NO. CV 04 0104527S	:	SUPERIOR COURT
GOODSPEED AIRPORT, LLC	:	JUDICIAL DISTRICT OF MIDDLESEX AT MIDDLETOWN
v.		
TOWN OF EAST HADDAM	:	FEBRUARY 7, 2006

MEMORANDUM OF DECISION

The plaintiff, Goodspeed Airport, LLC, filed a two-count tax appeal challenging the valuation placed upon its property located at 15 Lumberyard Road in the town of East Haddam (town) for the revaluation date of October 1, 2002 as well as the assessor's determination not to grant open space land classification to a portion of the subject property.[1]

Since 1964, "[t]he subject property [has been] a commercial airfield with commercial operations, several hangar buildings, a small office building, and fuel sales. . . . The subject airport exists and operates by virtue of a special exception permit granted by the East Haddam Zoning authorities." (Citations omitted.) (Defendant's Post-

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[1] This appeal was filed after the board of assessment appeals (board) for the town, pursuant to General Statutes § 12-111, declined to conduct a hearing on the plaintiff's appeal of the assessor's decision.

Trial Brief, pp. 1-2.) See also Plaintiff's Exhibit 3; Plaintiff's Reply Brief, Exhibit A.[2] The total acreage of the subject's land is 57.12 acres.

In count one, the plaintiff claims that it is aggrieved because the town's assessor denied the plaintiff's application to classify 43.04 acres of the subject as open space pursuant to General Statutes § 12-107e[3] resulting in the excessive valuation of the

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[2] The court notes that Exhibit A to the plaintiff's reply brief is a certified true copy of the original minutes of the town's planning and zoning commission from November 18, 1963. The special exception recited therein provides that "[t]he commission hereby approves of the establishment and operation of a private airport on petitioner's premises, subject to such future conditions as experience may demonstrate to be proper, under Sect. 19A. The commission denies the change in zone of the area in question from Zone VIII to Zone VI; it also denies the proposed amendment to the permitted uses in Zone VI."

[3] General Statutes § 12-107e provides, in relevant part: "(a) The planning commission of any municipality in preparing a plan of development for such municipality may designate upon such plan areas which it recommends for preservation as areas of open space land, provided such designation is approved by a majority vote of the legislative body of such municipality. Land included in any area so designated upon such plan as finally adopted may be classified as open space land for purposes of property taxation or payments in lieu thereof if there has been no change in the use of such area which has adversely affected its essential character as an area of open space land between the date of the adoption of such plan and the date of such classification.

"(b) An owner of land included in any area designated as open space land upon any plan as finally adopted may apply for its classification as open space land on any grand list of a municipality by filing a written application for such classification with the assessor . . . . The assessor shall determine whether there has been any change in the area designated as an area of open space land upon the plan of development which adversely affects its essential character as an area of open space land and, if the assessor determines that there has been no such change, said assessor shall classify such land as open space land and include it as such on the grand list. . . .

subject. In count two, the plaintiff relies on General Statutes § 12-119[4] and claims that the subject was wrongfully assessed.

The assessor denied the plaintiff's application for open space classification (application) based on his interpretation of the language in the town's plan of development.[5] The assessor stated that he "questione[d] the amount of acreage Goodspeed Airport, LLC has requested to be classified as open space. Because the airport is a special exception . . . there is no mention of what the 'minimum zoning requirement for area' is. It is [his] opinion that because there is no specified minimum acreage for its

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"(c) Failure to file an application for classification of land as open space land . . . shall be considered a waiver of the right to such classification on such assessment list.

"(d) Any person aggrieved by the denial by an assessor of any application for the classification of land as open space land shall have the same rights and remedies for appeal and relief as are provided in the general statutes for taxpayers claiming to be aggrieved by the doings of assessors or boards of assessment appeals."

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General Statutes § 12-119 provides, in relevant part: "When it is claimed that . . . a tax laid on property was computed on an assessment which, under all the circumstances, was manifestly excessive and could not have been arrived at except by disregarding the provisions of the statutes for determining the valuation of such property, the owner thereof . . . prior to the payment of such tax, may, in addition to the other remedies provided by law, make application for relief to the superior court for the judicial district in which such town or city is situated. . . ."

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See Plaintiff's Exhibits 5 and 9.

use, the property must be considered as being currently at its minimum zoning requirements, and therefore no portion of the property qualifie[d]." (Plaintiff's Exhibit 5.)

On the day of trial, the court and the parties agreed to a bifurcation of the case, with the court first determining whether the subject should be classified as open space because that would impact the valuation of the subject for tax purposes.

Pursuant to subsection (a) of § 12-107e, supra, the classification of open space, for the purpose of obtaining a reduction of municipal property taxes, requires that:

- the planning commission (commission) designate a plan of development with areas recommended for preservation as areas of open space land and
- the commission's designation is approved by a majority vote of the municipality's legislative body.

