Property Tax and Valuation Topics

PULLMAN & COMLEY

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October 1, 2016 Revaluations: If/When/How to Challenge Your Real Estate Property Assessment

Connecticut municipalities are required to carry out a general revaluation of all real estate within their boundaries at least once every five years – although they are perfectly free to do so more frequently. Of course this rarely, if ever, happens due to the political stress associated with revaluations and, to a lesser degree, the cost and the impact on assessors' office staff in doing so.

With 20% of all municipalities revaluing each year, approximately 35 communities are going through this process this year. Typically, data collection starts early in the calendar year. Preliminary values are established and communicated to commercial property owners in the third or fourth quarter of the year to coincide with the October 1 valuation date observed throughout the state. Property owners usually are afforded the opportunity to meet with the revaluation company or the assessor's office to review the proposed assessment which is intended to equal 70% of market value.

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If this process is not satisfactory, the next step is an appeal through the local board of assessment appeals no later than February 20 except in communities which extend the appeal date to March 20. In each case, the appeal date is mandatory with no extension possible.

If the board does not act to the property owner's satisfaction, the last step in the process is an appeal to the Superior Court which must be filed within two months of the mailing of the board's decision. Overlooking a potential appeal right in a revaluation year does not doom the property owner to accepting the value for the remainder of revaluation cycle; an appeal may be filed in a later year while keeping in mind that the operative date of value is October 1 of the revaluation year. Of course, it generally makes no sense to defer the appeal and in many cases it can be even more difficult to settle a Superior Court appeal with an assessor who thought you were satisfied with your revaluation assessment!

In this era of increased strains on municipal budgets and reduced state financial aid, it is generally difficult to project what the applicable tax (mil) rate will be since municipalities establish their mil rates in late May or June.

A schedule of Connecticut October 1, 2016 revaluations appears below. Please contact any member of the firm's Property Tax and Valuation Department for further information.

Andover

Griswold

North Stonington

Ashford

Groton

Orange

Beacon Falls

Hartford

Plainville

Bridgewater

Hebron

Plymouth

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Brookfield

Killingworth

Portland

Colchester

Lisbon

Salem

Columbia

Manchester

Shelton

Cornwall

Meriden

Thomaston

East Hartford

Middlebury

Vernon

East Haven

Middlefield

Westbrook

East Lyme

Milford

West Hartford

Easton

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Montville

Wolcott

Enfield

New Haven

Woodstock

Computation of Damages With "Development Approach" Approved

After 12 acres of a 460 acre farm in Kansas were condemned by the utility company for a power line easement, the owners challenged the $96,465 award. This was an excellent decision because they received $1,922,559 after a jury trial! (Jury trials in eminent domain cases are somewhat unusual. Connecticut provides for a single judge or a three judge panel, depending on the circumstances).

Apparently one of the persuasive pieces of evidence introduced by the owners was a damage estimate prepared by a developer. Called a "development approach," this evidence projected "what a hypothetical buyer would pay for the property after the taking based on his knowledge of the (single family development business." Understandably, the utility company claimed that the farmer's damages should be based on the market value of the parcel and, presumably, on any severance damages determined by one of the three traditional approaches to property valuation as provided by a Kansas statute.

Since the "development approach" methodology did not appear in Kansas law, the power company argued that the trial court's admission of that evidence was in error. Finding that the Kansas statute did not provide for an exclusive valuation method, the trial judge's allowance of this evidence was accepted. Strengthening the farmers' argument was the testimony of their real estate appraiser whose estimate of damages apparently approximated that of the developer.

An award of 20 times a taking authority's damage award is certainly eye popping. There is a strong suggestion in the case that trial court relied on a "valuation in use" approach linked to the identity and business of the developer as opposed to a market value in exchange analysis. It also appears that Kansas courts allow valuation evidence from non-real estate appraisers, a phenomenon which is increasingly repeating itself in other reported decisions around the country as well.

Kansas City Power & Light Company v. Strong, Supreme Court of Kansas, 356 P.3rd 1064 (2015).

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Elliott B. Pollack at ebpollack@pullcom.com or 860-424-4340 is familiar with this decision.

Climate Change and Tax Appeals

The owners of four homes located on Stamford's Shippan Point appealed the assessor's valuation of their properties as of October 1, 2012 to the Superior Court. The properties are valued by the assessor from $2.5 to $3.1 million. Petitions to the Stamford Board of Assessment Appeals resulted only in slight reductions.

Not surprisingly, the parties' appraisers disagreed significantly concerning market values which were enhanced by their Long Island Sound water frontages.

