

DOCKET NO. HHB CV 176037358

SUPERIOR COURT

DATILLO FAMILY HOLDINGS, LLC

JUDICIAL DISTRICT OF

V.

NEW BRITAIN

TOWN OF WESTBROOK

NOVEMBER 22, 2021

**MEMORANDUM OF DECISION**

This is a tax appeal from the valuation of the plaintiff's property located on Long Island Sound at 57 Pointina Road, Westbrook, Connecticut (the "Property") on the list of October 1, 2016, the revaluation year. The Assessor found that the fair market value of the Property to be \$999,430.

Procedural Background

The plaintiff filed a timely appeal to the Westbrook Board of Tax Review. On March 15, 2017 the Board of Tax Review denied the appeal, finding that the valuation of the Property "has already been lowered." At the Board hearing the plaintiff argued that the fair market value of the Property was \$600,000.

The plaintiff then timely appealed to this court. The First Count of the complaint alleges a violation of Connecticut General Statutes § 12-117a and the Second Count alleges a violation of Connecticut General Statutes § 12-119. The trial occurred on August 10, 2021 and September 7, 2021. The parties submitted simultaneous briefs on October 15, 2021.

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### Findings of Fact

The Property is a multi-family, residential, year round structure, consisting of 3 units located on 16,988 square feet of land in an area referred to as "Money Point" surrounded by million dollar single family houses. The plaintiff purchased the Property in December, 2015 for \$485,000. The plaintiff's representative, Claudio Marasco, testified that he had previously represented to the Board of Tax Review that the fair market value of the Property was \$600,000. He further testified that the Property was purchased as a rental property and he has previously rented three separate units in the Property. He also testified that he understood from the Town that the legal use of the Property is limited to two units.

Mr. Marasco further testified that the easements in the deed to the Property interfered with its use and, therefore, negatively affected its value. The court finds that there was no evidence that the easements in the deed to the Property had any effect on the use or value of the Property.

The plaintiff presented the testimony of James Caramanello, an appraiser. Although he used only multi-family properties as comparables, he provided no rental income analysis and did not use the income approach to valuation, only the sales comparison approach. Notwithstanding that many consider location to be the key feature in determining a property's value, and there were many sales of waterfront properties in Westbrook during the relevant time period, Mr. Caramanello did not use any Westbrook waterfront properties as comparable sales. Mr. Caramanello opined that the fair market value of the Property as of October 1, 2016, was \$495,000.

The only Westbrook property that Mr. Caramanello used was a multi-family property located near Route 1. It was half a mile away from the Property and the Long Island Sound. His appraisal

report describes the property as having an "obstructed water view." However, he could not describe the view, had no photographs showing the water from the property and had never visited same. The court finds that this property was inaccurately described as having a water view. Mr. Caramanello's use of value adjustments with respect to the first comparable was suspect. For example, he added \$53,000 to the value of the Property as compared to the comparable due to the lack of water view, but then subtracted the same \$53,000 from the value of the Property as compared to the comparable due to "condition," even though the condition of both properties was described as "fair."

Mr. Caramanello's second comparable sale was almost 23 miles away from the Property in East Haven in a beach area which he described as less desirable than the area in which the Property is located. The third comparable was 33 miles away located in a marine harbor and not directly on Long Island Sound.

The court finds that Mr. Caramanello's testimony and report were not credible. The only reason he gave for his failure to use comparable sales of Westbrook waterfront properties was that good appraisal practice required him to use only multi-family properties because the Property was multi-family. He was not able to cite to any section of the Uniform Standards of Professional Appraisal Practice or any other source to support such practice. He failed to use the income approach to valuing the comparable multi-family properties without any explanation for such failure and used incredible valuation adjustments which appeared to be based more on his desire to reach a low valuation than on reason or reality.

