

NO. CV 04 0527106S : SUPERIOR COURT
ABINGTON, LLC : JUDICIAL DISTRICT OF
v. : NEW BRITAIN
TOWN OF AVON : OCTOBER 27, 2005

MEMORANDUM OF DECISION

This is a real estate tax appeal by the plaintiff, Abington, LLC, contesting the valuation placed upon its property located at 333 Montevideo Road in the town of Avon (town) for assessment purposes on the Grand List of October 1, 2003, the date of the last town-wide revaluation.

The town's assessor (assessor) concluded that the valuation of the subject property, as of October 1, 2003, was \$4,294,890. Christopher A. Italia (Italia), the plaintiff's appraiser, valued the subject property, as of October 1, 2003, at \$3,050,000. Marc P. Nadeau (Nadeau), the town's appraiser, valued the subject property, as of October 1, 2003, at \$4,850,000.

The subject property consists of approximately 93.03 acres of land located in the town of Avon and partly in the adjoining town of Bloomfield.¹ The assessor calculated the Avon acreage to be 68.8 acres based upon historical information. Italia, on the other

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This appeal concerns property located in Avon only.

hand, concluded that the total acreage in Avon was 65.6 acres based upon an A-2 Survey obtained by the plaintiff. See Plaintiff's Exhibit 10, sheets 1 and 2.² The court finds that it is more credible to consider the acreage from the A-2 Survey because the Advisory Committee on Survey and Map Standards recognizes it as meeting the minimum standards of accuracy. See General Statutes § 20-300b.

On December 22, 1987, Janney Realty Co. conveyed the 93.03 acres to Abington Commercial Associates Limited Partnership, which later changed its name to Abington, LLC, the present owner. In 1991, the primary residence on the property was demolished and the current primary residence was constructed.

The primary residence is a single-family house containing 6,964 square feet net of the garage and basement areas. The main level contains 4,724 square feet and the finished second floor contains 2,240 square feet. 1,897 square feet of the basement is finished. There are eleven rooms, four of which are bedrooms. There are also four full and two half bathrooms.

In describing the interior of the primary residence, Italia noted as follows:

"Many of the design features within the residence are to the specifications of the property owner. For example, the master bedroom is located on the first floor on the front of the house. As the sales will show, the master bedroom is typically located on the second floor, away from the activity on

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The survey on Plaintiff's Exhibit 10 shows the total area of the subject property to be 93.029 with 65.57 acres in Avon and 27.46 acres in Bloomfield.

the main level, and captures the view amenity. Essentially, the master bedroom in the subject has no view amenity.

"The most unique feature of the house is the extremely long footprint. This design is not customary for homes on three-acre lots within this market. As the sales will show, the standard residence in this price range provides more of a Colonial design with a grandiose common foyer. The subject has two entrances from the parking area, neither of which opens to a dramatic entry. In fact, there is some confusion as to which entry to use when visiting the homeowner.

"The residence possesses many attributes, which are expensive to construct and do not contribute dollar for dollar to the property value. For example, the steel doors/windows in the dwelling are very expensive and are not required by many purchasers of luxury homes in the market. Additionally, these steel swing doors are included in the majority of the first floor rooms in the house, which is not standard within this market."

(Plaintiff's Exhibit 3, p. 28.)

Nadeau described the primary residence as follows:

"The dwelling is a custom, architecturally-designed dwelling in the gothic revival design. The dwelling in general is constructed out of exceptional materials with a brick exterior, custom casement windows, slate roof, numerous built-ins (many of speciality woods). The interior detail is augmented by extensive lighting. Other features include: a gourmet kitchen with granite counters, GE Monogram line appliances, Sub-Zero refrigeration, zoned heating and cooling, an attached 3-car garage with floor drains, a security system, high quality master bedroom suite with whirlpool tub and extensive built-ins."

(Defendant's Exhibit I, Comment Addendum.)

In addition, the subject property is improved with three single-family houses and three barns. The houses cannot be sold or taxed separately because they do not exist as

separate lots. Furthermore, the houses have no frontage, and therefore, do not comply with the planning and zoning regulations of the town.

