NO. CV 08 4017412S	:	SUPERIOR COURT
FELIPE MULERO	:	JUDICIAL DISTRICT OF NEW BRITAIN
V.	:	
TOWN OF WETHERSFIELD	:	SEPTEMBER 22, 2009

MEMORANDUM OF DECISION

Felipe Mulero (Mulero), as a pro se plaintiff, brings this property tax appeal claiming that the assessor for the town of Wethersfield (town) overvalued, and therefore, overassessed his property located at 746 Prospect Street for the revaluation years of October 1, 2003 and October 1, 2008.

The town's assessor valued the subject premises, as of the October 1, 2003 and October 1, 2008 Grand Lists, at $272,700.

The subject property, as part of an unsubdivided tract of land, was purchased by Premier Building and Development, Inc. (Premier Building) on July 23, 2003 for $400,000. Premier Building received approval for a three-lot subdivision on May 6, 2003 from the town's planning and zoning commission. On October 26, 2004, the plaintiff purchased from Premier Building the house located on one of the lots identified as 746 Prospect Street. Although the town and the town's appraiser, Susan M. Mulready (Mulready), listed the purchase price of the subject at $299,000, in fact, the plaintiff paid

$241,457 for the purchase. Mulready described the subject property as follows:

"The site is improved with a single-family, colonial-style home with a brick veneer built in 1941. *The property owner has not responded to a request for an interior inspection so information below was obtained from municipal records.* There is a two-car garage on the west side of the house. The roof of the house is gable with asphalt shingles.

"The interior of the home contains seven rooms, four bedrooms and three full baths. There is one chimney with a fireplace. The fuel to heat the house is oil and the type of heat is hot water baseboard. The house has central air conditioning. The walls are plaster. The floors on both the first and second floor are hardwood with some tile. There is a one-story addition between the house and the garage with brick exterior walls and asphalt shingle roof. There is no basement under this space. There is also a one-story addition on the rear of the house with 744 square feet of living space. This area has vinyl siding and asphalt shingle roof. There is no basement under this space. There is a total of 2,300 square feet of living space. There is also 298 square feet of finished living space in the basement. There is an enclosed porch on the rear of the garage with 160 square feet of space.

"According to municipal records, the house was remodeled in 1975. In 2003, when the house and land was sold to Premier Building . . . for a three-lot subdivision, an addition on the side of the house was removed. This occurred before October 1, 2003, the

date of the revaluation."

(Emphasis in original.) (Defendant's Exhibit H, p. 22.)

In contrast to Mulready's description, which was obtained solely from the municipal records, the plaintiff complains that, on October 1, 2003 and continuing thereafter, there were substantial deficiencies in the house and that the assessor did not recognize these deficiencies. They included drainage problems stemming from the builder subdividing the property into three lots and changing the elevation of the land; an inoperable heating and air conditioning system; a living room containing a fireplace demolished in May 2003; and an unuseable basement due to the existence of mold and mildew.

In Mulready's opinion, the fair market value of the subject property, as of October 1, 2003, was $285,200. Her appraisal report, defendant's Exhibit H, is in conflict with the condition of the subject property as obtained by her from the municipal records. Mulready relied on the municipal records because the plaintiff refused to permit an interior inspection of his house. The town made numerous attempts to obtain the plaintiff's permission to inspect the house. Although this court ordered the interior inspection of the subject premises by the town's assessor and appraiser, the plaintiff continued to raise objections that, for the most part, were arbitrary.

A basic reason for the plaintiff's refusal to allow the interior inspection of his

house was his distrust of the assessor. As an example, the plaintiff agreed to permit an inspection by the assessor and appraiser, but only by peeking through the window to confirm what the plaintiff considered an important part of this appeal, the lack of a fireplace that the assessor listed as an improvement. The plaintiff had a belief, which appears to be unfounded, that town officials have a personal vendetta against him. He claims that the town is responsible for all of his home's construction deficiencies because town officials did not proceed with due diligence to require the builder to correct the deficiencies. Although this action is a tax appeal dealing only with valuation, there is no credible evidence introduced in the trial to support such a claim other than the plaintiff's assertions.

In this tax appeal, the plaintiff is his own worst enemy. He went to extremes to prevent the assessor from inspecting the interior of his house and yet complains that the assessor did not take into consideration the deficiencies in his house when determining its value as of October 1, 2003. The plaintiff also contends that the town officials were aware of a mental condition that he has which causes him to be distrustful of them. Again, although not relevant to the issue in this case, there is no credible evidence to support this distrust.

