Property Valuation Topics

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Revaluations Are Proceeding

The next critical date for commercial property owners to challenge their revaluation assessments (on the October 1, 2006 grand list of approximately 35 Connecticut municipalities currently undergoing town wide revaluations) is February 20 or, in a few cases, March 20. Failure to appeal to the local board of assessment appeals will make it impossible to appeal the assessment to Superior Court, even though significant reductions generally are not awarded by local boards.

For further information about Connecticut's revaluation process, developments in any particular town or for assistance in filing an appeal to a board of assessment appeals, please contact any of the members of Pullman & Comley's Property Valuation Department.

Any member of Pullman & Comley's Property Valuation Department can furnish assistance in dealing with the revaluation of your property. (In many cases, the last revaluation took place five years ago or more.)

Appraisal Qualifications Discussed

In a recent issue of *Property Valuation Topics*, we discussed a Stamford Superior Court decision which allowed a real estate appraiser's testimony concerning the value of a home involved in a divorce action.

The appraiser updated the original appraisal performed two years earlier by a colleague in his appraisal firm. The appraiser furnishing the testimony never inspected the interior or the exterior of the property and was not aware of significant issues such as the existence of an overhead power line that bisected the property.

Notably, "(t)he structures and much of the land were not visible from the roadway because of trees."

Notwithstanding these shortcomings, the trial court adopted the wife's appraiser's value.

On appeal to the Connecticut Appellate Court, the plaintiff husband asserted that the admission of the appraiser's testimony and his update of the original appraisal were erroneous and prejudicial.

While acknowledging that trial courts have a wide discretion in ruling upon expert witness qualifications and the admissibility of their testimony, the unanimous opinion by Judge Ian McLachlan ruled that the appraiser "did not have the essential facts necessary to form an opinion about the value of the property." Moreover, relying completely on the information contained in an almost two-year-old appraisal which was excluded from evidence by the trial court was erroneous because the appraiser never verified any of the information in the first appraiser's report. As a result, the challenged testimony and appraisal update, Judge McLachlan ruled, "were based on speculation and lack of personal knowledge."

It is heartening to see the Connecticut Appellate Court tackle the issue of real estate appraiser testimonial qualification in so clear a manner. Members of Pullman & Comley's Property Valuation Department have occasionally experienced the same sort of situation and found there to be great judicial reluctance to exclude appraisal testimony even when reliance was placed on earlier reports not in evidence, which contain information not verified by the testimonial appraiser.

Porter v. Thrane, 96 Conn. App. 336 (2006)

If you have any questions or comments, please contact Gregory F. Servodidio (860-424-4332 or gservodidio@pullcom.com) in our Hartford office.

Interest In Tax Appeal Litigation

Conventional wisdom received a jolt recently. In a fairly routine real estate tax appeal, Superior Court Judge Trial Referee Anthony DeMayo, sitting in the New Haven Judicial District, issued unprecedented rulings concerning optional tax withholding during the pendency of litigation and the ability to earn interest on these withholdings.

Pullman & Comley Valuation Department attorneys usually take the position that the statutory right to withhold 10 percent of taxes due to a municipality during a commercial real estate tax appeal is an option. Even if the appealing property owner does not exercise this right, our view has been that the applicable statute permits the taxpayer to obtain interest on the full amount of any tax refund due following the conclusion of litigation. (Of course, municipalities frequently refuse to pay interest on refunds arising from a settlement.)

Judge Trial Referee DeMayo turned these understandings on their head by ruling last May that when a taxpayer decides not to withhold 10percent, the taxpayer thereby forfeits the right to obtain interest upon the conclusion of the case on that portion of any refund due. The court seemed to rest its decision, at least in part, on its impression that both the taxpayer and the town are equally at risk for the payment of interest – the taxpayer if it withholds and loses the case, the municipality if it is obliged to pay a refund. This view may be challenged given the huge disparity between the mandatory interest rate of 18percent collectible by communities for unpaid taxes as opposed to the extremely low single digit rates awarded by various Superior Courts to taxpayers recently.

It remains to be seen whether other Superior Courts will address this issue. If so, hopefully, a clarification will not be too far behind. In the meantime, because this decision appears not to be solidly based on the applicable statutes, Pullman & Comley Valuation Department attorneys have not varied from the advice mentioned above.

