

Property Valuation Topics

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2006 Revaluations Loom

Thirty-six of Connecticut's 169 towns are scheduled to conduct community wide revaluations of all real estate within their boundaries this fall. Connecticut determines property value for *ad valorem* purposes as of October 1; the fiscal year for tax payments begins the following July 1.

Among the larger municipalities scheduled to revalue as of October 1, 2006, are East Hartford, East Haven, Groton, Hartford, Manchester, Meriden, New Haven, Orange, Stamford and West Hartford.

Property owners can expect to be contacted very shortly by the revaluation company performing the work, if notice of new value has not been already delivered.

Please feel free to contact any of the members of Pullman & Comley's Property Valuation Department for assistance in dealing with the revaluation of your property. In many cases, the last revaluation took place five years ago.

Valuation of Real Property after *Sheridan v. Killingly*

For many years Connecticut courts hearing tax appeals have been moving away from valuing commercial property in fee simple for purposes of real property taxation, without expressly saying so.

In 1978, in *Uniroyal v. Middlebury*, the Supreme Court affirmed a trial court decision that it was proper to capitalize actual rental income, whether or not it equated to market rent. Uniroyal conveyed land in the town of Middlebury to Metropolitan Life Insurance Company on which Metropolitan was to build Uniroyal's corporate headquarters and research facility. Uniroyal and Metropolitan's agreement called for Uniroyal to lease back

the newly-constructed facility and pay Metropolitan an annual "rent" equivalent to 9.2 percent of the project cost. It was clear that this arrangement was a financing agreement, although there was disagreement as to the extent to which the "rent" exceeded market rent.

In 1984, perhaps in reaction to *Uniroyal*, the General Assembly adopted a statute which requires assessors to value income producing properties using market rents (if the income approach is used), but to *consider* contract rents in doing so. In *First Bethel Associates v. Town of Bethel*, interpreting the new law for the first time, the Supreme Court affirmed a trial court ruling which melded contract and market rents (contract rents were below market rents).

In 2003, the Appellate Court concluded that the new statute was, in effect, advisory, and did not mandate that any of the valuation methodologies it mentioned actually be used.

Just recently, the Supreme Court ruled that a court can consider the value of the *leasehold estate* in valuing real property for *ad valorem* tax purposes. The decision in the *Sheridan* case adds further uncertainty to the area. In *Sheridan*, the town's appraiser had valued the lessor's interest with an income capitalization approach by using contract rent; the tenants' leasehold interests were valued with the comparable sales approach. He then added the resulting values to determine the value of the property – both the landlord's and tenants' interests. The trial court ruled that the leasehold interest could not be considered in determining the fair market value of the property.

The Supreme Court pointed to *First Bethel* where it had noted that "a leased property might have a fair market value that exceeds the capitalized value of the actual rental income and that excess value may be taken into account in assessing the true and actual value of the property." While that quotation may be accurate, permitting a town to use a sales comparison approach to value the leasehold, an income approach to value the landlord's interest and to somehow combine the two is, to say the least, puzzling.

Sheridan was returned to the trial court for a new trial. It will be interesting to see how the Supreme Court's decision is addressed and, once the trial court's new opinion is released, whether a further appeal will follow. In the meantime, this case further compounds the uncertainty surrounding the valuation of income-producing property for *ad valorem* tax purposes.

Sheridan v. Killingly, 278 Conn. 252 (2006).

Please feel free to contact Marjorie S. Wilder in our Hartford office, at 860-424-4303 or by email to mwilder@pullcom.com, for further information.

Greenwich and Stamford Values Powered by Hedge Funds

The "thousands of young financial workers who stream into Grand Central Terminal every weekday morning" are not all heading to Wall Street. As Michael S. Schmidt points out in the August 4, 2006, *New York Times*, many are heading to Greenwich and Stamford, particularly Greenwich, "which has emerged as the home of the ballooning hedge fund industry."

Aside from the interesting sociological and demographic aspects of this migration, Mr. Schmidt notes that the affinity of hedge funds for Greenwich has pushed office rentals from \$50 to as high as \$85 per square foot in just five years.

While office buildings have benefited, retailers perhaps do not see the young financial workers very frequently. "During the day," Mr. Schmidt comments, "many hedge funds employees do not leave their offices. For lunch, they use . . . an online food directory" that delivers orders to their offices.

Please feel free to contact Elliott B. Pollack in our Hartford office at 860-424-4340 or by email to ebpollack@pullcom.com, for further information.

