

NO. CV 02 009 8896S : SUPERIOR COURT  
KENNETH SULLIVAN, ET AL. : JUDICIAL DISTRICT OF  
V. : MIDDLESEX  
: AT MIDDLETOWN  
TOWN OF WESTBROOK : JANUARY 23, 2004

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### **MEMORANDUM OF DECISION**

These two cases involve real estate tax appeals of properties known as 93 Chapman Avenue and 87 Chapman Avenue located in the defendant town of Westbrook. The date of Westbrook's last revaluation was October 1, 2001.

93 Chapman Road was valued at \$459,880 by the assessor for Westbrook on the list of October 1, 2001. The board of assessment appeals (Board) reduced this valuation to \$406,286. As to 87 Chapman Road, the assessor valued this property at \$513,200 for the same revaluation year. The Board made no changes to this valuation. The plaintiffs argue that both valuations are excessive.

93 Chapman Road is a non-conforming two room waterfront cottage located on

.08 acres of land in an area known as Chapman Beach. This cottage contains 420 square feet of livable space, and is essentially a one person cottage in average condition. The dwelling is over 100 year old, being constructed in 1900. Built on a slab with a septic sewerage system, the subject property has been winterized with electric heat but no garage, fireplace or porch. The subject property has a frontage on Chapman Avenue of twenty-eight feet and a frontage on Long Island Sound of thirty-eight feet. A town right of way for residents going to and from Chapman Beach on the Sound adjoins the subject property on the east. This property was described in the deed to the plaintiffs as the "Office Cottage." It appears that the only thing that this property has going for it is the 38 feet of frontage on Long Island Sound.

87 Chapman Avenue is a non-conforming one story cottage of four rooms containing two bedrooms and one bathroom. Constructed in 1948, this property has a total of 737 square feet of living space with a crawl space for a basement. This property has a frontage on Chapman Avenue of twenty-nine feet, a frontage on the Sound of forty feet, and sits on .12 acres of land. The subject is not winterized. It has no heat and no garage or fireplace. It does have a deck containing 189 square feet.

Both parcels are located in the District of Chapman Beach, a fifty-five member private residential enclave and taxing district. The association maintains the 900 foot beach area on Long Island Sound parallel to Chapman Avenue. In the rear of the subject property is a stone seawall with steps leading down to a five foot wide strip of beach.

This section of Chapman Beach is rocky and only usable during low tides. There is no on-street parking allowed in the district. Both properties are located within a HD-R residential zone requiring a minimum lot size of 15,000 square feet. Each of the subject parcels is about one-third of the minimum lot size. The HD-R zone also requires a lot with a minimum frontage of eighty feet and a maximum building area of 25 percent of the site area.

The highest and best use of both parcels is for residential use. The appraiser for the plaintiffs, Cheryl H. Williams (Williams) and the appraiser for the town, Ivan J. Kusalanka (Kusalanka) selected the market sales approach to determine the value of the subject properties as of October 1, 2001.

Williams concluded that 93 Chapman Avenue had a fair market value as of October 1, 2001 of \$340,000. Williams relied on the selection of five comparable sales to arrive at this value. Of the five sales, three are located in the town of Old Saybrook, one is located in the town of Guilford, and the remaining sale is located in the town of Westbrook. We note, from Williams' inspection of 93 Chapman Avenue, that extensive interior remodeling and exterior deferred maintenance is needed. On the other hand, this property has benefitted from the updating of the electrical and septic systems. We agree with Williams' analysis that given the size, frontage and setbacks of this property, there is a small likelihood of any expansion.

Considering all of the sales used by both appraisers, those selected by Williams

appear to be most comparable to the two subject sites. The sales selected by Kuvallanka, the town's appraiser, have, as he points out, only two things in common with the subject parcels: good waterfront location and nearness to the subject properties. Other than that, we see little comparable. 21 Marvin Drive, selected by Kuvallanka, is a six room, one and three quarters story cottage sitting on a lot of 1.8 acres of shore front property containing 4 bedrooms and one stall shower bath, a toilet room and an outside shower. This site has a frontage along Long Island Sound of 200 feet. This property sold for \$573,000 on May 9, 2000. 43 Chapman Avenue, also selected by Kuvallanka, is a two story colonial with a gross living area of 2,264 square feet containing ten rooms, three bedrooms and three bathrooms. This property sold for \$1,052,443 on October 13, 2000. 53 Chapman Avenue, another comparable selected by Kuvallanka, also contains a two story colonial with 2,677 square feet of gross living area and contains nine rooms, three bedrooms and three bathrooms, a heat pump with air conditioning and a two car garage. This property sold for \$975,000 on April 1, 2002. 17 Chapman Avenue, another Kuvallanka comparable, is a one and three quarter story cape containing 1,716 square feet of gross living area with seven rooms, three bedrooms, one bathroom and a two car garage. This property sold for \$715,000 on April 22, 2002. For the most part Kuvallanka engaged in substantial adjustments downward, because of the wide differences between the comparables and the subject properties, to arrive at the valuation of 93 Chapman Avenue and 87 Chapman Avenue.

