DOCKET NO.: X03-HHD-CV12-6050023-S	:	SUPERIOR COURT OF CONNECTICUT
JOHN P. TUOHY, ET AL., *Plaintiffs*	:	COMPLEX LITIGATION DOCKET
v.	:	JUDICIAL DISTRICT OF HARTFORD AT HARTFORD
TOWN OF GROTON, ET AL., *Defendants*	:	July 5, 2017

MEMORANDUM OF DECISION

This case is a class action residential real property tax application for relief pursuant to General Statutes § 12-119.[1] The plaintiff class comprises: all owners of taxable residential real property with buildings thereon in the Groton Long Point assessment area of the Town of Groton ("town" or "Groton") between October 1, 2011 and July 1, 2013, excluding those owners who individually appealed their real property tax assessments to the Superior Court and whose appeals have reached a final judgment. (#201.00.) A trial to the court took place on October 21, 28, and 30, 2016. For the reasons stated below, the court finds for the defendants.

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HARTFORD, CT

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[1] Section 12-119 provides:

> 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 or any lessee thereof whose lease has been recorded as provided in section 47-19 and who is bound under the terms of his lease to pay real property taxes, 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. 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.

(Emphasis added.) General Statutes § 12-119.

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Findings of Fact

The plaintiffs are residential property owners in the Groton Long Point ("GLP") neighborhood[2] of Groton, who, on behalf of themselves and the certified class, are challenging the revaluation conducted by the town for the October 1, 2011 grand list (the "2011 revaluation"). GLP is a planned community and comprises approximately 600 properties. When someone owns property in GLP, he or she pays into an association and has rights to use certain amenities within the community, including the beach, docks, piers, and association buildings, which include, among other things, a restaurant. In addition, parking in GLP requires a permit.

The 2011 revaluation was a mass appraisal, defined as "the process of valuing a universe of properties as of a given date using standard methodology, employing common data, and allowing for statistical testing. Methodology that is acceptable shall include, but is not limited to, automated valuation models, adaptive estimation procedure, multiple regression analysis, statistical analysis and other generally accepted techniques." Regs., Conn. State Agencies § 12-62i-1(10). The 2011 revaluation was overseen by the town assessor, defendant Mary Gardner ("Gardner" or "assessor"), whose position as the town assessor began in June 2011. Gardner first worked in the town's assessor office in 1986; she became a certified assessor in 1989. The 2011 revaluation was the first revaluation that Gardner conducted as an assessor.

To assist it with the 2011 revaluation, the town hired Tyler Technologies ("Tyler"), a mass appraisal vendor certified by the state to do revaluations. The project supervisor from Tyler with respect to the 2011 revaluation was Debra Christy ("Christy"), who also is certified to do revaluations. Christy has been employed with Tyler, although not continuously, since 1980

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[2] The town is divided into thirteen residential neighborhoods. The term "neighborhood" is defined in the revaluation regulations as "a geographic area of complementary real property parcels that share similar locational and market value characteristics, and may be defined by natural, man-made, or political boundaries." Regs., Conn. State Agencies § 12-62i-1(13).

and has been involved with revaluations in the state of Connecticut since around 1997. Christy had some responsibility in the 2006 revaluation of Groton but was not the manager. In the 2011 revaluation, Christy was responsible for the analysis for the residential property class.

The 2011 revaluation commenced in earnest in April 2010, at which time Gardner was the assistant assessor for the town. In April 2010, the town issued a press release informing the public that a revaluation would be underway and that data collectors would be going door-to-door to measure the exteriors of all properties and to attempt interior inspection, if allowed. Tyler conducted its data collection using data from the 2006 revaluation and updating it. Because the 2011 revaluation was a full measure revaluation, Tyler knocked on every door and did an exterior measurement of every property. To the extent access to the interior was not granted, Tyler sent the property owner a call-back letter to inquire whether the owner would make a scheduled appointment for an interior inspection. Tyler then prepared and distributed data mailers for each property; such data mailers reflected the property's physical characteristics that would be used in the revaluation. Property owners were asked to contact Tyler if any information required correction. Any changes resulting from the data mailer process were inputted into the Computer Assisted Mass Appraisal ("CAMA") software system, which the town uses for its revaluations to generate property values. CAMA is certified by the state of Connecticut and is an example of an "automated valuation model," as that phrase is used in § 12-62i-1(10), which sets forth the definition of "[m]ass appraisal." In CAMA, with respect to each property, a value is assigned to the land,[3] and a value is assigned to any improvements or structures using the cost approach (i.e., the cost of replacement with an adjustment for

[3] With respect to GLP, the land values were established using three vacant lot sales.

depreciation). The improvements value comprises a dwelling value and an outbuilding value. One arrives at total value by adding land value and improvements value.

