NO. CV 09 5014943S	:	SUPERIOR COURT
AMIEL DABUSH	:	JUDICIAL DISTRICT
	:	OF NEW BRITAIN
v.	:	
TOWN OF WESTON	:	FEBRUARY 1, 2011

MEMORANDUM OF DECISION

The plaintiff[1], Amiel Dabush (Dabush), as a self-represented party, brings this real estate tax appeal pursuant to General Statutes § 12-119, claiming that the assessor's valuation of his house located at 14 Marshall Lane in Weston (town) as of the Grand List of October 1, 2008[2], was excessive.

Dabush previously brought a tax appeal (Docket No. FBT CV 09 4029502) pursuant to General Statutes § 12-117a claiming that the assessor, as of October 1, 2008, had overvalued his house for assessment purposes. This appeal was dismissed by the Superior Court in the Judicial District of Fairfield at Bridgeport on September 14, 2009 for failure to comply with the time limitation from which to appeal the decision of the board of assessment appeals (BAA). Dabush attempts to avoid the statutory limitation in

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Amiel Dabush brought the tax appeal in his name only. See summons and complaint. However, he and his wife, Marcela Haendler Dabush, are both listed as owners of the subject property on the town's property card.

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The court notes that the plaintiff filed a request for leave to file an amended complaint on October 8, 2010 seeking to add subsequent tax years. The defendant objected thereto.

§ 12-117a by timely filing the present action pursuant to § 12-119.

Our Supreme Court explained the distinction between appeals brought pursuant to § 12-117a and § 12-119 in Breezy Knoll Assn., Inc. v. Morris, 286 Conn. 766, 778 n.20, 946 A.2d 215 (2008): "[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." (Citations omitted; internal quotation marks omitted.)

Since the present action was brought pursuant to § 12-119, the key issue is whether the valuation placed upon the plaintiff's property on the Grand List of October 1, 2008 was caused by an illegal act of the assessor.

The plaintiff's home is located on the eastern edge of Weston at the end of a cul-de-sac with a shared driveway in a neighborhood of similar homes located on two-acre lots or larger. The subject home has three stories covering 7,070 square feet with a total of eleven rooms, including five bedrooms. There are four full baths and two half-baths.

The subject has a two-story 20' x 12' foyer with hardwood floors and wood paneling on the walls. A music room is located off the foyer. The living room is also located off the foyer with a step down. There is a two-story fireplace with an opening in the living room and another opening in the upstairs master bedroom. The dining room has hardwood flooring and is located between the living room and the kitchen. The family

room is located off the kitchen with hardwood flooring and a vaulted ceiling.

There is a master bedroom with a small balcony. The master bathroom has a glassed-in shower, bathtub, double sinks and vanities. There are also three additional bedrooms on the second floor. One of these bedrooms has a small balcony.

The third floor has a guestroom and a bathroom with three sinks, Jacuzzi tub and shower. The basement has been finished with four offices, a bedroom, an exercise room and full bathroom with shower. There is also a three-car basement garage. The home has a stone patio across the rear of the house.

Furthermore, there is a detached brick workshop on the subject's grounds as well as an asphalt tennis court covered by a rubber membrane. Behind the tennis court, there is a large open porch with concrete flooring and a central fireplace. Beside the tennis court is a large in-ground heated pool with an attached Jacuzzi. There is also a cabana with a small kitchenette and a non-functioning full bathroom.

The assessor, as of October 1, 2008, was of the opinion that the fair market value of the subject premises was $2,438,700. See plaintiff's Exhibit 5. The BAA reduced the subject's valuation to $2,364,900. See defendant's Exhibit B. The plaintiff's appraiser, Vincent J. Boccanfuso (Boccanfuso), was of the opinion that the subject home, as of October 1, 2008, had a fair market value of $1,875,000. See plaintiff's Exhibit 1. The town's appraiser, Robert J. Mulready (Mulready), was of the opinion that as of October 1, 2008, the subject had a fair market value of $2,400,000. See defendant's Exhibit A.

