

No. CV-18-6045592

MARGARET RUSH

v.

TOWN OF WEST HARTFORD

MEMORANDUM OF DECISION

The plaintiff, Margaret Rush, brings this real estate tax appeal challenging the town of West Hartford assessor's valuation of her property located at 133 Waterside Lane for the revaluation year of October 1, 2016.

The assessor determined that the subject property, as of October 1, 2016, had a fair market value of \$375,000. The town's appraiser, Keith Burritt (Burritt) was of the opinion that the fair market value of the subject property, as of the date of revaluation, was \$245,846 approximately \$130,000 lower than the assessor's valuation. Given this fact, the plaintiff is found to be an aggrieved party. See *Redding Life Care, LLC v. Redding*, 308 Conn. 87, 99-100, 61 A.3d 461 (2013).

The plaintiff's appraiser, John W. Nitz (Nitz), was of the opinion that the West Hartford part of the subject property had a fair market value, as of the date of revaluation, at \$139,555. Plaintiff's Exhibit 1, p.40.

The subject property, located at 133 Waterside Lane, consists of an irregular shaped level site that has frontage along the westerly side of Waterside Lane and 70 feet of lakeside frontage along the easterly banks of Woodridge Lake. The total acreage of the subject is approximately one-half acre. However, the site straddles the West Hartford/Farmington town line with approximately two-thirds of the site located in West Hartford and one-third located in the town of Farmington. The town of West Hartford has assessed the two-thirds portion of the site. The remaining one-third portion of the site, which is not part of this appeal, has frontage on Woodridge Lake. The present tax appeal focuses only on the West Hartford site.

In arriving at his valuation of \$139,555, plaintiff's appraiser, Nitz selected four sales as his comparables to arrive at a market sale price for the subject. None of these four sales have any similarity to the subject property. Of the four sales, two are located on Still Road, near Wampanoag Country Club far from the location of the subject. One sale is located on the Boulevard near an access to Interstate I-84. The fourth sale is located near Elizabeth Park. As Nitz notes, the selection of his comparable sales lack any similarity to the subject. The lack of comparability led Nitz to adjust each sale by over 50%. Adjusting a sale that an appraiser considers to be similar and comparable to the subject property, by over 50%, is questionable at best to be used as a measure of fair market value. Cf. *Kuchinski v. Stratford*, Superior Court, New Britain Judicial District, 2009 WL 1532151.

Recognizing that, as a hypothetical, if the town of West Hartford had to foreclose on a tax lien for non-payment of taxes, the town would only obtain possession of the two-thirds portion of the site thereby losing the lake frontage portion located in Farmington. See *Redding Life Care v. Redding*, *supra*, 308 Conn. 107-108. The loss of the use of Woodridge Lake would become problematical for the valuation of the West Hartford site.

According to the town's appraiser, Burritt, there were no sales of unimproved waterfront lots in West Hartford or neighboring towns that could be used as a comparable to the subject. Burritt, arriving at a fair market value of \$245,846 for the West Hartford side of the subject. Burritt selected three sales that he determined to be comparable. Two of the sales are lake-side property. One of the sales, 61 Waterside Lane, West Hartford sold on October 1, 2013, and the second, 38 Wood Pond Road West Hartford, sold on June 30, 2017, were purchased as improved properties, However, the buyers demolished the existing structures shortly following the purchase. Burritt considered 61 Waterside Lane to be the most similar to the subject. In this respect, Burritt adjusted the sale price of 61 Waterside Lane from \$410,000 to \$419,500 by adding the cost of demotion to the lot cost.

In spite of the deficiencies noted of the subject property, such as the sewer lift station located on the subject property with its attendant noise being emitted from its operation and the lack of access to Woodridge Lake by the West Hartford portion of the site, Burritt expressed his opinion, which the court finds to be lacking credibility, as follows: "No unfavorable factors affecting marketability or appeal. . . .No known or observed adverse environmental conditions noted at the time of the inspection.. . ." Defendant's Exhibit C, p.1.

Although Burritt noted that the subject had not been listed for sale in the past 12 months, the plaintiff countered that she had previously listed the subject for sale and withdrew the listing after receiving an offer of \$129,000, which she rejected.

"Whether a property has been overvalued for tax assessment purposes is a question of fact for the trier. . . . The trier arrives at his (her) own conclusions as to the value of land by weighing the opinion of the appraisers, the claims of th parties in light of all the circumstances in evidence bearing on value, and his (her) own general knowledge of the elements going to establish value including his (her) own view of the property....". See *Nutmeg Housing Development Corp. v.*

*Colchester* 324 Conn. 1, 9, 151 A.3d 358 (2016) citing *Konover v. West Hartford*, 242 Conn. 727, 734-35, 699 A.2d 158 (1997).

This lack of information about the sewer lift station is troubling to the court because no evidence had been introduced to describe the station. The quit claim deed attached to the complaint does not recite whether or not there is a right of way or easement to enter the subject property to service or repair the sewer lift station. In addition, the question of where does the sewerage come from and where does it go would seem an important factor in the valuation of the subject lot.

Recognizing that the town's own appraiser, Burritt, has valued the subject at \$245,846, which is less than the assessor's valuation of \$375,000, and considering the fact that the West Hartford side of the property lacks lakeside use and contains a sewer lift station, these factors, in all probability, would affect the value of the subject.

As stated in *Nutmeg Housing Development Corp.*, supra, the court must arrive at its own conclusions of value, weighing the opinions of the appraisers, the claims of the parties, the evidence introduced and the court's own general knowledge of the elements going to establish value. Given all of these factors, the court concludes that the fair market value of the subject property on the date of revaluation was \$200,000.

Accordingly, judgment may enter in favor of the plaintiff without cost to either party.

Aronson

Referee

Arnold W.

Judge Trial