Tyler then performed a prereview, which involved producing all of the property record cards that were in the system and having a certified field person go out to each property to conduct what Tyler called a "windshield prereview check" to ensure that the information on the cards was accurate.

After all data were collected and corrected during the eighteen-month period following the initial press release, Tyler engaged in preliminary ratio testing, which required compiling a validated sales set (i.e., sales involving actual warranty deeds) using a two-year lookback period because of the number of sales.[4] With respect to GLP, the sales set contained eighteen validated, arm's-length transactions. Tyler compared the median of the sales identified for each neighborhood against the median for the total value for the neighborhood. A 1:1 ratio, meaning the medians are equal, would be considered ideal. Tyler performed preliminary ratio testing for each of the thirteen neighborhoods within the town.[5] The same process was followed in 2006.

On October 31 and November 1, 2011, Christy conducted four computer runs to create values for the GLP residential properties, using the CAMA software. The 2006 revaluation had used an adjustment factor of 1.2 (i.e., a 20% increase in value) in setting the improvement values of the GLP properties. Those adjustments were already reflected in the CAMA database that Christy used in conducting her analyses. Because an adjustment factor of 1.2 was used in 2006 with respect to GLP improvement values, Christy used that adjustment factor as a starting point.

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[4] As part of this work, Tyler sent sales verification documents to the town to determine whether there were any unknown features within the validated sales set.

[5] Christy has conducted sales ratio studies by neighborhood, in addition to town-wide, in every revaluation she has handled.

Application of an adjustment factor of 1.2 yielded a median assessment to sales ratio ("ASR")[6] of 88.31% for GLP. Christy found this ratio to be outside an acceptable range because it fell under 90%.[7] In this regard, Tyler and the town deemed GLP to be an outlier. Specifically, in reaching this conclusion, Christy relied on the International Association of Assessing Officers ("IAAO")[8] principle that, when looking at the level of assessment, if market value is 100%, the ASR should be plus or minus 10% around market value. Applying an adjustment factor of 1.4 yielded a median ASR of 95.08%. Applying an adjustment factor of 1.4 with a waterfront adjustment yielded a median ASR of 97.56%. Finally, application of an adjustment factor of 1.35 yielded a median ASR of 92.03%.

Tyler and the town concluded that applying an adjustment factor of 1.35 to the dwelling values within GLP was appropriate and necessary to reach fair market value. Christy reasoned that other variables, including a coefficient of dispersion, fell within a preferred range to reach uniformity. After changing the 1.2 factor to a 1.35 factor, Tyler did a "field review" of all the values that resulted (meaning they went out and reviewed every property in GLP to ensure that the new computer-generated values appeared to be full and fair market value for the whole sample).

Christy conducted sales ratio studies with respect to each of the other twelve neighborhoods. Using a 1.0 factor, each neighborhood's median ASR landed above 90% (and below 100% market value). For each of the other neighborhoods, the resulting median ASRs were as follows:

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[6] An ASR results from the comparison between the assessed value that the CAMA program generates and the validated actual sale.

[7] Christy even testified that, in her view, to adopt the 1.2 adjustment factor would have been unethical.

[8] The IAAO is an international group that adopts standards that appraisers in revaluation use.

1010 – Center Groton	91.80%
1020 – City of Groton	92.99%
1021 – City of Groton-Eastern	96.43%
1030 – Poquonock Bridge	96.28%
1040 – Mystic	94.10%
1041 – Mystic Village	94.37%
1050 – Noank	95.08%
1051 – Noank Village	94.69%
1060 – Old Mystic	96.46%
1061 – Old Mystic-River Road	95.14%
1080 –West Pleasant Valley	95.73%
1090 – Mumford Cove	94.78%

Because these median ASRs fell above 90%, and therefore were deemed acceptable, no adjustments were made.

Thereafter, Tyler entered into what it called the final review phase. Because the town had elected to use ratio testing standards, and not procedural testing standards, Christy conducted ratio testing to residential property town-wide to assure satisfaction of the requirements of § 12-62i-3(b). Such testing to such property class on a town-wide basis resulted in those criteria being met on the first try. Therefore, no further analysis was performed pursuant to § 12-62i-3(c). The town subsequently submitted to the Connecticut Office of Policy and Management ("OPM") the statutorily-required certification of compliance, which was signed by Christy and Gardner and which reflected that the town utilized ratio testing standards.[9]

Procedural Background

The plaintiffs commenced this action by way of summons and complaint on or about September 12, 2012. The complaint contained one count pursuant to General Statutes § 12-119, against the town and Gardner. The plaintiffs seek declaratory and injunctive relief, reimbursement for overpayment of taxes, attorneys' fees and costs.