The defendant presented the testimony and the report of John Ryan, an appraiser. Mr. Ryan's opinion as to fair market value was based on four comparable sales of waterfront properties in Westbrook. The comparable properties were all within 3 miles of the Property, with the nearest being

.2 miles away and the farthest 2.7 miles away. The sales prices of those properties ranged from \$800,000 to \$1,550,000. The second comparable sale, which sold for \$800,000 had only .07 acres of land, 1,169 square feet of living area was seasonal. The Property has .39 acres of land, 3,859 square feet of living area and is a year round residence. Mr. Ryan opined that the fair market value of the Property as of October 1, 2016 was \$900,000. This was based on adjusted sales prices of the comparable sale properties ranging from \$889,500 to \$1,219,750. Based on that range his appraisal clearly supported the Town's determination that the Property was valued at \$999,430.

### Discussion of the Law

In an appeal under § 12-117a, the trial court performs a twostep function. "The burden, in the first instance, is [on] the plaintiff to show that he has, in fact, been aggrieved by the action of the board in that his property has been overassessed.... In this regard, [m]ere overvaluation is sufficient to justify redress under [§ 12-117a], and the court is not limited to a review of whether an assessment has been unreasonable or discriminatory or has resulted in substantial overvaluation.... Whether a property has been overvalued for tax assessment purposes is a question of fact for the trier.... The trier arrives at his own conclusions as to the value of land by weighing the opinion of the appraisers, the claims of the parties in light of all the circumstances in evidence bearing on value, and his own general knowledge of the elements going to establish value including his own view of the property.... *Konover v. West Hartford*, 242 Conn. 727, 734-35, 699 A.2d 158 (1997). Thus, the trial court first must determine whether the plaintiff has offered sufficient, credible evidence that the subject property has been overvalued. If the trial court concludes that the plaintiff has not met [this] burden,' the trial proceeds no further, and the town's assessment stands." (Internal quotation marks omitted.) *Redding Life Care, LLC v. Redding*, 308 Conn. 87, 99-100, 61 A.3d 461 (2013). "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 court may render judgment for the town on that basis alone." *Ireland v. Wethersfield, supra*, 242 Conn. at 557-58, 698 A.2d 888. With respect to appeals by taxpayers, "we have regularly affirmed such judgments without a showing that the town adduced affirmative evidence sufficient to demonstrate that the assessor's determination of market value was not unjust." *Id.*, at 558, 698 A.2d 888.

*Nutmeg Housing Development Corporation v. Town of Colchester*, 324 Conn.1, 9, 151 A. 3d

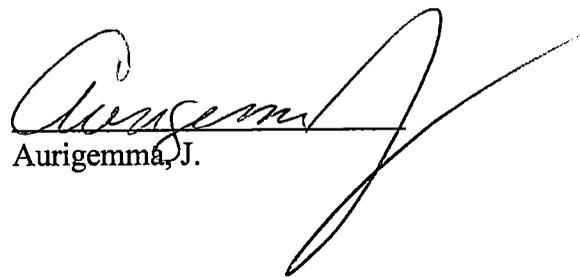
358(2016).

It is a basic principle of law governing tax appeals that it is the burden of the taxpayer to show that he or she has been aggrieved by the action of the assessor over-assessing the property. *Ireland v. Wethersfield*, 242 Conn. 550, 556, 698 A.2d 888 (1997). It is also recognized by our case law that where the trial court finds that the taxpayer's appraiser is unpersuasive, judgment may be entered in favor of the municipality on this basis alone. *Id.*, at 557-58.

There is also case law that the trial court is charged with the duty of making an independent evaluation of the property involved. *E&F Realty v. Commission of Transportation*, 173 Conn 247, 253, 377 A. 2d 302(1977). The only reliable evidence presented as to valuation came from Mr. Ryan. With respect to the First Count of the complaint, the court will reduce the Assessor's value in accordance with Mr. Ryan's appraisal and find that the Property had a fair market value of \$900,000 and a 70% assessed value of \$630,000 on October 1, 2016.

There was no evidence of misfeasance or malfeasance by the Assessor or Board or that the valuation was manifestly excessive within the meaning of Connecticut General Statutes § 12-119. Judgment enters in favor of the defendant Town of Westbrook on the Second Count.

By the court,



Aurigemma, J.