Westlaw

239 A.2d 478
156 Conn. 107, 239 A.2d 478
(Cite as: 156 Conn. 107, 239 A.2d 478)

Supreme Court of Connecticut.
Harry MARSHALL et al.
v.
TOWN OF NEWINGTON. (two cases).

Jan. 30, 1968.

Cases involving alleged wrongful assessment of taxes on realty. The Court of Common Pleas in Hartford County, Cohen, J., dismissed appeals and plaintiffs appealed. The Supreme Court, House, J., held that classification of land for real estate taxes upon fact that its highest and best use would be for industrial purposes and that, at instigation of owners, it was placed in zone which would permit such use was error and classification should have been predicated on actual use to which land was being put.

Judgment set aside and new trials ordered.

The appellee filed a motion for reargument which was denied.

West Headnotes

[1] Appeal and Error 30 ⚿717

30 Appeal and Error
30X Record
30X(N) Matters Not Apparent of Record
30k717 k. Opinion of Lower Court. Most Cited Cases
Supreme Court may consult memorandum decision of court of common pleas for better understanding of basis of decision.

[2] Taxation 371 ⚿2478

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)3 Mode of Assessment in General
371k2476 Nature or Ownership of Property
371k2478 k. Real Property in General. Most Cited Cases
(Formerly 371k338)
Classification of land upon fact that its highest and best use would be for industrial purposes and that, at instigation of owners, it was placed in zone which would permit such a use was error and classification for real estate purposes should have been predicated on actual use to which land was being put. C.G.S.A. §§ 12-63, 12-107a, 12-107b, 12-107c(a, d); Practice Book 1963, § 606.

[3] Appeal and Error 30 ⚿878(1)

30 Appeal and Error
30XVI Review
30XVI(C) Parties Entitled to Allege Error
30k878 Appellee, Respondent, or Defendant in Error
30k878(1) k. In Absence of Separate or Cross-Appeal in General. Most Cited Cases
Nonappealing defendant's bill of exceptions would be considered by Supreme Court so far as it presented a question likely to arise on a new trial. Practice Book 1963, § 659.

[4] Taxation 371 ⚿2645

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)8 Review, Correction, or Setting Aside of Assessment in General
371k2644 Grounds of Review
371k2645 k. In General. Most Cited Cases
(Formerly 371k456)
Issue of proper classification of land subject to real estate tax was properly raised through appeals to board of tax review and on appeal to court of common pleas from board's decision; not only as-

sessor was authorized to classify land. C.G.S.A. §§ 12-107c(d), 12-111, 12-118.

*108 **479 Abraham S. Silver, New Britain, for appellants (plaintiffs).

William W. Sprague, Hartford, with whom was David C. Rappe, Meriden, for appellee (defendant).

Before *107 ALCORN, HOUSE, COTTER, THIM and RYAN, JJ.

HOUSE, Associate Justice.

The plaintiffs appealed to the Court of Common Pleas from a decision of the board of tax review of the defendant town which denied relief to the plaintiffs on their appeals from the refusal of the assessor to classify and assess three tracts of their land as farmland on the tax lists of 1964 and 1965. By way of relief, the appeals prayed only that the valuation of the property be reduced. During the trial, the plaintiffs were permitted to amend their prayers for relief to include a prayer that the property be classified as farmland. The court found the issues for the defendant in each case and rendered judgments dismissing the appeals. From those judgments the plaintiffs have *109 taken a combined appeal to us pursuant to Practice Book s 606.

In 1963, the General Assembly enacted ss 12-107a-12-107c of the General Statutes, which provided for preferential tax treatment of farmlands. In its '(d)eclaration of policy,' s 12-107a declares that it is in the public interest to encourage the preservation of farmland in order to maintain a readily available source of food and farm products close to the metropolitan areas of the state and to prevent the forced conversion of farmland to more intensive uses as a result of economic pressures caused by the assessment of the land for purposes of property taxation at values incompatible with their preservation as farmland. '(F)arm land' is defined to mean 'any tract or tracts of land, including woodland and wasteland, constituting a farm unit.' General Statutes s 12-107b.

Section 12-107c(a) directs that when any owner of land has applied for its classification as farmland, the local assessor shall determine whether it qualifies for such a classification, and, '(i)n determining whether such land is farm land, such assessor shall take into account, among other things, the acreage of such land, the portion thereof in actual use for farming or agricultural operations, the productivity of such land, the gross income derived therefrom, the nature **480 and value of the equipment used in connection therewith, and the extent to which the tracts comprising such land are contiguous.' The same statute in subsection (d) provides that any person aggrieved by the denial of any application for the classification of land as farmland shall have the same rights and remedies for appeal and relief as are provided by the General Statutes for taxpayers claiming to be aggrieved *110 by the doings of assessors or boards of tax review.

The provisions of one other statute are relevant. Section 12-63 provides that, although the present true and actual value of all other property shall be deemed by all assessors and boards of tax review to be the fair market value, the true and actual value of land classified as farmland pursuant to s 12-107c (as well as open space land and forest land) 'shall be based upon its current use without regard to neighborhood land use of a more intensive nature.' It is admitted that the plaintiffs, in accordance with the statutory requirements, petitioned the assessor for the classification of the three parcels as farmland, that he refused to make the requested classification, that he assessed them on the basis of fair market value, that the plaintiffs appealed to the board of tax review, and that the board refused to classify the parcels as farmland.

The court's finding lacks the clarity and specificity which is not only desirable but necessary to test the validity of its conclusions. Practice Book s 619. It appears that the three tracts of land involved a total of slightly over seventy-three acres, that the plaintiffs' principal crop was sweet corn, that one of

the plaintiffs estimated that he picked 500 dozen ears of corn per acre planted and sold them for seventy cents a dozen, and that in the years 1964 and 1965 the plaintiffs expended $1977.20 per year for fertilizer and farm supplies. Their farm equipment consisted of three tractors, one corn planter, one hay baler, one mowing machine, two harrows, one plow and two sprayers for which the assessor allowed a $3000 farm equipment tax exemption pursuant to s 12-91 of the General Statutes, which provides for a maximum exemption of $3000 for farm machinery 'actually and exclusively*111 used in farming.' On one tract, consisting of 35.3 acres, fifteen acres of corn were cultivated. Some fifteen acres of the remaining acres of that tract were swampy and unfit for cultivation, and about 3.6 acres were wooded. The fifteen acres of swamp land, however, were not included as part of the 'farm unit' on the plaintiffs' application for farm classification. The court also specifically found that in Connecticut farm units traditionally include some land which is not tillable and that it is a recognized principle of good farming to allow portions of tillable land to remain unused for one or more years. Another parcel consisting of 9.7 acres was treated with atrozine, a recognized herbicide, and seven acres of it was cultivated with rye. The third parcel consisted of 28.2 acres. In 1963 and 1964, a knoll on this parcel was removed, the topsoil was accumulated on adjacent land, and the underlying material was sole as fill. In their farm classification application, the plaintiffs claimed that twenty acres of the tract were usable for farming. They did not include the 8.2 acres from which fill was removed as a part of the acreage for the farm unit, and their application claimed that, of the remaining twenty acres, ten were cultivated with corn. Photographs introduced as exhibits disclose an extensive plainting of corn on this tract. The plaintiffs have assigned as error the failure of the court to find that on this tract they produced 9500 dozen ears of corn having a retail value of $6650. Their brief, however, contains no appendix with evidence supporting their assertion, and this assignment of error cannot be considered. Practice Book s 717; Rusinak v. Paushter, 151 Conn. 299, 197 A.2d 336.

Over the objection of the plaintiffs, the court admitted evidence that the subject property was *112 zoned for industrial use, and it found that the property was so zoned. It also found that the plaintiffs' principal source of income was from retail sales at a stand where they sold not only the corn **481 grown on their cultivated lands but other produce, fruits, groceries and beer. It further found that, in 1960, the plaintiffs had sold about three acres of adjoining industrial land for $28,000, that in 1962 another adjacent parcel of industrial land was sold for approximately $25,000, and that in 1964 and 1965 they derived substantial income from the operation of the stand, from rents, from the sale of topsoil and fill and from horse purses.

The court concluded, inter alia, that the highest and best use of the plaintiffs' land was industrial, that the produce raised on their land was a minor source of their income, that '(a) small portion of (the) plaintiffs' land * * * (was) actively used for farm purpose,' that their 'use of their land has not been shown to be in furtherance of the declared policy of general statute (s) 12-107,' and that the assessor, using the criteria established in the statutes, was justified in refusing to classify the plaintiffs' land as farmland. Judgment was thereupon rendered dismissing the appeals.

Obviously, the conclusion that the produce raised on the plaintiffs' land was a minor source of their total income from all sources is completely irrelevant to the question whether they were using a particular piece of land for farming purposes. Equally irrelevant is a finding that adjacent industrial lands were sold for high prices. Furthermore, although the conclusions that the highest and best use of a particular parcel was for industrial purposes and that it was zoned for industrial purposes at the request or instigation of the owner would be relevant*113 to a determination of the land's fair market value, such conclusions are not relevant to a determination as to whether in fact the land is being

used for farming purposes. A declared purpose of the statute granting favorable tax treatment to farmland is to prevent its forced conversion to more intensive uses as a result of an assessment based on its market value rather than its current use. In addition, the facts found concerning the extent of farming done by the plaintiffs and the $3000 exemption afforded their farming equipment seem inconsistent with the conclusions that only a small portion of the land was actively used for farm purposes and that not a single acre should be classified as farmland.

[1][2] These considerations have prompted us to consult the court's memorandum of decision, which we may do for a better understanding of the basis of the decision. Craig v. Dunleavy, 154 Conn. 100, 105, 221 A.2d 855; Maltbie, Conn.App.Proc. s 152. From this examination, the conclusion is inescapable that the court's decision as to a proper classification of the land was predicated, not on the actual use to which the land was being put, which is the criterion the statute specifies, but on the fact that its highest and best use would be for industrial purposes and that at the instigation of the plaintiffs it was in a zone which would permit such a use. This was error.

[3][4] The defendant filed a bill of exceptions which we consider so far as it presents a question likely to arise on a new trial. Practice Book s 659. At the trial, the defendant claimed that the plaintiffs failed to bring their actions in a proper manner so as to entitle them to a consideration of the issue of proper classification in that they raised the issue ***114** through an appeal to the board of tax review and then in an appeal to the Court of Common Pleas from that board's decision. The defendant claims that only the assessor is authorized by statute to determine whether land is to be classified as farmland and that s 12-111 of the General Statutes, which defines the powers of boards of tax review, although it authorizes such boards to equalize and adjust valuations and assessment lists, does not give boards of tax review jurisdiction in the matter of the reclassification of farmland. The court overruled the defendant's claims.

There was no error in this ruling. Section 12-107c(d) expressly provides that any person aggrieved by the denial of any application for the classification of land as farmland 'shall have the same rights and remedies for appeal and relief as are provided in ****482** the general statutes for taxpayers claiming to be aggrieved by the doings of assessors or boards of tax review.' Section 12-111 authorizes any person claiming to be aggrieved by the doings of assessors to appeal to the board of tax review, 'which shall determine all such appeals.' Section 12-118 authorizes an appeal to the Court of Common Pleas by any person claiming to be aggrieved by an action of the board of tax review. The plaintiffs followed the procedure authorized by the applicable statutes.

It is unnecessary to consider the remaining questions raised by the bill of exceptions.

There is error in both cases, the judgments are set aside and a new trial is ordered in both.

In this opinion the other judges concurred.

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Not Reported in A.2d, 2009 WL 2872495 (Conn.Super.), 48 Conn. L. Rptr. 350
(Cite as: 2009 WL 2872495 (Conn.Super.))

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Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

This decision was reviewed by West editorial staff and not assigned editorial enhancements.

Superior Court of Connecticut,
Judicial District of New Haven.
257 BLAKE, LLC
v.
TOWN OF SEYMOUR et al.

No. CV084031348S.
Aug. 4, 2009.

Cohen & Acampora, East Haven, for 257 Blake, LLC.

George R. Temple, Shelton, for Town of Seymour et al.

DAVID W. SKOLNICK, Judge Trial Referee.

*1 The plaintiff, 257 Blake, LLC, appeals the decision of the defendant, Joseph Kusiak, the tax assessor for the town of Seymour (the assessor), to re-assess certain parcels of its land, located on Warren Drive, as "individual subdivision lots" for tax purposes. The town of Seymour (Seymour) is additionally named as a defendant. In re-assessing the plaintiff's properties for the October 1, 2007 grand list, the assessor acted pursuant to § 12-55 of the General Statutes. The plaintiff appeals pursuant to § 12-119 of the General Statutes.

The plaintiff was notified of the assessor's decision by written notice dated March 6, 2008. Within two months of receiving said notice, the plaintiff served the defendants by having the state marshal deliver the appeal papers to the assessor and the assistant town clerk in Seymour. The plaintiff's application was filed with the clerk of the Superior Court on May 19, 2008. The defendants filed an answer on June 10, 2009. The parties have additionally filed briefs, as well as a joint stipulation of facts.

The facts, as stipulated to by the parties, are as follows. At all relevant times, the plaintiff owned the parcels of land in Seymour known as 27, 29, 30, 31, 32, 33, 35, 37, 38, 39, 40, and 41 Warren Drive (the property). On October 14, 2004, Seymour granted the plaintiff subdivision approval for the property. This approval, however, was appealed and did not become effective until July 26, 2007. Shortly thereafter, Seymour executed the necessary subdivision map. Yet, despite the expiration of the subdivision appeals and the execution of the subdivision map, Seymour did not return the subdivision map to the plaintiff for recording until February 27, 2008. Between July 26, 2007 and February 27, 2008, the plaintiff requested two extensions of time so that the subdivision approval would not expire due to the failure of Seymour to return the subdivision map to the plaintiff for recording. Upon the eventual receipt of the subdivision map, the plaintiff promptly filed it.

In a correspondence dated March 6, 2008, Seymour informed the plaintiff that it had reassessed the property as "individual subdivision lots" on its October 1, 2007 grand list. This determination subjected the plaintiff to a tax liability of seventy percent of the property's true and actual valuation as of that date. The plaintiff appeals this determination.

General Statutes § 12-119 provides in relevant part: "When it is claimed that a tax has been laid on property not taxable in the town or city in whose tax list such property was set, or that a tax laid on property was computed on an assessment which, under all circumstances, was manifestly excessive and could not have been arrived at except by disregarding the provisions of the statutes for determining the valuation of such property, the owner

thereof ... prior to the payment of such tax, may, in addition to other remedies provided by law, make application for relief to the superior court for the judicial district in which such town or city is situated. Such application may be made within one year from the date as of which the property was last evaluated for purposes of taxation and shall be served and returned in the same manner as is required in the case of a summons in a civil action, and the pendency of such application shall not suspend action upon the tax against the applicant. In all such actions, the Superior Court shall have power to grant such relief upon such terms and in such manner and form as to justice and equity appertains, and costs may be taxed at the discretion of the court. If such assessment is reduced by said court, the applicant shall be reimbursed by the town or city for any overpayment of taxes in accordance with the judgment of said court."

*2 Section 12-119 "does not act in any way as ... an appeal [from the board of tax review]. It provides another and different method of attacking the validity of an assessment upon two different grounds included in its provisions, and upon those only." (Internal quotation marks omitted.) *E. Ingraham Co. v. Bristol,* 146 Conn. 403, 407, 151 A.2d 700 (1959), cert. denied, 361 U.S. 929, 80 S.Ct. 367, 4 L.Ed. 352 (1960).

"In contrast to § 12-117a, which allows a taxpayer to challenge the assessor's valuation of his property, § 12-119 allows a taxpayer to bring a claim that the tax was imposed by a town that had no authority to tax the subject property, or that the assessment was manifestly excessive and could not have been arrived at except by disregarding the provisions of the statutes for determining the valuation of [the real] property ... [A] claim that an assessment is excessive is not enough to support an action under this statute. Instead, § 12-119 requires an allegation that something more than mere valuation is at issue." (Emphasis in original; internal quotation marks omitted.) *Pauker v. Roig,* 232 Conn. 335, 339-41, 654 A.2d 1233 (1995); accord *Interlude, Inc. v. Skurat,* 253 Conn. 531, 538, 754 A.2d 153 (2000); *Carol Management Corp. v. Board of Tax Review,* 228 Conn. 23, 30-31, 633 A.2d 1368 (1993).

"Claims under § 12-119 must fall into one of ... two categories ... The first category in the statute embraces situations where a tax has been laid on property not taxable in the municipality where it is situated ... This category includes claims alleging that the municipality has exceeded the scope of its taxing power. Cases that fit in this category include *Fenwick v. Old Saybrook,* 133 Conn. 22, 24, 47 A.2d 849 (1946) (municipality cannot tax a public park established by a borough of the municipality), and *First National Bank & Trust Co. v. West Haven,* 135 Conn. 191, 194, 62 A.2d 671 (1948) (municipality has no authority to tax the property of a national bank). See also *Hartford Electric Light Co. v. Wethersfield,* 165 Conn. 211, 332 A.2d 83 (1973) (utility right-of-way generally not taxable separate from freehold to which attached) ...

"The second category consists of claims that assessments are (a) manifestly excessive *and* (b) ... could not have been arrived at except by disregarding the provisions of the statutes for determining the valuation of the property ... Cases in this category must contain allegations beyond the mere claim that the assessor overvalued the property. [The] plaintiff ... must satisfy the trier that [a] far more exacting test has been met: either there was misfeasance or nonfeasance by the taxing authorities, or the assessment was arbitrary or so excessive or discriminatory as in itself to show a disregard of duty on their part ... Only if the plaintiff is able to meet this exacting test by establishing that the action of the assessors would result in illegality can the plaintiff prevail in an action under § 12-119. The focus of § 12-119 is whether the assessment is illegal ... [S]ee *E. Ingraham Co. v. Bristol, supra,* at [146 Conn.] 408 (municipality disregarded the statutes when it taxed real property at 50 percent of its value, personal property at 90 percent and motor vehicles at 100 percent at a time when municipalit-

ies were prohibited from assessing property as a percentage of its value); *Stratford Arms Co. v. Stratford,* 7 Conn.App. 496, 500, 508 A.2d 842 (1986) (property could not be taxed as condominiums when still legally an apartment building at date of assessment). The statute applies only to an assessment that establishes a disregard of duty by the assessors." (Citations omitted; emphasis in original; internal quotation marks omitted.) *Second Stone Ridge Cooperative Corp. v. Bridgeport,* 220 Conn. 335, 340-42, 597 A.2d 326 (1991); see also *Timber Trails Associates v. New Fairfield,* 226 Conn. 407, 418, 627 A.2d 932 (1993) (upholding trial court's decision to affirm appeal pursuant to § 12-119 because reassessments of property, based upon improper declassification of forest land, were manifestly excessive); *NSA Properties, Inc. v. Stamford,* 100 Conn.App. 262, 917 A.2d 1034 (2007) (upholding trial court's decision to affirm appeal pursuant to § 12-119 because denial of tax exemption is not an illegal assessment).

*3 In its application dated April 29, 2008, the plaintiff contends that the assessor incorrectly reassessed the property on October 1, 2007 when he classified the property as individual subdivision lots. "Claims that an assessor has misclassified property and, consequently, overvalued it, comprise a category of appeals frequently pursued under the aegis of § 12-119 ... In such cases, the determinative issue typically is whether, as a matter of law, the property at issue properly was subject to taxation as the type of property falling within the classification applied by the assessor ... If the plaintiff can show that it was not, it necessarily follows that the resulting assessment was manifestly excessive." (Citations omitted.) *Griswold Airport, Inc. v. Madison,* 289 Conn. 723, 740-41, 961 A.2d 338 (2008). The plaintiff's application, therefore, appears to be properly made under General Statutes § 12-119, and accordingly, the court must consider the substantive arguments presented by the parties.

In its memorandum of law, the plaintiff contends that "the Town of Seymour placed a condition of the Subdivision Approval (i.e., the Bond Condition) and withheld the delivery of the Subdivision Map to the Plaintiff pursuant to Section 6.3 of the Seymour Zoning Regulations until said condition was satisfied. Based upon the foregoing, the Town of Seymour treated the compliance with said condition as a condition precedent to final approval. Otherwise, the Town of Seymour would have had to deliver the Subdivision Map to the Plaintiff for recording within thirty days of the Appeal Expiration Date as required by Connecticut General Statutes Section 8-25(a)." Essentially, the plaintiff argues that the bond requirement placed on it by Seymour in a letter dated November 1, 2004 is a condition precedent, thus rendering the property as something other than "individual subdivision lots" until the bond condition was satisfied, thus rendering the approval effective. In their brief, the defendants counter that the bond was a condition subsequent to approval, that precedent supports the proposition that the subdivision approval takes effect before the filing of the subdivision map and that "[i]t is clear that the date of approval by the Planning and Zoning Commission is the defining moment for a reassessment because on that date, the raw land now becomes a viable and legal subdivision."

The plaintiff's legal argument is that its "case falls within the exception contemplated by *Fyber Properties,* [228 Conn. 476, 636 A.2d 834 (1994)], in which [the Supreme Court] ... held that, as a general rule, subdivision approval, rather than recording of a subdivision map, furnishes an appropriate occasion for the revaluation and reassessment of real property. In *Fyber Properties,* [the Supreme Court] relied in [its] analysis of the applicable real property statutes to conclude that [t]he legislature has ... indicated that, in the subdivision of property, the focal point is the date of approval ... [The Supreme Court] declined to decide, however, the date upon which a property becomes taxable as a subdivision *if* the approval has been appealed, or conditions imposed upon an approval have not been fully satisfied before the assessment date." (Citations omitted; emphasis added; internal quotation marks

omitted.) *Pauker v. Roig, supra,* 232 Conn. at 344, 654 A.2d 1233.

*4 The plaintiff's brief, however, fails to consider the subsequent law established by *Pauker v. Roig, supra,* 232 Conn. at 335, 654 A.2d 1233. In *Pauker,* the Supreme Court once again addressed the effect of such approval conditions and "discern[ed] a bright-line rule underlying our taxing and real property statutes with regard to subdivision approvals. Absent an appeal challenging its validity, the approval of a subdivision authorizes a tax assessor to tax the property as subdivided lots rather than as the undifferentiated parcel or parcels that preceded the approval. The authority to tax subdivided lots in such a manner means that taxpayers have no basis for challenging such a revaluation under § 12-119. To the extent that *conditional approvals deprive taxpayers of immediate economic returns from their investment, such conditional approvals raise issues only of valuation,* which properly may be addressed only by appeals under § 12-117a." (Emphasis added.) *Id.,* 345, 654 A.2d 1233. Although the plaintiff may attempt to distinguish the bond condition in this case from the conditions imposed in *Pauker,* the court believes that it would be a disservice to the "bright-line rule" clearly established in that case to find that such highly technical distinctions effectuate a different result. *Id.,* 337 & 345, 654 A.2d 1233. Furthermore, unlike an actual misclassification, such as the one in *Griswold Airport, Inc.,* the essence of this claim is the mere timing of a condition. Neither party contends that the property is presently anything other than "individual subdivision lots." Thus, this case falls under the clear purview of both *Pauker* and *Fyber Properties.*

An appeal pursuant to § 12-119, therefore, although generally proper in cases of misclassification, is improper in this case. Rather, after considering the Supreme Court's holding in *Pauker,* the assessor's inclusion of the property on the October 1, 2007 grand list as "individual subdivision lots" was proper [FN1] and any further issues regarding the bond condition's effect on the property's economic value on that date must be resolved by a valuation appeal under § 12-117a. Accordingly, the plaintiff's application pursuant to General Statutes § 12-119 is denied.

FN1. Both parties seemingly assume that the prior appeal challenging the approval's validity does not effect the outcome of this case because neither party discusses its relevance at length in their respective briefs. Although the Supreme Court does not reach the effects of such an appeal in *Pauker,* the court agrees that the mere existence of a previously resolved approval appeal does not change the outcome of this § 12-119 appeal. The assessor did not attempt to include the property on the grand list as a subdivision until after the appeal challenging approval had reached its conclusion. The potential issues alluded to by the Supreme Court in *Pauker* and *Fyber Properties* exist only if the assessor had hypothetically attempted to include a property on the grand list as a subdivision after its approval, but before the completion of the appeal challenging said approval. During the approval appeal process, it would prove to be difficult to ascertain whether an approval was indeed effective or not because the result of the approval appeal could render the initial approval invalid. Such is not the case under these facts.

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Westlaw.
975 A.2d 1241
292 Conn. 817, 975 A.2d 1241
(Cite as: 292 Conn. 817, 975 A.2d 1241)

H

Supreme Court of Connecticut.
ASPETUCK COUNTRY CLUB, INC.
v.
TOWN OF WESTON.

No. 18105.
Argued Jan. 13, 2009.
Decided Aug. 4, 2009.

Background: Country club appealed from decision of the town tax assessor denying club's application for classification of certain of its golf course property as open space land. The Superior Court, judicial district of Fairfield, Gilardi, J., granted town's motion for summary judgment and denied club's cross-motion for summary judgment. Club appealed.

Holdings: The Supreme Court, Vertefeuille, J., held that:
(1) property designated as open space land requires majority legislative approval before the land is eligible for open space classification for tax assessment purposes; and
(2) mere designation of club's property as open space land in the plan of development did not make the club's property eligible for open space classification for tax assessment purposes.

Affirmed.

West Headnotes

[1] Judgment 228 ⚿185(2)

228 Judgment
228V On Motion or Summary Proceeding
228k182 Motion or Other Application
228k185 Evidence in General
228k185(2) k. Presumptions and burden of proof. Most Cited Cases
In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party.

[2] Judgment 228 ⚿185(6)

228 Judgment
228V On Motion or Summary Proceeding
228k182 Motion or Other Application
228k185 Evidence in General
228k185(6) k. Existence or nonexistence of fact issue. Most Cited Cases
Party moving for summary judgment has the burden of showing the absence of any genuine issue of material fact and that the party is, therefore, entitled to judgment as a matter of law.

