

NO. CV 04 0569644S : SUPERIOR COURT  
MARVIN BERGER, ET AL. : JUDICIAL DISTRICT  
 : OF NEW LONDON  
v. :  
 : AT NEW LONDON  
CITY OF NEW LONDON : APRIL 20, 2006

**MEMORANDUM OF DECISION**

This is a real estate tax appeal commenced by eleven plaintiffs owning ten out of sixteen residences with rights to the subject beach property located along Pequot Avenue in the City of New London (city) for the Grand List of 2003 and the subsequent tax years of 2004 and 2005.

The city's assessor (assessor) valued the subject beach property, as of October 1, 2003, at \$84,400. The plaintiffs' appraiser, Dennis Slopak (Slopak), valued the subject, as of October 1, 2003, at \$25,000 or, in the alternative, \$0. In contrast, the city's appraiser, Robert Silverstein (Silverstein) valued the subject at \$100,000.

The subject property, known as Lot 9, is a beach lot that is substantially level and rectangular in size and contains .07 acres of land, or approximately 3,750 square feet<sup>1</sup>,

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The size of the subject beach is unclear. Slopak testified at trial that the subject was .048 acres with dimensions of approximately fifty feet by fifty feet. See Transcript of January 5, 2006 (hereinafter Tr.), p. 23. Silverstein testified at trial that the subject was .07 acres with approximately fifty feet of frontage on Pequot Avenue and approximately seventy-

with frontage along the Thames River (river) at its junction with Long Island Sound.

Although the city describes the subject property as a “private, sandy beach” in its brief and implies that it is a desirable beach front property, the photographs, Slopak’s commentary, the appraisal reports and defendant’s exhibit B indicate otherwise.

For instance, the property is split by a storm water drainage pipe that runs from Pequot Avenue to the river. Defendant’s exhibit B shows that the subject beach not only has a large drainage gully, but is also littered with debris thrown up by the tidewater. In fact, Slopak reported that “a storm water drain pipe . . . traverses the land and is exposed and leaking on the property and into the water. The river in this area is heavily overgrown with eel grass which makes bathing undesirable.” (Plaintiffs’ Exhibit 4, Addendum, p. 1.)

The subject property cannot be improved with any dwelling because it lies in the R-1 residential zone requiring a minimum lot size of 7,500 square feet. Silverstein reported that “[t]he site is not a buildable lot; the current use as a beach is the highest and best use.” (Defendant’s Exhibit A, Addendum, p. 3.) Silverstein also detailed how the owners of the sixteen residences on Parkway South, Reyquinn Street and Glenwood Avenue have ownership rights in the subject, ranging from an interest of 3% to 10%, that cannot be separated from these residences. Slopak reported that “[t]he land carries a

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five feet deep to the mean high water line. See Tr., p. 76. In its brief, the city states that the subject property is 0.09 acres with sixty-seven feet of direct water frontage on the river and seventy-five feet in depth from the road to the water. Silverstein’s appraisal report also lists the subject at .09 acres. The subject lot is described in the third tract of a deed, marked Plaintiffs’ Exhibit 1, as running fifty feet along Pequot Avenue and southeasterly to the water of New London Harbor.

covenant which states that the partial interests are transferable only with the sale of the homes and are not separately transferable. . . . Deed restrictions restrict the use of the land to sitting upon, taking of family meals, and bathing. No structure other than a single fireplace (barbeque) may be erected on the land.” (Plaintiffs’ Exhibit 4, Addendum, p. 1.)

See also Plaintiffs’ Exhibit 2, listing the deed restrictions with a condition subsequent that “[it] is understood and agreed between the parties hereto that this conveyance is subject to the express condition subsequent that the fee herein conveyed shall revert to the grantor, its successors or assigns for the use and benefit of all other owners of the interests in the land herein conveyed, if the same is aliened separately and apart from the land on Parkway hereinbefore referred to. It is further agreed that a similar condition subsequent shall be made a part of all other conveyances of interests in said above described land.”

