

NO. CV 09 4016846S : SUPERIOR COURT
ALBERT L. ZESIGER : JUDICIAL DISTRICT OF
v. : STAMFORD/NORWALK
: AT STAMFORD
CITY OF NORWALK, ET AL. : AUGUST 22, 2012

MEMORANDUM OF DECISION

The plaintiff, Albert L. Zesiger, brings this property tax appeal contesting the valuation of his properties located in the city of Norwalk (city). The subject properties are Tavern Island (also referenced herein as “the island”) and a waterfront parcel located at 75 Bluff Avenue.

On the revaluation date of October 1, 2008, the city’s assessor determined that Tavern Island had a fair market value of \$10,739,000 and 75 Bluff Avenue had a fair market value of \$3,145,900. The plaintiff appealed the valuations of its properties to the city’s board of assessment appeals which then changed the valuation of Tavern Island to \$10,742,200 and made no change to the valuation of 75 Bluff Avenue.

The plaintiff’s appraiser, Michael Gold (Gold) determined that the fair market value of Tavern Island was \$5,030,000 and of 75 Bluff Avenue was \$560,000. See plaintiff’s Exhibit 16.

The city’s appraiser, Christopher Kerin (Kerin), determined that the fair market value of Tavern Island was \$10,000,000 and of 75 Bluff Avenue was \$2,900,000. See

defendant's Exhibit AA.

Tavern Island is a 3.5-acre island in Long Island Sound (the Sound), about two-thirds of a mile off-shore from 75 Bluff Avenue. It is located in an Island Conservation (IC) zone. The island is not subdivisible. The plaintiff's wife Barrie Zesiger (Mrs. Zesiger) testified that the Zesigers access Tavern Island by boat from a dock at 75 Bluff Avenue.

The Zesigers reside year-round on the island by living in the main house which spans 6,116 square feet (SF) and sits on well-landscaped grounds. There are other buildings on the island, including a 1,176-SF caretaker's cottage, a 1,104-SF boat house and a 440-SF Tea House. Additional features and site improvements include an in-ground, 75-foot fresh water swimming pool, a small sandy beach, a flagstone boat dock with lighting and seawalls.

The island is connected to city water and electricity through underwater piping and cables. The plaintiffs transport trash from the island by boat to 75 Bluff Avenue for disposal. They also must make arrangements with local barge owners for any significant items they need hauled to or from the island.

The main residence on the island is a Tudor-style, wood-framed, two-and-half story building. There are 11 rooms, including 6 bedrooms, and 4 full bathrooms, 3 half baths and 2 shower rooms. The house was originally built around 1900, but has been

periodically updated. For example, in 2006, the kitchen and the third-floor bathrooms were remodeled. The plaintiff's appraiser Gold noted that "[t]he dwelling has circulating hot water radiators, via two oil-fired furnaces, but there is radiant heat in the kitchen and master bedroom. A large 8,000-gallon oil tank is buried to the west of the main dwelling and oil deliveries are made via barge from the mainland. There is no central air-conditioning for any of the structures on the island, but there is a diesel-powered generator which serves the main dwelling and part of the caretaker's cottage." (Plaintiff's Exhibit 16, p. 20.)

The caretaker's cottage lies east of the main dwelling on the island and is a two-story, wood-frame building with an unfinished basement. It was built around 1820 and has been periodically updated so that it is presently in good condition for the current caretaker to reside. The cottage has 4 rooms, including 1 bedroom, and 2 full bathrooms. It is heated by forced air from an oil-fired furnace.

The boathouse lies to the north of the main dwelling. It is a large one-story, vaulted wood-framed building with electric heat. There is a large recreation room, a bedroom, a full bathroom and an unfinished basement with a half-bathroom.

On the west end of the island, there is a wood-framed, one-room Tea House built over a basement storage area. There is electric heat present but no plumbing.

75 Bluff Avenue is a 0.48-acre parcel of land in the city's Rowayton section with

90 feet of frontage on the Sound. This property is approximately one-third of a mile from the southern tip of Wilson Point, in the west-central section of the city's coastline.