Once these requirements are met, subsection (b) of § 12-107e allows a property owner to file an application with the assessor of the municipality wherein the land is located for a designation that the owner's land be classified as "open space land" for taxation purposes. The municipality's assessor then determines whether there has been any change in the use of the designated areas that adversely affects its essential character as an area of open space land between the date of the adoption of the plan and the date of classification as open space land.

The defendant argues that the subject cannot be classified as open space because it does not conform to the amendment to the plan of development dated November 10, 1998 (1998 amendment) that "all land that is vacant or portions of land not built upon that is in excess of the minimum zoning requirement for area is eligible for open space designation." See Defendant's Post-Trial Brief, p. 2; Plaintiff's Exhibits 5 and 9. As discussed above, the assessor denied the plaintiff's application because the present use of the subject as an airport afforded no excess land under the no minimum zoning requirement for area of the special exception.

The plaintiff, on the other hand, disputes the assessor's determination that the grant of an airport use by special exception encompassed the whole of the subject's 57.12 acres with no excess land remaining. The plaintiff contends that there is a distinction between the granting of a special exception and the use of the land to meet the minimum zoning requirement for area.

Section 9.1.5 of the town's zoning regulations (regulations) permits the use of land located in a flood plain zone as an "[a]ircraft landing field, subject to the Commission approval as a Special Exception and with additional criteria as found in Section 18."[6] (Plaintiff's Exhibit 8, p. 27.)

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[6] The purpose of § 18 is "to promote the health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas . . . ." (Plaintiff's Exhibit 8, p. 91.)

Section 14B of the regulations recites the requirements for a special exception. Under § 14B.4, which describes the criteria for decision, the applicant for a special exception must conform, in all respects, to the regulations. See Plaintiff's Exhibit 8, p. 73. The assessor listed the subject property in the residential district known as the "Lake & Riverfront District" (LR District).[7] See Plaintiff's Exhibit 2. Section 10 of the regulations contains the only reference to minimum lot area requirements, namely, that there is a minimum lot area of one acre in the LR District.

A fair reading of the 1998 amendment shows that the commission addressed a specific concern: to avoid forcing residential land developers to build out their development. Instead, the commission apparently sought to permit developers the ability to designate, as open space land, lots that were not ready for construction but would be sometime in the future.

The commission expressed this particular concern in its statement of intent, which provides, in relevant part, that "[t]he town . . . for the past [twenty-five] years has established a fair and equitable method of assessment on lots subdivided but not built upon or separated by deed. This method of assessment should continue. Whether part of a subdivision along an existing road or one created with the construction of a new road, it is

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[7] The town's zoning districts are listed under § 6 of the regulations. See Plaintiff's Exhibit 8, p. 19. Permitted uses in the LR District zone are stated in § 9.4.

understood that lots not built upon do not bear any additional burden on the taxpayers. The commission's intent is to allow for the creation of neighborhoods that meet the intent of the owner, rather than force the owner to immediately develop lots due to fiscal concerns. If these subdivided lots are designated as open space lots, the financial burden is lessened, and the owner may lengthen the actual time to build out all of the lots. . . . The designation of these subdivided lots as open space lots benefits the owner and the [t]own. . . . In the case of vacant subdivided lots, only lots that have been deeded out shall be declassified from the open space designation." (Plaintiff's Exhibit 9.)

As noted above, § 12-107e (d) provides that "[a]ny person aggrieved by the denial by an assessor of any application for the classification of land as open space land shall have the same rights and remedies for appeal and relief as are provided in the general statutes for taxpayers claiming to be aggrieved by the doings of assessors or boards of assessment appeals."

"In § 12-117a tax appeals, the trial court tries the matter de novo and the ultimate question is the ascertainment of the true and actual value of the [taxpayer's] property. . . . At the de novo proceeding, the taxpayer bears the burden of establishing that the assessor has overassessed its property." (Internal quotation marks omitted.) United Technologies Corp. v. East Windsor, 262 Conn. 11, 22, 807 A.2d 955 (2002). "Only after the court determines that the taxpayer has met his burden of proving that the assessor's valuation

was excessive and that the refusal of the board . . . to alter the assessment was improper, however, *may the court then proceed to the second step in a § 12-117a appeal and exercise its equitable power to 'grant such relief as to justice and equity appertains . . . .'"* (Emphasis added.) Konover v. West Hartford, 242 Conn. 727, 735, 699 A.2d 158 (1997).

With these principles and the terms of § 12-107e[8] in mind, the court finds that the issue here is not whether the assessor was correct in his decision to deny the plaintiff's application. Instead, the issue is whether, on the merits of the plaintiff's application, the plaintiff was entitled to designate a portion of the subject as open space land.

The court finds that it is not clear from the evidence introduced to date whether each relevant condition recited in § 12-107e has been met. Because the court is unable to determine the merits of the plaintiff's application, the bifurcation is terminated and the case shall be set down for trial on the issues of valuation and the classification of the land.

Arnold W. Aronson
Judge Trial Referee

[8] See footnote three.