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Serving Counties Since 1886

Commercial Valuation Revisited - Common Sense Prevailing?

By Patrick J. Clair And Howard J. Schulberg

A recent decision from the Commonwealth Court suggests that the Courts should look past intricate financing deals – and ordinary leasing arrangements – to get to the substance of real estate developments for their effects on tax revenue.

Tech One owns property near Century Three Mall in Allegheny County. In 1989 it leased the land to Terra Associates for development purposes. Tech One was to receive annual rent of $665,000. Terra Associates then began to develop the property with a shopping center, movie theater complex and a restaurant. After it was completed, Allegheny County determined the development to have a value of $31,000,000. An appeal was filed by Tech One claiming that the only value to be placed on its retained ownership of the land came from its lease and that the value of the improvements were to be ignored because they were owned by someone other than the property owner. According to the terms of the lease, Tech One had no rights to the improvements at the termination of the lease.

Interestingly, the lease arrangement also provided that the lessee, Terra, was obliged to pay all taxes. It would, of course, be in Terra's interest to have the lowest possible assessment. This could be easily accomplished if the value of the shopping center, theaters and restaurant were ignored.

At the trial court level, Judge Wettick found in favor of the taxing bodies, and the Commonwealth Court recently upheld that ruling. In so doing Judge Wettick and the Commonwealth Court rejected the application of a line of cases deriving from the Pennsylvania Supreme Court's 1992 Marple Springfield case from Delaware County. There too a lease provided for fairly low rent to the land owner, and the taxing bodies sought to determine value based upon the market rent to the land and the value of the constructed improvements. Marple Springfield held that the taxable value of land that is subject to a long-term leasing arrangement should be based strictly upon the lease rent to the land owner. Relying upon Marple Springfield, Tech One argued that it was the landowner and its interest (and therefore the assessed value) was to be based strictly upon the value of the lease.

What seems to be the difference? The major factor to the Commonwealth Court (and to Judge Wettick) is that uniformity of taxation is askew if there is no accounting for improvements made under the terms of the lease. If an owner/developer built the same commercial complex, it would be taxed for the full value of land and structures, while

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IDEAS FOR YOU

Take A Free Lunch

Stressed out? Take lunch off. Leave the office, go for a walk, go to the gym, go to a restaurant. If you can't afford to go anywhere, bring a book and brown bag it in your car. If you can't take off every day, target one day of the week, then increase it over time. By setting yourself free one hour each day, you'll be more relaxed—and productive—when you are working.

Look For The Egg!

The next time you or your employees are looking at a particularly tricky problem, try turning it around. It's called the "golden egg" technique: Change your point of view so that the situation is no longer a problem, but an opportunity. For example: If your company is losing market share to a competitor, look at what's working for your competition. Then adapt your products and services to reflect what they're doing right, and take the opportunity to improve upon it so you're not just copying someone else's success.

WHAT'S INSIDE

The President's Report, Legislative Update, AAP People and more!

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President's Message

Happy Summer To All!

We have a new president in Washington, DC who needs all of our support to help turn this country around and continue to make America the great country that it really is. I look forward to serving as your new president of the AAP and I am depending upon the support of AAP and all its members to continue our great role in education and training for all of our assessors.

First, let me say thank you to Randy Waggoner for a great presidency. It is a bit scary to follow in his footsteps but he has assured me that he is only a phone call away should I have any questions or concerns. I would like to express my thanks to the entire Association for their support over the years as I worked my way up through the chair positions. I am depending on Terry and the other CCAP personnel to help plan our conferences and meetings. I will need input and cooperation from my committee chairs and their members to keep things running smoothly and last, I will rely on all of you for your contributions, questions and comments to make this upcoming year and this presidency as good as any that has gone before me.

Our jobs as assessors are getting more and more complicated as time moves on. We think we have an answer to a problem and another issue comes up. The Wettick case has finally been decided but even that decision has opened more doors for reassessment discussion, "The Right to Know Law" has changed how we look at openness in government, and Act 319 issues need to be addressed concerning gas and oil leases and windmills. These are just a few of the concerns that the AAP and County Commissioners Association of Pennsylvania will have to work on in the coming months. I hope that the right decisions will be made in all these areas and our counties will have a common consensus on how things should be done.

I came back from the Spring Conference on an emotional high. I was the new president of the AAP, Ron, J.R., Dave and I were the undisputed bowling champions of the 61st annual conference and the Wettick decision had been decided on the last day of Randy's term. It does not get much better than that.

