

March 2, 2011 – Public Hearing Testimony – Planning and Development Committee

S.B. 505 – An Act Concerning the Assessment of New Construction

Good Morning Madam Chair/ Mr. Chairman and all distinguished members of this committee. My name is Gene Kasica and I have been a resident of Columbia, CT for over 20 years.

Regarding Bill 505, I am in support of this bill and would like to thank Senator John McKinney for sponsoring this bill, as well as Senator Edith Prague and Representative John Shaban for their co-sponsorship.

I consider this bill a clarification rather than a change. The effective date of this clarification should be retroactive back to the 12-53a date of inception into law. At the very least, I would suggest a change to the effective date of this bill, to be as of the last property valuation date of October, 1 2006.

This bill will clarify and prevent the existing practice of assessing and then taxing new construction by some municipalities, who believe they have the right to do so under other generally worded statutes.

The following is my experience on my existing new residential construction project. In August of 2006, I applied and paid for a new residential home permit, acting as my own General Contractor and Builder, for my dream home in Columbia, CT. The project is still ongoing and nearing completion on the permitted construction, within the next two years.

The project is not yet complete, due to several reasons. The number one reason is that the majority of the work is from my own sweat equity, along with help from my family and friends. The new house is much larger than an average residential home, which also adds to the time line of completion. The cost savings of doing it yourself are substantial, as are the rewards of knowing what has gone into building your own home. Another reason is due to unexpected taxes, which in my case are very substantial. A great deal of time has been devoted to understanding and appealing the property tax levied on the partial construction.

Not experienced in the process for new construction property tax, I slowly began to understand the procedure which was being applied. The new construction and lot were assessed for property tax as if they were one hundred percent completed, prior to the roof even being framed, based on a number of assumptions. Then

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based on a derived percentage of completion, the house value was adjusted to match this percentage of the completed house value. At first I was stunned, then shocked about the process and value derived. A meeting with the assessor and later an appeal to the Board of Assessment appeals, with an independent appraiser, resulted in my appeal(s) to be denied without a clear reason.

I had major questions. How could they determine what my new house would be worth without seeing it completed and the materials used. What if their assumptions are incorrect, will I ever get the tax money paid returned or credited? Based on appeal time limitations of one year, the answer is no. Why did they classify it as a Luxury Home for maximum square footage value when it is clearly not. Why did they have an elevator listed at a real value for closet space reserved for an elevator? Why did they have so much space as finished, such as other floors, when the permit clearly states it is not permitted? Why did they increase the building lot value over 200 percent and add a 15 percent upward value adjustment for a valley and lake view 3 miles away, located in a different municipality. The building lot is a 2 mile drive to the nearest Columbia Town road and is accessed through another municipality.

My dismay and anguish forced me to seek costly legal counsel, which resulted in filing multiple court actions. The cost of legal representation through a trial was not affordable, so I now represent myself in these court actions. A number of individuals in this state, including myself, have been waging individual battles in the courts to stand up for their rights, once aware of the definition for the existing 12-53a statute.

In one court case, Peggy Evans v. Town of Guilford (CV06-40221995-S), which was since vacated in Appellate Court after a stipulated settlement in favor of Peggy Evans, the Superior Court Judge clearly defined and supported the meaning of Statute 12-53a. I have included the Unpublished Memorandum of Decision for your review. The relevant part of this case states that the specific terms of 12-53a(a), governing new construction, prevail over the broad terms of 12-55. Because an interim assessment under 12-53a(a) cannot commence until after new construction is completed, the assessor acted outside of his statutory mandate by performing an interim assessment when the property was 69 percent completed.

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The municipalities will argue that they will lose critical tax revenue and provide ‘What If Never Completed’ situations. If the new construction were never to be built, the town would never realize the tax revenue to begin with. New construction does not burden a town prior to its completion. If a residential building is not occupied, there are no school children to enroll as an example.

In my case, the significant amount already paid in taxes, the time and cost of legal/court costs could have been utilized to hasten completion of the construction, which in turn would provide the municipal tax dollars much sooner.

