NO. CV 09 5014848S	:	SUPERIOR COURT
GENE KASICA	:	JUDICIAL DISTRICT OF
	:	
v.	:	NEW BRITAIN
TOWN OF COLUMBIA	:	OCTOBER 6, 2011
NO. CV 10 6006117S	:	SUPERIOR COURT
GENE KASICA	:	JUDICIAL DISTRICT OF
	:	
v.	:	NEW BRITAIN
TOWN OF COLUMBIA	:	OCTOBER 6, 2011

MEMORANDUM OF DECISION

The plaintiff, Gene Kasica (Kasica), a self-represented party, owns 186 acres of land with 23 acres located in the town of Hebron and 163 acres located in the town of Columbia. This tax appeal concerns only the property located in Columbia. The plaintiff commenced construction of a house at 213 Mill Stream Road on a 3.44-acre lot located within the Columbia portion of the plaintiff's property.

On the revaluation date of October 1, 2006, Columbia's assessor determined that 163 acres of land in Columbia, which was classified as forest land pursuant to P.A. 490[1],

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[1] See General Statutes § 12-107a, which provides as follows: "It is hereby declared (1) that it is in the public interest to encourage the preservation of farm land, forest land, open

had an assessed value of $21,680. See plaintiff's Exhibits 1, 12 and 13. As of October 1, 2008 and 2009, the assessor determined that the assessed value of the forest land was $21,220.[2] See plaintiff's Exhibits 12 and 13.

On the Grand List of October 1, 2008, the Columbia assessor valued the 3.44-acre lot[3] at $255,000 (assessed value of $178,500). As of the Grand List of October 1, 2008, the subject land was improved with a partially-constructed, three-story, plantation-style house. The assessor determined that the improvements were 35% complete as of October

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space land and maritime heritage land in order to maintain a readily available source of food and farm products close to the metropolitan areas of the state, to conserve the state's natural resources and to provide for the welfare and happiness of the inhabitants of the state, (2) that it is in the public interest to prevent the forced conversion of farm land, forest land, open space land and maritime heritage land to more intensive uses as the result of economic pressures caused by the assessment thereof for purposes of property taxation at values incompatible with their preservation as such farm land, forest land, open space land and maritime heritage land, and (3) that the necessity in the public interest of the enactment of the provisions of sections 12-107b to 12-107e, inclusive, 12-107g and 12-504f is a matter of legislative determination."

[2] The parties do not contest the forest land assessments.

[3] As noted by the defendant on p. 2 of its brief, the building lot was taken out of the P.A. 490 designation in 2007, when the assessor considered it to be a "developable lot" but not yet developed. However, the assessor did not declassify the 3.44-acre lot until November 29, 2007, approximately one year following the revaluation date. See plaintiff's Exhibit 8. See General Statutes § 12-107d (e), which provides as follows: "Upon termination of classification as forest land, the assessor of the municipality in which the land is located shall issue a notice of cancellation and provide a copy of such notice to the owner of the land and to the office of the assessor of any other municipality in which the owner's land is classified as forest land."

1, 2008 and valued the improvements at $569,500 (which includes the value of an elevator). See plaintiff's Exhibit 12. The assessor determined the improvements were 40% complete as of October 1, 2009 and valued the improvements at $601,600 (which includes the value of an elevator). See plaintiff's Exhibit 13.

The plaintiff appealed the assessor's valuation on the Grand List of October 1, 2008 to the board of assessment appeals (BAA) which denied the plaintiff's appeal. Pursuant to General Statutes § 12-117a, the plaintiff then appealed the BAA's denial to the Superior Court for the judicial district of Tolland at Rockville[4] claiming, in ¶ 4 of his May 22, 2009 complaint, that "[t]he valuation of the property placed thereon was not that percentage of its true and actual value, but was grossly excessive, disproportional and unlawful."[5]

The plaintiff brought a second appeal for the Grand List of October 1, 2009 in three counts and alleged in count one that the "valuation of the property placed thereon by the Defendant was not that percentage of its true and actual value, but was grossly excessive, disproportional and unlawful." In count two, the plaintiff alleged that the

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[4] These tax appeals were fully transferred to the Tax Session in New Britain.