[3] Appeal and Error 30 ⚿842(2)

30 Appeal and Error
30XVI Review
30XVI(A) Scope, Standards, and Extent, in General
30k838 Questions Considered
30k842 Review Dependent on Whether Questions Are of Law or of Fact
30k842(2) k. Findings of fact and conclusions of law. Most Cited Cases

Appeal and Error 30 ⚿1010.1(1)

30 Appeal and Error
30XVI Review
30XVI(I) Questions of Fact, Verdicts, and Findings
30XVI(I)3 Findings of Court
30k1010 Sufficiency of Evidence in Support
30k1010.1 In General
30k1010.1(1) k. In general. Most Cited Cases
On appeal, appellate court must determine whether the legal conclusions reached by the trial court are legally and logically correct and whether they find support in the facts set out in the memorandum of decision of the trial court.

[4] Appeal and Error 30 ⚿863

30 Appeal and Error
30XVI Review
30XVI(A) Scope, Standards, and Extent, in General
30k862 Extent of Review Dependent on Nature of Decision Appealed from
30k863 k. In general. Most Cited Cases
Appellate court's review of the trial court's decision to grant motion for summary judgment is plenary.

[5] Taxation 371 ⚿2704

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)10 Judicial Review or Intervention
371k2700 Further Judicial Review
371k2704 k. Scope of review. Most Cited Cases
Appellant's claims challenging the trial court's interpretation of property tax statute, governing classification of land as open space land, were subject to plenary review. C.G.S.A. § 12-107e.

[6] Statutes 361 ⚿181(1)

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k180 Intention of Legislature
361k181 In General
361k181(1) k. In general. Most Cited Cases

Statutes 361 ⚿191

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k187 Meaning of Language
361k191 k. Application of terms to subject-matter. Most Cited Cases

When construing a statute, court's fundamental objective is to ascertain and give effect to the apparent intent of the legislature; in other words, courts seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of the case, including the question of whether the language actually does apply.

[7] Statutes 361 ⚿181(2)

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k180 Intention of Legislature
361k181 In General
361k181(2) k. Effect and consequences. Most Cited Cases

Statutes 361 ⚿214

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k213 Extrinsic Aids to Construction
361k214 k. In general. Most Cited
If, after examining text of statute, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered.

[8] Statutes 361 ⚿190

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k187 Meaning of Language
361k190 k. Existence of ambiguity. Most Cited Cases
When a statute is not plain and unambiguous, courts look for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the

same general subject matter.

[9] Statutes 361 ⚷190

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k187 Meaning of Language
361k190 k. Existence of ambiguity. Most Cited Cases

The test to determine ambiguity is whether the statute, when read in context, is susceptible to more than one reasonable interpretation.

[10] Taxation 371 ⚷2523

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)5 Valuation of Property
371k2520 Valuation of Particular Real Property
371k2523 k. Rural or agricultural lands; open spaces. Most Cited Cases

A majority vote of a municipality's legislative body is necessary before a taxpayer may apply for open space classification of land for tax assessment purposes. C.G.S.A. § 12-107e.

[11] Statutes 361 ⚷188

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k187 Meaning of Language
361k188 k. In general. Most Cited

Terms in a statute are to be assigned their ordinary meaning, unless context dictates otherwise.

[12] Taxation 371 ⚷2523

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)5 Valuation of Property
371k2520 Valuation of Particular Real Property
371k2523 k. Rural or agricultural lands; open spaces. Most Cited Cases

The text of property tax statute, governing classification of land as open space land, failed to yield a plain and unambiguous meaning as to whether legislature intended that property designated as open space land in municipality's plan of development be approved by majority of the municipality's legislative body before it could be classified as open space land for tax assessment purposes, and because the statute was ambiguous, appellate court was not limited to the text of statute, and could look to extratextual sources for guidance as to the legislature's intent. C.G.S.A. § 12-107e.

[13] Statutes 361 ⚷217.2

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k213 Extrinsic Aids to Construction
361k217.2 k. Legislative history of act. Most Cited Cases

Statute's legislative history provides assistance in determining its meaning.

[14] Taxation 371 ⚷2523

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)5 Valuation of Property
371k2520 Valuation of Particular Real Property
371k2523 k. Rural or agricultural lands; open spaces. Most Cited Cases

By enacting property tax statute, governing classification of land as open space land, legislature intended that property designated as open space land in a municipality's plan of development be approved by a majority of the municipality's legislative body before it could be classified as open space land for tax assessment purposes. C.G.S.A. § 12-107e.

[15] Statutes 361 ⚿223.1

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k223 Construction with Reference to Other Statutes
361k223.1 k. In general. Most Cited Cases

Statutes should be construed, where possible, so as to create a rational, coherent and consistent body of law.

[16] Statutes 361 ⚿174

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k174 k. In general. Most Cited Cases

Statutes 361 ⚿212.3

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k212 Presumptions to Aid Construction
361k212.3 k. Unjust, absurd, or unreasonable consequences. Most Cited Cases

In construing a statute, common sense must be used and courts must assume that a reasonable and rational result was intended.

[17] Statutes 361 ⚿181(2)

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k180 Intention of Legislature
361k181 In General
361k181(2) k. Effect and consequences. Most Cited Cases

Statutes 361 ⚿184

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k180 Intention of Legislature
361k184 k. Policy and purpose of act. Most Cited Cases

When interpreting statute, courts must avoid a construction that fails to attain a rational and sensible result that bears directly on the purpose the legislature sought to achieve.

[18] Statutes 361 ⚿181(2)

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k180 Intention of Legislature
361k181 In General
361k181(2) k. Effect and consequences. Most Cited Cases

If there are two possible interpretations of a statute, appellate courts will adopt the more reasonable construction over one that is unreasonable.

[19] Taxation 371 ⚿2523

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)5 Valuation of Property
371k2520 Valuation of Particular Real Property
371k2523 k. Rural or agricultural lands; open spaces. Most Cited Cases

The initial "designation" of areas of open space land by a local planning commission is to be distinguished from the "classification" of such land by the town assessor; open space designation occurs within a municipality's plan of development, which is merely advisory and contains only recommendations for land use, but, on the other hand, open space classification for tax assessment purposes is more than a mere recommendation for land use, and instead, it is a status that leads to a lower tax assessment. C.G.S.A. §§ 12-107a(2), 12-107e(a, b).

[20] Taxation 371 ⚿2523

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)5 Valuation of Property
371k2520 Valuation of Particular Real Property
371k2523 k. Rural or agricultural lands; open spaces. Most Cited Cases

Open space designation, alone, is not enough to make land eligible for open space classification for taxation purposes; something more than mere open space designation is needed. C.G.S.A. § 12-107e (b).

[21] Taxation 371 ⚿2523

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)5 Valuation of Property
371k2520 Valuation of Particular Real Property
371k2523 k. Rural or agricultural lands; open spaces. Most Cited Cases

Property designated as open space land requires majority legislative approval before the land is eligible for open space classification for tax assessment purposes. C.G.S.A. § 12-107e.

[22] Taxation 371 ⚿2523

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)5 Valuation of Property
371k2520 Valuation of Particular Real Property
371k2523 k. Rural or agricultural lands; open spaces. Most Cited Cases

The mere designation of landowner's property as open space land in the plan of development did not make the landowner's property eligible for open space classification for tax assessment purposes; in other words, landowner's property was ineligible for open space classification because its open space designation never had been approved by a majority of town's legislative body. C.G.S.A. § 12-107e(b).

[23] Zoning and Planning 414 ⚿1220

414 Zoning and Planning
414V Construction, Operation, and Effect
414V(A) In General
414k1220 k. Comprehensive or general plan. Most Cited Cases
(Formerly 414k30)

A municipality's plan of development is merely advisory and not binding.

[24] Constitutional Law 92 ⚿2630

92 Constitutional Law
92XXI Vested Rights
92k2630 k. Constitutional guarantees in general. Most Cited Cases

Constitutional Law 92 ⚿2632

92 Constitutional Law
92XXI Vested Rights
92k2631 Property in General
92k2632 k. In general. Most Cited Cases

A vested right is one that equates to legal or equitable title to the present or future enjoyment of property, or to the present or future enforcement of a demand, or a legal exception from a demand made by another; a right is not vested unless it amounts to something more than a mere expectation of future benefit or interest founded upon an anticipated continuance of the existing general laws.

[25] Taxation 371 ⚿2523

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)5 Valuation of Property
371k2520 Valuation of Particular Real Property
371k2523 k. Rural or agricultural lands; open spaces. Most Cited Cases

Because a town's plan of development was

merely advisory in nature, a designation of property as open space land within that plan of development was also merely advisory and could not be considered more than a mere expectation of a future benefit, and therefore, such a designation did not create a vested right in having that land classified as open space land for taxation purposes. C.G.S.A. § 12-107e.

[26] Taxation 371 ⚿2523

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)5 Valuation of Property
371k2520 Valuation of Particular Real Property
371k2523 k. Rural or agricultural lands; open spaces. Most Cited Cases

There cannot be any right to open space classification for tax assessment purposes unless a landowner applies for such classification within the statutory sixty day period. C.G.S.A. § 12-107e(b, c).

[27] Taxation 371 ⚿2523

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)5 Valuation of Property
371k2520 Valuation of Particular Real Property
371k2523 k. Rural or agricultural lands; open spaces. Most Cited Cases

Because the designation of landowner's property as open space land in the town's plan of development over 30 years ago never had been approved by a majority of the town's legislative body, landowner's current application for open space classification based on its open space designation over 30 years ago was necessarily beyond the sixty day time limit imposed by property tax statute, and thus, landowner waived, pursuant to the time limitation, any vested right it might have had to open space classification for tax assessment purposes. C.G.S.A. § 12-107e(b, c).

[28] Taxation 371 ⚿2523

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)5 Valuation of Property
371k2520 Valuation of Particular Real Property
371k2523 k. Rural or agricultural lands; open spaces. Most Cited Cases

Because open space designation alone did not create a vested right to open space classification for tax assessment purposes, and because landowner's application for open space classification was necessarily beyond the 60 day time limit imposed by statute, trial court did not improperly deprive landowner of a vested right to open space classification for tax assessment purposes when it denied landowner's application for open space classification. C.G.S.A. § 12-107e(b).

**1243 Michael P. Shea, with whom were Joseph L. Hammer, Hartford, and, on the brief, Thomas D. Goldberg, Stamford, for the appellant (plaintiff).

**1244 Jonathan S. Bowman, with whom was Barbara M. Schellenberg, Bridgeport, for the appellee (defendant).

ROGERS, C.J., and NORCOTT, KATZ, PALMER and VERTEFEUILLE, Js.

VERTEFEUILLE, J.

*819 This appeal arises from the decision of the tax assessor of the defendant, the town of Weston, denying the application of the plaintiff, Aspetuck Valley Country Club, Inc., for classification of certain of its golf course property as open space land pursuant to General Statutes § 12-107e. [FN1] The plaintiff appeals [FN2] from the judgment of the trial court granting *820 the defendant's motion for summary judgment and denying the plaintiff's cross motion for summary judgment. The issues in this

appeal are whether the trial court improperly: (1) determined that, because the open space designation of the plaintiff's property in the defendant's plan of conservation and development had never been approved by a majority vote of the town's legislative body, the property was therefore ineligible for open space classification for tax assessment purposes pursuant to § 12-107e(a) and (b); and (2) deprived the plaintiff of its vested right to an open space classification for tax assessment purposes under § 12-107e(b). We conclude that the trial court properly determined that the plaintiff's property was ineligible for open space classification and that the plaintiff did not have a vested right to open space classification. Accordingly, we affirm the judgment of the trial court.

FN1. General Statutes § 12-107e provides in relevant part: "(a) The planning commission of any municipality in preparing a plan of conservation and development for such municipality may designate upon such plan areas which it recommends for preservation as areas of open space land, provided such designation is approved by a majority vote of the legislative body of such municipality. Land included in any area so designated upon such plan as finally adopted may be classified as open space land for purposes of property taxation or payments in lieu thereof if there has been no change in the use of such area which has adversely affected its essential character as an area of open space land between the date of the adoption of such plan and the date of such classification.

"(b) An owner of land included in any area designated as open space land upon any plan as finally adopted may apply for its classification as open space land on any grand list of a municipality by filing a written application for such classification with the assessor thereof not earlier than thirty days before or later than thirty days after the assessment date.... The assessor shall determine whether there has been any change in the area designated as an area of open space land upon the plan of development which adversely affects its essential character as an area of open space land and, if the assessor determines that there has been no such change, said assessor shall classify such land as open space land and include it as such on the grand list....

"(c) Failure to file an application for classification of land as open space land within the time limit prescribed in subsection (b) of this section and in the manner and form prescribed in said subsection (b) shall be considered a waiver of the right to such classification on such assessment list...."

Section 12-107e was amended since the relevant time period in the present case. See Public Acts 2005, No. 05-190, § 5. Those changes, technical in nature, are not relevant to the present appeal. Accordingly, references herein to § 12-107e are to the current revision.

FN2. The plaintiff appealed from the judgment of the trial court to the Appellate Court, and we transferred the appeal to this court pursuant to General Statutes § 51-199(c) and Practice Book § 65-1.

The record reveals the following undisputed facts and procedural history that are relevant to our resolution of this appeal. The plaintiff owns nearly 110 acres of land in Weston and for approximately forty years has used 100 acres of that land as a private golf course. In the 1969, 1987 and 2000 Weston town plans of conservation ****1245** and development (plan of development),[FN3] each of which was adopted pursuant to General Statutes § 8-23,[FN4] the plaintiff's golf course was labeled a

"[p]rivate recreational area of open character." In September, 2004, for the first time, the plaintiff applied to the defendant for open space classification for tax assessment purposes pursuant to § 12-107e (a) and (b).[FN5] Such a classification*821 would entitle the plaintiff to a reduction in the assessed value of its property and a corresponding reduction in taxes. In January, 2005, the defendant's tax assessor denied the plaintiff's application because the defendant's legislative body had not approved by a majority vote the open space designation of the plaintiff's property in the plan of development. The plaintiff then appealed from that decision to the trial court.

FN3. Such a plan of development is required to be prepared by each municipality's planning commission pursuant to General Statutes § 8-23.

FN4. General Statutes § 8-23(g)(1) provides: "After completion of the public hearing [pursuant to subsection (f) of this statute], the commission may revise the plan and may adopt the plan or any part thereof or amendment thereto by a single resolution or may, by successive resolutions, adopt parts of the plan and amendments thereto."

FN5. See footnote 1 of this opinion.

The defendant filed a motion for summary judgment, claiming that, because there was no genuine issue of material fact as to whether the defendant's legislative body had approved the designation of the plaintiff's land by a majority vote, the defendant was entitled to judgment as a matter of law. In response, the plaintiff filed a memorandum of opposition to the defendant's motion for summary judgment as well as a cross motion for summary judgment. The plaintiff contended that the designation of its property as an open space recreation area on the 1969 plan of development showed that the property continuously had been recognized as open space land even before the majority legislative approval requirement of § 12-107e(a) was imposed in 1979. See Public Acts 1979, No. 79-513, § 3 (P.A. 79-513). The plaintiff claimed that because § 12-107e(a) should not be applied retroactively, the defendant should be directed to classify the plaintiff's property as open space land for tax assessment purposes.

The trial court concluded that the plan of development was merely advisory and not binding on the defendant. The trial court thus determined that the plaintiff had no vested right to open space classification for tax assessment purposes. Furthermore, the trial court concluded that § 12-107e(a) clearly and unambiguously requires that a municipality's legislative body approve by a majority vote any open space designation. Accordingly, because the trial court found that this vote never *822 had occurred, [FN6] it granted the defendant's motion for summary judgment and denied the plaintiff's cross motion for summary judgment, and rendered judgment for the defendant. This appeal followed.

FN6. The defendant's first selectman, who is the presiding selectman for the defendant's legislative body, the board of selectmen, attested in an affidavit that no such vote had occurred. No affidavit or other evidence contradicting that representation was offered.

[1][2][3][4] We begin by setting forth the appropriate standard of review. " Practice Book § 17-49 provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In deciding a motion for summary judgment, the trial court **1246 must view the evidence in the light most favorable to the nonmoving party.... The party moving for summary judgment has the burden of showing the absence of any genuine issue of material fact and that the party is, therefore, entitled to judgment as a matter of law.... On appeal, we must determine whether the legal conclusions reached by

the trial court are legally and logically correct and whether they find support in the facts set out in the memorandum of decision of the trial court.... Our review of the trial court's decision to grant the defendant's motion for summary judgment is plenary." (Internal quotation marks omitted.) *State v. Peters,* 287 Conn. 82, 87, 946 A.2d 1231 (2008); see also *Bellemare v. Wachovia Mortgage Corp.,* 284 Conn. 193, 198-99, 931 A.2d 916 (2007).

[5][6][7][8][9] The plaintiff's claims challenging the trial court's interpretation of § 12-107e are also subject to plenary review. See, e.g., *Stiffler v. Continental Ins. Co.,* 288 Conn. 38, 42, 950 A.2d 1270 (2008); *Considine v. Waterbury,* 279 Conn. 830, 836, 905 A.2d 70 (2006). "When construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the ***823** legislature.... In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply.... In seeking to determine the meaning, General Statutes § 1-2z [FN7] directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered.... When a statute is not plain and unambiguous, we also look for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter...." (Internal quotation marks omitted.) *Stiffler v. Continental Ins. Co.,* supra, at 43, 950 A.2d 1270. "The test to determine ambiguity is whether the statute, when read in context, is susceptible to more than one reasonable interpretation." (Internal quotation marks omitted.) *Tarnowsky v. Socci,* 271 Conn. 284, 287 n. 3, 856 A.2d 408 (2004).

FN7. General Statutes § 1-2z provides: "The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered."

I

The plaintiff first claims that the trial court improperly determined that its property was not eligible for open space classification for tax assessment purposes under § 12-107e because the property's open space designation was never approved by a majority vote of the defendant's legislative body. Specifically, the plaintiff ***824** asserts that § 12-107e does not require the open space designation of its property within the plan of development to be approved by a majority vote of the defendant's legislative body in order to receive open space classification for tax assessment purposes. Instead, the plaintiff contends that § 12-107e(b) provides that a tax assessor *must* classify property as open space for tax assessment purposes if there has been no change in the use of the property that adversely affects its character as open ****1247** space as designated in *any* plan of development.

[10] In response, the defendant claims that the trial court properly concluded that § 12-107e plainly and unambiguously requires that a municipality's legislative body must approve an open space designation by a majority vote before a taxpayer may apply for an open space classification for tax assessment purposes. The defendant asserts that, because the defendant's legislative body never approved the open space designation of the plaintiff's property, it is therefore precluded under the statute from being classified as open space land for tax assessment purposes. Although we conclude that § 12-107e is not plain and unambiguous with regard

to the present issue, we nevertheless agree with the defendant that the trial court properly determined that a majority vote of a municipality's legislative body is necessary before a taxpayer may apply for open space classification.

[11] We begin our analysis pursuant to § 1-2z with the text of § 12-107e. See footnote 1 of this opinion. As we do so, we are mindful that "terms in a statute are to be assigned their ordinary meaning, unless context dictates otherwise...." (Internal quotation marks omitted.) *State v. Lutters,* 270 Conn. 198, 206, 853 A.2d 434 (2004). Subsections (a) and (b) of § 12-107e address the two consecutive procedures for the classification of land as open space for tax assessment purposes: (1) ***825** subsection (a) concerns the procedure and effect of open space designation by the planning commission; and (2) subsection (b) provides the procedure by which a landowner may apply for open space classification for tax assessment purposes once its land has been designated as open space in the plan of development.

Section 12-107e(a) provides that "[t]he planning commission of any municipality in preparing a plan of conservation and development for such municipality may designate upon such plan areas which it *recommends* for preservation as areas of open space land" and that such an open space designation is required to be "approved by a majority vote of the legislative body of such municipality." (Emphasis added.) The statute further provides that land *"so designated* upon such plan *as finally adopted* may be classified as open space land for purposes of property taxation...." (Emphasis added.) General Statutes § 12-107e(a).

Section 12-107e(b), on the other hand, provides that a landowner whose property has been "designated as open space land upon any plan *as finally adopted* " may apply for classification of that land as open space for tax assessment purposes. (Emphasis added.) That subsection establishes a very limited time frame within which this application may be submitted. Landowners may not apply for open space classification "earlier than thirty days before or later than thirty days after the [tax] assessment date...." General Statutes § 12-107e(b).

Notably, subsection (a) of § 12-107e provides that open space classification for tax assessment purposes may occur only after property has been designated as open space land and approved by a majority of the municipality's legislative body. Subsection (b), on the other hand, merely provides that the landowner of *"any* area designated as open space land upon any plan as ***826** finally adopted" may apply for open space classification. (Emphasis added.) General Statutes § 12-107e(b). It is not clear from the text of the statute itself whether the majority legislative approval requirement of subsection (a) of § 12-107e also applies to subsection (b). Specifically, the statute does not explain its use of the term "as finally adopted," which is used in ****1248** both subsections (a) and (b) of § 12-107e, but after different qualifications. While § 12-107e (a) clearly provides that open space designation must be "approved" and town plans of development must be "finally adopted" in order to be eligible for open space classification for tax assessment purposes, § 12-107e(b) omits any reference to the majority legislative approval requirement of subsection (a) and mentions only the requirement that the town plan of development containing the designation be "finally adopted...." See General Statutes § 12-107e(a) and (b). The statute therefore fails to clarify whether a "finally adopted" plan of development for the purposes of a landowner's application for open space classification under § 12-107e(b) includes an open space designation that has been approved by a legislative majority. In other words, it is not clear whether the majority legislative approval requirement from § 12-107e(a) is incorporated into the language of § 12-107e(b).

[12] The plaintiff, in an attempt to clarify the statutory language, highlights the fact that subsection (a) refers to land "so designated"; General Statutes § 12-107e(a); but subsection (b) refers to *"any* area designated" as open space land. (Emphasis ad-

ded.) General Statutes § 12-107e(b). Specifically, the plaintiff points out that while subsection (a) of § 12-107e was amended in 1979 to include the majority legislative approval requirement; see P.A. 79-513, § 3; subsection (b) remained untouched by the amendment and thus incorporates no such requirement. The plaintiff therefore asserts that the reference*827 in § 12-107e(b) to the open space designation of land in "any plan as finally adopted" requires only that the designation be upon *any* plan finally adopted pursuant to § 8-23, and not necessarily also approved by a majority of the municipality's legislative body. In response, the defendant claims that it would be unreasonable for the legislature to have added the requirement for legislative approval to § 12-107e(a) in 1979 but not have intended to make the requirement applicable to applications for open space classification under § 12-107e(b). Because § 12-107e(a) and (b) use the same language-that is, the phrase "as finally adopted"-even without the words "so designated," the defendant contends that subsection (b) also requires majority legislative approval before open space classification for tax assessment purposes may occur. Because we find that the text of § 12-107e is susceptible to both parties' reasonable interpretation, we conclude that it fails to yield a plain and unambiguous meaning. See, e.g., *Hees v. Burke Construction, Inc.*, 290 Conn. 1, 12, 961 A.2d 373 (2009) ("[b]ecause both readings of the statute are reasonable, we conclude that the statutory language is ambiguous in this case"); *State v. Jenkins*, 288 Conn. 610, 620-21, 954 A.2d 806 (2008) (concluding that phrase is ambiguous because it is susceptible of more than one reasonable interpretation). Accordingly, we are not limited to the text of § 12-107e and we may look to extratextual sources for guidance as to the legislature's intent. See *Tarnowsky v. Socci*, supra, 271 Conn. at 287 n. 3, 856 A.2d 408.

[13] The statute's legislative history provides assistance in determining its meaning. See, e.g., *State v. Orr*, 291 Conn. 642, 651, 969 A.2d 750 (2009) ("[w]hen a statute is not plain and unambiguous, we also look for interpretive guidance to the legislative history and circumstances surrounding its enactment" [internal quotation marks omitted]). In 1979, § 12-107e(a) was amended *828 by the addition of the language, "provided such designation is approved by a majority vote of the legislative body of such municipality." P.A. 79-513, § 3. Before 1979, no **1249 such language, and thus no such majority approval requirement, existed.[FN8] Senator Audrey Beck, a proponent of the legislation in the Senate and cochair of the subcommittee on business taxation of the finance, revenue and bonding committee, explained that "[t]he purpose of the bill is to require the legislative body of a municipality to approve any designation by the planning commission of that municipality's land in the municipality as open space land *for property tax purposes* ...." (Emphasis added.) 22 S. Proc., Pt. 15, 1979 Sess., p. 5064. Senator Beck's explanation explicitly links the requirement of municipal legislative approval to open space classification "for property tax purposes...." Id. In other words, contrary to the plaintiff's claim, Senator Beck's explanation indicates that the legislature intended its 1979 amendment to apply equally to both subsections (a) and (b) of § 12-107e.

> FN8. As the defendant concedes in its brief, if the plaintiff had filed an application for open space classification for purposes of property tax assessment before 1979, its application would have been approved because no requirement that the open space designation of its property be approved by a majority of the defendant's legislative body existed at that time.

[14] In addition to Senator Beck's statement, the proposed committee bill that ultimately was enacted as P.A. 79-513 contained the following statement of purpose: "To require that the legislative body of a municipality approve the classification of land as open space land for property tax purposes." Proposed House Bill No. 7246. Again, as in Senator Beck's remarks before the Senate, legislative ap-

proval is tied not just to open space classification, but also to actual property tax purposes. Thus, the legislative history of § 12-107e is clear that the legislature intended that property designated as open ***829** space land in a municipality's plan of development be approved by a majority of the municipality's legislative body before it may be classified as open space land for tax assessment purposes.