Again, I look forward to being your president over the next year. Enjoy your summer. Be safe and GOD BLESS AMERICA!

Paulette Sebring

Reporting On The Issues That Impact Assessors!

By
Jeff Laudenslager
Legislative
Committee Chair

Legislative Update

News From Harrisburg
As of June 30, 2009

The 2009-2010 regular session opened in January and there has been a flurry of legislative activity regarding real estate assessment. Thirty-one House bills, three House resolutions and 18 Senate bills pertaining to real estate assessment have been introduced, many of which represent legislation that was introduced but not passed into law during the 2007-2008 regular session. Following are some highlights:

PROPERTY TAX REASSESSMENT

House Resolutions 93, 272 and 334 related resolutions that would authorize a multi-party study of the commonwealth's fragmented system of property tax assessment law and compare to systems in other states including California and Maryland. Those to be included in the review include the Legislative Budget and Finance Committee, the Local Government Commission, the State Tax Equalization Board, along with the assessors and county commissioners associations.

Resolution 93 was referred to Local Government on February 23 and Resolution 272 was referred to Finance on April 28. CCAP believes these resolutions will be enacted and is encouraging a thorough review and consolidation of the existing county "class" codification system of laws prior to any future enactment of a different property tax assessment system.

Senate Bill 918 - This amendment to Act 53 would bring counties of second class A and third class through eighth class under a single set of codes for assessments and appeals.

ACT 319 (CLEAN AND GREEN)

House Bills 208 and 1394, Senate Bill 298, allow the owner of a property enrolled in Act 319 to lease land for oil and gas exploration and further allows for the drilling and extraction of oil and gas under certain conditions without breaching and triggering a rollback on the entire parcel.

House Bills 984 and1394 are the same as above but pertain to lease of land for wind power generation.

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2009 FALL CPE Classes

The next round of CPE classes begins in September. These classes are the training and preparation courses for anyone planning to sit for the state's CPE examination. **AAP recommends that anyone taking these classes have at least one year of assessment experience.**

Holiday Inn — Clarion

Introduction	September 14 - 18 (expanded five-day format)
Site/Market Approach	September 22 - 25
Cost Approach	September 28 - October 2
Income Approach	October 6 - 9

Information regarding the classes can be found on the AAP Web site, *www.paassessors.org.*

Update continued from page three

SENATE BILL 850

This bill proposes significant reduction in appropriations to Department of Agriculture including no provision for conservation easement administration. Specifically, this would eliminate CCAP's source of funding for farmland preservation and Clean and Green administration.

VETERAN EXEMPTIONS

House Bill 1067 is a constitutional amendment would remove income restrictions from the current law governing property tax exemptions for veterans.

SENATE BILL 593

This constitutional amendment would remove the requirement of having served in war or armed conflict as well as the need to be 100 percent disabled. The exemption would be set at the percentage of disability. The section that has the State's Veterans' Commission determining the person to be in need of the exemption would also be removed.

SENATE BILL 791

This amendment extends the exemption from real estate taxes to the surviving spouse of a veteran killed or missing in action, provided the State Veterans' Commission determines that such spouse is in need of an exemption.

ASSESSMENT APPEALS HOUSE BILLS 141 AND 142

These bills would allow an attorney-in-fact under a power of attorney signed by a person who has the right to appeal to the board of assessment appeals to file an appeal and represent that person in all aspects of the appeal. This representation shall not be construed as the unauthorized practice of law. It goes on to state that the appeal of an assessment decision by the board of assessment appeals to the court of common pleas shall be a de novo proceeding.

HOUSE BILL 1623

This amendment would limit a municipality or school's ability to appeal an assessment during a county wide reassessment when a parcel is divided and conveyed away in smaller parcels, when improvements are made to real property or when existing improvements are removed from real property.

SENATE BILLS 471 AND 472

These amendments would prohibit the board of appeals from imposing or assessing any fee relating to the appeal.

