Property Tax and Valuation Topics

PULLMAN & COMLEY

A publication of Pullman & Comley, LLC

Attorneys:

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

Fall 2015

In the Fall 2015 Issue:

"Celebrity" Value?

In 2004, in the quaint Fenwick borough of Old Saybrook, a developer purchased the beachfront summer home of the late actress Katharine Hepburn. The discovery of a discontinued road, which ran over part of the property and ended at the waterfront, precipitated a claim by the developer under its title insurance policy. Litigation commenced after the title company's offer of $17,000 was rejected by the developer, who claimed its loss was $5 million. Following a jury verdict of $2 million, the title company appealed to the Connecticut Appellate Court.

Readers of *Property Tax & Valuation Topics* will be interested to know that the developer relied on the testimony of a real estate broker whose theory of property "celebrity enhancement," given the prior Hepburn ownership, tended to support its damages claim. The title company argued that the court should not permit the broker to testify because his theory was based on "junk science."

After much controversy, the broker was qualified as an expert witness on the subject of real estate value. He testified that the "celebrity status of a property 'can greatly affect its value.'" Based on this idea, the broker maintained that the Hepburn property's "market value was greater than its value as determined by standard methods of appraisal." Consequently, the loss to the developer by virtue of the unknown right of way was greater as well.

Interestingly, the title company did not challenge the eligibility of the real estate broker to offer real estate appraisal testimony because of his lack of real estate appraisal licensure or training. Perhaps this issue will be addressed by our courts in future litigation.

First American Title Insurance Company v. 273 Water Street, LLC, Connecticut Appellate Court (May 5, 2015).

Contact Elliott B. Pollack at (860) 424-4340 or ebpollack@pullcom.com for further information about this case.

Unique "Highest and Best Use" Ruling

On September 11, 2001, United Airlines Flight 95 crashed into a western Pennsylvania field, killing all passengers and the terrorists who had hoped to commandeer the plane to carry out their sinister plot. Who would have known that this sacred site would become the subject of an eminent domain valuation case thirteen years later?

On September 1, 2009, the United States condemned the property. What compensation should be paid to the owner? A commission consisting of a real estate attorney and two appraisers was appointed. The commission rendered a decision valuing the site at $1,535,000. One issue was whether the highest and best use ("HBU") of the property was as a private memorial. The owner claimed that the HBU was both as a private memorial and as a museum/visitors' center. The commission rejected the visitor center claim because the property owner did not present sufficient evidence that the center was financially feasible – one of the classic tests within the HBU concept.

A United States District Court upheld the commission's decision. To account for the estimated additive market value of a visitor's center would enable the property owner to profit from an element "attributable to the government's creation of a national memorial" - an enhancement not in existence on the date of taking.

Thanks are due to Professor Alan M. Weinberger of the St. Louis University of Law whose article in the Summer 2014 issue of the *Appraisal Journal* called this case to the attention of PTVT editors.

United States v. 275.81 Acres of Land, U.S. District Court, Western District of Pennsylvania (March 26, 2014).

Contact Gregory F. Servodidio at (860) 424-4332 or at gservodidio@pullcom.com for further information about this case.

Impact of Professional Discipline on Expert's Ability to Testify

Consider the following hypothetical:

An appraiser holding the MAI designation is noticed as an expert witness in an eminent domain proceeding filed by the property owner. The municipality's attorney Googles the expert and learns that she was censured by the Appraisal Institute (AI), a private organization. As readers of *Property Tax & Valuation Topics* well know, the AI is not a professional licensing board. Although holding the MAI designation is certainly a strong indication of professional competence, membership in the AI is voluntary.

Counsel for the municipality alleged that the appraiser had been sanctioned by the AI for testifying falsely about matters outside her area of expertise. At trial, the appraiser acknowledged the censure but denied she had ever testified falsely or about matters outside her expertise. She also noted that she had never been convicted of perjury. The trial court found that the appraiser's AI membership status had not been affected by the censure in any way.

Was it proper for the trial court to allow the municipality's attorney to delve into this issue? The Connecticut Supreme Court recently ruled (albeit in a different setting) that a court doing so would have acted incorrectly. The censure proceedings at the Institute were "extrinsic evidence of misconduct" committed outside the court room. To allow a party to raise these issues would result in a "trial within a trial on the . . . question of whether the (appraiser) did, in fact, commit the alleged misconduct." Admission of evidence of the censure in the valuation case would enable the municipality to offer the out of court opinion of the AI's members, or at least the committee members, that the appraiser did something wrong.

Chief Justice Chase J. Rogers also observed that the censure had nothing to do with "the scope of (the appraiser's) knowledge or experience with the issues in (the) case."

The Supreme Court left open the possibility that the fact of false testimony before a court or state administrative agency, without a perjury conviction, might be admissible to challenge an appraiser's credibility.

Weaver, et al. v. McKnight, et al. 313 Conn. 393 (Sept. 2, 2014).

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Fall 2015

For further information about this issue, please contact Laura Bellotti Cardillo at 860-424-4309 or lcardillo@pullcom.com.

Use of Subsequent Sales Approved

When the value of a condominium unit in Chevy Chase, Maryland, was being litigated for ad valorem tax purposes, the effective date was January 1, 2011. At trial, the assessor's expert witness relied on three sales which took place in the building the following May.

The owner challenged the trial court's ruling (which did not reduce her value very much) asserting that reliance on sales recorded after the assessment date was erroneous. While computer-assisted mass appraisal generally relies on data occurring prior to the date of value, a fee appraisal's use of data five months removed from date of value to support the mass appraisal result was not erroneous, the Maryland court ruled. This is especially so, your editors would contend, given the fact that the May 2011 sales were probably negotiated shortly after the date of value in questions.

Supervisor of Assessments of Montgomery County v. Lane, Maryland Court of Special Appeals, (April 2, 2015) (2015 WL 1400797).

For further information about this case, please contact Tiffany Kouri Spinella at 860-424-4360 or tspinella@pullcom.com.

Attorneys' Notes

Pullman & Comley's Property Tax & Valuation Department has reported on Connecticut property tax law and case developments for the American Bar Association's *Property Tax Deskbook* since its inception in 1996. The 2015 issue of the Deskbook was published earlier this year.

Elliott B. Pollack co-authored, with Melton L. Spivak, "A Tale of Two Campuses," an article which appeared in the July 22, 2015, online issue of *National Real Estate Investor*. The article focuses on two large corporate HQ properties, neither of which continued that use after tax appeal litigation concluded. In one case, the 30-year-young complex was demolished when the occupant's obligations under a sale-lease back transaction expired because the owner could not find another user.

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