[15][16][17][18] This conclusion is consistent with principles of statutory construction. We are mindful that "statutes should be construed, where possible, so as to create a rational, coherent and consistent body of law. See, e.g., *Doe v. Doe,* 244 Conn. 403, 428, 710 A.2d 1297 (1998) (we read related statutes to form a consistent, rational whole, rather than to create irrational distinctions); *In re Valerie D.,* 223 Conn. 492, 524, 613 A.2d 748 (1992) ([s]tatutes are to be interpreted with regard to other relevant statutes because the legislature is presumed to have created a consistent body of law)." (Internal quotation marks omitted.) *Waterbury v. Washington,* 260 Conn. 506, 557, 800 A.2d 1102 (2002). Moreover, "[i]n construing a statute, common sense must be used and courts must assume that a reasonable and rational result was intended. *Norwich Land Co. v. Public Utilities Commission,* 170 Conn. 1, 4, 363 A.2d 1386 (1975); see *Sutton v. Lopes,* 201 Conn. 115, 121, 513 A.2d 139 (observing that we must construe statute in manner that will not thwart its intended purpose or lead to absurd results), cert. denied sub nom., *McCarthy v. Lopes,* 479 U.S. 964, 107 S.Ct. 466, 93 L.Ed.2d 410 (1986).... [W]e [also] must avoid a construction that fails to attain a rational and sensible result that bears directly on the purpose the legislature sought to achieve. *Peck v. Jacquemin,* 196 Conn. 53, 63-64, 491 A.2d 1043 (1985). If there are two possible interpretations of a statute, we will adopt the more reasonable construction over one that is unreasonable. ****1250***Turner v. Turner,* 219 Conn. 703, 713, 595 A.2d 297 (1991)." (Internal quotation marks omitted.) *Goldstar Medical Services, Inc. v. Dept. of Social Services,* 288 Conn. 790, 803-804, 955 A.2d 15 (2008).

***830** Indeed, it would make no sense to require legislative approval of a property's open space designation in an advisory plan of development pursuant to § 12-107e(a), but not require the same legislative approval for applications for open space classification based on that designation for tax assessment purposes pursuant to § 12-107e(b). Such a result would be irrational and would directly contradict not only Senator Beck's explanation of the intent behind the 1979 amendment to § 12-107e; see 22 S. Proc., supra, at p. 5064; but also the underlying bill's clear statement of purpose. The legislature cannot have intended such an unreasonable result.

[19][20] Furthermore, the more reasonable interpretation of § 12-107e-that is, that the legislative approval requirement apply to both subsections (a) and (b)-is consistent with this court's long recognition of the distinction between open space designation and open space classification under § 12-107e (a) and (b). "[I]t is apparent that the initial 'designation' of areas of open space land by a local planning commission is to be distinguished from the 'classification' of such land by the town assessor." *Birchwood Country Club, Inc. v. Board of Tax Review,* 178 Conn. 295, 299, 422 A.2d 304 (1979); see also *Felician Sisters of St. Francis of Connecticut, Inc. v. Historic District Commission,* 284 Conn. 838, 850, 937 A.2d 39 (2008) ("use of the different terms ... within the same statute suggests that the legislature acted with complete awareness of their different meanings ... and that it intended the terms to have different meanings" [internal quotation marks omitted]). On the one hand, open space designation pursuant to § 12-107e occurs within a municipality's plan of development, which is merely advisory and contains only recommendations for land use. See, e.g., General Statutes § 8-23(d)(1) ("[a town's] plan of conservation and development shall ... [D] *recommend* the most desirable use of land within the municipality for residential, ***831** recreational, commercial, industrial, conservation and other purposes and include a map showing such proposed land uses" [emphasis ad-

ded]); *AvalonBay Communities, Inc. v. Orange,* 256 Conn. 557, 574-75, 775 A.2d 284 (2001) (it is well established that " 'a town plan is merely advisory' "); *Lathrop v. Planning & Zoning Commission,* 164 Conn. 215, 223, 319 A.2d 376 (1973) (same); R. Fuller, 9 Connecticut Practice Series: Land Use Law and Practice (3d Ed.2007) § 10:15, pp. 321-22 ("contents of the plan of conservation and development are only advisory to the zoning commission"). On the other hand, open space classification for tax assessment purposes is more than a mere recommendation for land use; it is a status that leads to a lower tax assessment. See General Statutes § 12-107a(2) [FN9] (mandating lower tax rate for property classified as open space land). This distinction between designation and classification indicates that open space designation alone is not enough to make land eligible for open space classification pursuant to § 12-107e(b). Indeed, if mere open space designation were enough, not only would there **1251 have been no need for the legislature's 1979 amendment to § 12-107e, but there also would have been no need for the legislature to use the different terms, "designation" and "classification," within the same statute. See *Felician Sisters of St. Francis of Connecticut, Inc. v. Historic District Commission,* supra, 284 Conn. at 850, 937 A.2d 39. Something more than mere open space designation is needed.

> FN9. General Statutes § 12-107 a provides in relevant part: "It is hereby declared ... (2) that it is in the public interest to prevent the forced conversion of farm land, forest land, open space land and maritime heritage land to more intensive uses as the result of economic pressures caused by the assessment thereof for purposes of property taxation at values incompatible with their preservation as such farm land, forest land, open space land and maritime heritage land...."

We recently recognized the additional requirement of approval of a majority of the municipality's legislative *832 body. In *Griswold Airport, Inc. v. Madison,* 289 Conn. 723, 732, 961 A.2d 338 (2008) , we noted that approval of the open space designation by a majority of the town's legislative body is necessary for property to be classified as open space land for tax assessment purposes. "Once a planning commission designates an area that it recommends should be preserved as open space *and the designation receives legislative approval,* land included within that area may be classified as open space land for purposes of property taxation...." (Emphasis added; internal quotation marks omitted.) Id. It is thus apparent that "[i]f the open space plan [in the plan of development] is approved by a majority vote of the municipality's legislative body, areas shown on the plan for open space land can receive an open space tax classification...." 9 R. Fuller, supra, at p. 321.

[21][22] On the basis of the foregoing textual and extratextual analysis of § 12-107e, we conclude that under § 12-107e, property designated as open space land requires majority legislative approval before the land is eligible for open space classification for tax assessment purposes. In the present case, the plaintiff's property was designated as open space land in the 1969 plan of development, and was recognized as the same in the 1987 and 2000 plans of development. The open space designation, however, has never been approved by a majority of the defendant's legislative body.[FN10] We therefore conclude that the mere designation of the plaintiff's property as open space land in the plan of development does *not* make the plaintiff's property eligible for open space classification for tax assessment purposes pursuant to § 12-107e(b), and, accordingly, that the trial court properly determined that the plaintiff's property was ineligible for open space classification because its open space designation never had been approved by a majority of the defendant's legislative body.

> FN10. See footnote 6 and accompanying text of this opinion.

*833 II

The plaintiff also claims that it has a vested right to obtain open space classification of its property and that the trial court improperly deprived it of this vested right by rendering judgment for the defendant. Specifically, the plaintiff asserts that the defendant's continuous recognition of the plaintiff's property as open space land since its designation as such in the 1969 plan of development created a vested right to obtain open space classification for tax assessment purposes. The plaintiff also maintains that the trial court's application of P.A. 79-513, which amended § 12-107e(a) to create the majority vote requirement, constitutes an improper retroactive application of a statutory amendment.

In response, the defendant contends that the plaintiff has no vested right to open space classification because the open space designation in the 1969 plan of development constitutes only a recommendation and not a definite fixed right. Additionally, the defendant claims that the ****1252** principle of retroactivity does not apply to the plaintiff's case because the plaintiff waited until 2004 to file its application for open space classification for tax assessment purposes. The defendant asserts that the plaintiff's reliance on a 1969 plan of development that has been twice superseded by more recent town plans of development, most recently in 2000, renders the plaintiff's argument meritless. We agree with the defendant.

[23][24] As previously set forth herein, it is well established that a municipality's plan of development is merely advisory and not binding. See, e.g., *AvalonBay Communities, Inc. v. Orange,* supra, 256 Conn. at 574-75, 775 A.2d 284 (noting that it is well established that " 'a town plan is merely advisory' "); *Lathrop v. Planning & Zoning Commission,* supra, 164 Conn. at 223, 319 A.2d 376 (same); 9 R. Fuller, supra, at pp. 321-22 ("contents of the plan of conservation and ***834** development are only advisory to the zoning commission"). It is also well established that "[a] vested right is one that equates to legal or equitable title to the present or future enjoyment of property, or to the present or future enforcement of a demand, or a legal exception from a demand made by another." (Internal quotation marks omitted.) *Bhinder v. Sun Co., Inc.,* 263 Conn. 358, 375, 819 A.2d 822 (2003) ; *Toise v. Rowe,* 243 Conn. 623, 631, 707 A.2d 25 (1998); *Wiltzius v. Zoning Board of Appeals,* 106 Conn.App. 1, 13, 940 A.2d 892, cert. denied, 287 Conn. 907, 950 A.2d 1284 (2008). "A right is not vested unless it amounts to something more than a mere expectation of future benefit or interest founded upon an anticipated continuance of the existing general laws." (Internal quotation marks omitted.) *Hayes Family Ltd. Partnership v. Planning & Zoning Commission,* 98 Conn.App. 213, 233, 907 A.2d 1235 (2006), cert. denied, 281 Conn. 904, 916 A.2d 44 (2007).

[25] Accordingly, because a town's plan of development is merely advisory in nature, it is clear that a designation of property as open space land within that plan of development is also merely advisory and cannot be considered more than a "mere expectation of [a] future benefit...." (Internal quotation marks omitted.) Id. Such a designation does *not,* therefore, create a vested right, as the plaintiff claims.

[26][27] Moreover, to the extent that there might be a vested right to open space classification for tax assessment purposes, the statute itself limits the time within which a landowner may exercise that right. Section 12-107e(c) is clear that, since 1979,[FN11] the failure to file an application for open space classification for tax assessment ***835** purposes within the time limit imposed by subsection (b) constitutes "a waiver of the right to such classification...." General Statutes § 12-107e(c). Subsection (b) limits the application period for open space classification for tax assessment purposes to a specific sixty day window: "not earlier than thirty days before or later than thirty days after the assessment date...." General Statutes § 12-107e (b). Accordingly, there cannot be any right to open space classification for tax assessment purposes unless a landowner applies for such classification

within that sixty day period. In the present case, the plaintiff concedes that it did not file an application for open space classification until 2004, despite the designation of its property as open space land in the 1969 **1253 plan of development. Moreover, the designation of the plaintiff's property as open space land in the 1969 plan of development never had been approved by a majority of the defendant's legislative body. Lacking such approval, the plaintiff's 2004 application for open space classification based on its 1969 open space designation is necessarily beyond the sixty day time limit imposed by § 12-107e(b). The plaintiff has thus waived, pursuant to the time limitation in § 12-107e(b) and (c), any vested right it may have had to open space classification for tax assessment purposes.

> FN11. The legislature amended § 12-107e in 1979 to include the provisos in both subsections (a) and (b). P.A. 79-513, § 3. This amendment took effect July 1, 1979. P.A. 79-513, § 6.

[28] Accordingly, because open space designation alone does not create a vested right to open space classification for tax assessment purposes, and because the plaintiff's application for open space classification was necessarily beyond the time limit imposed by § 12-107e(b), we conclude that the trial court did not improperly deprive the plaintiff of a vested right to open space classification for tax assessment purposes.

The judgment is affirmed.

In this opinion the other justices concurred.

Conn.,2009.
Aspetuck Country Club, Inc. v. Town of Weston
292 Conn. 817, 975 A.2d 1241

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Westlaw.

Date of Printing: May 30, 2012

KEYCITE

H Aspetuck Country Club, Inc. v. Town of Weston, 292 Conn. 817, 975 A.2d 1241 (Conn., Aug 04, 2009) (NO. 18105)

History

Direct History

H 1 Aspetuck Valley Country Club, Inc. v. Town of Weston, 2007 WL 1120512, 43 Conn. L. Rptr. 153 (Conn.Super. Mar 30, 2007) (NO. CV064014805S)

Judgment Affirmed by

=> 2 **Aspetuck Country Club, Inc. v. Town of Weston,** 292 Conn. 817, 975 A.2d 1241 (Conn. Aug 04, 2009) (NO. 18105)

Court Documents

Dockets (U.S.A.)

Conn.Super.

3 ASPETUCK VALLEY COUN v. WESTON,TOWN OF, NO. FBT-CV-06-4014805-S (Docket) (Conn.Super. Feb. 1, 2006)

Westlaw

961 A.2d 338
289 Conn. 723, 961 A.2d 338
(Cite as: 289 Conn. 723, 961 A.2d 338)

Supreme Court of Connecticut.
GRISWOLD AIRPORT, INC.
v.
TOWN OF MADISON et al.

No. 17938.
Argued Sept. 5, 2008.
Decided Dec. 23, 2008.

Background: Owner of property, which was being used as airport but upon which proposed housing development was to be constructed, appealed from assessment after municipal tax assessor terminated property's open space classification and reassessed property as 127 individual condominium unit options, plus value of underlying land, which increased total assessed value of property from $294,420 to $2,516,920. The Superior Court, Judicial District of New Britain, Arnold W. Aronson, Judge Trial Referee, rendered judgment in favor of property owner. Town appealed.

Holding: The Supreme Court, Rogers, J., transferred appeal from Appellate Court, and held that assessor acted illegally when she terminated open space classification of property.

Affirmed.

West Headnotes

[1] Statutes 361 ⇐223.4

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k223 Construction with Reference to Other Statutes
361k223.4 k. General and special statutes. Most Cited Cases

For purposes of statutory construction, specific terms covering a given subject matter will prevail over general language of another statute which might otherwise prove controlling.

[2] Statutes 361 ⇐181(1)

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k180 Intention of Legislature
361k181 In General
361k181(1) k. In general. Most Cited Cases

Statutes are to be considered to give effect to the apparent intention of the lawmaking body.

[3] Statutes 361 ⇐188

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k187 Meaning of Language
361k188 k. In general. Most Cited

Statutes 361 ⇐214

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k213 Extrinsic Aids to Construction
361k214 k. In general. Most Cited

Statutes 361 ⇐223.1

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k223 Construction with Reference to Other Statutes
361k223.1 k. In general. Most Cited Cases

The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes; if, after examining such text and considering such relation-

ship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered.

[4] Taxation 371 ⚿2523

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)5 Valuation of Property
371k2520 Valuation of Particular Real Property
371k2523 k. Rural or agricultural lands; open spaces. Most Cited Cases

When determining whether a property should retain a previously existing open space classification, an assessor must determine whether the property's owner actually has begun to use the property in a way that somehow has altered its essential open space character. C.G.S.A. §§ 12-107e, 12-504h.

[5] Taxation 371 ⚿2523

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)5 Valuation of Property
371k2520 Valuation of Particular Real Property
371k2523 k. Rural or agricultural lands; open spaces. Most Cited Cases

In the absence of any change in an open space area adversely affecting its essential character as such since the time of its designation, the assessor must classify such land as open space and include it as such on the assessment list. C.G.S.A. §§ 12-107e , 12-504h.

[6] Statutes 361 ⚿188

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k187 Meaning of Language
361k188 k. In general. Most Cited Cases

As a rule, terms in a statute are to be assigned their ordinary meaning, unless context dictates otherwise.

[7] Statutes 361 ⚿176

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k176 k. Judicial authority and duty. Most Cited Cases

A court must construe a statute as written.

[8] Taxation 371 ⚿2523

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)5 Valuation of Property
371k2520 Valuation of Particular Real Property
371k2523 k. Rural or agricultural lands; open spaces. Most Cited Cases

Municipal tax assessor acted illegally when she terminated open space classification of property, which was being used as airport but upon which proposed housing development was to be constructed, and revalued it on basis of its approved use as condominium units; neither statute governing open space classification directed assessor to consider planned or potential use of property when determining whether it qualified as open space, both statutes directed assessor simply to consider property's use, and assessor's termination of open space classification for property on basis of its proposed use, as opposed to its current use, was improper. C.G.S.A. §§ 12-107e, 12-504h.

[9] Taxation 371 ⚿2523

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)5 Valuation of Property
371k2520 Valuation of Particular Real

Property

371k2523 k. Rural or agricultural lands; open spaces. Most Cited Cases

When valuing open space land, market value, a fundamental rule or standard of valuation of property taxation, must give way to an assessment based on the current use of the property because the declared purpose of the statute is intended to grant favorable treatment to such property to prevent its forced conversion to more intensive use. C.G.S.A. §§ 12-107e, 12-504h.

[10] Taxation 371 ⚖2699(11)

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)10 Judicial Review or Intervention
371k2691 Review of Board by Courts
371k2699 Proceedings for Review and Parties
371k2699(11) k. Determination and relief. Most Cited Cases

Trial court's determination that municipal tax assessor had illegally removed open space classification of property, which was being used as airport but upon which proposed housing development was to be constructed, necessarily incorporated implicit finding that resultant assessment was manifestly excessive, such that property owner was entitled to relief under wrongful property tax assessment statute. C.G.S.A. § 12-119.

**339 William H. Clendenen, Jr., with whom, on the brief, was Nancy L. Walker, New Haven, for the appellant (named defendant).

Matthew J. Willis, Glastonbury, for the appellee (plaintiff).

ROGERS, C.J., and NORCOTT, PALMER, VERTEFEUILLE and ZARELLA, Js.

ROGERS, J.

*725 The primary issue before the court is whether a municipal tax assessor's termination of an open space classification for property on the basis of its proposed use, as opposed to its current use, was proper. The outcome of this appeal turns on the proper interpretation of General Statutes (Rev. to 2003) § 12-504h, a provision that gives municipal tax assessors discretionary authority to remove open space classifications previously placed on real property within their municipalities when the use of that property has changed. See also General Statutes § 12-107e.[FN1] The *726 named **340 defendant, the town of Madison,[FN2] appeals from the judgment of the trial court sustaining a municipal tax appeal brought by the plaintiff, Griswold Airport, Inc., pursuant to General Statutes § 12-119.[FN3] The defendant claims on appeal that the trial court improperly: (1) concluded that the defendant's tax assessor (assessor) illegally terminated the open space classification on the plaintiff's property and revalued it accordingly; and (2) granted the plaintiff relief pursuant to § 12-119. We affirm the judgment of the trial court.[FN4]

FN1. General Statutes (Rev. to 2003) § 12-504h provides in relevant part: "Any land which has been classified by the record owner as ... open space land pursuant to section 12-107e shall remain so classified without the filing of any new application subsequent to such classification ... until either of the following shall occur: (1) The use of such land is changed to a use other than that described in the application for the existing classification by said record owner, or (2) such land is sold by said record owner."

Open space classifications initially are placed on real property pursuant to General Statutes § 12-107e, which provides in relevant part: "(a) The planning commission of any municipality in preparing a plan of conservation and development for such municipality may designate

upon such plan areas which it recommends for preservation as areas of open space land, provided such designation is approved by a majority vote of the legislative body of such municipality. Land included in any area so designated upon such plan as finally adopted may be classified as open space land for purposes of property taxation or payments in lieu thereof if there has been no change in the use of such area which has adversely affected its essential character as an area of open space land between the date of the adoption of such plan and the date of such classification.

"(b) An owner of land included in any area designated as open space land upon any plan as finally adopted may apply for its classification as open space land on any grand list of a municipality by filing a written application for such classification with the assessor thereof.... The assessor shall determine whether there has been any change in the area designated as an area of open space land upon the plan of development which adversely affects its essential character as an area of open space land and, if the assessor determines that there has been no such change, said assessor shall classify such land as open space land and include it as such on the grand list...."

In the present matter, the areas designated for open space in the defendant town of Madison's comprehensive plan of development included land that had been used for airport purposes since 1968, and had been classified as open space, in accordance with that plan, since 1969.

FN2. Patricia G. Hedwall, the tax assessor for the defendant town of Madison, also was named as a defendant in this action, but the plaintiff subsequently withdrew its complaint against her. Hereinafter, all references to the defendant in this opinion are to the town of Madison.

FN3. General Statutes § 12-119 provides in relevant part: "When it is claimed that a tax has been laid on property not taxable in the town or city in whose tax list such property was set, or that a tax laid on property was computed on an assessment which, under all the circumstances, was manifestly excessive and could not have been arrived at except by disregarding the provisions of the statutes for determining the valuation of such property, the owner thereof ... prior to the payment of such tax, may, in addition to the other remedies provided by law, make application for relief to the superior court for the judicial district in which such town or city is situated.... In all such actions, the Superior Court shall have power to grant such relief upon such terms and in such manner and form as to justice and equity appertains...."

FN4. The defendant also claims that the trial court's decision is inconsistent with public policies favoring home rule and equal treatment of taxpayers. Because this argument was neither raised nor briefed at trial, and the defendant is asserting it for the first time on appeal, we decline to address it. See *Konigsberg v. Board of Aldermen,* 283 Conn. 553, 597 n. 24, 930 A.2d 1 (2007) ("[a]s we have observed repeatedly, [t]o review [a] claim, which has been articulated for the first time on appeal and not before the trial court, would result in a trial by ambuscade of the trial judge" [internal quotation marks omitted]); *Jalowiec Realty Associates, L.P. v. Planning & Zoning Commission,* 278 Conn. 408, 418, 898 A.2d 157 (2006) (declining to review claim because defendants did not raise it

adequately before trial court).

*727 The following facts, either found by the court or not disputed by the parties,[FN5] and procedural history are relevant to the appeal. The plaintiff is the owner of a forty-two acre parcel of land (property) on the Boston Post Road in Madison; a small airport and related structures occupy the property. From 1969 to 2004, thirty-two acres of the property were classified as open space pursuant to the defendant's open space plan and, accordingly, received the benefit of a lower tax assessment. The property was used as an airport from 1968 to 2006.

FN5. The parties filed a stipulation of facts in the trial court.

In 2000, Leyland Development, LLC (Leyland), contracted to purchase the property, contingent on receiving various approvals from land use agencies that would permit it to construct an active adult **341 housing development on the property. In November, 2000, the defendant's planning and zoning commission (commission) approved Leyland's application for a change to the applicable zoning regulations to permit construction of the development upon special exception approval. In May, 2004, the commission granted Leyland's applications for a special exception and coastal site plan approval, thereby permitting Leyland to build 127 condominium units on the property, subject to a number of conditions. At the time of trial, construction of the project still was contingent on Leyland obtaining from the state department of environmental protection a wastewater discharge permit; see General Statutes § 22a-430; for which Leyland had applied.

Subsequent to the commission's approval of Leyland's special exception and coastal site plan applications, the assessor terminated the property's open space classification, and, consequently, reassessed the property as 127 individual condominium unit options, plus the value of the underlying land. As a result, the total *728 assessed value of the property increased from $294,420 on the 2003 grand list to $2,516,920 [FN6] on the 2004 grand list.

FN6. The underlying land remained assessed at $294,420. The assessor added an additional $2,222,500 in assessed value, representing 127 condominium unit options assessed at $17,500 each.

Thereafter, the plaintiff appealed from the 2004 assessment pursuant to § 12-119, claiming that it was illegal and manifestly excessive. See footnote 3 of this opinion. After a trial to the court, the trial court rendered judgment in favor of the plaintiff. The court noted the assessor's testimony that she considered the commission's approval of Leyland's special exception request and coastal site plan to amount to a change in use requiring termination of the property's open space designation.[FN7] The trial court concluded, however, contrary to the assessor, that the approvals did not amount to a change in use as contemplated by § 12-504h because they did not result in a change to the essential character of the property as an area of open space land. Specifically, the trial court found that, on October 1, 2004, the date of revaluation, "the use of the subject property was [still] for airport purposes, not for the development of residential condominium units." [FN8] This appeal followed.[FN9]

FN7. The assessor considered the approvals at issue as, essentially, the equivalent of a subdivision approval. See *Pauker v. Roig,* 232 Conn. 335, 336, 654 A.2d 1233 (1995).

FN8. The trial court also relied on the fact that a declaration of condominium had not been filed on the land records pursuant to General Statutes § 47-220. See *Saybrook Point Marina Partnership v. Old Saybrook,* 49 Conn.App. 106, 110-11, 712 A.2d 980, cert. denied, 247 Conn. 904, 720 A.2d 515 (1998); *Stratford Arms Co. v. Stratford,* 7 Conn.App. 496, 500, 508 A.2d 842 (1986). It further rejected the defendant's claim that the assessor's termination of the prop-

erty's open space classification was authorized by General Statutes § 12-55, reasoning instead that that authority emanated from § 12-504h.

FN9. The defendant appealed from the trial court's judgment to the Appellate Court, and we transferred the appeal to this court pursuant to General Statutes § 51-199(c) and Practice Book § 65-1.

*729 I

[1] The defendant first claims that the trial court improperly concluded that the assessor acted illegally when she terminated the open space classification on the property and revalued that property accordingly. It argues, to the contrary, that the assessor properly acted within the purview of § § 12-107e and 12-504h.[FN10] See **342 footnote 1 of this opinion. According to the defendant, when the plaintiff applied for and received key approvals from land use agencies, thereby permitting it to develop the property as 127 condominium units, it changed the property's essential use from preserved open space to land to be developed and sold. The defendant argues further that the assessor's decision comported with state and local open space policies.

