Property Tax and Valuation Topics

PULLMAN & COMLEY

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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

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In this Spring 2013 Issue:

Low Income Housing Tax Credit Case

The owner of a former school building converted into a low income housing apartment project asserted that its property was worth about 20 percent of what the Lee County (Kentucky) assessor claimed it was worth. Similar to the Connecticut Superior Court's decision in *Saranor Apartments Limited Partnership v. City of Milford (2007*), the parties agreed that the income approach to valuation was appropriate and that the property's restrictive covenants limited residents to incomes not in excess of 50 percent of a designated low income benchmark.

Although lacking the benefit of a Connecticut statute which requires property specific contract rents as opposed to market rents to be used, the Kentucky Board of Tax Appeals disagreed with the county assessor who chose to stabilize expenses for the property in much the same manner that she did for non rent restricted apartments. "Low-income rent-restricted properties," the Board stated, "are creatures of state and federal regulation and they generate expenses that non-regulated properties do not generate." The actual expenses incurred by the property owner in managing this asset should have been employed, the Board held, rather than market based expenses.

This decision tracks how other courts have tackled the reality that a building saddled with restrictive covenants to facilitate low and moderate housing occupants cannot simply be valued as if it were rented at market rents and operated with market based expenses.

Beattyville School Apartments v. Lee County Property Valuation Administrator, Commonwealth of Kentucky, Kentucky Board of Tax Appeals, Docket No. K11-S-870 (November 14, 2012).

Gregory F. Servodidio, Esq. at (860) 424-4332 or gservodidio@pullcom.com can answer questions about this case.

Trial Court Ruling Affirmed

In a recent *Property Valuation Topics* edition, we wrote about the *Samnard* case.

After the New Britain Board of Assessment Appeals reduced the value of a shopping center following the appeal of a tenant, the reduction was allowed to stand without further challenge. Two years later, the landlord challenged the assessment again during the same revaluation cycle. After the Board of Assessment Appeals refused to reduce the value further, an appeal to the Superior Court followed.

The trial court dismissed the action on the basis that the Board of Assessment Appeals's decision, left to stand by both parties in interest, could not be challenged again until the next revaluation.

On January 22, 2013, the Connecticut Appellate Court affirmed that ruling which, in all likelihood, puts an end to the question.

Samnard Associates, LLC v. City of New Britain, Connecticut Appellate Court, Docket No. AC 33400, January 22, 2013.

Laura A. Cardillo, Esq. at (860) 424-4309 or lcardillo@pullcom.com wrote this article.

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States Can Regulate Appraisers

The State of New York brought legal action against First American Corporation and E Appraise It, LLC claiming violations of New York law with respect to alleged fraudulent and deceptive actions committed by the defendants in their appraisal business. The complaint stemmed from the mortgage underwriting practices of Washington Mutual (WAMU) prior to the 2008-2009 financial meltdown. WAMU, then the largest nationwide thrift institution, retained the defendants for a significant portion of their New York appraisals. Essentially, the New York Attorney General asserted that the defendants succumbed to pressure from WAMU to generate higher appraisal values than were warranted.

The appraisal firms attempted to defeat the law suit by maintaining that the regulation of appraisers is entirely a matter of federal law and as a result, no state should attempt to do so.

The New York Court of Appeals, that state's highest court, rejected this claim concluding that the state could rein in fraudulent practices even in the face of significant federal regulation of appraisers.

Federal oversight of insured thrift institutions would not be hampered, the Court of Appeals held, by the consumer-oriented action taken by New York. Congress, the court ruled, "did not intend to occupy the entire field with respect to appraisal" practices. Fraud and misrepresentation typically are the kinds of conduct that state governments are permitted to address even in the face of federal regulation of the industries in which these practices may take place.

People ex rel Cuomo v. First American Corp., 18 N.Y.3d 173 (2011).

For more information about this article, please contact Tiffany K. Spinella, Esq. who can be reached at (860) 424-4360 or tspinella@pullcom.com.

New Owner Can Appeal

The owner of Blackacre sells his property to Ms. Buyer. On the date of the closing, a petition to the local Connecticut Board of Assessment Appeals is pending. When the Board issues its decision, the owner no longer holds title to Blackacre.

The municipality moved to dismiss Ms. Buyer's Superior Court tax appeal on the grounds that she did not own the property either on the October 1 assessment date, on the day the petition was filed with the Board of Assessment Appeals or the day the appeal was heard by the Board of Assessment Appeals. The fact that she acquired title after the date of the Board of Assessment Appeals' hearing disqualified her from filing a Superior Court case, the City asserted. The City also argued that Ms. Buyer should have notified the Board of Assessment Appeals that she had acquired title to the property.

Not true, according to the New Haven Superior Court. "[A] subsequent owner of property has a specific personal and legal interest in the issue of whether the property is properly valued prior to its (acquisition of) ownership . . . . Consequently, a subsequent owner has "a direct and substantial issue in the subject matter of the appeal . . ."

This ruling avoided what the court stated what otherwise have been an "absurd" result.

Corner Block Development, LLC v. City of New Haven, Docket No. CV 12 6030527 (December 18, 2012).

For further information, please contact Elliott B. Pollack, Esq. who can be reached at (860) 424-4340 or ebpollack@pullcom.com.

Attorney Notes

Property Valuation Department chair Elliott B. Pollack will speak at the 2013 annual meeting of the Appraisal Institute in Indianapolis this July on current issues in the valuation of senior housing properties. Among the topics to be addressed is the allocation of going concern value among the various property components in the context of ad valorem tax law.

Property Valuation attorneys Laura Bellotti Cardillo and Gregory Servodidio will be presenting "The Appraiser as an Effective Expert Witness: Lessons Learned From Recent Judicial Rulings" to the Connecticut Chapter of the Appraisal Institute. The seminar will cover the importance of credibility in appraisal preparation and testimony. For more information, please click here.

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