NO. CV 11 6011314S	:	SUPERIOR COURT
MICHAEL KRONENBERGER	:	JUDICIAL DISTRICT OF
	:	
v.	:	NEW BRITAIN
TOWN OF HADDAM	:	OCTOBER 26, 2012

MEMORANDUM OF DECISION

The plaintiff, Michael Kronenberger (Kronenberger), is the owner of 47.7 acres of land in the town of Haddam (town) at 103 Nason Road. He brings this tax appeal challenging 1) the town assessor's removal of a forestry exemption from a 2-acre portion of the overall 47.7 acres of land, 2) the accompanying increase in the tax assessment and 3) the imposition of a penalty on the Grand List of October 1, 2010.

The plaintiff purchased the 47.7 acres of land as forest land on April 2, 2008. See plaintiff's Exhibit 1. The parcel is a land-locked, rear lot with an existing, deeded right of way extending to a town road.

In 2008, the town's assessor granted to the plaintiff a forestry exemption pursuant to General Statutes § 12-107d[1] for the 47.7 acres based upon a certification by John

---

[1] General Statutes § 12-107d provides, in relevant part, as follows:

"(b) A certified forester may evaluate land proposed for classification as forest land and attest to the qualifications of such land for classification as forest land, provided such certified forester has satisfactorily completed training by and obtained a certificate from the State Forester . . . related to policies and standards for evaluating land proposed for

O'Donnell (O'Donnell), a certified forester.[2] The assessor thereby valued the subject 47.7 acres at $9,542.86 (assessed value of $6,680).

---

classification as forest land and, in the opinion of the State Forester, the certified forester acts in conformance with such policies and standards.

"(c) An owner of land seeking classification of such land as forest land shall employ a certified forester to examine the land to determine if it conforms to forest stocking, distribution and condition standards established by the State Forester pursuant to subsection (a) of this section. If the certified forester determines that such land conforms to such standards, such forester shall issue a report to the owner of the land pursuant to subsection (g) of this section and retain one copy of the report.

***

"(e) 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 . . . .

"(f) An owner of land may apply for its classification as forest land on any grand list of a municipality by filing a written application for such classification accompanied by a copy of the certified forester's report described in subsection (g) of this section with the assessor thereof not earlier than thirty days before or later than thirty days after the assessment date and, if the assessor determines that the use of such land as forest land has not changed as of a date at or prior to the assessment date such assessor shall classify such land as forest land and include it as such on the grand list, provided in a year in which a revaluation of all real property in accordance with section 12-62 becomes effective such application my be filed not later than ninety days after such assessment date in such year."

[2] See plaintiff's Exhibit 3 containing the plaintiff's application to the assessor for classification of land as forest land and O'Donnell's "Qualified Forester's Report," dated July 11, 2008, qualifying the plaintiff's land as forest land. O'Donnell recommended that the property owner "remove poor growing stock to favor more valuable/healthy growing stock" and further suggested "[thinning] ridge top to encourage low-bush blueberry for benefit of wildlife."

In 2009, the plaintiff purchased a used pre-fabricated structure and erected it within the 47.7 acres. See defendant's Exhibits B and C. The plaintiff refers to the structure as a tool shed in which he stores his chain saw and various other tools.[3] The assessor refers to the structure as a cabin.

Merriam-Webster's Collegiate Dictionary (10th ed.), p. 158, defines "cabin" as "a small one-story dwelling usu. of simple construction." The dictionary, p. 1078, defines "shed" as "a slight structure built for shelter or storage[.]" Clearly, a shed is not a dwelling under the dictionary definitions.

The structure itself is a 12 x 12 foot pre-fabricated structure placed on a concrete slab which rests on a ledge. The structure has a door and windows on the front and sides. There is no running water, electricity or septic system. The plaintiff moved the used pre-fabricated structure onto his land without first obtaining a building permit. Subsequently, on June 7, 2010, the plaintiff obtained from the building inspector a "certificate of completion" for the structure. The certificate of completion specifies that the structure cannot be used as a dwelling.[4] The structure is located in an area of natural clearing and is

---

[3] Although the plaintiff referred to the subject structure as a tool shed during his testimony at trial, his application for a zoning permit dated April 27, 2010 refers to a 12 x 12 cabin which "will be called a principal structure." (Defendant's Exhibit E.)

[4] The certificate of completion, signed by the building official and the zoning/wetland official recites, in part, as follows:

approximately 1,200 feet from a town road. For the purpose of clarity, the court will refer to the structure as a shed rather than a cabin since it cannot be used as a dwelling.

As a result of a neighbor's complaint, the assessor in March 2010 investigated the installation of the shed in an area designated as forest land to determine whether the exemption should be revoked. After the assessor inspected the subject property and the shed, the assessor arbitrarily determined that the shed, with two acres of land surrounding it, should be classified as a building lot and stripped of the forestry exemption.

The subject property, as testified by the building inspector, is located in a two-acre residential zone. The assessor considered the two acres surrounding the shed to be a vacant two-acre residential lot even though the owner had neither sought out nor gave the assessor permission to subdivide his land.

