

NO. CV 09 4016756S : SUPERIOR COURT
EDWARD KWESKIN AND
HELEN KWESKIN : JUDICIAL DISTRICT OF
v. : STAMFORD/NORWALK
: AT STAMFORD
CITY OF NORWALK : JUNE 16, 2011

MEMORANDUM OF DECISION

The plaintiffs, Edward M. and Helen T. Kweskin, are owners of residential real property at 3 Plant Court in the city of Norwalk (city). The plaintiffs bring this tax appeal from the decision of the board of assessment appeals (BAA), denying their claim for relief from an excessive assessment, as of the revaluation year of October 1, 2008 and subsequent years.

On October 1, 2008, the city's assessor determined that the fair market value of the subject property was \$2,577,200. Upon the plaintiffs' appeal to the BAA, the BAA increased the subject's fair market value to \$2,758,700. See plaintiffs' Exhibit 1.

The plaintiffs' appraiser, Michael McGuire (McGuire), valued the subject property, as of October 1, 2008, at \$1,500,000. See plaintiffs' Exhibit 19, p. 2. The defendant's appraiser, Michael Fazio (Fazio) valued the subject premises, as of October 1, 2008, at \$3,000,000. See defendant's Exhibit 21. Both appraisers employed the comparable sales approach to value the subject property.

“The sales comparison approach, also known as the market data approach or the comparable sales approach, is a process of analyzing sales of similar recently sold properties in order to derive an indication of the most probable sales price of the property being appraised. . . . After identifying comparable sales, the appraiser makes adjustments to the sales prices based on elements of comparison.” (Internal quotation marks omitted.) Town of Branford v. Santa Barbara, 294 Conn. 785, 793 n.11, 988 A.2d 209 (2010).

The subject property is located in the exclusive Bell Island neighborhood of the city’s Rowayton section. Upon agreement of the parties after the trial, the court inspected the subject property, the appraisers’ comparables and the Bell Island area with the parties’ attorneys.

Before beginning the process of analyzing the appraisers’ use of the comparable sales approach, it is necessary to review the key elements of the subject property to determine its fair market value, as of October 1, 2008. From a historical viewpoint, the plaintiffs purchased the subject property on July 1, 1982 for \$230,000. The subject house is over 100-years-old. It was built in 1907 as a beach cottage with approximately 45 feet of frontage along Wilson Cove. There is a remarkable view of Norwalk Harbor into Long Island Sound (the Sound) from this property.

As McGuire noted, the subject was a converted summer home of poor construction quality with a functionally obsolete layout. See 11/19/10 trial transcript (Tr.),

p. 141. There is no beach directly at this site, only a ledge that drops off to the water below. A concrete walkway with a pedestrian easement in favor of every Bell Island resident runs along the edge of the shoreline crossing the southeasterly portions of lots with water frontage, such as the subject. See 11/19/10 Tr., p. 57. This walkway leads to East Beach, a small private community beach servicing Bell Island homeowners.

The subject lot is approximately 0.13 acres. See survey map, plaintiffs' Exhibit 8. The subject house is a colonial with three stories and covers a gross living area of 2,874 SF. It has 8 rooms, including 5 bedrooms, and 2 baths.¹ The maximum allowable zoning coverage on the subject is 35% which is exceeded by the existing improvements. See Exhibit 8 and 11/19/10 Tr., p. 53. Although the city requires a 30-foot front yard setback, the subject house is set back just several feet from the road. The distance between the house and adjoining lots and houses is also minimal.

The front of the house is on Plant Court which is a narrow unaccepted street that the city does not maintain or snowplow. See 11/19/10 Tr., p. 40. Therefore, Rowayton residents maintain the road. Because there is no parking available on Plant Court, the

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The appraisers noted that, subsequent to the revaluation date of October 1, 2008, the third-floor attic was remodeled into a master bedroom with bathroom and a rear porch facing the Sound was added. This may explain the difference between McGuire's report that the subject had 8 rooms, including five bedrooms, 2 baths and 2,874 SF of gross living area, whereas Fazio reported that the subject had 9 rooms, including 5 bedrooms, 2.1 baths and 2,980 SF of gross living area. Improvements made after the revaluation date of October 1, 2008 will not be a value consideration in the present action.

plaintiffs and their guests must find parking on other neighborhood streets.

