INDEPENDENT REVIEW AND EVALUATION
OF
TOWN OF ENFIELD 2021 REVALUATION
PREPARED FOR THE TOWN OF ENFIELD
June 1, 2023

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APPENDIX

I. INTRODUCTION AND SCOPE OF REVIEW

Berchem Moses PC ("BMPC") was hired by the Town of Enfield, in response to the Town's Request for Proposals ("RFP"), to conduct an independent review and evaluation of issues pertaining to the Town's 2021 revaluation and the assessment of real and personal property on the Grand List of October 1, 2021. Over the course of several months, this office has conducted a diligent and thorough review and compiled a record containing hundreds of documents which totaled over ten thousand (10,000) pages. A critical component of BMPC's review was interviewing individuals involved with, or possessing knowledge of, the Town's revaluation as well as its assessment and assessment appeal procedures. During the course of our review, we interviewed the following individuals:

Ellen Zoppo-Sassu, Town of Enfield Town Manager
Todd Helems, Town of Enfield Assessor
Victoria Rose, Town of Enfield Deputy Assessor
John Wilcox, Town of Enfield Director of Finance
Arthur R. Mullen, Jr., Town of Enfield Resident and Property Owner
June Perry, Vision Government Solutions District Manager
James Williams, Vision Government Solutions Senior Appraiser
Joan Nichols, Executive Director, Connecticut Farm Bureau
Thomas Tyler, Chairman, Enfield Board of Assessment Appeals
Donna Dubanoski, Member Enfield Board of Assessment Appeals
Lori Longhi, Member Enfield Board of Assessment Appeals
Della Froment, Former Town of Enfield Assessor
Paul Friia, Town of Westport Assessor
Denise Hames, Town of Weston Assessor
Carl Landolino, Tax Appeal Attorney

All of the interviews, with the exception of the interviews of Thomas Tyler, Donna Dubanoski and Lori Longhi, were conducted remotely via Zoom and recorded. The interviews with Thomas Tyler, Donna Dubanoski and Lori Longhi were conducted in-person in Rocky Hill, Connecticut in the presence of their legal representative, Rachel M. Baird, Esq. The three BAA interviews, though conducted in-person, were also recorded via Zoom. The majority of the

interviews were transcribed. The transcripts of those interviews are included in the record. The documents and transcripts received and reviewed as part of BMPC's independent evaluation have been bound and bate-stamped (Enfield-0001- Enfield-4043 and BAA0001 through BAA6641) as part of the official record, and will be available for public review in the Town of Enfield Town Attorney's Office, Town Hall, 820 Enfield Street, Enfield, CT.

The scope of BMPC's review was limited to whether the appropriate entities and individuals involved with the Town's 2021 revaluation and subsequent appeals to the Board of Assessment Appeals ("BAA") adhered to the law and to generally accepted practices and followed proper procedure. These individuals include the Tax Assessor, his staff, representatives from the revaluation company and members of the BAA. This report does not review each tax assessment and BAA appeal on a case-by-case basis. That is the role of the judicial branch following an appeal filed pursuant to Connecticut General Statutes ("C.G.S.") §§ 12-117a or 12-119. In most cases, it would not be possible for BMPC to determine, for example, whether the Assessor or the BAA properly classified property as farmland or forest land under Connecticut Public Act 63-490 ("PA490"), without conducting a thorough field review and site inspection. Instead, this report summarizes the conduct of the parties involved with the 2021 revaluation and identifies thematic issues, areas of concern and suggested areas where there could be improvement. The report provides a general outline of tax assessment and appeal law in Connecticut and will comment, where appropriate, on individual cases which are either illustrative or representative of a general theme or area of concern or which clearly exceed or conflict with Connecticut law.

II. EXECUTIVE SUMMARY

On January 10, 2020, the Town of Enfield solicited proposals for a Revaluation Company to assist with the 2021 revaluation. On May 28, 2020, the Town, through its Assessor, Della Froment ("Froment"), selected Vision Government Solutions, Inc. ("Vision"). Vision is a mass appraisal vendor certified by the State to conduct revaluations. See C.G.S. § 12-62(e). Vision previously assisted with the Town's 2016 revaluation and its 2011 revaluation. Vision commenced data collection in June 2020. Due to the Covid-19 pandemic, physical inspections were limited to the exterior of properties. Interior inspections were only conducted at the request of property owners. Data mailers were otherwise used to collect updated information on any interior property improvements. Vision representatives conducted informal hearings via telephone to review new assessments with Enfield property owners. In total, two hundred and thirty (230) property owners scheduled an appointment for an informal hearing to discuss the assessment of two hundred and ninety-one (291) properties. In all, that total represents less than two percent (2%) of Enfield property owners.

In the spring of 2021, Froment informed the Town's Finance Director and Human Resources (HR) Director that she was retiring. Though it is unusual for an assessor to retire in the middle of the Town undergoing its revaluation process, the long-time assistant assessor, Victoria Rose ("Rose"), provided the office with stability and continuity during the transition. The Town hired Todd Helems ("Helems"), the former Town of Bloomfield Assessor, to supersede Froment. Helems assumed office on June 1, 2021, in the midst of the 2021 revaluation. Helems and Froment appear to have contrasting personalities and management styles. This stark contrast became apparent to, and caused concern amongst, certain demographics within the Town of Enfield.

Vision's revaluation was conducted properly and in accordance with accepted standards for the mass-appraisal of property. The State of Connecticut Office of Policy and Management ("OPM") reviewed Vision's revaluation report and certified the newly established values. Vision's statistical analyses (e.g. co-efficient of dispersion ("COD") and price related differential ("PRD") met all State requirements. In short, it is our conclusion that there was nothing abnormal about Vision's 2021 Revaluation program. Allegations that Vision's work was somehow flawed are unsubstantiated and without merit.

A vocal and concerted public effort to discredit Helems developed during the revaluation process. The majority of the criticism levied against Helems stemmed from his handling of PA490 farmland, forest land and open space classifications and the exemption status of certain charitable organizations. Helems drew heavy criticism from the Enfield Board of Assessment Appeals ("BAA") and its individual members, Chairman Thomas Tyler, Lori Longhi and Donna Dubanoski. The BAA criticized policies implemented by Helems which they characterized as infringing on their Board's autonomy. They also publicly questioned his qualifications and credentials and accused him of attempting to intimidate or bully taxpayers who challenged his assessment of their properties.

Based upon our review of documentary and testimonial evidence, it is our conclusion that Helems generally complied with his statutory mandates and adhered to accepted best practices. Helems inherited an office which can best be characterized as "risk averse," and implemented new policies and practices intended to ensure that the grand list accurately reflects all of the taxable property within the Town of Enfield. While we find that Mr. Helems mostly complied with the law and fulfilled the duties of his office in good faith, there were interpersonal shortcomings. The office of the assessor is required to engage with the public and to convey

assessment information to the Town's taxpayers in a timely and clear manner. One of the principal complaints lodged against Mr. Helems was that he appeared indifferent and unresponsive to the public. In the future, and particularly during the next upcoming Town-wide revaluation that is scheduled to take place in 2026, Mr. Helems should endeavor to engage early and often with the community, particularly the farming and agricultural community, to ensure that taxpayers are aware of their individual responsibilities and reporting obligations and feel as though their concerns have been acknowledged and addressed by the Town. We have included specific, enumerated recommendations and best practices in Section X of this report.

While we believe that the individual members of the BAA acted in good faith, our review of the documentary evidence, as well as our interviews with Town officials, indicates that the BAA acted in an unnecessarily adversarial manner and, on several occasions, disregarded the law applicable to the assessment of real and personal property. In addition, the BAA's withholding of public documents violated C.G.S. § 1-200 et seq., the Connecticut Freedom of Information Act ("FOIA"). Moving forward, we recommend that BAA members attend an annual training seminar conducted by the Town Attorney or a reputable organization such as the Connecticut Association of Assessing Officers ("CAAO").

III. FACTUAL FINDINGS

a. Town of Enfield Demographics and Tax Base

The Town of Enfield is a Connecticut municipality situated in Hartford County. As of the 2020 census, Enfield's population was 42,141. Enfield is bordered by the Town of Somers to the east, the Towns of East Windsor and Ellington to the south, the Towns of Suffield and Windsor Locks (separated by the Connecticut River) to the west, and the Towns of Longmeadow and East Longmeadow, Massachusetts to the north.

Enfield is a typical suburban municipality with its residential housing stock consisting principally of owner-occupied single-family detached homes. Approximately seventy-two percent (72%) of the Town's total housing units are single-family detached units. Ninety-nine percent (99%) of which are owned-occupied. Enfield has limited commercial and industrial development consisting of approximately 3.4% and 1.6% of the Town's total taxable parcels, respectively. The majority of Enfield's commercial and industrial tax base is located proximate to Interstate 91, along U.S. Route 5 and Connecticut Routes 190 and 220. Due to its proximity to the Connecticut River, Enfield possesses soil and climatic conditions favorable for agricultural production. According to the Town's Plan of Conservation and Development ("POCD"), approximately thirty-three percent (33%) of the Town's land area (i.e. approximately 7,160 acres) contains soil types considered prime farmland. Nurseries and tobacco fields are common agricultural businesses in the Town. As it relates to assessment practices, Enfield is one of twenty-one (21) Connecticut municipalities classified as River Valley Municipalities for the purpose of PA490 land valuation. Certain PA490 classes of agricultural land (i.e. Tillable A through D) are assessed at a higher value per acre in River Valley Municipalities than they are in the rest of the State. (See Table 7.2; See also State of Connecticut OPM 2020 Recommended Land Use Values, available at https://www.cfba.org/wp-content/uploads/2021/04/2020-PA490-Recommended-Land-Use-Values.pdf).

b. Prior Tax Assessment Practices

Della J. Froment served as the Town's assessor from 2010 through May 28, 2021. Froment oversaw Enfield's 2011 Town-wide revaluation, as well as its 2016 statistical revaluation. Both in 2011 and 2016, The Town of Enfield selected Vision Government Solutions, Inc. ("Vision") to serve as the Town's revaluation company. Preparation for the 2021 revaluation

began in 2020 under Froment. She assisted with the preparation of the Town's Request for Proposals ("RFP") and worked with Town Counsel to draft a contract with the selected revaluation company. On May 22, 2020, the Town issued a press release (Enfield-0180; App 12) notifying residents and taxpayers that Vision had again been selected to conduct the Town-wide revaluation. Vision commenced data collection in June 2020. Due to the Covid-19 pandemic, data mailers were sent to property owners in lieu of on-site interior inspections.

In early 2021, Della Froment announced her retirement. Victoria Rose, the Town's Assistant Assessor, and Todd Helems, the Assessor from the Town of Bloomfield, were interviewed as candidates for the position of tax assessor and supervisor of assessment and revenue collection. Interviews were conducted by a panel of three individuals, the Town Manager, Assistant Town Manager-HR Director and the Director of Finance. The Town elected to hire Mr. Helems, who assumed the position on June 1, 2021. According to the Town's Human Resources Director, Helems "was the best candidate" and impressed the Town "with his outside of the box thinking." (Journal Inquirer, May 25, 2021 by Adam Hushin, article available at https://www.journalinquirer.com/towns/enfield/enfield-hires-supervisor-of-assessment-and-revenue-collection/article_51d92796-bd62-11eb-8718-7b62b6a3daca.html). Enfield's then Town Manager, Christopher Bromson stated, "Todd's innovative ideas coupled with his proven experience in utilizing new technology in his field is a great combination to move the tax and assessor's department into the future." Id. Enfield's present Town Manager, Ellen Zoppo-Sassu, was not involved in the decision to hire Helems but similarly believes that Helems was hired to "modernize" the Assessor's office and bring it "into the 21st century." (Interview with Ellen Zoppo-Sassu, 1:00).

Helems was hired to modernize the Assessor's office, utilize new assessment software and to review PA490 applications and quadrennial reports (Form M3) with greater scrutiny. Helems was hired to implement policy and practice to ensure that the grand list accurately reflected all the taxable property in Enfield. During our interviews, this practice was frequently mischaracterized as "growing the grand list." This characterization, however, is misleading. The role of the assessor is not to increase or decrease the grand list (generally, growth is achieved through development / new construction). Rather, assessors are responsible for ensuring that all assessments are properly and uniformly made and that the Town's grand list is an accurate reflection of all taxable and tax-exempt property in the municipality. See C.G.S. § 7-100k. This report is not critical of the previous assessor. Based upon our interviews, it is apparent that Froment was qualified for the position and remains highly knowledgeable of Connecticut assessment law. That said, it was acknowledged that Froment had a long history in Enfield and knew how previous administrations had historically assessed, classified or exempted certain parcels of property. According to the Town's Finance Director, John Wilcox, Froment was "not really one to rock the boat." (Interview with John Wilcox). The Town's Assistant Assessor, Victoria Rose, noted that Froment was less diligent than her predecessor and Helems in terms of reviewing PA490 properties. (Interview with Victoria Rose). The stark difference between Froment and Helems was, in the words of the Town Manager, "a shock to the system." (Interview with Ellen Zoppo-Sassu).

The timing of Froment's retirement, during a covid-impacted town-wide revaluation *and* a grand list year when revised Quadrennial Applications were due, coupled with the starkly different management and operational style and personality of Helems, created, an inherently chaotic situation. Nonetheless, the 2021 revaluation was, by objective standards, a success. The

fact that three hundred and eighty-nine (389) appeals to the BAA were filed is not, in and of itself, cause for concern. It is common for the number of appeals heard by a BAA to increase significantly in a revaluation year. Of the 389 appeals filed, the BAA heard two hundred and fifteen (215) real estate tax appeals, one hundred and twenty-two (122) motor vehicle tax appeals and fifteen (15) personal property tax appeals. In total, one hundred and thirty-six (136) individual taxpayers filed BAA appeals following the 2021 revaluation.[1] Accordingly, the percentage of Enfield taxpayers who appealed the reassessment of their property is relatively minor. There were, however, certain demographics within Enfield, in particular the farming and agricultural communities, which publicly and vocally opposed Helems and criticized the revaluation. What distinguished Enfield's 2021 revaluation from prior cycles was the lack of communication and level of distrust and apparent animosity between the Assessor, the members of the BAA and a minority of the Town's taxpayers.

