

# Changing The Foundation: Assessing Construction In Progress

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## Case law, legislature altering longstanding grand list practices

It has long been the practice in Connecticut for a tax assessor to assess all property in a municipality when preparing each grand list. However, since all construction underway is not complete by Oct. 1 each year, determining how to assess construction in progress has posed a challenge.

### Standard Operating Procedure

Assessors in Connecticut have a longstanding practice to address this dilemma. With each new grand list, if construction is in progress, an assessor will assess only the percentage completed. If construction is completed entirely in between grand lists, then the assessor will develop a supplemental assessment calculated on a prorated basis depending on when during the assessment year the construction is completed.

This practice appeared to be in accordance with Connecticut General Statutes. C.G.S. §12-55(a) states that “each grand list shall contain the assessed values of all property in town.” Thus, assessors would assess the percentage complete to ensure “all property” in the town was assessed pursuant to statute. C.G.S. § 12-55 (b) states that “the assessor or board of assessors shall equalize the assessments of property in the town . . . The assessor or board of assessors may increase or decrease the valuation of any property as reflected in the last-preceding grand list.” An assessor would adjust the percentage completed on the construction as necessary each year to reflect the work that was completed and to ensure all properties were treated alike.

Finally, C.G.S. §12-53a(a) states that “completed new construction of real estate completed after any assessment date shall be liable for the payment of municipal taxes from the date that certificate of occupancy is issued or the date on which such new construction is first used . . .

prorated for the assessment year in which the new construction is completed.” This statute would be utilized by assessors to determine the assessed value for newly completed construction. The Handbook for Connecticut Assessors, published by the Connecticut Association of Assessing Officers Inc., even includes a

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chart to assist an assessor in prorating any assessment increase due to newly completed construction.

The aforementioned system meant that a property owner may challenge (1) the assessor's determination of percentage complete as of the date of the grand list; (2) the assessor's determination of when the property was first used or the Certificate of Occupancy issued; and/or (3) the value placed on the property — whether pertaining to construction in progress or newly completed construction.

### **Case Law Causing Change**

These assessment practices were upended with the decision of *Evans v. Town of Guilford* on Dec. 29, 2009. In *Evans*, a property owner had demolished an existing dwelling and began constructing a new one. For the Oct. 1, 2005 grand list, the assessor determined the construction in progress was 69 percent complete and assessed the property accordingly. Thereafter, the assessor, pursuant to §12-53a, prorated the assessment because the construction was completed in March 2006. The property owner claimed that the assessor acted illegally in assessing its property for the 2005 Grand List because §12-53a only permits the assessment of completed construction — not construction in progress.

Additionally, Oct. 1, 2005 was not a revaluation year in Guilford and interim revaluations are normally not permitted unless a statutory exception applies. The town argued that an interim revaluation of construction in progress was permitted based on both § 12-53a and §12-55 — specifically that §12-55 “charges the assessor with a ‘watchtower’ role ‘to correct inequalities, whether too high or too low.’” The Court ultimately held that “the specific terms of § 12-53a(a), governing new construction, prevail over the broad terms of § 12-55. Because an interim assessment under § 12-53a(a) cannot commence until after new construction is completed, the assessor acted outside of his statutory mandate by performing an interim assessment when the property was 69 percent completed.”

Approximately two years later, the New Britain Tax Court had an opportunity to address a similar issue in *Kasica v. Town of Columbia*. In *Kasica*, the property owner began constructing a new home. The assessor determined that 35 percent of the house was complete for the Oct. 1, 2008 Grand List and that 45 percent was complete for the Oct. 1, 2009 grand list.

The property owner claimed that the assessor disregarded §12-53a by assessing the property prior to its completion. The Town of Columbia utilized slightly different arguments than the Town of Guilford in the *Evans* case. The Town of Columbia asserted that §12-55(b) requires that an assessor place upon the assessment roll “any property”; thus, partially completed property must be included.

Ultimately, the court was not persuaded by the town's arguments. The court first noted that it adopted the *Evans* decision — the specific language of §12-53a regarding assessing new construction completed trumps the general language of §12-55. The court further held that although §12-55(b) requires an assessor to assess “any property,” the fact that the legislature enacted §12-53a demonstrates an intent by the

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legislature “to carve out an exception” for construction in progress. Thus, the court held that only the land should have been assessed for the 2008 and 2009 grand lists. Currently, this case is under appeal with the Connecticut Appellate Court.

### **Eye On Legislative Efforts**

On Dec. 29, 2009, the Evans case was decided. Between the time the Kasica case was filed (June 2009) and the decision was issued (October 2011), legislation was proposed in support of the Evans decision. Senate Bill No. 505 in the January 2011 session provided that the “Statement of Purpose” of the bill was to “clarify that towns may not under any circumstances impose taxes on new construction until at least a certificate of occupancy has been issued or the new construction has begun to be used for its intended purposes.” Ultimately, this legislative effort died in session.

With the February 2012 session, new efforts are underway in opposition to the Evans and Kasica decisions. Raised Bill No. 5158 entitled “An Act Concerning The Assessment of Buildings Under Construction” proposes a change to the statutory language of Connecticut General Statutes § 12-64. This statute entitled “Real estate liable to taxation” lists property that must be assessed by an assessor. The bill would change the language of the statute to include “improvements that are partially completed or under construction.”

A similar bill, Governor’s Bill No. 5035, Section 2, Subsection (a), proposes the same change in language to Connecticut General Statutes § 12-64 as aforementioned.

Both bills were the subject of a public hearing on Feb. 22, 2012. At the public hearing for Governor’s Bill No. 5035, a representative for CAAO, stated that if Connecticut General Statutes § 12-64 is not amended, “Connecticut municipalities stand to lose 35 million dollars annually, but more importantly, there will be a protected class . . . which will not be taxed based on its fair market value and two homes sitting side by side will have drastically different tax liabilities.”

A representative for Connecticut Conference of Municipalities (CCM) stated that “this proposal would specifically identify ‘improvements that are partially completed or under construction’ as properties that are assessable — and would therefore, conform state law to generations of public policy standards.”

### **Questions That Remain**

With the tax court in Kasica confirming the Evans decision and any potential legislative changes currently unknown, the looming question is: how do assessors treat construction in progress? However, there are other far reaching consequences and questions, including the following:

- Is an assessor now between “a rock and a hard place”? If the assessor assesses construction in progress, the assessor violates existing caselaw, but if the assessor does not assess construction in progress, the assessor arguably fails to abide by his/her statutory duty to assess “any property” pursuant to § 12-55(b)?

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- Will municipalities have to increase their mill rates to compensate for this loss in revenue?

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### **Practice Areas**

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