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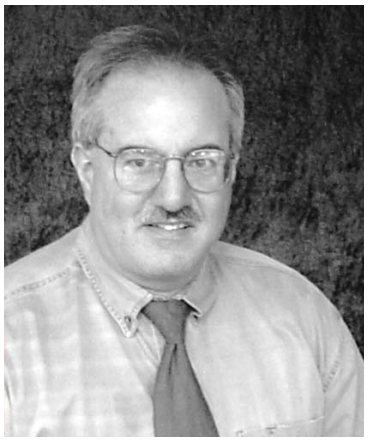


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MEMBER ABILIA

Name: Eric H. Wolfe

Position: Valuation Analyst

Year in assessment field: Thirty years

County: Allegheny

Marital status and family: Single; parents deceased. Father passed when I was 18. Mother passed in 1991. I also have two sisters and four nephews

What irritates me most in the assessment business: People not directly involved in the assessment process get to impose their opinions in the valuation process

Most people would be surprised to know: I'm trained in classical/jazz piano. I volunteer for a mental health agency, the Low Self-Help Mental Health Program out of Chicago.

Biggest challenge as an assessor: Competency, qualifications and experience as well as integrity and commitment don't seem to be given the attention they deserve.

First Job: Inventory Control, Office Supply Warehouse

If I couldn't be an assessor, I'd be: Learning and practicing bookkeeping and accounting

If I won millions in the lottery, I would: Retire and donate a portion to the mental health profession

Favorite vacation: Touring the land of Israel

Favorite food and drink: Ice cream and micro-brews, but not together

Favorite movie: Any James Bond series combining drama and music

Three people living or dead that I would invite to dinner: Sean Connery, actor; Debra Winger, actress; John Barry, composer

The hardest lesson I ever learned as an assessor was the time: Still learning. Thinking people will change

If I could live in the past for one day, I would change: Going back home after college!

Chapter Notes And Other News

SOUTH CENTRAL CHAPTER NEWS

The South Central Chapter meets quarterly. Our meetings begin with our business meetings at 9 a.m., with seminars beginning immediately after the meeting (approximately 9:30 a.m.) and are held at the Adams County Agricultural and Natural Resources Center, 670 Old Harrisburg Road, Gettysburg, PA 17325. Please contact Barb Walter at (717) 337-9837 for more information.

CUMBERLAND COUNTY NEWS

Welcome to new assessor Christopher Plitt.

Congratulations to Bill Reath, Commercial Assessor who became "grandpa" with his first grandchild on May 27, 2009. Cooper James Thurston weighed 8 pounds, 11 ounces and was 22 ¾ inches long and is the son of Bill's daughter Casey and her husband Jason. Congratulations to Grandpa Bill!

PERRY COUNTY NEWS

Congratulations to Randy and Connie Waggoner on the birth of the fourth grandchild; Nevaeh Rose Waggoner was born on April 5, 2009, weighed 5 pounds, 10 ounces and was 17 inches long. Congratulations on the new family addition.

Send Us Your News!

Let's know what is happening in your coumty.

Let's share the infrormation with your peers.

Send us notices of promotions, job changes, awards, etc.

Send to:

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NEEDED: AAP INSTRUCTORS

The AAP is looking for new instructors for our CPE courses and other classes. If you are interested in teaching for AAP, please contact Steve Howe or Randy Waggoner, our Education Chairs, who will explain the process to you and answer any questions you may have.

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Why People Go Online

Might your county residents be getting information about the assessment office, your employees or their tax bills? What you need to know.

Learning and fun top the list.

If idle hands are the devil's workshop, the Internet is a pretty hot place.

According to Ruder Finn, 100% of U.S. Internet users surveyed in Q2 2009 went online to pass the time.

Other popular reasons were education, connecting with others, researching and sharing.

The least common intentions when logging on were to make purchases, manage finances, comparison shop and join causes.

"Intent is the new demographic," said Kathy Bloomgarden, Ruder Finn co-CEO. "Delving deeper into the underlying motivations of online behavior is critical to developing proactive strategies."

Overall, Ruder Finn divided online activities into six categories, listed from most common to least:

- Learn
- Have fun
- Socialize
- Express oneself
- Advocate
- Do business
- Shop

Men were more likely than women to go online for business, entertainment and to keep informed on news and current events.

Women, in turn, were more likely to use the Internet to advocate for a cause or issue, express themselves and socialize.

More than two-thirds (69 percent) of young adults ages 18 to 29 posted comments on social networking sites, 55 percent played games and 50 percent went online "specifically to rage against a person or organization."

Seniors were nearly twice as likely as young people to manage their finances, and 65 percent of seniors went online to be part of a community.