IV. SUMMARY OF CONNECTICUT LAW REGARDING TAX ASSESSMENT

In order to put the various claims associated with the 2021 revaluation in their proper context, it is necessary to review the relevant statutory and regulatory framework. Connecticut imposes an ad valorem tax on all real and personal property located within the State and not otherwise exempt.[2] The State Legislature allocated the authority to tax real estate and personal property to the individual municipalities. The municipalities' authority to tax is defined and limited by Statute, specifically, C.G.S. § 12-40 through § 12-195h. In accordance with C.G.S. § 12-122, municipalities are required to levy such property taxes as are estimated to be required to

[1] One prominent property-owning family in Enfield, the Jarmocs, filed approximately one-fourth of the total BAA appeals.

[2] Ad valorem is Latin for "according to value." Ad valorem taxes are, therefore, based on each taxable item's assessed value.

pay all of the current expenses of the municipality after taking into account all other revenue sources. In the majority of Connecticut municipalities, eighty to ninety percent (80-90%) of the municipal budget is generated by property taxes.

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 C.G.S. § 12-62c(b)(3).[3] Real property is assessed at seventy percent (70%) of its present true and actual value. C.G.S. § 12-62a(b). Present true and actual value is defined as the properties' "fair market value…and not its value at a forced or auction sale." C.G.S. § 12-63; see also C.G.S. § 12-64 (all taxable real property, except for land classified as forestland, farmland, open space land or maritime heritage land and property which is exempted from taxation is subject to "taxation at a uniform percentage of its present true and actual valuation, not exceeding 100 percent of such valuation.").

Pursuant to C.G.S. §§ 12-41 and 12-42, all personal property owned, used or leased by anyone engaged in business in the State of Connecticut, unless specifically exempted, must be declared by the owner and assessed by the assessor. Accordingly, personal property owners are required to file a declaration with the assessor on or before November 1st of each year. If a taxpayer does not timely file a declaration, the assessment is subject to a twenty-five percent (25%) penalty. See C.G.S. §§ 12-41 and 12-42. Motor vehicles grand lists are created annually. The regular motor vehicle grand list is billed in July and the supplemental list is billed in January. The CAAO recommends that towns use National Automobile Dealers Association ("NADA") pricing guidelines each year for the assessment of the motor vehicle grand list. Several towns, including Enfield, use software systems, such as VinDecode to supplement NADA pricing guides.

[3] See also Regs., Conn. State Agencies § 12-62i-l(15) (defining "property class").

a. Methods of Valuation

A detailed discussion of the various approaches to value exceeds the scope of this report. For a comprehensive analysis of real estate assessment and valuation, reference is made to the following publications: the Appraisal Institute's *The Appraisal of Real Estate* and the International Association of Assessing Officers' *Property Appraisal and Assessment Administration*.

Nonetheless, a brief overview of the three generally accepted methods of valuation is useful and provides a conceptual framework for the remainder of this report.

Cost Approach- The cost approach is typically utilized to value new construction or unique properties. The approach is used to derive the value of the property by estimating the current cost to construct a reproduction of, or replacement for, the existing structure; deducting accrued depreciation from the reproduction or replacement cost; and adding the estimated land value plus an entrepreneurial profit. The appraiser may make further adjustments to the value of the property interest being appraised.

Sales Comparison Approach- The sales comparison approach is the most relevant and widely used method for valuing residential property. This approach is conducted by comparing the property being appraised to similar properties that have been sold recently, applying appropriate units of comparison, and making adjustments to the sale prices of the comparable properties based on the elements of comparison.

Income Capitalization Approach- The income capitalization approach is used to value income-producing properties. An investor who purchases an income-producing property is essentially trading present dollars for the expectation of receiving future dollars from the future income stream. In this approach an appraiser derives a value for an income-producing property

by converting its anticipated net operating income into property value. The property value is calculated by taking the projected net operating income and dividing it by a capitalization rate, which is the annual rate of return an investor would expect on the projected net operating income. There are two different methods for the income approach. The direct capitalization method derives a value by applying a single year's estimated income and expenses. The yield capitalization method (AKA – discounted cashflow analysis) derives a value(s) by using estimated income and expenses over a multi-year holding period.

b. <u>Mass Appraisal and Revaluation Technique</u>

Municipalities are required to revalue property every five (5) years. C.G.S. § 12-62.[4] The purpose of periodic revaluations is to accurately account for fluctuations in fair market value, acknowledging that properties appreciate and depreciate at different rates. Revaluations, in theory, eliminate the value inequities created during the prior five years. During non-revaluation years, property values are primarily based upon the last revaluation cycle, adjusting for improvements made in the interim period.

The Dictionary of Real Estate Appraisal defines "revaluation" as the "mass appraisal of all property within an assessment jurisdiction to equalize assessed values." *Dictionary of Real estate Appraisal (Fourth Edition)*. The mass appraisal process differs from a standard bank appraisal in that it is "the process of estimating the market value of a universe of properties, as of a specific date, using standard methodology, which allows for statistical testing and reporting."

[4] C.G.S. § 12-62 was amended by Public Act 22-74. Specifically, Section 7 of P.A. 22-74 provides that, as of October 1, 2023, all Connecticut municipalities will be placed in one of five geographic "revaluation zones" established by the Secretary of OPM. Moving forward, municipalities will revalue their property every five years based upon a revaluation date schedule prescribed by the Secretary of OPM for each revaluation zone. See C.G.S. § 12-62(b) (effective July 1, 2022). The intent of the amendment is to stabilize the current state-wide revaluation schedule so that approximately twenty percent (20%) of the State's municipalities are revaluing each year.

The mass appraisal process is best understood as a modified cost approach. This approach is recognized as the appropriate method of valuation of properties for ad valorem tax purposes in periodic municipality-wide revaluations required by law. The process requires the use of generally accepted techniques, including the development of valuation schedules properly specified and calibrated to local market conditions. Such methods include specification and calibration of valuation schedules using actual sales that represent the broad spectrum of properties in the assessment jurisdiction.

In Enfield, all properties were appraised as of October 1, 2021, using all valid arms-length transactions for the approximate period of October 1, 2020 through October 1, 2021. These sales were used to test the existing property characteristics and their ability to reflect variation in market value throughout the Town. All sales were field verified to ensure property characteristics were accurate at the time of inspection. A revaluation must satisfy certain OPM performance-based revaluation standards, as set forth in C.G.S. § 12-62 and Conn. Agencies Regs. § 12-62i-1 et. seq. OPM determined that Enfield's 2021 revaluation satisfied all of the requisite performance standards.

c. <u>Connecticut Tax Exemptions</u>

Connecticut law provides for a limited number of exemptions from municipal property taxation. The exemptions are enumerated in C.G.S. § 12-81. It is well established that "provisions granting a tax exemption are to be construed strictly against the party claiming the exemption, who bears the burden of proving entitlement to it…Exemptions, no matter how meritorious, are of grace…[t]hey embrace only what is *strictly within their terms*." (Emphasis added) <u>St. Joseph's Living Center, Inc. v. Town of Windham</u>, 290 Conn. 695, 707, 966 A.2d 188 (2009). Courts strictly construe tax exemptions because, "exemption from taxation is the

equivalent of an appropriation of public funds… the burden of the tax is lifted from the back of the potential taxpayer who is exempted and shifted to the backs of others…" Id.

This report cannot discuss each of the eighty-two (82) statutory exemptions provided by C.G.S. § 12-81. However, an analysis of C.G.S. § 12-81(7) is warranted given Helems' controversial decision to remove multiple charitable organizations' exempt status, including the Thompsonville Moose Lodge. To qualify for the charitable use tax exemption, an organization must timely file with the assessor a Tax Exempt Application (Form M3), also known as a Quadrennial Report, on or before November 1st every four years. Quadrennial reports were due in Enfield in 2021.

C.G.S. § 12-81(7) exempts property used for scientific, educational, literary, historical, charitable or open space land preservation purposes. The statute does not, however, exempt *all* property owned by nonprofit or 501(c)(3) tax exempt organizations. To qualify for exemption, property must (i) belong to or be held in trust for a corporation organized exclusively for charitable purposes; (ii) be used exclusively for carrying out such charitable purposes; (iii) not be leased, rented or otherwise used for a purpose other than the furtherance of its charitable purposes; (iv) not be housing subsidized by the government; and (v) not constitute low or moderate income housing. C.G.S. § 12-81(7); see also St. Joseph's Living Center, Inc., *supra* 290 Conn at 709. Connecticut courts have developed a three-pronged analysis for determining whether a taxpayer is organized 'exclusively for charitable purposes.' First, courts evaluate an entity's organizational documents. Exclusivity of purpose is material. Once the entity's purpose is determined, the court will evaluate whether that purpose is, in fact, charitable. The second factor considered is whether the entity is self-supporting. An entirely self-supported organization will not be treated as exempt for the purpose of municipal taxation. The third, and final, prong of

the analysis is whether the entity relieves a state or municipal burden by pursuing a publicly mandated moral obligation. See Capital for Change, Inc. v. Board of Assessment Appeals, 215 Conn. App. 681, 692-93, 283 A.3d 562 (2022).

d. Actual Use V. Highest and Best Use

As discussed above, real estate in Connecticut is typically assessed based upon the property's highest and best use. The Appraisal Institute defines highest and best use as "[t]he reasonably probable and legal use of vacant land or an improved property that is physically possible, appropriately supported, financially feasible and that results in the highest value." C.G.S. § 12-63 provides four exceptions to the 'highest and best use' standard. Specifically, it provides that the present true and actual value of farmland, forest land, open space land and maritime heritage land "shall be based upon its *current use* without regard to neighborhood land use of a more intensive nature." C.G.S. § 12-63.

Classification as Farm Land- Farmland is defined as "any tract or tracts of land, including woodland and wasteland, constituting a farm unit." C.G.S. § 12-107b(a). The statutes do not specify any minimum acreage. However, C.G.S. § 12-107c directs assessors to consider the following factors when determining whether to classify property as farmland: "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 and value of the equipment used in connection therewith, and the extent to which the tracts comprising such land are contiguous."

Classification as Forest Land- Forest land is defined as any "tract or tracts of land aggregating twenty-five acres or more in area bearing tree growth that conforms to the forest stocking, distribution and condition standards established by the State Forester pursuant to

subsection (a) of section 12-107d, and consisting of (A) one tract of land of twenty-five or more contiguous acres, which acres may be in contiguous municipalities, (B) two or more tracts of land aggregating twenty-five acres or more in which no single component tract shall consist of less than ten acres, or (C) any tract of land which is contiguous to a tract owned by the same owner and has been classified as forest land pursuant to this section." C.G.S. § 12-107b(2). In order to receive "forest land" classification for tax purposes, a property owner must submit, *inter alia*, a Qualified Forester's Report to the assessor.[5]

Classification as Open Space Land- Open space land is defined 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." C.G.S. § 12-107b(3).

Maritime Heritage Land- Maritime heritage land is defined as "that portion of waterfront real property owned by a licensed shellstock shipper who grows or harvests shellstock, aquaculture operator or commercial lobster fisherman… provided…. not less than fifty per cent (50%) of the adjusted gross income of such shellstock shipper, aquaculture operator or fisherman… is derived from commercial shellfishing, aquaculture or lobster fishing." "Maritime heritage land" does not include buildings not used exclusively by such shellstock shipper,

[5] A form Qualified Forester's Report is available through the State of Connecticut Department of Energy and Environmental Protection ("DEEP"), Division of Forestry. See https://portal.ct.gov/-/media/DEEP/forestry/landowner_assistance/forestland_taxation/forestersreportformpdf.pdf.

aquaculture operator or fisherman for commercial shellfishing, aquaculture or lobstering purposes." C.G.S. § 12-107b(8).

The law governing the classification of property as farmland, forest land and open space land is addressed more thoroughly in this report's subsequent discussion of PA490. See Section IV.[6]

e. Summary of Connecticut Tax Appeal Law and Procedure

Although technically not part of the formal tax appeal process, property owners first have the opportunity to schedule an informal meeting with the revaluation company to discuss the assessment of their property during a revaluation year. Due to Covid-19, these first informal "appeals" were conducted remotely via telephone. (Enfield-2039). If taxpayers are unable to resolve their concerns regarding an assessment through either the informal hearing process with the revaluation company or through informal dialogue with the assessor, the next step is a formal appeal to the BAA. Pursuant to C.G.S. § 12-111, an aggrieved taxpayer must file a written appeal, which includes the property owner's name, a description of the property, the basis for the appeal and an estimate of value, on or before February 20th (or March 20th if the Assessor was granted an extension for filing the Grand List).

The BAA acts as an independent body of review for property owners who wish to appeal their assessments after exhausting more informal channels of appeal such as the Assessor or the revaluation company. The BAA must conduct a hearing on every appeal unless the appeal involves commercial, industrial, utility or apartment properties assessed at more than $1,000,000. See C.G.S. § 12-111. The BAA is authorized to correct issues or mistakes in the assessment of property. See C.G.S. § 12-60. It may decrease or increase the assessment of any taxable property

[6] Enfield does not have any maritime heritage land.

and add any omitted property or property owners to the Grand List. C.G.S. § 12-111. Actions of the BAA are subject to review by OPM and the State Attorney.

Decisions of the BAA are generally binding unless altered by the Assessor pursuant to C.G.S. § 12-111 or appealed to the Superior Court in accordance with C.G.S. §§ 12-117a and/or 12-119. C.G.S. § 12-117a allows persons aggrieved by the action of the BAA to file an appeal within two (2) months of the Board's decision. The sole issue in a § 12-117a appeal is whether the property was over assessed. See Nutmeg Housing Development Corporation v. Town of Colchester, 324 Conn. 1, 151 A.3d 358 (2016) (Mere overvaluation is sufficient to justify redress under statute which allows taxpayers to appeal decisions of municipal boards of assessment appeals, and court is not limited to review of whether assessment has been unreasonable or discriminatory or has resulted in substantial overvaluation). Taxpayers can also file a direct appeal to the Superior Court under C.G.S. § 12-119. A § 12-119 claim, however, must allege more than mere overvaluation; taxpayers must prove that their property has been wrongfully assessed 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 real property. See Second Stone Ridge Co-op. Corp. v. City of Bridgeport, 220 Conn. 335, 597 A.2d 326 (1991) (Property owner seeking relief from wrongful assessment on ground that assessor overvalued property must also show that valuation could not have been arrived at except by disregarding provisions of statutes for determining valuation of property; owner must show either misfeasance or nonfeasance by taxing authorities, or that assessment was arbitrary or so excessive or discriminatory as in itself to show disregard of duty on assessor's part).

