NO. CV 04 0104527S	:	SUPERIOR COURT
GOODSPEED AIRPORT, LLC	:	JUDICIAL DISTRICT OF
	:	MIDDLESEX
	:	AT MIDDLETOWN
v.		
TOWN OF EAST HADDAM	:	DECEMBER 20, 2007

NO. CV 06 4005318S	:	SUPERIOR COURT
GOODSPEED AIRPORT, LLC	:	JUDICIAL DISTRICT OF
	:	MIDDLESEX
	:	AT MIDDLETOWN
v.		
TOWN OF EAST HADDAM	:	DECEMBER 20, 2007

NO. CV 06 4005319S	:	SUPERIOR COURT
GOODSPEED AIRPORT, LLC	:	JUDICIAL DISTRICT OF
	:	MIDDLESEX
	:	AT MIDDLETOWN
v.		
TOWN OF EAST HADDAM	:	DECEMBER 20, 2007

MEMORANDUM OF DECISION

In the original real estate tax appeal, brought in two counts under docket number CV 040104527, the plaintiff Goodspeed Airport, LLC, challenged (1) the assessor's denial of open space classification for 43.04 acres of a 57.12 acre parcel known as 15 Lumberyard Road which abuts the easterly side of the Connecticut River in the town of

East Haddam (town), and (2) the assessor's valuation of the subject's 57.12 acres on the Grand List of October 1, 2003, where the last revaluation year was October 1, 2002.

The subject property contains a commercial utility airport with a 2,100-foot paved runway. The airport does not have a control tower and primarily serves small single-engine airplanes weighing 12,500 pounds or less. The subject airport consists of 14.08 acres of land containing a terminal building and two buildings with a combined total of 35 individual hangars. The balance of the land consisting of 43.04 acres contains open fields located entirely within a flood plain. At their highest elevation of 9 feet, the open fields are well below the flood plain level of 11 feet.

The assessor denied the plaintiff's application for open space designation as to the 43.04 acres and valued the subject property, as of October 1, 2002, at $2,354,020.

The court, in its previous memorandum of decision dated November 7, 2006, held that the assessor improperly denied the application of the plaintiff for open space designation on the 43.04 acres of the subject property and ordered the assessor to determine the open space classification in accordance with the court's decision. The assessor complied and made a finding that the 43.04 acres of the subject property had not changed its essential character since the adoption of East Haddam's current plan of development and concluded that the 43.04 acres qualified as open space. See assessor's determination of facts upon remand, dated January 19, 2007. Accordingly, the only

remaining issue in this appeal is the determination of the fair market value of the subject property as of the revaluation year of October 1, 2002.

The plaintiff, through its appraiser, Louis Durocher (Durocher), valued the subject property, as of October 1, 2002, at $1,396,000 as follows:

43.04 acres	for open space	$ 129,000
14.08 acres	for airport use	$ 1,267,000
57.12 acres		$ 1,396,000

See plaintiff's Exhibits 20 and 21.

The town, through its appraiser, Robert J. Mulready (Mulready) valued the subject property as follows:

primary land value	$ 847,500
secondary land value	$ 550,000
physical improvements	$ 532,000
	$1,929,500
(rounded)	**$1,930,000**

In determining the fair market value of the subject property, both Durocher and Mulready concluded that the income stream from the operation of the airport was not sufficient to provide an adequate return to an investor, and therefore, the income approach to value was not an appropriate valuation method for the subject property.

As noted above, Durocher broke up the subject parcel into two sections, 14.08 acres used for airport purposes and 43.04 acres for open space land, and valued each separately.

As to the 14.08 acres used as an airport, Durocher discounted the airport use and concluded that the highest and best use was as vacant land.[1] It is Durocher's opinion that "this large site along the Connecticut River would be an ideal site for a park and/or playground operated by the State of Connecticut or the Town of East Haddam. This type of facility would require a minimum of building area to be constructed." (Plaintiff's Exhibit 21, p. 22.) Durocher concluded that, of the three standard approaches to value, sales comparison, cost and income, only the sales approach is meaningful and relevant in the valuation of the subject property.

