NO. CV 07 4007482S	:	SUPERIOR COURT
CHANDRA K. SACHETI	:	JUDICIAL DISTRICT OF MIDDLESEX
V.	:	AT MIDDLETOWN
TOWN OF WESTBROOK	:	SEPTEMBER 11, 2008

MEMORANDUM OF DECISION

In this real estate tax appeal, the plaintiff, Chandra Sacheti (Sacheti), challenges the valuation placed upon his property, located at 25 Pointina Road, by the town of Westbrook's assessor, Ivan J. Kuvalanka (Kuvalanka), on the Grand List of October 1, 2006. Kuvalanka determined that the fair market value of the subject premises, as of October 1, 2006, was $1,325,940.

The plaintiff's property, located in an area of mostly seasonal homes on a dead end road, has 50-feet of frontage on Long Island Sound (the Sound). The lot size is approximately 0.11 acres or 4,792 square feet. The subject property is in a High Density Residential (HDR) zone that requires a minimum lot size of 15,000 square feet (0.34 acre) with a maximum building area of 25% of the site area. Most of the properties in the subject's area, including all waterfront lots, are undersized, preexisting and nonconforming lots pursuant to the town's zoning regulations.

The improvement to the subject property is a ranch-style residential house containing 1,000 square feet of gross living area with a one-car attached garage. The house, built in 1957, contains a living room, kitchen, two bedrooms and two bathrooms. There is also a fireplace, oil heat, electricity and septic sewer system, but no air conditioning. The subject has a basement that is 70% finished. Plaintiff's appraiser, Robert R. Morra (Morra), did not consider the basement as a living area because it is below grade. In Morra's opinion, the fair market value of the subject property, on October 1, 2006, was $720,000.

The subject property's waterfront location on the Sound is its most important feature for valuation purposes. For this reason, the comparable sales that are used to determine the subject's fair market value must be sales of waterfront property.

Kuvalanka selected three waterfront properties as comparable sales in arriving at his opinion of the subject's fair market value. The first sale at $1,300,000 occurred on June 23, 2006 for a home located at 209 Old Mail Trail, which is 2 ½ miles west of the subject. This property is below the minimum lot area of 15,000 square feet under the zoning regulations. At 0.24 acres of land, it is double the size of the subject property. The house, which was built in 1977 with a Mansard roof, has a gross living area of 1,505 square feet and includes two bedrooms and two bathrooms. The house also has a fireplace and electric heat. Kuvalanka adjusted the value from $1,300,000 to $1,496,160, reporting that this site was larger and the dwelling unit superior to the subject. However, according to Kuvalanka, this comparable was in a less desirable neighborhood than the subject.

Kuvalanka's second waterfront sale at $1,548,720 occurred on June 29, 2006 for a home located on a 0.14 acre lot at 158 Captains Drive, which is 2 miles west of the subject. This property is a ranch dwelling built in 1962 with a gross living area of 1,467 square feet and no basement. The house has three bedrooms, two bathrooms, oil heat and central air conditioning. Kuvalanka adjusted the sale price down to $1,324,190 due to the superior site and structure value.

Kuvalanka's third and last comparable sale at $1,875,000 occurred on September 8, 2006 for a home located on a 0.45 acre lot at 175 Old Salt Works Road, which is 300 feet easterly of the subject property. Kuvalanka adjusted this sale down to $1,238,160 due to the larger site, better quality of the dwelling and other improvements. This sale is substantially different from the subject. The house is on an almost one-half acre lot. There are eight rooms for a gross living area of 2,561 square feet, which includes three bedrooms and two bathrooms. A fireplace, basement, large deck, oil heat and central air conditioning are present. Although this property is in close proximity to the subject property, Kuvalanka adjusted this sale down by approximately $600,000 because the properties are significantly different.

Morra selected three comparables, only two of which were waterfront properties in Westbrook. Sale one at $660,000 occurred on March 26, 2007 for 449 Seaside Avenue, which is located 1.72 miles west of the subject. Although Morra noted that this sale had access to water, it was not waterfront property, a key element in the valuation of the subject property. Therefore, Morra's sale one is not a credible comparable.

According to Morra, sale two had use of a long private beach. This sale at $878,900 occurred on November 22, 2005 for 193 Old Mail Trail. The 0.06 acre lot consists of a seventy-year-old Cape Cod-style cottage with a gross living area of 1,176 square feet upon it. This sale has four bedrooms and 1.5 baths. It is notable that this comparable has open parking for four cars, two porches and a deep water dock.

Morra's sale three at $725,000 occurred on December 17, 2004 for 141 Second Avenue. This 0.16 acre property is located 0.14 miles northwest of the subject and has a Cape Cod-style house on it that was built in 1959. The house has 1,308 of gross living area, including three bedrooms and one bath. However, this is a weak comparable because the property was sold almost two years prior to the October 1, 2006 revaluation date.

Of the six sales selected by the two appraisers, only the sales at 193 Old Mail Trail, 158 Captains Drive, 141 Second Avenue and 175 Old Salt Works Road appear to be sufficiently comparable to the subject for purposes of determining value.

Although the issue of waste disposal was not raised by the appraisers, there is an inconsistency between Kuvalanka's appraisal report stating that the subject had a septic system and Morra's appraisal report stating that the subject had sanitary sewers.

Subsequent to the completion of the trial, the parties filed a stipulation reciting that "[t]he Plaintiff and the Defendant stipulate and agree that neither the subject property nor any of the comparable properties are served by public sewers. All of the properties have private septic systems." (8/1/08 stipulation of parties.)[1]

It is necessary to analyze each of these four comparable sales because the unadjusted range of sales, from a low of $725,000 to a high of $1,875,000, can be used as an indicator of value since both appraisers considered the land value to be the most important component.

