

OFFICE OF THE CLERK  
SUPERIOR COURT

2022 rrnR 1 Prl 12 2s  
DOCKET NO. HHB-CV-20-6062877-S  
JUDICIAL DISTRICT OF  
COLVEST/COLCHESTER

V.

TOWN OF COLCHESTER

SUPERIOR COURT

JUDICIAL DISTRICT  
OF NEW BRITAIN  
ADMINISTRATIVE AND TAX  
APPEALS

MARCH 14, 2022

MEMORANDUM OF DECISION

**INTRODUCTION:**

This matter is a real property tax assessment appeal by Colvest/Colchester, LLC (plaintiff) concerning the tax assessment by the Town of Colchester (Colchester) for certain real property owned by the plaintiff located at 71 Linwood Avenue in Colchester. The plaintiff's complaint challenges the tax assessment on the subject real property, pursuant to General Statutes §§ 12-117a and 12-119, on the 2019 and 2020 Colchester grand lists. The court held a trial on March 10, 2022.

**FINDING OF FACT:**

Based upon the evidence introduced at trial, the court makes the following findings of fact:

*Electronic notice sent to all counsel of record and to the official reporter. A. Jordanopoulos, 3/14/22*

1. On October 1, 2019, and, at all times relevant to this appeal, the plaintiff owned certain real property located at 71 Linwood Avenue in Colchester (Property).
2. As of October 1, 2019, the tax assessor of Colchester determined that the full market value of the Property was \$931,000. As of this date, construction of improvements on the Property were in progress and incomplete. The unfinished improvements were intended to be a commercial retail building.
3. As of October 1, 2020, the tax assessor of Colchester determined that the full market value of the Property was \$1,974,714. As of this date, construction of the improvements on the Property was nearly complete.<sup>1</sup> October 1, 2019 and October 1, 2020 will be referred to collectively as the Valuation Dates.
4. For each grand list, Colchester assessed taxes on the Property by applying the applicable mil rate to seventy percent of the full market value of the Property as determined by the tax assessor for the applicable grand list.
5. The plaintiff timely appealed the valuation and the corresponding tax assessment to the Colchester Board of Assessment Appeals.
6. By a notice dated March 14, 2020, the Colchester Board of Assessment Appeals denied the plaintiff's appeal and declined to make any change to the valuation or the tax.

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<sup>1</sup> The plaintiff signed a lease with AutoZone for the use of the Property in December of 2020.

7. The plaintiff subsequently timely appealed the board's denial to this court, which held a trial on March 10, 2022.
8. At trial, neither party proffered an expert appraiser to testify. The managing member of the plaintiff, Frank Colaccino,<sup>2</sup> and the Tax Assessor, John Chaponis, testified.
9. The plaintiff purchased the Property on November 14, 2007, for \$812,500. At the time, the Property had two buildings on it. Some time between November 14, 2007 and the beginning of 2019, the plaintiff paid to tear those original buildings down. Some time in early 2019, the plaintiff began to redevelop the Property into its current state.
10. Redevelopment of the Property began with the plaintiff hiring engineers and architects, and obtaining the necessary permits.
11. In the plaintiff's exhibits 6, 7, and 10, Colaccino presented some of the costs incurred by the plaintiff in redeveloping the Property, however, the court found that these costs as presented were not complete. The costs as presented in these exhibits do not accurately represent the total costs incurred by the plaintiff in redeveloping the Property. The costs as presented in the foregoing exhibits do not accurately contain the true cost of acquiring the land, the cost of engineers and architects, and the cost of tearing down the original buildings.

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<sup>2</sup> The court notes that, although Colaccino was the managing member of the plaintiff limited liability company, he was not the owner of the Property. Instead, the plaintiff itself was.

12. The costs as presented in the plaintiff's exhibits 6, 7, and 10, in addition to being incomplete, do not properly reflect the value of the Property as of each of the Valuation Dates because, inter alia, the plaintiff accounted for the costs as they were invoiced to and paid by the plaintiff as opposed to when the work was done.
13. For land value, Colaccino improperly used the defendant's assessed value as of October 1, 2018 instead of the plaintiff's actual cost. This tactic is mistaken from at least two perspectives. The defendant's assessment was as of October 1, 2018, not as of any of the Valuation Dates. Second, this tactic attempts to mix a cost approach with a value that was not a cost, and which was substantially different from the actual cost.
14. The court did not find Colaccino to be a reliable witness and did not credit his testimony.
15. The court did find Chaponis to be a reliable witness and did credit his testimony.
16. The valuations made of the Property by Chaponis were conservative, and certainly did not overvalue the Property as of either of the Valuation Dates.
17. The plaintiff failed to establish any specific and reliable valuation for the Property as of either of the Valuation Dates.

**STANDARD OF REVIEW:**

A trial court hears tax appeals pursuant to §§ 12-117a and 12-119 de novo, and, if the taxpayer is aggrieved, must arrive at its own conclusions as to the value of the property at issue

by evaluating all of the evidence, including the opinions of appraisers. The court is to apply its general knowledge and experience in evaluating all of the evidence presented. See *Davis v. Westport*, 61 Conn. App. 834, 840, 767 A.2d 1237 (2001).

The trial court must first determine whether the taxpayer is aggrieved by the assessment, specifically whether or not the assessment is excessive. A finding of aggrievement concerns both issues of fact and of law. An affirmative finding of aggrievement is a condition precedent to engaging the court's broad discretionary power to grant appropriate relief. In exercising its discretion, the court should correct the valuation if it is found to be excessive. Whether the property has been overvalued is a question of fact. It is the taxpayer's burden to show that the valuation is excessive, and the trial court must determine whether the taxpayer has offered sufficient, credible evidence that the subject property has been overvalued. When making a claim pursuant to § 12-119, the plaintiff must prove more than mere overassessment as in § 12-117a, proving instead that the assessment was manifestly excessive and could not have been arrived at except by disregarding the provisions of the statutes applicable to determining the valuation of such property.

**ANALYSIS:**

The plaintiff's amended complaint dated January 21, 2022, presents four counts challenging the tax assessment on the Property as of each of the Valuation Dates pursuant to

General Statutes §§ 12-117a and 12-119, with two counts addressed to each Valuation Date, one count pursuant to § 12-117a and one count pursuant to § 12-119.

It was the plaintiff's burden to prove that it was aggrieved by either assessment by proving that either assessment was excessive by a preponderance of the evidence. The plaintiff has certainly failed to meet its burden. The plaintiff failed to prove any specific valuation of the Property, as of either of the Valuation Dates, that the court found reliable. The court found the testimony of Colaccino to be unreliable and did not credit it. The court found the costs alleged by the plaintiff to have been incurred in acquiring and redeveloping the Property to be incomplete, unreliable, and inconsistent with the accepted cost method of valuation. Further, the court found Colaccino's assertions of the Property value to be unreliable. Since it was the plaintiff's burden to prove that the defendant's assessments were excessive, and since the plaintiff has failed to meet its burden, the defendant's assessment must stand.<sup>3</sup> Accordingly, the court must dismiss the appeal for lack of aggrievement.

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<sup>3</sup> The court further notes that it accepted the testimony of Chaponis that his valuations of the Property were conservative and likely undervalued the Property.

**JUDGMENT:**

The appeal is dismissed for lack of aggrivement.

*II/A*

*/* E. Cordani, Judge  
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