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 Winter 2015 Issue:

Thorny Exemption Issue Discussed

Limited Liability Company X owns property in the Town of Windham which it leases to Corporation Y. Both entities are tax exempt under the Internal Revenue Code. Both entities brought suit against the Town to challenge its failure to grant their tax exemption applications.

Windham attempted to have the suit dismissed because of the split between ownership and occupancy and the plaintiffs' failure to seek adoption of Town ordinance to approve the leasing arrangement. Without that ordinance, the Town claimed, the division between title and occupancy doomed the plaintiffs' exemption objective.

The court pointed out that at least since 2007, applicable law has not required adoption of such an ordinance and has specifically permitted real property owned by one exempt organization used by another such organization to achieve an exemption.

While there may have been a question as to whether or not the tenant corporation was carrying out a charitable purpose, the Superior Court was unwilling to dismiss the complaint before pretrial discovery could be conducted.

Generations Willimantic, LLC v. Town of Windham, Superior Court Judicial District of Windham, Docket No. CV-13-6007335 (April 4, 2014)

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For further information, please contact Laura A. Cardillo at 860-424-4309 or lcardillo@pullcom.com.

Heritage Value and Eminent Domain

The famous case of *Kelo v. New London* decided by the Connecticut Supreme Court in 2003 eventually reached the U.S. Supreme Court, which rendered its decision in 2005. The lesson of *Kelo* was that governmental entities could take property by eminent domain for development by private entities even if no direct public purpose was served other than improving the local economy.

Following the Supreme Court's decision,, more than 40 states adopted legislation to restrict governmental eminent domain powers, Connecticut among them. Indeed, as Alan M. Weinberger and Michael Brain note in the fall 2013 issues of the *Appraisal Journal,* "the majority opinion in *Kelo* expressly invited state legislators to enact additional restrictions on the exercise of (their) takings powers."

Connecticut's statutory revisions were relatively minor.

Several states went quite far in rewarding property owners who held title for a lengthy period of time with a bonus upon a taking. "Homestead" property was also given preferential valuation consideration.

It may be reasonably doubted whether paying longevity bonuses to property owners in eminent domain proceedings is a sound way to trim governmental condemnation powers. Critics argue that requiring payments in excess of fair market value makes little sense except to enrich property owners at the expense of the public purse.

Gregory Servodidio at 860-424-4332 or gservodidio@pullcom.com is knowledgeable about eminent domain issues.

Unaccepted Offers as Evidence of Value?

When an ad valorem assessment is challenged as excessive or when the amount awarded for real property taken in an eminent domain proceeding is attacked as inadequate, the central dispute is value/compensation. In addition to fact and other expert witnesses, the litigants present appraisers' testimony regarding the value of the property at issue; the appraisers employ classic cost, income and sales approaches, and variants thereof, in their evaluations.

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Is evidence of a purchase offer to buy a property by a third party which the owner rejected relevant in these proceedings? Some courts decline such evidence; others admit it. Some courts allow the appraiser to rely on a rejected offer; others do not. Is such evidence sufficiently trustworthy in valuation cases? Most courts think not, although a minority disagree.

A fundamental judicial concern can be linked to the question of reliability and the bear that a valuation plaintiff might be able to "create" such offers. More than one hundred years ago, the U.S. Supreme Court cast great doubt about the reliability of such evidence. However, on closer examination, rather than excluding it entirely, courts might condition admission on the availability for cross-examination and direct judicial inquiry of the offeror whose proposal was declined. (Even when the offeror is available for cross-examination, many courts reject such evidence.)

A few state courts admit offers made in good faith by a knowledgeable offeror and without financing conditions as evidence of recent market activity.

Since materials relied upon in an appraiser's report need not be admissible in and of themselves (appraisers can employ hearsay and other third party data in reaching an expert opinion) it may be challenging to find an appraiser who would not find such data to be probative.

No Connecticut court has considered this issue. However, the editors of *Property Valuation Topics* question whether such evidence should be excluded as a matter of law. The weight accorded to declined offer evidence should be subject to strong judicial scrutiny and discretionary authority. Rejection of a bona fide offer from a serious purchaser with the ability to close the deal may very well influence a trier's opinion - just as the valuation plaintiff's acceptance of a low offer from a purchaser who was unable to consummate the transaction might be a piece of data that an opponent would want to present to the trial court!

For further information about these questions, contact Elliott B. Pollack at ebpollack@pullcom.com or 860-424-4340.

Appraiser's Liability to Borrower

A property developer applied for a construction mortgage to a bank. The bank retained an appraiser. The appraiser's report stated that the report was prepared only for the bank's use. As is frequently the case, the appraiser assumed there were no environmental issues associated with the property. As it turned out, a buried trash dump was uncovered as development work commenced. Of course, the appraiser was sued by the property owner.

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Because the appraiser did not intend anyone other than the bank to rely on his report, his report made it clear that he was not willing to assume any professional obligation to the property owner. The Georgia Court of Appeals agreed and sustained the trial court's grant of a motion for summary judgment in the appraiser's favor.

Adams v. DeWitt, Georgia Court of Appeals, 2014 WL 2609974 (June 12, 2014)

For further information about these questions, contact Tiffany K. Spinella at tspinella@pullcom.com or 860-424-4360.