

NO. CV 09 4010452S : SUPERIOR COURT
RALPH COPPOLA AND :
DONNA COPPOLA : JUDICIAL DISTRICT OF
v. : MIDDLESEX AT MIDDLETOWN
TOWN OF CROMWELL ET AL. : OCTOBER 22, 2010

MEMORANDUM OF DECISION

The plaintiffs, Ralph and Donna Coppola, bring this real estate tax appeal claiming that the assessor for the town of Cromwell (town), overvalued their property located at 2 Sovereign Ridge for the Grand Lists of October 1, 2008 and 2009, retrospective to the revaluation date of October 1, 2007. The assessor determined that the subject had a fair market value of \$1,579,371. The board of assessment appeals reduced the assessed valuation (70% value) to \$930,500, or a fair market value of \$1,329,286.

The plaintiffs' appraiser, R. Bruce Hunter (Hunter), determined that the subject property, as of the revaluation date, had a fair market value of \$810,000.¹

The town's appraiser, Albert W. Franke (Franke), was of the opinion that, as of

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Hunter testified that the \$820,00 fair market value printed in his report was erroneous and amended the value at trial to \$810,000. See plaintiffs' Exhibit 15, p. 6. The plaintiffs characterize the error as "singular and . . . due to a technical error in the formula calculations contained in the Excel worksheet, and was not a function of substantive errors in Mr. Hunter's valuation process." (Plaintiffs' reply brief, p. 3.)

October 1, 2007, the fair market value of the subject property was \$1,100,000.

The subject property is an irregular-shaped lot containing 7.917 acres of land and improved with a 2-story, contemporary-style wood-framed house containing approximately 8,377 square feet (SF), plus a barn covering an area of 2,800 SF. See plaintiffs' Exhibit 15, p. 3. The subject house is located on one of the highest points in Cromwell, thereby giving it a commanding view amenity of the rolling hills in the distance.

The subject house is somewhat unique in that it is located in a residential zone (A-25) that does not permit a two-family house; however, the subject house is basically a two-family home built in two stages: first in 1984 and then in 2002. The house contains 18 rooms including 8 bedrooms and 6 full bathrooms and 2 half baths.² The house also contains 2 formal entrances, 2 full kitchens, including a commercial kitchen, 2 dining rooms and 2 master bedrooms. See plaintiffs' Exhibit 15, p. 3.

The town's appraiser described the following features of the subject house. See defendant's Exhibit A, p. 4. The first floor of the house contains a two-story foyer, great room, dining room, kitchen with breakfast area, billiards room, den, 2 bedrooms, study

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Hunter reported that the subject house contains 18 rooms. However, the town's appraiser Franke reported that the subject house has 15 rooms. See defendant's Exhibit A, p. 4. Franke shows an additional 3 exercise rooms in the basement covering 5,226 SF which had not been previously counted. Hunter also reported fewer bathrooms than Franke: 4 full baths and 1 half bath. See Plaintiffs' Exhibit 15, p. 3.

room, laundry room, a former kitchen/dining area, a former commercial kitchen, sitting area and 3 full bathrooms and 2 half baths. The second floor living areas are divided into 2 wings containing a sitting area, 4 bedrooms, an ancillary room and 2 full bathrooms. The house also contains 4 fireplaces, a multi-zone heating system, multiple skylights, an enclosed porch and an oversized 2-car attached garage. The basement contains 3 exercise rooms, a tanning room and a full bathroom. The plaintiffs primarily use the newer, northern half of the house for their living quarters. In addition, the two-car garage is located in the older portion of the house requiring a lengthy walk from the new portion.

The site is encumbered with utility easements and an open space easement that precludes building on a large portion of the site, leaving a house site of approximately 1.84 acres. The open space easement runs in favor of the Sovereign Ridge Homeowner's Association (homeowner's association). A long, winding shared driveway is encumbered with a driveway easement in favor of an abutting neighbor to the southwest. With the utility easements and open space easements covering a large portion of the subject site, the majority of the site is maintained as an expansive lawn.

A cell tower is located on land to the north of the subject property that is visible from the northerly portion of the subject home. Although the plaintiffs claim that the cell tower affects their enjoyment of their property, the restricted view, if any, appears minimal from the northerly portion of the subject.

Hunter, the plaintiffs' appraiser, noted that the subject property was sold on August 15, 2008 for \$725,000 after being on the market for 127 days with an original listing price of \$1,599,000, which was reduced subsequently to \$899,000. See plaintiffs' Exhibit 15, p. 2.

Both appraisers recognize that this unusual house was overbuilt. Hunter aptly describes this over-improvement as a "superadequacy" which is "[a] type of functional obsolescence caused by a property component that exceeds market requirements, but does not contribute to value an amount equal to its cost. A superadequacy is only curable if it can be removed and value is added (or costs reduced) to the property - including any salvage value - from its removal." (Plaintiffs' Exhibit 15, p. 3, quoting *The Appraisal of Real Estate* (13th Ed.) p. 435.)

