

DOCKET NO. DBD-CV-23-6046290-S

BEST ENTERPRISES, LLC

V.

CITY OF DANBURY

OFFICE OF THE CLERK  
SUPERIOR COURT

2024 JUN 12 P 2:24

JUDICIAL DISTRICT  
DANBURY

STATE OF CONNECTICUT

SUPERIOR COURT

J. D. OF DANBURY

AT DANBURY

JUNE 12, 2024

**MEMORANDUM OF DECISION**  
**RE: MOTION TO DISMISS # 117**

**PROCEDURAL HISTORY AND FACTS**

The plaintiff, Best Enterprises, LLC, in a three-count complaint filed with the court on May 19, 2023; alleges the following facts. The plaintiff appeals a decision from the action of the defendant, the city of Danbury, through the Danbury Board of Assessment Appeals (hereinafter “the Board”), concerning a tax assessment of the real property located at 83 Newtown Road, Danbury, Connecticut. The Board assessed the value of the property on October 1, 2022. Its fair market value was determined to be \$2,149,600, and pursuant to General Statutes § 12-62a (b), the property’s assessed value was set at \$1,543,900. See Docket Entry No. 100.30.

In count one, the plaintiff alleges that the valuation of the property by the Board was grossly excessive, disproportionate, and unlawful. The plaintiff timely appealed to the Board, claiming that it was aggrieved by the Board’s assessment. In count two, the plaintiff alleges that a tax/taxes will be computed on an assessment which is excessive, unlawful, and could not have been arrived at except by disregarding the statutes for determining taxes and valuation pursuant to General Statutes § 12-119. Additionally, in count three, the plaintiff alleges that the income and expense penalty for failure to prove an income and expense report to the defendant was improperly assessed.

On July 12, 2023, the defendant filed a motion to dismiss, supported by a memorandum

*121.00*

of law, on the ground of a lack of statutory standing pursuant to General Statutes § 12-117a. Docket Entry Nos. 101 and 102. Following the plaintiff's objection to the motion, the plaintiff moved to modify the statutory requirements to file an appraisal within 120 days of the filing of the appeal. Docket Entry No. 103; Docket Entry No. 104. On August 24, 2023, the court (*Shaban, J.*) found good cause for the extension of the September 16, 2023, deadline for the filing of the appraisal and granted the plaintiff a sixty-day extension to November 15, 2023, to do so.<sup>1</sup> Docket Entry No. 104.01. The good cause was based on the large number of tax appeals statewide within the judicial system coupled with the shortage of appraisers within the state to keep up with surging demand for their services, the ability to retain an appraiser and timely receive an appraisal report. The defendant then filed another motion to dismiss on December 15, 2023, following the expiration of the extension period, arguing the same grounds as the first motion.<sup>2</sup> Docket Entry No. 108. A corrected motion to dismiss, the motion that is now before the court, was filed on March 19, 2024. Docket Entry #117. The plaintiff objected to the defendant's motion on May 10, 2024 and also filed with the court an appraisal of the property the same date. Docket Entry Nos. 119, 120. Oral argument was heard by the court on May 20, 2024.<sup>3</sup>

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<sup>1</sup> The plaintiff's summons and complaint are dated May 16, 2023, but were not filed with the court until May 19, 2023. Docket Entry No. 100.30. The deadline of September 16, 2023, being a Saturday, was extended to the next date the court was open for business, which was Monday, September 18, 2023. The extended November 15, 2023, deadline to file the appraisal remained the same.

<sup>2</sup> The defendant had previously filed a motion to dismiss in this case on July 12, 2023, in order to notify the court and the parties of the jurisdictional prerequisites and preserve its rights under the statute. However, it did not claim the motion for adjudication. Accordingly, the instant motion has now been brought in this case.