V. ASSESSOR TODD HELEMS

a. Qualifications as Assessor

Much of our evaluation focused on the conduct and qualifications of Helems. Over the course of our review, we conducted five separate interviews with Helems and found him to be credible, knowledgeable and forthcoming. Notably, Helems for the most part acknowledged where he had erred and where, moving forward, he could improve as an assessor and an appointed public official.

It is our opinion that Helems is qualified for his position as the Town's Assessor. A copy of Helems' current curriculum vitae ("CV") is included in the record (Enfield-0812-0818) and attached hereto as Appendix ("App") 1. His career in real estate valuation began in 2004. From 2004 until 2012, Helems was employed by Vision Government Solutions, Inc. He was hired as a residential and commercial collector, and was subsequently promoted to crew chief and staff appraiser. During his eight-year tenure with Vision Government Solutions, Helems estimates that he was involved in thirty (30) to forty (40) tax assessment revaluations occurring in approximately sixty (60) municipalities located in Connecticut, Massachusetts, New Hampshire and New York. (Interview with Todd Helems, p. 17, ¶¶ 16-18; Enfield-3411).

In 2012, Helems was hired as a staff appraiser by the Town of Wallingford. In that role, Helems provided technical and administrative assistance to Wallingford's Assessor and Deputy Assessor. In 2016, Helems left Wallingford to become the Assessor in Bloomfield. Helems served as the Bloomfield Assessor from November 2016 until May of 2021.

Helems has completed a series of continuing education courses through The Appraisal Institute, the International Association of Assessing Officers ("IAAO") and the Connecticut Association of Assessing Officers ("CAAO"). Helems is a Connecticut Certified Municipal

Assessor II (CCMA II) and is currently two courses short of obtaining his Certified Assessment Evaluator ("CAE") designation from the IAAO.[7] Helems serves as the co-chair of the CAAO Revaluation Committee and is a member of the CAAO Information Technology and PA490 Committees. (CV of Todd Helems; Enfield-0812; App. 1).

Members of the BAA and the public have characterized Helems as unqualified and/or antagonistic with regard to the assessment of agricultural, open space and forestland. Based upon our review, we do not find these characterizations to be fair or accurate. As noted, Helems serves as a member of the CAAO's PA490 Committee. The PA490 Committee regularly meets with OPM to discuss potential legislation pertaining to C.G.S. § 12-107 et. seq. Additionally, Helems regularly attends continuing education workshops on PA490 offered by the CAAO. It is our conclusion that Helems is well-versed on the law. He understands the intent and practical effect of farmland, open space and forestland classification. The perception that Helems is "anti-farmer" is also, in our opinion, unwarranted. As Helems testified, his grandfather owned an approximately fifty-acre farm in Massachusetts and growing up he worked on his family's vegetable farm from age six through his mid-twenties. That said, Helems *strictly* interprets the General Statutes and has adopted practices pertaining to the assessment of farmland, in particular, that have been justly characterized as aggressive.[8] These practices will be discussed in greater detail in this report.

[7] The purpose of the CAE designation is to recognize professionalism and competency in a wide range of matters covering property valuation for tax purposes, property tax administration, and property tax policy.

[8] It is a tenet of Connecticut law that tax exemptions embrace only what is strictly within their terms. See e.g. H.O.R.S.E. of Connecticut, Inc. v. Washington, 258 Conn. 553, 560, 783 A.2d 993 (2001). That said, the Supreme Court has acknowledged that C.G.S. §§ 12-107a through 12-107e, as derived from PA490, "are as much conservation statutes as they are tax relief measures…Indeed, it would appear that the purpose of the tax relief if to aid the conservation effort." Torrington Water Co. v. Board of Tax Review, 168 Conn. 319, 362 A.2d 866 (1975).

While discussing Helems' qualifications, it is equally important to acknowledge what he is not. First, he is not a soil scientist. Although Helems characterizes his almost thirty years of farming and landscaping as practical "life experience," we are not aware of any instance where he held himself out as a soil scientist or as having the requisite credentials or qualifications to evaluate Connecticut soils and soil types.[9] Second, Helems is not a certified appraiser in the State of Connecticut. There may have been some confusion due to the various job titles on Helems' resume. Once again, however, we are not aware of any instance of Helems misrepresenting his qualifications as a certified appraiser.

Since being in office, Helems has implemented a series of policy changes and increased the use of assessment software. With respect to the assessment of motor vehicles and personal property (for unregistered motor vehicles), the office began using the VinDecode software to assist with locating, identifying and accurately assessing commercial motor vehicles in Enfield. This resulted in a total tax assessment increase of $9,916,511.00 or a corresponding total tax dollar increase of $256,491.00 on the Grand List of 2021 (using the 2021 mill rate). (Enfield-0786). The Assessor's office retained a new personal property vendor and is in the process of implementing new geographic information systems ("GIS") and Data Cloud solutions software to increase efficiencies and reduce redundancies in data entry.

Based upon our interviews, Helems' colleagues and supervisors have generally found his work competent, informed and thorough. As noted by the Town's Director of Finance, John Wilcox, the Town has not received any complaints about Helems from his staff (Interview with John Wilcox at 40:00-41:00). His supervisory skills have been satisfactory. Victoria Rose, the Assistant Assessor, stated that she does not have any concerns regarding Helems' management

[9] Later in this report, we address Helems' practice of reclassifying farmland soil types. Generally speaking, this is a practice that we would advise Helems to avoid in the future, absent a very strong evidentiary basis.

style and enjoys working with Helems. (Interview with Victoria Rose at 1:35). The Town Manager, Ellen Zoppo-Sassu, stated that office staff is "supportive of Todd" and have commented, anecdotally, that Helems "is fixing things" within the Assessor's office. (Interview with Ellen Zoppo-Sassu, 1:01).

The totality of the evidence supports a conclusion that Helems is qualified for the Town's assessor position.[10] He possesses the knowledge and skill necessary to effectively manage and supervise the office and its staff and to equitably assess real estate, personal property and motor vehicles for the purposes of ad valorem taxation.

b. <u>Conduct as Assessor</u>

The majority of the complaints against Helems involved his conduct as the Enfield Assessor, as opposed to his qualifications for the position. First, as previously noted, there were interpersonal shortcomings. Throughout our review, Helems was characterized as unsympathetic, indifferent and cold. Certain taxpayers and members of the BAA described him as intimidating and generally unresponsive to residents' questions and requests. Based upon the totality of the evidence, we find these characterizations of Helems to be somewhat overstated.[11] Nonetheless, Helems should endeavor to improve his communication with the public and to respond to public inquiries in a timely and clear fashion. The Assessor is a public official. It is not Helems' job to tell the public what they want to hear, but it is his job to engage the public and to provide information and transparency with respect to the Town's revaluation and assessment processes and procedures.

[10] This report does not make a finding as to Helems' qualifications for his role as Enfield's Tax Collector.

[11] Helems assumed the role of Assessor in June 2021. The Town was in the midst of the 2021 Revaluation. His office was operating short-staffed and subject to certain Covid-19 protocols. Helems acknowledged that he could be more engaged with the public if he had additional time and/or resources. While there is certainly a degree of truth to Helems' statement, it does not justify his alleged unresponsiveness to the taxpayers.

During the course of BMPC's interviews, Helems acknowledged that he could improve upon his office's methods of conveying important assessment information to the public (i.e. filing obligations, deadlines, appeal procedures etc.). Helems specifically noted the possibility of working with coordinate branches of the Enfield government to communicate more effectively and efficiently with the community. (Interview with T. Helems, Pt. 1, p. 142-43; Enfield-3536-37). BMPC recommends such an interdepartmental approach. The Assessor's Office should utilize the Town's new Social Media Director and coordinate with, among others, the Town Manager's Office and the Agricultural Commission to reach different demographics using a variety of print and electronic media.

Helems must also improve his communication and working relationship with the BAA. This report discusses the BAA's antagonism towards Helems. The antagonism, however, ran both ways. Thomas Tyler, the Chairman of the BAA, complained that he was denied a copy of Vision's Revaluation Manual by the Assessor's Office. He was informed that he was a private citizen and would have to purchase a copy of the Manual directly from Vision. (Interview with Helems, Enfield, pt. 5, p. 26-27, ¶¶ 12-23, 1-14; Enfield-3615-16). This was improper. Moving forward, the Assessor and the BAA must maintain a cooperative working relationship. If a member requests a copy of a revaluation manual or a similar document, it should be provided by the Assessor's Office as an accommodation and free of charge.

i. Attending Board of Assessment Appeals Hearing

One of the principle complaints levied against Helems by members of the public and the BAA is that Helems improperly attended BAA appeal hearings. The members of the BAA, in particular, alleged that Helems intimidated taxpayers and that his presence had a chilling effect on discourse between the taxpayer and the BAA. (Enfield-0120-121; App. 4). The law, however,

is clear; BAA appeal hearings are public meetings. They are open to any interested member of the public, including the assessor. In fact, in its May 28, 2022 report, the BAA quotes from the BAA Handbook and acknowledges that "[i]t is an individual preference whether the Assessor should be in attendance." (Enfield-0120; App. 4). While it is clearly not illegal nor necessarily improper, it is not a best practice for the assessor to attend BAA appeal hearings.

Both Denise Hames, the Weston Tax Assessor, and Paul Friia, the Westport Tax Assessor, confirmed that they do not attend their BAA's hearings. Hames commented that it's not her role to attend the appeal hearings. She stated, "I don't want the appellant to feel as if I'm passing judgment on them before the Board, so I don't attend them. I've never attended them." (Interview with Denise Hames, p. 9, ¶ 5-7; Enfield-3987). Friia similarly explained, "I don't feel comfortable [attending BAA hearings]…I think…that's the time when the applicant gets to talk to the Board…I don't know what purpose it serves for me or for the Board…" (Interview with Paul Friia, p. 11, ¶ 8-13; Enfield-4017). Della Froment, the prior Enfield Assessor, likewise did not attend BAA hearings. She stated that the purpose of the hearing was for the taxpayer "to speak to the Board individually, to…acknowledge that they have that appeal right and not to be confronted with my opinion." (Interview with Della Froment, p. 9, ¶¶ 1-7; Enfield-3658).

Based upon the totality of the evidence, we find that Helems did not attend the initial BAA hearings with the intent of intimidating taxpayers or influencing the decisions of the BAA. Nonetheless, we agree with the finding of the Town Manager that Helems' presence at the appeal hearings resulted in an unnecessarily contentious atmosphere. Whether or not Helems' attendance intimidated taxpayers, it evidently antagonized the BAA and was viewed as an infringement upon the Board's autonomy and jurisdiction. Therefore, it is our recommendation that Helems not attend future BAA appeal hearings. He should, however, be available during the

hearings in the event the BAA or the appealing taxpayer requests his input or clarification on an issue.

ii. Recording BAA Hearings

Helems' decision to record the BAA appeal hearings was similarly criticized by the individual Board members as well as certain members of the public. The previous assessor, Della Froment, confirmed that she did not record BAA hearings. However, during her interview, she acknowledged that "in hindsight I probably would have recorded them at some level…perhaps during the communication level with the taxpayer, it might be appropriate because that's where you can learn where you need to educate your tax base." (Interview with Della Froment, p. 10-11, ¶¶ 20-23, 1-4; Enfield-3659). Neither Denise Hames nor Paul Friia record the appeal hearings in Weston or Westport, respectively. That said, there is no legal prohibition against recording the hearings. The BAA is a municipal board and its appeal hearings are public. Accordingly, this report adopts and incorporates the conclusion reached by the Town Attorney's Legal Opinion No. 2022-1 (Enfield-010-11; App. 2), which, in summary, found that the Town may record the audio of its BAA hearings.

The Chairman of the BAA, Thomas Tyler, drafted a statement dated April 4, 2022 which, in his words, "set[s] the record straight" on the purposed audio recording of BAA hearings. (Enfield-0001; App 3). His principal argument against recording BAA appeal hearings is that "[m]any cases involve personal and/or financial information not subject to public disclosure. It would be virtually impossible for us, as BAA members, to monitor, screen, redact or otherwise guard against the accidental acquisition of and/or subsequent release of protected confidential/privileged information in violation of law, putting the town and us in legal jeopardy." (Enfield-0003; App. 3). Additionally, Tyler reiterates his argument that the appeal

hearings are "intimidating to most people…[audio recording] and would have a 'chilling effect' on them as they try to present their cases. Most are not attorneys; they should not feel as though they are being interrogated at an inquisition." (Enfield-0003; App. 3). After discussing these issues with Tyler during his interview, we conclude that his statements were made in good faith. Nonetheless, they lack legal merit.

As noted, BAA hearings are public within the meaning of the Connecticut Freedom of Information Act, C.G.S. § 1-200 et. seq. ("FOIA"). Anything discussed with, or submitted to, the BAA is subject to public disclosure. Della Froment confirmed, "once…any document or any information [is] presented to the Board of Assessment Appeals it then becomes public information." (Interview with Della Froment, pt. 2, p. 11, ¶¶ 11-17; Enfield-3660). While Denise Hames does not record Weston's BAA hearings, she confirmed that she, "would not have any concerns about recording them. They are public meetings…so there really shouldn't be a concern about recording. There's no confidentiality breach if a meeting is recorded…once [documentation is] submitted to the Board of Assessment Appeals it is an open document." (Interview with Denise Hames, p. 9-10, ¶¶ 21-23; 1-7; Enfield-3987-88).

There may be a degree of merit to Chairman Tyler's second argument regarding the "chilling effect" of recording appeal hearings.[12] However, the possibility that some taxpayers may feel intimidated by having the audio of their appeal hearing recorded is not a sufficient basis for disregarding the Town's request to record. Any time a member of the public chooses to address a municipal board or commission, whether it be the BAA, planning and zoning, inland wetlands or the Town Council, they subject themselves to the possibility of being recorded. If

[12] With that said, drawing a comparison between recording public hearings and "being interrogated at an inquisition" certainly overstates the argument and strains credibility.

that possibility is a sufficient deterrent for the individual taxpayer, he or she can always have an authorized representative or legal counsel appear before the BAA on his or her behalf.

Therefore, the Town has the legal right to record its BAA hearings. Similar to the Assessor attending the hearings, however, it may not be the best practice. As noted, neither Paul Friia nor Denise Hames record their respective towns' BAA appeal hearings. It is our understanding that the Towns that do record typically do so at the request and for the benefit of their BAA members. Certain BAAs find it useful to refer to an audio recording during their deliberative sessions, particularly when an appeal was heard by an individual board member and not the entire BAA. This is not the case in Enfield. The individual BAA members are publicly opposed to mandated recording. Unless the BAA members are listening to the recordings during their deliberations, they are of little practical utility and will be likely be perceived by the BAA as an attempt to monitor their legitimate activities.