Although Durocher noted that highly comparable land sales were difficult to obtain, he selected five sales along the Connecticut River (river). See plaintiff's Exhibit 21, pp. 27-31. Sale one is located in the town of Haddam on River Bluff Road and is in a common interest community consisting of five units. Sale one is lot three of the five units and contains a Cape Cod-style, single-family home, sited well above the river, with 11 rooms, including 4 bedrooms. Sale two is lot one within the same River Bluff Road

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[1] Durocher noted that "[t]he existing improvements consist of a small general airport having one paved runway, a water runway on the Connecticut [R]iver for floatplanes, two hangers, tie-down space for transient aircraft and facilities for the purchase of aircraft fuel. After carefully examining the owners income and expense statements for the past four years I reached the conclusion that the current airport does not produce sufficient income to provide a decent return on the investment in land and buildings. In my opinion the existing improvements are obsolete and do not contribute to the overall property value. All of the value is in the land." (Plaintiff's Exhibit 21, p. 22.)

community and is also sited well above the river. Sale three is a vacant lot in Haddam that slopes down to the river and is subject to a right of way in favor of the Connecticut Valley Railroad. Sale four, in the town of Deep River, is a 3.26 acre parcel that slopes down to the river, but is improved with a single-family house containing 14 rooms, a two-car garage and a finished basement area. Sale five, in the town of Chester, is a vacant 2.90 acre lot running high along the river and is subject to a right of way in common with other lot owners to Parkers Point Road.

Based on his five comparable sales selections, Durocher concluded that the market value of the subject site was $90,000 per acre of the 14.08 acres or $1,267,000 (rounded). See plaintiff's Exhibit 21, p. 33.

Given Durocher's comments (1) that the property is "subject to periodic flooding when the Connecticut River rises above its banks", (2) that the "most recent serious flooding was reported in 1955, 1982 and 1984" and (3) that "[t]he property is also located in a Flood Plain. . . . [and] cannot support large permanent building areas", Durocher's so-called comparables are simply not similar to the subject property. (Plaintiff's Exhibit 21, p. 21.) For example, the subject land is located below the flood plain level adjoining the Connecticut River while Durocher's five so-called comparable sales were all buildable lots that were well above the flood plain.

Durocher also did an independent valuation of the subject's 43.04 acres of open space land and noted that "[a] major portion of the westerly area of the 43.04 acres is wetlands with surface water near the easterly property line near Creamery Road. Virtually all of the land is open land and level except for the most easterly portion near Creamery Road. All of the property is within the inland wetlands and flood hazard area . . . . Most of the land is flat and level . . . ." (Plaintiff's Exhibit 20, p. 20.) Durocher concluded that these 43.04 acres were not suitable for development and were best utilized as open space land, which is consistent with the plaintiff's application for open space designation. See plaintiff's Exhibit 20, p. 23. Durocher concluded that the 43.04 acres of open space land "should not be utilized for any form of public activity" as there were negative factors such as aircraft noise and the potential danger from landing aircraft. (Plaintiff's Exhibit 20, p. 35.) Durocher's final conclusion of fair market value of the 43.04 acres of land as of October 1, 2002 was based upon a finding of open space land at $3,000 per acre or $129,000 (rounded). See plaintiff's Exhibit 20, p. 36. It is interesting to note that Durocher did not consider the operation of the 14.08 acres of land as an airport to be the highest and best use of the land, and yet, used the negative aspects of the airport to affect his judgment on the use of the 43.04 acres.

Considering Durocher's value of the 14.08 acre airport site at $1,267,000 and the open space land at $129,000, his total fair market value of the subject 57.12 acres was

$1,396,000. Durocher placed no value on the improvements to the airport site, concluding that all of the improvements were obsolete and of no value. Although the court did not make a personal inspection of the subject property, the photographs of the airport property contained in Mulready's report (see defendant's Exhibit A, p. 5) and the photographs contained in Durocher's report (see plaintiff's Exhibit 21, pp. 12-14), together with the current operation of the airport, all these items make Durocher's statement, that the improvements on the subject have no value, lack any credibility since the airport has been maintained, improved and operated as such since it was purchased by the plaintiff in 1999.