Tax Relief Tailored for the City of Hartford

As the only Connecticut municipality which imposes a property tax surcharge on commercial and industrial property, Hartford also is the only municipality that can take advantage of a newly created mechanism to provide residential property tax relief. This mechanism is set forth in Public Act No. 06-183 which became law in June of this year.

Hartford may elect to avail itself of this legislation effective with the revaluation scheduled to be implemented for the October 1, 2006, Grand List. Under the new law, the Hartford assessor would determine the assessment rate to be used to ensure that the revaluation does not cause the average property tax for residential (four or fewer units) and apartment (five or more units) properties to increase by more than 3.5 percent in the first year of revaluation. That assessment rate would be recalculated for each of the following four years in the revaluation cycle so that the average property tax for residential and apartment properties increases by 3.5 percent annually. Thus, the Hartford assessor would make annual changes to the assessments of residential and apartment properties (by changing the assessment rate) so that the average taxes on these property types will go up cumulatively no more than about 18.8 percent over five years after the revaluation. The legislative objective is to largely shield residential and apartment properties from the tax impact which otherwise would have resulted from the large appreciation in market value that has occurred for these property types since Hartford's last revaluation in 1999.

In order to fund this program of residential property tax relief, the Hartford assessor can develop a new assessment rate for non-residential and non-apartment properties on an annual basis that can differ from (and presumably exceed) the 70 percent ratio that has been a fixture of Connecticut assessment law for many years. Those familiar with the financial modeling done in connection with this legislation expect the new rate to stay near 70 percent. To offset this tax exposure to some extent, the property tax surcharge imposed by Hartford on commercial and industrial properties gets ratcheted down annually over the five year

reevaluation cycle. It is anticipated that the surcharge will be reduced approximately 1.5 percent per year down to 7.5 percent in the last year of the reevaluation cycle.

The passage of this unique legislation raises a number of interesting questions. Will this law make Hartford more or less attractive for business? Is it good public policy to have an assessment regime tailored to one municipality? As it appears that Hartford can only take advantage of this law once, where does it leave the City when the next reevaluation comes around in 2011?

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

Key Valuation Issue Decided in Condemnation Case

Mondary Real Estate, Inc. owned property in Bridgeport which was taken by the Bridgeport Housing Site Development Authority (HSDA) by virtue of its eminent domain powers on September 14, 1998.

When HSDA offered to pay slightly less than \$60,000, Mondary appealed asserting several fascinating valuation claims based on the property's highest and best use (HBU).

Initially, Mondary argued that the property should have been appraised based on a HBU as a development site for a free standing pharmacy such as CVS or Walgreens. HSDA challenges this assertion noting that the immediate neighborhood, a low to middle income community bounded by housing projects and without any other pharmacies in the vicinity, was not suitable for either drain. Tellingly, HSDA also observed that a pharmacy had been operated on the property 20 years earlier but "was burned out in 1978 and . . . never replaced with any commercial use, let alone another pharmacy."

A free standing pharmacy use was reasonable in light of the property owner's documented efforts over several years, prior to the taking, to enter into a lease which, Mondary claimed, was frustrated by HSDA's taking activities. The

"economic upswing in the greater Bridgeport area . . . since the date of the taking to the time of trial" tended, Mondary also argued, to document its position.

Sitting in the judicial district of Fairfield, Judge Joseph W. Doherty rejected Mondary's claims. He found that a market for a big box free standing pharmacy HBU did not exist at the time of the taking, was purely speculative and "not reasonably likely to have existed in the near future" after the taking.

The "comparable" sales relied upon by the owner's appraiser, each of which were actually viewed by Judge Doherty, "could not possibly compare to the commercial characteristics and attributes of the (subject) property," that is to say, the comparables were superior.

While the owner's HBU argument was rejected by the court, it did not fare too poorly dollar-wise in the final decision. Concluding that the HSDA award was too paltry for a 1.5 acre parcel of commercial property in a commercial zone, the court noted that "even several residential building lots at that location would have considerably more value."

Mondary enjoyed an increase in its award to \$325,000, perhaps a good example of a battle lost but a war won.

Housing Site Development Authority of the City of Bridgeport v. Mondary Real Estate, Inc., Docket #CV-98-0356395, Superior Court, Judicial District of Fairfield at Bridgeport.

Please feel free to contact Elliott B. Pollack in our Hartford office at 860-424-4340 or by email to ebpollack@pullcom.com, for further information.

Attorney Notes

Pullman & Comley proudly announces that **Laura A. Bellotti** was recently chosen as a "Forty under 40" award recipient by the *Hartford Business Journal*. This award recognizes the region's up-and-coming leaders in the business world, young professionals who "have what it takes" to be successful in and out of the office.

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