Lastly, any attempt by the Assessor or the Town to record the hearings should be transparent, open and obvious. During our investigation, Helems was accused of hiding recording devices in the BAA hearing room. Based upon the totality of the evidence, we find these accusations to be exaggerated at best. Nonetheless, under no circumstance should recording devices be planted or clandestinely placed in the BAA hearing room. Taxpayers should be notified that the hearings are being recorded.

iii. Conducting Property Inspections

It is well-established that an assessor cannot inspect the interior of a residential or commercial property without the permission of the property owner. Connecticut court have held that such an inspection of the interior of a property constitutes a search within the meaning of the Fourth Amendment of the United States Constitution. See Parnoff v. Stratford, Docket No.:

HHB-CV13-60308520S, 2018 WL 10094272 (Nov. 26, 2018) (Aronson, JTR); see also C.G.S. § 12-62(a)(3) defining "full inspection" and "fully inspect" as "to measure or verify the exterior dimensions of a building or structure and to enter and examine the interior of such building or structure in order to observe and record or verify the characteristics and conditions thereof, *provided permission to enter such interior is granted by the property owner or an adult occupant*." (Emphasis added).

C.G.S. § 12-62(b)(3) does permit the assessor to "at any time, fully inspect any parcel of improved real property in order to ascertain or verify the accuracy of data listed on the assessor's property record for such parcel." C.G.S. § 12-62(b)(3). As noted, the requirement that the assessor obtain permission from the property owner or an adult occupant thereof applies only to interior inspections.

Moreover, Connecticut courts recently affirmed that property owners "do not have a reasonable expectation of privacy in open fields beyond the curtilage of their homes and, therefore, a government official's inspection of an open field is not a 'search' within the meaning of the Fourth Amendment." Bassilakis v. Town of Bloomfield, HHB-CV20-6060278-S, 2020 WL 8023812 (Conn. Super. Ct., Nov. 17, 2020) (Klau, J.). Therefore, the Assessor possesses the legal authority to inspect the exterior of commercial and residential property for the limited purpose of ascertaining or verifying the accuracy of the data listed on the Assessor's field card. The Assessor may also inspect open fields and farmland.

Helems was not trespassing when he conducted unnoticed site visits to residential and agricultural properties. Both Paul Friia, the Westport Assessor, and Denise Hames, the Weston Assessor, confirmed that during a revaluation year it is simply impractical to schedule site visits with, and obtain the consent of, each individual property owner. Hames stated that she has

"never schedule[d] any meetings or consent to walk on properties. We show up, we're doing thousands of properties in a short timeframe. Even during a normal year we go out on inspections unannounced if someone has a permit or we're going through the reval[uation] process, we enter the properties without inspection notice, or without the homeowner…having to be there." (Interview with Denise Hames, p. 7-8, ¶¶ 20-21, 1-3; Enfield-3985-86). Paul Friia also conducts unannounced site visits, as needed, in Westport. At a minimum, however, he recommends ringing the doorbell, if the site contains a residential dwelling, and attempting to introduce oneself prior to conducting an exterior inspection and/or measurement of the property. This is the prudent course of action and best practice.

If a property owner refuses to permit the assessor to enter his property, the assessor always has the authority to conduct a field review of the property. A field review is defined by statute as "the process by which an assessor, a member of an assessor's staff or person designated by an assessor [i.e. a revaluation company] examines each parcel of real property in its neighborhood setting, compares observable attributes to those listed on such parcel's corresponding property record, makes any necessary corrections based on such observation and verifies that such parcel's attributes are accounted for in the valuation being developed for a revaluation." C.G.S. § 12-62(a)(2).

Of course, if a property owner denies an assessor's request to inspect the exterior or interior of a property for assessment purposes, then the assessor is entitled to use the best information that is reasonably available to him to carry out his statutory duty. The property owner, in such a case, cannot complain if the assessor, acting in good faith, makes an error in judgment in the valuation process of the assessment. See J.C. Penney Corp. v. Manchester, 291 Conn. 838, 845, 970 A.2d 704 (2009).

VI. 2021 ENFIELD REVALUATION – REVIEW OF VISION

As part of our investigation, we reviewed the work done by Vision. Vision is a Massachusetts corporation licensed to conduct business in Connecticut which specializes in municipal revaluation and the mass appraisal process. Vision has a high degree of experience with the Connecticut real estate market, having contracted with more than forty (40) Connecticut municipalities within the past two years and having completed more than one hundred (100) revaluation projects in the State over the last decade. Vision is well known and well respected as one of the leading providers of revaluation services and municipal software in New England.

Vision was hired by Enfield in 2010 to establish the market value of all real estate located within the municipality as part of the Town's 2011 Revaluation. Vision also conducted the Town's 2016 revaluation. In 2020, Vision was once again selected by the Enfield Town Council to handle the Town's 2021 revaluation. June Perry, Vision's District Manager, served as the Project Manager for Enfield's 2021 Revaluation along with James Williams, Vision's senior appraiser. Both June Perry and James Williams were interviewed as part of this investigation. Ms. Perry's and Mr. Williams' resumes are included in the Record (Enfield-2041 and Enfield-2036, respectively).

As of October 1, 2021, there were 15,908 taxable parcels located within the Town of Enfield. The parcels were broken down by primary property class as follows:

Table 6.1

Primary Property Class	Number of Parcels	Percentage of Town Total
Residential	14,575	91.6%
Commercial/Mixed Use	545	3.4%
Industrial	248	1.6%
Special	94	0.59%
Exempt	446	2.8%

Vision determined that the market value for all 15,908 properties in the Town of Enfield as of October 1, 2021 was **$3,395,083,660.00**. (Enfield-0244).

The Town of Enfield issued an RFP for revaluation services of real property associated with the 2021 Grand List on or about January 10, 2020. Vision submitted its proposal to the Town on January 23, 2020. The award of the contract was delayed due to the Covid-19 Pandemic until May 18, 2020.

On May 22, 2020, the Town issued a press release informing residents that Vision had been selected to assist with the 2021 revaluation. (Enfield-0180; App. 12). The Town also mailed prenotification letters to all property owners on or about June 12, 2020. As an aside, it is worth noting that not all municipalities elect to disseminate prenotification letters to their residents. In this respect, the Town's former assessor, Della Froment, exceeded the standard notice requirements. The Town also posted notice of Vision's scheduled exterior property inspections on the homepage of its website, in newspapers of general circulation, and on the Town's Facebook and Twitter accounts.

Vision commenced data collection in June 2020. Vision's data collectors visited each property in Town and conducted an exterior inspection to verify building measurements, size, condition, and quality of construction, as well as other improvements, utilities, topography and other pertinent characteristics of the underlying Property. The collection of exterior data enabled Vision to ensure accurate measurements both on main structures and outbuildings and to visually verify exterior characteristics of the properties and their condition. However, because of the pandemic, Vision did not conduct interior inspections as part of the 2021 Revaluation.

In lieu of interior inspections, Vision mailed each owner of improved real property a Residential Data Verification Report. Property owners were requested to verify that the property

information on file with the Assessor's office and Vision was accurate. If interior changes occurred since the last Town-wide Revaluation (i.e. 2016), property owners were asked to provide updated and/or corrected information and to return the data mailer to the Town. (Enfield-2038; App. 14).

After the initial data collection phase, Vision conducted a market analysis and valuation followed by field review of properties to re-check values and ensure uniformity and accuracy of information. Impact Notices (i.e. notices of new value) were mailed to each property owner of record setting forth the valuation that had been placed upon the property identified in the notice. (Enfield-2039; App. 15). Enclosed with the Impact Notice was information specifying the date(s) and time of informal public hearings. The informal public hearings afforded the public the opportunity to discuss with qualified members of Vision's staff the new valuations. During said informal hearings, Vision's staff were directed to explain the manner and methods of arriving at value. Any information received from the property owner, or their legal representatives, was given consideration and adjustments to value were made where warranted. Approximately two hundred and thirty (230) property owners scheduled information hearings with Vision. As a result of the informal hearings two hundred and ninety-one (291) Second Impact Notices were mailed to the property owners who scheduled and attended (remotely) the informal public hearings. The purpose of the Second Impact Notice was to provide the property owner with the original valuation determined by Vision and either an adjusted valuation based upon the information received at the hearing or a statement that no change to valuation was warranted. (Enfield-2040; App. 16). Both the Impact Notices and the Second Impact Notices contained information describing the property owner's rights to appeal the valuation, including the manner in which an appeal could be filed with the BAA.

It is our conclusion that Vision adhered to established best practices associated with municipal revaluations and produced an accurate and equitable valuation report for the Town. During our interviews, the general consensus was that Vision's process was fair and transparent and its final revaluation report was largely accurate and equitable. Vision's revaluation, however, was criticized by the BAA in its "Report on Decisions of Appeals of Assessments Heard in April, 2022 and Decided in May, 2022", dated May 28, 2022. (Enfield-0118; App. 4). Specifically, the BAA concluded that Vision's report "was more than just a little flawed." (Enfield-0118; App. 4). First, it is worth noting that OPM reviewed and certified Vision's work in conducting the 2021 Revaluation in Enfield. The State found no errors in Vision's report. (See Interview with June Perry, at 40:00). Likewise, BMPC reviewed Vision's Revaluation Manual and concludes that the BAA's criticisms are mostly unfounded.

First, the BAA felt that Vision misrepresented the scope of its review, in the context of land valuation, when it stated in its report that, "[t]his determination is also influenced by interviews with knowledgeable local brokers and real estate agents." See Vision Revaluation Manual (Enfield-2056; App. 13). The BAA felt that the above-quoted language "was demonstrably false and misleading." Upon inquiry, the BAA was allegedly informed by the Tax Assessor that "the only broker or real estate agent Vision interviewed was 'a woman from Wallingford', who…had not been involved in any real estate transactions in North Central Connecticut, let alone in Enfield." (Enfield-0119; App. 4).

June Perry confirmed that Vision did not interview knowledgeable local brokers and real estate agents as part of the revaluation process. Both Perry and Helems, however, confirmed that it is generally unnecessary to interview brokers and agents about local real estate transactions because sales data is readily available through other media. Perry did confirm that she consulted

with a real estate agent from Wallingford, Connecticut "a couple of times" for the limited purpose of obtaining Multiple Listing Service ("MLS") information that was not otherwise available to the public. The Wallingford real estate agent was not consulted, or relied upon, by Vision as an individual possessing personal knowledge or expertise with respect to the Enfield real estate market.

During her interview, Perry confirmed that it is unusual for Vision to consult with local real estate brokers and agents as part of a town-wide mass appraisal. Simply stated, local consultation is typically unnecessary due to the availability of sales data through other sources. For example, as part of the Enfield revaluation, Vision had access to market data from approximately five hundred (500) real estate transactions. However, Perry did admit that there are unique transactions where local knowledge and input is useful or, in rare instances, necessary. For example, Vision will, on occasion, consult with individuals possessing local knowledge when determining whether borderline or questionable sales constitute 'arms-length' transactions. In such instances, Perry stated that she consulted with and relied upon the former Assessor, Froment, and the Assistant Assessor, Rose, both of whom possessed knowledge of the Town's property owners, transactions and (in a general sense) its real estate markets.

Therefore, it is our conclusion that Vision's statement that it obtained information through interviews "with knowledgeable local brokers and real estate agents" was false and misleading. However, this misstatement is immaterial and did not affect the assessment of individual properties or the accuracy of the mass appraisal and revaluation. Nevertheless, the importance of communicating deliberately cannot be overstated. Each individual word and phrase imports meaning and significance. Moving forward, Vision should exercise additional caution to avoid similar misstatements. In the future, Vision should remove this statement from

its report for any given municipality where it conducts a revaluation unless Vision does, in fact, consult with "local brokers and real estate agents" as part of its revaluation work.

Additionally, in its May 28, 2022 report, the BAA criticized Vision for its "[f]ailure to provide consistent depreciation schedules for Residential (FY 2020 and FY 2021) as well as for Retail (FY 2020 only)." The BAA stated that "[a]n updated depreciation schedule reflecting retail cap rates for FY 2021 would have been fairer and more accurate." (Enfield-0119; App. 4). The BAA's complaint is not entirely clear to the undersigned. However, the Board appears to conflate depreciation schedules, which are integral to the cost approach to value, and capitalization rates, which are part of the income capitalization approach to value. Residential real estate is valued in a mass appraisal using the modified cost approach detailed in the preceding section. Depreciation applied in the modified cost approach is table driven and consistent. (See Interview with June Perry, 52:00). OPM reviewed the depreciation schedules used by Vision as part of Enfield's 2021 Revaluation and did not raise any concerns prior to certification. Income producing properties, on the other hand, are assessed using the income capitalization approach to value with the cost approach being used as a secondary check on value. Interview with James Williams. BAA member, Lori Longhi, accuses Vision of improperly relying on income and expense data from the prior year (i.e. FY 2020), to calculate commercial properties' market rent. It is our conclusion that Vision was justified in relying upon pre-pandemic income and expense ("I&E") statements. As a result of the pandemic and State-mandated shutdowns, Vision determined that actual income and expense data from FY 2021 was an outlier that did not reflect properties' income-generating potential. Reliance on such data could yield artificially depressed property values which would not reflect the fair market value of

the property as of October 1, 2021. This decision is within the purview of the revaluation company and the Assessor.

The BAA's third complaint alleged the creation of a "fountain of youth formula." See Enfield-0119; App. 4). The BAA alleged that this formula "made residential properties get younger as they aged, apparently in order to artificially inflate value for tax revaluation purposes." Once again, we have not seen any evidence to substantiate the BAA's accusation. There may have been instances where the condition of a property improved from "average" to "good" with no significant renovations or construction occurring during the interim period between revaluations (i.e. from 2016 to 2021). However, determinations of condition are based on physical observations made in the field by different data collectors. There will always be a degree of subjectivity as it relates to the evaluation of a property's condition.[13] That said, the revaluation company and the assessor should utilize consistent, and generally understood, guidelines and criteria for field assessing a property's condition. If a property owner feels that the condition of his or her property has been changed without justification, it is imperative that the property owner raise their concern with the revaluation company and/or the assessor. The evaluation of a property's condition can ordinarily be resolved through informal dialogue or a physical inspection. It is the recurring theme of this report, but, once again, open communication between the assessor and taxpayers is critical to a successful revaluation.