Reasons that US Internet Users Go Online, Q2 2009 (% of respondents)

Pass time	100%
Educate self	96%
Connect with others	92%
Research	89%
Share	86%
Be entertained	82%
Keep informed	79%
Discuss	76%
Be part of a community	72%
Work (business)	69%
Escape	66%
Opine	62%
Influence others	56%
Activate support	52%
Entertain others	48%
Emote	44%
Be creative	42%
Make a purchase	33%
Manage finances	30%
Comparison shop	28%
Join a cause	26%

Note: n=500 ages 18+
Source: Ruder Finn, "Intent Index" as cited in press release, June 29, 2009

Social Networks And Government

Social networking sites are Web sites that connect people. In these online communities, people can join (free) and at a minimum, establish a page with their profile.

The most popular, MySpace and Facebook, also have groups, which are feature rich chat boards for members. A popular professional social networking site, LinkedIn, offers sections for jobs, service provider recommendations, and questions. All allow users to find people they know among the members, or look for other members with similar interests or affiliations. These sites make it easy to establish networks of contacts. Other Web 2.0 technologies, such as Wiki products (e.g., WikiMedia) and photo sharing sites (e.g., Flickr), also have social networking aspects to them.

POTENTIAL USES OF SOCIAL NETWORKS BY GOVERNMENT

Public social networking sites can be used to further promote government information and services. This could include setting up a LinkedIn group, a Facebook group, or a Ning community. By setting up a group in Facebook, for example, government can bring people together who are employees with those who are interested in a facet of an agency's work and information. Doing so expands the government's outreach capabilities and ability to interact.

> "By setting up a group in Facebook, for example, government can bring people together who are employees with those who are interested in a facet of an agency's work and information."

Public social networking sites can also be used for recruitment. Agencies could advertise jobs and answer questions about jobs on sites such as LinkedIn to attract students and professionals, provided they have already listed their federal jobs on the federal government's official jobs site *USAjobs.gov*.

Public social networking sites are a great way to announce events. The Columbus, Ohio, Chamber of Commerce worked with students at Ohio State University to use Facebook to announce the opening event of a new restaurant, leading to long lines of students waiting outside in cold weather until the restaurant opened. The restaurant had the biggest opening day ever for the restaurant chain.

Social networking sites with government partners can help achieve a government's mission. ***See the NASA example discussed below.***

Interagency and intergovernmental social networking sites can promote cooperation across government. Internal social networking sites can establish connections across traditionally stovepiped and geographically dispersed organizations. Employees could form groups on social networking sites to overcome stovepipes within organizations.

EXAMPLES OF GOVERNMENT USING SOCIAL NETWORKS

NASA built its own community building, collaborative workspace site. NASA's CoLab program develops and supports online and offline communities collaborating with NASA. With the involvement of many NASA centers, CoLab provides frameworks for partnership projects between the nation's space program and talented, creative, tech-savvy communities. In addition to getting people more interested and involved with the space program, CoLab provides a way for individuals to actually contribute to NASA.
Many government agency networks and groups have sprung up on sites like Facebook. EPA's facebook network, for example, has over 750 members—anyone with an EPA e-mail address can become a member of the group. There are similar examples for most agencies.

USA.gov started a *Facebook USAgov* page in March 2008, for RSS feeds, videos, photos and other news. The public is invited to become a "fan" of that page.

The CIA has used Facebook to invite students to apply to work at the agency.
The Library of Congress' Photostream in Flickr is a good example of posting the government's public domain photos on a social networking site where the public can comment on the photos.

GOVERNMENT ISSUES

Some agencies have blocked use of social networking sites from government workplaces, citing concerns of proper use, bandwidth, and security. An agency wide ban, without waivers, prevents Web managers, communications professionals, and others in the organizations from using these tools to help market and achieve the agency's mission.

There is nothing to prevent individuals from participating on social networking sites as individuals. However, it may not be clear in some agencies what official interaction agency employees can have on social networking sites.

Wettick continued from page one

Tech One, would here escape taxation on the structures.

