NO. CV 09 4011315S

ROBERT C. HUNT, JR.	:	SUPERIOR COURT
	:	JUDICIAL DISTRICT OF
v.	:	TOLLAND
	:	AT ROCKVILLE
TOWN OF ANDOVER	:	JANUARY 6, 2011

MEMORANDUM OF DECISION

The plaintiff, Robert C. Hunt, Jr. (Hunt) brings this four-count tax appeal[1] challenging the assessor's change in the valuation of the subject property located at 40 Townsend Road in the town of Andover (town) from an assessment of $181,000 as of the last revaluation year of October 1, 2006 to an interim assessment of $204,500 set on the Grand List of October 1, 2008, a non-revaluation year.

The subject property is a 1.08-acre lot with a gravel driveway to the 156-year-old house. The subject house is a one and a half story Cape Cod-style farmhouse containing 1,641 square feet (SF) with a total of seven rooms, including three bedrooms and two baths. In 1986, a detached "barn" that serves as a garage/workshop was constructed.

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[1] See plaintiff's second amended complaint dated October 28, 2010.

The sole basis for the change in valuation on the subject property was the assessor's opinion that after making an external inspection in 2008, he revisited his previous designation of the house's grade set at C+, as of October 1, 2006. The assessor is of the opinion that the grade should have been set at grade B+.

As noted by Harry Derasadourian (Derasadourian), the assessor for the town of Avon over the last 25 years and an expert witness testifying for the plaintiff, grading deals with the physical wear and tear on a building obtained from a description of the quality of construction. After inspecting the subject inside and out, Derasadourian was of the opinion that the grading category should have remained at C+. The subject had been graded C+ in the revaluation years of 2002 and 2006 by the same revaluation company.

Derasadourian's opinion was based upon the fact that the subject was a farmhouse constructed over 150 years ago and updated with vinyl siding. The subject has a stone foundation, and the house itself had no architectural details or ornamental improvements. In addition, Derasadourian considered the subject to be a very basic house without special qualities. After Derasadourian inspected the subject house, he saw nothing warranting the assessor's change in the grade of construction that could be used to support such an increase in valuation.

The assessor, John Chaponis (Chaponis), works two days a week as the town's part-time assessor. He engaged Vision Appraisal Technology (Vision) to do the October 1, 2006 town-wide revaluation. However, Chaponis was not satisfied with Vision's work.

Once a year, Chaponis reviews properties that were issued a work permit. Although Chaponis had not inspected or noticed the subject property before, he noted that a minor repair permit had been issued for the subject. As a result, in 2008 Chaponis visited the subject and determined that Vision's valuation of the subject was low. Chaponis subsequently changed the grade on his field card from C+ to B+ and raised the assessment from $181,000 to $204,500.

Although the town, in its post-trial brief dated November 2, 2010 at p. 3, stated that the assessor changed the grade of the subject from B to B+ and placed great weight on the value of the barn/garage, it is clear to the court that the primary reason for the initial change in valuation by the assessor was his change of grade from C+ to B+.

Chaponis testified that he considered four ways to change the value:

(1) Grade

(2) Condition of the property

(3) Land value

(4) Value by override.

Clearly, Chaponis' focus in changing the subject's 2008 valuation was his view that the grade should be B+, not in determining that the barn/garage added more value to the subject that had been previously noted on the 2006 and 2007 assessment cards.[2]

Chaponis considered that, pursuant to General Statutes § 12-55, he had a "watchtower" role by periodically checking on assessments in town and equalizing assessments where needed.

Section 12-55 recites, in relevant part, as follows: "(b) Prior to taking and subscribing to the oath upon the grand list, the assessor . . . shall equalize the assessments of property in the town if necessary, and make any assessment omitted by mistake or required by law. The assessor . . . may increase or decrease the valuation of any property as reflected in the last-preceding grand list . . . ."

Our courts have interpreted § 12-55 to accord to an assessor this "watchtower" role so that each taxpayer pays his or her fair share of taxes based on the market value of

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[2] The town's post-trial brief focuses on the "post and beam garage" as the central theme for the change in valuation of the subject property even though the same "post and beam garage" was constructed approximately 20 years prior to the October 1, 2006 revaluation date. Noting the requirement of General Statutes § 12-62 (b) (3) that at the time of revaluation, the assessor is required to make a full inspection of all real estate within his or her jurisdiction, it is not credible that the "post and beam garage" had been missed or ignored by the town's assessors over a 20-year period. See General Statutes § 12-62 (a) (3): "'Full inspection' or 'fully inspect' means to measure or verify the exterior dimensions of a building or structure and to enter and examine the interior of such building or structure in order to observe and record or verify the characteristics and conditions thereof, provided permission to enter such interior is granted by the property owner or an adult occupant[.]"

the property. See Matzul v. Montville, 70 Conn. App. 442, 448, 798 A.2d 1002, cert. denied, 261 Conn. 923, 806 A.2d 1060 (2002).

