

SOCIETY OF PROFESSIONAL ASSESSORS

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REVIEW OF RECENT COURT DECISIONS

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RHODE ISLAND

UTGR, Inc. v. Mandillo

Nos. C.A. PC-08-2614, C.A. PC-10-1172

(R.I. Superior Court Jan. 26, 2011)

Facts

- Case concerns the Twin River Casino in Lincoln.
- Formerly a thoroughbred race track and a dog racing facility known as Lincoln Park, this “convenience casino” or “racino” now features 4,750 video lottery terminals (VLTs), simulcast racing broadcasts, restaurants and entertainment amenities.
- The facility consists of 508,349 square feet of building area on 160.7 acres of land.
- By virtue of its unique characteristics, zoning and special restrictions and entitlements contained in UTGR’s contract with the State, the property is “special use” or “limited market.”
- Relevant date of value was December 31, 2006.

UTGR, Inc. v. Mandillo (cont.)

Procedural Issue

- Taxpayer properly appealed the December 31, 2006 and December 31, 2008 assessments in relevant triennial cycle.
- Taxpayer failed to appeal the December 31, 2007 assessment to the assessor and on to the local tax board of review as required by law, instead seeking to amend one of its pending Superior Court appeals to add that assessment on the first day of trial.
- Since the taxpayer had not adhered to the mandatory annual administrative appeal procedures, the motion to amend was denied and the December 31, 2007 assessment was allowed to stand.

UTGR, Inc. v. Mandillo (cont.)

Valuation Discussion

- Town's valuation expert was former Lincoln assessor and current president of the Town's revaluation firm. Since his revaluation firm assisted with the assessments being challenged, the Court observes that he is not an independent expert.
- Taxpayer's valuation expert was a certified appraiser, licensed broker and deputy assessor in another municipality.
- Although comparable sales approach is the preferred approach to value in Rhode Island, both appraisal experts used replacement cost method (RCM).
- The Town's land value was \$20,031,900 (\$124,654/acre) while the taxpayer's land value was \$3,000,000 (\$18,668/acre).

UTGR, Inc. v. Mandillo (cont.)

- The Town divided the land into three segments (primary site, future development and buffer) and valued each segment with reference to the values of other commercial properties in Lincoln (equalization) as well as sales of commercial land in Connecticut, Massachusetts and elsewhere in Rhode Island.
- The Court expressed skepticism about the Town's land valuation methodology, particularly since it ignored the unique land use restrictions placed on the subject land and was more focused on equalization rather than valuation.
- The taxpayer's appraiser valued the subject land with reference to the sales of four properties (two in Pennsylvania, one in Baltimore and one in Newport) that were developed with gaming facilities. All four sales were considered superior to the subject and adjusted downward.

UTGR, Inc. v. Mandillo (cont.)

- The Court did not find the taxpayer's appraiser's land valuation to be credible as 1) his adjustments were subjective, 2) he did not look at the values of commercial land in Lincoln, 3) his comparable sales involved destination casinos as opposed to racinos and 4) he did not adequately adjust for location.
- The Court found that the taxpayer did not sustain its burden of proving that the Town overvalued the land. Thus, the Town's presumptively correct land value was allowed to stand.
- In valuing the improvements, both experts used Marshall and Swift.

UTGR, Inc. v. Mandillo (cont.)

- The Town's expert calculated the reproduction cost of the improvements and then deducted 10% for physical depreciation. A 20% functional obsolescence deduction was also taken but this appears to relate to the Town's conclusion that the facility was 80% complete as of December 31, 2006.
- UTGR's expert dealt with the functional obsolescence issue by calculating the cost to construct a smaller hypothetical building with the same functional utility as the current structure.
- The taxpayer's expert valued a hypothetical building of 353,000 square feet as opposed to the existing 508,349 square feet. This 30% reduction in building area was accomplished by eliminating the unused three-story concrete grandstand (a vestige of the thoroughbred racing days) and a closed food court as well as reducing the size of the gaming and back office areas.

UTGR, Inc. v. Mandillo (cont.)

- The Court found this approach to be credible in part because it was based on thoroughly conducted field work such as visits to other casinos with VLT gaming and interviews of Twin River management.
- The Court also agreed with UTGR that the facility was only about 60% complete as of December 31, 2006 based on actual construction records and building permits.
- The Town's 80% complete conclusion, which was based on an undocumented site visit by the assessor and her revaluation consultant, was rejected as not credible.

