Property Valuation Topics

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Landmark "Standing" Ruling Issued

The institution of an *ad valorem* tax appeal in the name of a plaintiff who does not own the property or in the name of a tenant who does not hold a lease from the owner of the property occurs fairly frequently. In the past, many Connecticut trial courts faced with an attack by a municipality asserting this error have allowed the plaintiff to sidestep the mistake by amending its papers, in effect sloughing off an error which, in a different cause of action, would deprive a court of jurisdiction.

The end of this trend appears to have been marked by a unanimous decision of the Connecticut Appellate Court last fall.

Wilfred J. Megin challenged the New Milford Board of Assessment Appeals' refusal to reduce the assessment on his land parcel; he instituted the case in his name. As part of its defense, the Town of New Milford, having checked the land records, discovered that title to the property was held as "Wilfred J. Megin, Trustee."

The Town moved to dismiss the appeal. The trial judge agreed, holding that "[t]he present appeal was brought in the name of someone who does not own the property. The property is listed in the name of the owner, and the appeal should have been brought by the owner."

Mr. Megin argued that it would be unfair for the Town to raise this issue because several years earlier it had filed a tax lien foreclosure action against him in his individual name, failing to do so in his trustee status. As a result, it should not be allowed to raise the issue now.

Judge Herbert Gruendel rejected the tax lien case as having any bearing on the subsequent tax appeal quoting from a Supreme Court opinion which trenchantly observed that "[p]laintiffs are not fungible."

The practice point emerging from this decision is that the hasty selection of a plaintiff for a tax appeal who is not the record owner of the property or who does not lease from the property owner of record will doom the tax appeal.

Megin v. Town of New Milford, 125 Conn. App. 35 (November 9, 2010).

Tiffany K. Spinella can answer questions about this case. She can be reached at 860.424.4360 or at tspinella@pullcom.com.

Defunct Business Doesn't Improve Property Value

By all accounts, the property at 142-144 Willard Avenue in Newington, a Hartford suburb, presented the dreary picture of a defunct gas station in which motor vehicle repairs had been performed.

The right to sell gasoline there terminated on October 31, 2006 due to the non-renewal of the applicable license; as of February 14, 2007, the site was "inactive/out of business." To add insult to injury, the Town amended its zoning regulations in the summer of 2007 to remove the right to carry on "auto related uses" on the site.

More than a year after the zoning regulations were changed, Selina's Family, LLC purchased the site for $425,000 and did nothing with or to it for the next year and a half. In January 2010, representatives of the Connecticut Department of Transportation met with a Selina representative to discuss DOT's plans to acquire the property by eminent domain. The owner thereupon sprang into action and obtained a renovation proposal from a contractor at a cost of $350,000 in early May 2010; the taking was effectuated by DOT six weeks later.

Not surprisingly, the owner challenged the taking with two appraisals which relied on the sale of gasoline as the highest and best use of the property. The suggestion did not sit well

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with Judge Trial Referee Julius Kremski, who dryly noted that "[t]o suggest that this location would be a successful location for a gas station, in light of its failure as a gas station, is not based on fact." Judge Kremski also was understandably negative about the use of successful gas stations by the owner's appraiser as rental and market comparables.

The owner's appeal was summarily rejected.

Commissioner of Transportation v. Selina's Family, LLC, Judicial District of New Britain, April 18, 2011, Docket No. CV 10 5015029.

For further information, contact Gregory F. Servodidio at 860.424.4332 or gservodidio@pullcom.com.

Revaluation Depression

As many readers of *Property Valuation Topics* know, the general rule in the Nutmeg State is that Connecticut municipalities are required to revalue at least once every five years – although once in a blue moon, the General Assembly affords a locality the opportunity to extend for an additional year or two. Recent announcements from the offices of assessors of Connecticut municipalities conducting revaluations on October 1, 2010 indicate that the inventory of taxable property (called the Grand List) appears to have remained fairly flat. All in all, this has not been bad news in a sea of poor economic developments.

It came as a bit of a surprise, therefore, that the town of Deep River has shown a drop of 8 percent in total taxable value from its last revaluation date in 2005.

Due to the largely residential nature of the community, it appears that Deep River's tax base has been seriously affected by the drop in residential real estate values over the last two years. To make that point, the Deep River assessor published, as is customary, a list of the town's top ten taxpayers. Four of the ten own residential properties located on or near the Connecticut River.

Financial Accounting Standards Board Change of Heart?

The Financial Accounting Standards Board (FASB) proposed, in an exposure draft (Topic 840-Leases) in August 2010 to significantly alter the financial reporting of leases in financial statements under generally accepted accounting principles (GAAP).

Presently, GAAP creates a major distinction between an "operating lease" and a "capital lease." A "capital lease" is a relationship which substantially mirrors a financing transaction. An "operating lease" involves less than the transfer of the entire bundle of rights to a piece of equipment or real estate over its useful life. A short-term lease for a photocopier would qualify as an operating lease; the lease of a computer system over its useful life with a $1 purchase option at expiration is classified as a capital lease.

FASB put its draft on the table for comments and received 781 responses by the time the comment period expired. Now, according to a knowledgeable observer, "FASB may be having a profound change of heart – or, at least … it wants to move more slowly on any rewrite of the current lease accounting rules."

Whether current GAAP protocols regarding the booking of leases will be retained or, perhaps, changed organically over a lengthy time period, remains to be seen. It would seem that enlargement of the capital lease concept to include long term real estate space leases will generate greater interest on the part of tenants to convert their occupancy into ownership. This, in turn, is likely to generate greater interest in managing property taxes as former occupants will now be fully responsible for taxes.

FASB has referred the issues to its staff for reconsideration on a timetable not presently available.

As more information becomes available concerning this topic, the editors of *Property Valuation Topics* will revisit this issue.

Laura A. Bellotti can answer questions about the impact of accounting rules for leases on property valuation/tax issues. She can be reached at 860.424.4309 or lbellotti@pullcom.com.

Land Value Test Taxation Program Fails to Gain Traction

Senator Martin Looney and Representative Jason Rojas introduced legislation in the 2011 Connecticut General Assembly which would have established a pilot program in three communities calling for different tax (mil) rates for unimproved land or, with respect to improved land, land exclusive of buildings.

The pilot program would have been limited to communities with populations of not more than 26,000.

It proposed the same citizen study group format that was included in the differential land value taxation program adopted several years ago which did not go anywhere.

Unfortunately, this effort to determine whether differential tax rates might have a salutary effect in reducing building demolitions to create surface parking lots in many of our cities died in committee on January 14, 2011.

Attorney Notes

Laura A. Bellotti and Department chair Elliott B. Pollack wrote "How to Value Nursing Home Real Estate" for the Winter 2011 issue of *ALTCFM Journal,* the publication of the Association for Long Term Care Financial Managers.

Mr. Pollack will speak at the Annual Meeting of the Institute of Professionals in Taxation in San Antonio looking at real estate markets from the perspective of an ad valorem tax litigator on June 27, 2011.

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