

DOCKET NO. HHB-CV-21-6065056-S

SUPERIOR COURT

**NEW BRITAIN WATER DEPARTMENT,
ET AL.**

**JUDICIAL DISTRICT
OF NEW BRITAIN**

V.

**ADMINISTRATIVE AND TAX
APPEALS**

TOWN OF SOUTHTON

OCTOBER 11, 2022

MEMORANDUM OF DECISION

INTRODUCTION:

This matter is a real Property tax appeal by the New Britain Water Department and the City of New Britain Board of Water Commissioners (collectively, plaintiff) concerning the valuation and taxation by the Town of Southington (defendant) of certain real Property owned by the New Britain Water Department in the Town of Southington. The court held a trial on September 7, 2022.

*Electronic notice sent to all counsel
A. Jordanopoulos, 10/11/22*

of record.
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JUDICIAL DISTRICT
NEW BRITAIN
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FINDING OF FACT:

Based upon the evidence introduced at trial, the court has made the following factual findings:

1. The Property at issue is real Property located at the following addresses in the Town of Southington: 2193 Andrews Street; 1080 Pleasant Street; Mount Vernon Road; 158 Cascade Ridge; 800 North Shuttle Street; 375 North Shuttle Street; 315 Long Bottom Road; 416 Long Bottom Road; 1000 Shuttle Meadow Road; 360 Mine Hollow Road; 290 Long Bottom Road; 1360 Andrews Street; 135 Mine Hollow Road; and 14 Mine Hollow Road. (collectively, the Property).
2. At all times relevant to this appeal, the plaintiff owned the Property and had the responsibility of paying the taxes assessed thereon.
3. As of October 1, 2020 (Valuation Date), the defendant valued the Property as follows:
 - a. 2193 Andrews Street (313.04 acres) - \$2,468,680.
 - b. 1080 Pleasant Street (0.89 acres)- \$4,330.
 - c. Mount Vernon Road (156.10 acres) - \$842,940.
 - d. 158 Cascade Ridge (11.77 acres) - \$88,980.
 - e. 800 North Shuttle Street (19.77 acres) - \$106,760.
 - f. 375 North Shuttle Street (410.85 acres) - \$2,218,590.
 - g. 315 Long Bottom Road (293.84 acres) - \$1,586,740.

- h. 416 Long Bottom Road (1.94 acres) - \$10,480.
 - i. 1000 Shuttle Meadow Drive (6.98 acres) - \$33,920.
 - J. 360 Mine Hollow Road (0.15 acres) - \$730.
 - k. 290 Long Bottom Road (2.59 acres) - \$13,990.
 - l. 1360 Andrews Street (8.36 acres) - \$42,890.
 - m. 135 Mine Hollow Road (1.38 acres) - \$6,710.
 - n. 14 Mine Hollow Road (2.09 acres) - \$10,160.
4. In total the Property comprises 1,229.75 acres.
5. As of the Valuation Date, the total aggregate market valuation of the Property by the defendant was \$6,893,350 which is approximately \$5,605 per acre. ¹
6. The plaintiff timely appealed the valuation, assessment and taxation of each portion of the Property to the Southington Board of Assessment Appeals, but said board declined to make any change.
7. Every portion of the Property is held and used for the purpose of creating and furnishing a supply of water for the plaintiff s use and for use by the citizens of New Britain, and accordingly the Property must be valued for taxation purposes as if it were improved farmland pursuant to General Statutes § 12-76. Improved farmland is land that has been

¹ The foregoing valuation amounts are net of the value of the building improvements on 2193 Andrews Street which have been deducted from the overall valuation.

altered from its natural state in order to enhance its use for farming. Such alterations may include clearing the land, grading the land, providing for irrigation, or similar improvements.

8. The citizens of Southington do not have the right to use, and do not use, the water supply provided through the use of the Property on the same terms as are applied to residents of New Britain, and accordingly the Property is not exempt from taxation.
9. The Property comprises fourteen parcels of land with approximately 1,229.75 acres in aggregate.²
10. The plaintiff's expert, Christopher Kerin, produced a report and testified that, using the sales comparison valuation approach, he valued the Property, as of the Valuation Date, at \$2,580,000 in aggregate or \$2,100 per acre.
11. The defendant's expert, George Malia, produced a report and testified that, using the sales comparison valuation approach, he valued the Property, as of the Valuation Date, at \$9,195,525 in aggregate or \$7,500 per acre.
12. In his sales comparison analysis, Kerin used market sales of land in which the development rights had previously been sold and deducted from the sales price his

² One of the properties has building improvements thereon. Kerin did not include the value of the building improvements in his analysis but included the acreage underlying them. Malia entirely removed the improvements and the acreage underlying the improvements from his analysis.

determination of the value of building improvements on the land.³ Kerin testified that the value of improved farmland was not materially different from the value of land in its natural state (woodlands or wetlands) and made no valuation distinction between the two in his analysis. Kerin did not use waterfront Property, Fairfield county Property or gentleman's farms⁴ in his analysis.

