

Property Valuation Topics

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PILOTs Examined

The Lincoln Institute of Land Policy recently published a report on the current status of payment in lieu of tax (PILOT) relationships between local or state governments and the tax-exempt nonprofit institutions that benefit from PILOTs within their precincts.

According to the Lincoln Institute, at least 117 municipalities in 18 states have PILOT agreements with tax-exempt institutions, most being in Massachusetts.

How do localities impress upon other institutions the need to contribute to local government costs even though by law they are not required to do so? One way, the report suggests, is to lure nonprofits with economic relocation incentives in return for agreeing to a PILOT contract up front.

On the less consensual side of the equation, Pittsburgh, Princeton and Providence tried to establish a controversial internal "tuition tax" on students while others have launched attacks on the tax-exempt status of certain organizations, asserting noncompliance with state charitable law requirements.

Eliminate conflict, the authors of the Lincoln Institute study urge, by working together with nonprofits "to structure (a) program (that is) reasonable, predictable and transparent – all as part of a town-gown partnership that is mutually beneficial."

However new PILOT approaches are sliced, in your editors' judgment, pressure on nonprofits is not going to go away because of the mandate on local governments to cut expenses and find new revenue sources without raising local mil rates.

Gregory F. Servodidio, Esq. at 860.424.4332 or at gervodidio@pullcom.com can answer questions about PILOTs.

New London and Pfizer

After moving substantial resources and personnel into a new research and development facility in New London, less than ten years later, Pfizer Inc. disappointed the Whaling City by deciding that it would close shop and move most of its New London personnel to its Groton facility.

The pall created by this announcement was relieved on June 21, 2010, by news that submarine manufacturer Electric Boat will acquire the Pfizer facility and convert it into an "engineering, research and development center for submarine design work." An additional 700 jobs will be created.

Recently, however, Pfizer announced significant layoffs and job relocations to Massachusetts causing some observers to question the major financial relocation incentives given by state and local governments to Pfizer ten years ago.

Valuation of Intangibles

Connecticut assessors are not permitted to assess intangible assets such as good will, franchise value or business value. Only tangible real and personal property may be assessed.

The question of intangibles was presented in a different and perhaps more interesting form in an extensive article in the sports section of *The New York Times* on November 10, 2010, about the New York Yankees' redoubtable shortstop, Derek Jeter.

"The Yankees would not quite be the Yankees if (Derek Jeter) suited up with another team," Richard Sandomir notes. Comparing Jeter's situation to that of an unflagged and flagged hotel, Mr. Sandomir quotes a business consultant's observation that "[a]s a nameless, faceless shortstop, I have (Jeter) worth \$10 million to \$11 million, but as Derek Jeter, I have him worth about \$20 million."

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The Yankee captain's "value as a brand-builder," this expert observed, not merely as a hitter or infielder, is what drives his intangible worth differential, very much like the business value attributable to a well-managed hotel or convalescent facility.

It would be foolish for the Yankees not to sign Mr. Jeter, who entered free agency after a lengthy contract, even though his baseball skills have slightly declined. "What they'll be paying for," a baseball historian observes, "is a licensing deal. They will be paying for a brand that they have great equity in."

The Yankees' challenge in reaching a new contract with Mr. Jeter, which was finally concluded in December, echoes the difficulty faced by many Connecticut assessors in valuing properties that are almost as much businesses as they are parcels of real estate. For one court's approach towards this issue, the case of *Avon Convalescent Home v. Town of Avon*, decided by the New Britain Superior Court in 2005, may be consulted at 2006 WL 932388.

For further information about this challenging valuation problem, contact Elliott B. Pollack, Esq. at 860.424.4340 or ebpollack@pullcom.com or Tiffany G. Kouri, Esq. at 860.424.4360 or tkouri@pullcom.com. Mr. Pollack cautions, however, that he is an avid Boston Red Sox fan.

Another Notice of Lease Case

When Wal-Mart Stores East, L.P. initiated a tax appeal against the Town of Stratford, it thought the only issue was the accuracy of the assessor's valuation of its 150 Barnum Avenue store on the Stratford Grand List of October 1, 2004.

Wal-Mart did not expect, in all likelihood, that the Town would move to dismiss the appeal before valuation issues could be addressed using an obscure but potentially potent procedural attack.

As a tenant, Wal-Mart had the right to challenge the valuation of the property under a Connecticut statute which authorizes "any lessee of real property whose lease has been recorded" and who is responsible to pay real estate taxes pursuant to the lease to file a tax appeal. Neither Wal-Mart's lease nor a short form notice of lease were recorded on the Stratford land records as of the October 1, 2004, 2005 and 2006 assessment dates.

Stratford argued that Wal-Mart failed the test of the statute applicable to tenants' tax appeals and sought dismissal.

Sitting in the New Britain Tax Court, Judge Trial Referee Arnold W. Aronson ruled that even though Wal-Mart failed to comply with the statute, the Town was well aware of its lease and occupancy. This actual knowledge was enough, Wal-Mart claimed, to defeat the Town's dismissal efforts. JTR Aronson noted: "since the Town had actual knowledge that Wal-Mart was a lessee obligated to pay the real estate taxes on the subject property as of October 1, 2004, the Town's motion to dismiss is denied."

An Appellate Court ruling, decided a few months later, strongly suggests a different result in these cases; it will be discussed in the Spring 2011 issue of *Property Valuation Topics*.

Notwithstanding this and other decisions favorable to tenants who also failed to comply with tax appeal statutes, even a favorable ruling comes at the cost of additional briefing and gives the adversary an issue on appeal. Simply filing a notice of lease is the best way to protect the tenant's right to challenge valuation and avoid the prospect of a similar motion altogether.

Wal-Mart Stores East, L.P. v. Town of Stratford, Docket No. CV-054009106 (May 14, 2010).

Gregory F. Servodidio, Esq. at 860.424.4332 or gservodidio@pullcom.com or Laura A. Bellotti, Esq. at 860.424.4309 or lbellotti@pullcom.com can provide additional information about this case.

Revived National Office Market

Terry Pristin reports in *The New York Times* on January 5, 2011, that “the investment market for office buildings has sprung back to life.”

The reporter refers to transactions in such prime markets as New York, Washington, D.C., Houston and Boston as heralding a rediscovered interest on the part of buyers in assuming risks — notwithstanding that “[m]ore than \$48 billion worth of office buildings nationwide are in default, bankruptcy or foreclosure...”

With some exceptions, most investors are unwilling “to venture outside the top markets” due to lack of familiarity and lower tenant demand. Even buildings with substantial vacancies in major areas are attracting stronger buyer interest if they are well located.

What this means for the Connecticut office real estate market, outside of lower Fairfield County, remains to be seen.

Attorney Notes

Department chair Elliott B. Pollack discussed multiple aspects of commercial real estate tax appeals, including appraisal concepts, with Patrick A. Lemp, MAI at the January 27 meeting of the Connecticut Bar Association’s Real Property Section Executive Committee meeting. He has also created a program which will be presented at the ABA/IPT Property Tax seminar in New Orleans on March 24, entitled *Value in Use v. Value in Exchange: Do the Courts Know the Difference?* For more information, please visit www.pullcom.com.

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