With the assessor's valuation of the subject property, as of October 1, 2003, at $272,700 and the town's appraiser's opinion of value at $285,200 and recognizing that

the plaintiff prevented the assessor and the town's appraiser from inspecting the interior of the subject premises, the plaintiff is in no position to argue that he has been aggrieved by the assessor's action.

In a General Statutes § 12-117a tax appeal, it is the burden of the taxpayer challenging the decision of the assessor and the board of assessment appeals to show that he has, "in fact, been aggrieved by the action of the board in that his property has been overassessed. . . ." J.C. Penney Corp. v. Manchester, 291 Conn. 838, 844, 970 A.2d 704 (2009).

Although J.C. Penney involved the valuation of personal property, the concept expressed in that decision appears to be appropriate in the present action, namely, that each taxpayer has a personal obligation to cooperate with the assessor in the valuation of his or her property for tax purposes and to furnish such facts upon which the valuation may be based. See, e.g., id., 845 (if the taxpayer fails to cooperate with the assessor, "the taxpayer cannot justly complain if the assessors, acting in good faith, make an error in judgment in listing and valuing his property. . . .").

This failure to permit the assessor to inspect the subject property, for purposes of the revaluation process, flies in the face of General Statutes § 12-62 (b) (3) that provides for an assessor to periodically make a full inspection of real property. "Full inspection", as defined in § 12-62 (a) (3), "means to measure or verify the exterior dimensions of a

building or structure and to enter and examine the interior of such building or structure in order to observe and record or verify the characteristics and conditions thereof, provided permission to enter such interior is granted by the property owner or an adult occupant[.]"

Accordingly, as to the October 1, 2003 Grand List, because the plaintiff has failed to sustain his burden of proving that the assessor overassessed his property, the plaintiff is not entitled to relief. Therefore, as to the October 1, 2003 revaluation, the plaintiff's appeal is hereby dismissed.

As to the Grand List of October 1, 2008, the plaintiff's appraiser, Joseph A. Borcynski (Borcynski), selected six comparables to arrive at a fair market value of $215,000. A key factor in the adjustments made to five of the six comparables related to the issue raised by the plaintiff in regard to the subject's interior condition. Borcynski made a negative $67,600 adjustment for sales one through five and a negative $35,000 adjustment for sale six.

In his appraisal report, Borcynski noted as follows: "The basement is currently finished. However, the adjustments process, above, has been developed as if there were no basement finish. This is because, in order to remedy the mold and mildew problem at the subject, the basement finish will have to be removed . . . in order to remedy the problem. In essence, then, the basement finish must come out, and therefore no finished basement will exist." (Plaintiff's Exhibit 16, p. 2.)

Borcynski further noted that "[s]ix sales have been used to developed the sales comparison approach. The results are fairly consistent, and the estimate of value is a reliable one based on sales of good quality and quantity. The sales that took place after 10-1-08 were being negotiated as of the value date (10-1-08), as are a good reflection of current market value for the subject property." Id. Borcynski also commented that "[t]here are six sales altogether, and the average indicated value of the six sales is $214,017. Indicated values range from $197,000 to $236,000, roughly. The sales, generally, are similar to the subject in quality, location, living area and overall amenity. The subject property is considered to have an 'unfinished' basement, because the present basement finish must be removed to implement the mold, mildew and drainage remediation planned for the subject property." (Id., p. 3.)

As to the plaintiff's appeal of the assessor's valuation for the Grand List of October 1, 2008, the town introduced no appraiser nor any other evidence as to value. The town did introduce into evidence, the town's assessment card showing a total appraised parcel value of $272,700 containing a notation that a portion of the house was removed with an adjustment of square footage as of 2007. See defendant's Exhibit D. This same exhibit also noted in the "Building Sub-Area Summary" section that there is a finished basement with a value of $63,678 and in the "Building Extra Features" section that there is a fireplace with a value of $2,900. This is in contrast with Borcynski's finding of no

fireplace and a basement needing remediation from mildew and mold.

Although the court recognizes that the town is not obligated to defend its determination of the fair market value of the subject premises, see Ireland v. Wethersfield 242 Conn. 550, 558-59, 698 A.2d 888 (1997), the plaintiff introduced the appraisal report and testimony of Borcynski presenting a credible picture of the subject property, as of October 1, 2008, and the comparable sales supporting his opinion of the subject's value at $215,000. Based upon the credibility of Borcynski's opinion of value, as expressed in his testimony and appraisal report, the plaintiff's property, as of October 1, 2008, had a fair market value of $215,000. Accordingly, as to the Grand List of October 1, 2008, the plaintiff's appeal is sustained without costs to either party.

Arnold W. Aronson
Judge Trial Referee