The subject is located in a residence B zone where there are narrow roads similar to Plant Court. The homes in this area tend to be large and, unlike the subject, have on-site parking. These homes, however, share an important commonality – a beautiful view of the Sound.²

Although the subject house is situated on the Sound, it has two major deficiencies as McGuire noted: (1) lack of both on-site and street parking and (2) water leakage into the house from wind-driven rain. As McGuire observed, having no parking is a “killer.” See 11/19/10 Tr., p. 141. As for the weather, since wind-driven rain comes from the Sound on the easterly side of the house, these elements invade the subject from top to bottom. Mr. Kweskin testified that despite spending over \$65,000 to correct weather-related damage, the house continuously leaks and has water stains and cracking in the ceilings, walls and floors. See 11/19/10 Tr., p. 31. McGuire noted that the subject’s history of leaks would require a disclosure to a purchaser and that this type of “stigma” diminishes the property’s value. In all likelihood, this deficiency came from the original poor construction.

McGuire, in arriving at \$1,500,000 as the subject’s fair market value, as of

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Mr. Kweskin testified that the view from his back porch was “beautiful.” (11/19/10 Tr., p. 21.) McGuire described the subject’s view of the Sound as “dramatic” and “outstanding.” (Plaintiffs’ Exhibit 19.)

October 1, 2008, relied on what he considered to be three comparable sales to the subject. Mr. Kweskin testified that he believes the value of his property is no more than \$1,800,000, as of October 1, 2008. See 11/19/10 Tr., pp. 41-42.

McGuire's first sale, at 73 Roton Avenue in Rowayton, sold for \$2,197,500 on September 25, 2008. In contrast to the subject, this property is not located on the Sound but on Farm Creek, a salt water marsh. It has 8 rooms, including 4 bedrooms, and 2.1 baths. The gross living area covers 2,942 SF on a 0.14-acre lot. McGuire adjusted this sale down approximately 30% for a value of \$1,558,815. The two factors critical to the subject property, lack of parking and significant water leakage and damage, do not exist here. Although this sale had a view of Farm Creek, this is not comparable to the subject's brilliant view of the Sound. Given the problems with comparability, McGuire did not give much weight to this sale.

McGuire's sales two and three are a short distance away from the subject. While these properties have views of the Sound, their location on South Beach Drive (which runs between the properties and the beach), cuts off direct beach access. Neither of these sales had on-site parking, but unlike the subject, there was on-street parking along South Beach Drive for the benefit of the adjacent homes.

Sale two, at 27 South Beach Drive, sold for \$1,850,000 on June 26, 2008. McGuire adjusted this sale down approximately 25% for a value of \$1,390,855, as of

October 1, 2008. This house is a cape containing 7 rooms, including 4 bedrooms, and 1.1 baths. It covers a gross living area of 1,729 SF on a 0.07-acre lot.

Sale three, at 25 South Beach Drive, sold for \$2,350,000 on October 2, 2007. McGuire adjusted this sale down approximately 32% to \$1,589,968, as of October 1, 2008. This house is a colonial with 6 rooms, including 3 bedrooms, and 3 baths. It covers a gross living area of 2,120 SF on a 0.10-acre lot.

Sales two and three are older homes like the subject property. Sale two was built in 1920 and sale three was built in 1890. Although sales two and three are located across South Beach Drive from the beach, McGuire reported they have excellent views of the Sound. McGuire quantified the subject's water leakage stigma by adjusting sale two down by \$245,445 and sale three down by \$280,582. McGuire also adjusted each of sales two and three down by \$160,000 because of the subject's lack of parking.

During its inspection, the court noted that sales two and three have excellent views of the Sound. However, it was clear to the court that there is a marked difference between having an excellent view of the Sound directly on the Sound versus a Sound view without beachfront. As Fazio noted, being on the Sound adds to the value of the subject, but this is tempered by whether the property has direct access to a sandy beach or no beach at all, such as the subject property. See, e.g., Pelletier v. Westbrook, Superior Court, judicial district of Middlesex at Middletown (July 30, 2010, *Aronson, JTR*).