As noted above, the town's appraiser, Mulready, concluded that the subject property of 57.12 acres, as of October 1, 2002, had a fair market value rounded to $1,930,000. Mulready broke down the total value into a primary land value of $847,500, consisting of the airport property, a secondary land value of $550,000, consisting of the open space land, and a valuation of the physical improvements, using the cost approach, at $532,000.[2]

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[2] Although the court found Mulready's conclusion as to the highest and best use of the subject credible, the comparables selected by Mulready to establish value lacked the same credibility. For the most part, Mulready's selection of comparable sales, like those of Durocher, were not similar or comparable to the subject land. See defendant's Exhibit A, pp. 30-36 for primary sales and pp. 41-47 for secondary sales.

Although the subject property, as previously noted, was located in a flood plain and subject to periodic flooding from the Connecticut River, and given Mulready's credible conclusion that the "[t]he highest and best use for the Goodspeed Airport is the current use", (defendant's Exhibit A, p. 29), it is difficult to rationalize Durocher's use of so-called comparable sales for his primary valuation because these sales are buildable residential building lots, for the most part, located in residential subdivisions.

It is important to review Mulready's analysis of the airport use to understand the valuation of the subject. Mulready noted that:

> "The site is improved with three buildings that service the functions of the airport. The airport has been in service for several decades and continues to provide a very important service primarily for recreational aviators. Based on the existing operation for both businesses and general aviation uses associated with small aircraft, the construction of the airport and the maintenance are clearly physically possible.
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> "The Goodspeed Airport could likely increase their revenues with some potential alternative uses that would require local and state approval. Regardless, the cash flow would not be sufficient to meet the value of the property that would attract venture capital or end users who were driven by a certain return on investment. The property sold for $2,330,000 in 1999 and while it is my belief that this value is slightly high for 2002, the type of investors are either municipal governments or an operator who has a passion for aviation and is looking for a recreational airport for his/her needs plus to provide a service to other aviators.
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> ***

> "The subject property is designed for purposes of supplying an airport with related services and support for small aircraft. The subject property is considered the highest and best use due to the historic significance of the airport, the needs it fulfills for small aviators and the reality that there is little in the way of alternative uses. This is a unique property with limited use. The property as improved provides more value as improved than it would as vacant. The highest and best use for the Goodspeed Airport is the current use."

(Defendant's Exhibit A, pp. 28-29.)

Mulready broke up the 57.12 acres of the subject into airport use of 19.71 acres and vacant open space land of 37.41 acres. He valued the non-airport vacant land as secondary property at $14,700 per acre or $550,000 (rounded). See defendant's Exhibit A, p. 25.

General Statutes § 12-107e (b), recites, in relevant part, as follows: "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."

The valuation of open space land, as set forth in § 12-107e, is controlled by the language in General Statutes § 12-63 (a) which recites, in relevant part: "The present true and actual value of land classified . . . as open space land pursuant to section 12-107e

shall be based upon its current use without regard to neighborhood land use of a more intensive nature, provided in no event shall the present true and actual value of open space land be less than it would be if such open space land comprised a part of a tract or tracts of land classified as farm land pursuant to section 12-107c ." In other words, open space land is valued at its current use, but in any event, not less than the value of farmland.

"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. Once the taxpayer has demonstrated aggrievement by proving that its property was overassessed, the trial court [will] then undertake a further inquiry to determine the amount of the reassessment that would be just. The trier of fact must arrive at [its] own conclusions as to the value of [the taxpayer's property] by weighing the opinion of the appraisers, the claims of the parties in light of all the circumstances in evidence bearing on value, and his own general knowledge of the elements going to establish value . . . ." (Citations omitted; internal quotation marks omitted.) United Technologies Corp. v. East Windsor, 262 Conn. 11, 22-23, 807 A.2d 955 (2002). In this regard, the plaintiff has failed to sustain its burden. The highest and best use of the subject property's airport portion is for a small airport. This highest and

best use is confirmed, not only by Mulready's conclusion, but also by the testimony of the principal owner of the airport, Timothy Mellon, who purchased the property in 1999 and continues to operate and maintain the airport.[3]

Durocher's opinion that the highest and best use of the subject property is not for airport use, but for use as vacant land dedicated to park or park-like uses, is inconsistent with the plaintiff's present use of the property. However, the current use of the property, as described by Mulready, clearly shows otherwise. "The site is improved with three buildings that service the functions of the airport. The airport has been in service for several decades and continues to provide a very important service primarily for recreational aviators. Based on the existing operation for both businesses and general aviation uses associated with small aircraft, the construction of the airport and the maintenance are clearly physically possible." (Defendant's Exhibit A, pp. 28-29.) Clearly, the improvements to the airport portion of the subject property are not obsolete and do

