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SUPERIOR COURT

DOCKET NO.: HHB-CV206060278S : SUPERIOR COURT
 2020 NOV 17 PM 1:50 :
 HARRY BASSILAKIS : JUDICIAL DISTRICT OF NEW BRITAIN
 v. :
 TOWN OF BLOOMFIELD : NOVEMBER 17, 2020

MEMORANDUM OF DECISION
RE: REQUEST TO INSPECT PROPERTY

In this tax appeal the plaintiff challenges the Town of Bloomfield’s (“Town”) revocation of a longstanding farmland exemption for the subject property. As part of the discovery process, the Town seeks a court order authorizing it to inspect the subject property. The plaintiff objects. For the following reasons, the court overrules the plaintiff’s objection.

I

FACTUAL AND PROCEDURAL BACKGROUND

The plaintiff purchased the subject property in 1999. Shortly after the purchase the plaintiff applied for and received a farmland exemption under General Statutes § 12-107c.¹ The

¹ Section 12-107c provides in relevant part: “(a) An owner of land may apply for its classification as farm land on any grand list of a municipality by filing a written application for such classification with the assessor thereof not earlier than thirty days before or later than thirty days after the assessment date, provided in a year in which a revaluation of all real property in accordance with section 12-62 becomes effective such application may be filed not later than ninety days after such assessment date. The assessor shall determine whether such land is farm land and, if such assessor determines that it is farm land, he or she shall classify and include it as such on the grand list. In determining whether such land is farm land, such assessor shall take into account, among other things, the acreage of such land, the portion thereof in actual use for farming or agricultural operations, the productivity of such land, the gross income derived therefrom, the nature and value of the equipment used in connection therewith, and the extent to which the tracts comprising such land are contiguous. The assessor shall not deny the application of an owner of land for classification of such land as farm land if such land meets the criteria for classification as farm land pursuant to this subsection. The assessor shall not deny the application for any portion of such land on account of any minimum acreage requirement for residential parcels or agricultural use established under municipal zoning regulations.” General Statutes § 12-107c (a).

*electronic notice sent to all counsel of record.
 mailed to Reporter of Judicial Decisions. A. J. Iordanopoulos et al*

property retained its exempt status continuously for approximately twenty years, during which time the plaintiff used the property to grow fruit, vegetables and nuts for a diner he owned in West Hartford.

In December 2019, the plaintiff learned that the Town had revoked the farmland exemption, which resulted in a significant increase in the assessed value of the subject property. The plaintiff appealed the revocation and the increased assessment to the Bloomfield Board of Assessment Appeals. The board denied his appeal by notice dated March 9, 2020. The plaintiff timely filed this appeal pursuant to General Statutes § 12-119.

Pursuant to Practice Book § 13-9, the Town served the plaintiff with a request to inspect the subject property. Section 13-9 provides in relevant part: “In any civil action . . . any party may serve . . . upon any other party a request . . . to permit entry upon designated land or other property for the purpose of inspection, measuring, surveying, photographing, testing or sampling the property or any designated objection or operation thereon.” Practice Book § 13-9. The plaintiff denied the Town his permission to inspect, whereupon the Town filed a motion for a court order authorizing the inspection.² The plaintiff then filed a formal objection to the § 13-9 request to inspect. The objection states that the requested inspection “is totally unnecessary under a [] § 12-119 appeal. The unlawful decision to remove the designation was made last year after an inspection by the Assessor. The plaintiff has not transferred the property, nor has he changed the use of the property since 1999. There is no basis to conduct an inspection of the property now for something that supposedly happened in 2019.”

² Technically, the Town filed a caseflow request asking for an immediate physical inspection of the property. The court has treated that request as a motion to compel compliance with the request to inspect under Practice Book § 13-9.

II

DISCUSSION

In general, where real property is at issue in a legal controversy, a Practice Book § 13-9 request to inspect the property is not only logical, but eminently reasonable. This court cannot consider § 13-9 in isolation, however. The court must also consider several other relevant statutory provisions, as well as the potential Fourth Amendment implications of allowing a municipal official to enter and inspect, i.e., to search, the plaintiff's private property without his consent.

