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NO. HHB CV 12-6028137

SUPERIOR COURT

ALAN M. REZNIK
ELIZABETH KAYE REZNIK

JUDICIAL DISTRICT OF

NEW BRITAIN

v.

CITY OF MILFORD

DECEMBER 11, 2015

MEMORANDUM OF DECISION

This is a real estate tax appeal in which the plaintiffs, Alan M. Reznik and Elizabeth Kaye Reznik (Rezniks) challenge the valuation of their property at 19 Beach Avenue in the city of Milford as determined by the assessor for the city of Milford on the grand list of October 1, 2012 related back to the last revaluation year of October 1, 2011.

On June 11, 2012, the Rezniks purchased 19 Beach Avenue for \$1,825,000. On August 7, 2012, the Rezniks wrote a letter to the city of Milford notifying the city that the purchase price included \$100,000 worth of furniture that was purchased from the sellers. (Plaintiffs' Exhibit 5). The Rezniks informed the city in this letter that the purchase price for the furniture should not be included in the assessment of the house. The assessor denied their request. The Rezniks have not produced any documentation, other than their letter of August 7, 2012, to support their claim that the purchase price for the subject property included the sale of the furniture for \$100,000.

The assessor had previously determined that the fair market value of 19 Beach Avenue, as of October 1, 2011 was \$1,362,900. Subsequently, for the grand list of October 1, 2012, a non-revaluation year, the assessor increased the assessment of the subject property to reflect a fair market valuation of \$1,654,140.

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The assessor's change in valuation of the subject property for the list of October 1, 2012 came about because of the practice of the Milford assessor, in his "watch tower"¹ role, to comply with the provisions of General Statutes § 12-55², which requires an assessor, prior to subscribing to the yearly grand list, to "equalize the assessment of property in the town, if necessary"

In seeking to carry out his "watch tower" role, the Milford assessor made a practice of having the staff in his office examine all real estate transactions that had been recorded in his office where the indicated sale price of the real estate was above or below 10% of market values in the town of Milford. Using this procedure, the staff, seeing that the sale of the subject property by the Rezniks on June 11, 2012 was above 10% of market value, as established by the assessor in the last revaluation year, brought this observation to the assessor's attention. The assessor looked at the Multiple Listing Service (MLS) rating and pictures for the subject when the subject was purchased by the plaintiffs in June of 2012. The assessor was impressed with the MLS listing and the sale price paid by the Rezniks. The assessor wanted to see the justification for the sale of the subject at \$1,825,000 when the assessor's valuation, eight months earlier, was at \$1,362,900.

Concerned about his obligation under § 12-55 to equalize assessments, the assessor sought permission from the Rezniks to inspect the interior of the subject house. The assessor sent the plaintiffs a "discrepancy letter" dated July 27, 2012 (Defendant's Exhibit D) asking for permission to inspect the subject property.³

See *84 Centwy Ltd Partnership v. Board of Tax Review*, 207 Conn. 250, 262, 541 A.2d 478 (1988) "The power to equalize the lists, if necessary, imports a watchtower role for the assessor to correct inequalities, whether too high or too low"

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General Statutes sec. 12-55(b) recites, in pertinent part: "Prior to taking and subscribing to the oath upon the grand list, the assessor . . . shall equalize the assessments of property in the town, if necessary, and make any assessment omitted by mistake or required by law. The assessor . . . my increase or decrease the valuation of any property as reflected in the last-preceding grand list. . . ."

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Defendant's Exhibit D recited that the reason for the request of inspection was that there was a discrepancy between the assessor's records and physical data and the purpose of the inspection was to "verify the accuracy of such discrepancy."

The Rezniks permitted the assessor to inspect the interior of their home on August 7, 2012. Based on this inspection, and noting the improvements to the interior, the assessor increased the grade of the property and therefore the assessment to equalize the valuation process of residential homes in Milford. The assessor changed the interior grade of the subject from grade 9 (very good) to grade 13 (Excellent).

