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 2014

In This Fall 2014 Issue:

Green Appraisal Issues Addressed

The Federal Housing Administration ("FHA") now allows appraisers to use the cost and income approaches to "analyze market reaction to green and energy-efficiency improvements in the absences of comparable sales," reports the September 10, 2014 issue of *Appraiser News Online* published by the Appraisal Institute. The FHA approach requires appraisers to "analyze and report the local market acceptance of special energy-related building components and equipment..."

It is likely that green valuations will increasingly be confined to a smaller group of appraisers who have developed the expertise and gathered the data necessary to meet these new requirements.

Brad Mondschein, a member of the firm's energy department, can be contacted for further information concerning this development at bmondschein@pullcom.com or 860-424-4319.

PULLMAN &COMLEY

Fall 2014

Discovery of Tax Returns Clarified

Quite frequently, municipalities defending tax appeals brought by members of Pullman & Comley's Property Valuation Department file requests for the property owner/plaintiff's tax returns. As a result, it was most welcome news to read a recent Superior Court decision that addressed that issue in significant detail.

Alexander Gonzales was injured while employed by The Walter D. Sullivan Co. Inc. He waived his rights to worker's compensation based on assurances allegedly given to him by his employer that all his medical expenses would be paid and that he would be compensated for any loss of income due to the injury, all pain and suffering and any permanent injury. As these things go sometimes, the employer did not keep its alleged promises and a worker's compensation claim was filed. Mr. Gonzales was fired and suit was brought.

In order to challenge his employer's claims that he was not fired for filing the compensation claim, but due to the "lack of work," Mr. Gonzales sought discovery of his employer's corporate tax returns for 2007-2012.

After noting that discovery disputes are decided on a case by case basis and that there are no Connecticut appellate decisions addressing "tax return disclosure disputes," Judge Leeland J. Cole-Chu, sitting in the New London Superior Court, made the threshold observation that "there is an expectation of confidentiality in tax returns not to be lightly ignored." Tax returns, he held, will not be made available for discovery unless "it clearly appears that they are relevant to the case" and that "there is a compelling need . . . because the information contained (in the returns) is not otherwise readily available."

It is unlikely, Judge Cole-Chu reasoned, that the former employer's tax returns would reveal its "motive for laying off any one employee." Whether the tax returns showed a strong, weak, growing or declining business, the linkage between the returns and the issue before the Court was just too tenuous.

Requests for tax returns in property valuation cases should be examined through the same analytical lens. When the only matters at issue are the income and expenses of the subject property, there would appear to be no reason to obtain an entire tax return given that the relevant schedule showing property income and expenses should be sufficient. In agreeing or complying with a court order to furnish the schedule, confidential data such as social security and tax payer identification numbers should be deleted.

If you have any questions about this case, please contact Elliott B. Pollack at ebpollack@pullcom.com or 860-424-4340.

Alexander Gonzales v. The Walter D. Sullivan Co., Superior Court of New London, Docket No. CV-11-6009628 (June 10, 2014)

PULLMAN &COMLEY

Fall 2014

Lien Can Be Filed During a Tax Appeal

It is fairly well known that once you file a Connecticut tax appeal of a property with an appraised value of $1 million or more, the appellant may limit its tax payment to 90 percent of the amount which otherwise would be due while the action is pending. In a case in which the owner exercised that option, the tax collector filed a certificate of continuing tax lien against the property. “Dirty pool!” the owner argued in the Superior Court for the Judicial District of Middlesex because the law affording it the ability to pay only 90 percent of the amount due, it claimed, precludes the tax collector from taking collection action.

Judge Edward S. Domnarski held that the property owner’s interpretation of the relevant statute was far too broad. The mere filing of a tax lien does not amount to collection action so as to incur the bite of the statutory prohibition. Under the tax collection laws, it was necessary for the tax collector to file a certificate of continuing lien in order to maintain the existence of the automatic tax lien which was created by the owner’s less than full payment. The automatic lien expires two years after the taxes become due unless an enforcement action is commenced. Judge Domnarski ruled that the lien simply protected the town’s interests.

Parenthetically, Pullman & Comley property valuation attorneys do not suggest that their clients exercise this payment deferral option due to the 18 percent annual interest charge that the tax collector is required to collect on the deferred portion - if the tax appeal is not successful.

Touchstone Development Associates LLC v. Town of Haddam (2013).

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

When a Related Party Transaction Is Not!

Three storage facilities were transacted as part of the sale of nine such properties. “An unusual aspect of the . . . sale,” the IAAO publication *Fair & Equitable* reports in its September 2014 issue, “was that the President of the selling company was (going to be) the CEO of the purchasing company (two weeks after the sale).” The same individual also held a 20 percent interest in one of the three facilities.

The purchasing company filed an assessment appeal after the assessor relied heavily on the above-mentioned sales and pointed to a Securities and Exchange Commission filing which stated that the transaction was not at arm's length given the president/CEOs' unusual involvement.

The president/CEO did not have any interest in the purchasing company and, at the time of the transaction, did not control "the purchase decision."

The Ohio Supreme Court upheld the assessor's reliance on this most unusual transaction in assessing the facilities.

Hilliard City Schools Board of Education v. Franklin County Board of Revision, Docket Number 2014-Ohio-853. (March 11, 2014).

Laura Bellotti Cardillo, who can be reached at lcardillo@pullcom.com or 860-424-4309, can respond to questions about this case.

Attorney Notes

Department member Gregory F. Servodidio is listed in the 21st Edition of the *Best Lawyers in America* in the area of eminent domain and condemnation law.

Department member Tiffany Spinella was a recipient of the 2014 *Connecticut Law Tribune's* "New Leaders in the Law" award.