FN10. The defendant also claims that its assessor had the authority to terminate the property's open space classification pursuant to General Statutes § 12-55(b), which provides in relevant part that, after publishing and lodging each year's grand list for public inspection, a town's "assessor or board of assessors shall equalize the assessments of property in the town, if necessary, and make any assessment omitted by mistake or required by law. The assessor or board of assessors may increase or decrease the valuation of any property as reflected in the last-preceding grand list...." The discretionary power to equalize grand lists conferred by § 12-55 "imports a watchtower role for the assessor to correct inequalities, whether too high or too low." *84 Century Ltd. Partnership v. Board of Tax Review,* 207 Conn. 250, 262, 541 A.2d 478 (1988), superseded by statute on other grounds as stated in *DeSena v. Waterbury,* 249 Conn. 63, 84, 731 A.2d 733 (1999); see also General Statutes § 12-63d. Nothing in § 12-55(b), however, authorizes an assessor to remove an open space classification preliminary to exercising this role, and the case cited by the defendant in support of this argument; see *Matzul v. Montville,* 70 Conn.App. 442, 445-46, 798 A.2d 1002, cert. denied, 261 Conn. 923, 806 A.2d 1060 (2002); did not involve the removal of an open space classification. Rather, the authority to declassify open space clearly is conferred by § 12-504h only. It is a "well-settled principle of [statutory] construction that specific terms covering [a] given subject matter will prevail over general language of ... another statute which might otherwise prove controlling." (Internal quotation marks omitted.) *Board of Education v. State Board of Education,* 278 Conn. 326, 338, 898 A.2d 170 (2006). Accordingly, we reject the defendant's argument that § 12-55 authorized the assessor's actions in the present matter.

*730 The plaintiff argues in response that the receipt of unused zoning approvals does not constitute a change of use as contemplated by § 12-504h. It notes that the trial court found that the property still was being used as an airport on October 1, 2004, and that there was no evidence to the contrary. According to the plaintiff, there is no guarantee that final approvals to develop the property ever will be obtained, and the approvals already secured allow only for the possibility of future use. The plaintiff disagrees that the assessor's actions comport with the statutory goal of keeping open space property in its open space condition. We agree with the plaintiff.[FN11]

FN11. The defendant also argues that the

trial court improperly concluded that the assessor may not revalue the property as a condominium until a declaration of condominium is recorded. See footnote 8 of this opinion. The plaintiff disagrees, citing statutory authority and case law in re- sponse.

> Pursuant to Connecticut's general statutory valuation principles, set forth in General Statutes § 12-63(a), "[t]he present true and actual value of land classified as ... farm land ... forest land ... *or as open space land pursuant to section 12-107e ... shall be based upon its current use* without regard to neighborhood land use of a more intensive nature...." (Emphasis added.) In contrast, § 12-63(a) provides that "[t]he present true and actual value of *all other property* shall be deemed by all assessors and boards of assessment appeals to be *the fair market value thereof....* " (Emphasis added.)
>
> Because we conclude herein that the assessor's removal of the property's open space classification, a prerequisite to its assessment at fair market value under § 12-63(a), was improper, we need not reach the secondary question at which the parties' arguments are directed, i.e., whether a particular planned use of property, toward which preliminary steps have been taken by its owner, affects the property's fair market value for assessment purposes. We emphasize that none of the cases relied on by the parties or the trial court in this regard; see *Pauker v. Roig,* 232 Conn. 335, 345, 654 A.2d 1233 (1995); *Fyber Properties Killingworth Ltd. Partnership v. Shanoff,* 228 Conn. 476, 477, 636 A.2d 834 (1994); *Saybrook Point Marina Partnership v. Old Saybrook,* 49 Conn.App. 106, 109, 712 A.2d 980, cert. denied, 247 Conn. 904, 720 A.2d 515 (1998); *Stratford Arms Co. v. Stratford,* 7 Conn.App. 496, 498, 508 A.2d 842 (1986); involved property formerly classified as open space; accordingly, only the fair market value of the subject property was at issue. In contrast, in the present matter, both open space classification and valuation were at issue, although the former essentially was dispositive. In other words, once the trial court determined that the assessor improperly removed the property's open space classification, it need not have reached the hypothetical question of whether the zoning approvals impacted the property's fair market value, because § 12-63(a) required it to be assessed on the basis of its actual, current use, not its potential, highest and best use. As such, any authority pertaining to the determination of its fair market value was rendered irrelevant.

****343** [2][3] ***731** In concluding that the plaintiff had proven that the assessor improperly had removed the property's open space classification and, accordingly, reached a valuation for that property that was manifestly excessive, the trial court construed and applied pertinent statutory provisions. Accordingly, our review of the court's conclusions is plenary. See *Carmel Hollow Associates Ltd. Partnership v. Bethlehem,* 269 Conn. 120, 129, 848 A.2d 451 (2004). "A fundamental tenet of statutory construction is that statutes are to be considered to give effect to the apparent intention of the lawmaking body.... The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered." (Citation omitted; internal quotation marks omit-

ted.) Id. We conclude that the plain language of §§ 12-107e and 12-504h, read within the context of the overall statutory scheme affording favorable tax treatment to certain undeveloped property and case law applying that scheme, makes clear that the assessor acted improperly in removing the open space classification from the property on the basis of its receipt of certain zoning approvals.

Classification and declassification of open space land are accomplished pursuant to §§ 12-107e and 12-504h. See footnote 1 of this opinion. Section 12-107e gives municipal planning commissions and assessors authority, respectively, to designate and classify land as open ***732** space. [FN12] Once a planning commission designates an area that it recommends should be preserved as open space and the designation receives legislative approval, land included within that area "may be classified as open space land for purposes of property taxation ... *if there has been no change in the use of such area which has adversely affected its essential character as an area of open space land* [in the interim between such designation and] classification." (Emphasis****344** added.) General Statutes § 12-107e (a). Accordingly, when a landowner applies to have land within a municipality's designated open space area classified as open space, the municipality's "assessor shall determine *whether there has been any change in the area [so] designated ... which adversely affects its essential character as an area of open space land* and, if the assessor determines that there has been no such change, said assessor shall classify such land as open space land and include it as such on the grand list...." (Emphasis added.) General Statutes § 12-107e (b).

> FN12. Open space land is defined in General Statutes § 12-107b(3) as "any area of land, including forest land, land designated as wetland under section 22a-30 and not excluding farm land, the preservation or restriction of the use of which would (A) maintain and enhance the conservation of natural or scenic resources, (B) protect natural streams or water supply, (C) promote conservation of soils, wetlands, beaches or tidal marshes, (D) enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries or other open spaces, (E) enhance public recreation opportunities, (F) preserve historic sites, or (G) promote orderly urban or suburban development...." Although § 12-107b has been amended since the assessor terminated the property's open space classification, the amendments involved technical changes not relevant to this appeal. For convenience, we refer to the current revision of the statute.

Thereafter, "[a]ny land which has been classified by the record owner as ... open space land pursuant to section 12-107e shall remain so classified without the filing of any new application subsequent to such classification ... until either of the following shall occur: (1) ***733** *The use of such land is changed to a use other than that described in the application for the existing classification by said record owner,* or (2) such land is sold by said record owner." (Emphasis added.) General Statutes (Rev. to 2003) § 12-504h. The foregoing provision was enacted "to eliminate the necessity of applying annually for the classification of property as ... open space land.... The statute thus provides that property may retain its classified status until the occurrence of certain events that terminate the classification and require the filing of a new application, these events being the sale of the property or a change in its use." (Citation omitted.) *Carmel Hollow Associates Ltd. Partnership v. Bethlehem, supra,* 269 Conn. at 140, 848 A.2d 451.

[4][5] Reading the foregoing provisions together, it is clear that, when determining whether a property should retain a previously existing open space classification, an assessor must determine whether the property's owner actually has begun to

use the property in a way that somehow has altered its essential open space character. "[I]n the absence of any change in an open space area adversely affecting its essential character as such since the time of its designation, the assessor must classify such land as open space and include it as such on the assessment list...." *Birchwood Country Club, Inc. v. Board of Tax Review,* 178 Conn. 295, 299, 422 A.2d 304 (1979).

[6][7] Tellingly, neither § 12-107e nor § 12-504h directs an assessor, explicitly or implicitly, to consider the planned or potential use of property when determining whether it qualifies as open space, but instead, both statutes direct an assessor simply to consider the property's use. As a rule, "terms in a statute are to be assigned their ordinary meaning, unless context dictates otherwise...." (Internal quotation marks omitted.) *State v. Lutters,* 270 Conn. 198, 206, 853 A.2d 434 (2004). Moreover, "[i]t is a principle of statutory *734 construction that a court must construe a statute as written"; *Leo Fedus & Sons Construction Co. v. Zoning Board of Appeals,* 225 Conn. 432, 441, 623 A.2d 1007 (1993); and not, through interpretation, supply omitted language. See id., at 441-42, 623 A.2d 1007.

Applicable case law is in accord. Both General Statutes § 12-107c(a), governing classification of property as farmland, and §§ 12-107e and 12-504h, governing classification and declassification of property as open space, require municipal assessors to determine whether the property at issue is being used in a way that entitles it to favorable tax treatment under General Statutes § 12-63(a).[FN13] Furthermore, all of **345 the foregoing provisions are part of the same statutory scheme and were motivated by the same stated policy considerations. See General Statutes § 12-107a.[FN14] Consequently, *735 this court's decision in *Marshall v. Newington,* 156 Conn. 107, 239 A.2d 478 (1968), concerning the use of property for purposes of farmland classification under § 12-107c, is instructive for purposes of determining what constitutes use of property for purposes of open space classification under §§ 12-107e and 12-504h.

FN13. As previously stated, § 12-63(a) provides that farmland and forestland, like open space, must be assessed on the basis of their current usage rather than at their fair market value. See footnote 11 of this opinion.

FN14. General Statutes § 12-107a provides in relevant part: "It is hereby declared (1) that it is in the public interest to encourage the preservation of farm land, forest land and open space land in order to maintain a readily available source of food and farm products close to the metropolitan areas of the state, to conserve the state's natural resources and to provide for the welfare and happiness of the inhabitants of the state, (2) that it is in the public interest to prevent the forced conversion of farm land, forest land and open space land to more intensive uses as the result of economic pressures caused by the assessment thereof for purposes of property taxation at values incompatible with their preservation as such farm land, forest land and open space land, and (3) that the necessity in the public interest of the enactment of the provisions of sections 12-107b to 12-107e, inclusive ... is a matter of legislative determination." As this legislative declaration of policy makes clear, the purpose of the statutes providing for the creation of farmland, forestland and open space land designations is to encourage the preservation of property so designated "by ensuring against the conversion of such land to more intensive uses as the result of higher property tax assessments." (Internal quotation marks omitted.) *Carmel Hollow Associates Ltd. Partnership v. Bethlehem,* supra, 269 Conn. at 131, 848 A.2d 451. Although § 12-107a has been amended since

the assessor terminated the property's open space classification, the amendments involved technical changes not relevant to this appeal. For convenience, we refer to the current revision of the statute.

In *Marshall,* a municipal assessor denied the application of landowners to have their property classified as farmland. Id., at 108, 239 A.2d 478. Instead, he assessed the property on the basis of its fair market value, in part because, at the landowners' behest, it had become zoned for industrial use. [FN15] Id., at 110, 111-13, 239 A.2d 478. In an appeal from that assessment, the trial court concluded that the highest and best use [FN16] of the property was as industrial property and, therefore, that the assessor was justified in refusing to classify the property as farmland. Id., at 112, 239 A.2d 478. On further appeal, this court reversed the trial court's judgment. Id., at 113, 239 A.2d 478. We explained: "[A]lthough the [trial court's] conclusions that the highest and best use of a particular parcel was for industrial purposes and that it was zoned for industrial purposes at the request or instigation of the owner would **346 be relevant to a determination of the land's fair market value, *such conclusions are not relevant to a determination as to whether in fact the land* *736 *is being used for farming purposes.*[FN17] A declared purpose of the statute granting favorable tax treatment to farmland is to prevent its forced conversion to more intensive uses as a result of an assessment based on its market value rather than its current use." (Emphasis added.) Id., at 112-13, 239 A.2d 478. We concluded that the trial court's decision as to the proper classification of the land was erroneous because it was "predicated, *not on the actual use to which the land was being put, which is the criterion the statute specifies,* but on the fact that its highest and best use would be for industrial purposes and that at the instigation of the plaintiffs it was in a zone which would permit such a use." (Emphasis added.) Id., at 113, 239 A.2d 478.

FN15. Additionally, the landowners' "principal source of income was from retail sales at a stand where they sold not only the corn grown on their cultivated lands but other produce, fruits, groceries and beer.... [Moreover] the plaintiffs [previously] had sold ... adjoining industrial land for [significant sums and] ... derived substantial income from the operation of the stand, from rents, from the sale of topsoil and fill and from horse purses." *Marshall v. Newington,* supra, 156 Conn. at 112, 239 A.2d 478.

FN16. "[U]nder the general rule of property valuation, fair [market] value, of necessity, regardless of the method of valuation, takes into account the highest and best value of the land.... A property's highest and best use is commonly defined as the use that will most likely produce the highest market value, greatest financial return, or the most profit from the use of a particular piece of real estate." (Citation omitted; internal quotation marks omitted.) *United Technologies Corp. v. East Windsor,* 262 Conn. 11, 25, 807 A.2d 955 (2002).

FN17. This court also found irrelevant the landowners' additional sources of income and their sale of adjacent industrial lands. See *Marshall v. Newington,* supra, 156 Conn. at 112, 239 A.2d 478; see also footnote 15 of this opinion.

[8] The assessor in the present case employed reasoning similar to that of the trial court in *Marshall* and, consequently, improperly concluded that continued open space classification for the property was unwarranted. Instead of looking to the *actual* use of the property at the time of the assessment, which indisputably remained as an airport, the assessor considered its *potential* highest and best use on the basis of unused zoning approvals secured by a contract purchaser.[FN18] In other words, the assessor considered the fair market value of the prop-

erty as controlling the determination of whether it should be classified as open space. That approach, however, turns the analysis on its head. *737 Rather, as the statutory provisions make clear, the assessor first must consider whether property actually is being used as open space. General Statutes § 12-107e; General Statutes (Rev. to 2003) § 12-504h . If it is not, then assessment at fair market value, i.e., on the basis of its highest and best use, is warranted. General Statutes § 12-63(a). If, to the contrary, property is being used as open space, then assessment must be on the basis of current usage, regardless of whether it has the potential to be used in a more lucrative fashion. See General Statutes § 12-63(a); see also *Rustici v. Stonington,* 174 Conn. 10, 14, 381 A.2d 532 (1977) ("[i]n enacting § 12-63 , the legislature intended that the current use value of open space land be less than what its fair market value might be").

> FN18. When testifying about why she removed the open space classification from the property and assessed it as condominium units, the assessor opined that there was no need for her to inspect physically the property to determine whether it was entitled to continued open space status. She further explained: "At the current time ... [the plaintiff has] the ability and the zoning option to build these condominium units and therefore to market them and, therefore, although they are not individual [condominium] units as such, *there is certainly the increased value because of their current status as being approved.* " (Emphasis added.)

[9] Our conclusion is consistent with the policies underlying the statutory scheme at issue. When valuing open space land, "market value, a fundamental rule or standard of valuation of property taxation, must give way to an assessment based on the current use of the property [because] ... the declared purpose of the statute is intended to grant favorable treatment to such property to prevent its forced conversion to more intensive use." (Internal quotation marks omitted.) **347*New Haven Water Co. v. Board of Tax Review,* 178 Conn. 100, 106, 422 A.2d 946 (1979). Section 12-107e is as much a conservation statute as it is a tax relief measure. *Torrington Water Co. v. Board of Tax Review,* 168 Conn. 319, 322, 362 A.2d 866 (1975). "Indeed, it would appear that the purpose of the tax relief is to aid the conservation effort." (Internal quotation marks omitted.) Id.

By requiring property classified as open space to remain taxed as such until its owner actually begins to use it in a contrary fashion or sells it, the statutes ensure that such property, even if ultimately developed, will have remained open space for as long as was practicable. If open space classification were removed at a *738 preliminary stage of development, that removal would only encourage the development to continue at an accelerated pace because the property owner suddenly would be forced to meet a greatly increased tax burden while the land still remained idle. Absent that economic pressure, a proposed project otherwise might be more easily abandoned. We recognize, moreover, the unfairness that could result from premature declassification of open space property solely because of its receipt of zoning approvals. If commencement of the project is delayed, as it apparently was in the present matter,[FN19] or the project ultimately is not pursued, the landowner will have been subject to a greatly increased tax burden on the basis of never realized potential while, in fact, the essential character of its property remained open space. On the basis of the foregoing analysis, we conclude that the trial court properly determined that the assessor had acted illegally when she terminated the property's open space classification and revalued it on the basis of its approved use as condominium units.

> FN19. Approximately two years elapsed, subsequent to Leyland's receipt of zoning approvals, before the property ceased being used as an airport. Moreover, some

four years had passed between the change in the defendant's zoning regulations permitting construction of the proposed project and Leyland's receipt of those approvals, due to a challenge to the zone change lodged by a citizens' group, which ultimately resulted in an appeal to this court. See *Stauton v. Planning & Zoning Commission,* 271 Conn. 152, 856 A.2d 400 (2004).

II

[10] The defendant also claims that the trial court improperly granted the plaintiff relief pursuant to § 12-119 because the plaintiff did not prove that the assessment of its property was both manifestly excessive and illegal. According to the defendant, the plaintiff failed to show that the assessment was manifestly excessive and ***739** not a mere overvaluation. [FN20] The plaintiff argues in response that the trial court correctly found that the assessor acted contrary to law in removing the property's open space classification and that, because this case involves misclassification of exempt property, the manifestly excessive prong of § 12-119 does not apply. We agree with the plaintiff.

FN20. The defendant also argues that the plaintiff did not prove that the assessor acted in disregard of applicable statutes. As we concluded in part I of this opinion, however, the assessor, in removing the open space classification from the property, acted contrary to §§ 12-63(a), 12-107e and 12-504h. Accordingly, we reject this aspect of the defendant's second claim.

Our review of this claim is plenary, because the "applicability [of a statutory requirement] to a given set of facts and circumstances ... [is] a question of law...." ****348***Commissioner of Social Services v. Smith,* 265 Conn. 723, 734, 830 A.2d 228 (2003). In its "Application for Relief against Excessive Tax Valuation," the plaintiff complained that, because its property illegally had been assessed as condominium units instead of open space land, the resultant valuation of that property was manifestly excessive. The parties did not dispute that the declassification of the property as open space caused its total assessed value to increase from $294,420 to $2,516,920. When testifying at trial, the assessor confirmed that her assessment of the property as condominium units flowed from her decision to remove its open space designation. In its memorandum of decision, the trial court concluded that, because "the use of the subject property was that of an active airport on October 1, 2004, the assessor was without authority to terminate the [property's] open space classification and then revalue the subject property for condominium use." Accordingly, it sustained the plaintiff's appeal. The court did not undertake a separate analysis, however, of whether the resulting assessment was manifestly excessive.

***740** In *Second Stone Ridge Cooperative Corp. v. Bridgeport,* 220 Conn. 335, 339, 597 A.2d 326 (1991), we explained the distinction between municipal tax appeals brought pursuant to § 12-119 and those authorized by General Statutes § 12-117a, formerly codified at General Statutes § 12-118. While the latter statute "provide[s] a method by which an owner of property may directly call in question the valuation placed by assessors upon his property by an appeal to the board of [tax relief], and from it to the courts"; (internal quotation marks omitted) id.; § 12-119 allows a taxpayer to claim either that a town lacked authority to tax the subject property, "or that the assessment was manifestly excessive and could not have been arrived at except by disregarding the provisions of the statutes for determining the valuation of [the real] property...." (Internal quotation marks omitted.) Id., at 340, 597 A.2d 326. In short, § 12-117a is concerned with overvaluation, while "[t]he focus of § 12-119 is whether the assessment is illegal." (Internal quotation marks omitted.) Id., at 341, 597 A.2d 326.

Claims that an assessor has misclassified property and, consequently, overvalued it, comprise a category of appeals frequently pursued under the

aegis of § 12-119. See, e.g., *Pauker v. Roig,* 232 Conn. 335, 338, 345, 654 A.2d 1233 (1995) (challenging property's assessment as subdivision lots instead of undivided parcel); *Fyber Properties Killingworth Ltd. Partnership v. Shanoff,* 228 Conn. 476, 477, 636 A.2d 834 (1994) (same); *Wysocki v. Ellington,* 109 Conn.App. 287, 295-96, 951 A.2d 598 (challenging assessor's failure to classify property as forest land), cert. denied, 289 Conn. 934, 958 A.2d 1248 (2008); *Saybrook Point Marina Partnership v. Old Saybrook,* 49 Conn.App. 106, 109, 712 A.2d 980 (challenging property's assessment as condominium when still legally apartment building at date of assessment), cert. denied, 247 Conn. 904, 720 A.2d 515 (1998); ***741***Stratford Arms Co. v. Stratford,* 7 Conn.App. 496, 497-98, 508 A.2d 842 (1986) (same). In such cases, the determinative issue typically is whether, as a matter of law, the property at issue properly was subject to taxation as the type of property falling within the classification applied by the assessor. See *Stratford Arms Co. v. Stratford,* supra, at 499, 508 A.2d 842. If the plaintiff can show that it was not, it necessarily follows that the resulting assessment was manifestly excessive. See, e.g., *Saybrook Point Marina Partnership v. Old Saybrook,* supra, at 112-13, 712 A.2d 980 (remanding case for new trial on issues of assessment and valuation after concluding that property illegally was assessed as condominium); see also ****349***Stratford Arms Co. v. Stratford,* supra, at 502, 508 A.2d 842 (setting aside judgment upholding assessment of property as condominium and remanding case with direction to reinstate prior assessment as apartment building after concluding that property illegally was assessed as condominium); cf. *Timber Trails Associates v. New Fairfield,* 226 Conn. 407, 413, 627 A.2d 932 (1993) (claim of improper declassification of forest land, coupled with allegation of thirtyfold tax increase, cognizable under § 12-119).[FN21] Moreover, under the general statutory valuation principles articulated in § 12-63(a), the erroneous removal of a property's open space classification virtually guarantees that a manifestly excessive valuation will follow. Specifically, when open space property is assessed at ***742** fair market value based on the highest and best use, rather than on its current usage, marked overvaluation is the result.

> FN21. The case of *E. Ingraham Co. v. Bristol,* 146 Conn. 403, 151 A.2d 700 (1959), cert. denied, 361 U.S. 929, 80 S.Ct. 367, 4 L.Ed.2d 352 (1960), a § 12-119 appeal cited by the defendant in support of this claim, clearly is distinguishable. In that case, the plaintiff proved that the defendant's assessor had acted illegally in failing to assess real and personal property at its actual value, as required by statute. Id., at 409, 151 A.2d 700. Instead, the assessor had taxed real property at 50 percent of its actual value and personal property, excluding motor vehicles, at 90 percent of its actual value. Id., at 405, 151 A.2d 700. In other words, the property at issue clearly had been *undervalued* such that the assessment was "obviously too low...." Id., at 410, 151 A.2d 700. The plaintiff thus was unable to prevail under § 12-119 because the assessments, although legally improper, were neither claimed, nor found to be " 'manifestly excessive.' " Id. In the present matter, the plaintiff clearly alleged overvaluation of its property.

The matter before us illustrates the dynamic typically present in appeals alleging misclassification of property and resultant excessive valuation. The plaintiff alleged, and we agree, that the assessor acted contrary to § 12-504h in removing the property's open space classification and reassessing it accordingly. When the property ceased being assessed as open space, the basis of its assessment became its fair market value, based on its highest and best use as condominium unit options, rather than its actual current use as an airport. The parties agreed that the declassification of the property caused its assessed value to grow more than eightfold. Given the foregoing, we conclude that the trial court's determination that the assessor had illegally

removed the property's open space classification necessarily incorporated an implicit finding that the resultant assessment was manifestly excessive.

The judgment is affirmed.

In this opinion the other justices concurred.

Conn.,2008.
Griswold Airport, Inc. v. Town of Madison
289 Conn. 723, 961 A.2d 338

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Date of Printing: Feb 02, 2012

KEYCITE

Griswold Airport, Inc. v. Town of Madison, 289 Conn. 723, 961 A.2d 338 (Conn.,Dec 23, 2008) (NO. 17938)

History

Direct History

H 1 Griswold Airport, Inc. v. Town of Madison, 2007 WL 1019642, 43 Conn. L. Rptr. 159 (Conn.Super. Mar 30, 2007) (NO. CV054011562S)

Judgment Affirmed by

=> 2 **Griswold Airport, Inc. v. Town of Madison,** 289 Conn. 723, 961 A.2d 338 (Conn. Dec 23, 2008) (NO. 17938)

Negative Citing References (U.S.A.)

Distinguished by

C 3 257 Blake, LLC v. Town of Seymour, 2009 WL 2872495, 48 Conn. L. Rptr. 350 (Conn.Super. Aug 04, 2009) (NO. CV084031348S) ★★ **HN: 10 (A.2d)**

Court Documents

Dockets (U.S.A.)

Conn.Super.

4 GRISWOLD AIRPORT,INC v. TOWN OF MADISON, NO. HHB-CV-05-4011562-S (Docket) (Conn.Super. Jul. 18, 2005)

Not Reported in A.2d, 2007 WL 1019642 (Conn.Super.), 43 Conn. L. Rptr. 159
(Cite as: 2007 WL 1019642 (Conn.Super.))

H
UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of Connecticut,
Judicial District of New Britain.
GRISWOLD AIRPORT, INC.
v.
TOWN OF MADISON et al.

No. CV054011562S.
March 30, 2007.

Branse Willis & Knapp LLC, Glastonbury, for Griswold Airport, Inc.

Ravel Judith A., Attorneys at Law, Guilford, for Town of Madison et al.

ARNOLD W. ARONSON, Judge Trial Referee.

*1 This is a real estate tax appeal challenging the action of the assessor for the town of Madison (town) increasing the assessment of the plaintiff's property, as of the Grand List of October 1, 2004, by terminating the property's open space designation and instead valuing the property as a condominium development.

The parties' stipulation of facts can be summarized as follows:

The plaintiff, Griswold Airport, Inc., is the owner of property known as the Griswold Airport located at 1362 Boston Post Road in the town. There is a small airport and associated structures located on the subject property.

In 2000, Leyland Development LLC (Leyland) contracted to purchase the subject property contingent upon securing land use approvals for the development of an active adult housing complex.