The reason why the assessor reconsidered the subject's October 1, 2011 revaluation was the fact that there were substantial improvements made to the interior of the subject property since the 2006 inspection. These improvements were not recognized until the assessor's inspection of the subject property on August 7, 2012.⁴ The improvements, resulting in the change in grade, caused the assessor to increase the fair market value of the subject to \$1,654,140.⁵

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The improvements consisted of a change of interior wall composition, addition of wood paneling, heating fuel type from oil to gas, hot water system to forced air duct, the bedroom count from four to five and extra fixtures. (See Transcript 61-62). [See Defendant's brief p. 15.]

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See Defendant's Exhibit C "2011 Revaluation - Milford Residential Grading Guide Grade quality assignment in Milford attempts to serve two functions. First, it allows the reviewer to quantify' the characteristics revealed in the quality of the construction of a particular dwelling unit into a component of the valuation process. In so doing, it also becomes a unit of comparison to other dwellings of similar quality construction, so to establish a means by which we can measure equity in the valuation process. Observation of the quality of construction takes into account the quality of the construction materials, both interior and exterior, used at the time of construction and/or during subsequent remodeling and upgrading. It also takes into account the amenities offered, which include but are not limited to, square foot of living area, number of bedrooms and baths, heating and cooling type, fireplaces, and the presence of architectural features and evidence of design, such as symmetry, roof pitch, location and type of windows, doors, fireplace stacks, patios, etc.

"Grade quality assignment is also an integral part of the initial analysis and model calibration that takes place during the development of the cost tables that are used during the revaluation process.

"Grade quality assignment is a critical part of the overall valuation process and the

The complaint of the plaintiffs was that the assessor increased the assessment solely because of the purchase price paid by the plaintiffs. If the sale of the subject was the sole reason for the increase in valuation, the plaintiffs' argument that this is contrary to the provisions of General Statutes § 12-63d⁶ would have merit. However, according to § 12-63d, the change in assessment by the assessor must be solely on the basis of the sale price and not for any other reason. In the present case, the reason for the assessor's upgrading of the subject property was the determination by the assessor, following his inspection of the subject on August 7, 2012, that substantial improvements to the interior of the subject had not been previously noticed and considered.

Recognizing that the assessor has a clear mandate, unrelated to a periodic revaluation, to achieve, administratively, a fair and equal assessment for all taxpayers, the assessor had the authority to conduct an interim assessment of the subject property between revaluation periods. *Kasica v. Columbia*, 309 Conn. 85, 95-96, 70 A.3d 1 (2013).

The plaintiffs brought this present appeal in two counts challenging the assessor's valuation on the list of October 1, 2012 as it relates back to the revaluation year of October 1, 2011. The first count was brought pursuant to General Statutes § 12-117a dealing with valuation. The second count was brought pursuant to General Statutes § 12-119 claiming that the action of the assessor in changing the valuation of the subject property, in a non-revaluation year, was manifestly excessive and disregarded the statutes for changing the valuation of the subject property.

consideration for the reviewer at all times is to be consistent and to keep within the parameters established during valuation table development. Use of best available data is paramount to correct valuation, examples of best available data includes but is not limited to prior data collection notes, physical inspection, real estate listings and sales data, and data mailer and sales verification information (if available). Drive-by review (aka windshield appraisals) are required for all parcels."

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General Statutes § 12-63d. Change in assessed value of real estate. Relationship to sale price. The assessor in any municipality may not, with respect to any parcel of real property in the assessment list for any assessment year, make a change in the assessed value of such parcel, as compared to the immediately preceding assessment list, *solely on the basis of the sale price of such parcel in any sale or transfer of such parcel*. (Emphasis added.)

In the process of this appeal, the Rezniks engaged an appraiser, Alan Budkofsky (Budkofsky), who was of the opinion that the fair market value of the subject premises, as of the date of October 1, 2011, was \$1,200,000. The city, for the purpose of this appeal engaged an appraiser, Curtis E. Freda (Freda) who was of the opinion that the fair market value of the subject premises, as of October 1, 2011, was \$1,825,000.