Fazio determined that the subject's fair market value was \$3,000,000, as of October 1, 2008, relying on four sales which he considered comparable to the subject. He selected comparable sales based on the presence of a view of the Sound within Bell Island. Fazio considered sales located directly on the Sound to be superior to sales located across the street from the Sound such as McGuire's sales two and three on South Beach Drive. See 12/1/10 Tr., p. 127. While McGuire considered the subject house's water leakage as a stigma, in Fazio's opinion, this problem could be corrected, and therefore, he eliminated it from consideration.

Fazio's sale one was adjacent to the subject at 5 Plant Court and sold for \$3,890,000 on September 16, 2006.³ Fazio adjusted the sale down 25% to \$2,911,250. His two major downward adjustments to this sale were \$389,000 for condition and \$389,000 for timing. This property is a colonial with 8 rooms, including 4 bedrooms, and 3.1 baths. The house covers a gross living area of 3,286 SF and sits on 0.13-acres. There

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The viewing of 5 Plant Court was of particular interest to the court during its inspection as it was consistent with the testimony of James Falsey, a builder and long-time resident of Rowayton. Mr. Falsey purchased 5 Plant Court in October 2005 for \$2,070,000 when it had a 100-year-old house on it. He testified that he made major renovations and "basically built a brand new house" at a cost of \$1,000,000, and then resold the property. See 11/19/10 Tr., pp. 107, 111. He further testified that the house was effectively a tear down but that "[t]here [were] zoning rules that precluded us from tearing the house down. Most of the house was in the front setback, which comes 30 feet off the street. So it was a bit of a hindrance . . . in that when something is in the setback, you're not allowed to just tear it down. I had to get approval by the zoning office . . ." (11/19/10 Tr., p. 107.)

is on-site parking for two cars with a cobblestone driveway and a finished deck overlooking the Sound.

Recognizing that Fazio's downward adjustments for 5 Plant Court result in a value of \$2,911,250, as of October 1, 2008, and his conclusion that the subject's value, as of that same date, is \$3,000,000, it is difficult for the court to accept that the properties at 3 and 5 Plant Court are so nearly equal in comparison. With the court standing at the rear of both properties at 3 and 5 Plant Court during the inspection, it was clear that Fazio's downward adjustments were not realistic.

Since 5 Plant Court essentially has a new interior and exterior, Fazio's 10% downward adjustment for condition is not credible when compared to the subject, which is susceptible to water leaks and has an outdated layout. In addition, Fazio's \$100,000 downward adjustment for parking is also unrealistic when the subject has no parking on-site or on the street and 5 Plant Court has two parking spaces on-site. Falsey, a knowledgeable area builder and developer who is familiar with construction costs, testified as a fact witness that, from a developer's viewpoint, such a lack of parking diminishes the subject's value by at least \$500,000. See 11/19/10 Tr., p. 110. Falsey's testimony, although not an appraiser's opinion of value, comports with McGuire's comment that lack of parking is a "killer."

Fazio's remaining comparable sales were equally superior to the subject. Sale two,

located at 7 Rocky Point Road in Rowayton, sold for \$4,050,000 on July 10, 2008. This sale was a colonial with 11 rooms, including 4 bedrooms, and 3.1 baths. It has a gross living area of 4,110 SF on 0.12 acres. There is a 2-car garage as well as two parking spaces. In addition, the distance between neighboring houses runs from 15 to 20 feet, whereas the subject sits a few feet away from its neighbors. As in the case of 5 Plant Court, Fazio's sale two on 7 Rocky Point Road was completely redone with an open floor plan and was in excellent condition. Here, Fazio made a 10% downward adjustment for condition. This is simply inadequate when comparing the condition of the subject with 7 Rocky Point Road.