A

The court first considers General Statutes § 12-62 (b) (3). It provides in relevant part, “[a]n assessor, member of an assessor’s staff or person designated by an assessor may, at any time, fully inspect any parcel of improved real property in order to ascertain or verify the accuracy of data listed on the assessor’s property record for such parcel. Except as provided in subdivision (4) of this subsection, the assessor shall fully inspect each such parcel once in every ten assessment years, provided, if the full inspection of any such parcel occurred in an assessment year preceding that commencing October 1, 1996, the assessor shall fully inspect such parcel not later than the first day of October of 2009, and shall thereafter fully inspect such parcel in accordance with this section. Nothing in this subsection shall require the assessor to fully inspect all of a town’s improved real property parcels in the same assessment year and in no case shall an assessor be required to fully inspect any such parcel more than once during every ten assessment years.”

General Statutes § 12-62 defines the terms “full inspection” and “fully inspect.” They mean “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.*” (Emphasis added.) General Statutes § 12-62 (a) (3).

The statutory requirement that an assessor must have the property owner’s permission to inspect the owner’s property seems to preclude a court order permitting an inspection against the owner’s wishes. The Town argues, however, that this requirement means only that the Town must first request permission from the owner before seeking a court order. In other words, the General Assembly, perhaps cognizant of the potential Fourth Amendment implications of such an inspection, added the proviso to make clear that assessors do not have the right to enter a taxpayer’s property to inspect it at will.

The court does not have to resolve this potential conflict between the General Statutes and the Practice Book because the plain language of § 12-62 (a) (3) only applies to inspections for two specific purposes: (1) measuring the exterior dimensions of a building or structure, or (2) examining the interior of a building or structure. The purpose of the requested inspection in this case is to view farmland. Accordingly, § 12-62 (a) (3) does not bar a Practice Book § 13-9 request to inspect, at least not under the unique facts and circumstances of this case.

The court next considers General Statutes § 12-107c, the farmland exemption statute. When a property owner seeks to invoke § 12-107c, “[t]he assessor shall determine whether such land is farmland and, if such assessor determines that it is farm land, he or she shall classify and include it as such on the grand list. In determining whether such land is farm land, such assessor shall take into account, among other things, the acreage of such land, *the portion thereof in actual use for farming or agricultural operations*, the productivity of such land, the gross income derived therefrom, the nature and value of the equipment used in connection therewith, *and the*

extent to which the tracts comprising such land are contiguous.” (Emphasis added.) General Statutes § 12-107c (a).

Although some of the factors the assessor must take into account do not require a physical inspection of the property, others—such as the portion of the land in actual use for farming and whether the tracts are contiguous—seem to require an inspection. Thus, the text of § 12-107c strongly suggests that a party requesting a farmland exemption must permit the assessor to inspect the property. Indeed, the Supreme Court has held that “when an owner has applied for the classification of land as farmland, as defined in § 12-107b, it is the duty of the assessor to determine whether the land qualifies for such classification under the tests laid down in § 12-107c (a).” *Dickau v. Glastonbury*, 156 Conn. 437, 440, 242 A.2d 777 (1968). If the property owner declines to grant the assessor permission to inspect, the owner could hardly complain if the assessor denied the exemption request because of an error in the assessor’s knowledge about the true nature and use of the property. E.g., *J.C. Penney Corp. v. Manchester*, 291 Conn. 838, 845, 970 A.2d 704 (2009); *Acampora v. Hamden*, Superior Court, judicial district of New Haven, Docket No. CV-15-6053896-S, 2015 WL 7941576, at *3 (Nov. 12, 2015); *Mulero v. Wethersfield*, Superior Court, judicial district of New Britain, Docket No. CV-08-4017412-S (Sept. 22, 2009, *Aronson, J.*).

The court acknowledges that this appeal involves a challenge to a town’s revocation of a farmland exemption, not a town’s failure to grant an exemption application in the first instance. This difference, however, is not legally relevant. Whether a property owner seeks a farmland exemption in the first instance, or restoration of a revoked exemption, the assessor needs to inspect the property.

In sum, as far as the relevant statutory provisions are concerned, the need for the assessor to inspect farmland property for exemption purposes is clear. Further, the property owner does not have a statutory right to refuse the inspection, unlike the owner's right under §§ 12-62 (a) (3) and (b) (3) to refuse inspections of the interior and exterior of buildings and structures.