The single-family house located at 221 Montevideo Road (hereinafter referenced as the farmhouse) contains 1,910 square feet. It is a two-story stone house built circa 1800 with three bedrooms, 1.5 baths and a full basement. This house is rented on a month to month basis for \$700 per month.

On 379 Montevideo Road, there is a 1.5-story cape (hereinafter referenced as the cape) built in 1920 with two bedrooms and two baths. This house is rented for \$600 per month.

On 295 Montevideo Road, there is a one-story ranch (hereinafter referenced as the old style) built in 1900 of stone and contains 1,444 square feet. This house has two bedrooms and two baths and is currently rented for \$500 per month.

Across from the farmhouse, there are three barns with a gross building area of 6,538 square feet. The barns are used for storage purposes only.

The 65.6 acre site in Avon is unusual because it sits atop Talcott Mountain, the highest point in Avon. The site commands exceptional views of the Farmington River Valley and overlooks Avon and the town of Simsbury. The site maintains its privacy because it is located on a mountain top with steep slopes along the westerly line of the property. Hoe Pond, a pond of approximately ten acres, is located on the site and extends

into Bloomfield. Access to the site is along Montevideo Road, a single-lane, 9,000-foot private right of way extending from U.S. Route 44 on the southerly end, to that portion of the subject site lying in Bloomfield. Montevideo Road has an average width of about 16 feet, with widths ranging from about 14 feet to 19 feet, and serves about twelve homes and the Talcott Mountain Science Center.

The subject site is zoned RU-2A permitting single-family dwellings and accessory uses with a minimum lot size of two acres. 60.8 acres of the subject property is restricted as forest land pursuant to General Statutes § 12-107d (c).³ Accordingly, the assessor classified the bulk of the subject land, for assessment purposes, as forest land and valued this portion at \$8,512 on the Grand List of October 1, 2003. See also Carmel Hollow Associates Ltd. Partnership v. Bethlehem, 269 Conn. 120, 848 A.2d 451 (2004).

The court agrees with both Italia and Nadeau that the highest and best use of the subject property is its continued use as residential property. Nadeau noted that "[c]urrently, the subject functions quite well as an exclusive estate-like property. The marketplace certainly supports properties like this with greater dollars chasing these

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General Statutes § 12-107d (c) provides: "An owner of land seeking classification of such land as forest land shall employ a certified forester to examine the land to determine if it conforms to forest stocking, distribution and condition standards established by the State Forester pursuant to subsection (a) of this section. If the certified forester determines that such land conforms to such standards, such forester shall issue a report to the owner of the land pursuant to subsection (g) of this section and retain one copy of the report."

exclusive properties at the time of revaluation and through present day. The outbuildings on site are usual and typical for a large exclusive property like this with the additional dwellings often serving as [a] guest house and perhaps a caretaker's house. It would appear as though the most feasible use is with the current use." (Defendant's Exhibit J, p. 36.)

The assessor, in arriving at a fair market value of \$4,294,890 as of October 1, 2003 using the cost approach (see Plaintiff's Exhibit 1), based this valuation on the primary residence having a fair market value of \$2,502,740, with the remaining value attributed to the three secondary houses (hereinafter referenced as cottages), the three barns and the value of the designated forest land at \$8,512.

While recognizing that there was no true comparable to the subject property, Italia concluded that he could separately consider and independently value the subject property as a primary residence with three acres of land, three houses and excess land. Under the sales comparison approach, Italia concluded that the primary residence with three acres had a value of \$2,500,000; the three cottages and barn had a value of \$445,000 and the excess acreage had a value of \$120,000, for a total value of \$3,065,000.

Using the cost approach, Italia arrived at a rounded fair market value of \$2,430,000 for the primary residence, including \$700,000 as site value, and \$570,000 for the cottages and barns, including \$120,000 as site value. See Plaintiff's Exhibit 3, pp. 73-

76. Under the income approach, Italia gave the cottages and barns a rounded market value of \$580,000. Although the plaintiff derived only \$21,600 from the cottage rentals, Italia concluded that market rent for each of these properties should be \$30,000 per year, for a total potential rental income of \$90,000 per year.

