

NO. CV 084008835S : SUPERIOR COURT  
B. DEVINE : JUDICIAL DISTRICT OF  
v. : MIDDLESEX AT MIDDLETOWN  
CITY OF MIDDLETOWN : SEPTEMBER 11, 2009

**MEMORANDUM OF DECISION**

This action is a real estate tax appeal brought by the plaintiff, B. Devine, challenging the valuation of his property at 55 Laureate Drive by the assessor for the city of Middletown (city) on the Grand List of October 1, 2007.

The subject property is a contemporary, single-family residence containing 3,889 square feet of gross living area. There are 2.5 bathrooms and 10 rooms in the residence, including 4 bedrooms. The house lot is 6.04 acres and is irregularly-shaped and partially-encompassed by a conservation easement.

The assessor, on the revaluation year of October 1, 2007, valued the subject at \$573,890. The plaintiff's appraiser, Scott Gallagher (Gallagher), determined that the subject's fair market value, as of October 1, 2007, was \$475,000. The city's appraiser, David Clark (Clark), valued the subject, as of October 1, 2007, at \$559,000. Both appraisers relied on the market sales approach out of the three approaches to value (i.e., market sales, cost and income).

Gallagher selected three residential sales located in Middletown. Sale one is

located less than one mile from the subject at 5 Monarca Drive. It is a single-family residence on 1.44 acres of land and contains 3,049 square feet of gross living area with 2.5 baths and 8 rooms, including 4 bedrooms. This property sold for \$492,000 on September 18, 2007.

Gallagher's second sale is located at 67 Watch Hill Drive, approximately 1.5 miles from the subject. It is a single-family residence on 1.19 acres of land and contains 2,943 square feet of gross living area with 3 baths and 10 rooms, including 4 bedrooms. This property sold for \$485,000 on August 31, 2007.

Gallagher's third sale is located at 377 Chauncey Road, approximately 1.3 miles from the subject. It is a single-family residence on 1.03 acres of land and contains 2,710 square feet of gross living area with 2.5 baths and 8 rooms, including 3 bedrooms. This property sold for \$450,000 on June 15, 2007.

The city's appraiser, Clark, selected three residential sales in Middletown. Sale one is located at 48 Pheasant Drive, approximately 0.5 miles from the subject. It is a single-family residence on 1.02 acres of land and contains 3,314 square feet of gross living area with 2.5 baths and 4 bedrooms. The property sold for \$555,000 on July 23, 2007.

Clark's sales two and three were the same as the comparable sales selected by the plaintiff's appraiser, namely, the residences at 5 Monarca Drive and 67 Watch Hill Drive.

The issue in a property tax appeal is the fair market value of the subject property as of the last revaluation date. “In § 12-117a tax appeals, the trial court tries the matter de novo and the ultimate question is the ascertainment of the true and actual value of the [taxpayer’s] property. . . . At the de novo proceeding, the taxpayer bears the burden of establishing that the assessor has overassessed its property.” (Internal quotation marks omitted.) United Technologies, Corp. v. East Windsor, 262 Conn. 11, 22, 807 A.2d 955 (2002). “The trier arrives at his own conclusions as to the value of land by weighing the opinion of the appraisers, the claims of the parties in light of all the circumstances in evidence bearing on value, and his own general knowledge of the elements going to establish value including his own view of the property. . . .” (Internal quotation marks omitted.) J.C. Penney Corp. v. Manchester, 291 Conn. 838, 844, 970 A.2d 704 (2009).

In his post-trial brief, the plaintiff compares the subject property’s deficiencies to the comparable sales selected by Clark, the city’s appraiser. As to the deficiencies, most notably, the subject has a well and a septic system whereas Clark’s comparable sales have city water and sanitary sewers.

The significant difference regarding the two sales selected by both appraisers and the subject property is the treatment of the subject’s excess land and the excess gross footage of the residence. First, the subject property, with 6.04 acres of land, is larger in size compared to the two comparables selected by both appraisers by approximately 5

acres. Second, the subject's gross living area of 3,889 square feet is approximately 900 square feet larger than the average difference in gross living area square footage of the residences at Monarca Drive and Watch Hill Drive.

Furthermore, Gallagher valued the excess land of the subject at \$3,000 per acre, whereas Clark valued this same excess acreage at \$9,500 per acre. Gallagher valued the excess square footage of the subject at \$30 per square foot whereas Clark valued this same excess square footage at \$40 per square foot.

The court notes that the subject's excess acreage consists of a ravine, a conservation easement on 1.92 acres of land and an extensive rock ledge. The court also notes that the septic sewerage system of the subject is a poor substitute when compared to the city water and sanitary sewerage systems of the comparable sales at Monarca Drive and Watch Hill Drive.

Recognizing that the assessor's valuation of \$573,890 is higher than Clark's valuation at \$559,000 and Gallagher's valuation of \$475,000, as of October 1, 2007, and recognizing further that, the plaintiff, in his post-trial brief, placed his own value of the subject at \$495,000, the range of value is most likely between \$495,000 and \$559,000.

Taking the comparable sale at Monarca Drive for the price of \$492,000 and adding \$15,000 for the excess acreage value of 5 acres at \$3,000 per acre<sup>1</sup>, results in a

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<sup>1</sup>

The court selected Gallagher's value of \$3,000 per acre for the excess acreage rather than

value of \$507,000. To this amount, \$27,000 is added for the value of the subject's 900 square feet of excess gross living area at \$30 per square foot<sup>2</sup>, for a total value of \$534,000. In this way, the value of the subject property is adjusted to the value of the Monarca Drive comparable sale which both appraisers relied upon in determining the subject's fair market value.

Considering all of the factors discussed above, the court finds that the fair market value of the subject property, as of October 1, 2007, was \$534,000. Accordingly, judgment may enter in favor of the plaintiff, sustaining his appeal, without costs to either party.

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Arnold W. Aronson  
Judge Trial Referee

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Clark's value of \$9,500 per acre because the subject's excess land consists of a conservation easement and extensive rock ledge. Any further use or development of the subject's excess acreage would be difficult.

<sup>2</sup>

The court selected the value of \$30 per square foot for the gross living area rather than Clark's value of \$40 per square foot because the subject is 20-years-older than the newly-constructed Monarca Drive residence.