Property Tax and Valuation Topics

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In This Summer 2015 Issue:

The Environment and Property Taxes

It seems that many stakeholders are trying to deal with climate change.

Connecticut's hundreds of miles of coastline along the Long Island Sound include many low-lying areas which scientists tell us will be hit by rising sea levels. The future market value of these properties and the scope of these changes must be taken into account, now or in the future, when appraisers do their work.

Will the sale prices of properties at lower elevations (more likely to be impacted by rising sea levels) impact properties at higher elevations? What role do periodic FEMA flood map changes play in appraisal results? Will it be sufficient to simply refer to current maps or must appraisers examine trends and consider sources outside of FEMA materials? What impact will insurance underwriters' decisions have on property values?

As premiums inevitably increase, insurance no longer becomes available, or only with inadequate coverages or vastly increased deductibles. How will the property market react? To the extent that market data do not display strong indications of climate change on current valuations, are appraisers nevertheless entitled/ required to take these elements into consideration?

These and other questions remain to be explored in greater detail. What is quite likely, however, is that climate change will gradually move to occupy a front burner position in property valuation determinations. The budgets of many cities with rising sea level exposure will inevitably suffer as waterfront properties, formerly large tax generators, become less valuable.

A §1031 Exchange Does Not Occur Under "Duress"

After purchasing a small commercial building in Old Greenwich in 2007, the property owner challenged the Town of Greenwich's revaluation market value of almost $2.7 million as of October 1, 2010.

The owner asserted that its need to effectuate a "like kind exchange" under the Internal Revenue Code resulted in an atypical quasi-compulsory transaction which did not reflect market value.

"No one forced (the purchaser) .... to purchase the property. The fact that (its principal owner) may have felt some internal pressure to purchase a property within a certain time frame does not significantly distinguish this case from the many potential purchasers and sellers on the free market who must act quickly before their best opportunity slips away," Judge Carl Schuman wrote. "It is surely the rare case," he noted, "in which someone purchases or sells real property at precisely the price he or she had in mind without the influence of some other factor."

The property owner's appraiser's refusal to consider the sale as a data point in developing his comparable sales analysis was rejected by the Court. The transaction of the subject property "is not only comparable," the Court noted, "it is identical."

Elliott B. Pollack, Esq. at ebpollack@pullcom.com or 860-424-4340 can answer any inquiries about this case.

Statute of Limitations Issue Resolved

Connecticut tax appeal procedure offers the possibility of two avenues for challenging the *ad valorem* valuation of real estate. The first contemplates a Superior Court appeal within two months after action by a municipal Board of Assessment Appeals is deemed inadequate by the property owner. The property owner's burden of proof in this case is to prove overvaluation.

A second and less well known option permits appeals in cases in which the property owner has not filed a board petition. The burden of proof here requires the property owner to establish that the assessment was "manifestly excessive" and could not have been arrived at except by disregarding "the assessor's duties . . . ."

Frederick Cornelius filed a tax appeal under the second statute. The time limitation for exercising rights under this law is "one year from the date as of which the property was last evaluated for purposes of taxation. . . ." Mr. Cornelius challenged the value of his property as of October 1, 2011, on February 4, 2013. The Town of Farmington sought the dismissal of this case on the basis that it should have been filed by September 30, 2012.

Notwithstanding the owner's reference to various duties imposed on the assessor after October 1, 2011, with regard to that assessment year's Grand List, the Superior Court held firm to the clear statutory language; it ruled that Mr. Cornelius was more than five months late with his appeal. In doing so, the Superior Court referred to a 1999 Connecticut Supreme Court decision which noted the requirement of sound public policy that "taxes that have not been challenged timely, cannot be the subject of perpetual litigation, at any time, to suit the convenience of the taxpayer. . . ."

Cornelius v. Arnold, Docket Number CV-13-5015763-S, Superior Court, J.D. of New Britain, at New Britain (January 30, 2015)

Gregory F. Servodidio, Esq. at gservodidio@pullcom.com or 860-424-4332 can answer any inquiries about this case.

Questionable New York Appellate Ruling

A group of Buffalo, New York residential property owners filed tax appeals; the City submitted pretrial discovery requests seeking, in part, interior inspections of their homes which had not been performed during the assessment process. New York law requires the assessor to prove that his request to inspect a home is reasonable. The Court found that he could not do so. The Court's holding relied on a provision in the Uniform Standards of Professional Appraisal Practice ("USPAP") that an interior inspection "is not always required ...." It also delved into constitutional law protections against unreasonable interference with owners' privacy rights.

This rather astonishing ruling seems to ignore the reality that the market value of the plaintiffs' properties depended in substantial part on the condition and quality of the exterior *and* interior of their homes. Since a potential buyer would be unlikely to sign a contract to purchase any of the plaintiffs' homes without being fully aware of outside and inside conditions, it would seem unreasonable on the face of things for an assessor to be expected to arrive at an accurate market value without the same opportunity.

Perhaps the New York Court of Appeals, to whom the case is now pointing, will have a different view.

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In the matter of *Diana Sachs Aylward v. Assessor*, *City of Buffalo*, Supreme Court of New York, Appellate Division, Docket No. CA 14-00624 (February 6, 2015).

Laura A. Cardillo, Esq. can reply to questions about this case at 860-424-4309 or lcardillo@pullcom.com.

Tax Appeal Not Required to Challenge Improper Collection Action

When a delinquent tax action is challenged by the property owner because it claims the underlying assessment is excessive, Connecticut courts typically reject the claim. They do so because the proper way to attack an excessive assessment is by means of a statutory tax appeal; waiting to raise valuation issues until the tax collector comes after you is unacceptable.

However, when it is claimed that a tax collector improperly extracted unpaid taxes from the *wrong party*, a tax appeal is not necessary. This is what happened.

The same person was a member of a limited liability company and the president of a closely held corporation. The entity names, Premier Partners Associates, LLC and Premier Building & Development, Inc. strongly suggest an affiliation. When the building company failed to pay its taxes, the town of Cromwell took collection action against the limited liability company.

The Town's defense to the lawsuit brought by Partners to recover the taxes taken from its account was that Partners should have brought a tax appeal. Partners countered that a tax appeal is not necessary when a town improperly consolidates tax obligations of one entity with those of another entity, even if related.

Holding that Partners was not obliged to appeal the building company's assessments and that it had made no claim of improper assessment of *its* property, the Superior Court rejected the Town's motion to dismiss Partners' litigation to recover the taxes it claimed were unlawfully seized from its bank accounts.

Premier Partners & Associates, LLC v. Town of Cromwell, et al, Superior Court, Judicial District of Middlesex, Docket No. 14-6011999 (April 10, 2015).

Tiffany K. Spinella, Esq. can reply to questions about this case at 860-424-4360 or tspinella@pullcom.com