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[3] "The property was inspected on July 24, 2007 . . . with Mr. Tim Mellon showing the East Haddam assessor and [Mulready] through the property. The runway is 50 feet wide and 2,120 feet in length for 106,000 square feet with an additional 48,000 square feet of paving for taxi ways and parking (based on town records). There are no ground radio controls but there are REIL runway lights that are turned on 24 hours a day. The Federal Aviation Administration specifications are 4-6 inches of asphalt over a processed base of 8 inches for runways. This airport does not require this quality of improvement for small planes either single or twin engine. . . . Mr. Mellon advised us that the runway was repaved in the last couple of years and on the date of inspection the asphalt was in good condition." (Defendant's Exhibit A, p. 25.)

have value. As noted by Mulready, using the Marshall & Swift Valuation Service to value the physical improvements under the cost approach, he concluded that the total value of the improvements, as of the last revaluation year of October 1, 2002, were $532,000. See defendant's Exhibit A, p. 52.

"In a § 12-117a appeal, the trial court performs a two step function. The burden, in the first instance, is upon the plaintiff to show that he has, in fact, been aggrieved by the action of the board in that his property has been overassessed. . . . Only after the court determines that the taxpayer has met his burden of proving that the assessor's valuation was excessive . . . may the court then proceed to the second step in a § 12-117a appeal and exercise its equitable power to grant such relief . . . ." (Citations omitted; internal quotation marks omitted.) Konover v. West Hartford, 242 Conn. 727, 734-35, 699 A.2d 158 (1997).

The court recognizes that Mulready's appraisal on behalf of the town is lower in value than the assessor's value of the subject property. However, in view of the court's finding that the plaintiff has not sustained its burden of showing aggrievement, there is no reason for the court to conclude that the subject has been overassessed. "If the trial court finds that the taxpayer has failed to meet his burden because, for example, the court finds unpersuasive the method of valuation espoused by the taxpayer's appraiser, the trial court may render judgment for the town on that basis alone. . . ." Union Carbide Corp. v.

Danbury, 257 Conn. 865, 870, 778 A.2d 204 (2001). See also United Technologies Corp. v. East Windsor, supra, 262 Conn. 22-23.

The only conclusion that the court can draw from the facts in this case is that the plaintiff has not sustained its burden to prove that the subject property of 57.12 acres of land and improvements have been overvalued by the assessor as of the last revaluation year of October 1, 2002.

Accordingly, the court finds that the plaintiff is not an aggrieved party under the original appeal, CV 040104527. Therefore, this appeal is denied as to valuation, without costs to either party.

In the files with docket numbers CV 064005318 and CV 064005319, the plaintiff brought tax appeals challenging the amount of open space land classified by the assessor and the valuation of the subject property on the Grand List of October 1, 2005.

The valuation issue raised in the CV 064005318 and CV 064005319 files was resolved in the CV040104527 appeal as the valuation of the subject on the Grand List of October 1, 2005 is governed by the assessor's valuation of the property as of the last revaluation year of October 1, 2002.

The plaintiff also claims in these latest appeals that, as to the Grand List of October 1, 2005, the assessor should have classified all of the subject land, except for one acre, as open space land. The plaintiff reasons that the zoning regulations in East Haddam provide

that the minimum zoning requirement for area in a Lake Riverfront (L R) zone is one acre, and therefore, all but one acre of the subject land is eligible to be classified as "open space land."

The defendant town counters by arguing that the area of the subject property which is used as a commercial airport cannot be classified as "open space land" for the purpose of reducing the assessment value of the property for tax purposes.

The plaintiff relies on the holding in Rolling Hills Country Club, Inc. v. Board of Tax Review, 168 Conn. 466, 363 A.2d 61 (1975), in which the court held that a privately-owned golf course qualified for open space designation under General Statutes § 12-107e. The court in Rolling Hills stated that "[t]he basic concept is that the land be 'open,' and not that it be entirely unused, undeveloped or unimproved. . . . It also is interesting to note that § 7-131c additionally defines 'open space land' as 'any land acquired under the provisions of sections 7-131c to 7-131k, inclusive' (the grant-in-aid program) and refers to 'recreational and conservation purposes' as specifically including use of land for golfing." Id., 474-75. Although §§ 7-131c to 7-131k include land used for golfing, there is no evidence in this case that airport use is consistent with open space use.

