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| NO. CV 05 4003783S (Sakon I) | : | SUPERIOR COURT |
| JOHN ALAN SAKON | : | JUDICIAL DISTRICT OF |
| | : | |
| v. | : | NEW BRITAIN |
| TOWN OF GLASTONBURY | : | APRIL 27, 2007 |

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| NO. CV 05 4006620S (Sakon II) | : | SUPERIOR COURT |
| JOHN ALAN SAKON | : | JUDICIAL DISTRICT OF |
| | : | |
| v. | : | NEW BRITAIN |
| TOWN OF GLASTONBURY | : | APRIL 27, 2007 |

**MEMORANDUM OF DECISION**

The plaintiff, John Alan Sakon (Sakon), pro se, brought two tax appeals (hereinafter referred to as Sakon I and Sakon II), consolidated for trial, in order to challenge the valuation placed upon Sakon's property by the assessor for the town of Glastonbury (town). The plaintiff filed Sakon I as a two-count complaint pursuant to General Statutes § 12-119 on January 25, 2005.[1] The plaintiff filed Sakon II as a one-count complaint pursuant to General Statutes § 12-117 on May 17, 2005.

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[1] On October 14, 2005, the court denied the defendant's motion to dismiss "[i]n reliance on pro se's objection to motion to dismiss that counts one and two are [§] 12-119 appeals, not zoning appeals or condemnation appeals."

The subject property covers approximately 9.36 acres and consists of three separate but contiguous parcels of undeveloped land. The subject property is located on the east side of Main Street, on the north side of Griswold Street and on the south side of the Route 3/Route 2 Interchange in the northwest corner of the town. While none of the subject parcels have direct frontage on Main or Griswold Streets, each parcel has access to these streets by way of easements. In 1999, the town's planning and zoning commission approved a special permit for an access easement to serve the subject properties for future development. The subject property is located in proximity to the town's central business district as well as to an existing retail/commercial development known as Somerset Square.

On the Grand List of October 1, 2002, the date of the last town-wide revaluation, the town's assessor valued the subject property at $122,425 per acre, for a grand total of $1,145,900. Sakon appealed the assessor's valuation to the board of assessment appeals in 2003. The board "substantially reduced the valuation – to approximately $40,000 per acre, only slightly less than the estimates of value that Mr. Sakon himself gave to the Board. Mr. Sakon now challenges the value placed on the property by the Board of Assessment Appeals." (Defendant's brief dated January 24, 2007 (hereinafter defendant's 1/24/07 brief), p. 2.)

On October 11, 2005, the plaintiff amended his Sakon I complaint by changing the two-count complaint to a five-count complaint. In Sakon I as amended, the plaintiff alleges in count one that the assessor, on October 1, 2003, valued his three parcels of land as follows:

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| Main Street Rear | (4.922 acres) | $196,858 |
| Griswold Street Rear | (1.82 acres) | $72,857 |
| 2980 Main Street | (2.56 acres) | $317,143 |
| | | $586,858 Total |
| | | ($63,000/acre) |

Sakon further alleges that the valuation placed upon his property by the assessor was manifestly excessive and disregarded the statutes for determining valuation. The amended complaint includes counts alleging the illegal valuation of the subject property on the Grand Lists of October 1, 2004 and October 1, 2005. In count four, the plaintiff alleges that for the Grand Lists of October 1, 2003, October 1, 2004 and October 1, 2005, "by withholding its discretionary approval to use his properties[,] the town has taken the Plaintiff's property rights without compensation." Count five was added for the Grand Lists of October 1, 2003, October 1, 2004 and October 1, 2005 claiming "[a]s there is no productive use[,] the Plaintiff may put his property [to] as of right which may generate income to pay the aforementioned property taxes, the town has placed a confiscatory tax

upon the Plaintiff."[2]

As discussed above, the subject property consists of three contiguous parcels of undeveloped land, and while none of the parcels have direct frontage, each has access. The parcel known as Main Street Rear (E0008A) consists of 4.922 acres and is located to the rear and east of Main Street. It is accessible by a twenty-two foot wide easement over an abutting property at 2944 Main Street and by a fifty-two foot easement for the 2980 Main Street property. Sakon purchased Main Street Rear in 1985 for $210,000. The parcel known as Griswold Street Rear (N0002B) consists of 1.82 acres located to the rear and north of Griswold Street. It is accessible by a fifty-foot easement that extends from Griswold Street over an abutting property at 131 Griswold Street. Sakon purchased Griswold Street Rear in 1988 for $89,000.

