

DOCKET NO: LLI-CV-19-6022555-S

SUPERIOR COURT

STEVEN R. ASTROVE, ET AL

JUDICIAL DISTRICT OF LITCHFIELD

V.

AT TORRINGTON

TOWN OF NORFOLK

MARCH 10, 2021

MEMORANDUM OF DECISION

This is a real estate tax appeal taken pursuant to General Statutes § 12-117a from the assessment of property on the Norfolk Grand List of October 1, 2018. The plaintiffs, Steven R. Astrove and Christina L Astrove, own property ("the property") which was appraised by the Norfolk Tax Assessor at a 100% value of \$356,700, and at a 70% assessed value of \$249,690. The plaintiffs filed a timely appeal of their assessment to the Board of Assessment Appeals of the Town of Norfolk which reduced the 100% value to \$317,060 and the 70% assessed value to \$221,940. This appeal followed. The trial took place on January 27, 2021.

I. Facts

The property is an undeveloped residentially-zoned building lot containing 2.05 acres in the Town of Norfolk. It has about 200 feet of road frontage along the east side of Tower Hill Road and about 200 feet of water frontage along the westerly shore of Doolittle Lake ("the lake"). The lake is a body of water of about 190 acres, the level of which has been raised by a dam and a dike. It is surrounded by about 50 cottages and houses which are privately owned but which are subject to the covenants of the Doolittle Lake Company, which owns the lake and 1,730 surrounding acres.

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Although the property's size and frontage qualify it as a building lot, it contains areas of wetlands which extend through the southerly and easterly portions of the property as well as an isolated area of wetlands in the north central portion. These wetlands areas significantly constrain the construction of a house and related improvements. There is an area near the center of the property which is a possible site for a house but which would still require Inland' Wetlands approval because portions of the house and related improvements would be within the :100 foot Wetland Regulated Area.

The property is also encumbered by an easement for a portion of the septic system for the neighboring property at 72 Tower Hill Road. Nothing can be built on that easement, and the owners have the right of access for maintenance. Also, the covenants of the Doolittle Lake Company restrict the ability of a landowner to cut trees. Because the property is wooded, a house constructed in the center of the property would have trees which obstruct a clear view of the lake. Finally, the property slopes down from the road to the lake making for a sloping driveway and yard.

In July 2018 the plaintiffs signed a contract to purchase the property for \$225,000, contingent upon an opinion of an engineer regarding a septic system for a four bedroom house. Prior to closing, the plaintiffs engaged an engineer to flag the wetlands on the property, and to select sites for a potential house and septic system. Following that investigation, in September 2018, the plaintiffs negotiated a reduction of the purchase price to \$190,000. The closing took place on November 12, 2018. The sellers were Laura B. Matson, Lise B. Read, and Carolyn B. O'Connor.

The property is bordered on the north by a 3.19 acre residential lot ("adjoining property")

at 72 Tower Hill Road which is improved with a house and related facilities. The plaintiffs contracted to buy the adjoining property in June 2018 and closed on that property in July 2018 at a sales price of \$875,000. The seller of this property is not named in the record. The defendant's expert makes the claim that: "The grantors of each property are related and these properties were both owned by members of the Brush family." That relationship was not explained to the court.

The plaintiff, Steven Astrove, testified that after he and his wife saw the results of the site feasibility investigation, they decided to purchase the property at a reduced price as a buffer to their home at 72 Tower Hill Road, rather than as a building lot. This testimony was credible.

The Norfolk Tax Assessor valued the property as follows: 100% appraised value of \$356,700 and 70% assessed value of \$249,690. The plaintiff appealed these values to the Norfolk Board of Assessment Appeals which reduced them as follows: 100% appraised value of \$317,060 and 70% assessed value of \$221,940. This appeal followed.

## **II. Standard of Judicial Review**

The plaintiff's claim is based upon C.G.S. § 12-117a. "In § 12-117a tax appeals, the trial court tries the matter de novo and the ultimate question is the ascertainment of the true land actual value of the [taxpayer's] property. . . . At the de novo proceeding, the taxpayer bears the burden of establishing that the assessor overassessed its property; . . . Once the taxpayer has demonstrated aggrievement by proving that its property was overassessed, the trial court [will] then undertake a further inquiry to determine the amount of the reassessment that would be just. . . . The trier of fact must arrive at [its] own conclusions as to the value of [the taxpayer's] property] by weighing the opinion of the appraisers, the claims of the parties in light of all the

circumstances in evidence bearing on value, and [its] own general knowledge of the elements going to establish value . . . ." (Citations omitted.) *Cadlerock Properties Joint Venture L.P. v. Ashford*, 98 Conn. App 556, 560 (2006).