The reference to a one-acre minimum zoning requirement comes from a 1998 amendment to the town's plan of development that sought to promote the orderly development of residential subdivisions in town so that residential subdivision developers

may keep an inventory of lots for future development that would be assessed as vacant land, not at the higher value of residential building lots. See plaintiff's Exhibit 9.

The starting point for the court's analysis must begin with East Haddam's 1981 plan of development that sets out the town's proposed land use and identifies the existing and proposed open space in the town. The plan of development included inland wetlands and water courses and special flood hazard areas. See plaintiff's Exhibit 9, p. 90. At the time of the adoption of the 1981 plan of development, the subject land was located within the area that the planning commission had recommended for open space development and the plan had been approved by the town's legislative body.

Although the town's plan of development was created in 1981, the airport use of the subject property goes back to the 1960's and was approved before the adoption of inland wetlands laws in Connecticut and more current restrictive flood regulations. The airport is a "permitted use in the Flood Plain Zone but is not listed as a permitted use in the L R District. As a pre-existing use[,] the airport has the right to continue to operate and the building contained within the airport may be replaced to the same number of square feet if damaged or destroyed." (Defendant's Exhibit A, p. 20.) To this extent, Durocher's opinion that the hangar and terminal buildings used for airport purposes are obsolete and of no value, makes no sense.

As a prerequisite to the classification of land as "open space land," § 12-107e requires the assessor to determine whether or not there has been any change in the essential character of the land as open space land. Since the subject property was in use as an airport prior to the adoption of the plan of development in 1981, the issue must be whether the planning commission contemplated that the airport use of the subject property at the time it adopted the development plan, included the airport as open space land. The court concludes that it did not for the following reasons.

The 1981 plan of development makes reference to the subject under "AIRPORT SERVICE", and states that "[t]he Goodspeed Airport is a private concern offering a taxi service, air freight and flight instruction located just south of the Goodspeed Opera House. Neither the State of Connecticut 1980 Master Transportation Plan nor the Midstate Region's Regional Transportation Plan, 1978 contain recommendations for the facility. Expansion of the airport is literally impossible due to geographical, environmental, legal and practical constraints." (Plaintiff's Exhibit 9, p. 55.) This statement is an acknowledgment of the pre-existence of the airport to the development plan, the inability of the airport to expand and its exclusion from the "open space land" designation pursuant to § 12-107e.

The factors that mitigate against the designation of the subject land as "open space land" except for one acre are as follows:

(1) An aircraft landing field is a permitted use in the Flood Plain Zone pursuant to § 9.1.5 of the East Haddam zoning regulations as a special exception allowing for the construction of improvements pursuant to § 18 of the zoning regulations.

(2) The airport contains buildings and a runway that are currently in use for airport purposes.

(3) The operation of an airport is inconsistent with the concept of "open space land" since the purpose of classifying open space land pursuant to § 12-107e is to conserve the state's natural resources.[4]

(4) The authority for the classification of land for "open space land" comes from the town's plan of development, as authorized by § 12-107e. The assessor's role is to determine whether there has been any change in the subject property since the designation of open space land in the town's plan of development. See § 12-107e (b).

The granting of the special exception to the zoning regulations authorizing the use of the subject property for airport service in the 1960's, as acknowledged in the town's plan of development, together with the physical presence of the airport runway, airport hangars, terminal building and the operation of the airport itself, support the assessor's determination that the airport land was not classified in the plan of development as "open space land." There is nothing presented by the plaintiff to support its contention that the

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[4] Sections 12-107a to 12-107e, "as derived from . . . [Public Acts 1963, No.] 490, are as much conservation statutes as they are tax relief measures. The declaration of policy in 12-107a recites . . . that it is in the public interest to conserve the state's natural resources. Indeed, it would appear that the purpose of the tax relief is to aid the conservation effort." (Internal quotation marks omitted.) Rolling Hills Country Club, Inc. v. Board of Tax Review, 168 Conn. 473.

open space classification by the assessor was in error. Accordingly, judgment may enter in favor of the town for the remaining appeals, CV 064005318 and CV 064005319, without costs to either party.

Arnold W. Aronson
Judge Trial Referee