Property Tax and Valuation Topics

PULLMAN & COMLEY

A publication of Pullman & Comley, LLC

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Summer 2019

August 2019

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2019 Connecticut revaluations are on their way

Approximately 20% of Connecticut's 169 municipalities usually conduct general revaluations every five years as required by law. Due to a quirk in the schedule, 2019 revaluations will be conducted by only 14 communities. While none of Connecticut's largest cities will be going through revaluation process, municipalities such as Bloomfield, North Haven, Stratford and Torrington will be doing so.

An updated list of 2019 revaluations will be published in our Fall edition.

Elevated property values in Florida

With southern Florida bracing for significant sea level rise within the next decades, "higher ground inland has started to look more and more desirable" reports National Public Radio. These inland neighborhoods are some of the

poorer portions of the region and are experiencing what one Harvard researcher calls “climate gentrification,” meaning that speculators are starting to take positions, resulting in some cases, in the loss of homes and nonrenewal of leases.

Assuming these realities apply to the northeast sea coast as well, perhaps we soon will be reading about New England real estate appraisals which take sea level elevation into account as an important variable. According to NPR, the Harvard researcher “found that from 1971 to 2017, real estate at higher elevations in Miami appreciated at higher rates than properties closer to sea level.”

Glug!

The tenant's assessment appeal

Under Connecticut law, a tenant to a signed lease (or memorandum) recorded on the land records who is obliged under that lease to pay real estate taxes may bring a tax assessment appeal. Tenants frequently become tax appeal plaintiffs under NNN lease situations where the property owner/landlord is not economically motivated to challenge an assessment.

The standing of the tenant to take a tax appeal in New York is not as well established. The Empire State’s standard permits an “aggrieved party” to challenge the decision of a local board of assessment review, but without further detail. Thus, the question in a recent New York Court of Appeals (that state’s highest court) decision was whether a tenant who is not legally bound to pay real estate taxes and who nevertheless pays them may challenge the assessment. New York’s highest court ruled that lacking a legal obligation to do so, the tenant could not pursue the appeal; actual payment of the taxes as a matter of overall business judgment was not sufficient.

Returning to Connecticut, members of Pullman & Comley’s Property Tax and Valuation Department frequently find that tenants who are legally bound to pay real estate taxes for some reason have failed to record the appropriate document on the land records, which potentially invalidates an appeal that otherwise could go forward. One way our attorneys have dealt with this challenge is to prepare a memorandum of the lease which, with both the landlord’s and tenant’s signatures, can be recorded in order to prime the tax appeal.

Matter of *Larchmont Pancake House v. Board of Assessors*, New York Court of Appeals (April 12, 2019).

Gregory F. Servodidio at 860-424-4332 or at gservodidio@pullcom.com can respond to questions about tenants’ assessment appeals.

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Anatomy of a shopping center appeal

A shopping center in Taunton, Massachusetts consisting of TJ Maxx, Michael's Jewelry, Pier 1 Imports and Office Depot stores was valued by the assessor at slightly over $10 million. The value was somewhat curious because the assessor's property record card reflected a value of *$8.9* million based on an income capitalization approach, the very methodology used by the tax appeal plaintiff's appraiser. Even more curiously, the assessor chose not to present expert testimony but relied solely on his work.

The Massachusetts Appellate Tax Board disagreed with a number of the assumptions used by the property owner's appraiser in developing his income value approach and strongly disapproved of his expense calculations which, it observed, "were simply extracted from general database sources and did not include supporting detail specific to the subject property." Nevertheless, the ATB lowered the assessor's value significantly below his income approach value and, as noted above, significantly below his assessment!

While the ATB did not offer much commentary about the discrepancy in the assessor's records, it is difficult to imagine that it did not have a major impact on the Board's decision.

Ipers Taunton Crossing, et al v. Taunton Assessor, MA Appellate Tax Board, 2019 WL 354880 (2019).

Laura B. Cardillo can answer questions about this case. She can be reached at lcardillo@pullcom.com or at 860-424-4309.

Vexing decision on filing data for income and expense reports

Readers of *Property Tax and Valuation Topics* know that Connecticut assessors require the owners of income producing property to file income and expense forms every June 1, even though new values are established only once every five years. The relevant statute recites that owners must "submit" the form to the assessor. Surprisingly, the word "submit" is not defined there - or in any other Connecticut statute. The dictionary definition does not nail the issue and the legislative history surrounding adoption of the statute is somewhat opaque as well.

And so, does the statute require the form to be placed in an envelope postmarked by June 1 or must the form actually hit the assessor's desk on June 1?