"If the trial court finds that the taxpayer has failed to meet his burden because, for example, the court finds unpersuasive the method of valuation espoused by the taxpayer's appraiser, the trial court may render judgment for the town on that basis alone." *Ireland v. Wethersfield*, 242 Conn. 550, 557-58 (1997). "If, however, the trial court finds that the taxpayer, in light of the persuasiveness, for example, of his appraiser, has demonstrated an overvaluation of his property, the trial court must then undertake a further inquiry to determine the amount of the reassessment that would be just." *Id.* at 558.

"No one method of valuation is controlling . . . and the [court] may select the one most appropriate in the case before [it]." (Citations omitted; internal quotation marks omitted.) *Abington, LLC v. Avon*, 101 Conn. App. 709, 715 (2007). "[T]he court's ultimate goal is to establish the true and actual value of the subject property and . . . it is a question of fact for the trier as to whether the method used for valuation appears in reason and logic to accomplish a just result. . . . [No] particular method must be utilized [and valuation principles shall not serve to limit the court's discretion to choose the method that it believes will result in the fairest approximation of the subject property's value." (Citations omitted; internal quotation marks omitted.) *Id.* 716-17.

### III. Discussion

, The plaintiff presented the testimony of R. Bruce Hunter, a well-qualified and experienced real estate appraiser in private practice. He appraised the property as of October 1,

2018 and prepared a report which was admitted into evidence. He testified about the method used to arrive at a final appraised value of \$200,000.

Mr. Hunter did a thorough investigation of the status of the property as a viable building lot. He reviewed the materials prepared by Kenneth Hrica, the professional engineer engaged by the plaintiffs to explore the feasibility of construction of a house. These materials included a map of the wetlands on the property and the location of a potential home: He spoke with Mr. Hrica who expressed the opinion that the property is a "tough, tight site". He reviewed the restrictions imposed by the Doolittle Lake Company. He did a site inspection and concluded that the highest and best use of the property is as land protecting the privacy of the plaintiffs' property to the north.

Mr. Hunter decided upon the comparable sales approach and used three comparable sales of waterfront properties as well as the sale of the subject property. He used properties on other bodies of water in Northwest Connecticut because he found no current sales of property on Doolittle Lake other than the subject itself. He made adjustments for the characteristics of the comparable sales in order to arrive at an adjusted sales price for each. Ultimately, Mr. Hunter arrived at an adjusted sales price per acre of \$99,923. He also placed substantial weight on the subject property because its sale was negotiated prior to October 1, 2018, and the closing took place only a few weeks thereafter. In addition, he saw no evidence that this sale was not an arm's length transaction.

The defendant presented the testimony of Roger C. Rawlings, a well-qualified and experienced real estate appraiser in private practice. He appraised the property as of October 1, 2018 and prepared a report which was admitted into evidence. He testified about the methods

used to arrive at a final appraised value of 365,000.

Mr. Rawlings concluded that the highest and best use of the property was as a building lot for a single-family home. He opined that the property has a gently sloping topography allowing easy development. However, Mr. Rawlings did not inspect the wetlands mapping or other work done by the engineer, Mr. Hrica, to identify a potential house site. The court is baffled that an appraiser with the experience and expertise of Mr. Rawlings would neglect to consider this information. Mr. Rawlings was aware of the easement for the neighboring septic system but did not believe that it would adversely affect the construction of a house.

Mr. Rawlings first considered the comparable sales approach. He used two sales of water front lots on Doolittle Lake. The first sale took place in September 2010, and the second took place in 1991. He used these sales to determine that the value of the property on October 1, 2018 was \$360,000 or \$175,000 per acre.

He next used a method he called the "land residual analysis". Mr. Rawlings used the assessed value of other properties around Doolittle Lake to conclude that the property "with a house on it would have a market value of \$1,150,000. He then estimated that it would cost \$785,000 to construct a house on the lot. He subtracted the cost of construction from the market value of the improved lot to arrive at a land value of \$365,000. He then adjusted this value up to \$374,000 to reflect that this lot is slightly larger than average. Finally, Mr. Rawlings reconciled the values obtained from the two methods of valuation to arrive at a final value of the property on October 1, 2018 of \$365,000.

The court's first task is to determine whether the plaintiffs have demonstrated an overvaluation of their property. Based upon Mr. Hunter's persuasive opinion, the court finds

that the plaintiffs have met their burden of establishing that the assessor over-assessed the property. The evidence is convincing that Mr. Hrica is right that the property is a "tough, tight site". The defendant's 100% value of \$317,000 is simply too high for a property with difficult development potential.