UTGR, Inc. v. Mandillo (cont.)

- The taxpayer's expert's use of a base building cost of \$146 per square foot for a Grade C casino was found to be more accurate than the Town's \$150 per square foot.
- UTGR's expert enhanced his credibility by also developing an income approach in which an imputed rent of 3% of gross revenue was calculated.
- Based on the foregoing, the Court reduced the December 31, 2006 value from \$94,739,200 to \$50,031,900 (reflecting 60% complete) and the December 31, 2008 value from \$113,327,200 to \$72,031,900 (reflecting 100% complete).

CONNECTICUT

St. Luke's Senior Housing, Inc. v. City of New Haven

51 Conn. L. Rptr. 105 (2010)

- Property at issue is an apartment building for low income elderly tenants.
- Assessor valued and assessed the property utilizing the cost approach.
- Taxpayer argued the assessment was illegal and violated C.G.S. § 8-216a, which is a statute that requires assessors to value and assess low income housing projects utilizing the income capitalization approach.
- Court found that the City violated C.G.S. § 8-216a by failing to use the income capitalization approach, citing to four decisions addressing the application of C.G.S. § 8-216a to the valuation and assessment of low income housing properties.

Megin v. Town of New Milford

125 Conn.App. 35 (2010)

- Property owned by “Wilfred J. Megin, Trustee”.
- Appeal was brought by Wilfred J. Megin, as an individual, not as a trustee.
- At trial, the Town moved to dismiss the appeal for lack of subject matter jurisdiction.
- Plaintiff did not dispute the trial court’s finding that he is not record owner of the property.
- Plaintiff did not advance a claim that he possessed standing to pursue the appeal in his individual capacity.

Megin v. Town of New Milford (cont.)

- Rather, Plaintiff argued the Town should be collaterally estopped from raising the issue of standing in light of a tax foreclosure proceeding between the parties that allegedly occurred several years prior concerning the subject property.
- No credible evidence concerning the prior tax foreclosure case was presented; therefore, no proof was offered that the tax foreclosure action actually was decided or went to judgment.
- Appellate court found C.G.S. § 12-117a and 12-119 “clearly create causes of action for taxpayers who have been aggrieved by excessive and wrongful valuation of their property.”
- The Court applied the general rule that one party has no standing to raise another’s rights to affirm the dismissal of the plaintiff’s appeal.

NYNE Equipment, Inc. v. Town of Seymour
51 Conn. L. Rptr. 253 (2010)

- Taxpayer failed to duly and timely file its personal property declarations for the 2003, 2004 and 2005 grand lists.
- As a result of the taxpayer's failure to file personal property declarations, the Town conducted a personal property audit.
- Based on the audit, the net assessments for the plaintiff's personal property were determined as follows: 2003 grand list - \$846,919; 2004 grand list - \$688,561; 2005 grand list - \$603,849.
- Plaintiff filed personal property declarations for the 2006, 2007 and 2008 grand lists and paid taxes for each of those years based upon the assessor's audit completed in May 2006.

NYNE Equipment, Inc. v. Town of Seymour (cont.)

- In December of 2009, the personal property audits were revised and the assessments were reduced as follows: 2003 grand list - \$44,950; 2004 grand list - \$111,485; and 2005 grand list - \$116,141.
- Parties agreed the taxpayer was entitled to a refund/credit of taxes paid on the 2006, 2007 and 2008 grand lists, based on the December 2009 revised audit.
- The parties could not agree, however, whether the taxpayer was entitled to a refund/credit for the years 2003, 2004 and 2005 - the years the taxpayer did not file declarations.

NYNE Equipment, Inc. v. Town of Seymour (cont.)

- The trial court found that the assessor must act in “good faith” when determining a personal property assessment after a taxpayer fails to file a personal property declaration with the assessor, but a taxpayer cannot complain if the assessor, while acting in good faith, makes an error in judgment in listing and valuing the taxpayer’s property.

Redding Life Care, LLC v. Town of Redding 2011 WL 1086928 (February 23, 2011)

- Plaintiff purchased the 133.62 acre subject site in August 1998 for \$5,500,000 to develop Meadow Ridge, an entry fee CCRC.
- Phases I and II of the development were completed in October 2001 and August 2007.
- Only 30-40 acres of the entire site were developed – the remaining approximately 70 acres contained a conservation easement to be accessed via walking trails by Meadow Ridge residents and the public.

Redding Life Care, LLC v. Town of Redding (cont.)