Fazio's sale three, at 63 Bluff Avenue in Rowayton, is a quarter mile away from the subject. It sold for \$3,535,000 on May 8, 2007. This sale was a colonial with 11 rooms, including 4 bedrooms, and 3.1 baths. It has a gross living area of 3,567 SF on a 0.27-acre lot. This property is not located on Bell Island but it is near the bridge leading to Bell Island. There is a one-car garage and on-site parking for approximately three cars. In stark contrast, the subject has no parking. This comparable sale does not fit into Fazio's criteria for selection of comparables as it is not on Bell Island and not directly on the Sound.

Fazio's sale four, at 1 Yarmouth Road in Rowayton, is located fairly close to the subject. It sold for \$3,075,000 on December 19, 2008. This sale was a three-story colonial

with 6 rooms, including 3 bedrooms, and 3.1 baths. It has a gross living area of 2,566 SF on a 0.07-acre site. This sale is not located on the Sound. It is a corner home which adjoins the comparable properties McGuire selected as his sales two and three (at 27 and 25 South Beach Drive, respectively). At this property, the only views of the Sound exist across South Beach Drive. Fazio reported that this sale was totally rehabilitated, and therefore, he considered it to be in superior condition to the subject. Fazio gave a 10% downward adjustment for condition, but gave a 10% upward adjustment for view. Again, this adjustment for condition is inadequate when comparing a fully renovated beach house to the subject with its interior obsolescence of layout, chronic leaks and water damage.

The difficulty with this appeal is that the defendant's appraiser Fazio selected sales that were far superior to the subject and the plaintiffs' appraiser McGuire selected sales that were problematic. The criteria for measuring value in this case was the subject's lack of both on-site and street parking and the stigma attached to the subject for water leakage and structural damage consistently caused by wind and rain which the plaintiffs are unable to correct. Notably, Fazio's comparables are all homes that have been completely renovated and have on-site parking. Of the sales McGuire selected, 73 Roton Avenue is dissimilar to the subject as it is not on or near the Sound and has two on-site parking spaces.

McGuire's selections at 25 and 27 South Beach Drive are more credible as comparable sales. However, McGuire failed to make any adjustments to these sales for view, which was an important factor for the subject. While Fazio noted that he did not select 25 or 27 South Beach Drive, as they were across the street from the Sound while the subject was on the Sound, McGuire should have considered this distinction. In addition, the properties at 25 and 27 South Beach Drive have adjacent on-street parking which the subject lacks.

Given the comparable sales selected by both McGuire and Fazio, and the problems that are posed by the differences between the subject and each of the comparables, an indication of market value comes mostly from the properties at 25 and 27 South Beach Drive as they are improved with older homes that have been partially renovated. It should be noted that McGuire adjusted the properties at 25 and 27 South Beach Drive down substantially for condition and stigma but this may be too heavily adjusted downward as the stigma, in turn, affects the condition.

As discussed above, the two main points in this appeal are the stigma resulting from the property's condition with water leakage, stains and cracks in the floors and walls and the lack of on-site and street parking on Plant Court. The most similar of the comparables used to determine the fair market value of the subject, as acknowledged by McGuire, are the properties at 25 and 27 South Beach Drive.

The court, after giving consideration to the weight of the various adjustments made to the sales at 25 and 27 South Beach Drive, arrives at a range of value for the subject from \$1,800,000 to \$2,200,000.⁴

A review of the adjustments made to both 25 and 27 South Beach Drive by McGuire⁵, when compared to the subject, forms a basis for the court to arrive at a fair market value of the subject property, as of October 1, 2008 and subsequent years, at \$2,000,000.

Accordingly, judgment may enter in favor of the plaintiffs, without costs to either party.

Arnold W. Aronson
Judge Trial Referee

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See Pilot's Point Marina, Inc. v. Westbrook, 119 Conn. App. 600, 604, 988 A.2d 897 (process of valuation in a property tax appeal is "at best . . . a matter of approximation"); J. C. Penney v. Manchester, 291 Conn. 838, 844, 970 A.2d 704 (2009) ("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").

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The date of sale adjustments made by McGuire, namely, the downward adjustment of \$262,700 for 27 South Beach Drive and the downward adjustment of \$270,250 for 25 South Beach Drive, appear to be unnecessary given that their sale dates are fairly close to the revaluation date of October 1, 2008.