

NO. CV 12 6016030S : SUPERIOR COURT
PELLETIER, GARY J., TRUSTEE : JUDICIAL DISTRICT OF
NEW BRITAIN
V. :
TOWN OF WESTBROOK : SEPTEMBER 17, 2013

MEMORANDUM OF DECISION

The plaintiff, Gary J. Pelletier, Trustee (Pelletier), brings this property tax appeal, pursuant to General Statutes § 12-117a and § 12-119, contesting the assessor's valuation placed upon his property located at 126 Captain's Drive in the town of Westbrook (town).

The assessor, as of the revaluation date of October 1, 2011, determined that the fair market value of the subject premises was \$1,227,490. Pelletier's appraiser, Alan Budkofsky (Budkofsky), was of the opinion that the fair market value of the subject property, as of the same date, was \$850,000. See plaintiff's Exhibit 16. The town's appraiser, John F. Ryan (Ryan), was of the opinion that the fair market value of the subject property, as of the same date, was \$1,300,000. See defendant's Exhibit A.

The subject property is in an area known as Pilot's Point, which is a private beach association. The subject lot, containing 0.16 acres, is located in a Commercial Boating zone requiring a minimum lot area of 15,000 square feet (SF). The subject is a legal nonconforming use under the town's zoning regulations. See defendant's Exhibit A, p. 12. The lot is located on Duck Island Harbor in Long Island Sound with 73.34 feet of

frontage on the coastline and 49 feet of frontage on Captain's Drive. See Exhibit 10, p. 2.

In the plaintiff's 2009 tax appeal, Budkofsky contended that the subject property no longer possessed any beachfront and that a ten-foot high concrete seawall contained the seawater at high tide.

In the present appeal, Budkofsky makes the same argument that a loss of beachfront further reduces the subject's value.

The subject property is improved with a one and one-half story house constructed in 1989 containing 2,232 SF. The house has five rooms, including three bedrooms and two full baths. The property is further improved with a wrap-around deck and a closed-in porch. The house is heated with an oil furnace with forced air and cooled with central air conditioning. The subject house has no garage but it does have a large brick paved area for parking. There is also a full basement. Town water and a septic sewer system is available to the subject.

Captain's Drive is maintained by the Pilot's Point Association. However, the association bylaws do not allow waterfront property owners, such as Pelletier, a right-of-way access to the association's beach area because he is not a member. See plaintiff's Exhibit 16, p. 3.

The highest and best use of the subject property, as noted by both appraisers, is for residential use. Both appraisers agree that the comparable sales approach is the most

appropriate method to use in determining the fair market value of the subject property, as of October 1, 2011.

In the 2009 tax appeal, the assessor had valued the subject property at \$1,707,214 while Budkofsky valued the subject at \$1,350,000. The court, after considering the evidence presented in that appeal and recognizing the lack of a sandy beachfront, concluded that the fair market value of the subject was \$1,430,000. See plaintiff's Exhibit 10, p. 8.

In the present appeal, the primary issue raised by the plaintiff is the assessor's "failure to account for, and adjust in [his] comparable sales, the lack of a sandy beach at the subject property in [his] sales comparison approach to the subject property" (Plaintiff's 7/8/13 post-trial brief, p. 1.)

Budkofsky took into account the lack of a sandy beach at the subject property in the 2009 appeal, as of October 1, 2006. His only reason for reducing the fair market value of the subject by \$377,490 – five years later – was due solely to the subject's lack of a sandy beach.

The plaintiff acknowledges that there was storm damage to the subject property from Storm Irene in August 2011, followed by Storm Sandy in October 2012 which caused flooding in the basement. However, there is no claim that these storms were responsible for the subject's lack of a sandy beach.

In conducting his search for comparable sales, Budkofsky could not find any waterfront sales without sandy beaches. He was of the opinion that there should be a 30% adjustment to the subject property, reducing the assessor's valuation of \$1,227,490 down to \$850,000, simply because it had no sandy beach.

Budkofsky offered no empirical evidence in the way of beachfront property sold with a sandy beach versus beachfront property sold without a sandy beach.¹ Other than his unsupported opinion, there is no justification for Budkofsky's 30% reduction in value for the subject's lack of a sandy beach.

Even though the subject has a ten-foot-high concrete seawall protecting the property from seawater at high tide, Budkofsky did not consider the seawall's existence to be an amenity to the subject property. In view of Storms Irene and Sandy, such a protection, in lieu of a sandy beach, would be a consideration in valuing beachfront property. See, e.g., Woods v. Brimm, No. 2007018 (Ma. Super., Aug. 2, 2010) (revetments increase the value and function of beachfront property by preventing erosion of sand from their shores).

Although this appeal was brought in two counts, at trial, the plaintiff only challenged the assessed value of the subject pursuant to General Statutes § 12-117a. No

¹

See, e.g., Donovan v. Okaloosa County, 82 So. 3d 801, 813 (Fla. 2012) (property with a sandy beach enhances the market value of the property because of the use and enjoyment of the sandy beach).

evidence was offered in support of the plaintiff's second count, brought pursuant to General Statutes § 12-119, which is based on the claim that the assessor, in valuing the subject property, was arbitrary or disregarded his statutory duties.² Furthermore, the failure to brief the § 12-119 claim in the plaintiff's post-trial brief shall be treated as an abandonment of the second count. "Whe[n] an issue is merely mentioned, but not briefed beyond a bare assertion of the claim, it is deemed to have been waived. . . ." (Internal quotation marks omitted.) Kervick v. Silver Hill Hospital, 309 Conn. 688, 719, _ A.3d _ (2013).

No evidence has been introduced in this case to support the plaintiff's claim that the lack of a sandy beach decreased the fair market value of the subject property. Without such evidence, the plaintiff has failed to meet his burden of proof to show that his tax assessment was excessive. See Ireland v. Wethersfield, 242 Conn. 550, 557-58, 698 A.2d

²

See Redding Life Care, LLC v. Redding, 308 Conn. 87, 105, 61 A.3d 461 (2013): "In a tax appeal taken pursuant to § 12-119, the plaintiff must prove that the assessment was (a) manifestly excessive *and* (b) . . . could not have been arrived at except by disregarding the provisions of the statutes for determining the valuation of the property. . . . [The plaintiff] must [set forth] allegations beyond the mere claim that the assessor overvalued the property. [The] plaintiff . . . must satisfy the trier that [a] far more exacting test has been met: either there was misfeasance or nonfeasance by the taxing authorities, or the assessment was arbitrary or so excessive or discriminatory as in itself to show a disregard of duty on their part. Only if the plaintiff is able to meet this exacting test by establishing that the action of the assessors would result in illegality can the plaintiff prevail in an action under § 12-119. The focus of § 12-119 is whether the assessment is illegal." (Citations omitted; emphasis in original; internal quotation marks omitted.)

888 (1997).

Accordingly, judgment may enter in favor of the town, dismissing this appeal, without costs to either party.

Arnold W. Aronson
Judge Trial Referee