Although 75 Bluff Avenue is located on the waterfront in a residential zone, the property is improved with a one-story masonry three-bay garage containing 1,927 SF and built on a concrete slab foundation. The garage's flat roof is made of a composition surface with concrete steps leading to the roof. The structure includes a one-room heated apartment including a kitchen and bathroom. Mrs. Zesiger testified that the Zesigers do not use this apartment as a residence, but as a necessary part of traveling back and forth from Tavern Island via the boat dock attached to the easterly end.

The plaintiff acquired Tavern Island on July 15, 1981. The deed granting the plaintiff title to Tavern Island also conveyed an easement "over and across the existing driveway located on other land of the grantors and running from Bluff Avenue to the shore, and together also with the right to use in common with the grantors . . . the garage, pier and parking areas located at the easterly end of the driveway . . . but subject, nevertheless, to the obligation to share equally with the grantors . . . the cost and responsibility of maintenance of said driveway, garage, pier and parking area and the floats, piles, ramp, bridge, sea wall and protective fence associated therewith. . . ."

(Plaintiff's Exhibit 1.)

Simultaneously with this conveyance, the plaintiff was also granted a lease to use

the easement area, driveway, parking areas and docking facilities for a period of ninety-nine years, subject to an option to renew for an additional ninety-nine years for \$1/year rent including the garage at 75 Bluff Avenue and accompanying facilities. See plaintiff's Exhibit 3.

Exactly two years later, on July 15, 1983, the plaintiff acquired title to 75 Bluff Avenue, affording the Zesigers year-round use of Tavern Island. As noted in the plaintiff's 5/22/12 brief, p. 27, "Kerin was unaware of the history of the unity of use and ownership of the two parcels of land for a period of time dating back more than eighty-eight years. . . . (Plaintiff's Exhibit 1)."

Both appraisers, Gold and Kerin, are of the opinion that the highest and best use of Tavern Island with its improvements is for its continued use as a private island. However, Gold and Kerin differ on the highest and best use of the 75 Bluff Avenue property. Gold is of the opinion that 75 Bluff Avenue is an accessory use for Tavern Island. Gold concluded that the independent use of 75 Bluff Avenue as a single-family residence would have a negative impact on Tavern Island and would force the owner of the island to make other arrangements for traveling to and from the island.

Kerin, on the other hand, opined that the highest and best use of 75 Bluff Avenue is for residential use, not as an accessory to Tavern Island. Kerin claims that Tavern Island "could be accessed by a boat docked at one of the many nearby marinas or Yacht

Clubs including Wilson Cove Marina or Norwalk Cove Marina.” (Defendant’s Exhibit AA, p. 33.) In contrast, Mrs. Zesiger testified that she and the plaintiff could not use Tavern Island during the winter months without the use of 75 Bluff Avenue due to freezing water up the Norwalk River and because marinas in the same area remove their docks during the winter months.

Gold, after considering all three approaches to value (comparative sales, cost and income), determined that the cost approach was the only reasonable approach to use for valuation because of the lack of sufficient comparable sales to Tavern Island. Gold selected three sales from the Norwalk Islands and compared these sales to mainland waterfront lot sales. See plaintiff’s Exhibit 16, p. 23.

The Norwalk Islands that Gold selected were:

<u>Name</u>	<u>Parcel Size</u>	<u>Sale Date</u>	<u>Sale Price</u>
Cedar Hammock Island	0.25 acres	9/24/08	\$485,000
Peach Island	2.63 acres	3/29/05	\$600,000
Calf Pasture Island	1.41 acres	2/10/95	\$137,500

Gold noted that “[h]aving established a value relationship with mainland properties, I then used the results of this analysis to value the land associated with Tavern Island.” (Plaintiff’s Exhibit 16, p. 23.)

