

NO. HHB CV 116012214 : STATE OF CONNECTICUT
CHARLES B. CAVINESS, ET AL. : SUPERIOR COURT
v. : JUDICIAL DISTRICT OF
NEW BRITAIN
CITY OF NORWALK : NOVEMBER 28, 2012

Memorandum of Decision

This case is a real estate tax appeal concerning property owned by plaintiffs Charles and Cristina Caviness located at 30 Thomes Street in the Rowayton section of the defendant city of Norwalk (city). The court sustains the appeal in part and concludes that the fair market value of the property on the revaluation date of October 1, 2008 was \$1,555,850.¹

I

The subject property is a 0.482-acre lot improved with a 4,756 square foot residence containing five bedrooms, four and one-half bathrooms, and six other rooms. There is also a partly finished basement, a two-car garage, a wood deck, and an in-ground swimming pool and sauna. The property is located near the Rowayton train station and is slightly more than one mile from the Long Island Sound.

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The appeal was taken for the Grand List of October 1, 2010 and subsequent years.

The plaintiffs purchased the property from a bank out of foreclosure in December, 2010 for \$950,000. The city assessed the property as having a fair market value on October 1, 2008 of \$1,835,200. The plaintiffs appealed to the city board of assessment appeals (BAA), which declined to reduce the assessment. The plaintiffs now appeal to this court.

II

The standards governing a municipal tax appeal are well settled. “Section 12-117a, which allows taxpayers to appeal the decisions of municipal boards of [assessment appeals] to the Superior Court, provide[s] a method by which an owner of property may directly call in question the valuation placed by assessors upon his property. . . . In 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 overvaluation 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. . . .

“Only after the court determines that the taxpayer has met his burden of proving that the assessor’s valuation was excessive and that the refusal of the board of [assessment appeals] to alter the assessment was improper, however, may the court then proceed to the second step in a § 12-117a appeal and exercise its equitable power to grant such relief as to justice and equity appertains. . . . If a taxpayer is found to be aggrieved by the decision of the board of [assessment appeals], the court tries the matter de novo and the ultimate question is the ascertainment of the true and actual value of the applicant’s property.” (Internal quotation marks omitted.) *Breezy Knoll Assn., Inc. v. Morris*, 286 Conn. 766, 775-776, 946 A.2d 215 (2008).²

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General Statutes § 12-117a provides as follows: “Any person, including any lessee of real property whose lease has been recorded as provided in section 47-19 and who is bound under the terms of his lease to pay real property taxes, claiming to be aggrieved by the action of the board of tax review or the board of assessment appeals, as the case may be, in any town or city may, within two months from the date of the mailing of notice of such action, make application, in the nature of an appeal therefrom, with respect to the assessment list for the assessment year commencing October 1, 1989, October 1, 1990, October 1, 1991, October 1, 1992, October 1, 1993, October 1, 1994, or October 1, 1995, and with respect to the assessment list for assessment years thereafter, to the superior court for the judicial district in which such town or city is situated, which shall be accompanied by a citation to such town or city to appear before said court. Such citation shall be signed by the same authority and such appeal shall be returnable at the same time and served and returned in the same manner as is required in case of a summons in a civil action. The authority issuing the citation shall take from the applicant a bond or recognizance to such town or city, with surety, to prosecute the application to effect and

The city's real estate appraiser who testified at trial, Michael Fazio, valued the subject property at \$1,775,000. The city properly concedes that the BAA's valuation of \$1,835,200, therefore, overvalues the plaintiffs' property by \$60,200. Based on these facts, the plaintiffs have standing to take this appeal.