In November 2000, the town's planning and zoning commission approved, with modifications, Leyland's application to amend the text of § 4.1.37 of the town's zoning regulations in order to designate "planned adult community" as an allowed use with special exception approval for the subject property. On August 23, 2001, a citizens' group commenced an appeal in which the Supreme Court of Connecticut held that the trial court lack subject matter jurisdiction to entertain the appeal because the plaintiff citizens were not statutorily aggrieved by the commission's decision. See *Stauton v. Planning and Zoning Commission,* 271 Conn. 152, 157, 856 A.2d 400 (2004).

For the Grand List of October 1, 2003, the subject property was classified as open space land and valued at a fair market value of $345,900 and an assessed value of $294,420.

On May 28, 2004, upon Leyland's application, the town's planning and zoning commission, pursuant to § 4.1.37 of the zoning regulations, granted a special exception permit and coastal site plan approval for a planned residential community for active adults on the subject property.

After the zoning approvals were granted, the assessment of the subject property changed for the Grand List of October 1, 2004. The assessor terminated the open space designation and described the plaintiff's property as containing 127 condominium units.

Based on the zoning approvals to build 127 condominium units, the town's assessor valued the subject property on the Grand List of October 1, 2004, at a fair market value of $25,000 per unit, for a total of $3,175,000, and an assessed value of $17,500 per unit, for a total assessment value of $2,222,500.

The town recorded the special exception permit and coastal site plan approval on the town land records on October 19, 2004.

A wastewater discharge permit filed by Leyland is pending with the Connecticut Department of Environmental Protection (DEP).

The plaintiff is responsible for the taxes assessed against the subject property for the Grand List of October 1, 2004 and thereafter.

See stipulation of facts, dated 12/11/06.

The last town-wide revaluation occurred on October 1, 2002. However, when the town's planning and zoning commission approved Leyland's request to change the use of the subject property for the development and construction of 127 condominium units in May 2004, the town's assessor testified that she considered this action as a termination of the subject property's open space designation. (Transcript of January 3, 2007 (hereinafter Tr.), p. 7.) The town's assessor, Patricia Hedwall, testified that the subject property was revalued for the October 1, 2004 Grand List as "127 condominium options and then the land" and "land that would be subject to being built for condominiums." (Tr., pp. 7, 13.)

*2 The subject property contains 42 acres and has been used as an airport since 1968. In addition to its two runways, one of asphalt and one of grass, there are various structures on the property including cabins, dwellings, hangars and offices. Thirty-two acres of the subject property had been designated as open space land since 1969. Although there was a zone change in 1997 designating the subject property as industrial use, the property continued to be used as an airport through 2006.

To summarize the facts, in 2000, Leyland had entered into an agreement with the plaintiff to purchase the subject property and, by May 2004, had obtained a zone change, special exception permit and coastal site plan approval to build 127 condominium units as a planned adult community. As recited in the stipulation of facts, Leyland's application with DEP on the wastewater discharge permit for a community septic system is pending.[FN1] No condominium units may be built on the subject property until a wastewater discharge permit is issued and the septic system is approved. Furthermore, no declaration pursuant to the Connecticut Common Interest Ownership Act (CIOA), General Statutes § 47-200 et seq., has been filed on the town's land records to create the condominium units.[FN2]

FN1. Maryann Griswold, the president of the plaintiff corporation, testified that there is a tentative approval for a septic system that is in the comment period until January 2007. See Tr., p. 35.

FN2. General Statutes § 47-220 provides, in relevant part, as follows: " *Creation of common interest community.* (a) A common interest community may be created pursuant to this chapter only by recording a declaration executed in the same manner as a deed and, in a cooperative, by conveying the real property subject to that declaration to the association. The declaration shall be recorded in every town in which any portion of the common interest community is located ... (b) A declaration, or an amendment to a declaration adding units, may not be recorded unless all structural components of all buildings containing or comprising any units thereby created are substantially completed in accordance with the plans, as evidenced by a recorded certificate of completion executed by a registered engineer, surveyor or architect."

The two issues presented in this case are 1) whether the assessor has the authority to terminate the subject property's open space designation when a zoning approval has been granted changing the use and 2) whether, as of October 1, 2004, the assessor may revalue the subject property for condominium use before a CIOA declaration is filed.

When considering the termination of open space land classification for the subject property,

General Statutes § 12-504h provides, in relevant part, that "[an]y land which has been classified by the record owner as ... open space land pursuant to section 12-107e shall remain so classified without the filing of any new application ... until either of the following shall occur: (1) The use of such land is changed to a use other than that described in the application for the existing classification by said record owner or (2) such land is sold by said record owner." [FN3]

> FN3. Public Act 05-190 repealed and amended § 12-504h for sales, transfers or changes in use of land classified as farm land, forest land or open space land occurring on or after July 1, 2005. The old version of § 12-504h will be recited and referenced herein as this appeal concerns the October 1, 2004 Grand List.

In terminating the open space classification of the subject property, the assessor based her decision on the holding made in *Johnson v. Killingworth,* Superior Court, judicial district of Middlesex at Middletown, Docket No. 64578 (July 25, 1994, Spallone, J.T.R.), where the assessor in that case concluded that there was a change of use pursuant to § 12-504h and declassified the forest land designation when the property owners obtained an approval for a subdivision from the town's planning and zoning commission. [FN4]

> FN4. In *Johnson,* the trial court stated that § 12-504h "expressly states that a change in use is a condition subsequent that upon occurrence removes the classification of forest land. Section 12-504h does not require that the state forester take any action to remove the classification as forest land. The language of [§]12-504h cannot be more clear. When one changes the classified use, one loses the designation."

The assessor's reliance on the *Johnson* decision is misplaced because *Johnson* dealt with forest land, not open space land. The Supreme Court in *Carmel Hollow Associates Ltd. v. Bethlehem,* 269 Conn. 120, 134-37, 848 A.2d 451 (2004), set out the difference in the statute regarding the designation of forest land and open space land, specifically observing that the legislature gave the state forester the sole authority to cancel forest land classification, while the legislature provided assessors with discretionary authority to classify property as farm and open space land.[FN5]

> FN5. General Statutes § 12-107e(b) provides, in relevant part, as follows: "The assessor shall determine whether there has been any change in the area designated as an area of open space land upon the plan of development which adversely affects its essential character as an area of open space land and, if the assessor determines that there has been no such change, said assessor shall classify such land as open space land and include it as such on the grand list."

*3 In the present case, the issue before the court is whether the change of zone and the granting of a special exception for the proposed use of the subject property for residential condominium use is a change in the "essential character as an area of open space land." General Statutes § 12-107e(b). The essential character of the area of open space land relates back to § 12-504h, which provides that open space classification terminates when the use of the land has changed from the use in existence at the time of the original application for open space designation.

The genesis of the open space classification, according to § 12-107e(a), is the preparation of a plan of development by the town planning commission and the subsequent approval of the plan by a majority vote of the town's legislative body. The plan of development designates areas on the plan that the planning commission recommends for preservation as areas of open space land. See plaintiff's Exhibit A, the town's comprehensive plan of development, effective December 1988 and amended, ef-

fective July 1997. The town's comprehensive plan specifically sets out areas recommended as open space, including land used for airport purposes.

As discussed above, the plaintiff acquired the subject property in 1968 and has used it as an airport from that date through 2006. The subject property was granted open space designation in 1969, as provided in the town's plan of development. It was zoned for industrial use in 1997 but continued to operate as an airport. The assessor testified that while the zone change allowed for an industrial complex, the property was not divided for multiple use or multiple structures, and continued to have its open space classification. See Tr., p. 10. It is the assessor's position that the approval to build 127 residential condominium units is "equivalent to a subdivision[.]" (Tr., p. 12.) The assessor places much weight on the fact that there exists a present ability to build 127 units on the subject property.

With this in mind, the key date for the court's consideration is October 1, 2004, which is the date of the revaluation by the assessor and the termination of the open space classification. On October 1, 2004, the use of the subject property was for airport purposes, not for the development of residential condominium units.

In addition to *Johnson,* the town also relies on *Pauker v. Roig,* 232 Conn. 335, 336, 654 A.2d 1233 (1995) where "the only issue is whether it is proper to revalue and reassess real property once a subdivision of the property has been approved and recorded, even though the conditions attached to the subdivision approval have not yet been fulfilled." The court in *Pauker v. Roig* "discern [ed] a bright-line rule underlying our taxing and real property statutes with regard to subdivision approvals. Absent an appeal challenging its validity, the approval of a subdivision authorizes a tax assessor to tax the property as sub-divided lots rather than as the undifferentiated parcel or parcels that preceded the approval." *Id.,* at 345.

*4 The facts in the present case are dissimilar to the facts in *Pauker v. Roig.* The subdivision of the lots in *Pauker v. Roig* had been approved and subdivision maps were recorded on the town land records for the entire subdivision project. The *Pauker v. Roig* lots, therefore, were saleable subject to the performance of certain conditions attached to the subdivision approval.

In the present action, however, while the approval of the special exception was granted, there was a key component of the special exception that remained outstanding-the requirement that there be a filing of a declaration of condominium use pursuant to § 47-220.

According to *Pauker V. Roig,* the approval of a subdivision of land creates separate lots, allowing an assessor to change the designated owner of one parcel to owners of each lot created by the subdivision. In. contrast, in the present action, condominium ownership cannot be created until the declaration of a common interest community is filed and recorded on the town land records pursuant to § 47-220(a) and the declaration itself cannot be filed and recorded on the town land records until the structural components of the condominium have been completed with a certificate of completion filed and recorded in the town records pursuant to § 47-220(b).

Neither of these conditions, with regard to the declaration, have been met in the present action. [FN6]

> FN6. See also *Fyber Properties Killingworth Limited Partnership v. Shanoff,* 228 Conn. 476, 484, 636 A.2d 834 (1994).

The assessor further relies on General Statutes § 12-55 [FN7] for her authority to terminate the open space designation and reassess the subject property following the zone change that permitted residential condominium use. However, the authority to terminate the open space designation comes from § 12-504h, not § 12-55.[FN8]

FN7. General Statutes § 12-55(b) provides, in relevant part, as follows: "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."

FN8. It is also important to note that § 12-504h refers to the record owner of the property, not an equitable owner operating under a contract to purchase, such as Leyland. More specifically, Section 12-504h allows an assessor to terminate an open space classification only if the "record owner" has changed the use of the prop- erty.

The assessor recognizes that the condominium units "have not as yet been built and therefore [the units] cannot be considered condominiums until they are declared." (Tr., p. 12.) In spite of this recognition, the assessor created 127 field cards identifying individual condominium units and revalued the subject property by assigning a fair market value of $25,000 to each unit, for a total fair market value of $3,175,000, and an assessed value of $2,222,500. See 12/11/06 stipulation of facts.

Given the court's finding that the use of the subject property was that of an active airport on October 1, 2004, the assessor was without authority to terminate the open space classification and then revalue the subject property for condominium use.

Accordingly, judgment may enter in favor of the plaintiff, sustaining its appeal, without costs to either party.

Conn.Super.,2007.
Griswold Airport, Inc. v. Town of Madison
Not Reported in A.2d, 2007 WL 1019642 (Conn.Super.), 43 Conn. L. Rptr. 159

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376 A.2d 79
34 Conn.Supp. 52, 376 A.2d 79
(Cite as: 34 Conn.Supp. 52, 376 A.2d 79)

C

Court of Common Pleas of Connecticut, New Haven County.
George CURRY et al.
v.
PLANNING AND ZONING COMMISSION OF the TOWN OF GUILFORD.

No. 100687.
Jan. 10, 1977.

Planning and Zoning Commission of Town of Guilford adopted open space amendment to its comprehensive plan of development. The Court of Common Pleas, New Haven County, Jacobs, J., held that: (1) statute providing for ten-year decrease in conveyance tax imposed on sales of property classified as open space land does not violate equal protection clause; (2) statute allowing a planning commission to designate areas for preservation as open space land is not void for vagueness; (3) open space amendment, which designated all land in the town as open space, with certain exceptions, did not constitute a taking of property without just compensation and (4) designating all land as open space, with exceptions, was not arbitrary and capricious as going beyond intent of the enabling statute.

Appeal dismissed.

West Headnotes

[1] Zoning and Planning 414 ⚿1598

414 Zoning and Planning
414X Judicial Review or Relief
414X(B) Proceedings
414k1598 k. In general. Most Cited Cases
(Formerly 414k561)

Court of Common Pleas would not discuss those issues raised in the complaint but not discussed in landowners' brief.

[2] Constitutional Law 92 ⚿3562

92 Constitutional Law
92XXVI Equal Protection
92XXVI(E) Particular Issues and Applications
92XXVI(E)6 Taxation
92k3561 Property Taxes
92k3562 k. In general. Most Cited Cases
(Formerly 92k229(1))

Taxation 371 ⚿2121

371 Taxation
371III Property Taxes
371III(B) Laws and Regulation
371III(B)4 Constitutional Regulation and Restrictions Concerning Equality and Uniformity
371k2121 k. Constitutional requirements and operation thereof. Most Cited Cases
(Formerly 371k40(1))

Taxation 371 ⚿2135

371 Taxation
371III Property Taxes
371III(B) Laws and Regulation
371III(B)4 Constitutional Regulation and Restrictions Concerning Equality and Uniformity
371k2134 Classification of Subjects, and Uniformity as to Subjects of Same Class
371k2135 k. In general. Most Cited Cases
(Formerly 371k42(1))

Equal protection clause of the Fourteenth Amendment merely requires that taxation of property not be patently arbitrary and that rates be uniform within classes. U.S.C.A.Const. Amend. 14.

[3] Constitutional Law 92 ⚿2522(1)

92 Constitutional Law
92XX Separation of Powers
92XX(C) Judicial Powers and Functions
92XX(C)2 Encroachment on Legislature
92k2499 Particular Issues and Applica-

tions
92k2522 Property Rights
92k2522(1) k. In general. Most Cited Cases
(Formerly 92k70.3(14))

Constitutional Law 92 ⚿3565

92 Constitutional Law
92XXVI Equal Protection
92XXVI(E) Particular Issues and Applications
92XXVI(E)6 Taxation
92k3565 k. Transfer taxes. Most Cited Cases
(Formerly 92k228.5)

Taxation 371 ⚿2102

371 Taxation
371III Property Taxes
371III(B) Laws and Regulation
371III(B)3 Constitutional Requirements and Restrictions
371k2102 k. Transfers and registrations of instruments. Most Cited Cases
(Formerly 92k228.5)

Wisdom of statute providing for ten-year decrease in conveyance tax imposed on sales of property classified as open space land was not relevant to determination of its constitutionality; to prevail on claim that statute violated equal protection, the landowners were required to show that the conveyance tax bore no rational relation to legislative intent. C.G.S.A. §§ 12-107a, 12-504a.

[4] Constitutional Law 92 ⚿3560

92 Constitutional Law
92XXVI Equal Protection
92XXVI(E) Particular Issues and Applications
92XXVI(E)6 Taxation
92k3560 k. In general. Most Cited
(Formerly 92k228.5)

Taxation does not constitute a "compelling state interest" within meaning of equal protection clause rule that a fundamental right may not be abridged without a compelling state interest. U.S.C.A.Const. Amend. 14.

[5] Constitutional Law 92 ⚿3565

92 Constitutional Law
92XXVI Equal Protection
92XXVI(E) Particular Issues and Applications
92XXVI(E)6 Taxation
92k3565 k. Transfer taxes. Most Cited Cases
(Formerly 92k228.5)

Taxation 371 ⚿2127

371 Taxation
371III Property Taxes
371III(B) Laws and Regulation
371III(B)4 Constitutional Regulation and Restrictions Concerning Equality and Uniformity
371k2127 k. Discrimination as to rate or amount. Most Cited Cases
(Formerly 371k40(7))

Statute providing for ten-year decrease in conveyance tax imposed on sales of property classified as open space land does not violate equal protection; decrease is rationally related to legislative goal of preserving open land and the statute treats alike all persons who have owned their land for the same amount of time. C.G.S.A. §§ 12-107a, 12-504a.

[6] Statutes 361 ⚿47

361 Statutes
361I Enactment, Requisites, and Validity in General
361k45 Validity and Sufficiency of Provisions
361k47 k. Certainty and definiteness. Most Cited Cases

Statute allowing a planning commission, as

part of its development plan, to designate areas for preservation as open space land is not void for vagueness on ground that it offers no guidelines demonstrating how and in what manner the planning commission's recommendations are to be arrived at; before designating any land as open space the planning commission must first find that the land meets certain statutory criteria and commission must follow the statutory procedures for adopting a plan of development. C.G.S.A. §§ 8-23, 12-107a, 12-107b(c), 12-107e, 12-107e(a); U.S.C.A.Const. Amend. 14.

[7] Eminent Domain 148 ⚿2.1

148 Eminent Domain
148I Nature, Extent, and Delegation of Power
148k2 What Constitutes a Taking; Police and Other Powers Distinguished
148k2.1 k. In general. Most Cited Cases
(Formerly 148k2(1))

To constitute a "taking" the owner must be excluded from his private use and possession, and an authority exercising a right of eminent domain must assume the use and possession of the land for a public purpose. C.G.S.A.Const. art. 1, § 11.

[8] Eminent Domain 148 ⚿2.10(1)

148 Eminent Domain
148I Nature, Extent, and Delegation of Power
148k2 What Constitutes a Taking; Police and Other Powers Distinguished
148k2.10 Zoning, Planning, or Land Use; Building Codes
148k2.10(1) k. In general. Most Cited Cases
(Formerly 148k2(1.2), 148k2(1))

Open space amendment of town of Guilford, which ordinance designated all land in the town as open space, with specified exceptions, did not constitute a taking of property without compensation where landowners were not prevented from using their land and there was no showing that the amendment destroyed the value of the land. C.G.S.A. § 12-107e; C.G.S.A.Const. art. 1, § 11.

[9] Taxation 371 ⚿2478

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)3 Mode of Assessment in General
371k2476 Nature or Ownership of Property
371k2478 k. Real property in general. Most Cited Cases
(Formerly 371k338)

Zoning and Planning 414 ⚿1033

414 Zoning and Planning
414I In General
414k1019 Concurrent or Conflicting Regulations; Preemption
414k1033 k. Other particular cases. Most Cited Cases
(Formerly 414k14)

Designating all land in town of Guilford as open space, with certain exceptions, did not go beyond intent of the open space enabling act; whether planning commission chose to describe the proposed open space by designating each individual parcel or by creating boundaries was beside the point so long as all of the land so designated as open space land fell within the statutory definition; furthermore, amendment did not confer a tax advantage on any lots located in subdivision because on such use any tax advantage under open space zoning ceased to have any validity. C.G.S.A. §§ 12-107b(c), 12-107e.

[10] Constitutional Law 92 ⚿1007

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(C) Determination of Constitutional Questions
92VI(C)3 Presumptions and Construction as to Constitutionality
92k1006 Particular Issues and Applications

92k1007 k. In general. Most Cited Cases
(Formerly 92k48(4.1), 92k48(4))

Constitutional Law 92 ⚖1012

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(C) Determination of Constitutional Questions
92VI(C)3 Presumptions and Construction as to Constitutionality
92k1006 Particular Issues and Applications
92k1012 k. Taxation and revenue legislation. Most Cited Cases
(Formerly 92k48(4.1), 92k48(4))

Zoning and Planning 414 ⚖1664

414 Zoning and Planning
414X Judicial Review or Relief
414X(C) Scope of Review
414X(C)2 Additional Proofs and Trial De Novo
414k1662 Validity of Regulations, Sufficiency of Evidence
414k1664 k. Degree of proof. Most Cited Cases
(Formerly 414k648)

Zoning and Planning 414 ⚖1669

414 Zoning and Planning
414X Judicial Review or Relief
414X(C) Scope of Review
414X(C)2 Additional Proofs and Trial De Novo
414k1668 Amendment or Rezoning, Sufficiency of Evidence
414k1669 k. In general. Most Cited Cases
(Formerly 414k652.1, 414k652)

Landowners, challenging open space zoning and taxing laws as well as open space zoning amendment adopted by town had burden of establishing unconstitutionality of such legislation beyond a reasonable doubt. C.G.S.A. §§ 12-107e, 12-504b.

***81 Syllabus by the Court*

***52** The plaintiffs, who challenged on constitutional grounds the open space amendment to the Guilford town plan of development adopted by the defendant planning and zoning commission, failed to sustain their burden of proving the claimed unconstitutionality beyond a reasonable doubt.

The statute (s 12-504a) which provides for a ten-year decrease in the conveyance tax imposed on sales of property classified as open space land does not violate the equal protection clause of the fourteenth amendment to the United States constitution since the decrease is rationally related to the legislative goal of preserving open land and since s 12-504a treats alike all persons who have owned their land for the same amount of time.

The statute (s 12-107e) which allows a planning commission, as part of its plan of development, to designate areas for preservation as open space land is not void for vagueness since, before so designating any land, the commission must find that it meets certain statutory (s 12-107b(c)) criteria, and since the commission must follow statutory (s 8-23) procedures for adopting a plan of development.

The open space amendment adopted by the defendant commission did not constitute a taking of property without just compensation as ***53** claimed by the plaintiffs since they were not prevented from using their land and since there was no evidence that the amendment had destroyed the value of their land.

Lattanzi, Vishno & Levine, New Haven, for the plaintiffs.

Dudley & Cox, Guilford, for the defendant.

JACOBS, Judge.

On September 15, 1975, the planning and zon-

ing commission of the town of Guilford (hereinafter referred to as the commission), acting under the provisions of s 8-23 of the General Statutes, adopted an amendment [FN1] to its comprehensive plan of development, effective September 30, 1975. The plaintiffs allege that they are aggrieved by the open space amendment for the reasons that (1) section 12-107e of the General Statutes is vague and therefore violative of the state and federal constitutions; (2) the open space amendment violates ***54** the equal protection clause "in that it confers a benefit on some to the detriment of other property ****82** owners . . . without legislative reason"; (3) the amendment constitutes spot zoning; (4) the commission exceeded its authority in passing the amendment because it is not "within the letter and/or spirit of . . . (s 12-107e) . . . "; (5) the amendment as applied will effect a taking of property without just compensation . . .; "(6) . . . the amendment will prevent land from being properly developed and will relieve some property owners from a tax burden which is justifiably theirs at the expense of other taxpayers; (7) . . . the amendment gives the (c)ommission de facto power to assess taxes and therefore constitutes a usurpation of the taxing power; and (8) (t)he amendment further curtails the equal protection clause of the federal constitution in that it arbitrarily provides greater benefits to those who have owned property for a longer period of time than others." The complaint further alleges that the "(c)ommission acted illegally, arbitrarily and in abuse of the discretion vested in it." In their prayer for relief, the plaintiffs ask this court to declare the amendment null and void.

> FN1. The amendment provided as follows: "All land in the Town of Guilford is designated as Open Space land with the following exceptions:
>
> 1. All building lots in a subdivision approved by the Guilford Planning and Zoning Commission and filed in the Guilford Land Records.
>
> 2. All land area in a Planned Residential Development approved by the Guilford Planning and Zoning Commission and recorded in the Land Records, except unimproved areas designated as Open Space on the approved plan for said development.
>
> 3. All land zoned for industrial or commercial use.
>
> 4. All other parcels of land upon which any building or structure is located, to the extent of the minimum lot size of the Zone District in which the parcel of land is located, or to the extent such parcel is so improved, whichever is greater.
>
> 5. Any unimproved portion of a parcel which is smaller than the minimum lot size of the Zone District in which the parcel of land is located.
>
> 6. All other parcels of land to the extent of the minimum lot size of the Zone District in which the parcel of land is located.
>
> This Amendment is to become effective on September 30, 1975.
>
> Henry J. Graver, Jr.
>
> Chairman."

[1] The court deems it unnecessary to discuss paragraph three (spot zoning), paragraph six (proper development of land) and paragraph seven (de facto power to assess taxes) for the reason that the plaintiffs' brief does not address itself to those issues.

Connecticut was neither the first nor the only state to pass open space laws which provide tax relief to certain qualified property owners. Note, "Preferential Property Tax Treatment of Farmland and Open Space under Michigan Law," 8 U.Mich.J.L.Ref. 428, 429 n. 6 (hereinafter referred to as Note, J.L.Ref.); Hagman, "Open Space Planning and Property Taxation Some Suggestions,"

*55 1964 Wisc.L.R. 628, 636 n. 30 (hereinafter referred to as Hagman). "The premise for all open-space legislation is that much undeveloped land in and around an expanding metropolis is an increasingly valuable asset. Open areas should be preserved for a variety of purposes, economic and otherwise some only vaguely articulated thus far: to 'shape' or 'time' urban growth and thus prevent development from spreading at all, or too fast, into areas where it will produce high public cost for community services or hasty, ill-planned sprawl today which will be blight tomorrow; to preserve nature and natural amenities; to relieve urban congestion and create more cohesive suburban communities; to reserve large accessible areas for outdoor recreation and neighborhood playgrounds and parks; to preserve sites of historic or scientific importance; to conserve wildlife habitats, water supply areas, valuable forests, and agricultural land; to minimize water runoff, soil erosion, and flood damage in critical areas; to protect health against the hazards of inadequate waste disposal; and to reserve adequate land for the development of facilities, public or private, that careful estimates suggest will be needed in the future." Krasnowiecki & Paul, "The Preservation of Open Space in Metropolitan Areas," 110 U.Pa.L.Rev. 179, 180-81.[FN2] "Open land taxation motivated by the land use *56 planning desideratum maintaining open space and preventing sprawl has a relatively recent discoverable history. There are no antecedents in England, where assessment is based on the income produced and not on market value. Under such circumstances, land which is not intensively used produces little income and hence is not highly taxed. . . . Suggestions for open land taxation schemes having a resemblance**83 to current open land taxation statutes date back to 1926 in the United States. The resemblance is due to a similarity in motivation, namely, the achievement of land use planning goals." Hagman, op. cit., 634.

