NO. HHB CV 15-6029662S	:	STATE OF CONNECTICUT
IMPERIAL DEVELOPMENT, LLC	:	SUPERIOR COURT
v.	:	JUDICIAL DISTRICT OF NEW BRITAIN
TOWN OF COVENTRY	:	APRIL 1, 2016

Memorandum of Decision

Plaintiff Imperial Development, LLC appeals from the decision of the board of assessment appeals of the defendant town of Coventry (town) approving the removal of the plaintiff's property from its classification as forest land. The court decides that the property should remain classified as forest land.

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JUDICIAL DISTRICT OF
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I

After a court trial, the court finds the following facts. The plaintiff is a limited liability corporation wholly owned by Nathan Primus. Primus's family owned approximately 260 acres of property in the town. Two sections of the property, referred to as Grant Hill Estates Section 1, containing twenty-five lots, and Grant Hill Estates Section 2, containing thirty-three lots, received subdivision approval from the town in 2002.

The plaintiff corporation purchased these two sections in 2005. At about that time, the town assessor first attempted to reclassify the two sections, which apparently had previously been classified as forest land. A perennial dispute between the plaintiff and the town arose concerning the property's proper classification. In 2011, a certified forester retained by the plaintiff filed a report with the assessor attesting to the qualification of the property as forest land. The parties resolved their disputes through the 2013 tax year.

In the intervening years, the plaintiff built four roads through the two sections. The

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plaintiff also posted a performance bond with the town for the completion of the road construction. The plaintiff marketed and sold approximately twenty-one of the lots in section 1, leaving four in its ownership for purposes of the 2014 and 2015 grand lists.[1] The plaintiff has also apparently sold nineteen of the lots in section 2, leaving fourteen of the lots in its ownership. The plaintiff has not cleared these remaining eighteen lots, which remained covered with trees.

In December, 2014, the town assessor advised the plaintiff by letter that the town had removed the forest land classification from the eighteen remaining lots for purposes of the October 1, 2014 grand list. The assessor cited the fact that the plaintiff had "issued a performance bond and [was] now able to market and sell the . . . properties." (Exhibit 10.)[2] The plaintiff appealed to the board of assessment appeals, which denied the relief sought.

The plaintiff then filed this appeal. In its amended appeal, the plaintiff alleges that the town improperly removed all eighteen lots from forest land classification for both the October 1, 2014 and the October 1, 2015 grand list. The appeal claims that the change in classification has resulted in a change of assessment from generally $100 or $200 per lot to $48,000 to $80,000 per lot. The plaintiff alleges that this assessment is "manifestly excessive and could not have been arrived at except by disregarding the provisions of law" and seeks relief under General Statutes §§ 12-117a and 12-119.

II

In a statutory "Declaration of Policy," the legislature has stated the following: "It is hereby

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[1]As of the time of trial, the plaintiff had sold another lot in section 1. That fact will not, however, affect the 2014 and 2015 grand lists.

[2]Other portions of the plaintiff's property apparently remain classified as forest land and are not at issue here.

declared (1) that it is in the public interest to encourage the preservation of farm land, forest land, open 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." General Statutes § 12-107a.

Pursuant to this policy, the legislature has enacted a comprehensive scheme for the designation and taxation of forest land and the other special categories of land.[3] The central element of this scheme is that town assessors must assess forest land at a much lower rate than unclassified property. Thus, pursuant to General Statutes § 12-63 (a), "[t]he present true and actual value of land classified as . . . forest land . . . or as open space land pursuant to section

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[3]General Statutes § 12-107b (2) defines "forest land" as: "any tract or tracts of land aggregating twenty-five acres or more in area bearing tree growth that conforms to the forest stocking, distribution and condition standards established by the State Forester pursuant to subsection (a) of section 12-107d, and consisting of (A) one tract of land of twenty-five or more contiguous acres, which acres may be in contiguous municipalities, (B) two or more tracts of land aggregating twenty-five acres or more in which no single component tract shall consist of less than ten acres, or (C) any tract of land which is contiguous to a tract owned by the same owner and has been classified as forest land pursuant to this section . . . ."

