Property Valuation Topics

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Final Stage For 2006 Revaluations

With the conclusion of informal meetings with revaluation companies and assessors and the local board of assessment appeals process, the next step for property owners seeking to challenge 2006 real property assessments is a Superior Court appeal.

This appeal, which is heard before a trial judge without a jury, must be filed *within two months from the date of mailing* of the notice of the board's decision.

Property owners who did not file a board appeal retain the limited ability to challenge their 2006 assessments before September 30, 2007, if there is a sufficient disparity between the assessor's value and the proper value so that the assessor's value can be fairly characterized as "manifestly excessive."

Please feel free to contact any member of the Pullman & Comley Valuation Department for further information.

Tax Appeals and Electrical Deregulation

Back in the good old days, utility companies seldom challenged *ad valorem* assessments of their generating properties because regulators allowed them to pass expenses through to rate payors and it seldom was worth the utility's while to crank up for a tax appeal. With the sale of generating properties, deregulation of the industry and the gyration of oil and energy prices in what has become, to a great degree, a wild west marketplace, examination of the value of generating properties has moved to the front burner.

A New York State Supreme (trial) Court justice recently devoted 125 pages to discussing the valuation of an electrical generation station in the post-deregulation era.

> "Back in the good old days, utility companies seldom challenged *ad valorem* assessments of their generating properties because regulators allowed them to pass expenses through to rate payors...."

While the space available in this newsletter does not permit a detailed discussion of the opinion, readers who are interested in this area will find important comments about utilization of the RCNLD approach and a lengthy discussion by the court about its rejection of the sales and income methodologies due to a lack of sufficient market data. Given the size of this facility, it was not surprising that the court also addressed physical depreciation, functional obsolescence and economic obsolescence. *Orange and Rockland Utilities, Inc. vs. Assessor of the Town of Haverstraw,* New York State Supreme Court, 9th Judicial District (August 11, 2006).

If you have any questions or comments, please contact Gregory F. Servodidio (860-424-4332 or gservodidio@pullcom.com) or Marjorie S. Wilder in our Hartford office, at 860-424-4303 or by email to mwilder@pullcom.com

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Valuation Of Co-Op Real Estate Discussed

Sun Valley Camping Cooperative, Inc. owns a campground in the town of Stafford consisting of several hundred camp sites on 57 acres. In addition to the camp sites, the property includes a gravel roadway, communal bathrooms and other minor structures.

Since the cooperative form of ownership is extremely unusual in Connecticut, although sanctioned by state statute, no trial court has ever addressed how to properly value coop real estate for *ad valorem* purposes.

Faced with a tax appeal, Superior Court Judge Trial Referee Arnold W. Aronson, sitting in the New Britain Tax Court, elected the valuation methodology propounded by the town's appraiser which determined the average value of each camp site/cooperative unit and multiplied that value by the number of units to establish the market value of the underlying real estate parcel.

Referring to the statutory scheme, the Connecticut Appellate Court ruled that while a co-op member "is vested with a possessory, real property interest in a unit within the real property owned by the association," another statute flatly states that "the real property constituting the cooperative shall be taxed and assessed as a whole and the unit owner's interests shall not be separately taxed." Since the unit owners themselves were not separately taxed, the town claimed compliance with the statute. The Appellate Court rejected this approach and ruled that it was important to focus on the phrase "shall be taxed and assessed as a whole."

Not only does the statutory scheme prohibit a municipality from taxing unit owners separately, the real estate owned by the cooperative must be assessed as a whole, the court ruled.

As a result, in the Appellate Court's unanimous decision by Judge Antoinette Dupont, the court held that "the plain language of (the statute) prohibits a municipality from using the true and actual value of the individual units as the basis for measurement to determine true and actual value of the cooperative as a whole for purposes of taxation."

Sun Valley Camping Cooperative, Inc. v. Town Of Stafford, Appellate Court Of Connecticut, Docket No. AC 25876 (April 11, 2006).

