

NO. CV 13 6025776S : SUPERIOR COURT
MICHAEL J. AND SUSAN H. : JUDICIAL DISTRICT OF
ANGELIDES
v. : NEW BRITAIN
TOWN OF COLUMBIA, ET AL. : MAY 29, 2015

MEMORANDUM OF DECISION

The plaintiffs, Michael J. and Susan H. Angelides (Angelides) bring this real property tax appeal challenging the assessor's valuation of their property located at 79 Cards Mill Road in the town of Columbia (town) for the Grand Lists of October 1, 2011 and October 1, 2012. On the revaluation date of October 1, 2011, the town's assessor determined that the fair market value of the subject premises, as of the revaluation date, was \$4,804,300.

The plaintiffs' appraiser, Robert H. Silverstein (Silverstein), was of the opinion, after considering the cost approach and the comparable sales approach, that the fair market value of the subject premises, as of October 1, 2011, was \$2,400,000.

The town's appraiser, Gary Carlson (Carlson), was of the opinion, after considering only the comparable sales approach, that the fair market value of the subject property, as of October 1, 2011, was \$4,000,000.

Both Silverstein and Carlson determined that the highest and best use of the

subject property was for residential use.

The assessor broke down the fair market value of the subject property, as of the revaluation date, into the following components (see defendant's Exhibit B):

Res. Land of 1.15 acres	\$ 531,300	(\$462,000/acre)
Res. Excess of 41.35 acres	\$2,282,400	(\$55,197/acre)
Dwelling	\$1,970,400	
Res. Outbuilding	<u>\$20,200</u>	
	\$4,804,300	

This is significant because the valuation of the land and the improvements implicates the use of the cost approach to value. Silverstein performed the cost approach and noted that the assessor valued the subject land at \$66,205/acre.¹ On the other hand, Silverstein calculated the valuation of the subject land, on the revaluation date, to be \$12,500/acre.²

The assessor testified that she recognized that there was nothing like the subject property in the town. The assessor, arriving at a value of \$4,804,300, relied on a mass appraisal approach using a land value of approximately \$56,000/acre and the cost of improvements. The assessor further testified that she was obligated to break down the value of the subject property into various components such as land value, lot value, the dwelling and the value of outbuildings. Basically, the assessor determined the value of the

¹ See plaintiffs' Exhibit 4, p. 4.

² See plaintiffs' Exhibit 4, p. 5.

land by backing out the value of the improvements, leaving just the land value. The assessor called this a land residual approach.³

Silverstein provides the most detailed picture of the subject property as follows:

“The subject property contains about 42.50 acres of land. There are extensive areas of steep slopes along the Tenmile River, except at the main house site. The land is mostly wooded except for an approximately 10-acre field at the parcel’s center along Cards Mill Road and the landscaped 3-4 acres surrounding the main residence. . . .

“The north end of the property is subject to an electric transmission right of way to CL&P and contains an area of wetlands extending from near the north end of Cards Mill Road frontage down to the slope to the river. The area of a second transmission easement to a predecessor of CL&P is located just north of the 10-acre field and appears to be unused.

“The subject parcel is improved with two single-family residences, a carriage house, two barns and several smaller outbuildings and site improvements. The larger residence was constructed circa 1988, renovated circa 2007 and is identified at 79 Cards Mill Road. The 17-room steel and wood frame residence has 9 bedrooms and 5 full and one half baths. The gross living area is estimated to be 7,995 [SF] based on circa 1987

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“The land residual technique assumes that the value of the building (or buildings) [and the land] can be estimated separately.” The Appraisal of Real Estate (12th Ed. 2001) p. 542-43.

house plans and estimated measurements of the attached wing. This is larger than the Assessor's gross living area of 6,848 [SF], which understates the size of the finished third floor and does not include the added size created by finishing the original garage in the attached two-story wing.