12–107e . . . shall be based upon its current use without regard to neighborhood land use of a more intensive nature. . . ." In contrast, § 12–63(a) also provides that "[t]he present true and actual value of all other property shall be deemed by all assessors and boards of assessment appeals to be the fair market value thereof. . . ." See *Griswold Airport, Inc. v. Madison,* 289 Conn. 723, 730 n.11, 961 A.2d 338 (2008).

In *Carmel Hollow Associates Ltd. Partnership v. Bethlehem,* 269 Conn. 120, 848 A.2d 451 (2004), our Supreme Court held, under a prior version of General Statutes § 12-107d, that a town assessor may not deny an application to classify newly subdivided land that the state forester has designated as forest land solely on the basis of the assessor's determination that the use of the land has changed. At about the time of this decision, the legislature enacted Public Acts 2004, No. 04-115, section 3 of which amended § 12-107d and substantially changed the procedures for the classification of forest land. The current version of § 12-107d provides in subsection (f) for the following procedure: "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 may be filed not later than ninety days after

such assessment date in such year." General Statutes §12-107d (f).[4] Thus, under the current system, if the property owner files an application accompanied by a report of a certified forester determining that the property conforms to the standards for forest land 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 . . . ." Based on the negative inferences of this phrase, the new statutory scheme, unlike the scheme in *Carmel Hollow,* allows the assessor to change a classification of forest land if the assessor determines that the use of the land has changed prior to the assessment date. See also General Statutes § 12-504h.[5]

Whether that use has changed is the central question in this case. The town agrees that the court tries the case de novo. (Defendant's brief, p. 7.) Therefore, the court must reach its own

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[4]Subsection (g) of the statute provides in pertinent part as follows: "A report issued by a certified forester pursuant to subsection (c) of this section shall be on a form prescribed by the State Forester and shall set forth a description of the land, a description of the forest growth upon the land, a description of forest management activities recommended to be undertaken to maintain the land in a state of proper forest condition and such other information as the State Forester may require as measures of forest stocking, distribution and condition and shall include the name, address and certificate number of the certified forester and a signed, sworn statement that the certified forester has determined that the land proposed for classification conforms to the standards of forest stocking, distribution and condition established by the State Forester." General Statutes § 12-107d (g).

[5]Section 12-504h states in pertinent part: "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 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."

conclusion without necessarily giving deference to the assessor's judgment. See *United Technologies Corp. v. East Windsor,* 262 Conn. 11, 22-23, 807 A.2d 955 (2002).

Since the time in 2011 that the forester filed a certificate with the assessor attesting to the qualification of the property as forest land, the plaintiff has completed the construction of four roads through the subdivision, posted a performance bond for the completion of the road work, and marketed some of the lots for sale.[6] Based on the evidence at trial, however, there has been no physical change to the lots, which remained uncleared and covered with trees.

Given these facts, our Supreme Court's decision in *Griswold Airport, Inc. v. Madison,* supra, 289 Conn. 723, becomes highly relevant. In *Griswold Airport,* the court addressed analogous provisions concerning open space land. See id., 732-33 (citing General Statutes § 12-107e (b)[7] and § 12-504h.[8]) The plaintiff, which owned a forty-two acre parcel of property classified as open space and used as an airport, contracted to sell the property to a development company contingent upon the company receiving approvals from land use agencies for the construction of condominiums on the property. After the town planning and zoning commission had granted the company a special exception and approved its coastal site plan, but before the

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[6]Although the assessor emphasized the construction of the roads in his trial testimony as the most significant change to the properties, the assessor did not mention that factor in his letter removing the forest land classification except to note that the plaintiff had posted a performance bond. (Exhibit 10.)

[7]General Statutes § 12-107e (b) provides: "The assessor shall determine whether there has been any change in the area designated as an area of open space land upon the plan of development which adversely affects its essential character as an area of open space land and, if the assessor determines that there has been no such change, said assessor shall classify such land as open space land and include it as such on the grand list."

[8]See note 5 supra.

company had obtained all of the necessary permits, the town assessor terminated the property's open space classification.