Kerin also discussed Cedar Hammock Island and Peach Island since they were

island sales in Norwalk over the past five years:

“Due to the small size of [Cedar Hammock Island], and lack of utilities, residential development is problematic. At the time of the sale, the island was improved with a 108-SF house. Approval for 666-SF house was granted after the sale, but is currently being litigated. Due to the extremely small size of this island, lack of utilities, and limited development potential, Cedar Hammock Island is not considered comparable to the subject property. Peach Island is vacant open space land that sold in 2005 from the Trust for Public Land to U.S. Fish and Wildlife. This island was purchased as open space and not for residential development. Peach Island is not considered comparable to the subject property due to its different highest and best use as open space.” (Defendant’s Exhibit AA, p. 35.)

Calf Pasture Island is not a good comparable to use as it was purchased 13 years prior to the October 1, 2008 revaluation date (see plaintiff’s Exhibit 16, p. 28) and lacks any similarity to Tavern Island. Although Gold contends that the Peach Island sale was at market, its sale in 2005 from a trust to the U.S. Fish and Wildlife, as a comparable to Tavern Island, makes it difficult for the court to accept this sale as well as the sale of Cedar Hammock Island as truly comparable to the subject island.

In addition to selecting the three islands, Gold’s selection of non-waterfront mainland property to develop an analysis and arrive at a fair market lot value for Tavern

Island is problematic. Tavern Island is wholly waterfront property. Comparing non-waterfront property to waterfront property eliminates any semblance of comparability. In addition to the use of non-waterfront sales, the age and lot sizes of these sales, when compared to Tavern Island, challenges the credibility of these so-called sales as comparables.

The court understands that it was Gold's purpose to develop a price per acre to apply to the land value of Tavern Island. However, Gold breaks up the 3.5 acres of the subject into a 2-acre residential lot and 1.5-acres of "excess land."¹ Gold, in effect, reduces the value of the subject land by attributing a lesser value (15% of the value of the prime acreage) to excess land, when in fact, Tavern Island is what it is, a fully-developed, 3.5-acre island with the property owner fully-utilizing the 3.5 acres.

It is simply not credible, in a fair market transaction, to expect that a purchaser of the subject island would consider breaking up the value of the island into prime and excess land. As Gold noted, 2 acres is the minimum lot size in an IC-zone under the city's zoning regulations, not the maximum lot size. See plaintiff's Exhibit 16, p. 22.

Kerin, the city's appraiser, also considered all three approaches to value, but

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Excess land is defined as "[a] given land use [that] has an optimum parcel size, configuration, and land-to-building ratio. Any extra or remaining land not needed to support the specific use may have a different value than the land area needed to support the improvement." *The Appraisal of Real Estate* (12th Ed. 2001) p. 198.

selected the market sales approach only. In his opinion, it was difficult to find land sales. Kerin looked at the sale of Cedar Hammock Island but determined that it was not comparable to the subject because Cedar Hammock Island did not have utilities and was improved with a one-room house spanning a mere 108 SF. Kerin also did not consider Peach Island as a comparable sale since it was purchased for use as a national park for wildlife protection. Kerin selected Rogers Island in Branford and two Norwalk waterfront properties located at 16 Nathan Hale Drive and 8 Shorehaven Road as comparable sales. See defendant's Exhibit AA, p. 42. These waterfront properties had substantial frontage on the Sound.

Rogers Island "is the largest of five islands in the Thimble Island chain in Branford purchased from 2003 to date. All five islands were purchased by entities related to Christine Svennington. All of these transfers were private sales, except Cut in Two Island East, which was listed on the MLS." (Defendant's Exhibit AA, p. 35.)

Gold had also considered the sales in the Thimble Island chain. After considering the 50-mile distance from Tavern Island and the fact that there was a bidding war between two prospective buyers, Gold determined that these sales were unreliable. As Gold noted: "The Branford assessor, Barbara Neal, stated that the Svennington purchases are not used as the basis for local island Assessments, as it is recognized that high premiums have been paid, significantly in excess of market levels. Mrs. Svennington is

an artist, who is restoring many of the homes on the islands, and her intention is preservation, rather than commercial exploitation.” (Plaintiff’s Exhibit 16, p. 37.)