Benjamin Barnes, secretary of the Office of Policy and Management, briefing reporters on 2/16/2011 stated “ We believe local property tax is the most onerous tax, and one of the most socially damaging tax of all the ones in the state”.

I urge this council to approve this bill and thank you for the opportunity in speaking here before you.

Gene Kasica

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Columbia, CT 06237

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Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT
RULES BEFORE CITING.

Superior Court of Connecticut,
Judicial District of New Haven.
Peggy Lee Cavalieri EVANS et al.

v.

TOWN OF GUILFORD,
No. NNHCV064021995.

Dec. 29, 2009.

West KeySummary

Taxation 371 ↻2443

371 Taxation

371III Property Taxes

371III(H) Levy and Assessment

371III(H)2 Assessors and Proceedings for
Assessment

371k2443 k. Time and Date of Assess-
ment. Most Cited Cases

A tax assessor acted outside of his statutory man-
date by performing an interim assessment when
construction on a home was only partially com-
pleted. The assessment was therefore void. An in-
terim assessment of property value was statutorily
prohibited from commencing until after new con-
struction was completed. C.G.S.A. § 12-119.

Evans Gordon Alan & Associates PC, New Haven,
for Peggy Evans, Gerald Cavalieri.

Milano & Wanat, Branford, for Town of Guilford,
Board of Assessment Appeals.

DAVID W. SKOLNICK, Judge Trial Referee.

*1 The plaintiffs, Peggy Lee Cavalieri Evans and
Gerald J. Cavalieri, Jr., commenced this action by
service of writ, summons and complaint on the de-

fendants, town of Guilford and the Guilford board
of assessment appeals (board), on August 1, 2006.
The plaintiffs' three-count second amended com-
plaint, filed on April 27, 2007, is operative. The
plaintiffs seek relief pursuant to General Statutes §
12-119 against the allegedly wrongful tax assess-
ment of their oceanfront property located at 68 Pro-
spect Avenue in Guilford. A trial was conducted
over three days: January 6, 2009, May 19, 2009,
and May 26, 2009. Thereafter, the defendant Town
filed its post-trial brief on October 2, 2009, and the
plaintiff on October 5, 2009.

Facts

The following facts are drawn from the record. In
2002, Guilford's tax assessor, Edmund Corapinski,
performed a town-wide assessment effective for the
October 1, 2002 grand list. Corapinski assessed the
value of the plaintiffs' property to be \$1,115,210,
which included assessed values of \$1,050,000 for
the land, \$64,940 for the dwelling, and \$270 for the
"excess land." (Tr. Transcript, 5/26/09, pp. 3-4.)
The plaintiffs appealed this assessment to the
board, which resulted in a reduction of the assessed
value of the main lot by \$210,000. (Pl.'s Exhibit
68.) Subsequently, the plaintiffs appealed the
board's decision to the Superior Court, which resul-
ted in a stipulated judgment, dated January 25,
2005; (Pl.'s Exhibit 34.); that further reduced the
property's assessment to \$700,000 for the grand
lists of October 1, 2002, October 1, 2003, and Octo-
ber 1, 2004. Additionally, the stipulation contained
the following provision: "Notwithstanding the pro-
visions of this Stipulation and finding value for the
real property stated herein, nothing shall prohibit or
prevent the Town or its Assessor from adjusting
said valuation to account for any new construction,
improvements, additions or changes to the subject
property beyond that existing or permitted on Octo-
ber 1, 2002, or at the next general Town wide re-
valuation as mandated by law." (Pl.'s Exhibit 34;
Tr. Transcript, 1/6/09, p. 66.)

