

DOCKET NO. HHB-CV-17-6039384

SUPERIOR COURT

UNITED STATES POSTAL SERVICE AND  
29 VALLEY LLP

JUDICIAL DISTRICT  
OF NEW BRITAIN

VS.

-ADMINISTRATIVE AND TAX  
APPEALS

TOWN OF GREENWICH, ET AL

APRIL 8, 2022

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JUDICIAL DISTRICT OF  
NEW BRITAIN  
APR 11 2022

MEMORANDUM OF DECISION

INTRODUCTION:

This matter is a property tax appeal concerning property located at 500 Old Post Road No. 3 in Greenwich by the owner of the land, 29 Valley LLP (29 Valley), and the lessee of the land and owner of the improvements thereon, The United States Postal Service (USPS). The appeal is directed at the assessments for the property by the Town of Greenwich on its October 1, 2015 and October 1, 2016 grand lists. The Town of Greenwich and the Greenwich Board of Assessment Appeals shall be collectively referred to as Greenwich. The court held a trial on April 7, 2022.

*Electronic notice sent to all counsel of record and to the official reporter. A. Jordanopoulos, 4/8/22*

**FINDING OF FACT:**

Based upon the evidence introduced at trial<sup>1</sup>, the court makes the following findings of fact:

1. At all times relevant to this appeal, 29 Valley owned the land located at 500 Old Post Road, No. 3, in Greenwich, Parcel ID #03-21991S (the "Land"). 29 Valley and the USPS will be referred to collectively as the Plaintiffs.
2. This court has previously determined that "the buildings and improvements" (Buildings and Improvements) on the Land were owned by USPS at all times relevant to this appeal. See Memorandum of Decision dated August 18, 2021 by Aurigemma, J. at pages 11-12.
3. Pursuant to a lease agreement (Lease) dated May 26, 1993, as amended, at all times relevant to this appeal, the USPS leased the Land from 29 Valley. The Lease has a forty year term, starting on May 26, 1993, and provides the USPS with five five-year renewal options. The Lease is a net lease and requires the USPS to pay the property taxes.
4. On October 1, 2015 (Valuation Date) and on October 1, 2016, Greenwich valued the Land, and the Buildings and Improvements, at \$17,925,100 and assessed taxes at seventy percent of the foregoing full value. Accordingly, on the Valuation Date, Greenwich taxed

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<sup>1</sup> A bifurcated trial was held in this matter. In connection with the first portion of the trial, Judge Aurigemma issued a decision dated August 18, 2021 on the first phase of the trial. Judge Aurigemma's decision is incorporated herein by reference.

the Land as well as the Buildings and Improvements. Greenwich's valuation, as of the Valuation Date, was broken down as \$8,732,100 for the Land and \$9,193,000 for the Buildings and Improvements. This taxation of the Buildings and Improvements changed an exemption that Greenwich had previously allowed for approximately twenty-two year on the Buildings and Improvements. <sup>2</sup>

5. The Plaintiffs appealed the valuation and the taxation of the Land, and the Buildings and Improvements, to the Greenwich Board of Assessment Appeals but the Board declined to make any change.
6. The Plaintiffs appealed the Board's denial to this court.
7. This court has previously determined that the Buildings and Improvements are exempt from taxation pursuant to Connecticut General Statutes § 12-81(1) and the Supremacy Clause of the United States Constitution because they are owned by the USPS. See Memorandum of Decision dated August 18, 2021 by Aurigemma, J. at pages 11-12.
8. This court has previously determined that Greenwich is estopped "from asserting its special defense that the statute of limitations bars the plaintiffs from including the 2015 Grand List" in this pending appeal. See Memorandum of Decision dated August 18, 2021 by Aurigemma, J. at page 16.

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<sup>2</sup> This change to the exemption was made despite there having been no material changes in the relevant facts.

9. In view of the finding 1-8 above, this portion of the trial was directed to determining the proper valuation of the Land as of the Valuation Date.
10. The Plaintiffs' expert appraiser, Peter Vimini, valued the Land at \$7,400,000 as of the Valuation Date. Mr. Vimini valued the Land using the sales comparison approach and the income valuation approach. The court accepted Mr. Vimini's testimony and valuation.
11. The Land is located in the western periphery of Greenwich Center on the east side of Valley Drive and on the northwest side of Old Post Road No. 3.
12. The Land has an irregular shape and comprises 2.82 acres. The Land has frontage on, and access from, Valley Drive and Old Post Road No. 3.
13. The highest and best use of the property would be to hold it for future development in a commercial use.
14. The proper valuation of the Land as of the Valuation Date is, as found by the Plaintiffs' expert, \$7,400,000. The foregoing valuation of the Land is applicable to all tax periods challenged by the Plaintiffs in this matter.
15. Greenwich's assessment and taxation of the Land, and the Buildings and Improvements, during the periods challenged was manifestly excessive and could not have been arrived at except by disregarding the provisions of statutes for determining the valuation of the property at issue. In this regard, Greenwich taxed exempt property and overvalued the Land. As a result, Greenwich's valuation of the properly taxable property was more than 140% higher than the proper valuation and taxation thereof.