[9] The parties stipulated that, had the town applied a 1.0 factor to GLP, the resulting residential property class values would have passed the ratio testing standards set forth in the OPM regulations.

On March 19, 2013, the plaintiffs filed a motion for class certification. On July 16, 2013, the court, *Cohn, J.*, granted the motion. Following a modification, the class was defined as:

> All owners of taxable residential real property with buildings thereon in the Groton Long Point assessment area of the Town of Groton between October 1, 2011 ('the Assessment Date') and July 1, 2013, excluding those owners who have individually appealed their real property tax assessments to the Superior Court and whose appeals have reached a final judgment.

The case was tried to the court on November 21, 28, and 30, 2016. On February 21, 2017, the parties submitted simultaneous post-trial briefs.

Analysis

The crux of the plaintiffs' claim is that, pursuant to General Statutes § 12-119, the 2011 revaluation with respect to GLP residential properties resulted in assessments that are manifestly excessive and could not have been reached absent a disregard of the standards for valuation of real property under Connecticut law. The plaintiffs claim that the assessor arbitrarily and for no legitimate reason raised the dwelling value of every residential property in GLP by a factor of 1.35, or 35%, in an across-the-board increase that was not applied to the twelve other neighborhoods. The plaintiffs argue that, despite the fact that the OPM ratio testing standards require certain mathematical criteria be met between and among "all property classes," the town applied such criteria among the thirteen "neighborhoods," which is not a property class. The town contends, to the contrary, that there is no prohibition against, and indeed, the purposes of revaluation supported, conducting preliminary ratio testing at the neighborhood level and making an adjustment to GLP dwelling values so that the median ASR for GLP was above 90%. The town argues that such an approach not only facilitated reaching fair market value but also served to equalize the tax burden. The court agrees with the town that the 1.35 adjustment factor applied to the GLP dwelling values did not violate § 12-119.

In order to put the plaintiffs' claim in its proper context, it is necessary to review the relevant statutory and regulatory framework. In Connecticut, by statute and by regulation, there are three classifications of real property: (1) residential; (2) commercial, including apartments, industrial and public utility; and (3) vacant land. *See* General Statutes § 12-62c(b)(3) ("such property classes are: (A) Residential property; (B) commercial property, including apartments containing five or more dwelling units, industrial property and public utility property; and (C) vacant land"); *see also* Regs., Conn. State Agencies § 12-62i-l(15) ("'Property class' means any one of the following three major classifications of real property: (A) residential; (B) commercial including apartments, industrial and public utility; and (C) vacant land"). This case involves only the first classification: residential.

In Connecticut, towns are required every five years to implement a revaluation of all real and personal property. General Statutes § 12-62(b)(1); § 12-62(a)(7) (defining "town" as "any town, consolidated town and city or consolidated town and borough"). "Revaluation" or "revalue" means "to establish the present true and actual value of all real property in a town as of a specific assessment date." General Statutes § 12-62(a)(5). Stated differently, the standard that the assessor attempts to achieve in a revaluation is fair market value, defined as:

> [t]he amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. By fair market value is meant the price in cash, or its equivalent, that the property would have brought at the time of taking, considering its highest and most profitable use, if then offered for sale in the open market, in competition with other similar properties at or near the location of the property taken, with reasonable time allowed to find a purchaser.

OPM's Report Regarding Revaluation Policies and Procedures at 2 (Dec. 27, 2004) (quoting Black's Law Dictionary (5th Ed.)).

A revaluation must satisfy certain OPM performance-based revaluation standards. General Statutes § 12-62(g). Section 12-62i-2 of the Regulations provides: "Performance-based

revaluation standards shall consist of two acceptable methods as set forth in section 12-62i-3 and 12-62i-4 of the Regulations of Connecticut State Agencies. The assessor shall utilize one of the methods so described." The two available OPM revaluation standards are: (1) ratio testing standards, set forth in § 12-62i-3; and (2) procedural testing standards, set forth in §12-62i-4.

Section 12-62i-3, governing ratio testing standards, used here, provides:

(a) Compiling Market Value Data

(1) A file of all real property sales transactions for the sales time period used shall be established. For each such transaction the following information shall be included in the file: parcel identification number, property location, United States Census Bureau census tract number, date of sale, sales price, property assessment as of the date of the sale, property class, and any other salient property characteristics as of the date of the sale. The sales price of the property and its condition as of the date of the sale should be verified, if possible, with the buyer or seller.