“The main residence, 79 Cards Mill Road, is of wood frame construction with steel beams and columns. The building contains a ground floor area of 3,773 [SF] and includes a living room, dining room, family room, half-bath, study or library, kitchen with informal dining area, solarium or sun room, and the first level of a lower quality two-story wing with 3 bedrooms and 1 full bath. The 3,180-SF second floor is accessed via a curving staircase in an elliptical central hall. There is no access between the second floor of the main residence and the second floor of the two-story wing except via the first floor. Each level of the wing is accessed via a staircase off the dining room, one leading up and one down.

“The second floor of the main residence contains 3 bedrooms, one a master bedroom, each with a full bathroom en-suite. The master bedroom also includes a dressing room and access to a 391-SF exterior balcony. The elliptical central hall also provides access to a staircase to the third floor or finished attic. The finished third floor/attic contains a 1,042-SF bonus room.

“The 3,382-SF unfinished basement is comprised of 1,917 SF of full height, 651

SF of crawl space and apparently 815 SF of slab at the wing. A 240-SF open porch is located at the west-facing main entry and there is a total of about 5,632 SF of patio and [paved] parking on the west, south and east sides of the residence.

“Mechanicals include oil-fired radiant heat, package air conditioning and an emergency generator. The quality and condition of the residence is excellent throughout except for the 1,571-SF two-story wing with 6 bedrooms and 2 baths which is of lesser quality.

“The original structure of the main residence was about 23 years old, and the renovations were completed 4 years prior to the date of valuation. The overall effective age was 5 years, with a remaining economic life of about 70 years.

“Adjacent to this residence is a 1.75-story carriage house containing a garage, carport, fitness room and two offices. The wood frame structure was constructed circa 2006 and contains a gross building area of 1,972 SF The quality of construction is very good and the condition is excellent. The carriage house had an effective age of about 5 years and remaining economic life of about 70 years.

“A separate 1.25-story wood frame residence located adjacent to Cards Mill Road, referred to as the caretaker’s house, appears to have been constructed prior to 1940, the date given by the Assessor, but has received updates. Addressed as 77 Cards Mill Road, it has 6 rooms, 3 bedrooms, including one in the attic, and 1 bath. The building has a

painted clapboard exterior, asphalt shingle roof, and overall was in average to below-average condition and of average quality. The wood frame structure shows signs of decay when viewed from the dirt-floor basement. It has a gross living area of 1,285 SF The interior was of average quality and condition, but in need of updating. Its effective age is about 30 years, with a remaining economic life of about 45 years.

“Additional buildings include a heated white gambrel barn of 864 SF near the carriage house, constructed circa 1993, containing a small office, a part concrete slab floor and storage loft.

“An older wood frame red barn near Cards Mill Road is apparently associated with the nearby 1.25-story residence and is used for storage. The unheated barn is in average to below average condition and we estimate it contains about 972 SF while the Assessor reports a size of 648 SF and age of 61 years as of the date of valuation.

“The site is located within the RA, Residential Agricultural zoning district, which has a minimum lot size of 50,000 SF, 150,000 SF for rear lots. The subject property contains two residences on one parcel which is a non-conforming use. The second residence, 77 Cards Mill Road and the adjacent red barn are located within the front yard setback.”

(Plaintiffs’ Exhibit 4, pp. 2-4.)

At the request of the plaintiffs, the court made a property inspection of the subject premises. Both plaintiffs' and defendant's counsel, as well as a representative of the plaintiffs, were in attendance.

The court agrees with the assessor that the subject premises are most unusual. However, Carlson disagreed, noting in his appraisal report, defendant's Exhibit A, p. 1, that the "[s]ubject is located in the eastern section of Columbia. Neighborhood is comprised of a compatible mix of properties, sharing similar appeal and marketability for the neighborhood. No significant unfavorable factors affecting marketability noted upon inspection."

Carlson was unaware that two easements crossed the subject property and that the Tenmile River overflowed parts of the subject property during the spring. In addition, Carlson was unaware that 67 Cards Mill Road was a non-conforming use being a separate residence on the subject property, in addition to the main house when zoning in that area allows only a single residence. Carlson further commented that "[d]ue to an inability to quantify the contributory value of the subject's outbuildings and guest house with market supported adjustments these amenities were not adjusted separately in the sales comparison approach. Based on MLS and local Land Records, the comparables have similar outbuildings, barns, cottages, etc." (Defendant's Exhibit A, p. 2.)