The parcel known as 2980 Main Street (E0005) consists of 2.56 acres and was acquired by Sakon under a long-term lease from Mary M. Randazzo, Trustee. The parcel is accessible by way of a fifty-two foot easement with frontage along Main Street. Sakon's lease of 2980 Main Street commenced on February 11, 1999 for fifty years with

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[2] On March 19, 2007, the court granted the plaintiff's motion to amend in order to incorporate the Grand List of October 1, 2006.

four, twelve-year options to renew, for a maximum lease term of ninety-eight years.[3] Sakon's base rent for parcel three is $12,500 per year, subject to adjustment based upon the amount of square footage that may be constructed on the site.[4]

The three parcels are located within the Planned Travel (PT) Zone, a type of commercial zone, that requires a minimum lot area of ten acres for uses permitted in the zone. Notably, under § 4.7.4 of the town's zoning regulations,"[s]maller legal lots of record under separate ownership may be developed and used for a permitted use provided the Town Plan and Zoning Commission finds that the Plan of Development for such lots has been formulated and integrated in a proper manner, taking into consideration the criteria set forth in Section 12 of these Regulations. Nothing herein is intended to limit the number of smaller lots that may be combined and developed under a single Plan of Development." (Plaintiff's Exhibit 1, p. 22.)

The town's appraiser, Sean T. Hagearty (Hagearty) stated in his appraisal report that "[t]he purpose of this [PT] zone is to provide for various land uses, including a wide variety of commercial ones. Per the town's zoning regulations, except for agricultural or

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[3] There is no option to purchase parcel three in the lease between Randazzo and Sakon.

[4] Approximately one-half of an acre from the total 3.01 acre site is leased to Galena Associates, LLC for 20 years, commencing September 1, 1999 and expiring on 2019, with three, five-year options to renew. This site contains an oil lube facility spanning 3,000 square feet.

park uses, all potentially allowable uses require a special permit with design review approval by the Town Plan and Zoning Commission in addition to any other review that may be required." (Internal quotation marks omitted.) (Defendant's Exhibit A, p. 4.) Hagearty further reported that "[s]ome of the uses allowed by special permit include banks, office buildings, day care centers, retail centers, motor vehicle service stations, athletic and recreational facilities and hotels/motels among others." (Defendant's Exhibit A, p. 4.) Hagearty also noted that public water, sewer, natural gas, electricity and telephone are all available to the subject property. See Defendant's Exhibit A, p. 12.

Although acting pro se and not currently licensed as an appraiser, the plaintiff has an extensive background in the field of real estate, including 29 years of work experience with commercial real estate. Presently, Sakon owns and operates Sakon Development LLC and Sakon Appraisal. In his appraisal report, Sakon describes his qualifications as follows: "John Alan Sakon holds a Degree in Economics with majors in Finance, Organization Management and Political Science from the Wharton School of Business, University of Pennsylvania. Mr. Sakon furthered his studies in the Wharton Graduate Program and the Fels Institute of Government at the University of Pennsylvania. Mr. Sakon also attended the University of Connecticut where he studied a program of General Business Studies and Economics and worked at the Center for Real Estate and Urban Economic Studies. Mr. Sakon completed the Society of Real Estate Appraisers Course

101 at the University of New Haven. He has also completed the Realtors National Marketing Institute Course 101 and taken several hundred hours of continuing education in the field of real estate and appraisal." (Plaintiff's Exhibit 1, p. 19.)