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Key Property Tax Environmental Decision Released

Cadlerock Properties Joint Venture owns a 335 acre parcel of land straddling the Ashford and Willington town lines. It acquired the property in 1996 from a related entity which purchased the parcel in 1995. Prior to 1995, the affiliate had been requested by the Connecticut Department of Environmental Protection (DEP) to remediate substantial groundwater and solid waste contamination.

Launching a tax appeal only on the value of the Ashford parcel as of October 1, 2002, the date of the last general revaluation in that community, Cadlerock's appraisal testimony conclusively established that its market value was $955,000, if clean, not the $1,369,000 value assigned to it by the Ashford assessor. Cadlerock's appraiser's testimony also tended to prove that the contamination reduced the market value of the property by approximately 85 per cent so that his final opinion of value was but slightly more than 10 per cent of the total value being challenged.

Although Superior Court Judge Trial Referee Arnold

W. Aronson accepted Cadlerock's appraiser's opinion as to market value without reference to contamination, he "declined to reduce the value (of the property) to take into account the presence of contamination." In so doing, the court relied on a provision of the Connecticut General Statutes applicable only to commercial property which prohibits an assessor from reducing the *ad valorem* value of any property due to contamination "if such condition was caused by the owner or if a successor in title to such owner acquired such property after any notice of the existence of any such condition was filed on the (town) land records."

Cadlerock did not cause the contamination; the DEP notice was filed on the land records more than two years after it acquired the property. Nevertheless, the Superior Court interpreted the statute to preclude any reduction because Cadlerock had "actual knowledge" of the contamination when it acquired the property.

Did the Superior Court improperly add a new basis upon which an assessment reduction can be denied in contamination cases? This was Cadlerock's exact claim to the Appellate Court which acknowledged that the statute was devoid of any reference to actual knowledge as a basis upon which to deny an *ad valorem* reduction.

Allowing a party with actual knowledge to defeat the preclusionary effect of the law, the unanimous ruling insisted, would produce "an absurd result." Unwilling to disturb the trial court's finding that Cadlerock had actual knowledge (presumably because it acquired the property from an affiliate), the ruling was allowed to stand.

Was the Appellate Court's decision a bit of judicial statutory amendment? Was it proper for the Appellate Court to conclude that actual notice could take the place of constructive notice although actual notice is not mentioned in the statute? Commonsensically, we all know that actual notice is superior to the notice which is imputed to a person by operation of law. Yet it is troubling that an assessment law which penalizes a property owner could be expanded so easily to add an additional grounds for denying relief.

What can be expected to follow from this decision? The editors of *Valuation Topics* suggest that in all tax appeals asserting entitlement to contamination reductions where the statutory tests cannot be satisfied by the assessor, it is likely that trials will require considerable time to support towns' efforts to prove actual notice. Perhaps the facts in Cadlerock made a different result difficult to stomach. But will future tax appeals now expand their scope to address whether a party acquiring a property from an unrelated party had any knowledge about contamination? What about a property acquired decades before environmental consciousness was raised and when contamination was not seen so clearly as a problem? Would a reasonable belief about there being a small amount of contamination be expanded into a disqualification under the law because of a new duty to investigate the extent of contamination?

The constitutionality of the statute in question was not addressed in this case. It is hoped in a future litigation that Connecticut's preclusion of assessment reductions for property contamination, but not other causes, will be challenged as unreasonably discriminatory and as a denial of substantive due process and equal protection under both the state and federal constitutions.

Cadlerock Properties Joint Venture, L.P. v. Town of Ashford, Connecticut Appellate Court, Docket No. AC27056 (November 28, 2006).

Elliott B. Pollack at (860-424-4340) or by email to ebpollack@pullcom.com or Marjorie S. Wilder at 860-424-4303 or by email to mwilder@pullcom.com, both in our Hartford office, can furnish additional information about this case.

ATTORNEY NOTES

On May 6, 2007, Elliott B. Pollack will present a talk on shortcomings in mass appraisals at the second annual program on mass appraisal techniques sponsored by the International Property Tax Institute in Toronto, Canada.

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