The court agrees with the assessor's testimony, and after the court's drive through

the neighborhood and a tour of the subject property, there is nothing like the subject and there is no comparable property in Columbia that compares to this 17-room residence on 42.50 acres.

Carlson relied only on the comparable sales approach to value the subject property at \$4,000,000. He looked at the subject property as an estate-type property. Therefore, Carlson considered his selection of sales based on this concept.

Carlson's sale one at 392 Woodland Street in Glastonbury was sold on February 1, 2011 for \$4,499,000. This 11-room residence, including 5 bedrooms and 8.1 baths, with a gross building area of 12,872 SF, also had a finished full basement of 1,500 SF, 3 fireplaces and a 4-car attached garage. Sale one also was located on 14.51 acres of land with a view of the valley facing the city of Hartford. From 1) an examination of the photo of this sale, see defendant's Exhibit A, 2) the fact that this sale is located in Glastonbury with a beautiful view of the Hartford skyline, and 3) the house's square footage is far in excess of the subject, the court determines that sale one does not appear to be a true comparable to the subject property.

Carlson's second sale is located on Avon Mountain in the town of Avon at 55 Bishop Lane. Sale two sold on June 1, 2011 for \$5,000,000. This sale contains a house spanning 10,150 SF with 14 rooms, including 7 bedrooms and 5.2 baths. Sale two also has a 1,444-SF finished basement, a 3-car detached garage and 2 fireplaces. Sale two

contains 70 acres of land. Although Carlson was not aware that sale two was located on Avon Mountain, Silverstein noted that it also had a westerly view of the Farmington Valley. According to Silverstein, sale two had a horse stable and extensive pond. When held in comparison, sale two is far superior to the subject.

Carlson's sale three was a colonial house located at 59 Joshua Lane in Lyme. It sold on May 17, 2011 for \$3,625,000. Sale three spanned 4,085 SF with 9 rooms, including 3 bedrooms and 3.1 baths. The site contained 19.1 acres of land. Carlson noted that this house was once owned by John Lindsay, the former mayor of New York City. This property has a 1,231-SF guest house, a pool and is located along the Connecticut River. Silverstein noted that this sale had a sandy beach, gorgeous views and a deep water dock.

Silverstein, in arriving at a valuation of \$2,400,000 for the subject property, relied on the cost approach and the comparable sales approach to value. Silverstein considered the comparable sales approach to be the more reliable method of valuation.

Considering the cost approach, Silverstein relied on seven land sales.

Sale one was a 29.16-acre parcel located on Old Hartford Road, in Hebron. This land sold on March 28, 2011 for \$319,000 (\$10,940/acre) and contained wetlands, steep slopes and was approved for the development of 6 lots.

Sale two was a 37.2 acre parcel in Columbia with quonset-style barns. This parcel

has frontage of approximately 2,000 feet along Szegda Road. Sale two sold on August 2, 2007 for \$499,000 (\$13,414/acre). Silverstein noted that the highest and best use of this sale was for a development of 12 homes with the barns converted for equestrian use.

Sale three was a 56.32-acre parcel at 468 Route 87 East in Columbia that sold on October 5, 2009 for \$430,000 (\$7,635/acre). Although Silverstein notes that this parcel has a highest and best use for 2 homes, with a possible use as a 7-lot subdivision, the property is presently classified under P.A. 490 for a reduced assessment as farmland.

Sale four is a 63.61-acre parcel at 41 Iron Street in Ledyard that sold on May 7, 2010 for \$675,000 (\$10,612/acre). Silverstein notes that this property was purchased by a developer who plans a two-phase subdivision, with phase one approved for 9 lots and open space areas.

Sale five is a 70-acre parcel at Wells Woods Road in Columbia that sold on December 29, 2009 for \$425,000 (\$6,071/acre). Silverstein referred to this sale as the “Lyman Woods” subdivision of 9 residential building lots. The rear 33 acres were set aside as open space.