The majority of the public and the BAA's criticism is directed toward Helems. However, it is worth remembering that the bulk of Vision's data collection was conducted under the prior-assessor, Froment. Regardless, our review has not revealed any significant aberrations relating to the mass evaluation of property conditions. It is our conclusion that Vision and the Assessor

[13] Additionally, it is possible that the condition of a property was changed to correct an inequity from a prior revaluation. (See Interview with Denise Hames; Enfield-3993).

utilized generally consistent criteria for determining the condition of properties. While there may have been individual structures that could have justified a reevaluation by either Vision or Froment and/or Helems, we have found no evidence of any systematic or formulaic wrongdoing or an improper "fountain of youth formula."[14]

After interviewing Tyler and Longhi, it is apparent that much of their concern was focused on a figure known as Effective Year Built ("EYB"). In addition to accusations that Helems and Vision manipulated the EYB to reduce the age of structures and increase their assessment, there was also concern that Helems improperly altered field cards by suppressing EYB data from the public. These concerns are not justified and result from a misunderstanding of the EYB. A property's EYB does not independently impact its value. EYB is an after-the-fact calculation derived from a property's actual age (i.e. its year built) and its condition. Because EYB is based upon the condition of the property, it may be greater than or less than the property's actual age. For example, a residential home built in 1950 may have an EYB of 1990 if it is in good condition and has been well maintained.

Our interviews with Helems, June Perry, Paul Friia and Denise Hames confirmed that EYB is the byproduct of a property's actual, or chronological, age and its condition and utility. Furthermore, Helems did not improperly alter property field cards by suppressing EYB data. Each municipality operates slightly differently; however, it is not uncommon to suppress EYB on field cards. Neither Westport nor Weston report EYB on field cards. Paul Friia, the Westport Assessor, explained that most towns suppress EYB data because "not everyone understands what effective age [or EYB] is because you'll see the actual age, and then you'll see an effective age and…in my experience…it would [only] serve to confuse the issue. (Interview with Paul Friia; Enfield-4026). Denise Hames, the Weston Assessor, similarly confirmed that EYB "is not

[14] Additionally, it is worth noting that the difference between an average and good condition is only 5%.

something that needs to be disclosed to the public it only…mudd[ies] the waters. People wouldn't understand if they see their house was built in 1940, but the EYB showed 1972, because the property was maintained." (Interview with Denise Hames; Enfield-3989). Hames has served as the assessor in five Connecticut municipalities over a period of approximately thirty-five (35) years. She confirmed that she's "never had [the EYB] on a field card…[and she] would assume it's the rule of thumb in any municipality" to suppress the EYB data. (Interview with Denise Hames, Enfield-3990).

VII. APPLICATION OF PUBLIC ACT 63-490 ("PA490")

The principal complaint levied against Helems concerns his treatment of Enfield's farming and agricultural community and his decision to remove multiple properties' farmland, forest land and open space classifications under PA490.

a. Legislative History of PA490

In 1962, John Dempsey, the Governor of Connecticut, commissioned a joint study by the Department of Agriculture and Natural Resources and the Development Commission to develop a "continuing program of action to guarantee the open space resources which the future of [the] State demands." As part of this objective, William H. Whyte, a leading authority on both national and state open space conservation programs, was retained to prepare a report on Connecticut's natural resources. The Whyte Report stressed the importance of retaining farmland. It provided, "[w]ith a re-examination of tax assessment policy and through the provisions of the town grant program, a great deal can be done to reduce the pressure for haphazard development of prime farmland. This is important for the farmer it is every bit as important for the community."

In 1963, the Connecticut Legislature enacted Public Act 63-490 ("PA490"), an act concerning the taxation and preservation of farm, forest and open space. As stated by State Representative Robert Orcutt, PA490 changed "the present rule of valuation for farm lands, forest lands, and open space under certain conditions from the valuation on the basis of true and actual fair market value to a use valuation." Conn. Gen. Assembly, House (1963), 328.2s, C76prh, Leg. Ref. Vault 3.

PA490 is codified at C.G.S. § 12-107a through § 12-107f. C.G.S. § 12-107a and provides an unequivocal declaration of policy. It states, "it is hereby declared (1) that it is in the public interest to encourage the preservation of farm land, forest land, open space land and maritime heritage 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, 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, and (3) that the necessity in the public interest of the enactment of the provisions of sections 12-107b to 12-107e, inclusive, 12-107g and 12-504f is a matter of legislative determination." C.G.S. § 12-107a. The Supreme Court has determined that "the purpose of the tax relief is to aid the conservation effort, and not merely to aid food production itself." Johnson v. Board of Tax Review, 160 Conn. 71, 273 A.2d 706 (1970).

b. Classification of Farmland, Forest Land and Open Space

C.G.S. § 12-107b provides the following definitions:

Farm Land- means any tract or tracts of land, including woodland and wasteland and any underwater farmlands used for aquaculture, constituting a farm unit. C.G.S. § 12-107b(1).

Forest Land- means any tract or tracts of land aggregating twenty-five acres or more in area bearing tree growth that conforms to the forest stocking, distribution and condition standards established by the State Forester... and consisting of (A) one tract of land of twenty-five or more contiguous acres, which acres may be in contiguous municipalities, (B) two or more tracts of land aggregating twenty-five acres or more in which no single component tract shall consist of less than ten acres, or (C) any tract of land which is contiguous to a tract owned by the same owner and has been classified as forest land pursuant to the section. C.G.S. § 12-107b(2).

Open Space- means 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. C.G.S. § 12-107b(3).

c. Sale or Transfer of Farm and Forest Land

One of the principle complaints levied against Helems was that he removed properties' farm and forest land classification under PA490 without cause. For the most part, we find these complaints to be unfounded and unsubstantiated. First, we find that Helems was justified in removing PA490 farm and forest land classification for properties that had been sold at any time prior to October 1, 2021 without a new application having been filed. Similarly, Helems

correctly removed PA490 classification for farm and forest land properties transferred (as opposed to sold) after July 1, 2005 without a new application being filed.

C.G.S. § 12-504h is clear, "[a]ny such classification of farm land pursuant to section 12-107c, forest land pursuant to section 12-107d, open space land pursuant to section 12-107e…shall be deemed personal to the particular owner who requests and receives such classification and shall not run with the land. Any such land which has been classified by a record owner 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 or transferred by said record owner*." (Emphasis added) C.G.S. § 12-504h. It is immaterial whether the property is sold or transferred to, or inherited by, a family member, the new record owner must reapply in order to maintain farmland classification under PA490.

The BAA clearly misapplied C.G.S.§ 12-504h and conflated its application with C.G.S. § 12-504c. In its May 28, 2022 report, the BAA stated "[e]ven where a 'sale or transfer' or land has occurred Connecticut law provides that some transfers are 'excepted' [See: CGS Section 12-504c]." (Enfield-0124; App. 4) (bracket in original). This statement is incorrect as a matter of law. C.G.S. § 12-504c exempts certain transfers of farm and forest land from the *PA490 recapture conveyance tax*. As explained in the Connecticut Farm Bureau's publication, A Practical Guide and Overview for Landowners, Assessors and Government Officials, "[i]f land classified as farmland or forest land is sold or transferred within the first ten years of being classified and the record owner who classified the property has owned the land for less than ten years, then an additional conveyance tax is applicable to the total sales price of such land. The

additional conveyance tax shall be a declining percentage based upon either the number of years the land was classified, or the date title was acquired by the owner who classified the property, whichever is earlier, i.e. 10% in the first year of classification of ownership, 9% in the second year of classification or ownership, and so forth under 1% in the tenth year of classification or ownership. No additional conveyance shall be imposed after the tenth year of ownership." (Enfield-0923).

C.G.S. § 12-504c, however, exempts, inter alia, "deeds between spouses and parent and child when no consideration is received" and "property transferred as a result of death when no consideration is received" from said *recapture conveyance tax*. C.G.S § 12-504c(a)(5) and (11).[15]

Property owners who obtain title by way of one of § 12-504c's 'exempted transfers' are not excused from the reapplication requirement of § 12-504h. In fact, C.G.S. § 12-504c(b) clearly articulates that "[a]ny person who obtains title to land as a result of a change of ownership enumerated in subsection (a) of this section shall provide notice of such change of ownership to the assessor by completing a form prescribed by (1) the Commissioner of Agriculture if such land is classified as farm land pursuant to section 12-107c…" C.G.S. § 12-504c(b). Joan Nichols, Executive Director of the Connecticut Farm Bureau, confirmed that *any* transfer or change in ownership of land classified under PA490, even an exempted transfer under C.G.S. § 12-504c, requires a new application to the Assessor. (Interview with J. Nichols; see also Enfield-0927; App. 20 ("Landowners who transfer or inherit PA 490 classified land as one of the excepted transfer[s] under CGS 12-504c still need to reapply in order to maintain the PA 490 farm, forest, open space or maritime heritage classification.")).

As part of the 2021 Revaluation, Helems reviewed all PA490 properties on file. He determined that title to multiple properties had been transferred or conveyed over the years

[15] With certain limiting conditions.

without a new application. Notices were provided to the record owners as of the 2021 Grand List informing them that they would lose their PA490 classification if they did not submit a new application (see e.g. Enfield-0789; App. 17). Property owners who submitted new applications and were determined by Helems to be otherwise eligible for such classification, retained their PA490 classification. Property owners who neglected their statutory obligation and failed to submit a new application were correctly removed from the PA490 program and their properties were assessed at fair market value, i.e. on the basis of the properties' highest and best use. See C.G.S. § 12-63(a). Property owners removed from PA490 can retain their farmland or forest land status by simply reapplying to the assessor for reclassification.

The BAA, however, uniformly reinstated these properties' PA490 status on the 2021 Grand List. The BAA argued that Helems could not look back and consider previous transfers of farmland and forest land, exempt or not, because C.G.S. § 12-60 only authorizes an assessor to retroactively correct clerical errors or omissions for a period of three years. The BAA argued that the transfers or conveyances of PA490 properties were not clerical, but rather matters of substance. The BAA, for the most part, properly characterizes C.G.S. § 12-60; however, § 12-60 is not the applicable statute in this instance. The Assessor's authority to remove the properties' PA490 classification comes directly from C.G.S. § 12-504h, as discussed, and C.G.S. § 12-55 which defines the assessor's 'watchtower role.' § 12-55(b) permits the Assessor to "make any assessment omitted by mistake or required by law" prior to taking and subscribing to the oath upon the grand list.[16]

[16] The case of Griswold Airport, Inc. v. Town of Madison, 289 Conn. 723, 961 A.2d 338 (2008), the Supreme Court confirmed that an assessor's authority to terminate farmland, forest land or open space classification emanates solely from C.G.S. § 12-504h. The assessor cannot use Connecticut General Statutes § 12-55 as a mechanism for prematurely terminating a PA490 land use classification where either (i) the use of the land has not changed; or (ii) the land has not been sold or transferred by the record owner. The fact pattern in Enfield, however, was quite different. The properties' PA490 classification had already terminated. See C.G.S. § 12-504h ("Upon the sale or

The BAA erred in reinstating property owners' PA490 classification where no new application and/or forester's certificate (as applicable) was filed with the Assessor. The BAA erred in restating at least fourteen (14) properties that should not have received PA490 classification on the 2021 Grand List. This issue is illustrative of the larger problem in Enfield. There is a clear need for improved communication between the Assessor's office, the public and the BAA. In addition, the agricultural community must be informed regarding its responsibilities and obligations under PA490. Just because land is farmed does not entitle the landowner to receive farmland classification for assessment purposes. The farm owner must strictly comply with certain reporting obligations that are required by the General Statutes. The argument that a property must continue to be assessed under PA490 solely because "this property has been farmed by my family for ninety-five years" is insufficient as a matter of Connecticut law.

Additionally, Public Act 05-190 amended C.G.S. § 12-504f to require the town clerk to "notify the tax assessor of the filing in the land records of the sale of any [farmland, forest land or open space land classified under PA490]. Upon receipt of such notice the tax assessor shall inform the new owner of the tax benefits of classification of such land as farm land, forest land or open space land." Conn. P.A. 05-190; codified at C.G.S. § 12-504f.[17] This report does not make a determination as to whether the notice requirements set forth in P.A. 05-190 have been complied with. However, in the event they have not, it is critical that the Town Clerk notify the Assessor of the sale of any PA490 classified farmland, forest land or (if an open space assessment ordinance is adopted) open space land on a going forward basis.

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transfer of any such property, the classification of such land as farm land…forest land…[or] open space land…*shall cease as of the date of sale or transfer*.") (Emphasis added).

[17] C.G.S. § 12-504f has since been amended to include maritime heritage land. The Town of Enfield does not contain maritime heritage land and, as such, this subsequent amendment is not relevant to this report.

d. Removal of Open Space Classification

During the 2021 Revaluation, Helems removed approximately ten (10) properties' PA490 open space classification. Helems removed the classification because Enfield does not have an ordinance which permits the assessment of property as open space. The BAA uniformly reversed Helems' decision and reinstated the properties' open space designations. While we understand the logic behind the BAA's decisions (i.e. the properties were classified as open space under PA490 by the previous assessor and the use of the properties had not changed), it is our opinion that Helems correctly applied C.G.S. § 12-107e. The statute provides "[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, *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." (Emphasis added) C.G.S § 12-107e(a).

In Aspetuck Country Club, Inc. v. Town of Weston, the Supreme Court reviewed C.G.S. § 12-107e and emphasized the distinction between open space designation and open space classification under PA490. The Court stated, "it 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." Aspetuck Country Club, Inc. v. Town of Weston, 292 Conn. 817, 830, 975 A.2d 1241 (2009); citing Birchwood Country Club, Inc. v. Board of Tax Review, 178 Conn. Conn. 295, 299, 422 A.2d 304 (1979). "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…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." Aspetuck Country Club, Inc., supra 292 Conn. at 831. The Court held that "[t]his distinction between designation and classification indicates that open space designation [on a POCD] alone is not enough to make land eligible for open space classification pursuant to § 12-107e(b)…Something more than mere open space designation is needed…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." Id. at 832. The Court's interpretation is consistent with the statute's legislative history ("the purpose of the bill [P.A. 79-513] 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…"). 22 S. Proc., Pt. 15, 1979 Sess., p. 5064 (Senator Audrey Beck).