[5] The plaintiff sought to amend his complaint (Entry #108) as follows: count one - violation pursuant to § 12-62a; count two - violation pursuant to § 12-53a; and count three, violation pursuant to § 12-119. The court sustained the defendant's objection to the motion to amend. See Entry #109.01.

"[d]efendant violated C.G.S. [§] 12-53a, by taxing the incomplete new construction on the Property during the 2008 assessment year." In count three, the plaintiff alleged that, pursuant to General Statutes § 12-119, the assessor computed an assessment that "was manifestly excessive and could not have been arrived at except by disregarding the provisions of C.G.S. [§] 12-53a."

Procedurally, the plaintiff took two appeals from the action of the assessor making interim assessments on his partially constructed home located on a 3.44-acre lot (from a total tract of 163 acres in Columbia).

The subject land rises up from Millstream Road in Hebron to an elevated site in Columbia, providing a limited southerly view of Williams Pond located about two miles from the subject. When completed, the subject house will have approximately 7,220 square feet (SF). There is also a separate garage intended to contain an additional 2,400 SF of living area, bringing the total expected area of the house at 9,620 SF. See defendant's Exhibit B, pp. 18-19.

The plaintiff's appraiser, Kevin E. Bill (Bill), noted that the building permit issued by Columbia was for the construction of the first floor of the house containing 2,500 SF and a first-floor corridor containing an additional 330 SF. As Bill further noted, "[t]he permit also includes an attic with stairs, unfinished rooms, the basement garage and porches. . . ." (Plaintiff's Exhibit 10, p. 5.) Using only the cost approach to value, it was

Bill's opinion that the subject property, land and improvements (which he accepted were 35% completed, as of October 1, 2008), had a fair market value of $365,000, as of October 1, 2008 (retrospective to October 1, 2006). See plaintiff's Exhibit 10, p. 11. Bill accepted the assessor's assessed value of $21,220 for the forest land. See plaintiff's Exhibit 10, p. 1.

The defendant's appraiser, Robert J. Mulready (Mulready), concluded that, even when giving equal consideration to the sales approach and the cost approach, the subject property had a fair market value, as of October 1, 2008 (retrospective to October 1, 2006), of $810,000. See defendant's Exhibit B, p. 65. Using the sales approach, Mulready valued the subject premises as if fully completed at $1,634,110. Using the cost approach, he valued the subject premises fully completed at $1,730,310. In order to arrive at his final value of $810,000, Mulready concluded that the subject house "as is" was 48.4% completed under the sales approach and was 48% completed under the cost approach.

The main focus of the plaintiff's appeals is that the assessor disregarded General Statutes § 12-53a by increasing the assessment value of the subject, as of the Grand Lists of October 1, 2008 and 2009.

General Statutes § 12-53a provides, in relevant part, as follows:

"(a) Completed new construction of real estate completed after any assessment date shall be liable for the payment of municipal taxes from the date the certificate of

occupancy is issued or the date on which such new construction is first used for the purpose for which same was constructed, whichever is the earlier, prorated for the assessment year in which the new construction is completed. Said prorated tax shall be computed on the basis of the rate of tax applicable with respect to such property, including the applicable rate of tax in any tax district in which such property is subject to tax following completion of such new construction, on the date such property becomes liable for such prorated tax in accordance with this section."

There has been no evidence introduced in this trial that the building inspector for Columbia had ever issued a certificate of occupancy for the subject house, nor has there been any evidence that the plaintiff occupied the subject house as a home. The assessor concluded that the subject house was 35% complete as of October 1, 2008 and 40% complete as of October 1, 2009. Both appraisers, Bill and Mulready, acknowledged that the subject house was less than 50% complete. In plaintiff's Exhibit 28, a house is shown in various stages of construction. This is a very telling example of why a building inspector would be remiss in issuing a certificate of occupancy for the subject.