<sup>3</sup> Similar motions to dismiss were filed in the cases of: *Route 6 Plaza, LLC v. Danbury*, DBD-CV-23-6046281-S; *Stetson Development Corp. v. Danbury*, DBD-CV-23-6046284-S; *Big Sky Properties, LLC, v. Danbury*, DBD-CV-23-6046287-S; *BDN Property, LLC, v. Danbury* DBD-

## STANDARD OF REVIEW

“[A] motion to dismiss . . . properly attacks the jurisdiction of the court, essentially asserting that the plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the court.” (Internal quotation marks omitted.) *Fay v. Merrill*, 336 Conn. 432, 445, 246 A.3d 970 (2020). “A motion to dismiss tests, inter alia, whether, on the face of the record, the court is without jurisdiction.” (Internal quotation marks omitted.) *MacDermid, Inc. v. Leonetti*, 310 Conn. 616, 626, 79 A.3d 60 (2013). “A court deciding a motion to dismiss must determine not the merits of the claim or even its legal sufficiency, but rather, whether the claim is one that the court has jurisdiction to hear and decide.” (Internal quotation marks omitted.) *Hinde v. Specialized Education of Connecticut, Inc.*, 147 Conn. App. 730, 740-41, 84 A.3d 895 (2014). “[B]ecause the issue of standing implicates subject matter jurisdiction, it may be a proper basis for granting a motion to dismiss.” *Electrical Contractors, Inc. v. Department of Education*, 303 Conn. 402, 413, 35 A.3d 188 (2012). “The proper procedural vehicle for disputing a party’s standing is a motion to dismiss.” (Internal quotation marks omitted.) *D’Eramo v. Smith*, 273 Conn. 610, 615 n.6, 872 A.2d 408 (2005). “If . . . the plaintiff’s standing does not adequately appear from all materials of record, the complaint must be dismissed.” (Internal quotation marks omitted.) *Burton v. Dominion Nuclear Connecticut, Inc.*, 300 Conn. 542, 550, 23 A.3d 1176 (2011). “Appeals to courts from administrative agencies exist only under statutory authority. . . . A statutory right to appeal may be taken advantage of only by strict compliance with the statutory provisions by which it is created. . . . Such provisions are mandatory, and, if not complied with, the appeal is subject to dismissal.” (Internal quotation marks omitted.) *Southern*

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CV-23-6046285-S; *7 Germantown Road, LLC v. Danbury*, DBD-CV-23-6046282-S; *HD Danbury, LLC v. Danbury*, DBD-CV-23-6046280-S.

*New England Telephone Co. v. Board of Tax Review*, 31 Conn. App. 155, 160–61, 623 A.2d 1027 (1993).

## DISCUSSION

General Statutes § 12-117a governs appeals from boards of tax review or boards of assessment appeals. Appeals to courts from administrative agencies are permitted under statutory authority and must be strictly complied with. *Chestnut Point Realty, LLC v. East Windsor*, 158 Conn. App. 565, 570, 119 A.3d 1229 (2015), *aff'd*, 324 Conn. 528, 153 A.3d 636 (2017). “Section 12–117a, which allows taxpayers to appeal the decisions of municipal boards of tax review to the Superior Court, provide[s] a method by which an owner of property may directly call in question the valuation placed by assessors upon his property.” (Internal quotation marks omitted.) *Konover v. West Hartford*, 242 Conn. 727, 734, 699 A.2d 158 (1997). “Only after the court determines that the taxpayer has met his burden of proving that the assessor’s valuation was excessive and that the refusal of the board of tax review to alter the assessment was improper, however, may the court then proceed to the second step in a § 12–117a appeal and exercise its equitable power to grant such relief as to justice and equity appertains.” (Internal quotation marks omitted.) *Id.*, 735; see also *Gorin’s, Inc. v. Board of Tax Review*, 178 Conn. 606, 608, 424 A.2d 282 (1979).

Here, the defendant argues that the plaintiff is without statutory standing as it did not timely file an appraisal of the property as required by § 12-117a (a) (2). This section provides in relevant part: “(2) For any application made on or after July 1, 2022 . . . if the assessed value of the real property that is the subject of such application is one million dollars or more and the application concerns the valuation of such real property, the applicant shall file with the court, not later than one hundred twenty days after making such application, an appraisal of the real

property that is the subject of the application. Such appraisal shall be completed by an individual or a company licensed to perform real estate appraisals in the state. The court may extend the one-hundred-twenty-day period for good cause. If such appraisal is not timely filed, the court may dismiss the application.”