At 7.65 acres, Rogers Island is more than double the size of Tavern Island. Rogers Island was sold on March 12, 2003 for \$22,300,000. Kerin was also aware of the bidding war for Rogers Island and believed this caused the sale price to be excessive. As noted by Kerin, Rogers Island was “a private sale, reportedly bid up by two buyers above the market. A negative adjustment was made” (Defendant’s Exhibit AA, p. 43.)

Kerin noted that the Branford assessor had reduced the valuation of Rogers Island by 20% due to the conditions of the sale. As a matter of fact, Kerin reduced the value of Rogers Island to \$12,809,500, a reduction of approximately \$9,500,000. Part of the negative adjustment to Rogers Island was due to the superior improvements as compared to Tavern Island. The year-round residence on Rogers Island contained a Tudor-type house covering 8,746 SF of GBA. The main house has 18 rooms, including 8 bedrooms, and 4 full and 2 half baths. This property also has a guest house and a gazebo.

The property at 16 Nathan Hale Drive is a site of 1.1 acres with 230 feet of water frontage on the Sound that sold on November 26, 2008 for \$5,000,000. It was improved with a Tudor-type house spanning 5,676 SF. There were 13 rooms, including 7 bedrooms, and 6.5 baths. See defendant’s Exhibit AA, p. 42.

The property at 8 Shorehaven Road is 1.01 acres with 170 feet of water frontage

on the Sound that sold on July 13, 2008 for \$7,011,000. The property was improved with a colonial-type house spanning 6,596 SF. The house contained 13 rooms, including 4 bedrooms, and 6.5 baths. See defendant's Exhibit AA, p. 42.

In analyzing the Nathan Hale site as compared to the subject Tavern Island, Kerin's net adjustments of plus \$3,531,000 represents a 70% increase to the purchase price of \$5,000,000 to an adjusted sale price of \$8,531,000. A sale that requires an adjustment of 70% is questionable whether it can be used as a credible comparison to the subject property.² A major part of the adjustment was a plus adjustment of \$3,600,000 for the site characteristic of 1.10 acres of land. See defendant's Exhibit AA, p. 42.

Similarly, Kerin also adjusted the 8 Shorehaven Road sale price of \$7,011,000 to \$9,166,415 primarily based on a site characteristic of 1.01 acres of land which was given an adjustment of plus \$3,735,000. The net adjustment of \$2,856,515 amounts to approximately 41%, a significant adjustment to use when comparing the sale to the subject. See defendant's Exhibit AA, p. 42.

Using the cost approach to value Tavern Island, Gold arrived at a land value of \$3,170,000 and a value for all of the improvements at \$1,860,000 using Marshall & Swift. See plaintiff's Exhibit 16, pp. 36, 40.

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“When many adjustments are applied by the appraiser and when their individual and collective amounts are substantial, the appraiser must ask, ‘Is the comparable property really comparable?’” The Appraisal of Real Estate (12th Ed. 2001) p. 458.

However, Gold arrived at the land value by first concluding that the fair market value of the 2-acre prime parcel was \$2,852,402 (\$1,426,201/acre) and that the fair market value of the 1.50 acres of excess land was \$320,895 (1.50 acres x \$1,426,201 x 15%).

However, disregarding Gold's opinion that 1.5 acres of Tavern Island is excess and treating the island's entire 3.5 acres as prime, the value of the land, using Gold's price per acre of \$1,426,201 is \$4,991,704 (rounded to \$5,000,000).

In the resolution of this case as to the value of Tavern Island, the issue is whether the sales approach to value used by the city's appraiser, Kerin, or the cost approach used by the plaintiff's appraiser, Gold, is the more credible approach to use in the valuation process.

Kerin's use of the sales approach to value is based on the selection of the sale of Rogers Island in the Thimble Island chain in Branford, and the sale of two waterfront properties, 16 Nathan Hale Drive and 8 Shorehaven Road. These three sales leave much to be desired as comparables for the valuation of Tavern Island. As the court has previously noted, the sale of Rogers Island was admittedly not a true arms-length transaction and Kerin's large adjustments of 16 Nathan Hale Drive and 8 Shorehaven Road indicate sales that are not comparable to the subject.

