



the defendant's December 31 deadline for filing his § 29-265d application. Nevertheless, the plaintiff contends that he is entitled to use § 12-117a to pursue a reduction in the assessed value of his property for the 2019 Grand List year based on the same defective foundation claim.<sup>3</sup> The defendant responds that the plaintiff is limited to the relief he will receive under § 29-265d.

Following a pretrial in which the precise nature of the parties' dispute became apparent, the court invited the parties to submit cross-motions for summary judgment based upon a stipulation of facts. See Order (dated Dec. 14, 2020) (#103.00). The parties filed their respective motions and the court heard oral argument on April 26, 2021. The court now concludes that the plaintiff's claim under § 12-117a fails as a matter of law.

## I

### STIPULATION OF FACTS

The parties stipulated to the following facts:

1. On or about October 1, 2019, the plaintiff owned certain property known as 181 Deer Run Trail, Manchester, Connecticut (the "Property"). Stip., ¶ 1.
2. For the October 1, 2019 Grand List, the defendant's assessor valued the Property at \$187,700 (fair market value), for an assessed value of \$131,400. Stip. ¶ 2.

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<sup>3</sup> During oral argument the plaintiff appeared to retreat from this position and suggest that his overvaluation claim did not rest on this defect alone. This retreat is disingenuous. When the plaintiff appealed his October 1, 2019 assessment to the BAA, he presented a written report of a licensed engineer stating that his foundation was defective. The plaintiff offered his own opinion that the defect reduced the value of his property to approximately \$40,000. Defendant's Memorandum in Support of Motion for Summary Judgment (dated Feb. 2, 2021) ("Def. Mem."), pp. 5-6. During the judicial pretrial in this tax appeal, the plaintiff reaffirmed that the sole reason he believes the October 1, 2019 assessment is excessive is because of the defective foundation. The court invited the parties to submit cross-motions for summary judgment based on these undisputed facts.

3. The assessor signed the 2019 Grand List on January 29, 2020, in accordance with General Statutes § 12-55 (a). Stip., ¶ 3. At that time the assessor was not aware that the Property had a defective concrete foundation. Stip., ¶ 6.

4. On February 11, 2020, the plaintiff approached the assessor to inform him of the defective concrete foundation and that the plaintiff wanted to file an application for reassessment pursuant to General Statutes § 29-265d. Stip., ¶ 7. The defendant had established a policy that any taxpayer seeking to availing itself of relief under § 29-265d had to file an application for relief by December 31 of the assessment year. That deadline would afford the inspector sufficient time to review the application and supporting documentation and to conduct the investigation mandated by the state before the Grand List was signed by the end of January. Stip., ¶ 5. Accordingly, the assessor informed the plaintiff that the reduction in the assessment of his Property would be effective for the five years commencing with the October 1, 2020 Grand List year. Stip., ¶ 8. The plaintiff proceeded with his § 29-265d application with that understanding. Stip., ¶ 9.

5. On March 15, 2020, the assessor formally notified the plaintiff that, due to the defective concrete foundation, the assessment of his Property would be reduced for Grand List years 2020 through 2024. Stip., ¶ 10.

6. In addition to his application for relief pursuant to General Statutes § 29-265d, the plaintiff challenged the defendant's October 1, 2019 assessment by filing an appeal with the defendant's Board of Assessment Appeals ("BAA") on February 13, 2020. On March 4, 2020, the BAA notified the plaintiff that it would not change his assessment. Stip., ¶ 11. The plaintiff timely appealed the BAA's decision pursuant to General Statutes § 12-117a.

## II

### DISCUSSION

Practice Book § 17-49 provides that summary judgment “shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issues as to any material fact and that the moving party is entitled to judgment as a matter of law.” Because the parties have stipulated to the relevant facts, the question for the court is whether those facts entitle one party or the other to summary judgment as a matter of law.

#### A

The General Assembly enacted § 29-265d in 2016 to provide a measure of relief to homeowners with defective concrete foundations. The plaintiff argues that the relief available under this statute is “in addition to and not in replacement of other statutory rights of tax appeal,” including an appeal to the BAA under § 12-111,<sup>4</sup> followed by an appeal to the Superior Court under § 12-117a. Plaintiff’s Memorandum of Law in Support of Motion for Summary Judgment (dated Feb. 2, 2021) (“Pl. Mem.”), pp. 4-5.