Therefore, a property's designation as 'open space' in the Town's plan of conservation and development ("POCD") is insufficient, in and of itself, to justify its classification as open space land for tax assessment purposes. Approval of said classification *for tax assessment purposes* by a majority vote of the Enfield Town Council is also required. In practice, this second step generally requires the adoption of a municipal ordinance. See Interview with Todd Helems (Enfield-03551), Interview with Paul Friia (Enfield-4031), Interview with Denise Hames (Enfield-3993-94) and Interview with Joan Nichols; see also Connecticut Farm Bureau's publication, A Practical Guide and Overview for Landowners, Assessors and Government Officials (Enfield-0919; App. 20) ("Unlike the PA 490 farmland and PA 490 forest land

classifications which are mandatory on all towns statewide, PA 490 open space is a classification that is an option for a municipality to adopt…The municipality adopts an Open Space Assessment Ordinance which stipulates the qualification criteria for the open space classification in that municipality. This criteria establishes the minimum acreage as well as requiring that the land be completely unimproved and undeveloped."). As of the 2021 Revaluation, the Town of Enfield did not have an Open Space Assessment ordinance. Accordingly, properties within the Town's municipal borders were not eligible for open space classification for tax assessment purposes under PA490 and C.G.S § 12-107e.

Furthermore, the properties previously assessed as open space land cannot claim any vested right to continue to be assessed as open space just because the previous tax assessor or BAA erroneously assessed it as open space. Aspetuck Country Club, Inc., *supra* . 292 Conn. at 834 ("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…Such a designation does not, therefore, create a vested right."); see also Machholz v. Town of Bloomfield, Docket No. CV10-6005915-S, 2011 WL 6413771 (Conn. Super. Ct., Dec. 2, 2011) (Aronson, JTR). Therefore, this report concludes that Helems properly removed all PA490 open space classifications in Enfield on the 2021 Grand List, and the BAA erred by reinstating those classifications.

It is our understanding that the planning and zoning commission is in the process of updating Enfield's POCD. The Town Council is aware of the Town's lack of an assessment ordinance and the multi-tiered requirements of C.G.S. § 12-107e. Property owners who were impacted by the removal of their PA490 open space classification on the 2021 Grand List may

want to contact their Town Council members and advocate for the adoption of a municipal open space assessment ordinance.

e. Exclusion of Wooded Lots from Farm Unit

C.G.S. § 12-107b defines farm land as "any tract or tracts of land, including woodland and wasteland, *constituting a farm unit*." C.G.S. § 12-107b(1) (emphasis added). The Connecticut General Statutes, however, do not define the term "farm unit." Historically, Enfield assessors treated separate wooded parcels abutting an operational farm and under common ownership as part of the "farm unit" for PA490 tax assessments purposes. This historic practice changed in 2021 when Helems removed these lots' farmland classification. He justifies this decision by stating that each *taxable parcel* must be reviewed for PA490 status independently. In practice, this means that each lot must either qualify as farmland or be certified as forest land (since Enfield does not presently have an open space ordinance). Pursuant to C.G.S. § 12-107, Helems reviewed each parcel for farmland status and considered, inter alia, "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 and value of the equipment used in connection therewith, and the extent to which the tracts comprising such land are contiguous." C.G.S. § 12-107c(a).

There is not a significant body of case law on the definition of "farm unit." In NF & W Cooke Ltd. Partnership v. Town of Branford, the superior court determined that "[o]nly a few cases have discussed the meaning of the term, 'farm unit,' as provided in § 12-107b." NF & W Cooke Ltd. Partnership v. Town of Branford, 2012 WL 5447973 (Conn. Super. Ct., Oct. 11, 2012) (Fischer, J.). In Johnson v. Board of Tax Review of the Town of Fairfield, the Supreme Court concluded that C.G.S. § 12-107b was ambiguous. To further define the word "farm" in the

statute, the Court considered the meaning of the words "agriculture" and "farming" specifically provided in C.G.S. § 1-1. Johnson v. Bd. of Tax Review, 160 Conn. 71, 74-75, 273 A.2d 706 (1970). To define the word "unit," it relied on Webster's Third New International Dictionary, which provided the following definition: "a single thing…that is a constituent and isolable member of some more inclusive whole." Id. at 75. However, it has also been noted that "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." Marshall v. Town of Newington, 156 Conn. 107, 111, 239 A.2d 478 (1968). In Holloway Bros., Inc. v. Avon, a trial court determined that a tract of woodland was not part of a farm unit when it was located approximately three miles away from the taxpayer's operational farm. The court concluded, "[t]his land is a wooded area not even part of a farm unit. It is a completely wooded area detached from [the other parcels]. In a sense it was abandoned land, nonproductive income wise and agriculturally." Holloway Bros., Inc. v. Avon, 26 Conn. Sup. 160, 162, 214 A.2d 699 (1965). Similarly, in NF & W Cooke Ltd. Partnership, the trial court determined that a wooded lot separated from the taxpayer's operational farm by approximately 1.5 miles and Interstate 95 was not a part of the farm unit. The court found that "[t]here is no evidence that when the plaintiffs submitted their Form M-29 application…the property was a constituent and isolable member of any farming operation." NF & W Cooke Ltd., *supra* at *8.

These cases do not stand for the proposition that noncontiguous lots cannot, as a matter of law, be a constituent part of a farm unit. In both cases it was determined that no farming-related activity occurred on the separate wooded lots. See Holloway, *supra* (as to the tract of woodland, "some of the trees many years ago had been cut for wood, but in recent years nothing was done with [the] area."); NF & W Cooke Ltd., *supra* ("The property was once a portion of [the farm],

until the property was separated by the installation of Interstate 95 in 1955. Since 1955, no commercial crop has been grown or harvested on the property.").

There is no bright-line test for determining whether a separate wooded parcel is part of a farm unit. All determinations must be made by the Assessor on a case-by-case basis. For example, a noncontiguous wooded lot *may* be classified as part of a farm unit. However, in the case of a noncontiguous lot, there must be an identifiable nexus between the lot and the operation of the farm. (i.e. the noncontiguous parcel must be incidental to the farming operation). See Connecticut Farm Bureau's publication, A Practical Guide and Overview for Landowners, Assessors and Government Officials (Enfield-0914; App. 20).

For contiguous parcels, Helems applied a bright line rule that woodland cannot be considered part of a farm unit if it is not located within the same taxable parcel; i.e. a separate wooded parcel (whether contiguous or not) cannot be classified under PA490 as a constituent part of the farm unit. This bright line rule is contrary to the intent of PA490 and should not have been applied. Woodland has historically been a valuable part of the farm unit. Woodland may be actively utilized for livestock grazing or timber production. It may also provide a more passive utility, such as providing a vegetative buffer for agricultural uses, protection from erosion and stormwater runoff, wildlife and habitat protection or an opportunity for future expansion. On a case-by-case basis, any of these uses of contiguous woodland may be determined to be incidental or supplementary to the farming operation. Whether the contiguous woodland is part of the same taxable lot as the active farming operation or is located on a separately taxed lot is neither determinative of, nor particularly relevant to, the determination of what constitutes a farm unit. In either instance, the woodlands provide the same benefit to the active farming operation. Our interpretation is guided, in significant part, by the Supreme Court's declaration that the purpose

of PA490 "is to aid *the conservation effort*, and not merely to aid food production itself." Johnson v. Board of Tax Review, 160 Conn. 71, 273 A.2d 706 (1970) (emphasis added).

Helems removed multiple wooded parcels from PA490 farmland classification in 2021. A case-by-case determination of whether those declassifications were justified exceeds the scope of this report. However, based upon our interpretation and analysis of the statutes and relevant case law, this report concludes that it is improper to remove a wooded lot's PA490 farmland classification *solely* on the basis that the lot is a separate taxable parcel.[18]

f. Reclassification of Soil Type

C.G.S. § 12-63 provides that the present true and actual value of land classified as farmland pursuant to Section 12-107c shall be based upon its current use without regard to neighborhood land use of a more intensive nature. See C.G.S. § 12-63. Therefore, when assessing farmland, "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, since…the declared purpose of [PA490] is intended to grant favorable treatment to such property to prevent its forced conversion to more intensive use." (Emphasis added) Rustici v. Town of Stonington, 174 Conn. 10, 13, 381 A.2d 532 (1977); see also Rolling Hills Country Club, Inc. v. Board of Tax Review, 168 Conn. 466, 470, 363 A.2d 61 (1975).

The legislative history of PA490 is clear. As representative Orcutt explained, "This bill changes the present rule of valuation for farm lands, forest lands, and open space land under certain conditions from the valuation on the basis of true and actual market value to a use

[18] It is worth noting that Helems returned wooded lots to PA490 farmland classification if the lots had always been wooded (i.e. there had been no change in use) and had not been sold or transferred. While Helems stated that he did not agree with the initial designation of said lots as part of a Farm Unit in accordance with C.G.S. § 12-107(a), he recognized his lack of authority under the statute to remove said designation. This is an instance of Helems correcting an initial misapplication of PA490.

valuation." Connecticut General Assembly House Proceedings, Vol. 10, Part 11, May 31-June 1, 4247 (1963).

The C.G.S. provide that the OPM in consultation with the Commissioner of Agriculture shall develop a recommended schedule of land use values for PA490 valuation. The recommended values are updated every five years and made available to all Connecticut municipalities and to the general public. Enfield uses the land use values recommended by OPM and the Commissioner of Agriculture. Though we have not surveyed all 169 Connecticut municipalities, we are not aware of any municipality that elects not to use the recommended values. The land use classifications are as follows:

Table 7.1

Land Class Number	Land Class Type	Land Description	Soils and Limitations
1	Tillable A	Excellent Shade Tobacco, ball and burlap nursery, crop land	Light, well drained, sandy loams, typically flat or level, no stones
2	Tillable B	Very Good. Binder tobacco, vegetables, potatoes, crop land	Light, well-drained, sandy loams, typically level to slightly rolling, may have stones
3	Tillable C	Very Good to Good. Quite level. Corn Silage, hay, vegetables, potatoes, crop land	Moderate heavier soils, level to rolling, may have stones
4	Tillable D	Good to Fair. Moderate to considerable slope. Hay, corn silage, rotation pasture, crop land.	Heavier soils, may be sloped and hilly, stones and seasonal wetness may be limiting factors. Christmas trees.
5	Orchard	Fruit Orchard. Well-maintained trees for the purpose of bearing fruit	May include grapes and berries
6	Pasture	Permanent pasture, not tilled, grazing for livestock and horses.	May be heavier soils that are too wet or stony to till for crops,

			may be wooded area. Christmas trees.
7	Swamp, Ledge, Scrub Lands	Wasteland. Wetlands, ledge and outcroppings	Non-farmable areas that also make up the farm unit.
8	Woodland, Forest	Woodland associated with the farm unit	Non-farmable areas that also make up the farm unit.

OPM, in consultation with the Commissioner of Agriculture, recommended the following land use values as of October 1, 2021:

Table 7.2		
CATEGORY	**STATE-WIDE**	**RIVER VALLEY**
Tillable A	$1,880	$2,530
Tillable B	$1,280	$1,810
Tillable C	$1,110	$1,690
Tillable D	$850	$1,170
Orchard	$990	$990
Pasture	$280	$280
Swamp, Ledge, Scrub	$40	$40
Woodland, Forest Land	$390	$390

The following municipalities are part of the River Valley, Bloomfield, Cromwell, East Granby, East Hartford, East Windsor, Ellington, Enfield, Glastonbury, Granby, Manchester, Portland, Rocky Hill, Simsbury, Somers, South Windsor, Suffield, Vernon, West Hartford, Wethersfield, Windsor and Windsor Locks.

One of the principal complaints levied against Helems is that he reclassified agricultural land without justification. By way of example, Helems reclassified just under fifteen acres of farmland located at 45 Charnley Road from Tillable C to Tillable B based upon the soil classification of two abutting properties. (See Interview with Todd Helems, Pt. 5, p. 3-4 ¶¶ 21-22, 1-12; Enfield-3592-93; Enfield-0167)

There are several other instances of Helems reclassifying the land class type based upon adjoining properties and/or previous filings submitted for the same parcel. Helems actions in this

regard raise several concerns. The first, and most obvious, issue is whether the assessor possesses the knowledge and/or expertise required to properly identify the land class based upon the soils and the lands' limitations. We discussed this issue with Denise Hames, the Weston Assessor. Ms. Hames explained that the classification of agricultural land typically exceeds the scope of an assessor's expertise. She testified that she typically accepts the land use classification provided by the property owner. In rare instances, where the proper classification is disputed, Ms. Hames recommends deferring to a soil scientist and/or the Connecticut Farm Bureau.

The second, and more interesting, legal question raised by Helems' actions is whether farmland should be valued based on its actual use or what we will informally refer to as the property's presumed "highest and best *farm use*." By this, we do not mean its "highest and best use" within the meaning of C.G.S. § 12-63. To value farmland as a residential subdivision, for example, would clearly contravene the intent of PA490 and the plain and unambiguous language of C.G.S. § 12-107a and 12-107c. What we mean by "highest and best farm use" is the most valuable (i.e. highest) agricultural use of PA490 farmland. For example, assume Farm A sat on twenty (20) acres. The topography of Farm A was flat and the property was free of glacial stones. For the sake of this hypothetical, let's assume that an abutting farm, Farm B, possessed similar a topography and light, well-drained loamy soils. Farm B grows shade tobacco. Based upon their similar topographies and proximity, the assessor assumes that Farm A could also cultivate shade tobacco, which is classified and assessed as Tillable A. However, Farm A does not cultivate shade tobacco. It grows corn, which is classified and assessed as Tillable C (a generally less profitable use than growing shade tobacco). In this hypothetical, should Farm A be assessed based upon its presumed highest agricultural use (i.e. shade tobacco) by taking into

account its physical characteristics and topography and actual use of abutting farms, or its actual use at the time of valuation (i.e. growing corn)?

Based upon our review of Connecticut case law and the statute's legislative history, there does not appear to be a clear answer to this hypothetical. We addressed this ambiguity with Joan Nichols, the Executive Director of the Connecticut Farm Bureau. Ms. Nichols confirmed that the land use classifications were created to "reflect the productivity of the soils." Interview with J. Nichols. Higher quality, more productive or fertile soils were intended to be assessed at a higher rate. The Tillable A, B, C etc., distinction was created by the Department of Agriculture and OPM to assist assessors who, generally speaking, are not qualified to identify and classify soil type and productivity.