16. Greenwich produced no witnesses, and introduced no evidence, in this portion of the trial.

**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 Plaintiffs' complaint has four counts. The first count asserts a claim pursuant to Connecticut General Statute § 12-117a concerning the valuation and taxation of the Land, and the Buildings and Improvements thereon, on the 2015 and 2016 grand lists. The second count asserts a claim pursuant to Connecticut General Statute § 12-119 concerning the valuation and taxation of the Land, as well as the Buildings and Improvements thereon, on the 2015 and 2016 grand lists. The third count asserts a claim pursuant to Connecticut General Statute § 12-60 seeking to correct a clerical error concerning the classification of the Land. The fourth count asserts a claim of estoppel seeking to estop Greenwich from changing the tax exempt status of the Buildings and Improvements from exempt to taxable on the October 1, 2015 grand list and for the tax periods challenged.

In view of the court's findings in this matter, the court finds that the Plaintiffs are aggrieved. As noted, this court has previously determined that the Buildings and Improvements on the Land were owned by USPS at all times relevant to this appeal. Accordingly, this court previously determined that the Buildings and Improvements are exempt from taxation pursuant to Connecticut General Statute § 12-81(1) and the Supremacy Clause of the United States Constitution because they are owned by the USPS. Lastly, this court previously determined that

Greenwich is estopped "from asserting its special defense that the statute of limitations bars the plaintiffs from including the 2015 Grand List" in this pending appeal. The court finds that Greenwich's special defenses one through four have not been established.

In view of the court's findings, having found the valuation and assessment on the 2015 and 2016 grands lists to be excessive, the court will enter judgment for the Plaintiffs on count one. The Plaintiffs have also their met burden of proof on count two, because the court does find that the Greenwich's valuation of the property was manifestly excessive and could not have been arrived at except by disregarding the provisions of the statutes<sup>3</sup> applicable to determining the valuation of such property. <sup>4</sup> Accordingly, the court will enter judgment for the Plaintiffs on count two. The Plaintiffs have presented no evidence on count three. Accordingly, the court will enter judgment for Greenwich on count three. The court will enter judgment for the Plaintiffs on count four.

The court accepted the Plaintiffs' expert valuation of the Land at \$7,400,000. The court has also determined that the Buildings and Improvements were, and are, exempt from taxation

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<sup>3</sup> Including § 12-81(1).

<sup>4</sup> In this regard, the court notes Greenwich's attempted change of the exempt status of the Buildings and Improvements after having allowed the exemption for approximately twenty-two years before the October 1, 2015 grand list. The court also notes the substantial over-taxation that resulted from Greenwich's decision. The court also notes that Greenwich substantially increased the valuation of the Land from \$3,393,900 in 2010 to \$8,732,100 in 2015.

pursuant to § 12-81(1). Accordingly, the full taxable valuation of the property as of the Valuation Date, and for all periods challenged in this matter, was the value of the Land, \$7,400,000.

In view of the court's findings and conclusions, the court finds that it should award the Plaintiffs interest at the rate of three percent per year on any overpaid taxes from the date of such overpayment to the date of this decision. The court finds that the foregoing interest rate is sufficient to compensate the Plaintiffs for the wrongful retention of these overpaid taxes. In awarding the foregoing interest, the court has considered the prevailing financial conditions in place during the period in question, the substantial over-taxation found, the significant change to the previously long-standing exemption status of this property made by Greenwich, and the long pendency of this lawsuit.

**JUDGMENT:**

Judgment enters for the Plaintiffs on counts one, two and four. Judgment enters for the defendants on count three. The proper full market valuation of the property as of October 1, 2015, and for all periods challenged in this matter, shall be \$7,400,000. Taxes should have been assessed using seventy percent of the foregoing full market value and the applicable mil rate. The Buildings and Improvements are exempt from taxation. The court awards the Plaintiffs interest at the rate of three percent per year on any overpaid taxes from the date of such overpayment to the date of this decision.

  
; *J* John A. Cordani, Judge  
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