Both appraisers and the assessor allocated specific acreage to the primary residence, to the cottages and to the excess land. The court finds that it is not appropriate to segment the value of the subject property when there is agreement that the highest and best use of the subject is its present use as a single property. See National Amusements, Inc. v. East Windsor, 84 Conn. App. 473, 480-81, 854 A.2d 58 (2004). The present use of the subject consists of the owner having:

- a primary residence on a parcel of approximately 93 acres which spans the towns of Avon and Bloomfield;
- three cottages ancillary to the use of the property;
- a narrow private right of way, extending from the primary residence to U.S. Route 44 and shared with multiple homes and a science center, and
- 60.8 acres of the parcel designated as forest land.

Because there are no pending subdivision proposals, zone changes or any other change in use, the owner cannot market sections of the subject property separately. Under these circumstances, a willing buyer must contemplate the purchase of a 93-acre, mountaintop estate without any expectation of selling off the cottages or the forest land.

The court finds that out of the 65.6 acres of land in Avon, 60.8 acres consist of forest land, leaving 4.8 acres in support of the primary residence, cottages and barns. In contrast, the assessor allocated six acres to the primary residence and cottages.

Turning to Italia's market sales approach, sales one and two (Plaintiff's Exhibit 3, pp. 39-44) are strikingly similar to the subject primary residence. Sale one, located at 12 Deer Ridge Road, Avon, contains 3.08 acres of land overlooking the Farmington River Valley. This sale, occurring on December 9, 2003 for \$2,525,000, is a single-family home with nine rooms and 5,239 square feet of above-grade living space.

Sale two, located at 605 Deercliff Road, Avon, contains 3.32 acres of land with excellent views of the Farmington River Valley. This sale occurred on July 14, 2003 for \$2,275,000 and consists of a single-family home with nine rooms above-grade covering 5,502 square feet. The finished basement is 1,776 square feet and has 1.1 bathrooms.

A review of the comparable sales selected by Nadeau show little resemblance to the subject. Sales one and five are in Lyme; sale two is in Cheshire; sale 3 is in Farmington and sale four is in Old Lyme. Sale one is an antique 16-room, 5-bedroom home built in 1790 on 27 level acres selling in 2002 for \$3,800,000. It is comparable to a bed and breakfast, not the subject property. Sale two is a 15-room, 4-bedroom home on 30 acres of rolling land selling in 2001 for \$4,000,000. Sale four is an 8-room, 4-bedroom, 6,282 square foot house on 21.47 acres selling in 2002 for \$3,558,600. Sale five

is an 8-room, 4-bedroom home with 2,360 square feet on 480 acres selling on October 7, 2004 for \$4,500,000. None of these sales contain land that is restricted in use as is the subject.

The court notes that Nadeau's appraisal (Defendant's Exhibit I), as of October 1, 2003, is substantially different from his appraisal of the same subject property as of October 1, 1999. On the 1999 appraisal (Defendant's Exhibit J, p. 74), Nadeau concluded that the subject's value was \$3,800,000, compared to his 2003 appraisal of \$4,850,000. This is an increase of \$1,050,000 in a relatively short period of time. (Defendant's Exhibit I, p. 4.)

Whether the income approach, the market sales approach or the cost approach are considered, it is clear that the assessor and Italia come close in their valuation of the primary residence. Italia found that the value of the primary residence under the cost approach was \$1,730,000 for the house and \$700,000 for the site, for a total of \$2,430,000. See Plaintiff's Exhibit 3, p. 76. The assessor's valuation under the cost approach was \$2,502,740 for the primary house and \$500,000 for an allocation of two acres, for a total of \$3,002,740. The court is persuaded that Italia's sales one and two (see Plaintiff's Exhibit 3, pp. 39-44) support a finding that the primary residence value, including the site, as of October 1, 2003, was \$2,500,000.

