5-23-23

Dear WPCA board members.

In 2016, 139 Lawrence rd was accidentally put on a new sewer extension assessment list. This list was intended for properties north of Vincent Circle, 139 Lawrence rd is south of that.

139 Lawrence rd was hooked up in 1999 and attached is a WPCA reciept adjusting the Balance to ~~0~~ dated 12-23-99

I'm requesting to have 139 Lawrence rd be removed from the assessment list and balance adjusted to ~~0~~ or be put on the agenda for the June 2023 WPCA meeting for discussion if needed.

Thank You

John Sanders

Date 12-23-99

Dear Taxpayer:

I am Holding / (Returning) your check in the amount of $ 195.00 Held / (Returned)

and am indicating below the reason why it is being

1. Unsigned _____
2. Incorrect amount; check should read $ _____
3. Interest not included $ _____
4. First payment not made on time; total bill now due, plus interest $ _____
5. WPCA has adjusted this bill to -0-. The first time fee was paid at time of connection.

Happy Holidays!

Very truly yours,

TOWN OF SOUTH WINDSOR

Bonnie Rabin
~~Edward C. Moniz~~
Deputy Collector of Revenue

Minimum interest charge $2.00

DOCKET NO. HHB-CV-16-5018012-S	:	SUPERIOR COURT
	:	
JOHN SANDBERG	:	JUDICIAL DISTRICT
	:	OF NEW BRITAIN
VS.	:	
	:	
TOWN OF SOUTH WINDSOR	:	
WATER POLLUTION CONTROL	:	APRIL 26, 2017

MEMORANDUM OF DECISION RE: MOTION TO DISMISS (#104)

Sent to all parties of record + counsel AKJ

The plaintiff, John Sandberg, filed this administrative appeal to challenge a sewer assessment imposed by the defendant Town of South Windsor Water Pollution Control Authority on his real property in South Windsor. The defendant filed a motion to dismiss, to which the plaintiff objected. After reviewing the allegations of the appeal and the arguments of counsel, the court concludes that the appeal was untimely and the court therefore lacks jurisdiction to hear it. The appeal is therefore dismissed.

FACTS AND PROCEDURAL HISTORY

The plaintiff's one-page complaint alleges that on September 22, 2016, the town gave notice of an intended sewer assessment in the amount of $8,963. The plaintiff, who was self-represented when he filed the appeal, alleged a "statute of limitation for billing 19 yr later after hooking up"; that the billing was prejudicial and oppressive in effect; that the defendant

was "double billing plaintiff"; and that the plaintiff requested a judgment to rescind the assessment. No further facts were alleged.

The administrative appeal complaint was dated October 21, 2016. It was apparently given to a marshal on November 11, 2016, and served on the defendant on November 14, 2016. See Marshal's Return. The civil summons form listed the plaintiff's address on Lawrence Road in South Windsor. The civil summons form identified the "Major/Minor" case type code as A 10, the code for appeals from administrative boards involving taxation. The complaint was filed on November 16, 2016, with a return day of November 29, 2016, in the judicial district of Hartford. The Hartford court transferred the case to the Tax and Administrative Appeals Session in the judicial district of New Britain.

The defendant appeared and moved to dismiss the appeal, claiming that the plaintiff's failure to file the appeal within twenty-one days after notice of the assessment was filed, as required by General Statutes § 7-250, deprived the court of subject matter jurisdiction. With its motion, the defendant submitted an affidavit by its superintendent, C. Fred Shaw, who attested that he had prepared a notice of sewer assessments for properties on Lawrence Road and Cliffwood Drive; that the notice was filed with the town clerk on September 22, 2016, and published in a newspaper having general circulation in the municipality; and that the notice advised that any appeal from such assessment must be taken within twenty-one days. The plaintiff retained counsel, who objected to the motion to dismiss, arguing that the

"complaint" is not governed by § 7-250. For the reasons stated herein, the court disagrees.

DISCUSSION

In deciding whether a complaint survives a motion to dismiss, a court must take the facts to be those alleged in the complaint, including those facts necessarily implied from the allegations, and construe them in the manner most favorable to the pleader. A motion to dismiss tests whether, on the face of the record, the court is without jurisdiction. The interpretation of pleadings is always a question of law for the court. See *Harborside Connecticut Ltd. Partnership* v. *Witte*, 170 Conn. App. 26, 34, 154 A.3d 1082 (2016).

A motion to dismiss may be decided on the basis of the complaint alone, the allegations in the complaint supplemented by undisputed facts evidenced in the record, or by the complaint supplemented by undisputed facts and the court's resolution of disputed facts after an evidentiary hearing. See *Conboy* v. *State*, 292 Conn. 642, 650-51, 974 A.2d 669 (2009). In this case, the plaintiff has not disputed the facts alleged in the affidavit provided by the defendant. Accordingly, pursuant to *Conboy*, the court decides this motion based on the allegations of the complaint as supplemented by undisputed facts evidenced in the record, including the summons, marshal's return, and the defendant's affidavit.