Although Sakon owns or controls all three parcels, he contends that each parcel is separately owned, and therefore, cannot be merged for valuation purposes. Although Sakon acknowledges that the subject property would be worth a substantial amount per acre if a special permit were approved and authorized by the town's zoning regulations, he maintains that the parcels have a low value because they are not merged and no special permit has been issued. Sakon selected as comparable sales properties that are located in a flood zone, despite the subject property not being similarly located. In Sakon's considered opinion, the three parcels have the following value, as of October 1, 2004[5]:

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|---|---|---|
| Main Street Rear | (4.922 acres) | $9,844 |
| Griswold Street Rear | (1.82 acres) | $3,640 |
| 2980 Main Street | (2.56 acres) | $5,120 |
| | | $18,604 Total |
| | | ($2,000/acre) |

It is Sakon's opinion that the highest and best use of the subject property, as

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[5] Although Sakon values the subject property as of October 1, 2004, the last town-wide revaluation was October 1, 2002.

vacant, is for use as a park. Sakon reported that "[b]ased upon our analysis of the physical characteristics of the subject site; appropriate legal restrictions; and applicable zoning restrictions and regulations, the highest and best use of any of the subject properties as [they] presently exist in their 'as is' condition is as a park. As several zoning application[s] for Special Permit have been denied, the only remaining use legally allowed by the Town regulations is for a park." (Plaintiff's Exhibit 1, p. 11.)

A brief review of the history of the subject property is appropriate here as Sakon has made several comments regarding why his special permit applications for the site have been denied. In 2002, Sakon obtained approval from the town's inland wetlands commission for on-site drainage improvements that would be required for the development of the subject property. Hagearty notes that the wetlands permit has been updated and modified to reflect a current proposed plan of development and is still valid. See Defendant's Exhibit A, p. 5.[6]

Since 1991, Sakon has filed numerous applications to develop the subject property. All of the applications have been denied. For example, in 2001, Sakon filed an application with the town's planning and zoning commission for a special design permit

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[6] The court notes that the wetlands permit is in effect for the three subject parcels as well as a fourth parcel not at issue in this appeal, 131 Griswold Street, which is an abutting site owned by an entity in which Mr. Sakon is a principal. The total acreage of the four parcels is approximately 13.55 acres.

to create a retail shopping complex. This application was withdrawn and a new application, known as Victoria Square II, was filed in 2003. The denial of this application was appealed to the superior court by Sakon and Victoria Square, LLC. See Victoria Square, LLC v. Glastonbury Town Plan & Zoning Commission, Superior Court, complex litigation docket at Hartford, Docket No. X09 CV 04 4001542 (June 15, 2006, *Shortall, J.*).

In the Victoria Square appeal, the court observed that Victoria Square, LLC and Sakon were one and the same. The court further commented that "[o]n February 25, 2004 the appellants applied for a 'special permit with design review approval' . . . to construct 65,775 square feet of retail space and for modification of an existing permit to renovate an additional 11,600 square feet in an existing building in order to create a retail shopping complex of over 77,000 square feet on four contiguous parcels of land owned by Victoria Square, LLC in a 'planned travel zone' in the northern portion of Glastonbury. Retail trade is a permitted use in a planned travel zone, and all uses in such a zone except farming and parks require a special permit."

The Victoria Square court upheld the decision of the commission to deny the appeal on the basis of extensive traffic problems. Sakon's claims, that the highest and best use of the subject property is for park use and that the three parcels of land comprising the subject property cannot be combined and must be considered separately,

are simply not credible. Following the adverse decision in Victoria Square, Sakon presented to the town's planning and zoning commission a new proposal to develop the same parcels of land into a retail shopping complex designated as "The Shoppes at Avalon".[7] See Plaintiff's Exhibits 3 and 4 showing the layout of the lots and the three easements providing ingress and egress to the development.

First, the highest and best use of the subject property is not for use as a park. As a property owner, Sakon has the right to maintain each of the three parcels separately as well as to argue that the Griswold Street Rear parcel is landlocked. However, Sakon's personal desires are of no importance when the issue is the fair market value of the property for the purpose of carrying its fair share of taxes.

"The highest and best use of a specific parcel of land is not determined through subjective analysis by the property owner, the developer, or the appraiser; rather, highest and best use is shaped by the competitive forces within the market where the property is located. Therefore, the analysis and interpretation of highest and best use is an economic study and a financial analysis focused on the subject property." The Appraisal of Real Estate (12th Ed. 2001) p. 305.

"Fundamentally, the concept of highest and best use applies to land alone because

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[7] The Shoppes at Avalon was proposed as a 13.55 acre site with up to 102,840 square feet of building space and 589 parking spaces.

the value of the improvements is considered to be the value they contribute to the land . . . . The theoretical emphasis of highest and best use analysis is on the potential uses of the land as though vacant." The Appraisal of Real Estate (12th Ed. 2001) p. 305.