Our Supreme Court has held that “[i]n interpreting statutory text, this court has often stated that the use of the word shall, though significant, does not invariably create a mandatory duty. . . . The usual rule, however, is that [t]he . . . use of the word shall generally evidences an intent that the statute be interpreted as mandatory.” (Internal quotation marks omitted.) *1st Alliance Lending, LLC v. Department of Banking*, 342 Conn. 273, 269 A.3d 764 (2022); see also *Department of Transportation v. White Oak Corp.*, 332 Conn. 776, 785, 213 A.3d 459 (2019). “[D]efinitive words, such as must or shall, ordinarily express legislative mandates of nondirectory nature.” (Internal quotation marks omitted.) *Morera v. Thurber*, 162 Conn. App. 261, 267, 131 A.3d 1155 (2016), quoting *Butts v. Bysiewicz*, 298 Conn. 665, 676, 5 A.3d 932 (2010). Accordingly, “[a]bsent an indication to the contrary, the [drafter’s] choice of the mandatory term ‘shall’ rather than the permissive term ‘may’ indicates that the . . . directive is mandatory.” (Internal quotation marks omitted.) *Vargas v. Doe*, 96 Conn. App. 399, 412, 900 A.2d 525, cert. denied, 280 Conn. 923, 908 A.2d 546 (2006). For example, the court in *Cooper v. Board of Tax Review-Fairfield*, Superior Court, judicial district of Fairfield, Docket No. CV-94-313781-S (August 18, 1994, *Pittman, J.*), aff’d, 37 Conn. App. 914, 655 A.2d 818 (1995), the court granted the defendant’s motion to dismiss, as the plaintiff’s appeal was not filed within the time prescribed by § 12-117a.

The court does take note of the discussions regarding the legislative intent of time requirements and jurisdiction. See *Sokolovsky v. Mulholland*, 213 Conn. App. 128, 136, 277

A.3d 138 (2022) (“[a]lthough we acknowledge that mandatory language may be an indication that the legislature intended a time requirement to be jurisdictional, such language alone does not overcome the strong presumption of jurisdiction, nor does such language alone prove strong legislative intent to create a jurisdictional bar”). In this case, however, when the court first had the discretion to modify the 120-day appraisal requirement, it granted the plaintiff an extension of sixty-days to complete and file the appraisal as required by § 12-117a. See Docket Entry No. 104.01. Despite this extension to November 15, 2023, the appraisal was not filed with the court by that date. The plaintiff ultimately filed its appraisal with the court on May 6, 2024.

The court notes that though there were prior incarnations of the motion to dismiss, oral argument on the corrected motion was not held until May 20, 2024. Though filed long after the deadline, the appraisal was received by the defendant well before argument on the motion. Therefore, there is no prejudice to the defendant from proceeding with the matter, as judgment has not entered, and it is fully informed of the claimed value of the property well in advance of any trial of the matter given that a trial date has not yet been set. It is an underlying principle of our courts that the preference is to have matters heard on the merits as opposed to having them decided on procedural grounds.

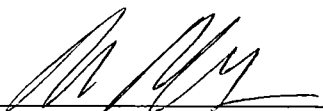
The court notes that the defendant repeatedly states in its memorandum of law in support of its motion that the plaintiff’s failure to comply with the statute with respect to the filing of the appraisal “must result in a dismissal.” See #118. This is not an accurate reading of § 12-117a (a)(2). The last sentence of that section of the statute reads: “If such appraisal is not timely filed, the court *may* dismiss the application.” (Emphasis added.) By use of the word “may” the court is not compelled to dismiss the matter. It has the discretion not to do so, and the court elects to exercise its discretion in this instance to deny the motion given there is little prejudice to the

defendant and comports with our courts' desire to have disputes heard on the merits as opposed to being dismissed on procedural grounds.

#### CONCLUSION

Though the plaintiff was given an extension to file its appraisal with the court and failed to timely do so, the court nonetheless declines to exercise its discretion to dismiss the action pursuant to § 12-117a (a) (2). Therefore, the motion is denied.

It is so ordered.

A handwritten signature in black ink, appearing to be 'J. Shaban', is written over a horizontal line.

Shaban, J.