

NO. CV 09 4010710S : SUPERIOR COURT
PELLETIER, GARY J., TRUSTEE : JUDICIAL DISTRICT OF
MIDDLESEX
V. : AT MIDDLETOWN
TOWN OF WESTBROOK : JULY 30, 2010

MEMORANDUM OF DECISION

The plaintiff, Gary J. Pelletier Trustee (Pelletier), brings this tax appeal, pursuant to General Statutes § 12-117a, contesting the valuation the assessor placed upon his property located at 126 Captain's Drive in the town of Westbrook (town) for the Grand Lists of October 1, 2008 and 2009, retrospective to the revaluation date of October 1, 2006.

As of the revaluation date of October 1, 2006, the following fair market valuations of the subject property were calculated:

Town's assessor	\$1,707,214
Town's appraiser Susan M. Mulready (Mulready)	\$1,674,000
Plaintiff's appraiser Alan Budkofsky (Budkofsky)	\$1,350,000

The subject property is located in an area known as Pilot's Point, a private beach association. The subject lot contains approximately 7,000 square feet and is within a commercial boating district requiring a minimum lot area of 15,000 square feet (SF). The subject property is a legal nonconforming lot within the town's zoning regulations. The

lot is located on Duck Island Harbor in Long Island Sound with 73.34 feet frontage on the coastline and 49 feet frontage on Captain's Drive.

Budkofsky reported that "[t]he subject property no longer possesses any beachfront." (Plaintiff's Exhibit I-2, p. 1.) There is a ten-foot high concrete seawall that contains seawater at high tide. Although the house had a small beach when the plaintiff purchased the property, the beach no longer exists due to erosion caused by rising sea levels.

The subject property is improved with a one and one-half story house constructed in 1989 containing 2,232 SF. The house has five rooms¹ with three bedrooms and two full baths. The property was further improved prior to the revaluation date with a wraparound deck and a closed-in porch. The house is heated with an oil furnace with forced air and is cooled with central air conditioning. The subject house has no garage but it does have a large brick paved area for parking. There is also a full basement. Town water and a septic sewer system is available as well.

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A difference of opinion exists between the appraisers as to the number of rooms in the house. The plaintiff's appraiser lists the subject property as having five rooms (see plaintiff's Exhibit I-2, p. 1) while the town's appraiser lists it as having seven rooms. The town's appraiser did not inspect the subject's interior in preparation of her appraisal report. Mulready referred to the information from the assessor's records only. On the other hand, the plaintiff's appraiser acquired information used in the appraisal by personally inspecting the interior. For the purpose of this appeal, the court credits Budkofsky's personal inspection of the subject's interior over Mulready's use of the assessor's records alone.

Captain's Drive is maintained by the Pilot's Point Beach Association. However, Budkofsky notes that the association bylaws do not allow waterfront property owners, such as the plaintiff, right of way access to the association's beach areas. See plaintiff's Exhibit I-2, p. 1.

As noted by both appraisers, the highest and best use of the subject property is for residential use. Both appraisers agree that the comparable sales approach is the most appropriate method to use in determining the fair market value of the subject property.

Budkofsky, in conducting his search for comparable sales, selected four sales, three of which are the same sales that Mulready relied upon. These common sales are all in Westbrook:

<u>Address</u>	<u>Sale Date</u>	<u>Sale Price</u>
158 Captain's Dr.	6/29/06	\$1,548,720
209 Old Mail Trl.	6/23/06	\$1,300,000
25 Pepperidge Ave.	12/5/05	\$1,837,500

Budkofsky's fourth sale was at 63 Chapman Avenue in Westbrook. It sold on October 14, 2005 for \$1,450,000.

Mulready's fourth sale was at 144 Captain's Drive in Westbrook. It sold on May 17, 2007 for \$1,804,500.

In conducting his analysis of the selected comparable sales, Budkofsky reviewed

the sale at 158 Captain's Drive, which is only six lots away from the subject. This property is a 0.14-acre lot containing a ranch home. The lot dimensions are 60 feet by 111 feet and the house covers 1,901 SF with seven rooms. There are three bedrooms and two bathrooms with no basement. This comparable has a 28 foot by 19 foot cathedral ceiling family room. This comparable is a waterfront lot with a 60-foot private sandy beach "with magnificent views of [Long Island Sound]." (Plaintiff's Exhibit I-2, p. 23, quoting the Multiple Listing Service data page.) It should be noted that Mulready differs in her report with the square footage of the living area at 1,467 SF, a difference of 434 SF. See plaintiff's Exhibit A, p. 28. However, the Multiple Listing Service data page lists the living area at 1,901 SF. See plaintiff's Exhibit I-2, p. 23.

209 Old Mail Trail is located on the west side of the mouth of the Patchogue and Menunketesuck Rivers, across the river from Pilot's Point Beach. The house is a 1,504 SF contemporary home with a mansard roof containing five rooms with two bedrooms, two baths and two fireplaces. This property has a sandy waterfront beach and wooden deck facing the water covering 381 SF.