In his explanation for park use as the highest and best use for the subject property, Sakon contends that "each parcel of land must be valued independently in an 'as is' condition. The appraiser cannot make the assumption that a single owner of each parcel will combine each parcel into one piece of land until said owner actually does so. Under current conditions, no single parcel is over 5 acres, (Parcel #2 does not even have an easement for road access) or has any approvals for development of the properties. The appraiser cannot make the assumption that approvals will be given for any of the parcels, and especially not the aggregate lots, until such time as a permit is in place. Any valuation of the parcels in the aggregate or under a 'what-if' scenario is highly speculative." (Plaintiff's Exhibit 1, p. 11.) Sakon's comments overlook the doctrine of assemblage which "applies when the highest and best use of separate parcels involves their integrated use with lands of another. . . . [S]uch prospective use may be properly considered in fixing the value of the property if the joinder of the parcels is reasonably practicable." (Internal quotation marks omitted.) Ferrigno v. Cromwell Development Associates, 93 Conn. App. 799, 805, 892 A.2d 291 (2006).

In the present case, Sakon does not have to approach adjoining property owners to

seek an assemblage with his property because he already owns two parcels in fee simple and holds a long-term lease to a third parcel.

In order to consider the highest and best use of the subject, it is important to consider the competitive market forces that are affecting the subject site. Hagearty, the town's appraiser, observed that "the assembled subject land, along with adjacent land owned/controlled by the subject owner, is proposed for development with a multiple building lifestyle retail center to be called The Shoppes at Avalon. This proposed development encompasses a total site area of 13.55 acres and up to 102,840 +/- SF of building area with 589 parking spaces. The application is still in the public hearing stage." (Defendant's Exhibit A, p. 13.)

Hagearty further observed that "the proposed plan of development would provide the highest and best use of the subject land. However, such a use was not approved as of the effective date of this appraisal (October 1, 2002). In fact, it is uncertain if such a use, or a similar use, will be approved. As such, in valuing the subject we have considered a number of different potential uses for the subject land that are potentially allowable under zoning. Among others, potentially allowable and feasible uses as of October 1, 2002 would have included office, hotel / motel, sales / service type operations (automobile dealership being a possible example) or recreational / athletic facilities. In addition, it is possible that the site could receive a zone change to permit multifamily housing via an

active adult condominium project." (Defendant's Exhibit A, p. 14.)

Hagearty reported that "[t]he physical characteristics of the site could support any of the above uses. In addition, many of the above uses would generate less in the way of traffic and would thus possibly alleviate some of the neighborhood complaints[,] yet still be acceptable uses to the town. Our interpretation of the special permit use process for all of the Planned zoning districts in Glastonbury is that it is designed to make sure that any proposed plan of development is simply in keeping with the town's overall plan of development. The typical buyer for parcels like the subject would simply factor these issues into his/her purchasing decision." (Defendant's Exhibit A, p. 14.)

As discussed above, Sakon selected comparable sales of vacant land in a flood zone whose primary use is for park use and concluded that the total value of the subject property was $18,604.

On the other hand, Hagearty selected comparable sales in which he analyzed sales of commercially zoned land in the town and considered the financial characteristics of each sale and factors such as location and physical characteristics. Reviewing the sales selected and adjustments made to these sales, Hagearty arrived at an overall value of $650,000 that was allocated among the three subject parcels as follows:

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|---|---|---|
| Main Street Rear | (4.922 acres) | $340,000 |
| Griswold Street Rear | (1.82 acres) | $130,000 |

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|---|---|---|
| 2980 Main Street | (2.56 acres) | $180,000 |
| | | $650,000 Total |
| | | ($70,000/acre) |

Of particular note is Hagearty's comment that "[b]ased on the subject's strong location features and the fact that there are relatively few remaining developable parcels in Glastonbury, the subject's development is more a question of what can or will be built and when as opposed to if there is adequate market demand to support development." (Defendant's Exhibit A, introductory letter, p. 3.)

"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).