General Statutes § 7-249 provides in relevant part: "At any time after a municipality, by its water pollution control authority, has acquired or constructed, a sewerage system or portion thereof, the water pollution control authority may levy benefit assessments upon the

lands and buildings in the municipality which, in its judgment, are especially benefitted thereby, whether they abut on such sewerage system or not, and upon the owners of such land and buildings, according to such rule as the water pollution control authority adopts, subject to the right of appeal as hereinafter provided." General Statutes § 7-250 provides the right of appeal from a sewer assessment by a water pollution control authority. It provides in relevant part: "When the water pollution control authority has determined the amount of the assessment to be levied, it shall file a copy thereof in the office of the clerk of the municipality. Not later than five days after such filing, it shall cause a copy of such assessment to be published in a newspaper having a general circulation in the municipality, and it shall mail a copy of such assessment to the owner of any property to be affected thereby at such owner's address as shown in the last-completed grand list of the municipality or at any later address of which the water pollution control authority may have knowledge. Such publication and mailing shall state the date on which such assessment was filed and that any appeals from such assessment must be taken within twenty-one days after such filing. . . . [A]ny person aggrieved by any assessment may appeal to the superior court for the judicial district wherein the property is located and shall bring any such appeal to a return day of said court not less than twelve nor more than thirty days after service thereof and such appeal shall be privileged in respect to its assignment for trial."

"Section 7-250 of the General Statutes provides persons aggrieved by an assessment of

the sewer authority with the right to secure judicial review of its action. The right to appeal the decision of this administrative body exists only under statutory authority . . . and is not founded upon principles of equity embedded in the common law. . . . Consequently, compliance with the time requirement for taking an appeal pursuant to § 7-250 is a prerequisite to the existence of the right itself; the remedy comes into existence only when the condition precedent imposed by the statute creating it has been complied with." (Citations omitted.) *Vecchio* v. *Sewer Authority*, 176 Conn. 497, 505, 408 A.2d 254 (1979). A person who fails to appeal within the time limited by law can bring a challenge to the assessment only on the ground that the assessment is void for lack of jurisdiction of the authority that assessed it. *Vaill* v. *Sewer Commission*, 168 Conn. 514, 518-19, 362 A.2d 885 (1975).

The defendant attests that it filed the notice of assessment with the town clerk on September 22, 2016, and duly published notice thereafter. The plaintiff has not challenged the sufficiency of the defendant's notice. Under General Statutes § 7-250, the plaintiff was required to take an appeal by October 13, 2016, the last date within twenty-one days of September 22, 2016. The plaintiff's complaint was dated October 21, 2016, served on November 14, 2016, and filed with the court on November 16, 2016. All of these dates are outside the October 13, 2016 deadline that applied to any appeal from the sewer assessment noticed on September 22, 2016. The plaintiff does not claim, and on this record the court

could not find, that his late-filed appeal is saved by General Statutes § 52-593a,[1] as there is no evidence that the complaint was provided to the marshal by October 13, 2016, or served within thirty days of October 13, 2016. Cf. Country *Gate Associates* v. *Middlebury*, Superior Court, judicial district of Waterbury, Docket No. 0122138 (September 20, 1996, Fineberg, J.) (17 Conn. L. Rptr. 553) (sewer assessment appeal saved by § 52-293a because process was given to the sheriff within the twenty-one day period provided in § 7-250 and served within fifteen days thereafter, as § 52-593a then provided).

"It is the general rule, with reference to special assessments of benefits, that an assessment legally made cannot be attacked in a collateral proceeding but requires pursuit of the statutory remedy for review, unless the assessment is void." *Vaill* v. *Sewer Commission*, supra, 168 Conn. 518. In opposing the motion to dismiss, the plaintiff's counsel argued that the plaintiff's property was connected to a sewer nineteen years ago and therefore the defendant lacked the authority to assess his property for the construction of a new sewer line

---

[1] General Statutes § 52-593a provides: "(a) Except in the case of an appeal from an administrative agency governed by section 4-183, a cause or right of action shall not be lost because of the passage of the time limited by law within which the action may be brought, if the process to be served is personally delivered to a state marshal, constable or other proper officer within such time and the process is served, as provided by law, within thirty days of the delivery.

"(b) In any such case, the officer making service shall endorse under oath on such officer's return the date of delivery of the process to such officer for service in accordance with this section."

in front of his property, to which he is not connected. Even if these facts were clearly alleged in the complaint, which they are not, the court would be constrained by Supreme Court precedent to reject the argument. In *Vaill* v. *Sewer Commission*, supra, 168 Conn. 519, the court held as follows: "If the commission assesses benefits where a property is not benefitted, it commits an error but does not act beyond its jurisdiction. . . . Section 7-250 does not limit the grounds for taking the appeal, other than that the person taking the appeal shall be aggrieved, and affords such person the opportunity to seek complete judicial relief." It concluded: "[S]ince § 7-250 provides for a complete remedy by means of an appeal . . . that section is the exclusive remedy available to the plaintiff." Id.

As harsh as the result may seem, this court is bound to follow the law as interpreted by the Supreme Court. Because the plaintiff failed to take his appeal within the twenty-one days required by § 7-250, the court lacks jurisdiction to hear it. The appeal is dismissed.

BY THE COURT,

Sheila A. Huddleston

Sheila A. Huddleston, Judge