Following the plaintiffs appeal, the assessor sought permission from the plaintiffs to permit the town's appraiser, Freda, to inspect the interior of their home for the purpose of preparing an appraisal with an opinion of value. The plaintiffs denied this request citing General Statutes § 12-62(a)(3). Since the plaintiffs objected to the assessor's inspection of their house, the court denied the town's motion for permission to inspect the interior of the subject property.

In the process of the assessor fulfilling his obligation to equalize the assessments in the town of Milford, the taxpayers also had an obligation to cooperate with the assessor in assisting the assessor to carry out this statutory duty. See *C. Penney Corporation v. Manchester*, 291 Conn. 838, 845, 970 A.2d 704 (2009). Although the plaintiffs were entitled, by statute, to deny the assessor access to their property in a non-revaluation year, there were consequences to their action. By failing to permit the assessor the right to inspect the interior of their home, and thereby frustrate the assessor in carrying out his statutory duty, the plaintiffs cannot now complain if the assessor, in good faith, makes an error in judgment, if any, based upon the information he had independently acquired without the inspection. *Id.*, 845. Under these circumstances, there is no basis for the court to conclude that the plaintiffs' rights under § 12-119 were violated.

Turning to Count One of the plaintiffs' appeal, pursuant to § 12-117a, the plaintiffs contend that the court should accept Budkofsky's valuation of \$1,200,000 as the fair market value of the subject property as of October 1, 2011.

The court notes that both appraisers agree that the highest and best use of the subject property, as of October 1, 2011, was a single-family residence. Consistent with their determination of highest and best use, both appraisers used the market sales approach to derive the value of the subject by comparing recently sold similar properties. See *United Technologies Corp. v. East Windsor*, 262 Conn. 11, 17, 807 A.2d 955 (2002).

Plaintiffs' appraiser, Budkofsky, relying on the sales approach to value, considered three sales in the town of Milford. Sale one was 101 Merwin Avenue, Milford that sold on January 27, 2011 for \$1,565,000. Sale two was an 8 room, 4 bedroom, 4.1 bath

beachfront home containing 3,571 square feet (sq. ft.) of gross living area. Budkofsky's main adjustment of this sale was down \$100,000 based on a site slightly larger than the subject resulting in an adjusted sale price of \$1,446,980. Budkofsky's other sales are 67 Point Lookout, Milford located 3 miles from the subject that sold for \$1,300,000 on April 25, 2011 and 268 Broadway, Milford located over 6 miles from the subject that sold for \$1,130,000 on July 15, 2011.

The town's appraiser, Freda, also selected 101 Merwin Avenue as a comparable sale. The largest adjustment made by Freda for this sale was a plus \$250,000 because of an "Average" location. Of interest is Budkofsky's report that the subject and 101 Merwin Avenue both had an "average" condition, whereas, Freda reported the condition of the subject and 101 Merwin Avenue to be in "very good" condition. Freda's adjusted sale price for 101 Merwin Avenue was \$1,815,000. Freda, concluded that the subject property had a fair market value, as of October 1, 2011, of \$1,825,000, the same as the price paid by the Rezniks for the subject property.

The assessor's valuation of the subject, following his revisit of the plaintiffs' assessment, was based on a change in grading of the interior. However, independent of the assessor's determination of value based on grading, in a § 12-117a tax appeal, the court tries the case de novo and the issue is what is the fair market value of the subject property as of the date of revaluation. See *United Technologies Corp. v. East Windsor*, supra, 262 Conn. 22.

101 Merwin Avenue having been selected by both appraisers as a good comparable to the subject, with one appraiser adjusting the sale price down and one appraiser adjusting the sale up, gives credence to the fact that the sales price of 101 Merwin Avenue on January 27, 2011 for \$1,565,000 is the most representative of the single family residential market in the area of the subject property on October 1, 2011.

As to the second count of the plaintiffs' complaint, based on § 12-119, judgment may enter in favor of the defendant. As to the first count based on § 12-117a, judgment may

enter in favor of the plaintiffs finding the fair market value of the subject property as of October 1, 2011 to be \$ 1,560,000 without costs to either party.

Arnold W Aronson
Judge Trial Referee