The defendant offers two responses to this argument. It contends that plaintiff cannot establish aggrievement under § 12-117a because he has already been granted five years of property tax relief per § 29-265d. “This relief . . . further establishes that he was not aggrieved under the totality of circumstances, as the reduced assessment will be extended to the October 1, 2024 Grand List rather than ending on the October 1, 2023 Grand List.” Def. Mem., p. 10. Simply put, property owners with defective concrete foundations are entitled to five years of property tax relief under § 29-265d. Having been granted that relief, the defendant argues that

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<sup>4</sup> General Statutes § 12-111 (a) provides: “Any person . . . claiming to be aggrieved by the doings of the assessors of such town may appeal therefrom to the board of assessment appeals.”

the plaintiff is not entitled to a sixth year of relief by characterizing his appeal as a generic § 12-117a appeal.

The defendant also offers a second reason why the plaintiff cannot establish aggrievement: “This appeal of the assessment on the October 1, 2019 Grand List suffers from a fatal defect. Specifically, that defect is that the plaintiff is unable to establish that he is aggrieved by the assessor’s actions because the assessor was not made aware of the existence of the defective foundation at the time he signed the October 1, 2019 Grand List.” Def. Mem., p. 6. This argument is based on the proposition that a taxpayer cannot claim that an assessor has overvalued property by failing to account for property conditions that were unknown as of the effective date of the assessment. Def. Mem., pp. 6-10.

The court agrees with the defendant’s first argument. Because the defendant is entitled to summary judgment on this basis, the court does not address the defendant’s alternative argument.

## B

Section 29-265d provides that an adjustment in the assessed value of residential property with a defective concrete foundation “shall apply for five assessment years.”<sup>5</sup> Through this appeal the plaintiff seeks a sixth year of tax relief based on the same defect. Had the plaintiff submitted his § 29-265d request to the defendant by December 31, 2019, the five years of tax

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<sup>5</sup> The General Assembly considered a bill during the most recent legislative session that would amend the five-year limitation on property tax relief under § 29-265d. The bill provides that “[a]ny reassessment under this section shall apply for five assessment years, notwithstanding the provisions of section 12-62 [until the next revaluation becomes effective or the concrete foundation is repaired or replaced, and the assessor, member of the assessor’s staff or person designated by the assessor adjusts the assessment of the residential building, whichever is earlier.]” House Bill No. 6646, 2021 Sess. The strikethrough text represents existing text that the bill would delete from the statute. The bracketed text represents proposed text.

relief to which the plaintiff is entitled would have been effective as of the October 1, 2019 Grand List, the very assessment year at issue in this appeal.<sup>6</sup> Stip., ¶ 5.

The plaintiff sees no problem with this request because he views § 29-265d as supplementing, not supplanting, the relief available under § 12-117a. Essentially, the plaintiff asks the court to imagine a legal universe in which § 29-265d did not exist. The plaintiff then asks whether a residential property owner would be able to challenge an assessment under § 12-117a on the ground that the assessor failed to consider the existence of a defective concrete foundation. The plaintiff would answer that question in the affirmative. Subject to certain key provisos, the court would agree. So would the defendant. Defendant's Reply Memorandum (dated Feb. 19, 2021) ("Def. Rep. Mem."), p. 7, n.4.

The plaintiff contends that the entry of § 29-265d into the universe in 2016 has no effect on the answer to this question. That is where the plaintiff and the court (and the defendant) part ways. It is an elementary rule of statutory construction that the text of a particular statute cannot be viewed in isolation. The plain meaning rule requires a court to consider the text of the statute itself *and its relationship to the broader statutory scheme*. *Foisie v. Foisie*, 335 Conn. 525, 531-

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<sup>6</sup> The defendant had sound legal and practical reasons for establishing the December 31 deadline. General Statutes § 12-55 (a) requires municipalities to publish their grand lists by January 31 for the assessment year commencing October 1 of the preceding calendar year. Thus, local assessors must know by January 31 whether a particular property owner is entitled to relief under § 29-265d for the assessment year in question. Moreover, because § 29-265d requires the assessor to conduct a physical inspection of the property after receiving an application, the assessor must actually receive the application well in advance of January 31 to have sufficient time to perform the inspection and make the appropriate adjustment to the Grand List. Therefore, the defendant's December 31 deadline is an eminently rational deadline for property owners who desire § 29-265d relief retroactive to October 1. Property owners who for whatever reason miss the December 31 deadline are still entitled to the full benefit of § 29-265d, but the five-year reduction in their assessments does not commence until October 1 of the year in which they actually filed their application.