Judge Sybil V. Richards, sitting in the New Haven Superior Court, recently ruled that simply mailing the form in a June 1 - or earlier - postmarked envelope is not sufficient. This is no small matter because the assessor is required to impose a 10% penalty for late filings. In the case of highly valued properties, thousands of additional tax dollars for a particular year could be at stake and, indeed, frequently are.

A May 31 postmark was of no avail to the property owner in this litigation because the assessor did not receive the form until June 2. One day late resulted in being $132,000 short! The court also rejected the owner's claim that it was being excessively penalized for the one day gap.

Seramont Associates LLC v. Town of Hamden, Docket No. CV-16-6065237 (February 5, 2019).

Elliott B. Pollack can be reached at ebpollack@pullcom.com or at 860-424-4340 for additional information about this topic.

Devilish tax exemption granted

According to Paige Jones's article in the May 2019 issue of *The Exempt Organization Tax Review*, The Satanic Temple was recently granted tax exempt status by the IRS. The public need not be concerned that The Temple promotes or worships Satan or believes in a symbolic devil, the article offers. The Temple's emphasis rather is on rational inquiry. It rejects "super naturalism and archaic tradition-based superstitions . . . ."

The Satanic Temple's headquarters is in Salem, Massachusetts. As noted by Ms. Jones, Salem is "infamous for its 1692 witch trials." Presumably, the Salem assessor will follow the IRS and grant the property tax exemption which the Temple likely will seek.

Pullman & Comley's newly expanded property valuation and tax practice in Massachusetts is conducted strictly on a secular basis.

Definition of "expert" testimony is exploded

Two years ago, the Connecticut Superior Court allowed unlicensed individuals to give expert testimony about the value of real estate in Wheelabrator Bridgeport v. City of Bridgeport. The City of Bridgeport claimed that only a licensed real estate appraiser could estimate the market value of real property and that it is both civilly and criminally prohibited for unlicensed individuals to do so. The Connecticut Supreme Court disagreed with the City, thus leaving the question of future appraiser licensure enforcement very much up in the air.

The North Carolina Supreme Court Department of Transportation last year faced a slightly different version of the issue. In an eminent domain action brought by that state's department of transportation, the Department of Transportation presented the testimony of a licensed real estate broker to which the property owner objected based on state appraiser licensing laws à la the Connecticut case mentioned above. The state agency maintained that a carve out to the appraiser licensing law, allowing real estate brokers to opine as to "the probable selling or leasing price of real property," did not turn licensed brokers into unlicensed appraisers. The trial court and an intermediate appellate court agreed with Department of Transportation.

However, when the case reached the North Carolina Supreme Court, that panel ruled much the way as did the Connecticut court in the Bridgeport matter. Developing a real estate appraisal for purposes of court testimony apparently is different than developing a real estate appraisal for purposes of a financing transaction, according to the North Carolina Court's reasoning. A person qualified as a real estate expert can testify about anything within the scope of his or her expertise, even though if the same person produced a real estate appraisal for purposes of mortgage transaction, she would run afoul of licensing laws.

The North Carolina ruling further erodes the concept of licensure given the court's notation that "an intelligent lay person, without any license, could potentially testify about fair market value."

It is too early to evaluate the potential mischief created by the Connecticut and North Carolina holdings. But among the many concerns they raise is opening the testimonial door to individuals whose compensation is typically based on a percentage of the selling price as opposed to a fixed or hourly fee. Regardless of how the broker who is allowed to give "expert appraisal testimony" in a contested proceeding may be compensated, this segue from professional, licensed, ethically supervised USPAP-focused appraisers to real estate brokers as courtroom experts portends serious problems.

North Carolina Department of Transportation v. Mission Battleground Lease Co, LLC, Supreme Court of North Carolina (March 2, 2018)

Michael J. Marafito can be reached at mmarafito@pullcom.com or 860-424-4360 to answer any inquiries regarding this case.

Attorney Notes

Elliott B. Pollack will be a panelist at the November 21, 2019 Property Tax Symposium presented by the Institute for Professionals in Taxation in Seattle. His panel's topic is "Value in Exchange v. Value in Use: Do the Courts Know the Difference"? Elliott has written and lectured on this topic and has litigated a number of assessment appeals in which the definition of value has been a central theme.

On May 9, 2019, Greg Servodidio delivered a presentation entitled "A Property Tax Perspective on Economic Growth Through Zoning Reform" at the American Bar Association's national real property legal education conference in Boston. Greg and his fellow panelists focused on the zoning reform initiatives in Hartford and Philadelphia and the economic development impact of those efforts. Please contact Greg at 860-424-4332 or gservodidio@pullcom.com if you would like a copy of his presentation.

outcome.