- There are 3 distinct building components of the property:
 - 3 separate, 4-story, excellent quality, Class A, congregate retirement apartment and limited common area buildings with 338 entry fee apartments – 94 1-bedroom, 2-bath units; and 244 2-bedroom, 2-bath units
 - A 1 to 2-story, excellent quality, Class A, attached community building
 - A 1 to 2-story, excellent quality, Class A, attached health center with 20 assisted living units – 3 studio units and 17 1-bedroom units; 50 skilled nursing beds – 14 private, 1-bedroom units and 18 semi-private, 2-bedroom units; and separated common areas

Redding Life Care, LLC v. Town of Redding (cont.)

- Difference in FMV between the parties, as of October 1, 2007, was nearly \$30,000,000
 - Taxpayer's expert determined a FMV of \$89,100,000
 - Assessor's determination of FMV is \$117,621,000
- Residents must be at least 62 years of age at the time they sign the Continuing Care Agreement and they must have sufficient financial resources to pay the entrance fee, monthly service fees and other expenses associated with independent living.
- Payment of the initial entrance fee and a monthly service fee entitle the resident to occupy an independent living unit for a lifetime.

Redding Life Care, LLC v. Town of Redding (cont.)

- Residents receive a flat 85% refund of their entry fee upon death, voluntary withdrawal or permanent transfer to the assisted living facility or health center.
- Taxpayer's appraiser valued the subject real estate by first estimating the value of the going concern using the income approach; specifically, a discounted cash flow.
- Taxpayer's value for the going concern was \$108,225,000, divided into 3 components:
 - Personal property \$ 2,775,000
 - Business value \$16,350,000
 - Real estate value \$89,100,000

Redding Life Care, LLC v. Town of Redding (cont.)

- The costs of land acquisition and construction were \$175,438,966.
- Taxpayer's appraiser testified he did not use the cost approach as it is rarely relied on by buyers and investors in valuing/pricing CCRCs.
- Taxpayer's appraiser also testified he rejected the sales comparison approach as he was not aware of the sale of a truly comparable cash flow stream for an entry fee CCRC.
- Town's appraiser also concluded that the valuation of the subject real estate could only be accomplished by determining the value of Meadow Ridge as a going concern.

Redding Life Care, LLC v. Town of Redding (cont.)

- Town's appraiser did not testify in support of the Town's value and assessment, but he testified in his deposition that his opinion of the value of the real estate, tangible personal property and intangibles was \$128,000,000 as of October 1, 2007.
- The Court could not find any authority accepting the going concern valuation method as an acceptable appraisal method to value the real estate portion of a business for assessment purposes, which is what the Court found the taxpayer's appraiser to be valuing – the cash flows from a business, not the cash flows from real estate.
- Meadow Ridge, as a CCRC, was determined to be a sophisticated and complex business that is not just real estate – it contains the operation and maintenance of 3 types of elderly housing, provide food service operations, medical support staff, maintenance and landscape staff.

Redding Life Care, LLC v. Town of Redding (cont.)

- The Court ultimately found that the taxpayer's going concern method to value the business as a whole, rather than value the real estate separately, is not a credible method of appraisal.
- Therefore, the taxpayer's appeal was dismissed as the Court found the taxpayer was not aggrieved.

NEW JERSEY
Exemption Trilogy
Hunterdon Medical Center v. Readington Township

416 N.J. Super. 127, 3 A.3d 593 (2010)

- Fifth decision in a long-running exemption battle.
- The issue is whether that portion of an off-site building used by a hospital to provide physical therapy (PT) services is exempt from taxation.
- In New Jersey, “all buildings actually used in the work of associations and corporations organized exclusively for hospital purposes” are property tax exempt. N.J.S.A. 54:4-3.6.
- According to the New Jersey Supreme Court, the hospital exemption can be granted when 1) the property owner is organized exclusively for an exempt purpose, 2) the property is actually used for the exempt purpose and 3) the operation and use of the property is not for profit.

Hunterdon Medical Center v. Readington Township (cont.)

- The only question in this case is whether the second criterion (use) had been met.
- The Appellate Division held that the hospital use requirement had been met because:
 - 1) The PT services fulfilled a core hospital purpose.
 - 2) The facility served primarily hospital patients and employees.
 - 3) The PT services were sufficiently integrated with and under the control and supervision of the hospital.
- Thus, the hospital is entitled to the exemption.