Generally, however, it is the farmers, not the assessor, who best know their land and the productivity of their soils. It would be unusual for a farmer to forego a more profitable and productive use of his or her land to obtain a slightly reduced assessment for property tax purposes. It is recommended that Helems rely on the soil classifications provided by the farmers. If there is a legitimate ground for disputing the farmer's classification, and the dispute cannot first be resolved by earnest communication between the parties, resort can be made to various soil mapping programs provided by the Department of Agriculture ("DOA") or a certified soil scientist. Upon request of either party, the DOA will issue an advisory opinion as to the proper soil classification. If it is necessary to go that route, it is recommended that the assessor abide by any such DOA or soil scientist opinion letter or report.

There were additional instances where Helems removed wetland acreage from a PA490 farm unit based upon his determination that the lot did not contain wetland soils (see e.g. 25 Park Street). During his interview, Helems reiterated that he is not a soil scientist and confirmed that

his decisions were informed by the Town's official wetlands map. (Interview with Todd Helems, pt. 5, p. 29, ¶¶ 4-19; Enfield-3618). This is not a best practice. Per the Town's Inland Wetlands and Watercourses Regulations, the Town's official wetlands map delineates only "the *general* location and boundaries of inland wetlands and the *general* location of watercourses…In all cases, the precise location of wetlands and watercourses shall be determined by the actual character of the land, the distribution of wetland soil types and location of watercourses." Town of Enfield IWWA Regs. § 3.1.

The Town's wetlands map is a valuable, albeit inexact, resource. It should not be relied upon as the sole authority for declassifying wetland acreage within a PA490 farm unit. As noted, the individual farm owners know their properties. It is unlikely that a farmer would misclassify and/or abandon otherwise productive arable land for a slight reduction in assessed value. However, if there is a significant discrepancy between a farmer's PA490 application and the Town map, the best practice would be to first conduct additional research prior to declassifying a portion of the lot. This additional research may be as straightforward as conducting a site visit, conferring with the Town's Conservation Director or, in an extreme case, consulting with a soil scientist.

VIII. CONDUCT OF THE BOARD OF ASSESSMENT APPEALS

The BAA is designed to serve as an appeal body for taxpayers. It is not the role of the BAA to value taxable property or to preempt the role of the Assessor. The Enfield BAA should be commended for handling a significant number of appeals from the 2021 Grand List. Its members, particularly Lori Longhi, often went above and beyond what is typically expected of a BAA in terms of compiling data and drafting comprehensive notes. However, in several notable respects, the BAA exceeded the permissible scope of its review and exercised authority that it

does not possess under the General Statutes. First, the BAA's "Report on Decisions of Appeals of Assessments Heard in April 2022 and Decided in May, 2022" dated May 28, 2022, was, at best, a misguided and unnecessary attempt to validate the Board's work and to vilify Helems. See Enfield-0118; App. 4. The preamble states that the purpose of the BAA's report was "to provide future guidance for the Tax Assessor's Office as well as for the public." That statement was incorrect. It is not the role of the BAA to provide either the Assessor or the public with guidance.

The report far exceeds the permissible bounds of BAA review. It is openly critical of the mass appraisal and revaluation conducted by Vision. It concludes that Vision's report, "was more than just a little flawed." (Enfield-0118, App. 4). As discussed in Section VI, *supra,* we have not found evidence to substantiate any of substantive allegations levied against Vision.[19] The BAA's report repeatedly criticizes Helems and accuses him of creating a confrontational atmosphere. It details the BAA's disagreement with the Assessor's interpretation and application of the law. It contains sensationalist headlines and hyperbolic language, instead of presenting objective fact. (i.e. "The 'Farm Inspection' was more like a '*Farm Invasion*'" and "Tax Assessor's Methods Used to Obtain Motor Vehicle Information from Property Owners was *very Disturbing*") (Emphasis supplied).

Moving forward, it is highly recommended that the BAA adhere to its statutorily mandated role of hearing and deciding appeals timely filed by aggrieved taxpayers. The BAA, as a municipal board, should not issue similar reports in the future. The report contains several mischaracterizations and misstatements of law which serve only to inflame public opinion. If the Town has continued concern regarding the BAA's conduct and its application of the law, it may

[19] Additionally, as noted, Vision's report was reviewed and approved by OPM.

request that the Secretary of the Office of Policy and Management ("OPM") or the State Attorney investigate any irregularities.

a. BAA Decisions in Conflict with Connecticut Law

The BAA's decisions on the 2021 Grand List reduced the total taxes due to the Town of Enfield by approximately $650,000.00. This report does not address each appeal on a case by case basis. Nor does it address differences in opinion as to valuation. Such an analysis exceeds the scope of this report. However, there were several instances where the BAA improperly exempted real estate or reduced the value of real estate to zero, in effect an illegal de facto exemption. These outlying cases will be addressed in turn. Additionally, moving forward, it is proper for the assessor to correct these errors on an interim basis, prior to the next town-wide revaluation. See C.G.S. § 12-55.

i. Nutmeg Solar, LLC Tax Stabilization Agreement

The BAA heard three appeals filed by Jarmoc Farms LLC and Jarmoc Real Estate LLC. Appeals 307, 308 and 309 involved three taxable parcels identified as 65 Broad Brook Road, Broad Brook Road (M/L 102/0050) and Broad Brook Road (M/L 108/0006). (See BAA 0811-0842). The BAA reduced the assessment of 65 Broad Brook Road from $1,024,900 to $0.00; the assessment of Broad Brook Road (M/L 102/0050) from $359,200 to $0.00; and the assessment of Broad Brook Road (M/L 108/0006) from $614,300 to $0.00. In a written memoranda signed by its Chairman, Tyler, the BAA noted that "[p]ursuant to the terms and conditions of a certain agreement dated February 3, 2020 by and between the Town of Enfield and Nutmeg Solar, LLC…real estate taxes on this property are due from Nutmeg Solar, LLC, not the appellant." (BAA-0812). Tyler adds, "To allow the tax assessor to levy the same tax on the same property twice cannot be tolerated." (BAA-0812). The BAA erred by reducing the assessment of the three

properties to zero. This mistake is likely predicated on the BAA's misinterpretation of the above-referenced Tax Stabilization Agreement.

In February 2020, the Town of Enfield and Nutmeg Solar, LLC ("Nutmeg") entered into a Property Tax Stabilization Agreement (the "Agreement") (Enfield-0959; App 18). In order to facilitate the development of a 19.6 megawatt solar photovoltaic facility, the Town agreed to abate real estate taxes for a period of time (i.e. the "Abatement Period") on certain parcels of real estate, subject to options to purchase held by Nutmeg, which were specifically identified within the Agreement. Section 3(b)(i) of the Agreement provides, "[d]uring the Abatement Period, the Town shall abate all Town property taxes that in the absence of this Agreement would be imposed against *the Property*. In lieu of all such abated taxes, Nutmeg for each year in the Abatement Period shall make an annual payment to the Town in the fixed amount of $319,432 ("Project Taxes")." (Enfield-0961; App. 18) (Emphasis added). Additionally, Section 4 of the Agreement clarifies that "[t]he Project Taxes shall be considered real and personal property taxes imposed and collected by the Town on *the Property*; shall represent the sole property tax payments to be made by Nutmeg to the Town with respect to *the Property*; and shall be accepted by the Town in full satisfaction of any property taxes due on *the Property*." (Enfield-0962; App. 18) (emphasis added).

The Agreement defines the term "Property" as "all real property that is owned by Nutmeg and identified on Exhibit A as Property *subject to Options to Purchase*…" Exhibit A is found on page 11 of the Agreement (Enfield-0969), and provides as follows:

Property subject to Options to Purchase

Assessor's Map Number	Lot Number	Owner as of Effective Date
109	4	Laura M. Jarmoc
109	40	Laura M. Jarmoc
109	18	Laura M. Jarmoc

109	12	James T. Lefebvre
109	13	James T. Lefebvre
109	3	David J. & Donna L. Waleryzak

Property subject to Ground Leases

Assessor's Map Number	Lot Number	Owner as of Effective Date
102	48	Jarmoc Farms, LLC and Jarmoc Real Estate, LLC
102	50	Jarmoc Farms, LLC and Jarmoc Real Estate, LLC
108	6	Jarmoc Farms, LLC and Jarmoc Real Estate, LLC

The terms of the Agreement are clear and unambiguous; the tax abatement provisions of the Agreement apply only to those six properties identified in Exhibit A as subject to Nutmeg's option to subject. The tax abatement provisions clearly do not apply to the three parcels subject to ground leases (i.e. the parcels at issue in BAA appeals 307, 308 and 309).

This report does not comment on the Assessor's valuation of the parcels 307, 308 and 309 on the 2021 Grand List. The BAA may have been justified in reducing the assessments in accordance with the property owner's estimate of fair market value. However, it was a clear error for the BAA to exempt the properties and reduce the assessments to zero. It is important to preface this analysis; the BAA is composed of laypersons.[20] BAAs are not charged with reading and interpreting legal documents and contracts. If the BAA had questions regarding the scope or applicability of the Agreement, it should have requested input from the Town Attorney.

What is problematic about this particular case is that the BAA did not exempt the same three properties on the 2020 Grand List. The property owner, Jarmoc Farms, LLC and Jarmoc Real Estate, LLC, appealed the assessment of the same three parcels to the BAA on the Grand List of 2020. Donna Dubanoski and Lori Longhi both sat on the BAA in 2020. The Assessor in

[20] The Chairman, Thomas Tyler, is an attorney licensed in the State of Connecticut.

2020, Froment, did not exempt the properties as it was clear that they were not subject to the Agreement's tax abatement provisions. The BAA accepted Froment's assessments and denied the appeals filed by Jarmoc Farms, LLC and Jarmoc Real Estate, LLC. (See BAA Appeals Nos. 17, 18 and 19 (Enfield-1045).

One year later, under Helems, the BAA (composed of two of the three 2020 members) reversed course and reduced the assessment of the three subject parcels to zero. Froment reviewed the memorandum prepared by Tyler and attached to the BAA's 2021 decision to exempt the properties and confirmed that she did not understand how the BAA "came up with that result." (Interview with Della Froment, p. 5, ¶ 22-23; Enfield-3654). She further confirmed that she was involved in the Town's negotiation of the Agreement and that the BAA's decision to exempt the properties was incorrect. (Id.; Enfield-3654-3656).

What the BAA determined was a proper assessment in 2020, under Froment, was characterized as the double taxation of property that could not "be tolerated" in 2021 under Helems. (See BAA-0812). This report draws no definitive conclusions regarding the intent of the BAA or its individual members.[21] The BAA, however, is an impartial municipal body. Its purpose is neither to assist the appealing property owner nor support the decision of the assessor. Its decisions must not be influenced by their distrust of, or disdain for, the new Assessor, Helems.

ii. 78 Park Avenue, Enfield, CT

The BAA additionally reduced the assessment of real estate owned by David Longhi and Board Member, Lori Longhi, located at 78 Park Avenue, Enfield, Connecticut from $45,900 to $0.00. (See Appeal No. 352). As of October 1, 2021, 78 Park Avenue was a 0.13-acre

[21] The undersigned's attempts to question the undersigned about these decisions were cut short by the individual members' counsel, Attorney Rachel Baird.

residentially zoned parcel improved with a two-car garage. Mr. and Mrs. Longhi acquired the property via tax collector's deed following a 2016 tax sale administered by the Town of Enfield. (A copy of said tax collector's deed is available in Volume 2654 at Page 982 of the Enfield Land Records; Enfield-0193). The deed to Mr. and Mrs. Longhi contained an incorrect property description which affected its marketability. However, 78 Park Avenue was assessed on the 2020 Grand List by the previous assessor, Froment, and the real estate taxes were paid in full.

The assessment of 78 Park Avenue increased following the 2021 Revaluation. As noted, this report does not comment on individual valuations. It is certainly plausible that the lot was over assessed in 2021.[22] Had the appellant presented persuasive evidence of overassessment, the BAA would have been justified in reducing the value of 78 Park Avenue. It was improper, however, to ascribe no value to the property and to reduce its assessment to zero on the 2021 Grand List.

There is no legal support for the BAA's decision. This report acknowledges that there are unique circumstances where properties are assessed at nominal or no value due to restrictions or covenants which effectively preclude their use. See e.g. Breezy Knoll Ass'n. Inc., v. Town of Morris, 286 Conn. 766, 946 A.2d 215 (2008) (common areas should have been assessed at no more than nominal value due to easements and restrictions which rendered properties unmarketable); Konover v. West Hartford, 242 Conn. 727, 699 A.2d 158 (1997) (Assessor, believing portion of property was subject to public roadway easement, assigned portion no value).

[22] It is equally plausible that it was underassessed in 2020.

78 Park Avenue was neither so encumbered nor restricted. It was a developable lot.[23] Mr. and Mrs. Longhi could have developed, occupied or leased the property regardless of the title defect. See e.g. Pfister v. Madison Beach Hotel, LLC, 341 Conn. 702, 734, 267 A.3d 811 (2022) (zoning regulates the use, not the ownership, of property). In fact, on November 29, 2022, the Enfield Zoning Board of Appeals ("ZBA") granted a variance application filed by Maiden, Builders, LLC (a contract purchaser) to allow the construction of a two-family home on the property. (Enfield-0264; Enfield-0216). A special permit and site plan application for the subject property was filed with the Enfield Planning Department in December 2022 (Enfield-0189).

78 Park Avenue had value as of the 2021 Revaluation date. As noted, the only issue was the title defect which would require corrective action prior to the sale of the property or prior to obtaining bank financing. A corrective quit claim deed which rectified the title defect was signed on April 3, 2023 and recorded on the Enfield Land Records on April 21, 2023 (one day after the BAA heard the Longhi's appeal).

We discussed this matter with Hames and Friia. Both independent assessors concluded that there is no basis under the Uniform Standards of Professional Appraisal Practice ("USPAP") for reducing the assessed value of 78 Park Avenue to zero and, in effect, treating the property as tax exempt. Hames stated, "First of all, I don't believe anything has a zero value, especially [a] parcel of land but because there's a title issue that is not something that's going to affect the value of the land…The title would be straightened out, and they would always have the ability to either rent it out and then at some point sell it. So it still maintain[s] a value." (Interview with Denise Hames, p. 23, ¶¶ 8-14; Enfield-4001). Similarly, Friia stated, "I can't imagine that [the] property would be worth zero, there's always going to be some value to the property. Certainly, I

[23] Moreover, the property's existing two-car garage provides *some* value. Depending on the condition of the garage that value may be nominal, but its greater than zero.

suppose at the very least if you wanted to build a house there and lived there for twenty years…there's value to that to that land. Yeah, I'm having a hard time believing anything like [the title defect] would…have such a significant effect on that property where that land would be worth zero…to me it's not it's not reasonable." (Interview with Paul Friia, p. 30, ¶¶ 4-9; Enfield-4036).