FN2. In the famous case of Berman v. Parker, 348 U.S. 26, 75 S.Ct. 98, 99 L.Ed. 27, the United States Supreme Court upheld a redevelopment project, one avowed purpose of which was to secure "a better balanced, attractive community." Douglas, J.'s, impressive dictum that it is within the police power to make a community beautiful as well as healthy has been widely quoted by other courts. See, e. g., Bilbar Construction Co. v. Easttown Township Board of Adjustment, 393 Pa. 62, 73, 141 A.2d 851; Tyler & Valentine, "The 1972 Open Space Conveyance Tax Recapture or Reaction?," 47 Conn.B.J. 332.

For a discussion of the need for urban open space, see generally Clawson, Held & Stoddard, "Land for the Future"; Siegel, "The Law of Open Space"; Whythe, "Securing Open Space for Urban America: Conservation Elements," Urban Land Inst.Tech.Bull.No.36.

Basically, General Statutes ss 12-107a, 12-107e and 12-504a allow a preferential assessment, that is, they permit an assessor to disregard the market value of the land and compute the tax on its use value. Those statutes also "provide for deferred taxation by charging a lower-than-normal rate while land is used in an approved manner and recapturing all or part of the reduction when the land is converted to another use." Note, J.L.Ref. 431; see also ss 12-504a, 12-504b and 12-504e. The theory underlying those enactments is that lower taxes will prevent the sale and conversion of the land to more intensive use. Note, J.L.Ref. 429.

The plaintiffs and the citizens of the town of Guilford are obviously divided on the issue of their open space amendment and the tax preference it entails. "(T)axation is an intensely practical matter." State Tax Commission v. Gales, 222 Md. 543, 560, 161 A.2d 676, 685. But to paraphrase Holmes, J., the task of the law is the drawing of lines. In so doing, it is possible to commit errors of judgment in the accommodation of principle, but perhaps this is the best that the law can afford. Schlesinger v. Wisconsin, 270 U.S. 230, 241, 46

S.Ct. 260, 70 L.Ed. 557 (dissenting opinion). As one commentator put it, "(a) preferential tax raises a controversial*57 political issue, as any tax favoritism would. However, it is not unreasonable for the general body politic to support preferential taxation of open land. Support would be reasonable where land use is controlled and the community is serious and careful about planning, so that the landowner cannot remove the restriction virtually at his discretion. True, the speculative value of the land may still be realized, but it also may not be, and the public, not the landowner, determines when. Furthermore, preferential taxation for open land does not seem grossly unfair when the benefit theory of taxation is applied. Clearly, open land places a comparatively light burden on schools, police and fire departments, and the many other governmental facilities conventionally supported by the property tax. If the public, in its need for open space and its need to control sprawl, seriously restricts the right to convert the land to a higher use, it seems only fair that the public should pay by way of a tax preference for that it has gained." Hagman, op. cit., 639-40.

[2][3][4][5] The plaintiffs ask the court to declare s 12-504a unconstitutional as violative of the equal protection clause of the fourteenth amendment of the United States constitution. They argue that the ten-year decrease in the conveyance tax bears no rational relationship to the legislative goal of s 12-107a, and that the ten-year decrease discriminates, without reason, on the length of the ownership of the land. The plaintiffs also make an equal protection argument against Guilford's open space amendment and ask that s 12-107e be struck down.

It has been suggested that there is no federal constitutional basis for a challenge to the Connecticut preferential assessment scheme. The equal protection clause of the fourteenth amendment merely requires that taxation of property not be *58 patently arbitrary and that rates be uniform within classes. Hagman, op. cit., 641 n. 43; see Newhouse, Constitutional Uniformity and Equality in State Taxation, pp. 603, 605-606.

State constitutional provisions, however, must also be examined with respect to tax assessment schemes. In other states, state constitutional requirements of uniformity and equality in taxation have constituted a factor in deciding whether any type of open land taxation scheme might be adopted. Hagman, op. cit., 640-41. First, when the state constitution requires property assessments to be based on "just," "full," "market," or "true" valuation, then tax statutes based on "use" value are open to constitutional challenge. Hagman, op. cit., 641. The Connecticut constitution does not seem **84 to require "just valuation"; consequently, that ground of challenge would not seem to be available in Connecticut. Second, some state constitutions require uniformity in taxation. Such a provision would prohibit unreasonable classifications and partial exemptions. Hagman, op. cit., 641. It does not appear that the Connecticut constitution contains such a provision. Moreover, reasonable classifications and exemptions appear to be approved in Bassett v. Rose, 141 Conn. 129, 104 A.2d 212.

The Connecticut Supreme Court has never ruled on the constitutionality of s 12-504a of the General Statutes. Nor has it ever ruled on the constitutionality of the other real estate taxes set forth in chapter 223 of the General Statutes. See, e. g., McKinney v. Coventry, 32 Conn.Sup. 82, 339 A.2d 480 (constitutionality of s 12-504a raised, but not decided); Alling Paper Co. v. Massinin, 31 Conn.Sup. 154, 325 A.2d 533 (conveyance tax of s 12-494 mentioned without disapproval). For the plaintiffs to prevail on this appeal, it must be shown that the conveyance tax bears no rational relation to the legislative intent. *59 It is not relevant whether the tax statute is wise; State ex rel. Kirby v. Board of Fire Commissioners, 129 Conn. 419, 29 A.2d 452; it must only be rational. Experts are divided as to the relative merits or wisdom of this type of legislation. See Marsele & Calabrese, "Taxation of Open Spaces: Its Pros and Cons," 18 Conn. Gov-

ernment 1; Hagman, op. cit., 429.

It is questionable whether the plaintiffs have made a showing that the tax is not rationally related to the legislative intent. First, it must be conceded that the state has taxing powers. First Federal Savings & Loan Assn. v. Connelly, 142 Conn. 483, 115 A.2d 455. Second, any conveyance tax, no matter how insignificant or variable over time, might serve to deter some persons from conveying their land, thus keeping the land as open space. Third, the variation in tax depending on the length of time the land is held is not so clearly irrational that it should be struck down. A high tax imposed on a conveyance for all time, for example, might unduly impede the marketability of the land. Also, the laws in this country are replete with examples of variations in tax rates depending on length of ownership, e. g., the federal tax laws relating to short and long term capital gains. Guinn v. United States, 238 U.S. 347, 35 S.Ct. 926, 59 L.Ed. 1340, relied on by the plaintiffs, is inapposite. That case involved the denial of the right of vote to blacks in violation of the fifteenth amendment to the United States constitution. In any event, voting is a fundamental right which may not be abridged without a compelling state interest a much higher constitutional standard than that applied to the taxing powers. An analogous argument was presented to the courts with respect to a city ordinance which affected the city's grand list. In Bassett v. Rose, 141 Conn. 129, 104 A.2d 212, the town of Milford taxed all property except new construction built between October 1, 1950, and June 30, 1952. Such a tax exemption *60 based on length of ownership was upheld. The Connecticut Supreme Court stated (pp. 133-34, 104 A.2d p. 214): "Legislatures have broad powers of taxation. They may prescribe the conditions, means and methods of the assessment, levy and collection of taxes. . . . They may classify taxpayers if there is a reasonable basis for the classification and all persons in any one class are treated uniformly. . . . The classification is permissible if it bears a reasonable relation to a legitimate purpose of governmental action. . . . The question under consideration here is whether the special act is discriminatory. It is not if it treats all persons who are in the same class on an equal basis and if there is a reasonable distinction between the members of that class and all others. The class of persons affected by the special act is made up of those who owned property in Milford on October 1, 1950. They are all treated alike. It is not unreasonable to segregate them from persons who owned property at some time prior to that date or from those who owned property at some subsequent date. . . . " (Citations omitted.)

**85 The plaintiffs here have vigorously argued that all similarly situated have not been treated alike. Here, however, all persons who have owned their land for the same amount of time are treated in the same way. Thus, by analogy to Bassett v. Rose, supra, the provision in s 12-504a concerning length of ownership and the tax preference scheme in general cannot be considered unconstitutional as a violation of the fourteenth amendment to the United States constitution. Thus, the court concludes that the equal protection clause could not affect the statute in question.

[6] The plaintiffs also argue that s 12-107e(a) be declared unconstitutionally void for vagueness on the ground that the statute offers no guidelines "which demonstrate how and in what manner the *61 planning commission's recommendations are to be arrived at." The court cannot agree with that contention. The "how and in what manner" is set forth in General Statutes ss 8-23 and 12-107e. Section 12-107e allows the commission to designate areas as open space land as part of its plan of development, and s 8-23 sets forth how such a plan is to be created, including provisions as to its content, publication, notice, hearings on the proposed amendment and final adoption. The guidelines as to what land may be designated as open land, i. e., how the commission's recommendations are to be arrived at, may be found in ss 12-107a and 12-107b (c). Section 12-107a sets forth the legislative purpose in passing the open space provision, and such purpose must rule and guide the commission's des-

ignation of any land as open space. Furthermore, s 12-107b(c) defines the term "open space." Obviously, for the commission to declare any land as open space, it must first make a finding that such land meets the statutory criteria. Thus, the statute fixes a limit on the commission's activities and thereby saves the statute from being void for vagueness.

[7][8] Paragraph three (e) of the complaint alleges that "(t)he amendment, as applied, will effect a taking of property without just compensation in violation of the Federal Constitution." The Connecticut constitution, article first, s 11, provides that "(t)he property of no person shall be taken for public use, without just compensation therefor." To constitute a "taking" within this constitutional provision, the owner must be excluded from his private use and possession, and an authority exercising a right of eminent domain must assume the use and possession of the land for a public purpose. Roessler, Inc. v. Ives, 156 Conn. 131, 140, 239 A.2d 538. The court finds no taking in this case. The plaintiffs are not prevented ***62** from using their land. Nor is there any evidence that the open space amendment has destroyed the value of their land. Therefore, it cannot be said that there has been a confiscatory taking by the municipality. Cf. State National Bank v. Planning & Zoning Commission, 156 Conn. 99, 239 A.2d 528.

[9][10] The plaintiffs also make the claim that the open space amendment adopted by the commission goes beyond the scope of authority and the intent of s 12-107e of the General Statutes. They argue that the commission went beyond the intent of the enabling statute when they designated "all land in the Town of Guilford" as open space, with certain exceptions. Whether the commission chooses to describe the proposed open space by designating each individual parcel or by creating boundaries is beside the point, so long as all of the land so designated as open space land is within the definition of s 12-107b(c).

It should be emphasized that the amendment does not confer a tax advantage on any lots located in subdivisions. That appears valid since "(i)f subdivision is allowed it is presumed that a planning decision to permit development has been made, and the tax advantage given to restrain development ceases to have any validity." Hagman, op. cit., 650.

The Connecticut Supreme Court has held that a court shall not substitute its judgment for that of the commission, so long as the regulation in question is in furtherance of a proper purpose. ****86**First Hartford Realty Corporation v. Plan & Zoning Commission, 165 Conn. 533, 338 A.2d 490; Teuscher v. Zoning Board of Appeals, 154 Conn. 650, 659, 228 A.2d 518; Young v. Town Planning & Zoning Commission, 151 Conn. 235, 196 A.2d 427; Zandri v. Zoning Commission, 150 Conn. 646, 192 A.2d 876. For the legislation to be found unconstitutional, the plaintiffs bear the burden of establishing its unconstitutionality***63** beyond a reasonable doubt. Adams v. Rubinow, 157 Conn. 150, 152-53, 251 A.2d 49; Hardware Mutual Casualty Co. v. Premo, 153 Conn. 465, 470, 217 A.2d 698.

The court concludes that in passing the open space amendment the commission did not act illegally, arbitrarily or in abuse of the discretion vested in it.

For the reasons stated herein, the plaintiffs' appeal must be and is hereby dismissed.

Conn.Com.Pl. 1977.
Curry v. Planning and Zoning Commission of Town of Guilford
34 Conn.Supp. 52, 376 A.2d 79

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242 A.2d 777
156 Conn. 437, 242 A.2d 777
(Cite as: 156 Conn. 437, 242 A.2d 777)

C

Supreme Court of Connecticut.
Ann P. DICKAU et al.
v.
TOWN OF GLASTONBURY.

May 7, 1968.

Appeal from alleged wrongful valuation of real estate for tax purposes and from refusal of assessor to classify taxpayers' land as farmland. The Court of Common Pleas, Hartford County, John J. Bracken, J., entered judgment dismissing the appeal and the taxpayers appealed. The Supreme Court, Alcorn, J., held that where assessor did not state to taxpayers that he was not going to increase assessment on taxpayers' land, assessor did not counsel, suggest or advise taxpayers not to file application or reclassification of their land and assessor had no intent to mislead, deceive or misrepresent, and taxpayers did not decide not to file application for reclassification at time of their conference with assessor, but came to that decision later on advice of their own independent advisor, town was not estopped from altering pre-existing valuation on taxpayers' land.

No error.

West Headnotes

[1] Appeal and Error 30 ⇐1078(1)

30 Appeal and Error
30XVI Review
30XVI(K) Error Waived in Appellate Court
30k1078 Failure to Urge Objections
30k1078(1) k. In general. Most Cited Cases

Where taxpayer did not pursue in his brief the issue of addition of paragraphs to finding of trial court in review of action of board of tax review, addition of paragraphs would be treated on appeal as having been abandoned.

[2] Taxation 371 ⇐2478

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)3 Mode of Assessment in General
371k2476 Nature or Ownership of Property
371k2478 k. Real property in general. Most Cited Cases
(Formerly 371k338)

When owner has applied for classification of land as farmland for tax purposes, it is duty of assessor to determine whether land qualifies for such classification. C.G.S.A. §§ 12-63, 12-64, 12-107a to 12-107c, 12-107b, 12-107c(a).

[3] Taxation 371 ⇐2523

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)5 Valuation of Property
371k2520 Valuation of Particular Real Property
371k2523 k. Rural or agricultural lands; open spaces. Most Cited Cases
(Formerly 371k348.1(3), 371k348)

Where landowner did not apply to assessor for classification of their land as farmland for tax purposes, their land was properly valued at its true and actual valuation unless owners' claim that owners were estopped from seeking classification by assessor was valid. C.G.S.A. §§ 12-63, 12-64, 12-107a to 12-107c, 12-107b, 12-107c(a).

[4] Taxation 371 ⇐2676

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)8 Review, Correction, or Setting Aside of Assessment in General

371k2676 k. Hearing. Most Cited Cases
(Formerly 371k486)

Taxation 371 ⚿2699(8)

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)10 Judicial Review or Intervention
371k2691 Review of Board by Courts
371k2699 Proceedings for Review and Parties
371k2699(6) Scope and Extent of Review
371k2699(8) k. Questions of fact. Most Cited Cases
(Formerly 371k493.8, 371k493(8))

Determination of valuation of land for tax purposes is question of fact for trier of facts. C.G.S.A. §§ 12-63, 12-64, 12-107a to 12-107c, 12-107b, 12-107c(a).

[5] Taxation 371 ⚿2723

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)11 Evidence in General
371k2723 k. Burden of proof. Most Cited Cases
(Formerly 371k485(1))

Taxpayers have burden to prove that assessor's valuation of taxpayers' land was not its true and actual value. C.G.S.A. §§ 12-63, 12-64, 12-107a to 12-107c, 12-107b, 12-107c(a).

[6] Estoppel 156 ⚿52(2)

156 Estoppel
156III Equitable Estoppel
156III(A) Nature and Essentials in General
156k52 Nature and Application of Estoppel in Pais
156k52(2) k. Basis of estoppel. Most Cited Cases
(Formerly 156k52)

Estoppel rests upon misleading conduct of one party to prejudice of the other.

[7] Estoppel 156 ⚿52.15

156 Estoppel
156III Equitable Estoppel
156III(A) Nature and Essentials in General
156k52.15 k. Essential elements. Most Cited Cases
(Formerly 156k52)

Essential elements of estoppel are that one party must do or say something which is intended or calculated to induce another to believe in the existence of certain facts and to act on that belief and that the other party, influenced thereby, changed his position or did some act to his injury which he otherwise would not have done.

[8] Taxation 371 ⚿2567

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)5 Valuation of Property
371k2567 k. Amendment or alteration by assessors in general. Most Cited Cases
(Formerly 371k360)

Where assessor did not state to taxpayers that he was not going to increase assessment on taxpayers' land, assessor did not counsel, suggest or advise taxpayers not to file application for reclassification of their land and assessor had no intent to mislead, deceive or misrepresent, and taxpayers did not decide not to file application for reclassification at time of their conference with assessor, but came to that decision later on advice of their own independent advisor, town was not estopped from altering pre-existing valuation on taxpayers' land. C.G.S.A. §§ 12-63, 12-64, 12-107a to 12-107c, 12-107b, 12-107c(a).

[9] Estoppel 156 ⚿62.5

156 Estoppel
156III Equitable Estoppel
156III(A) Nature and Essentials in General
156k62 Estoppel Against Public, Government, or Public Officers
156k62.5 k. Acts of officers or boards. Most Cited Cases
(Formerly 156k62(5))
A municipality cannot be estopped by the unauthorized acts of its officers.

[10] Estoppel 156 ⇐99

156 Estoppel
156III Equitable Estoppel
156III(D) Matters Precluded
156k99 k. Extent of estoppel in general. Most Cited Cases
Equitable estoppel is available only for protection and cannot be used as a weapon of assault.

[11] Taxation 371 ⇐2699(7)

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)10 Judicial Review or Intervention
371k2691 Review of Board by Courts
371k2699 Proceedings for Review and Parties
371k2699(6) Scope and Extent of Review
371k2699(7) k. In general. Most Cited Cases
(Formerly 371k493.9, 371k493(9))
Trial court had function to ascertain true and actual value of property in taxpayers' action to review decision of board of tax appeals which increased valuation of taxpayers' property for taxation purposes.

*438 **778 Robert W. Gordon, Manchester, for appellants (plaintiffs).

Edward C. Wynne, Glastonbury, for appellee (defendant).

Before *437 KING, C.J., and ALCORN, HOUSE, THIM and RYAN, JJ.

ALCORN, Justice.

The plaintiffs have appealed from the valuation placed upon certain of their real estate for tax purposes in Glastonbury. Their original complaint was in two counts. The first count was in the form of an appeal from the action of the board of tax review in refusing to reduce the allegedly excessive valuation placed by the assessors on five described parcels of land. The second count alleged that the plaintiffs had applied, under General Statutes (Rev. to 1964) s 12-107c, to have these parcels classified as farmland; that the assessors made no such classification but stated that the assessment as previously made would not be changed; and that the classification of the land 'as industrial land and commercial land as hereinbefore stated' was improper and illegal. There was, however, no allegation that the land had been classified as industrial or commercial land, but it was alleged that the board of tax review, on an appeal to it for a classification of the property as farmland, had refused to make any change. The relief sought on the two counts was (1) that the plaintiffs' land be classified as farmland and (2) that the valuation of the land be reduced to its 'true and actual value.'

A third count was later added to the complaint, alleging, in substance, that the plaintiffs had gone to the assessor's office for the purpose of seeking the benefits of General Statutes (Rev. to 1964) s 12-107c and that the assessor had told them that there was no need to seek such relief because the existing assessment would not be altered; that the *439 plaintiffs had consequently not applied for the benefits available under s 12-107c, but the assessor nevertheless did subsequently after the assessments; that the plaintiffs appealed from that action to the board of tax review without success; and that 'the classification of the plaintiffs' land by the assessor as industrial land and commercial land as hereinbe-

fore stated was improper and illegal.' Again there was no allegation that the land was classified as industrial and commercial land. The relief sought was that the land be assessed as farmland under s 12-107c.

**779 The defendant admitted none of the allegations of any of the counts except the plaintiffs' ownership of the five parcels of land involved.

The court was thus presented, in substance, with an appeal, as authorized by General Statutes (Rev. to 1964) s 12-118, from the valuation placed upon the plaintiffs' land, an appeal from a claimed refusal to grant an application to classify the land as farmland under s 12-107c, and an appeal from a claimed action of the assessor in dissuading the plaintiffs from seeking relief under s 12-107c. After a hearing on all of the disputed issues, the court concluded that the plaintiffs had not sustained their burden of proof and that the true and actual value of the land was that set by the assessor and the board of tax review. Judgment was rendered confirming the action of the board of tax review, and the plaintiffs have appealed from the judgment.

[1] There are eleven assignments of error. One of them seeks the addition of 102 paragraphs to the finding, of which fifty-six were expressly abandoned at the time of argument. The remaining forty-six are not pursued in the brief and must be treated as abandoned. *440Shelton Yacht & Cabana Club, Inc. v. Suto, 150 Conn. 251, 254, 188 A.2d 493. The same treatment, for the same reason, is accorded three assignments of error attacking the facts found and the conclusions reached by the court and four assignments of error in rulings on evidence. No correction of the finding is required.

The plaintiffs' contention on this appeal reduces to two propositions, based, in substance, on the first and third courts of the complaint. They are , first, that the tax assessor was not justified in revaluing the plaintiffs' land from $200 per acre as agricultural land to $1000 per acre merely because the land had been rezoned as industrial land; and, second, that the town was estopped from altering the pre-existing valuation by the action of the assessor in the complaint. They are, first, that the the benefits afforded by General Statutes (Rev. to 1964) s 12-107c. The claim under the second count is not pursued because the plaintiffs admittedly never sought relief under s 12-107c.

[2][3][4][5] We have recently discussed General Statutes ss 12-107a-12-107c, passed by the 1963 General Assembly and designed to provide preferential tax treatment of farmland. Marshall v. Town of Newington, 156 Conn. -, 239 A.2d 478. As we pointed out in that case, when an owner has applied for the classification of as farmland, as defined in s 12-107b, it is the duty of the assessor to determine whether the land qualifies for such classification under the tests laid down in s 12-107c(a). Land so classified is then to be valued 'based upon its current use without regard to neighborhood land use of a more intensive nature,' but the true and actual value of all other property is to be deemed the fair market value. General Statutes (Rev. to 1964) s 12-63. Admittedly the plaintiffs did not *441 apply for a classification of their land as farmland, and consequently, unless their claim of estoppel is valid, their land is to be valued at its present true and actual valuation. General Statutes (Rev. to 1964) s 12-64. The determination of that valuation presents a question of fact for the trier, with the burden on the plaintiffs to prove that the assessor's valuation was not the present true and actual value or, in other words, the present fair market value of the property. Sheldon House Club, Inc. v. Branford, 149 Conn. 28, 32, 175 A.2d 186; Burritt Mutual Savings Bank of New Britain v. City of New Britain, 146 Conn. 669, 680, 154 A.2d 608.

[6][7][8] The plaintiffs' claim of estoppel is without merit for several reasons. In the first place, '(e)stoppel rests upon the misleading conduct of one party to the prejudice of the other.' MacKay v. Aetna Life Ins. Co., 118 Conn. 538, 548, 173 A. 783, 787; **780Linahan v. Linahan, 131 Conn. 307, 327, 39 A.2d 895. Its two essential elements

are: one party must do or say something which is intended or calculated to induce another to believe in the existence of certain facts and to act on that belief; and the other party, influenced thereby, must change his position or do some act to his injury which he otherwise would not have done. Pet Car Products, Inc. v. Barnett, 150 Conn. 42, 53, 184 A.2d 797. The court found that the assessor did not state that he was not going to increase the assessment on the plaintiffs' land, that he had no intent to mislead, deceive, or misrepresent, and that he did not counsel, suggest or advise the plaintiffs not to file an application under General Statutes (Rev. to 1964) s 12-107c. The court further found that the plaintiffs did not decide not to file an application under s 12-107c at the time of their conference with the assessor but came to that ***442** decision later on advice of their own independent advisor. Consequently, the facts as found by the court would not give rise to an estoppel.

[9][10] Furthermore, a municipality cannot be estopped by the unauthorized acts of its officers. Hebb v. Zoning Board of Appeals, 150 Conn. 539, 542, 192 A.2d 206; Pet Car Products, Inc. v. Barnett, supra. And finally, 'equitable estoppel is available only for protection and cannot be used as a weapon of assault.' Hebb v. Zoning Board of Appeals, supra, 543, 192 A.2d 208.

In addition to the facts already related, the court found the following: For some twenty years prior to 1963, the plaintiff Anne P. Dickau and her now deceased husband, Edward F. Dickau, Sr., whose estate is represented in this action by his executors, had owned about ninety acres of land on the west side of Main Street and about fourteen and one-half acres on the east side of Main Street in Glastonbury. Tobacco had been grown annually on the ninety acres. Edward F. Dickau, Sr., died on March 27, 1963, and, after his death, the five parcels of the land which are the subject of this appeal, totaling 41.3 acres, were leased for the growing of tobacco and field corn. Four of the parcels were in an industrial zone, and one was in a business zone. In September, 1964, Mrs. Dickau, accompanied by a farm bureau representative, talked with the Glastonbury assessor regarding the feasibility of seeking the benefits of General Statutes (Rev. to 1964) s 12-107c for the portion of the land used for farming purposes. A schedule of land values covering various classifications of Glastonbury land existed at the time, in which industrial land had been valued at $1000 to $1200 per acre on the October, 1963, assessment list. The assessor said that ***443** the use values of farmland under s 12-107c would, in many cases, be higher on the October, 1964, list than those in the existing schedule of the various land classifications and that he expected to make no change in the existing schedule. The plaintiffs made no application to have their land classified as farmland under s 12-107c. Under the existing schedules and the zoning classification, their land would be valued at $1000 per acre. On the 1963 assessment list, however, one of the plaintiffs' parcels was valued at $100 per acre and each of the other four parcels was valued at $200 per acre. On October 1, 1964, one of the five parcels in issue was assessed at $1000 per acre instead of $100 per acre as it had been valued on the 1963 assessment list, and the other four parcels were each valued at $1000 per acre instead of $200 per acre as on the 1963 list. The plaintiffs appealed to the board of tax review, which refused to change the assessments thus made. In making the assessment appealed from, the assessor considered many factors including the availability of utilities, the location of the parcels, the road network, the zoning classification, the value of surrounding land, and the flat topography of the parcels. The plaintiffs' appraiser placed a value of $600 per acre, solely for agricultural purposes, on four of the parcels and a value of $900 on 1.5 acres of the fifth parcel. He did not consider the potentiality of any of the land for ****781** industrial use although he agred that he knew of no land in Glastonbury better suited to industrial use. Another appraiser, who considered the industrial use potential of the land, valued it at a minimum of $2000 per acre with portions of it at a higher figure.