Gold's use of the cost approach required him to determine the value of the land at

Tavern Island using the comparable sales approach plus the value of the improvements using Marshall & Swift. See plaintiff Exhibit 16, pp. 36, 40. Using this concept, Gold placed a land value of \$3,170,000 for Tavern Island and a value of \$1,860,000 for all of the improvements on the island. Recognizing the lack of comparable sales, Gold's opinion of the land value of Tavern Island at \$1,426,201/acre was based on an analysis of 9 waterfront properties, five of which had frontage on the Sound.

From the court's view, Gold's approach to value using the cost approach is more credible over Kerin's sales approach. However, there was no justification, as this court has noted, for Gold to break up Tavern Island into a 2-acre prime parcel with 1.50 acres of excess land.

Gold, following his analysis of land sales, opined as follows: "[A]s of the date of appraisal, the value of the primary 2.00 Acres at subject property, reflecting availability of city water and electricity, as well as the ownership of 75 Bluff Avenue, is upward from \$1,254,263 and downward from \$4,450,541, fairly represented mid-range, at \$2,852,402." (Plaintiff's Exhibit 16, p. 36.)

However, Gold failed to consider the fact that the value of Tavern Island is enhanced by having 75 Bluff Avenue as a permanent transfer point to travel back and forth from the island. In other words, Tavern Island and 75 Bluff Avenue go hand in hand.

On this basis, it is necessary to enhance the valuation of the land portion of Gold's cost approach by selecting a value higher than the mid-range that Gold determined. It is more credible to take a three-quarters range to arrive at a price per acre of \$1,750,000/acre.

Multiplying the total acreage of Tavern Island at 3.5 acres by \$1,750,000/acre results in a total land value for the island at \$6,125,000. Adding the value of the improvements at \$1,860,000, as found by Gold using Marshall & Swift, to the land value of \$6,125,000, results in a fair market value of Tavern Island at \$7,985,000, as of October 1, 2008.

Gold's highest and best use for 75 Bluff Avenue as an accessory use to Tavern Island has been demonstrated by the plaintiff's past and current use of the waterfront property as a garage for cars and boats. To use the 75 Bluff Avenue site for residential use would require a demolition of the garage and possibly no space for boat and car storage.

The plaintiff's current use of 75 Bluff Avenue is different from the use of this property as residential use. The location of a small one room apartment within the garage does not make the garage a residence. Since the plaintiff must rely in part on the weather when traveling to and from Tavern Island and 75 Bluff Avenue, it would appear that the one-room apartment would serve as a layover until weather improved.

Without the existence of Tavern Island, there would be no question that a 0.48-

acre lot in the Rowayton section of Norwalk with 90 feet of frontage on the Sound would command a highest and best use as residential. However, that is not the case here. There is no reasonable expectation that a separation of Tavern Island from 75 Bluff Avenue would occur now or in the near future.

Gold, in considering the value of 75 Bluff Avenue, used the comparative sales approach to determine the value of the land and then determined the value of the improvements using the Marshall Valuation Service. See plaintiff's Exhibit 16, p. 23. This is basically the cost approach.³

In arriving at the land value of 75 Bluff Avenue, Gold determined that the contributory value of the land to Tavern Island was \$300,000. This was arrived at by taking 15% previously used to value the excess land on Tavern Island multiplied by \$2,000,000, a figure that Gold based upon the following analysis:

“In order to value the land at 75 Bluff Avenue, I first reviewed the data presented herein for an estimate as if it was an independent entity, and then applied the 15% ratio related to the property effectively being excess acreage which could not be developed independently without damaging the value of Tavern Island.

“Reviewing the data presented herein, no waterfront sales in the A Residence zone

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“In the cost approach, value is estimated as the current cost of reproducing or replacing the improvements . . . minus the loss in value from depreciation plus land or site value.” The Appraisal of Real Estate (12th Ed. 2001) p. 50.

were identified, recent to the date of appraisal. Subject site area is 0.48 Acres and, irrespective of zone, there were several waterfront sales noted, around this size, particularly those dwellings where the underlying land value was estimated as a residual land values ranging from \$1,150,500 to \$3,100,800.” (Plaintiff’s Exhibit 16, p. 41.)

