NO. CV 08 4018797S	:	SUPERIOR COURT
JOSEPH GENOVESE, JR., ET AL.	:	JUDICIAL DISTRICT OF
v.	:	NEW BRITAIN
CITY OF NEW BRITAIN	:	OCTOBER 30, 2009

MEMORANDUM OF DECISION

The plaintiffs, Joseph Genovese, Jr. and Theresa Genovese[1], owners of 123 Forest Street, New Britain, bring this property tax appeal claiming that, for the Grand List of October 1, 2007, the assessor for the city of New Britain "laid [a tax] on this property which tax was computed on the assessment which was manifestly excessive and could not have been arrived at except by disregarding the statutes for determining the valuation of said property." (Plaintiffs' complaint, ¶ 4.)

Prior to the revaluation date of October 1, 2007, a fire occurred on the subject premises in January 2007, causing the plaintiffs to vacate the premises. On October 1, 2007, as part of a city-wide revaluation of property in New Britain, the city's assessor determined that the fair market value of the subject property, as of that date, was $303,200. The previous revaluation occurred on October 1, 2002.

The assessor, in the process of conducting a revaluation of New Britain property

---

[1] The plaintiffs are siblings.

for the Grand List of October 1, 2007, engaged Vision Appraisal Technology, Inc. (Vision Appraisal), a professional appraisal service. As part of the revaluation process, Vision Appraisal mailed a data verification form on September 25, 2006 to the plaintiffs at 123 Forest Street with a postage-prepaid return envelope. See defendant's Exhibit C.

The plaintiffs did not respond to this mailing. The city then sent the plaintiffs a letter dated February 6, 2007 notifying them that Vision Appraisal would be conducting an inspection of the premises. See defendant's Exhibit D. On March 20, 2007, Vision Appraisal went to the subject premises for the inspection, but could not gain access since no one was present at the premises. A visual inspection of the exterior was made but evidence of a fire was not clearly visible. As a result of the inspection, the assessor changed the classification of the condition of the premises from "average" to a lower category of "fair." Accordingly, the assessor changed the valuation of the subject premises from $325,000 to $303,200.

On April 23, 2007, the city sent a letter to the plaintiffs notifying them that Vision Appraisal had been unable to inspect their premises and requested that the plaintiffs contact the assessor's office to arrange for an interior inspection. See defendant's Exhibit F. The city's assessor did not receive any response to this letter.

On November 16, 2007, a notice of the change in assessment, as of October 1, 2007, was sent to the plaintiffs at their last known address at 123 Forest Street. See defendant's Exhibit G. A tax statement dated September 29, 2009, covering the October 1, 2007 Grand List, was also mailed to the plaintiffs at 123 Forest Street. See defendant's

Exhibit H.

The plaintiffs contend that they did not receive any of the assessor's notices after vacating the subject premises following the January 2007 fire. The plaintiffs further contend that the assessor's office should have been aware of the fire damage and factored that into the valuation of the property on October 1, 2007.

Although the plaintiffs seek a reduction in the assessed value of the subject premises, the issue raised by the plaintiffs in their complaint is founded on the basis that the assessor did something illegal or improper and not in compliance with our statutes governing the assessment process. A property owner may challenge the assessor's determination of the value of real estate during the process of a statutorily-required revaluation pursuant to General Statutes § 12-117a and General Statutes § 12-119 if claiming that the assessment was manifestly excessive and could not have been arrived at except by disregarding the statutes.

A § 12-117a appeal arises from a denial by the board of assessment appeals of the taxpayer's claim that the assessor overvalued the subject property.[2] There is no such allegation in the plaintiffs' complaint, nor is there any evidence, that an appeal was first

---

[2] A property owner's challenge to the assessor's valuation of his or her property must begin with an appeal to the board of assessment appeals pursuant to General Statutes § 12-111 which provides, in relevant part, as follows: "(a) Any person . . . claiming to be aggrieved by the doings of the assessors of such town may appeal therefrom to the board of assessment appeals." If the taxpayer is dissatisfied with the decision of the board of assessment appeals, the taxpayer's statutory remedy is to take a 12-117a appeal to the Superior Court "within two months from the date of the mailing of notice of such action [from the board of assessment appeals.]"

made to the board of assessment appeals. See *J.C. Penney Corp.* v. *Manchester*, 291 Conn. 838, 844, 970 A.2d 704 (2009).

Although no statute was cited in the plaintiffs' complaint, as required by Practice Book § 10-3[3], the language in the plaintiffs' complaint forms a basis for an appeal pursuant to § 12-119 and raises the question of whether the assessor complied with the statutory mandates of General Statutes § 12-62 when conducting a revaluation of property in the city of New Britain.