City of Newark v. Block 1861, Lot 24, 605-611 Central Avenue
2010 WL 3932996 (N.J. Superior Court, App. Div. Sept. 27, 2010)

- Exemption issue arose in the context of a property tax foreclosure proceeding.
- A §501(c)(3) religious organization purchased a vacant warehouse but could not afford to renovate it for religious purposes.
- Nonetheless, the organization submitted evidence that the warehouse was used for meetings of church auxiliary groups but was not open to the public for regular services.
- In New Jersey, “all buildings actually used in the work of associations and corporations organized exclusively for religious purposes, including religious worship, or charitable purposes” are exempt from taxation. N.J.S.A. 54:4-3.6.

City of Newark v. Block 1861, Lot 24, 605-611 Central Avenue (cont.)

- The same three part test applicable to hospitals is applied here with only the second criterion (use) at issue.
- In spite of the demonstrated use and with virtually no explanation, the Appellate Division held that the unrenovated building was not entitled to an exemption.
- The exemption denial was also supported by the fact that a certificate of occupancy had not been issued for the property so it could not be legally used for religious activities.

Society of the Holy Child Jesus v. City of Summit

418 N.J. Super. 365, 13 A.3d 886 (2011)

- The issue here is whether an exemption can be revoked because an otherwise qualified property is being used in a manner not permitted by a municipal zoning ordinance.
- The property at issue is a former residential property located next to a school, both of which are owned and operated by an affiliate of the Catholic Church.
- The subject property was formerly a residence for nuns but was converted for use as meeting, event and office space for the school.
- The subject property was located in a single family residential zone. The zone permitted educational institutions as a conditional use necessitating a conditional use variance which the plaintiff did not have.

Society of the Holy Child Jesus v. City of Summit (cont.)

- There is no dispute that the property and the plaintiff's use of it meet the statutory criteria for an exemption.
- After conducting an extensive analysis of New Jersey statutory and common law as well as reviewing out-of-state decisions, the Appellate Division finally concludes that the exemption statute "does not require the property be a lawful use under the municipality's zoning ordinance in order to qualify for tax exemption." The exemption statute "clearly and unambiguously contains no such requirement" and the courts should not graft such a requirement on an unambiguous law.
- Furthermore, such a requirement does not serve the underlying purposes of the exemption statute (i.e., benefitting institutions that contribute to the public good).

MASSACHUSETTS

Ziering v. Board of Assessors of the Town of Concord

Appellate Tax Board Commonwealth of MA, Docket No. F298606

(October 22, 2010)

- Residential property with a 4.576-acre parcel that is comprised of 2 contiguous parcels – a 2.61-acre improved lot with the subject home and a 1.96-acre vacant lot.
- Taxpayers combined the 2 parcels by means of a recorded deed in 2003 – the 2 lots therefore are assessed to the taxpayers as 1 lot.
- On December 26, 2006, the taxpayers made a “grant of restriction”, without monetary consideration, on the 1.96-acre vacant lot in favor of a neighbor who lives across the street from the extra lot.
 - Grant of restriction binds the taxpayers not to “build or locate any buildings or structure (other than fences)” on the extra lot for a 10-year period, expiring January 2017.

Ziering v. Board of Assessors of the Town of Concord (cont.)

- The extra lot conforms to the Concord zoning regulations for a single-family structure
- Taxpayers' motive in granting the restriction was to maintain the extra lot as a buffer area to protect the taxpayers' privacy.
- The Board of Assessors sent the taxpayers a letter on November 30, 2007 explaining their opinion that the grant of restriction had no impact on the subject assessment.
- Taxpayers were of the opinion that the 10-year restriction rendered the extra lot unbuildable, there would be no market for the extra lot, and therefore the extra lot should be valued and assessed as surplus land.

Ziering v. Board of Assessors of the Town of Concord (cont.)

- Taxpayers' appraiser completed 2 separate reports, 1 for the improved parcel and the other for the extra lot as encumbered.
- Town's appraiser considered 2 alternative approaches to valuing the extra lot – the first ignored the grant of restriction and the second considered the encumbrance both at a discounted rate and as an enhancement to the improved lot.
- Board was not persuaded by the taxpayers' valuation method based on the long-standing principle that real estate is assessed on its fee-simple value – “its value as a unit and not upon the interest therein of the person assessed.”
 - Assessors are not required to reduce the fee-simple value to account for below-market leases as leases are not encumbrances that diminish a property's value for tax assessment purposes.