Upon receiving a notice of the increase in his property's assessment, Hunt contacted Chaponis. Chaponis thereafter did a full inspection of the subject confirming his opinion that the subject was undervalued. Chaponis engaged an appraiser, Renee Healion (Healion) to do an appraisal of the subject using the market sales approach. Healion completed her appraisal report on September 3, 2010, more than a year after the final decision of the board of assessment appeals (board) denying Hunt's appeal. Hunt also engaged an appraiser, Norman F. Kilcomons (Kilcomons), to appraise the subject property. Kilcomons completed his appraisal on November 9, 2009, which was also subsequent to the board's final decision.

Healion's opinion of the subject's value, as of October 1, 2006, was $300,000. Kilcomons' opinion of value, as of October 1, 2006, was $246,000.

Hunt testified at trial that the chair of the board asked the assessor for comparables that would support his increase in the subject's assessment and the assessor replied that he would have to get them. The board deferred acting on the appeal until March 30, 2009 when Hunt received a notice that the old assessment was void and the new assessment was $204,500 without further explanation. The present appeal followed.

Hunt contends that the change in the 2008 assessment value from $181,000 to 204,500 was arbitrary on the part of the assessor and should be voided by the court.

Although Hunt acknowledges that the assessor has a watchtower role to equalize assessments, Hunt claims that the reassessment was done without any supporting data and without fully inspecting the property. Hunt further claims that "[t]he Assessor's practice of randomly reassessing properties, such as Mr. Hunt's Property, by changing the grade during interim revaluation years without reviewing similar houses in the neighborhood, can only result in 'similar homes within similar neighborhoods' being given inconsistent grades of construction. This has resulted in the Plaintiff paying a disproportionate share of the Town's property taxes when compared to similar homes in his neighborhood." (Plaintiff's post-trial brief, dated November 2, 2010, p. 27.)

The issue here is to what extent may an assessor do an interim revaluation of property consistent with his or her role as a "watchtower" to equalize the assessment of all properties listed on the Grand List of the municipality in any assessment year.

First, General Statutes § 12-55 (b) permits an assessor to "increase or decrease the valuation of any property as reflected in the last-preceding grand list." In other words, an assessor cannot be required by a taxpayer to make an interim revaluation of his or her property. An assessor, on the other hand, may increase or decrease the value of a

taxpayer's property in order to equalize it with other property assessments. See DeSena v. Waterbury, 249 Conn. 63, 91, 731 A.2d 733 (1999).

The DeSena court considered the statutory scheme governing the revaluation of property noting that "[w]e have recognized the legislature's awareness that, even though property values may fluctuate within a ten-year period, it is neither realistic nor necessarily desirable to require more frequent property revaluations. In noting that the legislature deliberately fashioned an assessment scheme designed to require assessors to base property valuations upon more reliable, long term market trends[,] the court stated [in Uniroyal, Inc. v. Board of Tax Review, 182 Conn. 619, 629, 438 A.2d 782 (1981)]: Tax assessors are required to recognize and act on the principle that the true value of a fixed asset such as real estate is fairly constant and must be gauged, not by conditions temporary and extraordinary, but by those prevailing over a period of time, and the assessors, in listing values of property for taxation, may, to a certain extent, disregard excesses of a boom as well as the despair of a depression." (Citations omitted; internal quotation marks omitted.) DeSena v. Waterbury, 249 Conn. 82-83.

For example, in 84 Century Ltd. Partnership v. Board of Tax Review, 207 Conn. 250, 263, 541 A.2d 478 (1988), superseded by statute on other grounds as stated in DeSena v. Waterbury, 249 Conn. 84, the court held that § 12-55 authorized an assessor to adjust real estate values during an interim year based upon the market sale of property

that had greatly increased in value due to a sale. However, the legislature was quick to enact legislation prohibiting an assessor from making such an interim adjustment in an assessment solely based on the sale price of the property. See also General Statutes § 12-63d.[3]

In Matzul v. Montville, 70 Conn. App. 448, an assessor increased an assessment when he discovered that land in a mobile home park was misclassified as "excessive acreage" when, in fact, it was commercial land. As noted in Matzul, § 12-55 is not restricted to changes "omitted by mistake" or "required by law." "Such a restrictive interpretation ignores the plain language of the statute. The fact that these two additional powers are specifically set out does not in any way limit the broad power to equalize assessment provided for earlier in the statute. The most logical interpretation of the effect of these two additional powers is that in addition to the power to equalize assessments the assessors are also empowered to make these specified changes." Id., 447.