The court turns to the main issue in the case, which is the fair market value of the

to comply with and conform to the orders and decrees of the court in the premises. Any such application shall be a preferred case, to be heard, unless good cause appears to the contrary, at the first session, by the court or by a committee appointed by the court. The pendency of such application shall not suspend an action by such town or city to collect not more than seventy-five per cent of the tax so assessed or not more than ninety per cent of such tax with respect to any real property for which the assessed value is five hundred thousand dollars or more, and upon which such appeal is taken. If, during the pendency of such appeal, a new assessment year begins, the applicant may amend his application as to any matter therein, including an appeal for such new year, which is affected by the inception of such new year and such applicant need not appear before the board of tax review or board of assessment appeals, as the case may be, to make such amendment effective. The court shall have power to grant such relief as to justice and equity appertains, upon such terms and in such manner and form as appear equitable, and, if the application appears to have been made without probable cause, may tax double or triple costs, as the case appears to demand; and, upon all such applications, costs may be taxed at the discretion of the court. If the assessment made by the board of tax review or board of assessment appeals, as the case may be, is reduced by said court, the applicant shall be reimbursed by the town or city for any overpayment of taxes, together with interest and any costs awarded by the court, or, at the applicant's option, shall be granted a tax credit for such overpayment, interest and any costs awarded by the court. Upon motion, said court shall, in event of such overpayment, enter judgment in favor of such applicant and against such city or town for the whole amount of such overpayment, together with interest and any costs awarded by the court. The amount to which the assessment is so reduced shall be the assessed value of such property on the grand lists for succeeding years until the tax assessor finds that the value of the applicant's property has increased or decreased."

subject property. The trial focused on the competing opinions of two real estate appraisers: Michael McGuire for the plaintiffs and Michael Fazio for the city. Both appraisers had considerable experience and expertise. McGuire valued the property at \$1,200,000. On the whole, however, the court favors Fazio's approach and testimony, which the court finds to be somewhat more formal and businesslike. Further, while McGuire used only the comparable sales method of determining value, Fazio used both the comparable sales and the cost approach and reached consistent conclusions. Finally, the net and gross adjustments that Fazio had to make in his comparables were much smaller than the ones made by McGuire, making Fazio's comparables more reliable indicators of the value of the plaintiffs' home. Thus, the court will use Fazio's report as a starting point for analysis.

The court nonetheless would make two adjustments to Fazio's appraisal. First, Fazio described the subject property as having 5,678 square feet above grade gross living area, whereas the town's own field card listed it as having 4,756 square feet.³ This is a differential of 922 square feet. Fazio adjusted the above grade gross living areas of his comparables with a figure of \$75 per square foot of differential value. Using this figure and multiplying it by 922, the net adjustment to the value of the subject property is a

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The 4,756 square feet is the sum of 2,224 square feet for the second floor, 1,536 square feet for the first floor, and 996 square feet for what is described as the "3/4 story," which is apparently a reference to the garage apartment.

deduction of \$69,150.⁴

Second, Fazio made no adjustment for the design, quality of construction, and condition of the interior of the house. McGuire generally made a \$300,000 adjustment in the value of the comparables because the interior of the subject property was prefabricated rather than “stick built,” which in turn resulted in the need for repairs and replacements inside and a general appearance that was “boxy.” Although the court finds some of McGuire’s testimony overly subjective, the court agrees that Fazio’s appraisal should include a \$150,000 deduction for the interior of the house.

The plaintiffs also argue that Fazio should have made greater deductions from at least one comparable sold in 2007 based on the rapid decline in the housing market between that time and the date of valuation of the subject property. The court finds that both appraisers took arguably valid approaches to this matter and declines to order any further adjustment. The court was also not persuaded, contrary to the plaintiffs’ contention, that the location of the subject property was sufficiently inferior to those of the comparables to merit the large deductions used by McGuire in his appraisal.

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Contrary to plaintiffs’ suggestion, Fazio’s miscalculation of square footage does not worsen most of his net and gross percent adjustments. Three of the four comparables used by Fazio had square footage under 4,756 square feet. For those homes, the use of 4,756 instead of 5,678 square feet for the subject property would reduce, rather than increase, the percentage adjustment necessary to make them equivalent to the subject property.

In sum, the court reduces Fazio's appraisal of \$1,775,000 by the sum of \$69,150 and \$150,000, or \$219,150, for a net valuation of \$1,555,850.

III

The appeal is sustained in part, and the court values the subject property at \$1,555,850 as of the revaluation date of October 1, 2008. Pursuant to General Statutes § 12-117a, the city shall provide the plaintiffs with a reimbursement or credit for the overpayment of taxes plus interest. The court declines to award costs to either party. Judgment may enter accordingly.

It is so ordered.

Carl J. Schuman
Judge, Superior Court