As noted in Waterbury Hotel Equity, LLC v. Waterbury, 85 Conn. App. 480, 494, 858 A.2d 259 (2004): "The legislature has . . . required revaluations in the interim years between decennial revaluations in very limited circumstances. The only circumstances provided by statute that *require* an assessor to conduct an interim revaluation of a

property are: (1) damage to a property requiring complete demolition or total reconstruction; General Statutes § 12-64a; and (2) new construction completed on the property. General Statutes § 12-53a." (Emphasis in original.)

The assessor, in conducting the subject interim valuation, relies on General Statutes § 12-55 for her authority to value the partial construction on the plaintiff's property as of October 1, 2008 and 2009. See defendant's brief, p. 4.

Subsection (b) of General Statutes § 12-55 provides as follows: "The assessor or board of assessors may increase or decrease the valuation of *any property* as reflected in the last preceding grand list . . . ." (Emphasis added.)

The subject improvements to the property were not in existence as of the revaluation date of October 1, 2006. The assessor added the subject improvements to the assessment rolls as new construction beginning on the Grand List of October 1, 2008. However, the assessor should have been guided by § 12-53a, not § 12-55. Without the issuance of a certificate of occupancy by the building inspector, there was no statutory authority for the assessor to 1) value the subject premises as partially improved and 2) add this amount to the Columbia assessment rolls.

This court adopts the well-reasoned interpretation of § 12-53a in Evans v. Guilford, 2010 Ct. Sup. 2109, 49 CLR 63 (Dec. 29, 2009, *Skolnick, JTR*), regarding the assessor's authority to make interim assessments. In Evans, the court discussed how

"[t]he assessor could not legally increase the assessed value of the property based solely on the new construction because interim assessments for new construction are governed by § 12-53a (a). It is a well-settled principle of [statutory] construction that specific terms covering [a] given subject matter will prevail over general language of . . . another statute which might otherwise prove controlling. Here, the specific terms of § 12-53a (a), governing new construction, prevail over the broad terms of § 12-55. Because an interim assessment under § 12-53a (a) cannot commence until after new construction is completed, the assessor acted outside of his statutory mandate by performing an interim assessment when the property was 69 percent completed." (Citation omitted; internal quotation marks omitted.)[6]

The town argues that § 12-55 (b) refers to "any property," and so the assessor is obligated to place upon the assessment rolls of the town "any property" in existence on the date of revaluation. If, as the town argues, the assessor is required to include "any property" within the town on the date of revaluation, pursuant to § 12-55 (b), without qualification, the language in § 12-53a (a), providing for an interim assessment on new construction, would be superfluous. The fact that the legislature enacted § 12-53a to provide for the assessment of new construction, but only after the completion of the

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[6] As the defendant notes in its brief, p. 9, Evans was vacated by the court and the parties entered into a stipulated judgment. See Evans v. Guilford, Superior Court, judicial district of New Haven, Docket No. CV 064021995 (July 13, 2010, *Skolnick, JTR*).

construction upon issuance of a certificate of occupancy, evinces an intent to carve out an exception to the "any property" language contained in § 12-55 (b). "[S]pecific terms in a statute covering a given subject matter will prevail over the more general language of the same or another statute that otherwise might be controlling. . . . This oft-stated principle reflects the fact that specific statutory language constitutes a more accurate representation of the legislature's purpose or intent than more general pronouncements concerning the same subject matter." Branford v. Santa Barbara, 294 Conn. 803, 813-14, 988 A.2d 221 (2010).

In addition to relying on § 12-55, the town further relies on the holding in Matzul v. Montville, 70 Conn. App. 442, 446-47, 798 A.2d 1002 (2002), that the assessor has broad authority to equalize assessments and to make interim changes in assessments. However, Matzul only addressed existing assessments, not new assessments.

Pursuant to § 12-53a, the assessor's valuations for the Grand Lists of October 1, 2008 and 2009 should have contained only the valuation of the land.[7]

Turning to the valuation of the land, as noted above, the parties do not contest the assessment of the forest land at $21,220.