On August 5, 2010, the assessor sent the plaintiff a letter that stated:

"According to the State of Connecticut Regulation Concerning Classification of Forest Land, [§] 12-107d-3 (a) (4) (D), 'When residential, commercial or industrial structures are present upon the land, the land . . . shall not include that portion of the land

---

"This is to certify that the above captioned property . . . is hereby approved for use and/or occupancy as indicated below:

"Description: 12 x 12 single-story storage shed with no water or electricity. Does not meet codes for habitable space."

(Plaintiff's Exhibit 4.)

required by local zoning ordinances to be associated with such . . . structures.' Therefore, in accordance with Public Act 490 and the zoning regulations, a 2-acre site will be assessed and will no longer qualify for the benefit of the forestry exemption under P.A. 490. The additional assessment will be added to the 2010 Grand List."
(Plaintiff's Exhibit 5.)

The assessor's August 5, 2010 letter further stated as follows:

"[B]y authority of . . . General Statutes § 12-504e which states, 'Any land which has been classified by the owner as . . . forest land . . . if changed by him, within a period of ten years of his acquisition of title . . . shall be subject to . . . conveyance tax . . . at the time he makes such change in use.' Therefore, that portion of land now being 'declassified' is subject to a penalty. The penalty is $7,920.00 . . . and should be payable to the town . . . ." Id.

The assessor applied an 8% penalty to a fair market value of $99,000 for the declassified portion of the subject land. Id. The assessor also assigned fair market valuations, for assessment purposes, as follows: outbuildings: $3,310; forest land: $9,140; vacant lot $99,000, for a total of $111,450. Id.

The plaintiff appealed the assessor's revocation of the forest land exemption, the determination of new valuations and the penalty to the town's board of assessment

appeals (BAA) on February 17, 2011. The BAA denied the plaintiff's appeal.[5] See plaintiff's Exhibit 6.

At the plaintiff's request, Forester O'Donnell issued a letter (dated March 30, 2012) to the plaintiff's attorney with the following comment:

"My review of [the] P.A. 490 law, the Town of Haddam Zoning Definitions and a site inspection indicate, in my opinion, that the structure erected by Mr. Kronenberger does not qualify as Residential, Commercial or Industrial as stated in P.A. 490.

"Section 12-107d-3 stated as follows:

"'When residential, commercial or industrial structures are present upon the land, the land proposed for forest land classification shall not include that portion of land required by local zoning ordinances to be associated with such residential, commercial or industrial structures.'" (Plaintiff's Exhibit 7.)

O'Donnell testified at trial that, in his opinion, the plaintiff's land should still be classified as forest land.

The issue here is whether the placement of a shed that is not used for a dwelling, or for industrial or commercial purposes, on land classified by a state forester as forest

---

[5] See General Statutes § 12-107d (j), providing that "[a]n owner of land aggrieved by the denial of any application to the assessor of a municipality for classification of land as forest land shall have the same rights and remedies for appeal and relief as are provided in the general statutes for taxpayers claiming to be aggrieved by the doings of assessors or boards of assessment appeals."

land, can be sufficient grounds for an assessor to terminate the forest land classification.

In the present action, the assessor made the determination that there was an essential change in the character of the forest land that affected its use as forest land. The plaintiff challenges the assessor's authority to make the determination that the erection of the shed on the plaintiff's property was sufficient reason for the assessor to terminate the forestry designation. It is important, therefore, to examine the statutes allowing the classification and declassification of forest land and who is authorized by statute to make this determination.

The legislature, in setting up the classification of environmentally-protected land, created separate statutory provisions, as noted in § 12-504h, to provide for the classification of farm land pursuant to § 12-107c, forest land pursuant to § 12-107d, open space land pursuant to § 12-107e and maritime heritage land pursuant to § 12-107g.

As an example, while the classification of open space land and farm land is determined by the municipality's assessor, the classification of forest land, pursuant to § 12-107d, is performed by the state forester.[6]

---

[6] See Carmel Hollow Associates Ltd. Partnership v. Bethlehem, 269 Conn. 120, 134, 848 A.2d 451 (2004): "[I]f the state forester cancels the forest land designation because the property no longer qualifies, the assessor may deny the owner's application to classify the property as forest land. If the state forester does not cancel the forest land designation, the assessor must continue to classify the property as forest land pursuant to § 12-107d (c). The statutory scheme does not, and need not, specifically identify all of those officials, including the town assessor, *who may not declassify property as forest land*, because the

In the legislative scheme for classifying land as forest land for the purpose of lowering the valuation of the land for tax purposes, there is a two-step process for the property owner. First, the property owner must engage a forester certified by the state of Connecticut to examine the land and determine if it conforms to forest stocking, distribution and condition standards established by the state forester. See § 12-107d (c).

Upon the forester classifying the property owner's land as forest land, the property owner files an application with the assessor for classification of the land as forest land on the municipality's grand list pursuant to § 12-107d (f).

Section 12-107d (g) describes the application process as follows: "An application to an assessor for classification of land as forest land shall be made upon a form prescribed by such assessor and approved by the Commissioner of Environmental Protection and shall set forth a description of the land and the date of the issuance of the certified forester's report and a statement of the potential liability for tax under the provisions of sections 12-504a to 12-504e, inclusive."