It is a general principal that "[i]n a § 12-117a appeal, the trial court performs a two step function. The burden, in the first instance, is upon the plaintiff to show that he has, in fact, been aggrieved by the action of the board in that his property has been overassessed. . . . In this regard, [m]ere over-valuation is sufficient to justify redress under [§ 12-117a], and the court is not limited to a review of whether an assessment has been unreasonable or discriminatory or has resulted in substantial overvaluation. . . . Whether a property has been overvalued for tax assessment purposes is a question of fact for the trier. . . . The trier arrives at his own conclusions as to the value of land by

weighing the opinion of the appraisers, the claims of the parties in light of all the circumstances in evidence bearing on value, and his own general knowledge of the elements going to establish value including his own view of the property. . . .” (Emphasis omitted; internal quotation marks omitted.) J.C. Penney v. Manchester, 291 Conn. 838, 844, 970 A.2d 704 (2009).

Both appraisers valued the subject premises substantially lower than the value placed upon the property by the assessor which supports the plaintiffs’ claim that they were aggrieved by the assessor’s action.

The next step, in this de novo appeal, is for the court to determine what the fair market value of the subject premises was on the Grand Lists of October 1, 2008 and 2009, retrospective to the revaluation date of October 1, 2007.

The starting point for the valuation of real estate is to determine the highest and best use of the property since “[t]he highest and best use concept, chiefly employed as a starting point in estimating the value of real estate by appraisers, has to do with the use which will most likely produce the highest market value, greatest financial return, or the most profit from the use of a particular piece of real estate.” (Internal quotation marks omitted.) Branford v. Santa Barbara, 294 Conn. 785, 795, 988 A.2d 209 (2010).

Considering the appraisers’ opinions, the court concludes that the highest and best use of the subject property is its continued use as a single-family residence as presently

occupied.

In arriving at his opinion of value, the plaintiffs' appraiser, Hunter, relied on the sales comparison approach considering four sales that he concluded were comparable to the subject. The pertinent features of each sale are as follows:

<u>Address</u>	<u>Sale Date</u>	<u>Sale Price</u>	<u>Adjusted Sale Price</u>	<u>Difference</u>
437 Scarborough Ln. Middletown	10/23/07	\$677,000	\$757,300	+\$80,300

This is a 9-room colonial on a site of 0.68 acres, containing 4 bedrooms, 3 full bathrooms and 1 half bath with a gross living area of 3,622 SF.

<u>Address</u>	<u>Sale Date</u>	<u>Sale Price</u>	<u>Adjusted Sale Price</u>	<u>Difference</u>
101 Peria Dr. Rocky Hill	6/7/07	\$800,000	\$862,155	+\$62,155

This is a 9-room colonial on a site of 1.03 acres, containing 5 bedrooms, 3 full bathrooms and 1 half bath with a gross living area of 6,175 SF.

<u>Address</u>	<u>Sale Date</u>	<u>Sale Price</u>	<u>Adjusted Sale Price</u>	<u>Difference</u>
314 Old Farms W. Middletown	10/23/06	\$800,000	\$819,820	+\$19,820

This is a 10-room contemporary on a site of 1.74 acres, containing 4 bedrooms, 3 full bathrooms and 2 half baths with a gross living area of 4,909 SF.

<u>Address</u>	<u>Sale Date</u>	<u>Sale Price</u>	<u>Adjusted Sale Price</u>	<u>Difference</u>
57 Steepleview Dr. Berlin	7/5/06	\$730,000	\$802,875	+\$72,875

This is a 10-room colonial on a site of 2.01 acres, containing 4 bedrooms, 3 full bathrooms and 1 half bath with a gross living area of 4,243 SF.

See plaintiffs' Exhibit 14; see also plaintiffs' Exhibit 15, p. 5.

The town's appraiser Franke selected three sales as comparables, one of which was the same as Hunter, located at 101 Peria Drive in Rocky Hill, which sold for \$800,000. However, while Hunter adjusted this sale up \$62,155, an 8% net adjustment, Franke adjusted this sale up \$301,000, a 38% net adjustment, to arrive at an adjusted sale price of \$1,101,000. See plaintiffs' Exhibits 12 and 13.

The remaining two sales relied upon by Franke are:

<u>Address</u>	<u>Sale Date</u>	<u>Sale Price</u>	<u>Adjusted Sale Price</u>	<u>Difference</u>
14 Turnberry Rd. Wallingford	2/16/07	\$1,125,000	\$1,094,000	-\$31,000

This is a 12-room Tudor on a site of 1.61 acres, containing 4 bedrooms and 3 full bathrooms with a gross living area of 5,247 SF.