13. In his sales comparison analysis, Malia used market sales of land but broke the overall sales price down based upon the seller's and/or the purchaser's subjective allocation of the overall sales price between buildings, farmland and land in its natural state (woodlands, wetlands) as provided to him in oral interviews with the seller and/or purchaser. Ultimately, Malia used the portion of the overall sales price that was attributed by the seller or purchaser to the actual farmland and applied it only to the acreage of the land actually being farmed.

14. Six out of the seven comparable sales used by Kerin were also used by Malia.

15. A study was conducted pursuant to Public Act 490, which produced values for farmland classified in various categories as well as values for pastureland, swamp, and woodlands

³ Kerin's analysis required no adjustments to the sales prices other than deduction for building improvements where applicable.

⁴ A gentleman's farm refers to a farm that has substantial non-farm improvements and that is owned by a person whose primary purpose for owning the Property is something other than farming or open space.

in 2020. See Plaintiff's Exhibit 4, page 61. The foregoing values were determined by collecting rent values for the various classes of farmland and land in its natural state in Connecticut and applying a capitalization rate. The values reflected in this exhibit value farmland, statewide, in a range from \$1,880 per acre to \$850 per acre based upon the classification of the farmland. The exhibit also indicates a difference in the value of farmland on one hand, as compared to woodlands valued at \$390 per acre, swamp valued at \$40 per acre, and pastureland valued at \$280 per acre on the other hand.

16. Malia's analysis used six sales of land in the Connecticut River valley (Comparable sales 1, 2, 5, 6, 7, and 9). In general, farmland in the Connecticut River valley is valued at much higher rates than farmland elsewhere in the state. The subject Property is not located in the Connecticut River valley. Malia also ascribed zero value to portions of the land in comparable sales 1 and 2.
17. The court found that there is factually no material distinction between tillable farmland and land in its natural state for valuation purposes.
18. The court was convinced and found that Kerin's valuation of improved farmland at \$2,100 per acre was the most reliable and accurate valuation of the Property at issue.

STANDARD OF REVIEW:

A trial court hears tax appeals pursuant to General Statutes §§ 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 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 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 complaint dated March 18, 2021 brings fourteen counts, with each count bringing a claim pursuant to §§ 12-76 and 12-117a⁵ challenging the valuation, assessment and taxation of each of fourteen different portions of the Property on the October 1, 2020 grand list.

The dispute in this case arises from the application of § 12-76 (a), which provides in relevant part: "*Land owned or taken by any municipal corporation, including any metropolitan district established under provisions of the general statutes or any special act, for the purpose of creating or furnishing a supply of water for its use shall be exempt from taxation when the inhabitants of the town in which such land is situated have the right to use, and use, such water supply upon the same terms as the inhabitants of such municipal corporation; otherwise such land shall be liable to taxation, shall be assessed in the town in which such land is situated to the corporation owning or controlling such water supply, shall be valued at what would be its fair market value were it improved farm land and shall be assessed at the uniform rate required by subsection (b) of section 12-62 (a), notwithstanding the provisions of section 12-63 or any special act.*" (Emphasis added.) General Statutes § 12-76 (a).

⁵ The complaint does not specifically assert § 12-117a but the pleadings are consistent with statutory claims under § 12-117a and the complaint does allege timely appeals to the Southington Board of Assessment Appeals.

In view of § 12-76, and the facts found⁶, the Property here must be valued for tax purposes as if it was improved farmland. Accordingly, the valuation must be conducted under a hypothetical assumption that the Property is improved farmland, even though in fact it is not. Both appraisers have used the sales comparison approach to valuation which appears to be appropriate in this situation. Improved farmland refers to land that has been altered or developed⁷ from its natural state in order to enhance or promote its use for farming. See *Metropolitan District v. Barkhamsted*, 199 Conn. 294, 302-03, 507 A.2d 92 (1986). However, that does not mean that every square foot of the land in question must be tillable cropland for it to be considered improved farmland. In actuality portions of the land may intentionally be left in a more natural state for the benefit of croplands to assist the croplands with irrigation or drainage, to provide for storage, and to shield crops or animals from detrimental activities on land nearby. Further, if the farm is an animal farm, pastures, open fields or lightly wooded areas may be beneficial. Accordingly, improved farmland is broader than solely cleared tillable land.

⁶ The applicable facts are that the Property is owned by a municipality for use in supplying water to the owning municipality but is located in another municipality and is not used to supply water to the situs municipality on the same terms as provided to the owning municipality.