Section 12-107d (f) further provides that "if the assessor determines that the use of such land as forest land has not changed as of a date at or prior to the assessment date,

---

statutory scheme affirmatively provides that the state forester is the only government official authorized to designate property as forest land and that property so designated *'shall'* be classified as forest land by the town assessor." (Emphasis in original.)

such assessor shall classify such land as forest land and include it as such on the grand list . . . ."

The legislative scheme for terminating a forest land classification is contained in § 12-504h, which provides two circumstances: "(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."

General Statutes § 12-504e provides as follows:

"Any land which has been classified by the owner as . . . forest land pursuant to [§] 12-107d . . . if changed by him, within a period of ten years of his acquisition of title, to use other than . . . forest land . . . shall be subject to . . . conveyance tax as if there had been an actual conveyance by him, as provided in [§§] 12-504a and 12-504b, at the time he makes such change in use. For the purposes of this section: (1) The value of any such property shall be the fair market value thereof as determined by the assessor in conjunction with the most recent revaluation, and (2) the date used for purposes of determining such tax shall be the date on which the use of such property is changed, or the date on which the assessor becomes aware of a change in use of such property, whichever occurs first."

In the present case, the assessor's only reason for making the change in the classification of the subject two-acre parcel of land out of the total 47.7 acres was that a

structure had been installed on land previously classified as forest land which the assessor believed converted the surrounding two acres into a residential use.[7]

As discussed above, Forester O'Donnell opined that he did not believe that the shed fit the definitions under P.A. 490 (which would render the shed subject to local zoning regulations). O'Donnell emphasized that the shed was "not a residential structure as there is no electrical service, running water or sewer/septic present. It cannot be interpreted as commercial or industrial as no business is taking place and nothing is being manufactured." (Plaintiff's Exhibit 7.)

An issue arises on who is the proper person to make the determination of whether the shed caused the loss of the forestry classification for the subject two acres. If the determination by the assessor relates to the classification of the land as forest land, this determination must be made by the forester. See Carmel Hollow Associates Ltd. Partnership v. Bethlehem, supra, 269 Conn. 134. However, the issue of the structure itself does not involve the classification of forest land. The application of the town's zoning regulations is then at issue. See § 12-107d-3 (a) (4) (D) of the regulations: "When residential, commercial or industrial structures are present upon the land, the land proposed for forest land classification shall not include that portion of the land required by local zoning ordinances to be associated with such residential, commercial or

---

[7] See plaintiff's Exhibit 5.

industrial structures." (Defendant's Exhibit H.)

When the property owner makes use of his or her land inconsistent with the forest land designation, the legislature has provided that such use of the land shall be made by the assessor as required by § 12-504h and the town's zoning regulations, not by the state forester. In this regard, Forester O'Donnell's opinion (as contained in his letter, plaintiff's Exhibit 7) that the shed is not a residence, is beyond his expertise as a forester. The forester is only authorized to express his expert opinion as to the classification of land as forestry land, not to interpret the town's zoning ordinances.

The parties are caught between our statutes requiring the forester to make the determination whether land qualifies for a forest land designation and the ability of the assessor to change the forest land designation by deciding whether the use of a structure located on land previously designated by the forester as forest land is a residence.

Under the facts in this case, it is clear that the shed is not a residence as that word is used in § 12-107d-3 of the regulations. The term "residence" is not defined in the town's zoning regulations. See defendant's Exhibit A, § 3 (definitions).

The term "dwelling unit" is defined in the town's regulations as "[o]ne or more rooms arranged for the use of one family living together as a single habitable unit, with cooking, living, sanitary and sleeping facilities." Id.

"Residence" is defined in Merriam-Webster's Collegiate Dictionary (10th ed.), p.

996, as "the place where one actually lives . . ." and as "a building used as a home."

"Dwell" is defined as "to live as a resident." Id., 361. "Dwelling" is defined as "a shelter (as a house) in which people live." Id.

There are no facts in evidence for the assessor to interpret the town's zoning regulations as qualifying the subject shed as a "residence" pursuant to § 12-107d-3 of the regulations. Under these circumstances, the assessor had no authority to terminate the forester's classification of forest land from two acres out of the plaintiff's total acreage of 47.7 acres designated as forest land.

Accordingly, the court finds that the plaintiff has sustained his burden of showing that the assessor had no authority (1) to declassify two acres of the total 47.7 acres of land designated as forest land, (2) to increase the tax assessment of such property and, (3) to impose a penalty on the plaintiff pursuant to § 12-504h.[8] Therefore, judgment may enter in favor of the plaintiff, sustaining his appeal, without costs to either party.

_____

Arnold W. Aronson
Judge Trial Referee

---

[8] Section 12-504h provides, in relevant part, as follows: "In the event that a change in use of any such property occurs, the provisions of [§] 12-504e, shall apply in terms of determining the date of change and the classification of such land as . . . forest land pursuant to [§] 12-107d . . . shall cease as of such date." See also plaintiff's Exhibit 5 containing the allocation formula for computing P.A. 490 penalty.