

## 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 2016

### In the Spring 2016 Issue:

- Extent of Environmental Damage Examined
- Importance of Board of Assessment Appeals Petition?
- Attorney Client Privilege in Valuation Litigation
- Substance Prevails Over Form
- Impact of Green Construction on Value
- Theatrical Housing Exemption Approved
- Attorney Notes

---

## Extent of Environmental Damage Examined

When Ciba Specialty Chemicals Corp. appealed the tax assessment of its heavily contaminated 1,200 acre undeveloped land parcel in Toms River, New Jersey, it swung for the fences.

Ciba not only argued that the impact of contamination and remediation of the contaminated portions of the site should be considered by the court, but also insisted that this entire parcel's market value should be reduced due to the contamination, even though a large portion had been remediated at a cost of over \$110 million.

Contamination should be recognized, the township agreed. However, it insisted that a parcel significantly larger than New York's Central Park should be looked at in sections, not as a whole. It asserted that those portions no longer affected by contamination should be valued as having development potential and perhaps different highest and best uses than the contaminated parts.

## Spring 2016

---

Ciba shot back that notwithstanding the fortune it spent on remediation, the property's designation as a Super Fund site years earlier, the stigma associated with that designation and the very significant pollution of large portions of the property all had to be part of the overall valuation analysis.

To some degree splitting the baby in half, the New Jersey Tax Court agreed with the township that the property could be segmented to determine highest and best uses. However, the court also approved Ciba's argument about an ongoing valuation stigma-related reduction for the now "clean" portions of the property and even portions that had always been clean.

While Connecticut's statutory scheme limits the opportunity to claim assessment reductions due to environmental impact in a tax appeal case when the claimant caused the pollution, this ruling nevertheless illustrates the benefit of approaching every complicated assessment appeal case with fresh thinking.

*Ciba Specialty Chemicals Corp. v. Township of Dover*, 2013 WL 6438501 (New Jersey Tax Court 2013).

For additional information about challenging the assessment of environmentally compromised property, please contact Elliott B. Pollack at 860-424-4340 or at [ebpollack@pullcom.com](mailto:ebpollack@pullcom.com).

---

## Importance of Board of Assessment Appeals Petition?

In a significant decision, at least in the tax appeal world, the Connecticut Supreme Court reinterpreted the statute covering board of assessment appeals activity.

Although the current property owner did not petition or appear before the Norwalk Board of Assessment Appeals, the Supreme Court allowed that owner to appeal to the Superior Court from the underlying board decision.

Chief Justice Chase Rogers ruled: Although we expect that, in the normal course of events, a party that brings an appeal to the trial court . . . first will have appeared in the proceedings before a board of . . . assessment appeals that are prerequisite to a court appeal, we were unable to conclude that that appearance, in all cases, is required.

The Court also interpreted the rules governing the amendment of pleadings to permit the correct owner to jump into the litigation originally filed by the non-owner after the appeal date passed.

A vigorous dissent suggested that the majority was bailing out the plaintiff and its attorney from jurisdictional mistakes which were committed when the case was originally filed.

## Spring 2016

---

*Fairfield Merritview Limited Partnership v. City of Norwalk, et al.*, Supreme Court of Connecticut, Docket number SC 19373 (March 1, 2016).

Gregory F. Servodidio can answer questions about this case at [gservodidio@pullcom.com](mailto:gservodidio@pullcom.com) or 860-424-4332.

---

## Attorney Client Privilege in Valuation Litigation

We know that communications between an attorney and her client in tax litigation, or for that matter any other representation, are protected by the attorney-client privilege. This means that the client cannot be made to respond to questions about what she said to her attorney and vice versa or reveal written or electronic communication from counsel. Over the years, the courts have extended the protective umbrella of the privilege to include lawyers' secretaries, paralegals and other assistants as the practice of law has become more complicated and the use of paraprofessionals has increased.

However, when otherwise attorney/client privileged communications are being exchanged in the presence of a third party who is not necessary for the exchange, the privilege can be lost. This can be true even if a family member not represented by counsel is present and hears the interchange.

For example, communications claimed to be privileged between an attorney and client in the presence of a real estate appraiser or another expert will likely be lost. The same might be said for engineers, environmental experts or brokers.

The takeaway here is when involved in valuation litigation, be cautious whom you invite to a meeting with your attorney or with whom you share your attorney's words, thoughts or emails.