As to the 3.44 acres attributed to that portion of the 163 acres that was declassified

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[7] This would include the forest land and the declassified 3.44 acres of land committed to the house.

as forest land as of November 29, 2007, Mulready arrived at a fair market value as of October 1, 2008 (retrospective to October 1, 2006) of $175,000. See defendant's Exhibit B, p. 62.

Bill determined that the subject 3.44 acres had a fair market value of $35,000/acre or $120,400. See plaintiff's Exhibit 10, p. 8.

Both Bill and Mulready were of the opinion that the 3.44 acres of declassified land was an approved building lot. See plaintiff's Exhibit 10, p. 1 and defendant's Exhibit B, pp. 28-29. Factually, the 3.44 acres did not make up an approved building lot, but was a declassified portion of the total 186 acres of land. In other words, a purchaser of the 3.44 acres of land acquired, in addition to the 3.44 acres, the balance of the 183-acre tract of forest land in Columbia and Hebron which, at any point in time, could be declassified by the owner. See General Statutes § 12-504h.[8]

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[8] General Statutes § 12-504h provides, in relevant part, as follows: "Any such classification of . . . forest land pursuant to section 12-107d . . . shall be deemed personal to the particular owner who requests and receives such classification and shall not run with the land. Any such land which has been classified by a record owner shall remain so classified without the filing of any new application subsequent to such classification, notwithstanding the provisions of sections 12-107c, 12-107d, 12-107e and section 12-107g, until either of the following shall occur: (1) The use of such land is changed to a use other than that described in the application for the existing classification by said record owner, or (2) such land is sold or transferred by said record owner. Upon the sale or transfer of any such property, the classification of such land as . . . forest land pursuant to section 12-107d . . . shall cease as of the date of sale or transfer. In the event that a change in use of any such property occurs, the provisions of section 12-504e, shall apply in terms of determining the date of change and the classification of such land as . . . forest

Mulready selected four sales as comparable land sales. After making adjustments, the values ranged from $165,000/lot to $179,300/lot, with an average lot price of $175,000. On the other hand, Bill selected three comparable land sales that were in the $30,000/acre range (not the per lot range). Since Bill and Mulready selected land sales involving approved residential lots, it is more credible to rely on a per lot valuation than a per acreage valuation of the subject 3.44 acres.

Mulready's land sale one, a 1.06-acre property located on the shore of the northwest corner of Mono Pond in Columbia, is substantially different from the subject which has a distant, two-mile-away view of Williams Pond. See defendant's Exhibit B, pp. 48-49. Also, Mulready's land sale two, located in a new subdivision in Hebron, with 2.01 acres subject to a conservation easement, is substantially different from the subject 3.44 acres. See id., pp. 51-52. Mulready's land sale three in Hebron and land sale four in Mansfield have similar characteristics to sale two.

Bill's three land sales, one in Colchester and two in Hebron, produce land sales consisting of approved building lots of 2.8 acres, 3.59 acres and 4.4 acres. See plaintiff's Exhibit 10, p. 7. The 2.8-acre lot in Colchester sold for $90,000 on October 12, 2005. The 3.59-acre lot in Hebron sold for $114,250 on March 31, 2006. The third lot of 4.4 acres in Hebron sold for $165,000 on February 3, 2006.

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land pursuant to section 12-107d . . . shall cease as of such date."

In selecting their comparable sales, neither appraiser acknowledged that the declassified 3.44 acres of land was still part of the original tract of 186 acres. It would have been helpful for the appraisers to find comparable sales of building lots which were sold as part of a larger tract. The closest sale that meets this requirement was Mulready's comparable sale one located at 459 Wolf Den Road in Brooklyn, Connecticut. See defendant's Exhibit B, p. 32. Sale one was for a lot on the side of a hill with views of the surrounding area with excess land of over 93 acres. Mulready's sale one contained a fully constructed house with fourteen rooms, five bedrooms and 4.5 bathrooms, central air conditioning, an in-ground pool and a two-story, four-car garage.