Boccanfuso selected three comparables within the town noting that "[t]he market

data was very limited due to a high ownership retention in the immediate neighborhood. As a result, and due to the subject's extreme location on the western border of the town of Weston, it was necessary to utilize sales located more than 1 mile from the subject for all sales. . . . There was a low turnover of comparable colonial-style homes within the past 6 month of the effective date of the appraisal in the subject's immediate neighborhood. . . . Most weight was given to sale #1 as this sale is located closest to the subject property." (Plaintiff's Exhibit 1, p. 2.)

Although Boccanfuso did a commendable job selecting comparable sales to the subject, his appraisal was based on his selection of comparable sales, not whether the assessor did anything illegal in setting the value of the subject for assessment purposes. As noted in his addendum, under additional comments, Boccanfuso commented, "[t]he purpose of this appraisal is to determine the estimated value of the subject property dating back to October 1, 2008." (Plaintiff's Exhibit 1, Addendum.)

Mulready's appraisal report also centered on the valuation of the subject, not whether the assessor's valuation was based on his failure to comply with some statutory requirement which would make his action illegal.

Kenneth Whitman, the town's assessor, hired Vision Appraisal (Vision), a revaluation company, to do a mass appraisal of real estate in Weston as of October 1, 2008. Whitman reviewed procedures with Vision and inspected sales personally. He created valuation tables based on his inspection of town properties and noted that Vision, in conducting the mass appraisal, used the cost approach because of the large number of

residents.

The plaintiff recognizes that, in a § 12-119 appeal, it is incumbent upon him to allege and prove that, in setting his assessment on October 1, 2008, the assessor disregarded the General Statutes in determining the valuation of his realty for assessment purposes.

The plaintiff's argument, namely, that the assessor disregarded the General Statutes related to the assessment of his real property, falls into three categories:

(1) The assessor relied on multiple inaccuracies when valuing the subject property;

(2) The use of a new and different grading system for the quality of Weston properties was unfounded and unjustified; and

(3) The plaintiff's appraisal was superior to the town's appraisal.

See plaintiff's post-trial brief, pp. 1-2.

To bolster his argument that the assessor relied on inaccurate information, the plaintiff points out that the assessor erroneously valued a utility storage area. However, Dabush acknowledges that the assessor corrected this error when it was brought to his attention. The plaintiff also claims that the value of a patio area was substantially increased over prior years and that the tennis court was listed on the property card as having a clay surface instead of asphalt.

With regard to the assessor's grading system, the plaintiff claims that the AAA-grading placed on his property for October 1, 2008 was unjustified. The plaintiff claims

that his property should have been graded A-. See plaintiff's post-trial brief, p. 4.

The court recognizes that the plaintiff persuaded the BAA that the assessor overvalued his property because the BAA reduced the value of the subject property from $2,438,700 to $2,364,900, a reduction of $73,800.

From the facts developed in this case, the plaintiff essentially disputes the valuation placed upon his property by the assessor. The plaintiff has not shown that the assessor did anything illegal. The court cannot impute illegality to the assessor merely because the plaintiff disputes the assessor's use of the town's grading system, its application to the plaintiff's real estate and the assessor's judgment as to the value of individual parts of the real estate.

As the court noted in Wysocki v. Ellington, 109 Conn. App. 287, 294-95, 951 A.2d 598 (2008), "[o]ur case law makes clear that a claim that an assessment is *excessive* is not enough to support an action under [§ 12-119]. Instead, § 12-119 requires an allegation that *something more than* mere valuation is at issue." (Emphasis added; internal quotation marks omitted.)

The two appraisals, Boccanfuso's for the plaintiff and Mulready's for the town, clearly show that the central issue here is one of valuation, not the action of the assessor doing something illegal. As noted in the Breezy Knoll case, supra, 286 Conn. 778 n.20, "[a] claim that an assessor used an inappropriate method of appraisal, resulting in overvaluation, is not a claim of illegal or wrongful assessment . . . ."

Since the plaintiff has not sustained his burden of proving that the town's assessor

acted illegally or had a manifest and flagrant disregard for the laws of this state, the plaintiff's appeal is denied. Accordingly, judgment may enter in favor of the defendant, without costs to any party.

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Arnold W. Aronson
Judge Trial Referee