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

Spring 2015

In This Spring 2015 Issue:

Assessor's Error Correction Authority Limited

An assessor has the right to retroactively reassess a land parcel to correct an error but can she do so when her error was discretionary?

The scope of assessors' error correction rights occasionally is a matter for contention with property owners, especially when an assessor rolls back the clock three years to *increase* a value.

The Stonington assessor's affidavit filed in a Superior Court case stated that after certain litigation between the property owner and the town had concluded, she "became aware of the fact that the assessor's card for (the first parcel) had included a storage building along with two dealership buildings. She subsequently learned that the storage building was not located on (the first parcel) and was in fact located on [the second parcel]."

The right to correct an error must be strictly construed, Superior Court Judge Emmet L. Cosgrove held. Despite the assessor's claim that she did not act intentionally, her own explanation evidences her judgment that the storage building was (on the first parcel) and negates the town's claim that a clerical error occurred.

A clerical error is not an error of substance, as was the case here, the Court ruled.

To clarify his decision, Judge Cosgrove referred to a 1985 Supreme Court opinion in which it was decided that "an error is of a *deliberate* nature (when) the party making it at the time actually intended the result that occurred . . . ." Judgment errors, the Superior Court ruled, "cannot be said to be clerical."

The owner's appeal was sustained.

JBRV, LLC vs. Town of Stonington, Superior Court in New London Docket No. CV-12-6013585 (January 31, 2014).

Gregory F. Servodidio at gservodidio@pullcom.com or 860-424-4332 can answer inquiries about this case.

Offer Testimony/Evidence

In the winter edition of *Property Tax and Valuation Topics*, we wrote about the admissibility of offer evidence in property valuation cases. Offer evidence is information concerning a proposal to purchase or to sell the real property which is the subject of the the winter article was written, there was no Connecticut case on point. This gap was filled, to some degree, by the Connecticut Appellate Court on January 27, 2015.

The Department of Transportation took a .44 acre parcel of commercial property in New Britain in order to reconstruct an adjacent roadway. $125,000 in damages was awarded for the taking; in the Superior Court appeal which followed, the award was increased to $243,840. One issue raised by the successful but unsatisfied property owner who appealed the award to the Appellate Court was the refusal of the trial judge to permit a physician to testify about a letter of intent he had signed to purchase the property for $850,000 - less than two years prior to the taking. The trial court precluded the physician would-be purchaser from testifying as an "expert" real estate investor. In a unanimous opinion, the Appellate Court held that it was proper for the trial judge to preclude the physician's testimony because he was not a qualified real estate valuation expert. The Appellate Court also ruled that to the extent that the physician intended to offer his opinion as to the highest and best use of the property, his lack of real estate *valuation* expertise was a proper basis upon which to refuse to admit his testimony.

In a parting comment, Judge Michael Sheldon, noted that the physician's offer letter "was admitted into evidence as a full exhibit" and there was no showing that the court's refusal to allow him to testify about his offer "impacted the outcome . . . ."

While this decision is not an endorsement of trial court's decision to allow the offer letter into evidence, it certainly does not amount to a rebuke of that ruling either.

Department of Transportation v. Cheriha, LLC, et al, Connecticut Appellate Court, Docket number AC 36041 (January 27, 2015).

Elliott B. Pollack at ebpollack@pullcom.com or 860-424-4340 is familiar with the issues in this case.

Religious Privileges and Exemptions Questioned

Many states, including Connecticut, offer property tax benefits to houses of worship and the residences of their professional religious leaders. The Internal Revenue Code provides a panoply of preferences as well.

In a 2013 Wisconsin federal court decision, US District Judge Barbara Crabb held that the tax-free housing allowance afforded clergypersons under Section 107(ii) of Internal Revenue Code violates the anti-establishment clause of the Constitution because only religious persons benefit – "to the exclusion of those with no faith at all."

A Kentucky federal court action seeking to invalidate Section 501(c)(3) of the Internal Revenue Code insofar as it extends preferential treatment to religions was denied in May 2014 even though a 1970 U.S. Supreme Court decision called *Walz v. Tax Commission* rejected an attack on religious *property* tax exemptions for many reasons, among which was the long history of providing such exemptions to non-profit religious organizations. *Walz* seems to have been placed on somewhat shaky ground 19 years later by the Supreme Court's rejection of a *sales tax* exemption for religious publications.

The nub of the present legal analysis seems to rest on the difference between a subsidy - a direct payment by government to a religious organization – and an exemption. As Jonathan T. McCants writes in the November/December 2014 issue of *Taxation of Exempts*, the distinction seems "tenuous."

It's conceivable that an action will be brought in Connecticut challenging the extensive web of income, sales and property tax exemptions accorded to religious originations as the state struggles to match revenue with expenses in current and future budgets.

Laura B. Cardillo at lcardillo@pullcom.com or 860-424-4309 will reply to questions about these issues.

PULLMAN &COMLEY

Spring 2015

Picky Board of Assessment Appeals Reversed

When Gibbs Oil Company filed an appeal to the Rocky Hill Board of Assessment Appeals ("BAA") to challenge the assessment of its property, it faxed its application on February 20, 2014, the last day to file the appeal, at 4:32 p.m. The BAA did not default Gibbs for filing two minutes later than the office's closing time; rather, it rejected the application because it violated the assessor's "requirement" that an original signature be present. The BAA refused to schedule a hearing.

Employing an unusual procedure, Gibbs filed a *mandamus* action to require the BAA to hear its appeal. Recognizing the unusual nature of this proceeding in property assessment matters, the Superior Court nevertheless rejected the BAA's reasoning that an original blue ink signature was required. In doing so, it referred to a section of the Connecticut General Statutes which does not define the word "signature" but simply requires that the appeal application be signed.

Noting that other statutes require *original* signatures and that the tax appeal statute did not, the court ruled "the faxed application substantially complies with the statutory requirement of a written appeal bearing the signature of the property owner . . . . The board should not have rejected it for a lack of original signature in blue ink."

Although the BAA did not base its refusal on Gibbs's two minute tardiness, in court it attempted to do so even though Gibbs's appeal had been received "at closing time." The court did not allow it to present this argument after the fact.

The *mandamus* application was granted and the BAA was ordered to hold a hearing on Gibbs's overvaluation claim.

Gibbs Oil Co. LTD. Partnership v. Town of Rocky Hill, et al., 2014 WL 7671674 (Huddleston, J.) December 17, 2014.

Contact Tiffany K. Spinella at tspinella@pullcom.com or 860-424-4360 for further information about Gibbs.