Property Tax and Valuation Topics

PULLMAN & COMLEY

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In This Winter 2012 Issue:

Critical Procedural Issue Decided

Wal-Mart Stores leased property in New Britain from Samnard Associates. After the city revalued all real estate within its boundaries as of October 1, 2007, Samnard authorized Wal-Mart to appeal the assessment to the New Britain Board of Assessment Appeals which reduced the value; no further action was taken either by Wal-Mart or Samnard.

Two years later, Samnard filed its own appeal challenging the reduced value obtained by Wal-Mart, again as of October 1, 2007. Unwilling to allow a second bite at the apple, the city filed a motion for summary judgment in which it asserted that the Board of Assessment Appeals' earlier reduction precluded further action by either the landlord or tenant. Samnard argued that a board of assessment appeals decision could not have preclusive effect because Wal-Mart did not take the case beyond the local board.

In support of its position, the city called the court's attention to 2009 legislation which provides when a local board of assessment appeals changes an assessment, "the amount of such . . . assessment shall be fixed until the assessment year in which the municipality next implements a revaluation of real property (within the municipality)."

While recognizing that a board of assessment appeals decision, lacking the characteristics of a judicial tribunal, may not have the same preclusive impact that a court decision would create, the New Britain Superior Court reviewed a number of Connecticut Supreme Court rulings and denied the landlord its desired second bite. Having "successfully challenged the assessor's valuation . . . as of the revaluation date . . . and no appeal (having been) taken of that decision either by Wal-Mart or Samnard, Samnard cannot now seek a different result . . . ."

The city's motion for summary judgment was granted and the appeal was dismissed.

Samnard Associates, LLC v. City of New Britain, Docket No. CV-10 6004651 (April 8, 2011).

Elliott B. Pollack, Esq.at (860) 424-4340 or ebpollack@pullcom.com can respond to questions about this case.

Upgrading of the Appraisal Profession

Amidst the controversy surrounding the Dodd-Frank financial reform bill, perhaps we have overlooked those provisions which addressed the real estate appraisal profession.

Among the relevant items are:

- That "reasonable and customary" fees be paid to appraisers; this provision is designed to end profit skimming by appraisal management companies which have played something akin to the role of managed health care organizations in some jurisdictions;
- The mandate that appraisal management companies register with state regulators.

Tiffany K. Spinella, Esq. at (860) 424-4360 or tspinella@pullcom.com is familiar with this topic.

Environmental Remediation Claim Fails

The property owner challenged the assessments of its properties, former gas stations, claiming they were environmentally contaminated and under governmental clean up orders. Its expert witnesses could not clearly present the extent of the contamination, the remediation methods proposed, the remediation reschedule or the proposed costs.

Under these circumstances, the Washington Supreme Court concluded that the evidence presented to it was "speculative" and could not support a reduction in the properties' assessments. Connecticut courts are likely to take a similar approach when presented with tenuous remediation valuation diminution arguments.

Tiger Oil Corp. v. Yakima County, Washington Supreme Court, 242 P. 3d. 936 (November 16, 2010).

Gregory F. Servodidio, Esq. at (860) 424-4332 or gservodidio@pullcom.com can respond to inquiries about this ruling.

Second CIP Case Decided

As we noted in a recent issue of *Property Valuation Topics*, a New Haven Superior Court ruled that real estate construction in progress could not be assessed. The decision did not receive appellate review because the case was settled. At that time, we opined that the decision in *Evans v. Guilford* lacked substantial support in legislative history and in sound assessment practice.

Perhaps we were wrong. On October 6, 2011, Judge Trial Referee Arnold W. Aronson ruled that a partially constructed residence could not be assessed until it was completed and a certificate of occupancy issued. "The fact that the legislature enacted (the statute in question) to provide for the assessment of new construction, *but only after* the completion of the construction upon issuance of a certificate of occupancy," held Judge Aronson, "evinces an intent to carve out an exception to the (statute permitting any property" to be assessed unless specifically exempt)."

Notwithstanding the importance of a decision from the New Britain Tax Court this opinion, if it stands, will create a major exception to the rule that tax exemptions may not be implied and must be specifically decreed by the General Assembly.

As there are further developments in this case, we will report them.

Kasic v. Town of Columbia, Docket Nos. CV-09-5014848 and CV-10-6006117, October 6, 2011.

Laura Bellotti Cardillo, Esq. at (860) 424-4309 or lcardillo@pullcom.com has been following the issues raised by Evans and Kasic.

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Fairfield Assessor Retires

Thomas Browne, Jr. retired as assessor of the Town of Fairfield after many years of service.

Don Ross, currently deputy assessor, was appointed as acting assessor by the Board of Selectmen in September, 2011. Mr. Ross, whose tenure with the Fairfield assessor's office goes back to 1975, will serve in an acting capacity until a successor is named, likely early this year.