Ziering v. Board of Assessors of the Town of Concord (cont.)

- The MA SJC has recognized the difference, for tax valuation purposes, between privately imposed restrictions intended for the personal benefit of the grantor and those governmentally imposed.
- Governmentally imposed restrictions include:
 - o leases subject to rent-control restrictions
 - o utility company's governmentally imposed income restrictions
 - o coastal or conservation restrictions
- Taxpayers failed to establish that the restriction had an adverse impact on their use and enjoyment of the property.

Boston Gas Company v. Board of Assessors of Boston

458 Mass. 715 (2011)

- Taxpayer challenged the tax imposed on its rate-regulated utility real and personal property in the City of Boston.
- Appellate Tax Board determined for the personal property that a valuation methodology according equal weight to the property's net book value and its reproduction cost new less depreciation (RCNLD) provided a reliable estimate of the assets' FMV.
 - o The value determined using this methodology was in excess of the assessed value, so the Board denied the taxpayer relief.

Boston Gas Company v. Board of Assessors of Boston (cont.)

- With regard to the real estate, the Board found that neither the taxpayer nor the City had provided sufficient basis for valuing the property, so the assessed value was not disturbed.
- Taxpayer claimed on appeal that the Board lacked substantial evidence in support of a valuation method for the personal property other than net book value.
- Taxpayer also claimed that the Board lacked substantial evidence to support the analysis of earnings before interest, taxes, depreciation, and amortization (EBITDA) in the income capitalization approach for valuing the personal property.
- Taxpayer further claimed the Board erred in failing to use a tax factor to account for property taxes in the income capitalization approach.

Boston Gas Company v. Board of Assessors of Boston (cont.)

- With regard to the real property, the taxpayer claimed the Board erred in concluding there was insufficient evidence to determine the value.
- The methods used to value taxable utility property include:
 - o a determination of the property's net book value
 - o an income capitalization value
 - o a sales comparison valuation
 - o a determination of RCNLD

Boston Gas Company v. Board of Assessors of Boston (cont.)

- The Department of Public Utilities (DPU) regulates the rates gas companies charge consumers – allows a utility to recover, through these rates, its reasonable operating expenses, taxes, depreciation and amortization, and other costs.
- In the context of a sale of utility assets, the DPU has maintained a general policy of limiting the net book value of assets in the hands of the buyer to the existing net book value in the hands of the seller so any premium paid would not be passed on the consumers – “carry-over rate base principle”.
- This regulation has resulted in the SJC stating that the net book value of utility assets is the proper value for assessment purposes, absent “special circumstances” that would induce a buyer to pay more than net book value.

Boston Gas Company v. Board of Assessors of Boston (cont.)

- o “Special Circumstances” have included:
 - o Net earnings exceed the rate of return approved by the regulatory agency
 - o Profit available from the transaction may exceed that which an investment of comparable risk could bring in the open market
 - o The regulatory agency may change its policies and abandon the carry-over rate base principle, thereby making an investment in the company more attractive

Boston Gas Company v. Board of Assessors of Boston (cont.)

- For FY2004, Assessors' value of the personal property = \$223,200,000; Net Book Value = \$159,200,000
- For FY2004, Assessors' value of the real property = \$28,000,000; Net Book Value = \$1,800,000
- Assessors' expert used 3 valuation methodologies to determine a value of \$248,000,000 for the personal property – an income capitalization approach; a sales comparison approach; and a RCNLD approach.

Boston Gas Company v. Board of Assessors of Boston (cont.)

- Board found that changes in the regulatory environment for utilities justified the use of a valuation method other than net book value.
- The income capitalization approach was necessary to estimate economic obsolescence in the RCNLD approach.
 - The income capitalization approach included a deduction for the actual property tax expense incurred by the taxpayer rather than a tax factor in the capitalization rate.
 - The Board normally prefers the use of a tax factor, the tax factor is frequently used in income capitalization analyses, the SJC has considered it as well. Therefore, this issue was remanded to the Board for further consideration.

Boston Gas Company v. Board of Assessors of Boston (cont.)

- Both parties introduced real estate appraisal reports that determined values of the real estate as if it was not rate-regulated utility property. The Board found no credible evidence was presented on which to appraise the real estate and the SJC affirmed this conclusion.
- Other than remanding the matter to the Board to further consider certain issues, the SJC affirmed the Board's determination of the appropriate methodology to value and appraise the personal property and that the real property value was to remain unchanged.

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