25 Pepperidge Avenue in Westbrook is a two-story colonial-style home located on a 0.27-acre lot built in 1900 containing 3,138 SF of living area. This house has nine rooms with five bedrooms and four full bathrooms, one fireplace and an unfinished full basement. There is a large 46 foot by 47 foot wraparound deck at the rear of the house

facing the waterfront with its own sandy private beach. The property also has a detached two-car garage.

Budkofsky's comparable at 63 Chapman Avenue in Westbrook is located on a sandy beach known as Chapman Beach. This colonial-style house was constructed in 1900 and contains seven rooms, three bedrooms and two bathroom totaling 1,822 SF of living area. The lot area of this house is 0.13 acres with dimensions of 50 feet by 110 feet.

Mulready's comparable at 144 Captain's Drive in Westbrook is a two-story colonial home built in 1965. This house contains 2,376 SF of living area with six rooms, four bedrooms and three full bathrooms. There is a full basement that is half-finished. This home is located on a sandy beachfront lot containing 0.15 acres of land with 60 feet of frontage on the street and on the water. The house also has an attached two-car garage, two fireplaces, an open porch and an enclosed porch on the waterfront side of the home.

In considering the sales approach method, Mulready selected the price per square feet of gross living area as a unit of comparison. See *The Appraisal of Real Estate* (12th Ed. 2001), p. 424. As noted therein, “[a] sale price reflects many different factors that affect a property’s value in varying degrees. Qualitative and quantitative techniques are employed to estimate the relative significance of these factors. Appraisers employ mathematical applications to derive quantitative adjustments” *Id.*, 425.

After making adjustments to the comparables, Mulready calculated an adjusted

sale price as summarized below.

<u>Address</u>	<u>Sale Price</u>	<u>SF</u>	<u>Indicated Value/SF</u>	<u>Adjusted Sales Price</u>	<u>Adjusted Sale Price/SF of Living Area</u>
144 Captain's Dr.	\$1,804,500	2,376	\$759.47	\$1,652,250	\$740.26
158 Captain's Dr.	\$1,548,718	1,467	\$1,055.70	\$1,660,618	\$744.00
209 Old Mail Trl.	\$1,300,000	1,505	\$863.79	\$1,644,050	\$745.54
25 Pepperidge Ave.	\$1,837,500	3,138	\$585.56	\$1,728,505	\$774.42

See defendant's Exhibit A, pp. 26-30.

In her final analysis, Mulready concluded that the subject's fair market value, as of the Grand List of October 1, 2008, retrospective to the revaluation date of October 1, 2006, could be determined by taking the average of the adjusted square foot price of \$750/SF of living area and multiplying it with the subject's living area square footage at 2,232 SF, resulting in a valuation of \$1,674,000.

In conducting an analysis of comparable sales, any adjustments to comparable sales can be made to total sale prices or to appropriate units of comparison. See *The Appraisal of Real Estate* (12th Ed. 2001), p. 425. However, in this case, Mulready focused on the adjusted sale price which generally includes the value of the land and divides this amount by the total square footage of the gross living area. In focusing on the gross living area of the subject and the four comparables, Mulready made adjustments for interior

conditions without making a personal inspection of the interiors.

Budkofsky points out that the significant issue here is that the subject property has frontage on Long Island Sound which is buttressed by a retaining wall. However, the subject property does not have a sandy beach. All of the comparables selected by Budkofsky and Mulready have a sandy beachfront as a unit of comparison. As a matter of fact, the lack of a beachfront to the subject property is the key issue with Pelletier, who believes that there should be a differential in value between properties having a sandy beachfront and those properties having no beachfront, like the subject. Accepting Budkofsky's opinion that the value of waterfront property without a sandy beach has less value than waterfront property with a sandy beach, the question becomes how is this value quantified.

Budkofsky made no study of the effect of one having a sandy beachfront versus one having no sandy beachfront since he could not find comparables to fit this situation. However, it was his professional opinion that there was a difference. Mulready, on the other hand, was of the opinion that there was no difference, and therefore, made no adjustments.

Finding, as this court does, that having a sandy waterfront beach is a valuable asset to residential property on Long Island Sound, based upon the adjusted sales Budkofsky selected, which included an adjustment for the subject's lack of a sandy

waterfront beach, and considering the difference in adjustments of comparable sales selected by both appraisers but giving more credibility to Budkofsky's personal inspection, the court finds that the fair market value of the subject property, as of the Grand Lists of October 1, 2008 and 2009, retrospective to the revaluation date of October 1, 2006, was \$1,430,000.² Accordingly, judgment may enter in favor of the plaintiff, sustaining his appeal, without costs to either party.

Arnold W. Aronson
Judge Trial Referee

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This amount was calculated by taking the sum of the adjusted sales prices of Budkofsky's comparables (\$1,602,500 + \$1,462,398 + \$1,390,500 + and \$1,261,350) for a total of \$5,716,748 divided by 4 to equal \$1,429,748 (rounded to \$1,430,000).