Unfortunately, the homes were all located on the east side of the peninsula which is only 10 feet above sea level and is subject to periodic flooding. Storms Irene (2010) and Sandy (2012) were notable events which also resulted in the passage of the Biggert-Waters Flood Insurance Reform Act of 2012. Although modified after passage, the effect of the Act is to raise flood insurance rates to improve the fiscal strength of the National Flood Insurance Program. The court noted that "[U]nder the law, subsidized insurance rates will be phased out until their premiums reflect full risk rates. Subsidies will immediately terminate for all new and lapsed policies and upon the sale of a home... a new reserve fund charge will start being assessed, which will increase over time."

One of the experts presented by the homeowners was a realtor, who was not an appraiser, but who had extensive experience in selling Shippan properties. The court credited the realtor with an understanding of the Stamford real estate market on the revaluation date with special emphasis on Shippan. The broker observed that an eastern exposure to Long Island Sound increased flooding problems – flooding was less of a concern for properties on the west side. The "uncertainty of buyers with respect to increases in premiums due to flood insurance changes" also tended to depress property values on the east side of the peninsula, the court observed.

Against this background, the court criticized both parties' appraisers' use of certain comparable sales which, while located on Shippan, did not face eastward and therefore did not suffer from the flooding issues experienced by the plaintiffs' homes. The court reduced the value of the four properties by approximately 15 percent each.

This decision is notable for the court's reliance on non-real estate expert market-based testimony, its reference to the impact of climate change and national flood regulatory developments on the local property market and the lack of contemporary comparable sales resulting in a greater reliance on listings than is typical in tax appeal litigation.

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Lanier v. City of Stamford, Docket CV-146026505, June 1, 2016.

Gregory F. Servodidio at gservodidio@pullcom.com or 860-424-43332 or Tiffany K. Spinella at tspinella@pullcom.com or 860-424-4360 can respond to questions about this decision.

Compensability of Intangible Losses and Eminent Domain

Requiring a new academic medical center, Louisiana State University (LSU) took property owned by Michael Villavaso in the New Orleans central business district. The property was used for special events and daily parking and was no doubt benefited by its proximity to the Superdome and other business parking generators.

With eminent domain power under Louisiana law, LSU determined that just compensation for Mr. Villavaso's property was $172,000. The owner challenged the taking award seeking increased damages, compensation for his economic losses, loss of business income and "general damages for mental anguish." The mental anguish claim was limited to the 10 day period preceding the taking. At trial, Mr. Villavaso was awarded an additional $78,000 for his property, $145,000 for business losses and $50,000 for his ten days of anguish.

The trial court's increase of the owner's property damages was sustained by the Louisiana Court of Appeal based on a "pure credibility call in which it articulated a rational basis for choosing one (appraisal) viewpoint over the other."

Interestingly, the trial court's award for losses due to the loss of Mr. Villavaso's parking business also was sustained. Since it was acknowledged that land for a replacement parking lots in the immediate facility existed, how did this happen?

The Appellate Court ruled that his parking lot was "both unique in nature due to its location, and indispensable to (his) business." The convenience of the lot to the Superdome (with "exceptional access" to the Interstate) was stressed. The ability of parking customers to bypass "much of the game day and event traffic" enabled Mr. Villavaso to "cultivate a network of regular customers who sought out his parking lot in particular for its unique features." A very special parking lot indeed!

Interestingly, the ability of the trial court to award the owner damages for mental anguish was sustained although the damage amount was reduced to $15,000. Proof that LSU has come on the property prior to the actual taking and had started to "remove various items, including but limited to parking blocks, chain links and cement posts" and to commence grading was "an impermissible trespass" which caused the owner to be "unnerved and emotionally upset even three years after the taking" by LSU's actions!

This unanimous opinion by Judge Joy Cossich Lobrano makes for very interesting reading and is a worthwhile primer for property owners facing similar circumstances in the eminent domain context.

Board of Supervisors of Louisiana State University v. Villavaso, Docket number 2014-CA-1277 (December 23, 2015).

Laura B. Cardillo at lcardillo@pullcom.com or 860-424-4309 is familiar with this decision.

New England Real Estate Notes

The *New England Real Estate Journal* reported in June that Winthrop Realty Trust recently sold a 93 unit Stamford apartment property for $940,860 per unit. If this transaction does not set a multifamily price per unit record, it certainly comes close.

Branded as “Highgrove,” the property was designed by noted architect Robert A. M. Stern and presents with numerous amenities including private balconies with views of the Long Island Sound, according to the publication.

Attorney Notes

- Elliott B. Pollack addressed attendees at a Strafford Publications webinar on the valuation of construction work in progress on September 1.
- On October 20, Attorney Pollack addressed the challenging issue of not for profit hospital tax exemptions at a national program sponsored by the American Health Lawyers Association in Washington.
- The final webinar in our series, *Property Tax and Valuation Primer for Retailers in New England* took place on October 5, 2016, from 1:00 p.m. to 2:00 p.m. The topic of discussion was "What Retailers and Other Taxpayers Should Know About Personal Property Taxes in Connecticut."