

NO. CV 09 4017050S : SUPERIOR COURT
CHARLES H. BERMAN, :
MELANIE K. BERMAN, :
7 NYLKED TERRACE LLC. : JUDICIAL DISTRICT OF
v. : STAMFORD/NORWALK
: AT STAMFORD
CITY OF NORWALK : AUGUST 30, 2012

MEMORANDUM OF DECISION

This is a real estate tax appeal of property located at 7 Nylked Terrace in the Pine Point¹ area of Rowayton in the city of Norwalk (city). The subject property is a 0.306-acre lot improved with a summer cottage overlooking Wilson Cove and adjacent to South Beach.

The plaintiffs Charles and Melanie Berman purchased the subject property in 2002 for \$2,700,000.² They later transferred title to 7 Nylked Terrace, LLC, which is an

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The plaintiffs argue that the Pine Point area is not as desirable as other sections of Rowayton because the subject property is located near the Rowayton Beach Club, which according to the plaintiffs, is very noisy during the summer. See plaintiffs' post-trial brief, p. 4; see also trial transcript of April 4, 2012 (4/4/12 Tr.), p. 11. In contrast, the city argues that their appraiser "Mr. Fazio noted that there is a positive significance to the address of the Subject Property being in the Pine Point section of Rowayton in that Pine Point 'is a private association which is more prestigious than just an overall Rowayton name.' [4/4/12 Tr., p. 95.]" (Defendant's post-trial brief, p. 7.)

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The purchase price was essentially for the subject land as the plaintiffs considered the cottage a "tear down" to be redeveloped with a new house. The plaintiffs hold a

entity that Mr. Berman controls and is a named plaintiff.

The city's assessor determined that the fair market value of the subject property, as of October 1, 2008, was \$3,438,100. Upon appeal, the board of assessment appeals (BAA) reduced the fair market value of the subject to \$2,922,400. See defendant's Exhibit W.

The plaintiffs' appraiser, Michael B. Gold (Gold), determined that the fair market value of the subject, as of October 1, 2008, was \$2,250,000. See plaintiffs' Exhibit 21.

The city's appraiser, Michael Fazio (Fazio), determined that the fair market value of the subject, as of October 1, 2008, was \$2,925,000. See defendant's Exhibit A.

The subject property has a dramatic 30 to 40-foot drop from the street level to a seawall of bulkheads on the shoreline along the Norwalk Harbor to Long Island Sound (the Sound).³ It is improved with a 2-story, colonial-style summer cottage spanning 1,972 square feet (SF) that was built around 1925 and has not been recently renovated. The cottage contains 7 rooms, including 4 bedrooms, and 1 full bath. As of October 1, 2008,

demolition permit. See 4/4/12 Tr., p. 12.

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Regarding water access for the property, Gold testified that "[h]ypothetically, one could jump into the water or throw stones into the water, but there's no access from a recreational standpoint. There's no dock. There's no beach. But there is water frontage." (4/4/12 Tr., p. 61.) Mr. Berman also testified that there was no direct water access from his property. See 4/4/12 Tr., pp. 18-19.

the subject had a covered porch and a two-car detached garage.⁴

Access to the subject property is from the private street Nylked Terrace which has a narrow 12-foot wide opening that is bordered by a stone wall. See plaintiffs' Exhibit 16. Access may also be made via an easement around the adjacent property to the south, a route that both Gold and Mr. Berman describe as "circuitous."⁵ Furthermore, the subject property has no driveway and there is no on-street parking on Nylked Terrace.

Fazio also noted factors adverse to the subject, namely, that "[t]he site has frontage on Long Island Sound and slopes downwards from Nylked Terrace. Heavy storms may impact the property adversely due to the close proximity to the water, however all the properties in the area suffer from the same external conditions. The site has a ROW and a sewer easement, this easement is in the rear portion of the property and doesn't impact the site negatively." (Defendant's Exhibit A, p. 4.)

Gold, using the sales comparison method to determine value, considered four Norwalk sales that he considered comparable to the subject. See plaintiffs' Exhibit 21.