Sale six is a 86.48-acre parcel on Pequot Trail (Route 234) and Whitehall Avenue (Route 27) in Stonington that sold on December 3, 2010 for \$1,950,032. Silverstein noted that this parcel sold after it was approved for a 48-lot subdivision of 1-acre lots with homes to be built starting in the upper \$400,000 (or \$40,625/approved lot) price range.

Sale seven is a 99.23-acre parcel located at 455 Route 87 East (Jonathan Trumbull Highway) in Columbia that sold on May 18, 2012 for \$540,000 (\$5,442/acre). Silverstein noted that this parcel is a rear lot created by subdivision. Any further subdivision would require the building of a town road. This parcel also contains about one-third wetlands and 35 acres of isolated uplands. The property is similar to the subject and is located on the Tenmile River.

The 7 land sales were considered subdivision material, whereas the subject was an estate with a single-family residence and a caretaker's cottage. Sale 7, located in Columbia on the Tenmile River, has some semblance of comparability to the subject. However, sale 7 is more than double the size of the subject land but has restrictions like wetlands and isolated uplands.

Silverstein concluded that the subject's 42.50 acres had a fair market value, as of October 1, 2011, of \$530,000. See plaintiffs' Exhibit 4, p. 5. Using Marshall & Swift's Residential Cost Handbook, Silverstein concluded that the depreciated value of the improvements on the subject property was as follows:

Caretaker's House	\$ 67,651
Carriage House	\$ 228,374
Main residence	\$1,300,318
Outbuildings	
& site improvements	<u>\$ 185,000</u>
	\$1,781,343

Based on the value of the land and improvements, Silverstein concluded the fair

market value of the subject, as of the last revaluation date, was \$2,311,343 (rounded to \$2,310,000). See plaintiffs' Exhibit 4, p. 6.

Silverstein, relying on the sales approach, analyzed five single-family homes he considered comparable to the subject. Four of the five home sales were located across the Connecticut River, west of Hartford, in Avon and Farmington. Silverstein recognized that these locations have higher residential land values. Four of the five sales selected by Silverstein have good to excellent valley views which are superior to the subject's view of the Tenmile River. As Silverstein noted, "[n]o sales of similar quality and size homes on large tracts comparable to the subject parcel were available for analysis." (Plaintiffs' Exhibit 4, p. 7.) A review of the comparable home sales selected by both Carlson and Silverstein confirms the assessor's opinion that the uniqueness of the subject makes it difficult to find comparable sales.

It is interesting to note that Silverstein found that the depreciated cost of the main residence, the caretaker's house and the carriage house, was \$1,300,318. See plaintiffs' Exhibit 4, p. 6. This amount is not much different from the value found by the assessor for the main residence at \$1,970,400.

Given the variables involved in finding valuation using the cost approach, the parties are not that far apart in their valuation of the subject buildings. "[T]he process of estimating the value of property for taxation is, at best, one of approximation and

judgment” (Internal quotation marks omitted.). Carol Management Corp. v. Board of Tax Review, 228 Conn. 23, 39-40, 633 A.2d 1368 (1993).

As noted by Silverstein, the costs are depreciated using the age-life method as well as considering the effective age and remaining economic life of each building. See plaintiffs’ Exhibit 4, p. 6. Recognizing that the cost approach requires the appraiser to use his or her judgment in estimating the cost to construct and whether the appraiser used the reproduction cost or replacement cost approach, it is difficult to arrive at a definitive estimate of value for the buildings. See *The Appraisal of Real Estate* (12th Ed. 2001) pp. 349-350. With this analysis, the plaintiffs fail to show evidence that would substantially challenge the assessor’s valuation of the subject main residence at \$1,970,400. It is well recognized that it is the taxpayer’s burden to establish that the assessor has overvalued the subject property. Ireland v. Wethersfield, 242 Conn. 550, 556, 698 A.2d 888 (1997). The court finds that the taxpayer has failed to meet this burden as to the valuation of the improvements to the land.