The subject property could be classified as a limited-market property which is a “property that has relatively few potential buyers at a particular time . . . .” The Appraisal of Real Estate (12<sup>th</sup> Ed. 2001) p. 25. Clearly, the value of the subject property is linked to the sixteen properties having an interest in the subject by virtue of their deeds.

Both appraisers identified only one non-buildable beach front lot as a credible comparable sale. On July 31, 2003, a 0.07 acre lot on Pequot Avenue in New London sold for \$149,575. This lot contained a large concrete patio, bath house and toilet facilities. While both appraisers considered this sale as a yardstick in measuring the sale of the subject property, they disagreed on the applicable adjustments to the property.

Slopak adjusted this sale down by \$125,000 for the patio, bath house, storm water pipe and deed restrictions to arrive at a comparable value to the subject at \$24,575 if the deed restrictions on alienation were ignored. He adjusted this sale down to \$0 value as a nontransferable interest. In contrast, Silverstein arrived at a comparable value to the subject at \$99,575 by adjusting this sale down by \$50,000 for the patio, bath house and storm water pipe.

The court agrees with both appraisers that there is a paucity of sales for non-buildable beach front lots and that sale one is the most credible arms length sale to determine the limited market for the subject. On the one hand, sale one is superior with improvements like the patio, bath house and toilet facilities while the subject has an unsightly drainage pipe traversing it and is owned by multiple interests with deed restrictions. However, on a positive note, the subject has over fifty feet of frontage at the junction of the Thames River and Long Island Sound. Furthermore, there is a possibility that the drainage problem could be corrected as there was no evidence presented that a drainage easement exists to prevent the pipe from either being submerged or relocated.

The drainage pipe, the multiple ownerships and deed restrictions present a formidable barrier to marketing the subject. However, the court is guided by General Statutes § 12-63 (a) which requires the true and actual value of real estate to be based on fair market value. “Fair market value is defined as the value that would be fixed in fair negotiations between a desirous buyer and a willing seller, neither under any undue compulsion to make a deal . . . . Uniroyal, Inc. v. Board of Tax Review, 174 Conn. 380,

390, 389 A.2d 734 (1978).” (Internal quotation marks omitted.) First Bethel Associates v. Bethel, 231 Conn. 731, 740 n.7, 651 A.2d 1279 (1995). The court’s charge, pursuant to § 12-63 (a), is to measure the market value of the subject property under the assumption that the plaintiffs would be willing sellers in an arms length sale of the subject.

As discussed above, although sale one is similar to the subject because it is beach property along Pequot Avenue, sale one has superior improvements. On balance, while Slopak’s opinion of \$0 value is not credible, the subject property is also not worth two-thirds the value of sale one, as opined by Silverstein.

The court recognizes that the valuation of real estate is not an exact science but rather a matter of approximation and judgment. See MacLean v. Town of Darien, 43 Conn. App. 169, 173, 682 A.2d 1064, cert. denied, 239 Conn. 943, 686 A.2d 122 (1996). In addition, “[i]n making its factual findings, [t]he trier is not limited to arbitrating the differing opinions of the witnesses but is to make determinations in the light of all the circumstances, the evidence, [and] his [or her] general knowledge . . . .” Giulietti v. Giulietti, 65 Conn. App. 813, 837, 784 A.2d 905, cert. denied, 258 Conn. 946, 947, 788 A.2d 95, 96, 97 (2001).

Upon the court’s review of all of the evidence and the claims of the parties, the court concludes that, while the subject property is a beach front and can be used as such, there are certain negative features that significantly hamper the owners’ use. Therefore, the court finds that, at a minimum, the subject property has a value of \$50,000, which is one-third of the value of sale one.

Accordingly, because the court finds that the fair market value of the subject real estate, as of October 1, 2003, is \$50,000, an amount lower than the assessor's valuation of \$84,400, judgment may enter in favor of the plaintiffs, sustaining their appeal, without costs to any parties.

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Arnold W. Aronson  
Judge Trial Referee