The next step is to determine the amount of reassessment that would be just. This involves a closer examination of the opinions of the experts. In order to make sense out of the two appraisals, it is helpful to compare the way in which the contending appraisers approached their work. Mr. Hunter investigated the property to determine its development potential while Mr. Rawlings simply assumed that the site could be easily developed. This is a major flaw in Mr. Rawlings's work. It is hard to understand why he did not avail himself of the efforts of Mr. Hrica to map the wetlands and try to locate a house site. His testimony that he did not make use of this information casts real doubt upon the accuracy of his opinion. Further doubt is cast by his apparent conclusion that the sale of the property to the plaintiffs was not an arm's length transaction. He handles this with the sweeping statement that the sale of this property and the sale of the neighboring residence at 72 Tower Hill Road were "at the same time . . . [and] . . . the grantors of each property are related and these properties were both owned by members of the Brush family." The court does not consider this statement to be sufficient to show something less than an arm's length transaction. The plaintiff, Steven Astrove, testified very credibly that he did not know the sellers of either property and negotiated both sales through an agent. There is no reason to find that either sale was anything less than arm's length.

Next, the methodology of each appraiser reveals that Mr. Rawlings did not do an adequate job in his comparable sales approach. His two comparable sales are so old that they

are almost useless. Sales in 1999 and 2010 cannot be given much weight when the task is to determine fair market value in 2018. His refusal to consider any sales outside of the Town of Norfolk is the root of the problem. Doolittle Pond is undoubtedly an exclusive community with families who have held the limited number of waterfront lots for generations. But, this exclusivity means that there are almost no sales. Expanding the search for comparable sales to other similar lakes in other similar Northwest Connecticut towns is the only way to obtain current sales. Adjustments can be made to those sales to account for differences. This is the approach taken by Mr. Hunter and it is far superior to the one taken by Mr. Rawlings.

Finally, the court must address the "land residual analysis" used by Mr. Rawlings. This approach is not one recognized in the text "The Appraisal of Real Estate: Twelfth Edition" from the Appraisal Institute, an authoritative resource in the field. Although it has a logic to it, it relies on information which is suspect. First, one must assume that the assessed values of the Town will accurately reflect the market values of developed lakefront properties. Second, one must assume that the costs of construction offered by Mr. Rawlings are accurate. Third, and most importantly, one must accept the finding of Mr. Rawlings that the estimated market value of the property after construction of a house will be \$1,150,000. This flies in the face of the undeniable fact that the neighboring property at 72 Tower Hill Road sold for \$875,000. There is no reason to believe that this was not an arm's length transaction which was negotiated even before the sale of the subject property was agreed upon. There is no question that the site of the house at 72 Tower Hill Road is much closer to the water than any house will be able to be built next door. Further, 72 Tower Hill Road is 3.19 acres in size and the subject lot is only 2.05 acres. Therefore, the fair market value of \$1,500,000 which Mr. Rawlings assumes for the

subject as developed is totally at odds with fact that the neighboring property had an actual sales price of \$875,000.

As a final check on the accuracy of "land residual value" approach used by Mr. Rawlings it is instructive to assume that the subject property after construction will have a market value equal to that of its neighbor, an even larger lot with a more attractive house site. If we do that, and subtract the construction costs of \$785,000 as estimated by Mr. Rawlings, we arrive at a residual land value of \$90,000. This is an absurd result as it is less than one-half of the value found by Mr. Hunter. For this and the other reasons given, the court rejects the conclusions of Mr. Rawlings as unreliable.

Mr. Hunter's opinion is not without difficulties. An example is his finding that the highest and best use of the property is as a buffer. The court finds that the highest and best use of the property is as a "tough, tight" building lot that will enable the owner to construct a home in a limited area near the center of the lot. But, on balance, the court finds Mr. Hunter's opinion to be sound and reliable. His comparable sales work is based on well-established principles of appraisal. However, there is no doubt that the selection of truly comparable sales was extremely difficult in this case even though Mr. Hunter opened up the search outside of Doolittle Lake and the Town of Norfolk. Furthermore, as with any appraisal, the use of adjustments to those comparable sales is based on experience rather than science.

The court finds that the best evidence of the true market value of the property is the actual sale price of the property as agreed upon in July 2018, renegotiated in September 2018; and closed upon in November 2018. Mr. Hunter uses this sales figure of \$190,000 in his analysis as an arm's length transaction. Mr. Rawlings does not. The court agrees with Mr. Hunter that his

final figure of \$200,000 accurately reflects the fair market value of the property on October 1, 2018. Therefore, the appeal is sustained and the assessed value of the property on the list of October 1, 2018 **is** reduced to 70% of \$200,000, or \$140,000.

BY THE COURT,

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John W. Pickard  
Judge Trial Referee