<u>Address</u>	<u>Sale Date</u>	<u>Sale Price</u>	<u>Adjusted Sale Price</u>	<u>Difference</u>
125 North Rd. Cromwell	10/12/06	\$575,721	\$1,052,221	+\$476,500 ³

This is a 14-room colonial on a site of 2.32 acres, containing 4 bedrooms and 4 bathrooms having a gross living area of 4,799 SF.

See defendant's Exhibit A, p. 10.

Although both appraisers selected sales of large homes, neither the sales nor the appraisers' analyses of the comparables dealt with the key issue in this case: determining

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Such a high adjustment affects the credibility of the selected comparable as being truly comparable to the subject property. "The goal of the sales comparison approach is to select the most comparable market sales and then adjust for differences that cannot be eliminated within the selection process. . . ." The Appraisal of Real Estate (12th Ed. 2001) p. 337.

the value of an overbuilt house. Although both appraisers considered the subject house to be a superadequacy, neither adjusted for this condition. Franke did not consider the superadequacy because he opined that superadequacy was a function of the cost approach, and therefore, inappropriate to use in the market sales approach. Although Hunter considered the inadequacy of the subject house to be an over-improvement and a type of functional obsolescence, he made no adjustment for this inadequacy. See plaintiffs' Exhibit 15, p. 5 (functional utility).

It would have been more appropriate for the appraisers to select sales of residential properties that were overbuilt in order to establish a market for such a property. Here, Franke and Hunter selected sales of large homes that sat on sites similar to the 1.84 acres that the subject house sits upon. However, each appraiser adjusted for the total 8-acre area of the subject property even though the subject does not have full use of the entire property.

As an example, Hunter's adjustments for land area ranged from \$29,535 to \$36,185. See plaintiffs' Exhibit 14 and Exhibit 15, p. 5. In this regard, Franke made an average upward adjustment of \$94,000 on each of his three sales. See defendant's Exhibit A, p. 10. This was done despite the fact that, except for the 1.84-acre house lot, the remaining acreage was covered by utility easements and the 4.577-acre recreational open space easement in favor of the homeowner's association, rendering the excess acreage

unusable to the plaintiffs for all practical purposes.⁴

The appraisers also had to deal with the problem of the subject's expansive gross living area at 8,377 SF. As an example, Hunter adjusted his four sales up, ranging from \$22,020 to \$47,550, because of the substantial difference in gross living area with the subject. Similarly, Franke selected sales of large homes having a gross living area of approximately 4,800 to 6,200 SF. Franke adjusted these three sales up for an average adjustment of \$178,167. See defendant's Exhibit A, p. 10.

Given the ready market for large homes with nine to ten rooms, four bedrooms and three full baths spanning an average gross living area of 5,000 SF, and recognizing that the subject is located in a residential zone that permits only single-family homes, when compared to the subject having 8,377 SF of gross living area, containing 18 rooms including 8 bedrooms as well as 6 full baths and 2 half baths, it appears that the sales selected by the appraisers establish the fact that the subject was overbuilt for single-family use.

The plaintiffs purchased the subject property on August 15, 2008, 10 months after the revaluation date of October 1, 2007, and as Franke noted, "[t]he property had been on

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According to the plaintiffs, two open questions remain: 1) whether the open space easement in favor of the homeowner's association can be used by members of the homeowner's association; and 2) who is obligated to maintain the condition of the open space easement.

the market for 127 days at the time of contract according to the MLS. The original asking price was \$1,599,000 that was later reduced to \$899,000. The listing broker indicated that there was an offer in the \$900,000s that fell through.” (Defendant’s Exhibit A, p. 2.) Given this activity occurring at a relatively short period of time following the date of revaluation on October 1, 2007, the court can conclude that this sale was an arm’s length transaction.⁵ For example, the court found in Schnier v. Ives, 162 Conn. 171, 178-79, 293 A.2d 1 (1972), that a sale considered in a condemnation case, which occurred approximately five months following the date of the taking, “was not so far removed, timewise. . . . as to make a comparison unjust or impossible as a matter of law. Whether a transaction is sufficiently close in point of time to afford a fair comparison is a matter resting largely in the discretion of the trier.”

Given the fact that both appraisers selected the 101 Peria Drive sale in Rocky Hill containing 6,175 SF of gross living area as the closest comparable to the subject, and recognizing the difference in adjustments made by both Franke and Hunter regarding this sale, the court finds that the fair market value of the subject property is \$870,000, which is closer to the range of the adjusted sale price at \$862,155 of the 101 Peria Drive property as determined by Hunter.

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In The Appraisal of Real Estate (12th Ed. 2001) p. 150, an arm’s length transaction is described as “[a] transaction between unrelated parties under no duress.”

Accordingly, judgment may enter in favor of the plaintiffs, sustaining their appeal, finding that the fair market value of the subject property, for the Grand Lists of October 1, 2008 and 2009, retrospective to the revaluation date of October 1, 2007, is \$870,000, without costs to either party.

Arnold W. Aronson
Judge Trial Referee