The sale at 141 Second Avenue occurred on December 14, 2004. Morra noted that the market for waterfront property was rising through the revaluation date of October 1,

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With the subject containing a site of 4,792 square feet and a finished living area of 1,000 square feet, a patio and an open point of 1,116 square feet, as reported by Kuvalanka, there does not appear to be much space left for a septic field, given the fact that the site abuts the ocean. Recognizing that Kuvalanka identified that "[m]ost of the properties located in the Pointina Beach Association and all of the waterfront lots are undersized preexisting nonconforming properties. . . ," a septic system on each of these small lots should raise a question about the environmental impact on the area as well as the effect on property values. (Defendant's Exhibit A.) However, neither appraiser raised this as an issue affecting value.

It appears appropriate for the court to ignore any problems that may be associated with septic systems, because if the value of the subject property were affected under these circumstances, the appraisers would have raised them. See, e.g., Hartford Federal Savings & Loan Assn. v. Lenczyk, 153 Conn. 457, 463-64, 217 A.2d 694 (1966) where there was a "significant question . . . whether in making their appraisal the appraisers allocated any element of value to property on account of [a] sewer being constructed in the street on which it was located and, if so, to what extent."

2006 because waterfront property was considered unique property. Adjusting for time and other factors, Morra determined that the adjusted sale price was $739,750, an increase over the actual sale price of $725,000.

The sale at 193 Old Mail Trail is located some distance from the subject, but in many respects, it is comparable to the subject. This property sold on November 22, 2005 for $878,900. It is a Cape Cod-style cottage with 1,176 square feet of gross living area on a 0.06 acre waterfront lot. This sale is superior to the subject because it has a deep water dock and open space parking for four cars. Morra adjusted the sale price of this property down to $770,100 for deficiencies such as space heating and a crawl space.

The comparable at 158 Captains Drive sold on June 22, 2006 for $1,548,720. This ranch-style house, containing 1,467 square feet of gross living area, has four rooms, three of which are bedrooms, but no basement. Oil heat and central air conditioning are the superior features of this property. Kuvalanka adjusted the sales price down to $1,324,190, very close to the valuation that he placed on the subject property at $1,325,940.

Kuvalanka considered all approaches to value but relied only on the sales comparison approach. In doing so, Kuvalanka used a range of values from $1,238,160 to $1,496,160 and settled on $1,325,940 as the subject's final fair market value.

Morra, on the other hand, used three comparable sales ranging between $704,500 to $739,750 and settled on $720,000 as the subject's final fair market value. Morra also considered the cost approach utilizing Marshall Swift valuation service. Morra estimated the land value at $625,000 but did not provide any support for the land valuation. For this reason, the cost approach is not applicable to this analysis.

In the court's analysis of the four sales that are most comparable to the subject, the range in adjusted value is between $739,750 and $1,324,190. It is of interest to the court that the plaintiffs purchased the subject property on June 2, 1988 for what appears to be approximately $714,000.[2] Keeping in mind Morra's report on the increase of waterfront property values in the subject's area, it is reasonable to assume that the subject increased substantially in value from 1988 to 2006.

In this tax appeal challenging the assessor's valuation of the subject property as of October 1, 2006, pursuant to General Statutes § 12-117a, the trial court must first determine, in a two-step process, whether or not the taxpayer has been aggrieved by the action of the assessor and the board of assessment appeals. See Breezy Knoll Assn., Inc. v. Morris, 286 Conn. 766, 775-76, 946 A.2d 215 (2008). If the trial court finds that the taxpayer has been so aggrieved, the trial court must then undertake a determination of the fair market value of the subject property as of the date of the last revaluation. Id. As noted in Breezy Knoll, "[t]he trier arrives at his [or her] own conclusions as to the value of land

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2 Neither appraiser considered this fact. See the deed of conveyance attached to Kuvalanka's appraisal report, defendant's Exhibit A.

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 [or her] own general knowledge of the elements going to establish value including his [or her] own view of the property. . . ." Id. As the town notes in its post-trial brief, the process of valuation is, at best, a matter of approximation. See Abington, LLC v. Avon, 101 Conn. App. 709, 717, 922 A. 2d 1148 (2007).

In the present action, the subject property's most attractive feature is that it has frontage on the Sound. Otherwise, the subject is a "postage" size lot with a seasonal residence having a gross living area of 1,000 square feet. Given the fact that sewerage is disposed of through a septic system and the subject is a nonconforming use in a HDR zone requiring a minimum lot of 15,000 square feet and a maximum building area of 25%, the property owner is locked into the property's present condition and cannot make significant improvements because of zoning restrictions.

In spite of the subject property's deficiencies, including its small size, the appraisers' comparable sales demonstrate that there is a market for waterfront property.

It is interesting to note that Kuvalanka's comparable sale at 175 Old Salt Works Road, located 300 feet east of the subject property, had an adjusted sale value of $1,238,160. Given the significance of the subject property's deficiencies and considering the range of adjusted values for the comparable sales, the fair market value of the subject appears to be closer to the high end of the four comparables this court selected.

On balance, a finding of $1,200,000 fits within the guidelines considered by this court as the fair market value of the subject property as of October 1, 2006.

Accordingly, since the finding of this court is that the fair market value of the subject is lower than the $1,324,940 value placed upon it by the town's assessor, judgment may enter in favor of the plaintiff sustaining its appeal, without costs to either party.

Arnold W. Aronson
Judge Trial Referee