"[Section] 12-119 requires an allegation that something more than mere valuation is at issue. It is this element that distinguishes § 12-119 from its more frequently evoked companion, [§ 12-117a]. Under § 12-119, there are two possible grounds for recovery: the absolute nontaxability of the property in the municipality where situated, and a manifest and flagrant disregard of statutory provisions. A claim that an assessor used an inappropriate method of appraisal, resulting in overvaluation, is not a claim of illegal or wrongful assessment and, therefore, is properly raised under § 12-117a." (Citation omitted; internal quotation marks omitted.) *Breezy Knoll Assn., Inc.* v. *Morris*, 286 Conn. 766, 778 n.20, 946 A.2d 215 (2008).

In *Waterbury Hotel Equity, LLC* v. *Waterbury*, 85 Conn. App. 480, 491, 858 A.2d 259 (2004), the court noted that the assessor's duties emanate from General Statutes § 12-62 and that "[t]he town assessor's duties under § 12-62 are mandatory, not discretionary,

---

[3] Practice Book § 10-3 provides as follows: "(a) When any claim made in a complaint . . . is grounded on a statute, the statute shall be specifically identified by its number."

and town assessors are obligated to conform to the requirements of § 12-62."

The plaintiffs' basic complaint is that because the assessor did not conduct an internal inspection of their property, the fire damage was not discovered and, therefore, the assessor did not lower the valuation of their property for assessment purposes.

Section 12-62 (b) sets forth the assessor's statutory duties as follows:

> "(3) An assessor, member of an assessor's staff or person designated by an assessor may, at any time, fully inspect any parcel of improved real property in order to ascertain or verify the accuracy of data listed on the assessor's property record for such parcel. . . .
>
> "(4) An assessor may, at any time during the period in which a full inspection of each improved parcel of real property is required, send a questionnaire to the owner of such parcel to (A) obtain information concerning the property's acquisition, and (B) obtain verification of the accuracy of data listed on the assessor's property record for such parcel."

A review of the assessor's actions in this case is consistent with the requirements of § 12-62 (b):

> (1) The assessor mailed a data verification form to the plaintiffs as part of the revaluation process;
>
> (2) After not receiving a data verification form from the plaintiffs, the assessor sent the plaintiffs notice that Vision Appraisal would conduct an inspection of their premises;
>
> (3) Vision Appraisal reported to the subject premises, but could not gain interior access and performed an exterior inspection only;
>
> (4) The assessor notified the plaintiffs that Vision Appraisal could not gain access to the interior of their premises and requested that the plaintiffs contact the assessor to arrange for an inspection, to which the plaintiffs did not respond.

It is clear from the assessor's actions that he carried out his statutory duties, as provided in § 12-62, to make every effort to contact the plaintiffs in order to conduct an interior inspection of the subject premises.

The difficulty in this case arises from the plaintiffs' apparent failure to provide a forwarding address for any mail or to arrange for mail pick up once they vacated from the subject premises. Although there was no evidence presented to determine whether or not the plaintiffs did in fact notify the U.S. Post Office of a change of address or whether the plaintiffs did in fact periodically pick up their mail at the subject premises, the only plausible explanation is that they did neither.

Although the plaintiffs contend that the city's fire department rendered a report of the January 2007 fire to the assessor's office, the assessor did not receive the report until after the completion of the revaluation process. The fire department's report showed property damage of $50,000 and contents loss of $10,000. The assessor testified that he could not make any correction following the October 1, 2007 revaluation because there was no clerical error permitting such a change, assuming that a change was warranted.

In order to prevail in this appeal brought under § 12-119, the plaintiffs must meet an "exacting test by establishing that the action of the assessors would result in illegality . . . . The focus of § 12-119 is whether the assessment is illegal. . . .The statute applies only to an assessment that establishes a disregard of duty by the assessors." (Citations omitted; internal quotation marks omitted.) *Second Stone Ridge Cooperative Corporation* v. *Bridgeport*, 220 Conn. 335, 341-42, 597 A.2d 326 (1991).

The key factor here was not the assessor's failure to comply with the statutory requirements of § 12-62, but the plaintiffs' failure to provide for the timely receipt of their mail, or their failure to respond to mail if it was in fact received. While the assessor has an obligation to comply with state statutes in regard to property valuations, the taxpayer/property owner also has an obligation to cooperate with the assessor in the valuation process by furnishing such facts upon which the valuation may be based. See *J.C. Penney Corp.* v. *Manchester*, supra, 291 Conn. 845.

Considering all of the evidence presented in this case, the plaintiffs have failed to sustain their burden to show that the assessor acted illegally or in disregard of his duty as assessor.

Accordingly, judgment may enter in favor of the defendant, denying the plaintiffs' appeal, without costs to any party.

_____

Arnold W. Aronson
Judge Trial Referee