(2) If the sale property is not considered a market sale as delineated in subdivision (9) of section 12-62i-1 of the Regulations of Connecticut State Agencies, the file shall contain the reason for such determination.

(3) The file may reflect an adjustment to the property sales price. The reason(s) for the adjustment shall be documented. Reasons for such an adjustment may include, but are not be limited to:

(A) The fact that personal property is included in the transaction;

(B) The existence of a lease that does not represent market rent, as defined in section 12-63b of the Connecticut General Statutes; and

(C) The effects of price changes reflected in the real estate market between the date of sale and the assessment date that is the effective date of a revaluation.

(b) Prior to finalizing a revaluation, the assessor shall conduct the following tests regarding the assessments derived from such revaluation. The assessments resulting from the revaluation shall be deemed sufficient, provided the following criteria are met:

(1) the overall level of assessment for all property classes shall be within plus or minus ten percent of the required seventy percent assessment ratio, as measured by the overall median ratio, and

(2) the level of assessment for each property class with fifteen or more market sales shall be within plus or minus five percent of the median overall level of assessment for each property class, and

(3) the coefficient of dispersion for each property class with fifteen or more market sales shall be equal to or less than fifteen percent for all property, equal to or less than fifteen percent for residential property, equal to or less than twenty percent for commercial property, and equal to or less than twenty percent for vacant land, and

(4) the price related differential for all properties and for each property class for which there are fifteen or more market sales shall be within 0.98 and 1.03, and

(5) the unsold property test result shall be between 0.95 and 1.05.

(c) In the event that the criteria described in subdivision (1), (2), (3), (4) or (5) of subsection (b) of this section are not met, the assessor shall, prior to the implementation of the revaluation, further analyze and refine the data elements or methods used in the revaluation. The assessor shall revalue the parcels of real property for which a deficiency in either the level of assessment or the uniformity of assessments has been identified.

Regs., Conn. State Agencies § 12-62i-3.

Simply put, prior to finalizing a revaluation, the assessor must conduct the various tests contemplated by subsection (b) above — ensuring that such criteria are satisfied and engaging in additional analysis as required by subsection (c) if they are not — so as to render the assessments resulting from the revaluation sufficient. When a revaluation is completed, the town must file a certification of compliance with OPM. General Statutes § 12-62(g).

As stated above, the plaintiffs bring their application for relief pursuant to § 12-119. The first category in § 12-119 involves a claim that a tax has been laid on property not taxable within the town. That category is not at issue here.

The second category, invoked here, requires the plaintiffs to demonstrate that the 2011 revaluation resulted in "an assessment which, under all the circumstances, [1] was manifestly excessive *and* [2] could not have been arrived at except by disregarding the provisions of the

statutes for determining the valuation of such property." (Emphasis added.) General Statutes § 12-119. "'Our case law makes clear that 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, 339-40, 597 A.2d 326 (1991); accord *Connecticut Light & Power Co. v. Oxford,* 101 Conn. 383, 392, 126 A. 1 (1924)." *Pauker v. Roig*, 232 Conn. 335, 341, 654 A.2d 1233, 1236 (1995). Section 12-119 was designed to give "a taxpayer a remedy where 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 . . . ." *Mead v. Town of Greenwich*, 131 Conn. 273, 275, 38 A.2d 795 (1944).

"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.' *Cohn v. Hartford*, 130 Conn. 699, 703, 37 A.2d 237 (1944); see *E. Ingraham Co. v. Bristol*, [146 Conn. 408], 151 A.2d 700 [(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.' *L.G. DeFelice & Son, Inc. v. Wethersfield*, 167 Conn. 509, 513, 356 A.2d 144 (1975). . . . While an insufficiency of data or the selection of an inappropriate method of appraisal could serve as the basis for not crediting the appraisal report that resulted, it could not, absent evidence of

misfeasance or malfeasance, serve as the basis for an application for relief from a wrongful assessment under § 12-119." *Second Stone Ridge Co-op. Corp. v. City of Bridgeport*, 220 Conn. 335, 341-42, 343, 597 A.2d 326, 329 (1991).

Distilled to its essence, the plaintiffs' challenge is to the fact that Tyler/the town applied ratio testing standards at the *neighborhood* level as part of a preliminary analysis. They argue that, because a neighborhood is not a property class, the OPM regulations do not permit such analysis at the neighborhood level. That is, they claim that such ratio testing standards should have been applied *only* on a town-wide basis. The court concludes that the plaintiffs have not satisfied, as they must, both prongs of the second category under § 12-119.