Under the cost approach, the assessor valued the three cottages as follows:

<u>Description</u>	<u>Value</u>
Cape	\$82,990
Old Style	\$193,630
Farmhouse	<u>\$189,590</u>
	\$466,210

See Plaintiff's Exhibit 1, pp. 3-7.

Italia valued the cottages and barns, using the cost approach, at \$445,000 and allocated a site value of \$120,000, for a total value of \$570,000. See Plaintiff's Exhibit 3, p. 76. On the other hand, the assessor allocated four acres of land to the cottages with a value of \$600,000. See Plaintiff's Exhibit 1, p. 1. Italia's valuation of the three cottages, however, is more credible than the assessor's since the assessor bases his valuation on an unverified acreage total.

The assessor valued the barns at \$64,940. See Plaintiff's Exhibit 1, pp. 7, 9. Italia, using the cost approach, valued the barns at \$60,000. See Plaintiff's Exhibit 3, p. 75. Given the closeness of Italia's valuation to the assessor's, the court considers \$65,000 to be an appropriate valuation for the barns.

Since the assessor and Italia included the site values with their valuation of the primary residence and the cottages, the only remaining item to value is the 60.8 acres of

land designated as forest land. The assessor valued the 68.8 acres at \$1,258,512, including 60.8 acres of forest land at \$8,512. As previously discussed, the actual acreage of the subject in Avon was approximately 65.6 acres. Therefore, after allocating 4.8 acres in Avon for the primary residence, cottages and barns, 60.8 acres of forest land is left for valuation purposes. The court recognizes that these 60.8 acres may lose the designation as forest land in the future and be valued at market value. However, as of October 1, 2003, the 60.8 acres are designated as forest land and valued by the assessor as such.

As discussed previously, the town's appraisal report by Nadeau, for the Grand List of October 1, 2003, was a statistical update of its appraisal report to the town for the Grand List of October 1, 1999. The 2003 appraisal by Nadeau valued the subject property at \$4,850,000. The 1999 valuation of the subject property was \$3,800,000.

On the 1999 appraisal report, Nadeau valued 68.8 acres in Avon at \$25,000 per acre for a rounded value of \$1,700,000. Nadeau did not, as the assessor did in 2003, divide the acreage into a lot of two acres for the primary residence and four acres for the cottages. Furthermore, the 1999 appraisal report does not mention the forest designation of 60.8 acres of the subject land. The assessor noted that, at that time, the prior owner of the subject property had the acreage designated as forest land and that the current owner had made application to the state forester for the continuation of this designation.

On the 1999 appraisal report, Nadeau valued all of the improvements on the

subject property using the cost approach at \$2,217,453. Under the cost approach, Nadeau found the fair market value of the subject, as of October 1, 1999, including the land and improvements, was \$3,917,453, rounded to \$3,900,000. Nadeau does not mention the cottages and barns in 1999's cost approach. (Defendant's Exhibit J, pp. 57-72.) However, the description of the subject property on page 1 (Summary of Salient Facts and Conclusions) of Defendant's Exhibit J refers to the primary structure as a single-family house supported by three guest houses, three barns and a shed.

The assessor apparently did not adopt Nadeau's appraisal report, in total, since the assessor's field card for 1999 (Plaintiff's Exhibit 2) shows a total valuation of \$3,246,830 with a breakdown of the primary residence, the cottages and barns. On the 1999 field card, the assessor also noted that the 60.8 acres of forest land had a value of \$8,512.

In summary, the court finds that the fair market value of this unusual property, as of October 1, 2003, consists of:

	<u>Value</u>
Primary residence	\$2,500,000
Three cottages	570,000
Barns and sheds	65,000
60.8 acres of forest land	<u>8,512</u>
	\$3,143,512

Accordingly, judgment may enter in favor of the plaintiff sustaining the plaintiff's appeal without costs to either party.

Arnold W. Aronson
Judge Trial Referee