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At the time that the stipulated judgment was entered, the plaintiffs had demolished the existing dwelling on the property and begun construction of a new dwelling. (Tr. Transcript, 1/6/09, p. 39.) The plaintiffs applied for a certificate of occupancy in March 2006. (Tr. Transcript, 1/6/09, pp. 45-46; Pl.'s Exhibit 46.) Corapinski acknowledged that the defendants could not reassess the property until a certificate of occupancy was issued. (Tr. Transcript, 5/19/09, p. 91.) The parties dispute whether the certificate of occupancy was issued on March 16, 2006; (Tr. Transcript, 5/26/09, p. 8.); or on June 6, 2006 (Tr. Transcript, 1/6/09, p. 48.) The plaintiffs argue that the certificate of occupancy did not issue until June 6, 2006, when the zoning enforcement officer signed it, because the zoning enforcement officer had to issue a zoning compliance before approving the certificate of occupancy. (Tr. Transcript, 1/6/09, p. 13.) The zoning enforcement officer, in turn, did not issue a zoning compliance in March 2006, because she had not received an "as-built" survey at that time. (Tr. Transcript, 1/6/09, pp. 50-51.) The defendants, however, contend that the certificate of occupancy issued on March 16, 2006, when the building inspector signed it. (Tr. Transcript, 5/26/09, p. 8.) Regardless, the plaintiffs actually moved into the new dwelling on May 4, 2006. (Tr. Transcript, 1/6/09, p. 44.)

*2 For the October 1, 2005 grand list, Corapinski conducted a physical inspection of the new dwelling and determined that it was 69 percent complete. (Tr. Transcript, 5/26/09, p. 6.) Based on this determination, Corapinski notified the plaintiffs on January 31, 2006, that the assessed value of the plaintiffs' property had increased from \$700,000 to \$1,316,940 for the October 1, 2005 grand list. (Tr. Transcript, 5/26/09, pp. 19-20, 35-36.) This assessment was pro-rated to March 16, 2006, which the defendants maintain was the date the certificate of occupancy was issued. (Tr. Transcript, 5/26/09, p. 9.) Corapinski testified that he conducted the pro-rated assessment for new construction pursuant to General Statutes § 12-53a. (Tr. Transcript, 5/26/09, p. 9.)

Corapinski determined the value of the property for the October 1, 2005 grand list based on the value placed on the property for the October 1, 2002 grand list rather than the value established by the 2005 stipulated judgment. (Tr. Transcript, 5/26/09, p. 6.) Corapinski testified that he used the 2002 value rather than the stipulated judgment value as his baseline pursuant to General Statutes (Rev. to 2005) § 12-62(a)(1).^{FN1}

FN1. The relevant provisions of General Statutes (Rev. to 2005) § 12-62(a)(1) are now found in § 12-62(b)(1).

The plaintiffs appealed the January 31, 2006 reassessment to the board, but the board did not change the assessment.

Discussion

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, 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."

Our Supreme Court has explained that municipal tax appeals brought under General Statutes § 12-119 are different than those authorized under

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General Statutes § 12-117a: "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 ... § 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 ... In short, § 12-117a is concerned with overvaluation, while [t]he focus of § 12-119 is whether the assessment is illegal." (Citations omitted; internal quotation marks omitted.) *Griswold Airport, Inc. v. Madison*, 289 Conn. 723, 740, 961 A.2d 338 (2008).

*3 The plaintiffs challenge the legality of four of the defendants' assessments: (1) a valuation conducted for the grand list of October 1, 2005, when the property was under construction; (2) a second, pro-rated valuation that occurred on or about March 16, 2006, upon the disputed issuance of the certificate of occupancy; (3) a third valuation on the grand list of October 1, 2006, and (4) a fourth reevaluation of which plaintiffs received notice on or about January 31, 2007. The plaintiffs argue that these assessments were manifestly excessive and could not have been arrived at except by disregarding the provisions of the statutes for determining the value of the real property.

Proving that an assessment was "manifestly excessive" presents a higher evidentiary bar than demonstrating overvaluation. "[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." *Second Stone Ridge Cooperative Corp. v. Bridgeport*, 220 Conn. 335, 340, 597 A.2d 326 (1991) (insufficiency of data or the selection of inappropriate method of appraisal could not, absent evidence of misfeasance or malfeasance, serve as basis for application for relief from a wrongful assessment under § 12-119). "[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.' ... see *E. Ingraham Co. v. Bristol*, [146 Conn. 403, 408, 151 A.2d 700, cert. denied, 361 U.S. 929, 80 S.Ct. 367, 4 L.Ed.2d 352 (1959)] (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 municipalities 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; internal quotation marks omitted.) *Id.* at 341-42, 508 A.2d 842.

