Property Tax and Valuation Topics

PULLMAN & COMLEY

A publication of Pullman & Comley, LLC

Attorneys:

- **Laura Bellotti Cardillo**
  lcardillo@pullcom.com
  413.314.6166
- **Michael J. Marafito**
  mmarafito@pullcom.com
  860.424.4360
- **Elliott B. Pollack**
  ebpollack@pullcom.com
  860.424.4340
- **Gregory F. Servodidio, CRE**
  gservodidio@pullcom.com
  860.424.4332

Winter 2018

February 2018

In this Winter 2018 Issue:

Hartford Bankruptcy Threat Postponed

The immediate possibility of Connecticut's capital city filing a bankruptcy petition has been mitigated as a result of the recently adopted Connecticut budget.

With a combination of a direct cash infusion and credit enhancement support, the City of Hartford should be able to pay its bills over the next few years. However, long term structural problems embedded in the city's finances indicate the likelihood that Hartford's financial pressures will continue to give the State *agita* again in the not so distant future. As Moody's Investor Service put it: "With a new Connecticut budget signed into law, the City of Hartford now appears to have sufficient funding to remove the immediate threat of bankruptcy or an imminent default."

PULLMAN &COMLEY

Winter 2018

Dark Store Controversy Resolved?

After several trial and appellate court rulings reducing the values of big box store assessments, the Michigan Supreme Court denied an appeal from a 2016 intermediate appellate court ruling which overturned a significant assessment reduction in favor of a Michigan retailer.

The gist of the "dark store" valuation approach is that big box retailers' stores represent a customized retailing environment in which the stores, even while occupied, are really not worth anything close to what it cost to develop and construct them. In some cases, when vacating a store, the retailer would prevent other big box companies from leasing space from the developer or would refuse to enter into such leases themselves if they owned the property.

While further proceedings will follow the Michigan Court's ruling, it remains to be seen whether the sort of discounts applied to compute big box values will continue. In the case that made it to Michigan's high court, the municipality valued a Menards freestanding store at approximately $8 million. The chain claimed, based primarily on sales comparison approaches growing from the sales of vacated properties, that the occupied store was only worth $3.3 million.

Key components of the "dark store" approach attack are that once vacated, the highest and best use of a big box becomes a second or third tier retail or service use and that an appraiser who relies on value in use, at least while occupied, is unreasonable. It remains to be seen how the Michigan authorities will deal with this topic.

Elliott B. Pollack can respond to questions about this issue at ebpollack@pullcom.com or at 860-424-4340.

Another Religious Property Tax Exemption Case

The Marist Brothers of New Hampshire, part of an international religious community, own a summer camp in Effingham.

A trial court judge found that the camp did not provide a public benefit, was not used for charitable purposes and that the camp's income was being used for purposes other than the organization's mission. Primarily, the trial judge seemed to be concerned about the fact that a relatively small population, 500 children, were served by the camp each summer and that camp tuition was "excessive." The religious order asserted that whether it served 500 or 5,000 children was not relevant, and the Court should have examined whether or not the public at large is benefited by the camp. As for tuition, the Order's counsel stated that "no one has ever been turned down for lack of ability to pay."

As the *Exempt Organization Tax Reporter* commented, "property tax exemptions granted on charitable or religious grounds are increasingly at issue across the nation, as states and localities struggle to raise revenue and thus question which groups are not paying and why." While having no interest in the case, the editors of *Property Tax and Valuation Topics* question whether a camp running as a commercial enterprise, as seems to be the case here, can be said to serve a public purpose even if it is liberal in granting scholarships.

We will follow this case and report on its future disposition by the New Hampshire Supreme Court.

Gregory F. Servodidio can respond to questions on this topic or this case at 860-424-4332 or gservodidio@pullcom.com.

Contentious Income and Expense Report Case

The owner of a shopping center in the Town of Wilton filed its 2013 income and expense report with the Wilton assessor a few days after the June 1, 2014 due date. Approximately three months after the assessor officially signed his report as to the value of all taxable (and non-taxable) property in the Town (the "Grand List"), he assessed a 10 percent penalty against the owner for the late filing.

The owner of the shopping center argued that the assessor himself was late in imposing the penalty because he should have done so at the time he published the Grand List. As a result, the owner argued that the assessor did not have the authority to impose the penalty and that his tardiness cancelled out its lateness.

While it is true that the assessor's delay made it impossible for the property owner to appeal the application of the penalty for the current tax year, it retained the ability to appeal it the following year and there was no prejudice to its full right to be able to do so. Consequently, the owner's effort to have the penalty cancelled was rebuffed in a Superior Court holding.

Wilton Campus 1691. LLC v. Town of Wilton, 2017 WL 3625572 (July 12, 2017).

Laura Cardillo is familiar with the intricacies of income and expense report filing requirements and can respond to questions on this topic and this case at 860-424-4309 or lcardillo@pullcom.com.

Litchfield Courthouse Building Likely To Lose Tax Exemption

Following almost 40 years of debate, a new courthouse was built by the State of Connecticut in Torrington, thereby putting an end to the use of a beautiful stone (but antiquated) building on the Litchfield town green which had functioned as a courthouse since 1890. The State will not play a role in determining the future of the building.

This is because the State leased the land in 1803 (two earlier courthouses were destroyed by fire) and the lease requires the reversion of title to the lessors if the property is not used for a court house. The heirs of the people who leased the property to the state in 1803 have been identified as "a Missouri man and the estates of his two sisters" in the September/October 2017 issue of *Connecticut Preservation News*. Although the property will be turned over to the heirs by the State shortly, the new owners apparently are interested in keeping public uses within the building, perhaps even donating the property to a preservation organization down the road.