Turning to the land value, the assessor’s finding that the subject’s 1.5-acre lot value was \$462,000/acre and the remaining land value was \$55,197/acre lacks credibility. See plaintiffs’ Exhibit 4, p. 4. As an example, Silverstein’s land sale 5 in Columbia, a 70-acre parcel of land, sold on December 29, 2009 for \$425,000 (\$6,071/acre) and land sale 7, a 99.23-acre parcel in Columbia sold on May 18, 2012 for \$540,000 (\$5,442/acre).

Having viewed the subject property in the company of both counsel, and considering the land with its highest and best use as estate property, a land value of the subject at \$15,000/acre, including the residential portion of the property, is more reasonable and credible.⁴

Taking the assessor's value of the improvements on the subject property at \$1,970,400 and using the valuation of the land, plus the site improvements, at \$15,000/acre, multiplied by the subject land at 42.5 acres, results in a land value total of \$637,500. Combining the building value and the land value (\$1,970,400 + \$637,500) results in the total value of the subject, as of October 1, 2011, at \$2,607,900, rounded to \$2,608,000.

In addition to the plaintiffs' challenge to the valuation of the subject property as of October 1, 2011, the plaintiffs also claim in counts 5 and 6 that, pursuant to General Statutes § 12-60, the assessor made mistakes in the nature of a clerical error by incorrectly multiplying the subject's land area and the square footage of the subject's building area as compared to similar properties nearby.

Section 12-60 provides, in relevant part, that "[a]ny clerical omission or mistake in the assessment of taxes may be corrected . . . by the assessors or the board of

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"[T]he visual observation made by the trier on a visit to the property are as much evidence as the evidence presented for its consideration by the witness under oath." Abington, LLC v. Avon, 101 Conn. App. 709, 715 n.5, 922 A.2d 1148 (2007).

assessment appeals [(BAA)]”

The plaintiffs’ complaint in counts 5 and 6 is founded on the claim that the assessor made errors of judgment in comparing the subject land and buildings to nearby properties. The plaintiffs have confused the ability of the assessor to make corrections of error pursuant to § 12-60 and challenge the assessor’s judgment in determining the fair market value of the property for assessment purposes.

As noted in Matzul v. Montville, 70 Conn. App. 442, 450-51, 798 A.2d 1002 (2002), there is a distinction between a matter of substance and the correction of a clerical error which is permitted by § 12-60. There is no basis under the facts in this case to conclude that the assessor made a clerical error and failed to correct it.

The plaintiffs also claim in counts 8, 9 and 10 that pursuant to General Statutes §12-170⁵ the assessor, the tax collector and the individual members of the BAA personally committed an official act of misconduct and have omitted “to do any necessary act connected with the levy, assessment or collection of any tax”

Nothing in the facts or the evidence presented to the court in this case supports the plaintiffs’ claims that these public officials personally committed an act of misconduct or

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General Statutes § 12-170 provides, in relevant part, as follows: “Penalty for official misconduct. Each assessor, member of the [BAA], selectman, committee or collector, who does any unlawful act or omits to do any necessary act connected with the levy, assessment or collection of any tax, shall forfeit fifty dollars to the person aggrieved thereby, to be collected by such person in an action on this statute[.]”

failed to do any act in relation to the levy, assessment or collection of a tax that they were required to do. The plaintiffs' complaint, as contained in their appeal pursuant to § 12-117a in count 1, raises issues of judgment, not issues of illegality.

Because the plaintiffs contend that the town officials, the assessor, the tax collector and the individual members of the BAA, engaged in misconduct and are subject to a penalty of \$50.00, it is the burden of the plaintiffs to support their claim by clear and convincing evidence. See Leonard v. Commissioner of Revenue Services, 264 Conn. 286, 302, 823 A.2d 1184 (2003). This they have failed to do.

Accordingly, regarding the valuation of the subject property, judgment may enter in favor of the plaintiffs, setting the fair market value of the subject property, as of October 1, 2011 and subsequent years, at \$2,608,000, without costs to any party.

Arnold W. Aronson
Judge Trial Referee