First, the plaintiffs argue that the assessor acted illegally when he reassessed their property for the October 1, 2005, and October 1, 2006 grand lists using a value derived from the October 1, 2002 revaluation. The assessor erred, they argue, because the October 1, 2002 value had been successfully overturned through the stipulated judgment reached between the parties on January 25, 2005. Therefore, the plaintiffs contend that the assessor should have based its assessments for the October 1, 2005, and October 1, 2006 grand lists on the value determined through the stipulated judgment. The defendants argue that the assessor's actions were proper under General Statutes (Rev. to 2005) § 12-62(a)(1), which required that the assessments "derived from" revaluations, not stipulated judgments, be used to levy property taxes.

*4 General Statutes (Rev. to 2005) § 12-62(a)(1)

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provided in relevant part: "Commencing October 1, 1997, the assessor or board of assessors of each town shall revalue all of the real estate in their respective municipalities for assessment purposes in accordance with subsection (b) of this section. The assessments derived from each such revaluation shall be used for the purpose of levying property taxes in such municipality in the assessment year in which such revaluation becomes effective and in each assessment year thereafter until the next succeeding revaluation in accordance with the provisions of subsection (b) of this section ..."

This statute requires the assessor to use the assessment from the previous revaluation when levying property taxes. In the event of a stipulated judgment, however, our appellate courts hold that the value determined by stipulation binds the assessor until the next town-wide revaluation: "When a previous owner stipulated to an agreed on value of the property and the court has rendered judgment on that stipulation, the parties are collaterally estopped from relitigating the same issue of valuation of the property only for the duration of that statutorily prescribed revaluation period. The adjusted revaluation memorialized in the stipulated judgment is conclusive as to the value of the property for that statutorily prescribed revaluation period. See *Uniroyal, Inc. v. Board of Tax Review*, [182 Conn. 619, 633-34, 438 A.2d 782 (1981)]. The fact that [the adjusted revaluation] has been applied to successive grand lists does not permit a different result. Consideration of the contrary result demonstrates the inefficacy of permitting a litigant to contest the validity of an assessment figure on ten different occasions (i.e., each of the ten years permitted by General Statutes § 12-62)." *Waterbury Equity Hotel, LLC v. Waterbury*, 85 Conn.App. 480, 493-94, 858 A.2d 259, cert. denied, 272 Conn. 901, 863 A.2d 696 (2004).

Although the holding in *Waterbury Equity Hotel, LLC* concerned a taxpayer's ability to challenge a municipality's revaluation after reaching a stipulated judgment, the same principle applies to a mu-

nicipality's effort to reassess a property through an interim valuation: the adjusted revaluation determined in the stipulated judgment is conclusive during the interval between statutory revaluations. Therefore, an assessor is bound to apply the property value agreed to in the stipulated judgment in succeeding years.

In the present case, the defendants argue that the stipulation was limited in duration for the 2002, 2003 and 2004 grand lists, and, therefore, the assessor was correct in applying the 2002 assessment value of the property for the October 1, 2005 grand list. Such an interpretation would not comport with the presumption of conclusiveness that attaches to a stipulated judgment concerning valuation. See *Waterbury Equity Hotel, LLC v. Waterbury*, *supra*, 85 Conn.App. at 493-94, 858 A.2d 259. Furthermore, although the stipulated judgment did provide that "nothing shall prohibit or prevent the Town or its Assessor from adjusting said valuation to account for any new construction, improvements, additions or changes to the subject property beyond that existing or permitted on October 1, 2002," this proviso does not expressly or implicitly permit an adjustment derived from the 2002 revaluation without the existence of "new construction, improvements, additions or changes to the subject property."

*5 Therefore, unless the assessor performed a permissible interim revaluation of the property based on "new construction, improvements, additions or changes to the subject property," the assessor's revaluation would appear to be based solely on the 2002 assessment. Deriving a value based only on the 2002 assessment would violate the stipulated judgment, making the assessment illegal.

The plaintiffs claim that the assessor acted outside his statutory authority when he assessed the value of their new dwelling for the October 1, 2005 grand list while it was under construction based on a finding that the dwelling was 69 percent complete. The defendants argue that this interim revaluation was permissible under General Statutes §§ 12-53a and 12-55.