Although the court can understand Sakon's frustration in being denied numerous applications for development of the subject property since 1991, including the Victoria Square development application, this frustration does not translate itself into a finding that the highest and best use of the subject property is for park use. Since the court finds that the highest and best use of the subject property is for commercial development, the plaintiff has failed to convince the court that he is an aggrieved party following the board's reduction of the assessor's valuation on the Grand List of October 1, 2002 from $122,425 per acre to approximately $40,000 per acre.

In Sakon I, Sakon claims that the assessor imposed an illegal tax on the subject property and this tax violated his federal and state constitutional rights. In a § 12-119 tax appeal, the focus is not on constitutional issues, but on whether the action of the assessor would result in illegality or that the assessor showed a complete disregard of his or her duty. See Tyler's Cove Assn., Inc. v. Middlebury, 44 Conn. App. 517, 527, 690 A.2d 412 (1997).

As noted by the Tyler's Cove court, there are two aspects to a § 12-119 tax appeal: (1) where a tax is laid on property that could not have been taxable in the municipality where situated and (2) where the assessment is so excessive that it could not have been arrived at unless the assessor disregarded the provisions of the statutes

authorizing the valuation of property for assessment purposes. See id., 526. "Cases in this [second] category must contain allegations beyond the mere claim that the assessor overvalued the property. [The] plaintiff . . . must satisfy the trier that [a] far more exacting test has been met: either there was misfeasance or nonfeasance by the taxing authorities, or the assessment was arbitrary or so excessive or discriminatory as in itself to show a disregard of duty on their part. . . . The focus of § 12-119 is whether the assessment is illegal." (Citations omitted; internal quotation marks omitted.) Id., 526-27. As the town points out in it post-trial brief, the plaintiff did not introduce any evidence to show that the assessor acted illegally or acted in disregard of the statutes relating to the assessments. See defendant's 1/24/07 brief, p. 20.

Sakon phrases the constitutional issue in the nature of a taking. He states that "[t]he issue before this court is that the plaintiff owns commercial properties that have no foreseeable source of income and no foreseeable use. However, while effectively denying the plaintiff use of his commercial property (the issue not before this court), the municipality still seeks to place a tax burden on these lands *as if they were commercial income producing properties*. This illegal taxation is the issue before this court." (Emphasis in original.) (Plaintiff's brief dated January 24, 2007, p. 9.)

Sakon, however, fails to show that the assessor did something illegal pursuant to § 12-119. The assessor properly determined that the subject property was commercial

income-producing property and valued it as such. Under General Statutes § 12-62, an assessor is required to exercise his or her judgment in determining the valuation of real estate for assessment purposes.

The plaintiff further claims that there was a governmental taking here in violation of the fifth amendment of the United States constitution and article first, § 11 of the Connecticut constitution because the imposition of an illegal tax on the plaintiff's property may lead to a tax foreclosure which goes to the issue of a practical confiscation or an inverse condemnation.

Inverse condemnation has been defined as "a cause of action against a governmental defendant to recover the value of property which has been taken in fact by the governmental defendant, even though no formal exercise of the power of eminent domain has been attempted by the taking agency." (Internal quotation marks omitted.) Albahary v. Bristol, 276 Conn. 426, 437 n.9, 886 A.2d 802 (2005). Simply put, claiming that a constitutional violation exists does not make it so. The plaintiff has brought a § 12-119 tax appeal which "requires a showing that an assessment is both manifestly excessive *and* illegal. Disagreements about the measurements of a benefit to real property do not make an assessment illegal." (Emphasis in original.) Pauker v. Roig, 232 Conn. 335, 341-42, 654 A.2d 1233 (1995). An inverse condemnation case, as noted in Albahary, is a separate cause of action not contemplated within the pleadings of this tax appeal.

The issue involved in this action is, in reality, a challenge to the valuation of the plaintiff's properties pursuant to § 12-117a, not whether the assessor acted illegally. Simply stated, the plaintiff has failed to sustain his burden of showing aggrievement. See Konover v. West Hartford, 242 Conn. 727, 735, 699 A.2d 158 (1997). Accordingly, both of the plaintiff's appeals are denied and judgment may enter in favor of the defendant, without costs to either party, for both appeals. Moreover, the defendant's request for triple costs is denied.

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Arnold W. Aronson
Judge Trial Referee