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Mr. Berman testified that the garage was washed away during a storm in 2011. See 4/4/12 Tr., p. 12.

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Regarding the easement and the difficulty accessing the property, Mr. Berman testified that "you now have to actually drive down to the beach club and there's a dirt road that runs out on the far side of the point where there is a gate controlled by this house and you have to drive in along what is an easement here to come into the property. So it's quite circuitous and then you have to go up about 30 feet to get to the house." (4/4/12 Tr., pp. 14-15.) See also plaintiffs' Exhibit 21, p. 1.

(1) 73 Roton Avenue is 0.14 acres with water frontage on Farm Creek. The property contains a Victorian house spanning 2,184 SF in very good condition with 7 rooms, including 3 bedrooms, and 2.5 baths. This property sold on September 25, 2008 for \$2,197,500. Gold adjusted this sale upwards to \$2,232,450.

(2) 33 Rowayton Avenue is 0.144 acres with water frontage on Five Mile River. The property contains a colonial-style house spanning 2,512-SF in very good condition with 8 rooms, including 4 bedrooms, and 3 full baths. This property sold for \$3,500,000 on July 25, 2008. Gold adjusted this sale down by 31.5 % to \$2,397,625.

(3) 7 Rocky Point Road is 0.12 acres with water frontage on the Sound. The property contains a colonial-style house in very good condition spanning 3,580 SF with 8 rooms, including 3 bedrooms, and 2.5 baths. This property sold for \$4,050,000 on July 10, 2008. Gold noted that the house had a two-car garage, a patio, deck and balcony. He adjusted the property down by 44.8 % to \$2,235,513.

(4) 45 Rowayton Avenue is 0.12 acres with water frontage on Five Mile River. This property contains a colonial-style house in average condition spanning 2,017 SF with 7 rooms, including 3 bedrooms, and 2.5 baths. There is a one-car garage. This property sold for \$3,200,000 on July 17, 2007. Gold adjusted this house down 29.8 % to \$2,247,500.

Noting that there were few recent waterfront land sales in Norwalk, Gold described two listings for land sales and two completed land sales as follows:

Listing #1, at 16 Norport Drive, is a 0.30-acre residential lot with 110 feet of water frontage on a tidal inlet. There are unobstructed views of the Sound and Shore Haven Golf Club. This property had a pre-existing dwelling that was demolished for new

construction. The listing price of \$2,895,000 on the list date of September 25, 2008 was reduced to \$2,495,000 six months later.

Listing # 2, at 22 Shorehaven Road, is a 0.38-acre residential lot with direct frontage on the Sound. This property had an older dwelling of nominal value. The original listing price of \$3,500,000 on July 9, 2008 was reduced to \$2,299,000 nearly one year later.

Land sale #1, at 1 Canfield Crossing, is a 0.399-acre residential lot that sold for \$1,100,000 on April 3, 2008. This property has water frontage on a tidal inlet from the Sound. While it has limited views of the Sound, there are views of the Shorehaven Golf Club course and the marsh.

Land sale #2, at 10 Harbor Bluff Lane, is a 0.08-acre residential lot in a 12-site common interest community. This property has no water frontage but it has views of Wilson Cove across Bluff Avenue. It sold for \$1,600,000 on January 29, 2007.

Fazio, in reaching his determination of value at \$2,925,000, relied on five Norwalk sales. See defendant's Exhibit A.

(1) 5 Rocky Point Road is a 0.15-acre property containing a 2,352-SF colonial-style house with 7 rooms, including 3 bedrooms, and 3 baths. There are waterfront views of the Sound from this property. It sold for \$3,075,000 in June 2008. Fazio adjusted the sale down slightly to \$2,917,500.

(2) 7 Rocky Point Road is the same sale Gold selected. However, the similarity ends there. Fazio listed the house

on this property with a higher gross living area at 4,110 SF and with more rooms than what Gold listed. Specifically, Fazio reported that the house had 11 rooms, including 4 bedrooms, and 3.1 baths. Fazio made a downward adjustment of \$1,024,750 to arrive at an adjusted sale price of \$3,025,250. This is in stark contrast to Gold's adjusted sale price for the same property at \$2,235,513.