For more information about this topic, contact Laura B. Cardillo at [lcardillo@pullcom.com](mailto:lcardillo@pullcom.com) or 860-424-4309.

---

## Substance Prevails Over Form

The operator of a barbecue restaurant in Seymour, Connecticut found its personal property account audited at the request of the assessor. The auditor increased the assessed value substantially - which produced an appeal from the owner. For whatever reason, the assessor's standard appeal form was not used by the barbecue and the assessor sought to dismiss his challenge to the audit results for that reason. In addition, the owner failed to offer its own estimate of the value of its assets and did not date the form, although the Board of Assessment Appeals' records indicated that it was received prior to the statutory deadline.

## Spring 2016

---

Superior Court Judge Theodore R. Tyma gave the assessor's dismissal motion short shrift. The owner demonstrated substantial compliance with the statutory appeal requirements, even though, he ruled, the two items cited by the Town were indeed lacking. The Town failed to cite any prejudice to it, and the owner's comments on the appeal form about why the auditor's increase was inappropriate clearly presented the Board with the issues the owner wished to raise. Judge Tyma relied on *Gibbs Oil Co. v. Rocky Hill*, a 2014 decision discussed in the Spring 2015 issue of *Property Tax and Valuation Topics*.

*Sweet Potatoes, LLC v. Town of Seymour, et al.*, docket number CV-14-6016022 (March 27, 2015).

For further information, please contact Tiffany K. Spinella at [tspinella@pullcom.com](mailto:tspinella@pullcom.com) or 860-424-4360.

---

## Impact of Green Construction on Value

Sandra K. Adomatis, SRA writes in the 4Q 2015 edition of *Valuation Magazine* that “[w]hen I first started talking about green homes, many thought I was out of my mind. Many laughed at my study of green.”

Eight years after she started digging into green issues, Ms. Adomatis reports that a pilot study of sales of green homes in the District of Columbia – recently and not so recently constructed – shows sales premiums as compared with non-green sales.

Although Pullman & Comley's Property Tax and Valuation practice does not typically address tax/assessment issues associated with single family homes, it is important to note that commercial property construction and renovation practices are starting to suggest a positive impact from greening as well. While definitive studies of market impact are presently lacking, we can certainly look forward to data in the years ahead. Many market participants expect to see market benefits in terms of rentals and sales prices in the commercial sector as well.

To learn more about green commercial real estate, please contact Pullman & Comley LLC energy attorney Brad Mondschein at [bmonschein@pullcom.com](mailto:bmonschein@pullcom.com) or at 860-424-4319.

---

## Theatrical Housing Exemption Approved

An Auburn, New York performing arts company owned apartment buildings “used to house staff and actors employed in (its) seasonal theater.” The Auburn assessor did not challenge the arts company's charitable *raison d'etre* but contended that the apartments were not used exclusively for its exempt purposes and that the tax exemption should be denied.

## Spring 2016

---

Even though housing is not the arts company's mission, a New York Appellate Court ruled that the housing *furthered* its exempt purpose and was "reasonably incidental" to its goals.

The creative director's evidence that housing actors and staff permitted these folks to rehearse, discuss creative ideas and similar activities and that no rent was charged was sufficient for the court to overturn the lower court decision supporting the assessor's denial of the exemption.

The "incidental purpose" test is generally well recognized in Connecticut as well.

*Merry-Go-Round Playhouse, Inc. v. Assessor of City of Auburn, et. al.*, 104 A.D. 3D294 (2013).

For further information please contact Elliott B. Pollack at [ebpollack@pullcom.com](mailto:ebpollack@pullcom.com) or 860-424-4340.

---

## Attorney Note

Pullman & Comley's Property Tax and Valuation Department is pleased to announce that it is expanding its practice into Massachusetts, Rhode Island and New Hampshire.

---

*Copyright 2016 Pullman & Comley, LLC. All Rights Reserved.*

---

This publication is intended for educational and informational purposes only. Readers are advised to seek appropriate professional consultation before acting on any matters in this update. This report may be considered attorney advertising. To be removed from our mailing list, please email [unsubscribe@pullcom.com](mailto:unsubscribe@pullcom.com) with "Unsubscribe" in the subject line. Prior results do not guarantee a similar outcome.