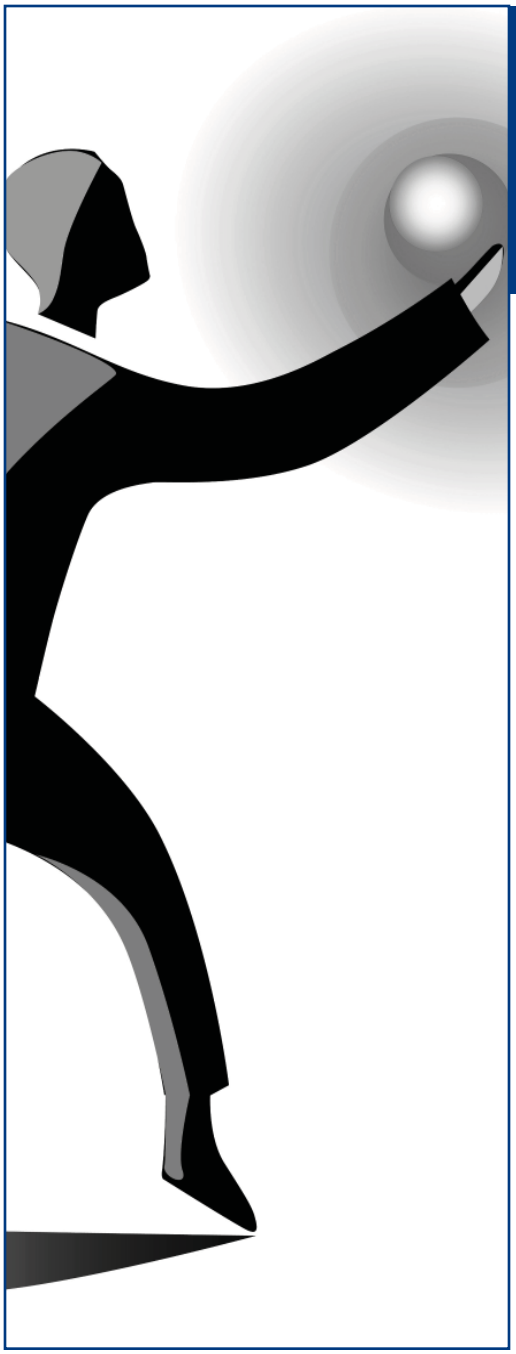
Of some significance, noted by the Courts, was the fact the lease here required the tenant to pay taxes, while in Marple Springfield the record was silent on that subject. Thus, we would have the owner of the buildings paying the tax on the underlying land which it does not own, and no one paying tax on the building value. There is an obvious absurdity in that effect.

Under the Marple Springfield approach, numerous financing arrangements are available today that would allow an owner to lease property to a legitimate holding/shell business and thus avoid taxation on improvements. Others might take to leasing the improvements to holding companies as a ground lease and in that way avoid the taxation of the improvements. The Court here looked beyond the troublesome holding of Marple Springfield to see this type of transaction as unfairly bypassing real estate tax obligations and placing the form of ownership over the need for uniformity of taxation. To paraphrase Judge Wettick, any other outcome would permit a Taj Mahal to be built, yet escape taxation. By affirming Judge Wettick's decision, the Commonwealth Court recognized the various financing strategies that could be put in play, and seems to have sent a message that Courts should look to the realities and not the intricacies of financing and development schemes.

One solution to this whole problem would be to facilitate – by legislation or assessment practice – the direct assessment of improvements to land which are owned by an entity other than the owner of the underlying land. That would "capture" all of the taxable value just as if it were in single ownership, and would remove any tax incentive for separation of land and improvement by developers. Those decisions should be made on other economic bases, not simply as arrangements to avoid taxation for support of local school and government operations.

Given that this decision significantly departs from the Marple Springfield decision, the Pennsylvania Supreme Court may be asked to accept and hear an appeal. Look for more news if that occurs.

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AAP 2009 Annual Conference Service Award Winners

The following AAP members were honored at the Annual Banquet for their years of service to the assessment profession.

TRAILBLAZER AWARDS (20 - 29 YEARS OF SERVICE)

George Ruscin, Allegheny County	20
Kim Steigerwalt, Carbon County	21
John Innocenzi, Eric County	26

BOARD OF GOVERNOR'S AWARDS (30 - 39 YEARS OF SERVICE)

John Engels, Erie County	30
Gregory M. Fedak, Lehigh County	30
Sarah Parise, Allegheny County	31
Francis J. Unger, Jr., Lehigh County	31
Eric Wolfe, Allegheny County	31
Cindy Zimecki, Allegheny County	32
Richard L. Benkovic, Lehigh County	35

50 YEARS OF SERVICE

A special award for 50 years of service was presented to Gerald Dann from Centre County.

Congratulations to all service award winners. Thank you for your ongoing contributions to the assessment profession.



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