The Supreme Court held that an assessor should rely on the current or actual use of the property rather than the proposed use. Id., 725-26. Because the plaintiff was still using the property as an airport and for open space, the fact that the contractor had obtained zoning approval to develop the property did not justify a change in its classification. The court relied on the legislative policy, quoted above, favoring preservation of forest, farm, and open space land. Id., 734. The court reasoned: "By requiring property classified as open space to remain taxed as such until its owner actually begins to use it in a contrary fashion or sells it, the statutes ensure that such property, even if ultimately developed, will have remained open space for as long as was practicable. If open space classification were removed at a preliminary stage of development, that removal would only encourage the development to continue at an accelerated pace because the property owner suddenly would be forced to meet a greatly increased tax burden while the land still remained idle. Absent that economic pressure, a proposed project otherwise might be more easily abandoned. We recognize, moreover, the unfairness that could result from premature declassification of open space property solely because of its receipt of zoning approvals. If commencement of the project is delayed, as it apparently was in the present matter, or the project ultimately is not pursued, the landowner will have been subject to a greatly increased tax burden on the basis of never realized potential while, in fact, the essential character of its property remained open space. On the basis of the foregoing analysis, we conclude that the trial court properly determined that the assessor had acted illegally when she terminated the property's open space classification and revalued it on the basis of its approved use as condominium units."

Id., 737-38.

The circumstances here are similar. To be sure, there are perhaps various ways to interpret the phrase "[whether] the use of such land as forest land has not changed" in § 12-107d (f) and various places to locate "forest land" on the spectrum between remote, virgin forest and a fully improved subdivision. The town argues that "[t]he activities that have been undertaken by the owner of the subject property are further along the continuum of development activity that the Court considered in *Griswold* and have changed the essential character of the subject property." (Defendant's brief, p. 12.)

It is true that the plaintiff in the present case fully intends to develop the subject property if it finds willing buyers. However, based on *Griswold Airport*, the court must focus on actual use rather than proposed use. Further, the court must interpret statutes in accordance with public policy. See *Enviro Express, Inc. v. AIU Ins. Co.*, 279 Conn. 194, 202, 901 A.2d 666 (2006). Just as in *Griswold Airport* public policy called for continuing the open space classification despite the owner's contract to sell and the zoning approval for development, here public policy favors continuing to classify the current use of the subject property as forest land despite the plaintiff's marketing efforts and building of roads. It has taken more than a decade to sell and develop about half the lots in the subdivision. At the same rate, the remaining land, if not put under pressure to sell by significantly higher taxation, could remain uncleared forest land for another decade or more. It is also reasonably possible, if the land remains classified as forest land, that the owner will completely abandon the plan for further development. Continuation of the subject property's classification as forest land based on its current use rather than its proposed use furthers the public policy of "[encouraging] the preservation of farm land, forest land, open 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 . . . ." General Statutes § 12-107a (1).

On the other hand, "[i]f [forest land] classification were removed at a preliminary stage of development, that removal would only encourage the development to continue at an accelerated pace because the property owner suddenly would be forced to meet a greatly increased tax burden while the land still remained idle." *Griswold Airport, Inc. v. Madison,* supra, 289 Conn. 737-38. Such an approach runs counter to the public policy "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 . . . ." General Statutes § 12-107a (2). Accordingly, the court concludes that the town erred in denying that the "use of such land as forest land has not changed" under § 12-107d (f) for purposes of the 2014 and 2015 assessments of the subject property.

III

Although the plaintiff's appeal is from the denial of its application for the classification of property as forest land, the underlying claim is that the town wrongfully assessed the property according to its highest and best use and, accordingly, that the resulting valuation was manifestly excessive. See *Carmel Hollow Associates Ltd. Partnership v. Bethlehem,* supra, 269 Conn. 122 n.1. Such a claim, if proven, as it was here, constitutes a cause of action under General Statutes § 12-119. See *Griswold Airport, Inc. v. Madison,* supra, 289 Conn. 738-42.

V

Pursuant to General Statutes § 12-119a, the town shall provide the plaintiff with an appropriate reimbursement or credit for any overpayment plus interest. The court awards costs to the plaintiff.

It is so ordered.

Schuman, J.

Carl J. Schuman
Judge, Superior Court