Of course, unless an exempt organization carrying on an exempt use succeeds to the courthouse, the property will lose the exemption and be taxable to the Missouri folks when it is deeded over to them. Given the unique configuration of this antique building, it will be fascinating to see how the Litchfield assessor determines the highest and best use of the property and its market value!

Michael Marafito can respond to questions on this topic or this case at 860-424-4360 or mmarafito@pullcom.com.

Tax Abatement Cancelled Due to Death!

A 95-year-old English woman was billed for local real estate taxes after she had passed away. As permitted in many jurisdictions in America, she had received an elderly tax abatement. In response to her son's note advising the City about her passing, authorities wrote back: "Dear Mrs. Davies, the reason for the cancellation of your tax abatement and the increase in your tax bill is that you've passed away." An apology to the family of course followed.

Thanks to Paul Sanderson, President of the International Property Tax Institute, for this nugget.

It's Evidence at Trial, not the Assessor's Initial Work, that Governs the Outcome of the Case

In a fascinating Louisiana tax appeal involving a 52 story Class A office building in the New Orleans CBD, the administrative agency hearing the initial appeal upheld the assessor's appraiser's value which was 10 percent lower than the initial assessment.

In its court appeal, the property owner challenged the assessor's methodology because he did not use one of the three recognized approaches to value but rather cobbled together a new approach based on building permits which, to your PTVT editors, did seem a bit sketchy.

The assessor responded that it was not important whether he did a good job. Rather, the only question was whether or not the evidence adduced at trial was sufficient to support his conclusion even if his work, standing alone, was not sufficient to do so. The agency added its view that when one of its decisions is appealed to court, the judicial role is to evaluate what the agency did, not what the assessor's work looked like.

This view may be contrasted with a recent Connecticut decision which suggest that an assessor's methodology may be relevant in court assessment appeals in limited circumstances.

201 Saint Charles Place, LLC v. Louisiana Tax Commission, Court of Appeal of Louisiana, February 17, 2017, 2017 WL 658752.

Laura Cardillo can respond to questions on this topic or this case at 860-424-4309 or at lcardillo@pullcom.com.

Is Discount for Large Housing Lot Inventory Warranted?

A development group subdivided 170 acres into 35 housing lots which were subsequently assessed as individual parcels for sale to individual residential use purchasers. Assessments approximated $460,000 for each lot. In the same time frame, the developers signed listing agreements calling for their real estate brokers to sell the lots at prices approximating $565,000 each.

The major issue before the Massachusetts Appellate Tax Board (ATB) was whether the owners were entitled to a volume discount on their lot assessments because the relevant market would not be able to absorb all of the lots within a given year. It was generally agreed that approximately no more than six or seven lots could be sold in "a good year." As a result, the developers took the position that "four or five of the lots should be assessed at full value and the rest at a reduced value to reflect that they were unsalable in any given assessment year." The problem with this argument, if valid, is that it could also be advanced by the owner of a single lot.

Rejecting this tack, the Massachusetts Appeals Court ruled that "the amount of other property that a taxpayer owns is not a rational basis for distinguishing between otherwise identical lots for tax purposes . . . ."

A further problem discussed by the court in a footnote was "that if property was to be taxed differently because one owner owned more lots than the absorption rate of a town would allow to be sold in a given year, it would violate the requirement that real estate assessments be proportional."

GLW Kids, LLC, et al. v. Board of Assessors of Carlisle, 2017 WL 2960269 (July 12, 2017)

PULLMAN &COMLEY

Winter 2018

Michael Marafito can respond to questions on this topic or this case at 860-424-4360 or mmarafito@pullcom.com.

Hartford CBD Apartment Market Parsed

The proverbial man from Mars whose last visit to Hartford was before the millennium would be rather surprised when he returned in 2017. A primarily 9-5 office locale with very little retail and limited restaurant offerings has become a mecca for apartment dwellers and foodies. The expansion from a paltry 177 units in 2002 to almost 1,600 with close to another 600 in the planning or construction phase has been a remarkable change. Pedestrian activity has increased sharply. New restaurants are opening. People are pushing prams, walking dogs and generally enjoying a more dynamic CBD environment, a phenomenon not seen for decades.

However, as Patrick Lemp and Josephine Aberle of Valbridge Property Advisors note in a recent issue of *The New England Real Estate Journal*, apartment development would not have occurred "without favorable government financing and tax agreements with the City of Hartford ... because achievable rental rates do not support (non-subsidized) development costs."

There may not be much more gold at the end of the subsidy rainbow, moreover, because State of Connecticut financing may not be available for future projects "given the State's dire economic condition, which will likely determine if future projects move forward ....," Mr. Lemp and Ms. Aberle observe.

Retail Slowdown on the Gold Coast?

Phil Hall writes in a recent issue of Westfaironline that retail vacancies on Greenwich Avenue in Greenwich, one of the wealthiest communities in the country, have spiked. Hall writes that Greenwich Avenue "is a reflection of a wider crisis in retailing. Ralph Lauren, Michael Kors and Gymboree closed scores of stores across the nation - the closings of their Greenwich Avenue locations were viewed as cost-effective."

Another major factor impacting retailing in Connecticut's Fairfield County is the development of The SoNo Collection about 20 miles up Interstate 95 in Norwalk. This 700,000-square-foot mall will be anchored by Bloomingdale's and Nordstrom and is seen as potentially encroaching on the Greenwich market.

A further consideration impacting Greenwich Avenue as well as many other retail venues is that of online shopping, although one commercial real estate expert suggests that high-end stores are not as vulnerable to this phenomenon. "I don't think," he opines, "people are going on Amazon to buy a Hermes belt."

The degree to which these concerns will affect property valuation decisions, of course, remains to be seen although there appears to be little doubt that a shakeup in the retailing world is under way.

PULLMAN & COMLEY

Winter 2018