It is unnecessary to relate other facts found by the court. A map in evidence demonstrates that *444 four of the parcels form a tract lying between Main Street on the east and Naubuc Avenue on the west, close to a major highway intersection and near the approach to the Putnam Bridge crossing the Connecticut River. The fifth parcel lies at the southeast corner of Main and Spring Streets near the center of the town. The plaintiffs' claim that the assessor made the change in value subsequent to a rezoning of the land to an industrial use is incomprehensible in view of the fact that not only is there no finding to that effect but the only zoning map in evidence shows the zoning restriction to have been in effect on June 25, 1956, some eight years before.

[11] From the evidence before it, including the desirability of the property for industrial use and the fact that it was zoned for such use, it was the function of the court to ascertain the present true and actual value of the property. Marshall v. Town of Newington, 156 Conn. -, 239 A.2d 478; Burritt Mutual Savings Bank of New Britain v. City of New Britain, 146 Conn. 669, 673, 154 A.2d 608. On the facts found, the court correctly concluded that the plaintiffs did not attempt to comply with the General Statutes (Rev. to 1964) s 12-107c so as to permit the land to be classified as farmland, that there was no estoppel, and that the land was not inequitably, disproportionately or unlawfully valued.

There is no error.

In this opinion the other judges concurred.

Conn. 1968.
Dickau v. Town of Glastonbury
156 Conn. 437, 242 A.2d 777

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Westlaw

863 A.2d 768
49 Conn.Supp. 125, 863 A.2d 768, 35 Conn. L. Rptr. 585
(Cite as: 49 Conn.Supp. 125, 863 A.2d 768)

H

Superior Court of Connecticut,
Judicial District of New Haven.
Nelson CECARELLI et al.
v.
BOARD OF ASSESSMENT APPEALS OF the TOWN OF NORTH BRANFORD [FN*]

FN* Affirmed. *Cecarelli v. Board of Assessment Appeals,* 272 Conn. 485, 863 A.2d 677 (2005).

No. CV-02-0464729-S.
Sept. 30, 2003.

Background: Landowner brought action to appeal town's property tax assessment.

Holdings: The Superior Court, Judicial District of New Haven, Blue, J., held that:
(1) dwelling was valued at $96,000, and
(2) land surrounding dwelling was valued at $14,325 due to deed restrictions.

Appeal sustained.

West Headnotes

[1] Municipal Corporations 268 ⇐972(3)

268 Municipal Corporations
268XIII Fiscal Matters
268XIII(D) Taxes and Other Revenue, and Application Thereof
268k970 Assessment of Taxes
268k972 Mode of Assessment
268k972(3) k. Description, ownership, and valuation. Most Cited Cases

Dwelling on alleged residential land was valued at $96,000 for tax purposes; appraiser testified for landowner that dwelling had value of $96,000, and town did not present any evidence in opposition to that fig- ure.

[2] Municipal Corporations 268 ⇐972(3)

268 Municipal Corporations
268XIII Fiscal Matters
268XIII(D) Taxes and Other Revenue, and Application Thereof
268k970 Assessment of Taxes
268k972 Mode of Assessment
268k972(3) k. Description, ownership, and valuation. Most Cited Cases

Residential land surrounding dwelling was valued at $14,325 for tax purposes due to deed restrictions on the 130-acre parcel which required that dwelling's inhabitant use rest of parcel for agricultural purposes; town valued land at $78,400 based on value of similar sized residential lots in surrounding area.

[3] Taxation 371 ⇐2523

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)5 Valuation of Property
371k2520 Valuation of Particular Real Property
371k2523 k. Rural or agricultural lands; open spaces. Most Cited Cases
(Formerly 371k348.1(3))

If an unplanted residential lot has not been altered from its natural state in order to enhance or promote its use for farming, it should not be taxed as "farm land," but should be taxed based on its actual market value rather than on the market value of some different, purely hypothetical parcel of land. C.G.S.A. §§ 1-1(q), 12-107c(a).

[4] Taxation 371 ⇐2518

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)5 Valuation of Property
371k2512 Real Property in General
371k2518 k. Appurtenances, easements,

863 A.2d 768
49 Conn.Supp. 125, 863 A.2d 768, 35 Conn. L. Rptr. 585
(Cite as: 49 Conn.Supp. 125, 863 A.2d 768)

and improvements. Most Cited Cases
(Formerly 371k348(6))
When an easement is carved out of one property for the benefit of another, the market value of the servient estate is thereby lessened.

**768 Robert M. Singer, Hamden, for the plaintiffs.

Gesmonde, Pietrosimone & Sgrignari, L.L.C., for the defendant.

BLUE, J.
The issue in this municipal tax appeal is the appropriate valuation of a farm house and its curtilage. The difficulty in valuing the subject premises arises from the fact that the development rights to the entire farm (including the residential portion) have been deeded to the state, resulting in significant restrictions on alienability. For the reasons stated below, the appeal must be sustained.

The subject premises ("property") are located at 186 Old Post Road in North Branford. The area of the property is approximately 53 acres. The property is one of two parcels forming a larger farm, and (to make matters slightly more confusing) that larger farm is itself half of a two-farm complex owned by the appellants, Nelson *126 Cecarelli and other members of his family. (The appellants will be referred to collectively as "Cecarelli.") The entire two-farm complex occupies approximately 130 acres. In 1997, Cecarelli conveyed the development rights to both **769 farms to the state by deed (deed) pursuant to General Statutes § 22-26cc (a). The deed provides that, "[t]he fee simple owner of the [premises] shall not divide, subdivide, develop, construct on, sell, lease or otherwise improve the [p]remises for uses that result in rendering the [p]remises no longer agricultural land." It further provides that, "[n]o use shall be made of the [p]remises ... which is or may be inconsistent with the perpetual protection and preservation of the land as agricultural land." Finally, the single-family residence on the premises (either the existing residence or any new residence built in its place) may be used only by "persons directly incidental to the farm operation."

The town of North Branford (town) revalued its properties as of October 1, 2001. The town hired a private company to do what the town assessor called a "mass appraisal" of approximately 5,400 properties in the town. Following adjustments by the board of assessment appeals, the property was appraised as follows:

Residential Land	$	78,400
Dwelling	$	105,000
Residential Outbuildings	$	29,100
Farm Land	$	300,000
Total	$	512,500

Cecarelli disputes the valuation of the "residential land" and the dwelling. He does not dispute the valuation of the residential outbuildings and the farm land. On May 15, 2002, he commenced a timely appeal by service of process pursuant to General Statutes § 12-117a. The *127 appeal was tried to the court on August 20, 2003. Following post-trial briefing, the appeal was argued on September 29, 2003.

The trial was curiously one-sided. Cecarelli presented both his own descriptive testimony and the expert appraisal testimony of George T. Malia, Jr., an experienced appraiser of agricultural property. Malia presented testimony, to be discussed in a moment, concerning both the farm house and its curtilage. The town, in contrast, did not present the testimony of anyone familiar with the property. (No agent or employee of the private company responsible for the town's appraisal was called.) It presented the testimony of a deputy bureau director of the state department of agriculture and the

town assessor, neither of whom displayed any cognizable acquaintance with the property. Thus, the trial here did not follow the path of the usual municipal tax appeal with contending experts. For practical purposes, the town seems to have not considered the valuation of the dwelling worth contesting. As to the valuation of the "residential land," the town, as I understand it, argues that *as a matter of law* a residential-lot-sized portion of the land immediately surrounding the dwelling should be given the same value as other residential lots in the immediate area *even though those other residential lots are not subject to the same restrictions on use and alienation as the residential lot here.* To state this proposition is to refute it.

[1] The town has effectively (although not formally) thrown in the towel as to the dwelling. The evidence establishes that the dwelling was built in 1705 and is in poor physical condition. The deed restricts use of the dwelling to "persons directly incidental to the farm operation." The dwelling has recently been used for the housing of farm hands. Malia's credible and unrebutted evidence establishes that the dwelling has a value of ***128** $96,000. (Malia's valuation is as of February 1, 2002, while the valuation date in question is October 1, 2001. There is, however, no evidence of any significant price fluctuation in the intervening three months.)

[2] The valuation of the "residential land" requires more detailed discussion. The town admits that the "residential ****770** land" area it has chosen to appraise as such is an artificial construct. The town's field card describes this area as consisting of ".92" acres, but the town assessor explained that this area was selected not because of the natural features of the subject property but because this is the size of the typical residential lot in the immediate area. As it happens, however, there is an unplanted curtilage of approximately one acre surrounding the dwelling, so this difference seems, at first blush, de minimus. (Some problems with the town's artificial approach will be discussed in a moment.) The more serious issue is how the "residential land" ought to be valued.

The town, as mentioned, has valued the "residential land" at $78,400. This valuation appears to be consistent with the value of residential lots of similar size in the area. The residential lots with which the town compares the subject premises are, however, unencumbered fees. The subject premises, in contrast, are significantly encumbered by the restrictions in the deed. Malia testified that, using the comparable sales approach for similarly encumbered properties, the value of Cecarelli's actual curtilage is $14,325. This testimony is, for all practical purposes, unrebutted. After carefully considering all of the evidence, the court accepts Malia's testimony on this point as credible. Although, as mentioned, the "residential land" appraised by the town occupies a slightly smaller area than the curtilage appraised by Malia, the difference is de minimus here. After considering all of the evidence, the market value of the "residential land" is found to be $14,325.

***129** The parties have focused their attention on General Statutes § 12-107c (a), which provides for the classification of certain agricultural land as farm land. The "farm land" here has been so taxed, but the valuation of that land is not an issue in the case. In *Newton v. Board of Tax Review,* Superior Court, judicial district of New Haven, Docket No. CV94-0359326S (November 21, 2001) (30 Conn. L. Rptr. 746, 2001 WL 1562113), *Booth, J.,* held that, under § 12-107c (a), "the minimum acreage required by zoning for a residence" surrounding a farm dwelling "should be assessed at market value." Id., at 747. If Judge Booth is correct, the question would then become what is the "market value" of "the minimum acreage required by zoning for a residence" here.

With respect, I believe that Judge Booth's focus on "the minimum acreage required by zoning for a residence"; id.; rather than on the actual unplanted curtilage on the property in question is not justified by the statute and could lead to unjust results in some cases. The problem lies in the analytical use of an artificial construct rather than the actual facts on the ground. Where, as here, a residence is surrounded by an unplanted area close in size to the minimum acreage required by zoning for a residence, no great injustice will result from use of the market value of the minimum acreage. Use of this artificial construct will be literally close enough for

government work. But as the facts on the ground begin to differ more significantly from the artificial construct, serious injustices can develop in either direction. If a particular dwelling is surrounded by several acres of unplanted land (think of the manorial Texas ranch house in the 1950s movie *Giant*), the property owner would gain an unjustified windfall from the use of a "minimum acreage" model. On the other hand, a property owner who plants crops right up to the footprint of his residence (think of Dorothy's house landing in a cornfield) will be severely overtaxed by use of the same ***130** model. Neither logic nor statutory text dictates use of the cookie-cutter "minimum acreage" approach.

****771** The town nevertheless argues that the "market value" of the "residential area" should be that of a standard residential lot in the immediate area and, inspired to even greater fictional heights, argues that the "market value" must be determined without regard to the actual encumbrances placed on the property by the deed. It reasons that, since the definition of "farm" contained in General Statutes § 1-1(q) "does not include 'residence' or 'residential lot' ... assessors have created the 'fiction' of a residential lot beneath a dwelling on farm land because only 'farm land' pursuant to [§ 12-107c (a)] is to receive preferential tax treatment." This argument turns the statute on its head.

[3] The reason that the definition of "farm" in § 1-1 (q) does not include "residence" or "residential lot" is that the statutory definition "refers to land that has been altered or developed from its natural state in order to enhance or promote its use for faming." *Metropolitan District v. Barkhamsted,* 199 Conn. 294, 302, 507 A.2d 92 (1986). An unplanted residential lot has not been altered from its natural state in order to enhance or promote its use for farming. If such an area exists, as it does here, it should not be taxed as "farm land." It should, however, be taxed based on its actual market value rather than on the market value of some different, purely hypothetical parcel of land. Nothing in § 12-107c (a) (or, for that matter, in *Newton*) requires the completely hypothetical market value that the town advocates here.

[4] The ineluctable fact that a property subject to encumbrances has a market value less than an otherwise similar property not subject to encumbrances has nothing to do with agricultural policy and everything to do with the laws of economics. It is well established that ***131** "[w]hen an easement is carved out of one property for the benefit of another the market value of the servient estate is thereby lessened ...." (Internal quotation marks omitted.) *Pepe v. Board of Tax Review,* 41 Conn.Supp. 457, 464, 585 A.2d 712 (1990), aff'd, 217 Conn. 240, 584 A.2d 1188 (1991). The restrictions on use and alienation here have a similar effect. If Smith and Jones own identical residential lots, but Smith's lot can be sold only to lefthanded redheads while Jones' lot can be sold to anybody, it does not take an expert in economics to correctly conclude that Jones' lot will be the more valuable of the two. If Smith and Jones own identical commercial properties, but Smith's property can be used only to sell buggy whips while Jones' property can be used to sell anything, once again Jones' property will be the more valuable of the two. By the same process of market economics, if Smith and Jones own otherwise identical residential properties, but Smith's property can only be used by persons directly connected with the operations of a farm while Jones' property can be used by anyone, it stands to reason that Jones' property will be the more valuable of the two. In a state like Connecticut, not overpopulated by farmers, this differential is likely to be substantial. That difference is substantial here, and the court is fully convinced by the evidence that the town's assessment of Cecarelli's "residential area" is grossly excessive.

After considering all of the evidence, the court finds that the value of the "residential land" as of October 1, 2001, is $14,325. The value of the dwelling is $96,000. The total fair market value of the property on the valuation date was therefore $439,425.

The appeal is sustained.

Conn.Super.,2003.
Cecarelli v. Board of Assessment Appeals of Town of North Branford
49 Conn.Supp. 125, 863 A.2d 768, 35 Conn. L. Rptr. 585

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273 A.2d 706
160 Conn. 71, 273 A.2d 706
(Cite as: 160 Conn. 71, 273 A.2d 706)

Supreme Court of Connecticut.
Helmer JOHNSON et al.
v.
BOARD OF TAX REVIEW OF the TOWN OF FAIRFIELD.

Nov. 23, 1970.

The Court of Common Pleas, Fairfield County, Mignone, J., sustained owners' claim that property was entitled to classification as farmland for tax purposes and Board of Tax Review appealed. The Supreme Court, Thim, J., held that land leased to nursery and used for growing plants, trees and shrubs was entitled to classification as farmland under tax statute which did not define farmland but general statutes defined 'agriculture' and 'farming' as raising or harvesting any agricultural or horticultural commodity and defined 'farm' so as to include nurseries, greenhouses or structures used primarily for raising of agricultural or horticultural commodities.

No error.

West Headnotes

[1] Taxation 371 ⚿2461

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)3 Mode of Assessment in General
371k2461 k. Statutory Provisions. Most Cited Cases
(Formerly 371k327)

Purpose of tax relief as contained in statute giving preferential tax treatment to farmland was to aid conservation effort, and not merely to aid food production itself. C.G.S.A. §§ 7-131a, 12-107a to 12-107e.

[2] Taxation 371 ⚿2478

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)3 Mode of Assessment in General
371k2476 Nature or Ownership of Property
371k2478 k. Real Property in General. Most Cited Cases
(Formerly 371k338)

Land leased to nursery and used for growing plants, trees and shrubs was entitled to classification as farmland under tax statute which did not define farmland but general statutes defined "agriculture" and "farming" as raising or harvesting any agricultural or horticultural commodity and defined "farm" so as to include nurseries, greenhouses or structures used primarily for raising of agricultural or horticultural commodities. C.G.S.A. §§ 1-1, 7-131a, 12-81, 12-81(39, 44), 12-107a to 12-107e.

[3] Taxation 371 ⚿2478

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)3 Mode of Assessment in General
371k2476 Nature or Ownership of Property
371k2478 k. Real Property in General. Most Cited Cases
(Formerly 371k338)

Even if nursery products were not farm products, nurseries would still promote purposes of statute giving preferential tax treatment to farmland. C.G.S.A. §§ 12-81, 12-107a.

*71 **707 Noel R. Newman, Bridgeport, for appellant (defendant).

Robert M. Zeisler, Bridgeport, for appellees (plaintiffs).

Before ALCORN, C.J., and HOUSE, COTTER, THIM and RYAN, JJ.

THIM, Associate Justice.

This appeal concerns the classification of certain land in the town of Fairfield as 'farm land'. The facts are not in dispute. On October 1, 1965, the plaintiffs owned a tract of land consisting *72 of 10.96 acres of cultivated nursery land. This land was leased to Johnson's Nursery, Inc., to be used for growing plants, trees and shrubs. Nurseries are a permitted use in the one-acre residential zone wherein this property is located. On October 1, 1965, the land was fully cultivated with plants, trees bushes and shrubs.

On October 28, 1965, the plaintiffs applied to the assessor to classify the land as farmland, but the assessor refused so to classify it. The plaintiffs appealed to the board of tax review. The board sustained the decision of the assessor. The plaintiffs then appealed to the Court of Common Pleas from the decision of the board of tax review. The trial court sustained the plaintiffs' appeal on the ground that the land was 'farm land' within the purview of ss 12-107a to 12-107e of the General Statutes. From the judgment rendered the defendant appealed to this court.

[1] 'In 1963, the General Assembly enacted ss 12-107a-12-107c of the General Statutes, which provided for preferential tax treatment of farmlands. In its '(d)eclaration of policy,' s 12-107a declares that it is in the public interest to encourage the preservation of farmland in order to maintain a readily available source of food and farm products close to the metropolitan areas of the state and to prevent the forced conversion of farmland to more intensive uses as a result of economic pressures caused by the assessment of the land for purposes of property taxation at values incompatible with their preservation as farmland.' Marshall v. Newington, 156 Conn. 107, 109, 239 A.2d 478, 479. In addition to the tax aspect of ss 12-107a to 12-107e, the statute is concerned with conservation. As originally enacted by the legislature, ss 12-107a to *73 12-107e were parts of Public Act No. 490 of the January, 1963, legislative session. That act is entitled: 'An Act Concerning the Taxation and Preservation of Farm, Forest, and Open Space Land.' An examination of this public act clearly indicates that the legislature contemplated more than the mere creation of tax advantages for producers of food products. A portion of Public Act 490, s 7, was not incorporated into the tax statutes, but rather, became a part of a general statutory provision, s 7-131a, which is entitled 'Conservation commissions.' It is thus clear that ss 12-107a to 12-107e, as derived from Public Act 490, are as much conservation statutes as they are tax relief measures. The declaration of policy in s 12-107a recites, inter alia, that it is in the public interest 'to conserve the state's natural resources'. Indeed, it would appear that the purpose of the tax relief is to aid the conservation effort, and not merely to aid food production itself. Clearly, aid to farm food production is not the sole purpose of the statute.

**708 The question decisive of this appeal is whether 'cultivated nursery land' constitutes 'farm land,' as defined in s 12-107b. 'The intent of a statute is to be sought first in the language used, and if that is unambiguous we need not resort to other aids of interpretation.' Klapproth v. Turner, 156 Conn. 276, 280, 240 A.2d 886. 'farm land', as defined in s 12-107b, is 'any tract or tracts of land, including woodland and wasteland, constituting a farm unit'. 'farm land' is thus not specifically defined. 'farm land' is 'land constituting a farm unit.' The two are equal. All that is stated is that we must look to the definitions of 'farm' and 'unit' to discover what is meant by 'farm land.' Since neither *74 'farm' nor 'unit' is defined in s 12-107b, the statute is ambiguous and we must resort to other aids for their definitions.

[2] Under s 1-1 of the General Statutes, in the

construction of statutes, 'words and phrases shall be construed according to the commonly approved usage of the language'. This would indicate that where, as here, the statute in question is barren as to specific definitions, the approach should be to discover the common usage. Section 1-1, however, continues by defining certain terms. Among them appears: 'Except as otherwise specifically defined, the words 'agriculture' and 'farming' shall include cultivation of the soil * * *, forestry, (and) raising or harvesting any agricultural or horticultural commodity * * *. The term 'farm' includes farm buildings, nurseries * * * greenhouses or structures used primarily for the raising of agricultural or horticultural commodities.' Thus, a nursery is expressly included in the statutory definition of a 'farm'. 'farming' includes the cultivation of the soil and the raising of any agricultural or horticultural commodity. Since 'horticulture' is not defined, we must apply common usage. Webster's Third New International Dictionary defines 'horticulture' as 'the cultivation of an orchard, garden, or nursery on a small or large scale: the science and art of growing * * * ornamental plants'. The same source defines 'commodity' as 'a product of agriculture'. It is thus clear that, by including the raising or harvesting of any 'horticultural commodity', the s 1-1 definition of 'farming' and 'agriculture' does include nurseries.

'It is an elementary principle of statutory construction that '(n)o word in a statute should be treated as superfluous, void or insignificant unless *75 there are impelling reasons * * * why the principle cannot be followed.' General Motors Corporation v. Mulquin, 134 Conn. 118, 126, 55 A.2d 732, 736.' Archibald v. Sullivan, 152 Conn. 663, 668, 211 A.2d 692, 694. To search for a definition beyond that in s 1-1 would require us to ignore the specific direction that 'agriculture' and 'farming' shall be defined as stated therein. To do so would be improper. Thus we must apply the definitions prescribed by the legislature in s 1-1. The last sentence of the s 1-1 definitions here considered directs that those definitions 'shall not be construed * * * to grant any local property tax exemptions other than those granted under the general statutes to real or personal property used in agriculture or farming'. In this case the s 1-1 definitions are pertinent because, while ss 12-107a to 12-107c purport to exempt 'farm land', the term is not defined. In applying the definition found in s 1-1, therefore, no property exemption not allowed in ss 12-107a to 12-107c is granted.

This brings us to the definition of the word 'unit'. Resorting once again to Webster's Third New International Dictionary for the common usage, we find the definition to be: '* * * a single thing * * * that is a constituent and isolable member of some more inclusive whole * * *.' Combining the definitions of 'farm' and 'unit', and transplanting them into the s 12-107b definition of 'farm land' we have, as pertinent to the **709 instant case: a tract or tracts of land making up a portion of a geographical area which is used as a nursery. Thus viewed, the definition is determinative of the issue. Nursery land is 'farm land' within the purview of ss 12-107a to 12-107c of the General Statutes.

The defendant argues that in s 12-81, subparagraphs (39) and (44), the terms '(f)arm produce' *76 and '(n)ursery products' are mutually exclusive, and thus that the legislature did not intend 'farm land' to encompass nurseries. For us to apply s 12-81 as requested would be to ignore s 1-1, or to determine that s 12-81 expresses general legislative intent and that s 1-1 does not. Neither approach would be correct. Section 1-1 contains general definitions to be used in all cases unless the legislature specifically provides otherwise in a statute. In ss 12-107a to 12-107e there is no definition of 'farm' and we must thus use the s 1-1 definition. We cannot resort to s 12-81 to determine intent when, as here, s 1-1 is clear.

[3] Our interpretation of 'farm land' as used in ss 12-107a to 12-107c is supported by the legislative purpose expressed in s 12-107a. While nurseries do not provide sources of food in close proximity to

metropolitan areas, under the accepted definition of 'farm', they probably do provide 'farm products'. Even were we to accept the defendant's contention that nursery products are not farm products, as shown by s 12-81, nurseries would still promote the further purposes of s 12-107a. They do encourage the preservation of farmland and they do conserve natural resources. By using the terms 'open space land' and 'wasteland' the statute is most unambiguous in stating that its purpose relates to the condition of the land as much as it does to the type of products produced thereon. The legislative purpose is thus sufficiently broad to include nurseries.

There is no error.

In this opinion the other judges concurred.

Conn. 1970.
Johnson v. Board of Tax Review of Town of Fairfield
160 Conn. 71, 273 A.2d 706

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214 A.2d 701
26 Conn.Supp. 164, 214 A.2d 701
(Cite as: 26 Conn.Supp. 164, 214 A.2d 701)

C

Court of Common Pleas of Connecticut, Hartford County.
HOLLOWAY BROS, INC.
v.
TOWN OF AVON et al.

No. 92616.
Nov. 2, 1965.

Proceedings to review decision of board of tax review. Corporation had filed prior appeal seeking review and was nonsuited. Town filed plea in abatement to second appeal. The Court of Common Pleas, Hartford County, Mignone, J., held that where corporation's appeal was not brought within two months after board's action, it was abatable, although original appeal, in which nonsuit was entered, was in fact taken within required two months' period, and accidental failure of suit statute was of no avail to corporation for statute did not apply to appeals of this nature.

Plea in abatement sustained.

West Headnotes

[1] Appeal and Error 30 ⚿804

30 Appeal and Error
30XIII Dismissal, Withdrawal, or Abandonment
30k804 k. Plea in Abatement. Most Cited Cases
Plea in abatement was proper pleading to plead to an appeal which has been improperly filed.

[2] Pleading 302 ⚿259

302 Pleading
302VI Amended and Supplemental Pleadings and Repleader
302k255 Amendment of Plea or Answer
302k259 k. Subject-Matter and Grounds in General. Most Cited Cases

Pleading 302 ⚿264

302 Pleading
302VI Amended and Supplemental Pleadings and Repleader
302k255 Amendment of Plea or Answer
302k264 k. Operation and Effect in General. Most Cited Cases
Where corporation appealed from ruling of board of tax review and town timely filed plea in abatement which set forth basic claim that corporation's appeal was not taken within two months of action of board but which omitted prayer for judgment, amendment to plea in abatement to include prayer for judgment was allowable and related back to original plea and became effective as of date of original plea.