32, 239 A.3d 1198 (2020). This canon of statutory construction compels the court to consider how § 29-265d and § 12-117a interact.

In this regard, the plaintiff's insistence that § 12-117a and § 29-265d are entirely separate remedies is textually problematic. Section 29-265d expressly authorizes a property owner to appeal a reassessment under that statute to the local board of assessment appeals pursuant to General Statutes § 12-111. By law, a party who is aggrieved by the local board's decision in such an appeal may appeal further to the Superior Court pursuant to § 12-117a. This connection between § 29-265d and § 12-117a counsels against viewing the two statutes as wholly independent of each other.

Additionally, "the legislature is presumed to have acted in light of existing relevant statutes and with the intent to enact a consistent body of law. [A]bsent manifest intent to repeal an earlier statute, when general and specific statutes conflict they should be harmoniously construed so the more specific statute controls." *Sullivan v. State*, 189 Conn. 550, 457 A.2d 304, 457 A. 20 (1983). Section 12-117a provides a general remedy for challenging property valuations based on mere overvaluation for any number of possible reasons. By contrast, § 29-265d addresses a very specific issue—the effect of defective concrete foundations on residential property valuations. As the more specific statute, § 29-265d should control in valuation appeals involving defective foundations.

Significantly, § 29-265d permits residential property owners with defective foundations to obtain *interim* revaluations of their property. Def. Rep. Mem., p. 5. By law, municipalities are required to conduct town-wide revaluations of their property every five years<sup>7</sup> and are not

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<sup>7</sup> General Statutes § 12-62 (b) (1) provides: "Commencing October 1, 2006, each town shall implement a revaluation not later than the first day of October that follows, by five years, the October first assessment date on which the town's previous revaluation became effective. . . . The

required to perform interim revaluations except under very limited circumstances inapplicable here.<sup>8</sup> Thus, § 29-265d constitutes an exception to the general rule against interim revaluations and thus permits homeowners to obtain immediate property tax relief for defective foundations rather than having to wait until the next town-wide revaluation.

### III

#### CONCLUSION

The court rejects the plaintiff's argument that § 12-117a and § 29-265d are separate and independent avenues for seeking property tax relief based on defective concrete foundations. The court must construe the two statutes together and adopt a harmonizing construction. The court concludes that a residential property owner who seeks property tax relief due to a defective concrete foundation must do so by way of application under § 29-265d. Having obtained relief under that statute for Grand List years 2020 through 2024, the plaintiff cannot pursue additional relief under § 12-117a, based on that same defect, for the Grand List year commencing October 1, 2019.<sup>9</sup>

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town shall use assessments derived from each such revaluation for the purpose of levying property taxes for the assessment year in which such revaluation is effective and for each assessment year that follows until the ensuing revaluation becomes effective.”

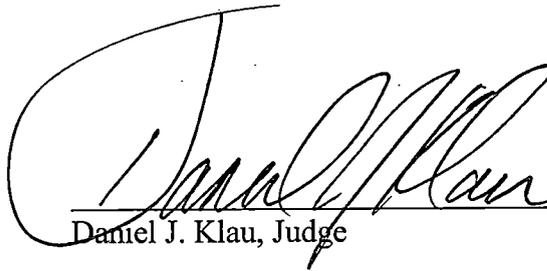
<sup>8</sup> See General Statutes § 12-64a; see also *Kasica v. Town of Columbia*, 309 Conn. 85, 70 A.3d 1 (2013). The defendant's last town-wide valuation occurred in 2016.

<sup>9</sup> This ruling does not address whether a property owner who has already obtained five years of tax relief under § 29-265d may obtain relief *in subsequent years* under § 12-117a if the defective condition still exists and no further relief is available under § 29-265d.

Wherefore, the defendant's motion for summary judgment (#108) is GRANTED. The plaintiff's motion for summary judgment (#106) is DENIED.

SO ORDERED.

Dated: June 15, 2021



Daniel J. Klau, Judge