Fitzsimons vs. Town of Madison, Superior Court, Judicial District of New Haven (May 22, 2006)

Please feel free to contact Marjorie S. Wilder in our Hartford office, at 860-424-4303 or by email to mwilder@pullcom.com or Laura A. Bellotti at (860) 424-4309 or by email to lbellotti@pull.com for further information.

New Intended User?

The December 2006 issue of *USPAP Q&A* talks about what one might think was a plain vanilla sort of problem but, in fact, required a bit of elucidation.

An anonymous appraiser advised that a week after she delivered an appraisal report to her client, a third party not identified as one of the intended users in the report contacted her. The third party requested that she write a letter, styled a "reliance letter," and presumably for a fee, which would permit the third party to rely on the report for its own use. The client has no objection. Could she, the appraiser inquired, provide the third party with such a letter?

The ASB response was unequivocal. "You cannot", ASB advised, "add what is in effect a new 'intended user' after the completion of an assignment….". In rendering this opinion, ASB relied on the USPAP definition intended user as one identified as such "at the time of the assignment."

Even though the third party's request arrived only a week after completion of the report, ASB advised the questioner that "(t)he proper way to handle this (issue) is to initiate a new assignment with this entity as the client….". The appraiser should provide this third party with a new appraisal "being careful to develop an appropriate scope of work consistent with (the new party's) own intended use."

The appraiser was cautioned in this new assignment to "consider the assignment elements most appropriate to the scope of work" for (the new) client even though the new assignment "could be based on virtually the same data and analysis, and the value conclusion might be the same."

Form over substance? Perhaps. The proscription against issuing the "reliance letter" probably does make sense in most cases because establishing a new professional relationship with the third party might well result in the discovery of additional information that could affect the appraiser's value estimate.

Call Andrew J. McDonald in our Stamford office at 203-674-7903 or contact him by email to amcdonald@pullcom.com for further information.

Future Reconstruction Costs: An Item Of Condemnation Damages

In a very brief decision addressing the taking of a drainage easement by the Connecticut Department of Transportation (CONN DOT), Judge Trial Referee Julius J. Kremski endorsed a novel theory, at least to your editors' knowledge, to augment the taking award payable to a property owner.

George A. King owned a commercial building and associated parking area in Newington. Unfortunately for Mr. King, CONN DOT found it necessary to acquire an easement to install a large concrete drainage pipe

As typically occurs in these sorts of cases, the commissioner awards a modest sum to property owners for subterranean acquisitions, the theory being, we suppose, that underground property rights count for very much less than do surface interests.

Unsatisfied with the commissioner's award of $5,150 as damages, Mr. King asserted that this paltry sum "did not truly reflect the value of the easement taken." Indeed, Judge Kremski agreed, almost tripling the award.

Accepting the fact that the drainage easement did not "directly affect (Mr. King's) parking area," Judge Kremski noted, however, that if the pipe underneath Mr. King's parking area became damaged or plugged, it would have to be replaced or repaired thereby necessitating excavations. Conceding that such remedial work was not presently required, Judge Kremski ruled that the "possibility is there and (if it happened) it would have a serious disruptive effect on the tenants" in Mr. King's building.

Against this backdrop, Judge Kremski ruled that the "possible need for future reconstruction adversely affects the present value of the real estate to an amount of $15,000."

While the brief opinion did not elucidate the issues further, the point is obviously well taken and should be considered as a damage augmentation argument by property owners faced with similar circumstances in the future.

Commissioner of Transportation vs. King, Superior Court, Judicial District of New Britain, Docket Number 030521505 (May 23, 2005).

Elliott B. Pollack at (860-424-4340) or by email to ebpollack@pullcom.com or Ericka Lenz at (860-424-4357) or elenz@pullcom.com, both in our Hartford office, can furnish additional information about this case.

Attorney Notes

Department chair Elliott B. Pollack will discuss the valuation of health care properties with Courtney B. Lees, MAI and Carol J. Reynolds, MAI, both of the Province Consulting Group, at the Advanced Property Tax Seminar presented by the American Bar Association and the Institute for Professionals in Taxation in New Orleans on March 8, 2007.

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