Recognizing that the assessor has an obligation to carry a "watchtower" role which gives him or her the authority to equalize assessments and to correct mistakes and make other corrections as "required by law," this right is not unfettered. As an example,

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[3] General Statutes § 12-63d provides as follows: "The assessor in any municipality may not, with respect to any parcel of real property in the assessment list for any assessment year, make a change in the assessed value of such parcel, as compared to the immediately preceding assessment list, solely on the basis of the sale price of such parcel in any sale or transfer of such parcel."

§ 12-63d, as noted above, prohibits an assessor from making an interim change in assessments based solely on a change in market value.

The assessor in this case, Mr. Chaponis, made an interim change in the assessment solely on his observation of a change from what had been previously set, without any other substantive basis. After making the change in assessment of the plaintiff's property, Mr. Chaponis sought justification for his action by obtaining a fee appraiser's opinion of market value subsequent to the decision of the board denying Hunt any relief from the assessor's action. If the assessor had intended to rely on the use of market sales in increasing the plaintiff's assessment, it would have been more appropriate to do a town-wide revaluation rather than to single out one property owner, contrary to the legislative intent expressed in § 12-62 (b) (1).

A change in grade, as made by the assessor, implicates the cost approach, not the sales comparison approach. As noted by Avon's assessor Derasadourian, the grade of property involves wear and tear on a building. If the assessor had intended to change Hunt's assessment based upon the cost approach, it would have been appropriate to use the cost approach as defined in United Technologies Corp. v. East Windsor, 262 Conn. 11, 17 n.8, 807 A.2d 955 (2002) ("[u]nder the cost approach to valuation, the appraiser estimates the current cost of replacing the subject property, with adjustments for depreciation, the value of the underlying land, and entrepreneurial profit").

The issue in this case goes beyond whether it was appropriate for the assessor to make an interim change in the assessment of the plaintiff's property because the board, to which the plaintiff sought relief, upheld the assessor's action. Once an appeal has been taken from the board, the issue before the court, in a de novo trial, becomes what is the fair market value of the subject property as of the date of the last revaluation. See Ireland v. Wethersfield, 242 Conn. 550, 556-59, 698 A.2d 888 (1997).

Reviewing Healion's appraisal of the subject, the court notes that Healion did not make any downward adjustment for the fact that the subject property was over 156-years-old, whereas two of her comparables were at least fifty years younger and two were under thirty years of age. Two of the comparables relied on by both Healion and the plaintiff's appraiser, Kilcomons, were in Andover at 14 Hebron Road and 11 Wheeling Road. According to Healion, 14 Hebron Road is a colonial containing 6 rooms, 3 bedrooms, one full bath and one-half bath for a total of 1,917 SF. Healion adjusted this sale down $11,000 for the gross living area square footage, offset this amount by adjusting the sale up $10,000 for the barn and deck, and concluded with a net adjustment of +$2,000.

On the Wheeling Road comparable, Healion adjusted this sale up by $85,000 from the original purchase price of $215,000 on August 6, 2006 to a value of $300,000. The reasons for the significant upward adjustments were the quality of construction, the condition of the comparable to the subject and the barn.

Kilcomons rejected the 14 Hebron Road sale which Healion selected because this sale had a master bedroom with a cathedral ceiling, recessed lighting, a detached barn and room with electrical heating and was updated as compared to the condition of the subject. As to the 11 Wheeling Road comparable selected by Healion, Kilcomons considered this sale as one similar to the subject; the subject also being a Cape Cod-style house with 3 bedrooms and a barn. Kilcomons considered the subject to be an antique because of its age, but concluded that the vinyl siding detracted from this classification. In addition, Kilcomons considered the pre-finished hardwood interior and the general appearance to be average to below average.

Considering the comparables selected by both Healion and Kilcomons and the adjustments made by each, Kilcomons' opinion of value is more credible. Kilcomons' conclusion that the fair market value of the subject property, as of October 1, 2006, was $246,000, is accepted by the court.

Accordingly, judgment may enter in favor of the plaintiff, setting the fair market value of the subject at $246,000, for the Grand Lists of October 1, 2008, 2009 and 2010, retrospective to the revaluation date of October 1, 2006.

Arnold W. Aronson
Judge Trial Referee