(3) 25 South Beach Drive covers 0.10 acres and has water views from across the street. There is a house on the property containing 2,120 SF, with 6 rooms, including 3 bedrooms, and 3 baths. The property was sold in October 2007 for \$2,350,000. Fazio made an upward adjustment of \$579,000 to arrive at an adjusted sale price of \$2,929,000.

(4) 45 Rowayton Avenue is also the same sale Gold selected. The only difference between the two appraisers is that Gold adjusted this sale down almost 30% to a value of \$2,247,500, whereas Fazio adjusted it down \$204,125 (or 6.4%) to a value of \$2,995,875, creating nearly a \$750,000 difference between the appraisers regarding this property's adjusted sale price.

(5) 63 Bluff Avenue covers 0.27 acres with waterfront. There is a 3,567-SF colonial-style house on the property with 11 rooms, including 4 bedrooms, and 3.1 baths. Fazio reported that the house is in superior condition. This property sold in May 2007 for \$3,535,000. Fazio adjusted this sale down by nearly \$700,000 to a sale price of \$2,837,125.

Gold defined his highest and best use for the subject property as a tear down giving no value to the cottage on the subject site. Therefore, Gold eliminated the use of the cost approach and the income approach, relying solely on the sales approach to value the subject site. While Gold's sales reflect his analysis of what he considered to be

comparable sales for the subject, the court finds that Gold's sales are so far removed from being comparable to the subject site that they are not helpful in the determination of value.

Gold does make a more credible point in his appraisal report, see plaintiffs' Exhibit 21, supplemental addendum, p. 2, where he noted "that the Assessor's opinion of market value for subject 0.306 Acre site, as of October 1, 2008, was \$2,582,300. In light of the preceding analysis, it is my opinion that this is high. It is also noted that the Assessor's opinion of market value for the adjacent site to the north at 5 Nylked Terrace, which is larger, with 0.39 Acres, is \$2,275,000. It has similar topographical features and water frontage, except that it does not have the negative impact of the circuitous R.O.W. It is my opinion, then that subject site Assessment is inequitable compared to this adjacent property."

As the court noted in reference to Gold's use of sales that lacked comparability to the subject, Fazio similarly used sales that lacked such comparability.

Both appraisers had a difficult time finding sales that were sufficiently comparable to the subject. Although Gold considered the subject cottage as detrimental to the value of the land, Fazio was of the opinion that, while the cottage was a tear down, it did have some value in its present state that could be used or be rented, as it was on the revaluation date. See 4/4/12 Tr., p. 113. On this basis, Fazio was of the opinion that the

cottage had a depreciated value of \$88,807, as of October 1, 2008. See defendant's Exhibit A, p. 4.

The court agrees with Gold's analysis of the problems with the subject property, namely, the steep drop from Nylked Terrace to the seawall, the rocky ledge, the narrow private street and the need to use an easement across adjacent property to access the lower level of the site. These factors impede the construction of a new dwelling on the site and would add substantially to the cost of construction. In addition, as Gold noted, the real estate market had been in decline from 2006 through the date of valuation.

Considering all of the evidence introduced in this case and the opinions expressed by the appraisers, the court finds a land valuation of \$2,600,000⁶ for the subject, as of October 1, 2008, credible. Given the fact that the subject cottage was in existence on October 1, 2008 and ready for use by the owners and occupied by renters, the court finds Fazio's opinion regarding the subject cottage, having a depreciated value in the amount of \$88,807, credible.

Therefore, the court concludes that the total fair market value of the subject property was \$2,688,807, as of October 1, 2008. Accordingly, judgment may enter in favor of the plaintiffs, sustaining their appeal, without costs to any party.

Arnold W. Aronson
Judge Trial Referee

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See also defendant's Exhibit W, p. 2, plaintiffs' BAA appeal application, on which Mr. Berman listed the value of the property, as of October 1, 2008, to be between \$2,500,000 and \$2,700,000.