[3] Pleading 302 ⚿255.1

302 Pleading
302VI Amended and Supplemental Pleadings and Repleader
302k255 Amendment of Plea or Answer
302k255.1 k. In General. Most Cited Cases
(Formerly 302k255)
Law of amendments applies to pleas in abatement.

[4] Pleading 302 ⚿236(1)

302 Pleading
302VI Amended and Supplemental Pleadings and Repleader
302k233 Leave of Court to Amend
302k236 Discretion of Court
302k236(1) k. In General. Most Cited Cases
Court has inherent discretion to allow amendment to plea in abatement, if it is of opinion that interests of justice require.

[5] Appearance 31 ⚿22

31 Appearance
31k21 Waiver of Objections
31k22 k. In General. Most Cited Cases
Fact that general appearance was filed by town, on appeal by corporation from ruling of tax board of review, did not vitiate its right to challenge jurisdiction of court.

[6] Limitation of Actions 241 ⇐130(2)

241 Limitation of Actions
241II Computation of Period of Limitation
241II(H) Commencement of Proceeding; Relation Back
241k130 New Action After Dismissal or Nonsuit or Failure of Former Action
241k130(2) k. Actions Within Exception of Statute. Most Cited Cases

Taxation 371 ⇐2694

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)10 Judicial Review or Intervention
371k2691 Review of Board by Courts
371k2694 k. Time of Taking Proceedings. Most Cited Cases
(Formerly 371k493.3, 371k493(3))
Where corporation's appeal from ruling of board of tax review was not brought within two months after board's action, it was abatable, although original appeal, in which nonsuit was entered, was in fact taken within required two months' period, and accidental failure of suit statute was of no avail to corporation for statute did not apply to appeals of this nature. C.G.S.A. §§ 12-107c(d), 12-118, 52-592.

[7] Limitation of Actions 241 ⇐130(5)

241 Limitation of Actions
241II Computation of Period of Limitation
241II(H) Commencement of Proceeding; Relation Back
241k130 New Action After Dismissal or Nonsuit or Failure of Former Action
241k130(5) k. Dismissal or Nonsuit in General. Most Cited Cases
Where appeal of corporation from ruling of board of tax review was made under tax statute and corporation was nonsuited, appeal could not be commenced anew under statute allowing commencement of new action on same cause of action within one year after nonsuit, although original appeal was filed within required two-month limitation period of tax statute. C.G.S.A. §§ 12-107c(d), 12-118, 52-592.

[8] Taxation 371 ⇐2694

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)10 Judicial Review or Intervention
371k2691 Review of Board by Courts
371k2694 k. Time of Taking Proceedings. Most Cited Cases
(Formerly 371k493.1, 371k493(1))
If defect in corporation's appeal was failure to file appeal within two-month appeal period and it appeared clearly on the record, motion to erase would have been preferred, if not required. C.G.S.A. § 12-118.

***164 **702** Regnier, Moller & Taylor, Hartford, for plaintiff.

Robert C. Hunt, Jr., Corp. Counsel, and Hoppin, Carey & Powell, Assistant Corp. Counsel, for defendants town of Avon and others.

MIGNONE, Judge.
This was an appeal from a ruling of the board of tax review of the town of Avon, Connecticut. A prior appeal from the same ruling of ***165** said board by the plaintiff had been nonsuited on February 23, 1965. The present action was made returnable to the first Tuesday of August 1965, which

was August 3. The defendant town filed a plea in abatement, dated July 30, 1965, on August 2, 1965, in the clerk's office. It bears the notation in writing "Returned by court as not filed. 8-4-65" and states "Wrong case # no prayer for judgment."

The plaintiff, by its pleading dated August 4, 1965, and filed August 16, 1965, demurrer to plea in abatement, sets forth its grounds for demurrer to the plea in abatement of July 30, 1965, stating: "(1) The defendant has waived its right to plead in abatement by filing a general appearance. (2) The plea in abatement is fatally defective in form by reason of its omission ****703** of a prayer for judgment. (3) The plea in abatement is not the proper pleading to raise the objection alleged which is a matter in bar rather than abatement. (4) The plea in abatement is groundless as a matter of law as this is an action pursuant to Section 52-592 rather than Section 12-118."

Thereafter a revised plea in abatement dated August 5, 1965, containing the correct case number and a prayer for judgment, was filed on August 6, a copy having been mailed to opposing counsel on August 5. The plaintiff filed its demurrer to plea in abatement of August 5, 1965. It alleges that the plea in abatement of August 5, 1965, was invalid because it was not filed within twenty-four hours of the return day, and added the reasons set forth in its demurrer of August 4, 1965. The plaintiff also filed on August 26, 1965, its pleading entitled "Motion to Strike Plea in Abatement dated August 5, 1965," alleging as a reason that "no permission of court or of counsel has been obtained for such amendment." Thereafter, on September 16, 1965, ***166** the defendant town filed a further pleading, dated September 15, 1965, entitled "Motion to Erase." This raised the same challenge to the jurisdiction of the court as set out in the plea in abatement-because of failure to appeal within the statutory period from the action of the board taken in February, 1964.

It is undisputable that the rules require that all "[p]leas in abatement must be filed on or before the opening of court on the day following the return day of the writ." Practice Book § 76. There is no question that the original plea in abatement was timely filed. Admittedly, it failed to contain a prayer for judgment, but it did set forth the basic claim of abatement that "the plaintiff's appeal was not taken within two months of the action of the Board of Tax Review of the Town of Avon as prescribed for such appeals by Section 12-118 of the Connecticut General Statutes." The plaintiff duly received a copy of this plea. Thereafter, on August 6, 1965, a corrected plea in abatement, setting forth the same defense but adding the prayer for judgment, was filed.

[1][2][3][4] A plea in abatement was the proper pleading to plead to an appeal which has been improperly filed in this court. Cramer v. Reeb, 89 Conn. 667, 670, 96 A. 154; Stephenson, Conn.Civil Proc. § 78(e). The decisive question here is whether the defendant could properly file its corrected plea in abatement. The plaintiff was duly informed by the original plea in abatement filed, a copy of which it admittedly received, of the exact reasons for abatement claimed. The amendment filed relates back to the original plea and, if allowed to be filed, becomes effective as of the date of the original. See State ex rel. Baskin v. Bartlett, 132 Conn. 623, 625, 46 A.2d 335. The law of amendments applies to pleas in abatement. ***167**Brockett v. Fair Haven & W.R. Co., 73 Conn. 428, 431, 47 A. 763. The court, if it is of the opinion the interests of justice require, has an inherent discretion to allow the amendment. In this case, in view of the technical defect in the original plea in failing to contain a prayer for judgment, this court will allow the amendment to the plea in abatement to stand.

[5][6] The fact that a general appearance was filed by the defendant would not appear to vitiate the defendant's right to challenge jurisdiction of the action by this court. Section 79 of Stephenson, Connecticut Civil Procedure, in its original context, seemed to suggest that a general appearance filed would be a waiver of jurisdictional defects. But in so stating it added the proviso "except such as go to

the competency of the court to hear the action." The 1963 supplement to § 79 of this text does not make any statement to the effect that the filing of a general appearance waives the right to file a plea in abatement. Based on the situation as it exists in this case, the corrected plea in abatement filed August 6, 1965, raised the essential legal issue as to whether this case is properly before this court to confer jurisdiction upon **704 it. The complaint filed alleges an appeal from the action of the board of tax review of the defendant town. It does not state the date such action was taken. The arguments on the short calendar hearing and the memoranda filed show that the action complained of was taken by said board in February, 1964. Sections 12-107c(d) and 12-118 of the General Statutes clearly require that an appeal such as the instant one must be taken within two months from the time of the action taken. The present appeal is dated June 23, 1965, clearly well beyond the two months' limitation valid here.

[7] The claim of the plaintiff is that it is entitled to bring this action under the provisions of *168 § 52-592 of the General Statutes, which allows the plaintiff, in cases of a nonsuit entered, to commence a new action for the same cause of action at any time within one year after determination of the original action. The court cannot sustain this contention for the reasons set out in Carbone v. Zoning Board of Appeals, 126 Conn. 602, 13 A.2d 462. This proceeding, involving an appeal under § 12-107c(d), cannot be held to be the type of "action" which comes within the saving protection of § 52-592. The reasons set out in the Carbone case, supra, 607, 13 A.2d 462, are of equal validity here. A speedy determination of the issues involved required the taking of a proper appeal within the two months' limitation period. The fact that the original appeal, in which a nonsuit was entered, was in fact taken within the required two months' period is of no avail here.

[8] Parenthetically, it may be stated that if the defect, namely, the failure of the present appeal to be filed within the required two months' appeal period, had appeared clearly on the record, the motion to erase would have been the preferred, if not the required, motion. See Stephenson, op. cit. § 77(b) (Sup.1963).

The plaintiff's demurrer to the defendant's plea in abatement is overruled, and the defendant's plea in abatement is sustained.

Conn.Com.Pl.,1965
Holloway Bros., Inc. v. Town of Avon
26 Conn.Supp. 164, 214 A.2d 701

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Westlaw.
251 A.2d 87
28 Conn.Supp. 97, 251 A.2d 87
(Cite as: 28 Conn.Supp. 97, 251 A.2d 87)

C

Court of Common Pleas of Connecticut, Hartford County.
Frank BUSSA et al.
v.
TOWN OF GLASTONBURY.
Philip R. GOLDBERG et al.
v.
TOWN OF GLASTONBURY.
Howard H. HORTON
v.
TOWN OF GLASTONBURY.
William ZOLA et al.
v.
TOWN OF GLASTONBURY.

Nos. 94101-94104.
June 14 and Aug. 12, 1968.

Proceeding, by farmers, on appeal from action of assessors and board of tax review, challenging method of fixing value for assessment purposes of land classified as farmland. The Court of Common Pleas, Hartford County, Cohen, J., held that the use value of farmland for purposes of taxation should be determined by capitalization of rents and the percentage normally used in determining final tax assessment should be applied to the use value.

Assessors directed to reclassify land as farmland, fix valuations in accordance with judgment and remit to plaintiffs any overpayments.

West Headnotes

[1] Taxation 371 ⇐2461

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)3 Mode of Assessment in General
371k2461 k. Statutory provisions. Most Cited Cases
(Formerly 371k327)

Intention of legislature in enacting statute basing taxes on farmland upon current use value and basing taxes on all other property upon actual value was to grant special privilege to land devoted to agricultural use. C.G.S.A. §§ 12-63, 12-107a, 12-107c.

[2] Taxation 371 ⇐2523

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)5 Valuation of Property
371k2520 Valuation of Particular Real Property
371k2523 k. Rural or agricultural lands; open spaces. Most Cited Cases
(Formerly 371k348.1(3), 371k348)

To obtain use value for taxation of farmland per acre the average gross rental for the particular crop grown was to be divided by 10% which was composed of interest, 6%; taxes, 3%; maintenance, 1%. C.G.S.A. §§ 12-63, 12-107a, 12-107c, 12-118.

[3] Taxation 371 ⇐2523

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)5 Valuation of Property
371k2520 Valuation of Particular Real Property
371k2523 k. Rural or agricultural lands; open spaces. Most Cited Cases
(Formerly 371k348.1(3), 371k348)

The average use value per acre of farmland owned or rented by farmers in town of Glastonbury who appealed from action of assessors and board of tax review of town was: tillable A, shade grown tobacco and nursery land, $500; tillable B, binder tobacco, vegetable crops and potatoes, $250; tillable C, cropland and cropland pasture, $125; orchard $200; untillable, permanent pasture, $50; woodland

and sprout, $25; swamp and waste, $10. C.G.S.A. §§ 12-63, 12-107a, 12-107c, 12-118.

[4] Constitutional Law 92 ⚿2482

92 Constitutional Law
92XX Separation of Powers
92XX(C) Judicial Powers and Functions
92XX(C)2 Encroachment on Legislature
92k2479 Determination of Facts
92k2482 k. Public interest. Most Cited Cases
(Formerly 92k70.1(6), 92k70(1))
Generally if legislation promotes public welfare and general welfare of community, it is for public purpose and it is for legislature to determine whether legislation serves public purpose or not.

[5] Statutes 361 ⚿61

361 Statutes
361I Enactment, Requisites, and Validity in General
361k57 Determination of Validity of Enactment
361k61 k. Presumptions and construction in favor of validity. Most Cited Cases
(Formerly 92k48(1), 92k48)
Court is bound to approach question of validity of legislation from standpoint of upholding the legislation as a valid enactment unless there is no reasonable ground upon which it can be sustained.

[6] Statutes 361 ⚿184

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k180 Intention of Legislature
361k184 k. Policy and purpose of act. Most Cited Cases

Statutes 361 ⚿217.1

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k213 Extrinsic Aids to Construction
361k217.1 k. History of act in general. Most Cited Cases
Legislative purpose and history of enactment are of importance in ascertaining legislative intent.

[7] Taxation 371 ⚿2523

371 Taxation
371III Property Taxes
371III(H) Levy and Assessment
371III(H)5 Valuation of Property
371k2520 Valuation of Particular Real Property
371k2523 k. Rural or agricultural lands; open spaces. Most Cited Cases
(Formerly 371k348.1(3), 371k348)
The use value of farmland for purposes of taxation should be determined by capitalization of rents and the percentage normally used in determining final tax assessment should be applied to the use value. C.G.S.A. §§ 12-63, 12-107a, 12-107c, 12-118.

***98 **88** Robinson, Robinson & Cole, Hartford, for plaintiffs.

Edward C. Wynne, Town Atty., for defendant.

COHEN, Judge.

These actions are appeals from the action of assessors and the board of tax review of the town of Glastonbury based on ss 12-107a and 12-118 of the General Statutes and on the rule of valuation under s 12-63. To be resolved in these appeals is the method of fixing the value for assessment purposes of land classified as farmland pursuant to s 12-63.

Section 12-63, as amended by Public Acts 1963 No. 490 s 9, marks a radical change from the method which existed prior to its enactment. The prior rule of s 12-63, before its amendment in 1963, was that the 'present true and actual value of any estate shall be deemed by all assessors and boards of tax review to be the fair market value thereof and not its value at a forced or auction sale.' This rule of

valuation was amended in 1963 as follows: 'The *99 present true and actual value of land classified as farm land pursuant to section 12-107c * * * shall be based upon its current use without regard to neighborhood land use of a more intensive nature * * *. The present true and actual value of all other property shall be deemed by all assessors and boards of tax review to be the fair market value thereof and not its value at a forced or auction sale.' See Burritt Mutual Savings Bank v. City of New Britain, 146 Conn. 669, 154 A.2d 608; National Folding Box Co. v. City of New Haven, 146 Conn. 578, 153 A.2d 420.

[1] The legislature, in its wisdom, as it has done in the past, in 1963 by Public Act No. 490 s 1 (General Statutes s 12-107a), stated a declaration of policy: 'It is hereby declared (a) that it is in the public interest to encourage the preservation of farm land * * * in order to maintain a readily available source of food and farm products close to the metropolitan areas of the state * * * and to provide for the welfare and happiness of the inhabitants of the state, (b) that it is in the public interest to prevent the forced conversion of farm land * * * to more intensive uses as the result of economic pressures caused by the assessment thereof for purposes of property taxation at values incompatible with their preservation as such farm land * * *, and (c) that the necessity in the public interest of the enactment of the provisions of * * * (sections 7-131c and 12-107b to 12-107e, inclusive) is a matter of legislative determination.' It was the intention of the legislature to grant special privilege to land devoted to agricultural use. This, the legislature has done before. See, chapter 205 of the 1911 Public Acts, which exempted from taxation for a period of not more than twenty years land planted with forest trees and which was declared not unconstitutional as creating a special privilege. Baker v. Town of West Hartford, 89 Conn. 394, 94 A. 283.

*100 The plaintiffs, bona fide farmers in the town of Glastonbury, own or rent land concerned in these appeals and are engaged in intensified farm pursuits of various forms-dairy, tobacco, vegetable, corn and orchard culture. The use to which these farmers have put their farms comes within the concept for which the legislation was intended. The problem to be resolved here is the method of valuation for purposes of taxation.

Capitalization of rentals paid by farmers for land devoted to farm use has come to be an acceptable method of fixing farm values in other jurisdictions concerned with this type of legislation. See Farmland Assessment Act of 1964, N.J.Laws 1964, c. 48; N.J.Stat.Ann. ss 54:4-23.1 to 54:4-23.23. The assessors of the town sought **89 the rentals paid in the town for various farmlands and were provided with them by applicants who sought the benefit of Public Act 490.

A plaintiffs' exhibit which was compiled by Glastonbury farmers familiar with farming operations in the town could form a basis for determination of assessment values. One of the outstanding authorities in Connecticut on farm economics, Dr. Irving Fellows, who also assisted the legislative committee in promulgating the legislation (Public Act 490), states that the most accurate method of assessing the use value of farmland is by capitalization of rentals. It has also been recommended by the American Society of Farm Managers and Rural Appraisers and by William G. Murray, professor of agricultural economics at Iowa State College, in his book, Farm Appraisal: Classification and Valuation of Farm Land and Buildings (1940). In the main, a rental agreement establishes a figure which may be assumed to represent the yearly worth of a farm. Whether the rent is a share of the crop or a sum of *101 money, both parties have agreed on an amount which represents the use value of the farm for an annual period.

A first requirement in this method, of course, is the knowledge of rental terms within an area, taking into consideration the variation above and below the average for farms of different quality. While, generally speaking, rentals for land for various crops are fairly uniform throughout Connecticut,

we are concerned here only with the town of Glastonbury, and we must exclude conditions which may cause a lowering or raising of rental prices and which are brought about because of drought, or excessive moisture affecting river lands, or close proximity to urban areas where sales of land may affect rental values. Peter Marsele of Bloomfield, Connecticut, an eminently qualified appraiser of twenty-two years' experience who is familiar with farms and farm values and assessments and testified in behalf of the plaintiffs, stated that the best method of arriving at current use value is by capitalization of rentals and that this was the generally accepted practice in appraisal technique.

This principle is one which has been used for many years in both the assessment and appraisal professions, so actually it is not an unsual appraisal practice; it is merely separating the value for use purposes versus fair market value. Marsele testified, 'If I assessed agricultural land in Bloomfield at fair market value there would not be a farmer left before the end of the year.' Both Fellows and Marsele acted as consultants in the drafting of Public Act 490 and participated in the final drafting of the legislation, which while not perfect is a good start in attempting to arrive at a fair basis for tax evaluation of farmlands. It was generally found that there was a uniformity of rental rates for ***102** various farmland uses throughout the state. Marsele stated that prior to the drafting of Public Act 490 a major number of communities in the state were taxing on a farm use basis and that this bill was being presented merely to make legal what the assessors had been doing in practice for many many years.

It seems, therefore, to the court that the information gathered and exhibited to the court concerning the rentals paid in the Glastonbury area and Hartford County is a fair and reasonable basis and the most practical method of determining the use values of farmland under Public Act 490. Since the assessors are familiar with the land generally in their town, the method of determining use values should be relatively simple and should follow the same pattern in all Connecticut towns. For the purpose of these cases, however, the issues raised shall apply only to them. The form used by the Glastonbury assessors does not follow the same classifications as the assessment form currently in use by the state tax commissioner and furnished to the various towns. This decision, however, will use the land classification therein set forth, i.e., tillable A, B, C, D, E; orchard; untillable; ****90** Woodland and sprout; and swamp. Use value therefore should be determined by the capitalization of the net rental value for all tillable land.

Contrary to general thinking, land for productive farm use in Connecticut is very limited. Suffice here to say that the plots are small, rocky, hilly, and of the right consistency for but few crops, the last of which remaining in the Connecticut valley is the shade-grown tobacco crop, which we should encourage to continue because it is of such great importance to the Connecticut valley. Generally speaking, the average rentals introduced by Fellows and ***103** Marsele can be classified as the average for farmland for the various crops, taking into consideration proximity, quality of land, number of farms in the area, and nearness to urban centers.

Classification of the crops should follow Fellow's recommendations: shade tobacco and nursery, tillable A; binder tobacco, potatoes, and vegetables, tillable B; corn, grasses, legumes (if land can be plowed), tillable C; pasture, untillable; orchard, orchard; woodland and sprout, woodland and sprout; swamp and waste, swamp and waste.

Taxation of farmlands has continued to go higher and higher in all the towns because of the need for school construction, roads, sewage facilities, more services for those who built large housing projects and industrial developments without any added benefits to the farmer. He has been caught in a squeeze. If farmland ultimately should be converted to these higher uses for development, the legislature may very well consider some period of years under a rollback provision to pick up the extra taxes lost from low assessments, after the sale at high

prices for industrial or housing acreage. The purpose of the bill to retard such conversions should not be stalled by refusing to give those who apply under Public Act 490 the benefits which the legislature has decreed.

The court finds that using the comparable sales method of evaluation for assessment purposes is not practical. The difference between market value and farm use value is very wide and could not be used to carry out the purposes of Public Act 490. Were comparable sales used, it would negate the very purpose of the act since very little if any land today (that is woodland) is being converted into farmland because of the high costs involved. And when a farm is sold it is usually for an industrial ***104** park or for housing developments. The comparable sales given by Roulston do not fairly reflect farm use value as the act implies.

[2] Since the best method, the court determines, is the capitalization of rents, the following is the formula which the court is adopting from the data furnished by Fellows, based on his research and his familiarity with the economics of the farm situation as it exists in Connecticut. To obtain the use value per acre, you have to take the average gross rental for the particular crop grown, divided by the 10 percent which is obtained as follows: Interest, 6 percent; taxes, 3 percent; maintenance, 1 percent.

[3][4] With the continuance of the inflationary spiral, these figures may be obsolete. Farmers for the next crop year may be paying 10 percent for interest on money alone to finance their crop growing. The following suggested average value per acre is adopted as applying to the present cases before the court. Tillable A (shade grown tobacco and nursery land), $500; tillable B (binder tobacco, vegetable crops and potatoes), $250; tillable C (cropland and cropland pasture), $125; orchard, $200; untillable (permanent pasture), $50; woodland and sprout, $25; swamp and waste, $10.

It has been held that if an act serves a proper public service the fact that it incidentally confers a direct benefit upon some individual or individuals does not render it invalid. 3 Willoughby, Constitution of the United States, s 1150. The exemption of individuals from the burdens of taxation ****91** stands on a ground similar to that of an appropriation of public funds. Corbin v. Baldwin, 92 Conn. 99, 101 A. 834. A good illustration of private gain under a law sustained by our Supreme Court as constitutional because it served a limited public service appears in Baker v. Town of West Hartford, 89 Conn. 394, 94 A. 283, where the granting ***105** of an exemption from taxation, for a limited period of time, of lands which were planted with forest trees in accordance with certain stated requirements was upheld. Generally speaking, if legislation promotes the public welfare and the general welfare of the community, as is stated in the purposes of this legislation, it is for a public purpose. It is for the legislature to determine whether legislation serves a public purpose or not. Lyman v. Adorno, 133 Conn. 511, 516, 52 A.2d 702.

[5][6] The court is bound to approach the question of the validity of the enactment of legislation from the standpoint of upholding the legislation as a valid enactment unless there is no reasonable ground upon which it can be sustained. Roan v. Industrial Building Commission, 150 Conn. 333, 338, 189 A.2d 399. The legislative purpose and the history of the enactment are of importance in ascertaining the legislative intent. See Sub. for S.B. 253 (May 28, 1963); [FN1] 10 S.Proc., pt. 7, ***106** 1963 Sess., p. 2335; 10 H.R.Proc., pt. 11, 1963 Sess., p. 4247.

> FN1. On April 3, 1968, it was reported on page 34 of The Hartford Courant, a local paper of long heritage, that President Johnson had this to say about farms and farm people: 'When I look at the people who serve here (Department of Agriculture) year in and year out, I pretty well know what king of product we are going to have, and whether it is down at the home demon-

> stration level, the girls showing us how to bottle our cucumbers, or can our peaches, or whether it is the county agent or the soil conservation man helping us with our terraces, or whether it is the county committee where we go to talk about or allotments, in every one of those places you will find good, honest, dedicated people, whatever church they belong to, whatever party. We haven't done as good a job as we ought to. If we had, the farmers wouldn't be moving out and going to the cities. We have to find some way to help move them back.'
>
> Farmers in the Connecticut valley are pretty well disgusted with growing conditions, lack of labor, high cost of materials and fertilizer, and, for other than wrapper tobacco, the low income from sales. Prices are not what they should be. The farmers' day begins in the field at 5 a.m. and frequently lasts past 8 p.m. Farmers must care deeply for their work when you consider these hours plus the care and worry attendant to livestock and weather conditions, which make or break farmers for the year. Tax relief is long in coming and should be realistic to allow farmers to remain on the farms. They are a proud and independent people.

[7] Applying the principles of economic rent as set forth in the present opinion, the court has found the 100 percent valuation of the four farms for assessment purposes under Public Act 490. The assessors, in accordance with the general application of assessments, should apply the percentage to these figures which they normally use in determining the final tax assessment, whether it be 50, 60 or 70 percent. The figures found by the court do not apply to any buildings or land on which said buildings are located. These issues were not raised in the hearing with reference to the land and the buildings located on these farms.

Judgments may enter directing the assessors of the town of Glastonbury to reclassify the land of the plaintiffs as farmland under General Statutes s 12-107c (Public Acts 1963, No. 490 s 3), to fix the valuations of the land in all four cases on the assessment list of October, 1965, in accordance with the above judgments, and to remit to the plaintiffs any overpayments which may have been made, with interest to the date hereof.

Conn.Com.Pl. 1968.
Bussa v. Town of Glastonbury
28 Conn.Supp. 97, 251 A.2d 87

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