Tyler explained his decision to reduce the assessment of 78 Park Avenue to zero. During his interview, he clarified that "it was the Town that either made [the property] unmarketable, or refused to cooperate in…removing the impediment so that it would be marketable…so under…those circumstances I didn't think [the property] had a value on it that the Town should be collecting taxes on." (Interview with Thomas Tyler, Enfield-3788). He relied, in part, on a Stipulated Judgment entered in the matter of Marilyn Tyler v. Town of Enfield, Docket No. HHD-CV09-5032569-S (Conn. Super. Ct., Oct. 7, 2016) (Enfield-2422). In that case, the plaintiff filed a six-count complaint against the Town alleging trespass, private nuisance, violation of C.G.S. § 13a-138(a), violation of C.G.S. § 22a-16, overburdening of an easement and inverse condemnation. (Enfield-2428). The Plaintiff alleged that the Town illegally altered and disturbed the flow of surface water onto Plaintiff's property resulting in a "permanent pond and stream." (Enfield-2422). As a condition of settlement, the Town agreed to reimburse the plaintiff property owner for real estate taxes assessed against the inundated property and paid over the years by the plaintiff.

It was a mistake to rely upon the Tyler stipulated judgment for a number of reasons. First, a stipulated judgment "is not a judicial determination of any litigated right…It may be defined as a contract of the parties acknowledged in open court and ordered to be recorded by a court of competent jurisdiction." Portfolio Recovery Associates, LLC v. Healy, 158 Conn. App. 113, 118,

118 A.3d 637 (2015). It does not provide any precedential value. Second, as discussed above, the facts pled in Tyler are markedly different and far more substantial than the title defect which previously impacted 78 Park Avenue. Lastly, and most importantly, the litigants to the Tyler matter had the right to condition the settlement of their lawsuit upon reimbursement of real estate taxes paid. The Superior Court, through the exercise of its equitable powers, *may* have had the authority to grant the plaintiff that same relief. The BAA, a municipal body composed of laypersons, does not possess the same contractual or equitable jurisdiction or authority. The BAA's ostensibly punitive determination that the Town is not entitled to collect real estate taxes on 78 Park Avenue exceeds the scope of the BAA's statutory authority and jurisdiction.

This report acknowledges and credits Lori Longhi for properly recusing herself from BAA Appeal No. 352. The appeal, however, was heard by Tyler, who described Longhi as a "good family friend." (Interview with Thomas Tyler, p. 21, ¶¶ 12-18). Donna Dubanoski works for the same real estate company, Realty One Group, as Longhi.[24] Both Tyler and Dubanoski voted unanimously to reduce the assessment of 78 Park Avenue to $0.00. Given the close personal relationship between Tyler and Longhi and the working relationship between Dubanoski and Longhi, the BAA's reduction of the assessment of Longhi's property to zero could be perceived as having the appearance of a conflict of interest. However, it is important to note that the BAA did not have the benefit of alternate members. Therefore, in order to constitute a quorum, it was necessary for both Tyler and Dubanoski to deliberate and vote on Longhi's appeal. Moving forward, BMPC recommends that the next time the Town of Enfield amends its Town Charter, it should include an amendment to permit the appointment of alternate BAA members. As presently drafted, Chapter Five, Section Four of the Town Charter caps the number of electors appointed to the BAA at three. A narrowly tailored amendment to this section would

[24] Interview with Donna Dubanoski at 1:01.

permit the appointment of alternates to serve, as needed, to avoid a conflict of interest or the perception of a conflict of interest.

iii. 15 Mullen Road, Enfield, CT

The BAA improperly exempted carports located at 15 Mullen Road. The carports are not tax exempt pursuant to C.G.S. § 12-81(57). C.G.S. § 12-81(57) exempts certain renewable energy sources. The solar array installed *on top of the commercial carport* located at 15 Mullen Road is a tax-exempt Class I renewable energy source as defined by C.G.S. § 16-1.

C.G.S. § 16-1 defines Class I Renewable Energy Sources as "electricity derived from…solar power…" C.G.S. § 16-1(a)(20)(A)(i). The statute, however, does not exempt the structure(s) upon which solar panels are installed. As noted, statutory tax exemptions "embrace only what is *strictly within their terms*." (Emphasis added) St. Joseph's Living Center, Inc. v. Town of Windham, 290 Conn. 695, 707, 966 A.2d 188 (2009). The BAA erred by defining the applicant's carport, itself, as a class I renewable energy source and thereby improperly expanded the statutory tax exemption provided by C.G.S. § 12-81(57).

b. Retention of BAA Documents and FOIA Concerns

The BAA is a public agency within the meaning of C.G.S. § 1-200(1). The documents maintained by the BAA are public records within the meaning of C.G.S. § 1-200(5). As such, BAA records are subject to certain retention and custodial requirements prescribed by the Connecticut Freedom of Information Act ("FOIA"). In accordance with the General Records Retention Schedules for Municipalities (M4-010, M4-020 and M4-030), BAA records typically must be retained and made available to the public upon request for a period of either one or two years (absent an appeal to the superior court). (Enfield-0106-0107; App. 11). As confirmed by

the Connecticut State Library, the Tax Assessor is the proper and customary custodian of BAA records. (Enfield-107; App. 11).

A conflict arose in Enfield when the BAA elected to retain certain public documents, including documentary evidence, photographs and other materials submitted by taxpayers during the April 2022 appeal hearings. By letter dated July 11, 2022 and addressed to the BAA, the Town Attorney requested the return of the retained BAA documents and explained that "[t]axpayers have recently visited Town Hall inquiring about their appeals, and without these public records, Town staff are unable to do their jobs and are unable to answer taxpayer questions." (Enfield-0094; App. 6). On July 14, 2022, BAA Chairman, Thomas Tyler, responded to Attorney Tallberg with the following curt response:

> "Your July 11, 2022 letter to Attorney Rachel M. Baird 'Re: Enfield Board of Assessment Appeals' raises may questions and issues. I suggest you take it to [the] Freedom of Information Commission to be resolved." (Enfield-0096; App. 7).

Tyler's response was unnecessarily antagonistic and adversarial. The Town should not be required to petition the Freedom of Information Commission ("FOIC") to obtain custody of its own public records. The BAA's withholding of the documents exposed the Town to potential liability under FOIA and delayed the undersigned's receipt of documents and the commencement of BMPC's independent review and analysis.

Moving forward, the BAA must immediately return all public records to the Assessor's Office upon competition of the Board's March or April appeal hearings. The BAA records should never be taken out of Town Hall. Copies can be made of the BAA records. However, the original records should always remain at Town Hall. This is the standard practice throughout Connecticut. Both Paul Friia, the Westport Assessor, and Denise Hames, the Weston Assessor, confirmed that their respective offices retain, and act as the custodians of, all BAA records. The

withholding of documents exposes the Town to potential FOIA liability and penalties. FOIA compliance is not an issue municipalities can take lightly; repeat offenders may be subjected to substantial fines from the FOIC. As a result, any future withholding of BAA documents by the Board, or its individual members, must be addressed expeditiously and firmly by the Town. It is our recommendation that any future FOIA-noncompliance be reported to the Secretary of OPM or the State Attorney General.

IX. OTHER ISSUES

a. Hyperbolic Language and Rhetoric

While the Town's 2021 Revaluation was largely successful, it is apparent that certain demographics and classes of property owners felt targeted by the new Assessor. As detailed in this report, most of the complaints against the Assessor were unfounded. In most instances, Helems properly applied Connecticut law. However, as detailed, some mistakes were made and certain classes of property and subclasses of agricultural land were improperly assessed in contravention of PA490 and C.G.S. § 12-107c.

It is a simple reality that municipal assessors are fallible. They make mistakes. They misinterpret legal provisions and, from time to time, overlook critical facts. The legislature acknowledged this realty and adopted a statutory scheme which provides aggrieved property owners the opportunity to appeal the assessment of their property to the municipal BAA. C.G.S. § 12-111. The BAA has the opportunity to review and correct assessments made in error.

For the most part, the statutory appeal process operated effectively in Enfield. Aggrieved property owners appealed their assessment pursuant to C.G.S. § 12-111 to the BAA. The BAA heard the appeals, and in most instances, compiled substantial documentation in support of its decision to correct an assessment. The Assessor may disagree with individual decisions of the

BAA, but, absent circumstances discussed further in this report, the decision of the BAA shall stand until the Town's next revaluation cycle.

The statutory appeal process, however, is not aided by the antagonistic relationship that has developed between the Assessor and the members of the BAA. Moving forward all parties have to acknowledge the authority of the other and proceed with mutual professionalism and respect. Specifically, the minutes of the BAA should reflect the appeals heard and the decisions rendered. They should not include personal or professional attacks against the Assessor. Nor should the minutes contain hyperbolic and damaging rhetoric. The BAA's May 28, 2022 Report, for example, frequently described Mr. Helems' tactics and methods as "disturbing" or "deceitful." Throughout the report, Mr. Helems' is identified as a "trespasser" and a "bully." In some instances these are the words of the BAA. In others, the language has been attributed to other, unidentified taxpayers. In either case, the use or echoing of such rhetoric is improper and unprofessional.

The use of vitriolic hyperbole has unfortunately become all too common in government. While there may be a political or parochial component to such language, that determination and analysis far exceeds the scope of this report. What is clear, however, is that moving forward the BAA and the Assessor will, by necessity, interact and the parties must carry themselves with professionalism. Neither party shall direct disparaging remarks at the other and both the Assessor and the members of the BAA should refrain from making disparaging remarks to the public.

It is apparent that the conflict between the Assessor and the BAA has contributed to an atmosphere of distrust between certain demographics and the Town government. During our interviews, we heard concerning testimony including the potential for violence. For example, during our interview with Arthur Mullen Jr., Mr. Mullen stated that, "people are talking about,

that guy[s] shows up on my property again, I got a dog or I'm going to show him my bull pen, put him in with the bull for an hour or you know I got a gun…there's a lot of bad vibes going out there. This guy [Helems] is creating an atmosphere where something bad is going to happen." (Interview with Arthur Mullen, Jr.). This type of discourse, whether exaggerated or overstated, is completely unacceptable. Both the Assessor and the BAA must work cooperatively and professionally to temper the hostilities.

As discussed, the parties do not need to agree on every assessment in Town. Nor must they agree on the interpretation and application of the law. The Assessor must do his job and the BAA must perform its duties. The parties do not need to maintain any personal relationship; they do not need to like one another. However, they must carry themselves as professionals. The BAA should not exceed the limited scope of its authority and any unresolved disputes pertaining to an assessment or the proper application of PA490, for example, should be decided in the courts pursuant to C.G.S. §§ 12-117a and 12-119, not through acrimonious public discourse.

X. RECOMMENDATIONS AND BEST PRACTICES

- As noted, it is neither improper nor illegal for an Assessor to attend BAA appeal hearings. There is no prescribed best practice. BAA hearings are public. However, given the contentious atmosphere, we recommend that the Assessor, Helems, refrain from attending future BAA appeals.
- Additionally, decisions regarding the recording of BAA hearings should be left to the members of the BAA. The Town has the right to record the hearings. There are no concerns regarding the violation of the taxpayer's privacy; anything said or submitted during a BAA appeal hearing is public. Nonetheless, the issue of recording the hearings has resulted in additional strife. Unless the BAA members are listening to the recordings

during their deliberations, they are of little practical utility and will be perceived by the BAA as an attempt to monitor their legitimate activities. If the Town has concerns about the conduct of the BAA, the solution is not to implement a recording policy, but rather to send a representative to observe the appeal hearings and/or refer the Board or its individual member(s) to either the Town Manager or the Secretary of OPM.

- All of the BAA documents, appeal files, recordings, notes, memorandum etc. (i.e. all public records) must be retained in Town Hall in accordance with the General Records Retention Schedules for Municipalities and FOIA. The Board shall adhere to the same procedure in September for motor vehicle tax appeal applications.
- Absent a compelling need, the BAA should not hold public meetings after April 30th (excluding the September motor vehicle appeals). All public meetings must be noticed and held in accordance with FOIA.
- The Town Council should discuss and consider a limited Charter Revision for the purpose of amending Chapter Five, Section Four of the Town's Charter to permit the appointment of alternate BAA members.
- The BAA should refrain from publishing minutes, or drafting and appending memoranda to its minutes, which addresses the qualifications of Town Employees, Elected or Appointed Officials, the Revaluation Company or matters of law and other issues beyond the scope of the Board's statutory jurisdiction.
- If an application for an appeal to the BAA is not timely received, the taxpayer waives his/her/its right to appeal (pursuant to C.G.S. §§ 12-111 and 12-117a). It is a clear error for the BAA to hear an untimely appeal (See Enfield-0014- Application of Raymond C. Romano involving 54 Virginia Avenue).

- To the extent he has not already done so, the Assessor should revise his Office's motor vehicle letters (i.e. the template provided by VinDecode) to remove any misleading language involving the Connecticut Department of Motor Vehicles ("DMV").
- The Assessor should coordinate with the Town's Agricultural Commission and/or the Connecticut Farm Bureau to disseminate information to, and engage with, the Town's farming and agricultural community. The Town may consider holding annual PA490 public informational sessions (i.e. Q & A) for the benefit of the Town's farmers.
- When conducting an exterior residential property inspection, the Assessor should attempt to announce his presence by knocking on the dwelling's front door or ringing its doorbell prior to inspecting and/or measuring the property.
- New BAA members should be required to attend an annual training seminar conducted by the Town Attorney or a reputable organization such as CAAO. Veteran BAA members, while not required, should be encouraged to attend the same annual seminars. All BAA members should be provided with a copy of the BAA Handbook that is produced by CAAO.
- The Assessor and the BAA should endeavor to work cooperatively and communicate professionally.
- The BAA should not attempt to interpret legal documents, such as the Nutmeg Solar Tax Stabilization Agreement. If the BAA has questions or concerns regarding applicability or interpretation of a legal document, it should contact the Town Attorney.