⁷ Applicable alterations or developments would include clearing, grading, providing for irrigation or any other improvements that will enhance the land's suitability for farming. In some circumstances leaving portions of the land as wetlands, swamp, river or creek may assist in irrigating or draining other portions of the land that are used for crops.

Kerin's analysis is built upon his assertion that there is no valuation difference between improved farmland and land in its natural state, such as woodlands, pastureland, or swamp. In this regard, Kerin used land sales that contain a mixture of cropland and land in its natural state and determined the per acre value without distinction between the two. Kerin's decision not to draw a valuation distinction between tillable cropland and land in its natural state is supported by his stated opinion that, from a valuation perspective, farmland and land in its natural state are valued similarly. The court accepted Kerin's view in this regard as a factual finding made by the court.⁸

In his analysis, Malia attempted to distinguish between the value of farmland and the value of land in its natural state. Malia's distinction between the two was provided to him from either the purchaser or the seller in each comparable sale in an oral interview. However, Malia has provided no back-up of these conversations. The allocations that Malia used were the seller's or the purchaser's individual subjective personal determination⁹ of the purchase price allocation

⁸ The court notes that this finding is a factual valuation finding that allows for functional valuation comparisons as made by Kerin. This factual valuation finding is equally applicable to the defendant's more restrictive definition of improved farmland because from a valuation perspective Kerin found, and the court accepted, that there is no material valuation difference between improved farmland and open space (without development rights).

⁹ These determinations were not reflected in any documents provided by Malia and were based on individual post-transaction oral interviews with the seller or the purchaser. Further, there was no proof provided indicating that the allocations were actually agreed upon by both buyer and seller, as opposed to merely one party's subjective view of the matter.

and there is no indication that that the person providing the allocation was qualified to do so, or even what that allocation was based upon. Further, artificial allocations of purchase price can frequently be driven by artificial factors such as taxation or financing. In using this distinction, which had no basis other than the reported oral subjective input from the seller or purchaser, Malia clearly increased the value ascribed to the improved farmland, in some cases going so far as ascribing no value at all to portions of land in its natural state. The court was unconvinced by Malia's analysis and found it unreliable.

Public Act 490 has developed valuations for farmland of different classes and for various types of land in its natural state. The Connecticut Farm Bureau Association and the Connecticut Department of Agriculture participated in the development of these valuations. The values were developed using the income valuation method with collected rental data for the land and the application of a capitalization rate. The capitalization rate was developed with reference to various sources. It is recommended, but not required, that municipalities use these per acre valuations provided when they value farmland for taxation purposes. The recommended statewide average values for farmland in 2020 range from \$850 per acre to \$1,880 per acre. The recommended statewide average values for land in its natural state range from \$40 per acre to \$390 per acre. See Plaintiff s Exhibit 4, page 61. Southington uses the values recommended in Public Act 490 to value some farms in Southington. The values provided for 2020 in this study are lower than, but far more consistent with, the valuation determined by Kerin of \$2,100 per

acre for improved farmland than they are with Malia's determination of \$7,500 per acre. In particular, the highest value for farmland recommended in the study is \$1,880 per acre on a statewide average. Even in the Connecticut River valley, the study reported its highest per acre value at \$2,530 per acre. These independent valuations support Kerin's valuation of \$2,100 per acre, which obviously falls between the highest statewide average and the highest value for farmland in the Connecticut River valley.¹⁰ The court found this independent support for Kerin's valuation to be compelling. See Defendant's Exhibit A, pages 16, 22, and 32-33. See also Plaintiff's Exhibit 4, pages 11-16 and 61.

The court accepted Kerin's valuation of \$2,100 per acre of improved farmland in Southington. In view of the court's valuation of improved farmland in Southington at \$2,100 per acre, the court finds that the plaintiff is aggrieved because the defendant has applied a valuation of \$5,605 per acre to the subject Property on its 2020 grand list. The court will enter judgment for the plaintiff on each of the fourteen counts, finding that the plaintiff has met its burden of proof on each of § 12-117a claims. The court will direct that the valuation of each portion of the Property on the October 1, 2020 grand list be calculated based upon a full market valuation of \$2,100 per acre multiplied by the number of acres in each parcel.

¹⁰ Both experts agreed that farmland in the Connecticut River valley was the most prized in the state and demanded the highest valuations. The subject Property is not in the Connecticut River valley.

JUDGMENT:

Judgment enters for the plaintiff on each of counts one through fourteen and the court directs that the valuation of each portion of the Property on the October 1, 2020 grand list be calculated based upon a full market valuation of \$2,100 per acre multiplied by the number of

acres in each parcel.

A handwritten signature in black ink, appearing to read "John A. ...", with a long horizontal flourish extending to the right.