First, the plaintiffs have not demonstrated that the 2011 revaluation resulted in assessments that are manifestly excessive. A common example of a "manifestly excessive" challenge results from the misclassification of property. *See, e.g.*, *Griswold Airport, Inc. v. Town of Madison*, 289 Conn. 723, 740, 961 A.2d 338, 348 (2008) ("Claims that an assessor has misclassified property and, consequently, overvalued it, comprise a category of appeals frequently pursued under the aegis of § 12–119.") (collecting cases). The plaintiffs do not claim that their property was misclassified, and they have failed to demonstrate that their assessments were manifestly excessive. In fact, the consistent testimony of Christy and Gardner, which the court credits, reflected that the 1.35 adjustment factor applied to the GLP dwelling values was used for the express purpose of increasing the appraised values so that they would be closer to fair market value, instead of well below fair market value.

Second, the plaintiffs have not shown that the assessments could not have been arrived at except by disregarding the provisions of the property valuation statutes. As the cases cited above demonstrate, the focus is on whether the assessment is *illegal*. As a matter of statutory or

regulatory interpretation, there is no language in the statutes and regulations cited above that prohibits, either expressly or implicitly, a town from conducting preliminary ratio testing at the neighborhood level prior to conducting such tests on a town-wide basis as part of the final process in support of certification. While the plaintiffs are correct that the OPM regulations require ratio testing standards to be applied to a "property class," the town applied such standards on a town-wide basis in its final analysis prior to submitting the certification of compliance pursuant to § 12-62(g).

Although the plaintiffs complain that the 1.35 adjustment factor was not applied to values in any other neighborhood, the town and Tyler arrived at such factor by concluding that (1) fair market value would not be reached for GLP with a 1.0 factor (i.e., no adjustment) and (2) no adjustment would mean that the GLP property owners would not carry their equitable tax burden. That is, because the other neighborhoods' median ASRs were within the 90-100% range using a 1.0 factor, in the town's and Tyler's view, no adjustment was necessary.

The plaintiffs rely on *Chamber of Commerce of Greater Waterbury, Inc. v. City of Waterbury*, 184 Conn. 333, 439 A.2d 1047 (1981), for the proposition that, in the revaluation context, the application of a fixed percentage without allowance for individual property differences is illegal pursuant to § 12-119. In *City of Waterbury*, 184 Conn. 333, a claim of disproportionate taxation was raised where the assessor had, based on his and his staff's inspection of 300 commercial and industrial properties, applied a 28% across the board increase to the assessment of the remaining commercial and industrial properties in the city. *Id.* at 334, 336. The trial court enjoined the city from levying any tax based on the 28% increase. *Id.* at 335. On appeal, our Supreme Court affirmed the trial court's decision. *Id.*

Having carefully considered the Court's decision in *City of Waterbury*, the court

concludes that the plaintiffs' reliance thereon is misplaced. In *City of Waterbury*, there is no suggestion that the assessor engaged in any data collection process remotely similar to the 18-month process conducted here, in which the physical characteristics of each residential property were updated and inputted into the CAMA system, forming the basis for the modeling expressly permitted by statute. Moreover, unlike here, the assessor in *City of Waterbury* did not apply ratio testing standards to determine how the appraised value compared to a validated sales set.

The plaintiffs attempt to make much of the fact that, after Tyler discovered that the application of the original 1.2 adjustment factor yielded a median ASR of 88.31%, it did not go back and physically inspect the GLP residential properties. This argument fails. First, the plaintiffs have not pointed to any statutory or regulatory authority requiring such an effort. Although the plaintiffs' expert, Stanley Gniazdowski, initially testified that the OPM regulations required such an effort, he could not identify any such language when asked to do so. Second, at the time Tyler/the town conducted the preliminary ratio tests that revealed a median ASR of 88.31% for GLP, they were satisfied with the data collection concerning the GLP properties that had occurred over the 18-month period prior thereto and believed that there was no need to physically reinspect each GLP residential property.[10]

In sum, the plaintiffs' claim that their assessments were manifestly excessive and were arrived at only by the assessor's disregard of the relevant statutes — and therefore illegal — is not supported by this record. The court concludes, as in *Second Stone Ridge Co-op Corp.*, 220 Conn. at 343, that "the circumstances presented here do not rise to the level of the extraordinary situation that would warrant tax relief under the provisions of § 12-119."

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[10] Christy testified that she is "very familiar" with every property in GLP.

Conclusion

Based on the foregoing, the court finds the issues for the defendants on the single count of the complaint. Accordingly, judgment shall enter for the defendants.

Moll, J. 7.5.2017

Ingrid L. Moll
Judge, Superior Court