Gold’s high-end value at \$3,100,800 compares favorably with Kerin’s three Norwalk land sales running between \$3,160,000 for 12 Nathan Hale Drive; \$3,535,000 for 63 Bluff Avenue and \$3,800,000 for 32 Shorehaven Road.

As Gold previously noted, his highest and best use of 75 Bluff Avenue was as an accessory use to Tavern Island. As mentioned previously above, Tavern Island and 75 Bluff Avenue go hand in hand. However, in determining the value of 75 Bluff Avenue, Gold used his criteria for valuing excess land rather than land considered an accessory use.

As discussed above, Kerin selected three sales that he considered comparable to 75 Bluff Avenue. The first sale was nearby 63 Bluff Avenue containing a waterfront lot size of 0.27 acres and improved with a Victorian house spanning 3,567 SF. The house contains 11 rooms, including five bedrooms, and 2 full baths and 2 half baths. There is also a one-car detached garage. This property sold on May 8, 2007 for \$3,535,000. See defendant’s Exhibit AA, p. 55.

Kerin’s second sale was 12 Nathan Hale Drive located in the Wilson Point section

of Norwalk containing a waterfront lot of 0.43 acres that sold on June 2, 2006 for \$3,160,000. This property was improved with a contemporary dwelling with 8 rooms, including 4 bedrooms, and 4 full baths. There is also a two-car attached garage. See defendant's Exhibit AA, p. 55.

Kerin's third sale was 32 Shorehaven Road located in Norwalk containing a waterfront lot of 0.64 acres that sold on August 7, 2007 for \$3,800,000. This sale was improved with a 4,069-SF colonial dwelling with 9 rooms, including 4 bedrooms, and 3 full baths and 2 half baths. There is also a two-car detached garage. See defendant's Exhibit AA, p. 55.

As previously noted, Kerin's selection of comparables for 75 Bluff Avenue were consistent with his highest and best use of the subject property for residential use, but certainly not comparable to the subject that contained only a garage used to store the Zesigers' boats and cars and not used as a residence.

Gold's determination of the fair market values of the land and improvements at 75 Bluff Avenue is fairly close to Kerin's determination of value. For example, Gold selected residual land values ranging from \$1,150,500 to \$3,100,800 (see plaintiff's Exhibit 16, p. 41) and determined that the value of the improvements was \$260,000 using Marshall Swift Valuation Service. The only significant difference between the two appraisers is that Gold considered 75 Bluff Avenue to be accessory land that should be

valued at only 15% of its fair market value.

The court recognizes that the highest and best use of 75 Bluff Avenue, with its garage, is that of an accessory use to Tavern Island, as of October 1, 2008, rather than the highest and best use as residential use. It is more appropriate to give recognition to Gold's highest and best use by selecting Gold's lower end land value of \$1,150,000, as noted above. The reason for the court's rejection of Gold's use of 15% as a multiplier for accessory use is that there was no evidence to support Gold's opinion for the use of the 15% as a component to the valuation of land under the cost approach.⁴

In summary, the court finds that the fair market value of Tavern Island, as of October 1, 2008, was \$7,985,000 (land value at \$6,125,000 and improvements valued at \$1,860,000) and the fair market value of 75 Bluff Avenue, as of October 1, 2008, was \$1,410,000 (land valued at \$1,150,000 and improvements valued at \$260,000). These findings of fair market value are less than the city's determination of fair market value for the properties.

Accordingly, judgment may enter in favor of the plaintiff, sustaining his appeal, without costs to any party. Furthermore, the plaintiff's request for interest and costs is denied.

Arnold W. Aronson
Judge Trial Referee

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See, e.g., M.I. Holdings, Inc. v. Jersey City, 12 N.J. Tax 129, 138 (1991) (“probative utility of an expert’s opinion stands or falls on the facts and reasoning offered in its support”).