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General Statutes § 12-53a(a) provides in relevant part: "Completed new construction of real estate completed after any assessment date shall be liable for the payment of municipal taxes from the date the certificate of occupancy is issued or the date on which such new construction is first used for the purpose for which same was constructed, whichever is the earlier, prorated for the assessment year in which the new construction is completed ..."

General Statutes § 12-55(b) provides in relevant part: "Prior to taking and subscribing to the oath upon the grand list, the 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 plain language of § 12-53a(a) precludes an assessor from performing an interim assessment of an uncompleted property. That statute only makes "completed new construction" liable for a prorated, interim assessment. The defendants argue, however, that its assessor could validly perform an interim assessment of a 69 percent completed dwelling under § 12-55, which charges the assessor with a "watchtower" role "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).

It would appear to the court that the assessor was not acting in a "watchtower" role when he increased the assessed value of the property from \$700,000 to \$1,316,940 for the October 1, 2005 grand list. His near-doubling of the assessed value may not have equalized the property's assessed value with that of neighboring properties. Rather, it appears to have reflected the assessor's finding that the value of the property had increased since the stipulated judgment because of the construction activity. The assessor acted outside his statutory

mandate, however, when he made this finding. The assessor could not legally increase the assessed value of the property based solely on the new construction because interim assessments for new construction are governed by § 12-53a(a). "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.) *Griswold Airport Inc. v. Madison*, *supra*, 289 Conn. at 728 n. 10, 961 A.2d 338. Here, the specific terms of § 12-53a(a), governing new construction, prevail over the broad terms of § 12-55. Because an interim assessment under § 12-53a(a) cannot commence until after new construction is completed, the assessor acted outside of his statutory mandate by performing an interim assessment when the property was 69 percent completed.

*6 The assessor further erred when he reassessed the property as of March 16, 2006, rather than May 4, 2006. Pursuant to § 12-53a(a), the assessor was within his authority to revalue the new dwelling built on the property "from the date the certificate of occupancy is issued or the date on which such new construction is first used for the purpose for which same was constructed, whichever is the earlier ..." Here, the certificate of occupancy was not issued on March 16, 2006, because it did not contain the zoning enforcement officer's signature on that date. In fact, the zoning enforcement officer did not sign the certificate until June 6, 2006. (Pl.'s Exhibit 46.) Therefore, the assessor could not legally assess the new construction until the date when the construction was "first used for the purpose for which [it] was constructed," which was May 4, 2006, the day the plaintiffs moved into the new dwelling.

Therefore, the court finds that the plaintiffs have met their burden of proving that the defendants violated General Statutes § 12-119 because the assessor conducted an interim valuation that (1) was derived from the 2002 revaluation rather than the 2005 stipulated judgment and (2) did not comply

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with General Statutes §§ 12-53a and 12-55.

As a result of the above violations as found by the court, the court orders that all reassessments based on the 2002 reassessment be voided. Further, that the value established by the 2005 stipulated judgment be adopted and used as a basis for any subsequent legal revaluations of the property and new house upon said property.

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UNPUBLISHED OPINION. CHECK COURT
RULES BEFORE CITING.

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

Superior Court of Connecticut,
Judicial District of New Haven.
Peggy EVANS et al.

v.

TOWN OF GUILFORD et al.
No. NNHCV064021995S.

Jan. 21, 2010.

Evans Gordon Alan & Associates PC, New Haven,
for Peggy Evans and Gerald Cavalieri.

Milano & Wanat, Branford, for Town of Guilford
and Board of Assessment Appeals.

DAVID W. SKOLNICK, Judge Trial Referee.

*1 The court denies that its decision requires articulation except to state that it intended to and believes that it did so determine that the assessor's errors began in 2002 and since the assessment in 2002 was appealed and stipulated by the parties in 2005 not using the stipulated figure as a foundation for subsequent reassessment and instead using the original 2002 assessment created a further foundation incapable of supporting future reassessments.

Of course, the assessor can consider any improvements on the property such as a new house in arriving at a fair assessment; however, when such new house can be assessed is subject to statute and was not followed in this case.

Conn.Super.,2010.