B

The court must still address the potential Fourth Amendment implications of an order authorizing the Town to inspect the subject property without the plaintiff's consent. The Fourth Amendment provides that "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . ." U.S. Const. amend. IV.³ Courts of this and other states have uniformly held that a tax assessor's inspection of the interior of a residential or commercial property owner's home or buildings is a Fourth Amendment search. E.g., *Parnoff v. Stratford*, Superior Court, judicial district of New Britain, Docket No. CV-13-6030852-S, 2018 WL 10094272 (Nov. 26, 2018) ("assessor's intrusion on the plaintiffs' property in order to inspect it, as required by statute, is a violation of the Fourth Amendment if done without permission from the owner"); *Sherman v. Ventnor City*, No. 012930-2017, 2019 WL 6245845 (Tax Court of New Jersey, Nov. 21, 2019); *Matter of Jacobowitz v. Bd. of Assessors for Town of Cornwall*, 121 A.D.3d 294, 990 N.Y.S.2d 551, 555-57 (N.Y. App. Div. 2014); *Roketenetz v. Bd. of Assessors*, 72 Mass.App.Ct. 907, 892 N.E.2d 363, 364 (Mass. App. Ct. 2008); *Poddar v. Department of Revenue*, 328 Or. 552, 983 P.2d 527,

³ Although popular conceptions of the Fourth Amendment tend to limit its application to criminal matters, "[i]t is well settled . . . that the Fourth Amendment's protection extends beyond the sphere of criminal investigations. . . ." *Grady v. North Carolina*, ___ U.S. ___, 135 S. Ct. 1368, 1371, 191 L.Ed.2d 459 (2015). Particularly relevant here, the Fourth Amendment applies to so-called administrative searches or inspections, such as those that a building or health inspector might conduct. E.g., *Camara v. Mun. Ct. of City and County of S.F.*, 387 U.S. 523, 87 S. Ct. 1727, 18 L.Ed.2d 930 (1967).

533 (Or. 1999); *Atkinson v. Gurich*, 248 P.3d 356, 358-60 (Okla. 2011); *MacDonald v. Town of Dover*, 377 Wis.2d 38, 899 N.W.2d 303, 313-28 (Wis. 2017).

This case is distinguishable from the cited cases in one very significant Fourth Amendment respect: the subject property is open farmland, not the interior of a home or building. Property owners do not have a reasonable expectation of privacy in open fields beyond the curtilage of their homes and, therefore, a government official's inspection of an open field is not a "search" within the meaning of the Fourth Amendment. "We conclude, from the text of the Fourth Amendment and from the historical and contemporary understanding of its purposes, that an individual has no legitimate expectation that open fields will remain free from warrantless intrusion by government officers." *Oliver v. United States*, 466 U.S. 170, 181, 104 S. Ct. 1735, 80 L. Ed. 2d 214 (1984). "Nor is the government's intrusion upon an open field a "search" in the constitutional sense because that intrusion is a trespass at common law. The existence of a property right is but one element in determining whether expectations of privacy are legitimate." *Id.*, 466 U.S. 183.

In sum, because the subject property is farmland, i.e., open fields, the requested inspection does not constitute a Fourth Amendment search.

C

Absent a statutory prohibition against tax assessor inspections of farmland without the property owner's consent, and absent Fourth Amendment concerns about such an inspection, the remaining question is: Do the plaintiff's objections to the Town's request to inspect under Practice Book § 13-9 have sufficient merit to outweigh the Town's reasons for wanting to inspect the property?

As noted above, the plaintiff raises two basic objections. First, he argues that an inspection is not necessary because the Town inspected the property before it revoked the farmland exemption in December 2019. Second, he argues that he has not changed the use of the property since 1999. Neither of these objections is persuasive.

Initially, it is fair for the plaintiff to ask why the Town needs to conduct another inspection. However, the test for discovery is not necessity, but whether the “information sought appears reasonably calculated to lead to the discovery of admissible evidence.” Practice Book § 13-2. The request to inspect the subject property readily meets that standard. To the extent the plaintiff believes a second inspection is unduly burdensome or constitutes harassment, the court disagrees.

Further, whether the plaintiff has changed the use of the property since 1999 is the very factual issue the parties are litigating. The Town obviously believes the use has changed, otherwise it would not have revoked the exemption. The court will have to resolve this factual dispute. Permitting an inspection will aid the court in doing so.

For the foregoing reasons, the plaintiff’s objection to the Town’s request to inspect the subject property is **OVERRULED**. The parties shall confer regarding a date and time for the inspection, which shall be within 3 weeks of the date of this order. If the parties are unable to agree, the Town shall select the date and time, which must be no earlier than 9 a.m. and no later than 3 p.m. No more than three representatives of the Town, including the assessor and the Town’s legal counsel, may participate in the inspection. The Town make take photographs of the property during the inspection for use as evidence in this case.

SO ORDERED.

Dated: November 17, 2020


Daniel J. Klau, Judge