Neither appraiser took into consideration that, if the total acreage of the subject, including the declassified 3.44 acres, were sold in an arms-length transaction, the classification of the whole property as forest land would terminate because the classification is personal to the owner of the land. See § 12-504h.

All of the comparables selected by Bill and Mulready, pursuant to the cost approach, were based on land sales of approved building lots, and therefore, excluded the value of the forest land as enhancing the value of the declassified 3.44 acres. See National Amusements, Inc. v. East Windsor, 84 Conn. App. 473, 480-81, 854 A.2d 58 (2004) ("our Supreme Court has expressly indicated that it has never held that a trial court in a de novo appeal pursuant to § 12-117a may determine the value of only a portion of a

taxpayer's property. . . . Accordingly, we conclude that a § 12-117a tax appeal provides a taxpayer a forum to contest the assessment of its property, not portions of that assessment"). (Internal quotation marks omitted.)

Although a tax appeal must be based on the valuation of the whole of the property, it does not mean that in determining the value of the whole, that the court may not consider the valuation of the various components of the whole. As in Abington, LLC v. Avon, 101 Conn. App. 709, 922 A.2d 1148 (2007), the trial court, under circumstances similar to the present action, determined the total value of the property by separately valuing the primary residence, three cottages and barns and approximately 60 acres classified as forest land. As in the present action, the parties in Abington did not challenge the assessor's valuation of the forest land.

The plaintiff in Abington argued that National Amusements, supra, stood for the proposition that it would be improper for a court to consider the various components of the property to determine its overall value. The court in Abington, 101 Conn. App. 716-17, rejected this argument, noting that "[i]t is particularly appropriate in a case such as this that the trial court be permitted to use a flexible approach and not be constrained to adopt one valuation methodology. See Aetna Life Ins. Co. v. Middletown, 77 Conn. App. 21, 33, 822 A.2d 330 ('[t]he court's ultimate goal is to establish the true and actual value of the subject property and . . . it is a question of fact for the trier as to whether the

method used for valuation appears in reason and logic to accomplish a just result. . . .')"

The similarity between the facts in Abington and in the present case is that in Abington, the primary residence was part of the 93-acre tract of land lying partly in the town of Bloomfield and partly in the town of Avon, whereas, in the present case, the 3.44 acres committed to the construction of the house was part of the 186-acre tract lying partly in Hebron and partly in Columbia. Yet, in Abington, the trial court accepted an appraiser's allocation of 3 acres for the primary residence based on the appraiser's analysis of sales of residential homes in the surrounding area.

It is well recognized that in the determination of the fair market value of property, in a tax appeal case, the court weighs "the opinion of the appraisers, the claims of the parties in light of all the circumstances in evidence bearing on value, and [its] own general knowledge of the elements going to establish value." Abington v. Avon, 101 Conn. App. 720.

Mulready, the town's appraiser, arrived at a lot value of $175,000, substantially below the assessor's valuation of $255,000, which apparently was inflated by the assessor's valuation of the partial construction of the improvements on the subject site and the view of the valley and lake that the assessor attributed to the subject site. Given Bill's valuation of the lot at $120,000, it is more credible to use Mulready's lot valuation of $175,000 which would include the benefit of being part of the 186 acres lying partly in

Hebron and Columbia.

Based on the above analysis, the assessor should not have placed an assessment on the partially constructed house until its completion and the issuance of a certificate of occupancy. This leaves only the 3.44 acres of declassified land and the 159.56 acres classified as forest land subject to being assessed for the purpose of taxation.

As discussed above, the assessment of the 159.56 acres classified as forest land remains at $21,220 for the Grand Lists of October 1, 2008 and 2009.

Accordingly, for the 3.44-acre lot committed to the construction of the house, judgment may enter in favor of the plaintiff in both appeals, setting the fair market valuation of the 3.44-acre lot at $175,000 for the Grand Lists of October 1, 2008 and 2009. No costs are awarded to either party.

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Arnold W. Aronson
Judge Trial Referee