Although the sales selected by Williams were not located near the subject properties, they were located in nearby towns under conditions similar to the subject properties. More specifically, all of the sales selected by Williams were lots fronting on Long Island sound in communities similar to the one in which the subject properties are located. Williams selected the following comparables. 24 Walker Lane in Old Saybrook is a cottage containing 600 square feet of gross living area and located on .16 acres of land. This four room non-winterized property, built in 1935, has two bedrooms and one bathroom. This comparable sold for \$350,000 on June 15, 2001. 127 Shell Beach Road, Guilford was sold on February 28, 2001 for \$347,000. This 6 room property has three bedrooms with one bathroom containing 1,160 square feet of gross living area. Built in 1940, this comparable sits on a lot of .14 acres of land. Although this property is winterized, there was a special problem with potable water. 538 Seaside Avenue, Westbrook was sold on October 3, 2001 for \$390,000. The Westbrook property is a six room cottage containing 880 square feet of gross living area with four bedrooms and only a half bathroom. This non-winterized property contains a two car attached garage and sits on a lot of .09 acres of land. 145 Plum Bank Road, Old Saybrook sold on August 31, 2001 for \$365,000. This seven room, four bedroom and one bathroom cottage contains 1,514 square feet of gross living area and is located on a lot containing .10 acres of land. This property was built in 1944 and is not winterized. The last sale selected by Williams,

as a comparable, is 147 Plum Bank Road in Old Saybrook that sold for \$410,000 on August 6, 2001. This property is a five room contemporary house containing 950 square feet with three bedrooms and one bathroom and a built-in garage. This property, constructed in 1965, is winterized with oil heat.

Kuvalanka arrived at the fair market value of \$403,180 for 93 Chapman Avenue, on the list of October 1, 2001, using an adjusted value of his four comparables with a range between \$393,105 for 21 Marvin Drive and \$888,590 for 43 Chapman Avenue. (See Defendant's Exhibit 2, p. 6.) Kuvalanka did not average the four adjusted sales he selected, which would have amounted to \$587,082, but rather, used an approach we are not familiar with. Kuvalanka concluded, as to 93 Chapman Avenue, "[g]iven the various factors, it is my opinion that the point estimate of the indicated market value of the above property by the direct sales comparison approach is \$403,180." (Defendant's Exhibit 2, p. 4.) Kuvalanka also arrived at a value of \$403,180 by multiplying \$115 per square foot by the lot size of 3,485 square feet. (Our multiplication of \$115 by 3,485 square feet gives us \$400,775.) (See Defendant's Exhibit 2, p.13.)

We find it more credible to use the sales selected by Williams that are similarly located on small lots fronting on Long Island Sound and more closely reflect the size and conditions of the subject properties. Williams arrived at a fair market value of \$340,000 for 93 Chapman Avenue, on the list of October 1, 2001, using an adjusted value of her five sales with a range between \$329,850 for 145 Plum Bank Road and \$355,950 for 147

Plum Bank Road. We find the sales selected by Williams at 24 Walker Avenue, Old Saybrook and 538 Seaside Avenue, Westbrook to be more closely representative of the fair market value of 93 Chapman Avenue as of October 1, 2001. We deem it appropriate therefore to take the unadjusted average sales price of these two sales to arrive at a fair market value of \$370,000 for 93 Chapman Avenue on the list of October 1, 2001.

As to 87 Chapman Avenue, Kusalanka arrived at a fair market value of \$513,210 using an adjusted value of his four sales between \$508,215 for 21 Marvin Drive and \$998,620 for 43 Chapman Avenue. (Defendant's Exhibit 2, p. 8.)

We find it more credible to use the sales selected by both appraisers of houses that are not winterized, thus reflecting more closely the condition of 87 Chapman Avenue. We recognize that we rejected the sale of 21 Marvin Drive by Kusalanka as a comparable for 93 Chapman Avenue, but we consider it appropriate to use it as a comparable sale for this property because it balances the 145 Plum Bank Road selected by Williams. Both 21 Marvin Drive and 145 Plum Bank Road are only seasonal homes, not used year round as the other comparable sales selected by both appraisers. We use the same process used by Williams in arriving at the fair market value of 87 Chapman Avenue by averaging the adjusted sales prices of 21 Marvin Drive at \$508,215; 24 Walker Avenue at \$364,425; 538 Seaside Avenue, Westbrook at \$379,425; and 145 Plum Bank Road at \$357,575, to arrive at a fair market value for 87 Chapman Avenue of \$402,410, as of the list of October 1, 2001.

Accordingly, we find the fair market value of 93 Chapman Avenue on the list of October 1, 2001 to be \$370,000. We also find that the fair market value of 87 Chapman Avenue on the list of October 1, 2001 to be \$402,410. Judgment may enter in favor of the plaintiffs sustaining their appeals in accordance with our findings without costs to either party.

Arnold W. Aronson  
Judge Trial Referee