

# Property Valuation Topics

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## 2010 Revaluations are Proceeding

*Property Valuation Topics* readers with real estate in Connecticut communities undergoing town-wide revaluations as of October 1, 2010 recently received a "Client Alert" from the Pullman & Comley Property Valuation Department. The Alert discussed the appropriate steps to be taken with respect to these revaluations.

If you have any questions after reading the Alert, please feel free to call any of the members of the Property Valuation Department. You may view the Alert on our website at [www.pullcom.com](http://www.pullcom.com) under Property Valuation, Publications and Alerts.

## Assessors Can No Longer Be Elected

Public Act No. 10-84 ends the quaint option which has long been available to Connecticut municipalities, although seldom exercised, of electing a town assessor.

As of October 1, 2010, assessors must be appointed by the chief executive officer of the municipality or another proper appointing authority that the town may provide by local ordinance.

Members of boards of assessment appeals may be appointed or elected, although it is difficult to comprehend why this body, which is supposed to evaluate the assessor's actions, should have any relationship to the political process.

## Property Taxes and Utility Submetering

Many commercial property owners are finding that tenants are no longer willing to absorb the full brunt of property tax increases. Not surprisingly, landlords are seeking other ways to increase revenues and reduce expenses. One approach being considered is the submetering of electric charges in order to more fairly allocate electric usage to tenants based on actual consumption.

Property owners or managers considering this approach should be aware of the extremely negative attitude taken by the Connecticut Department of Public Utilities Control towards submetering.

**For further information concerning this extremely technical area, please contact Brad Mondschein at 860.424.4319, [bmondschein@pullcom.com](mailto:bmondschein@pullcom.com) or James P. White, Jr. at 201.330.2132, [jwhite@pullcom.com](mailto:jwhite@pullcom.com).**

## Valuation of Conservation Easement Determined

*Property Valuation Topics* does not limit its articles to cases decided in the Connecticut courts; from time to time, judicial decisions from other jurisdictions can be most interesting and instructive. In this light, it is worth noting a ruling by the U.S. Tax Court as to the proper method of valuing a conservation easement.

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Kiva Dunes Conservation, LLC donated a perpetual conservation easement covering a golf course owned by Kiva to the North American Land Trust. The IRS challenged the amount of the deduction and also sought a penalty for an overreach. The case is of more than passing interest since Kiva claimed the charitable deduction was in excess of \$30 million.

After noting that there were no applicable sales of conservation easements from which a sales methodology valuation could be determined, at least any comparable to the grant involved here, the Tax Court approved the use of a “before and after” methodology. This approach posits the value of a perpetual conservation restriction to be the difference between the fair market value of the property before the grant and the fair market value of the property after the grant is created and encumbers the property. Of interest to PVT readers is the fact that this approach is favored by the Connecticut courts in determining damages that are due to property owners as a result of partial takings.

“ **The Tax Court permitted a deduction of almost \$27 million — a huge victory.** ”

Any ability to develop a residential subdivision around the Kiva golf course was completely removed by the creation and imposition of the conservation easement. The Tax Court agreed with the taxpayer that while the highest and best use prior to the creation of the easement was a residential subdivision, the continuation of the golf course was the highest and best use following the imposition of the easement.

The taxpayer’s position as to the valuation of the conservation easement was almost \$32 million; the IRS contended that it was worth only slightly

more than \$10 million. The Tax Court permitted a deduction of almost \$27 million – a huge victory. *Kiva Dunes Conservation, LLC v. Commissioner of Internal Revenue*, United States Tax Court, Docket No. 13196-06 (June 22, 2009).

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### Construction in Progress (CIP) Case Settled

In a recent edition of *Property Valuation Topics*, we reported on a somewhat odd decision in which a judge trial referee held that the Town of Guilford could not assess CIP under what appears to have been a strained interpretation of the applicable statute. The parties’ settlement, which your editor recently learned about, leaves the issue hanging out there with other cases likely to be brought unless a statutory change is effected.

While the editors of *Property Valuation Topics* do not wish to see the categories of properties eligible for assessment increased on a scatter-shot basis, we did find the argument that CIP was exempt, at least as articulated in the Evans case, somewhat difficult to follow.

*Evans v. Town of Guilford, Superior Court at New Haven*, Docket No. CV064021995, December 29, 2009

**Elliott B. Pollack, Esq. at 860.424.4340 or [ebpollack@pullcom.com](mailto:ebpollack@pullcom.com) can answer questions about this case.**

## Feng Shui Affects Value

Michael Rudder, director of office leasing and sales with Time Equities, a well-known brokerage, is enjoying robust sales of office condominiums to Asian buyers – even in a down New York commercial real estate market. Apparently, Asia’s greater prosperity and the weak greenback is endowing potential buyers of New York real estate with cash to acquire a major foothold in the Big Apple.

“**...the number 8 in Chinese ‘is a homophone for getting rich’ ... the 8th floors of office buildings and buildings numbered with an 8 ‘frequently command premium prices.’**”

–*The New York Times*

What makes this phenomenon so interesting to valuation professionals is the impact of cultural concerns on the prices being paid for these assets. Because the number 8 in Chinese “is a homophone for getting rich,” Jonathan Vatner reports in *The New York Times* on August 25, 2010, the 8th floors of office buildings and buildings numbered with an 8 “frequently command premium prices.” For example, in Manhattan’s Chinatown, office condos on the 8th floor of a particular building have sold “for as much as \$100,000 more than those on other floors.”

As another example, the pronunciation of the number four in Chinese, Japanese and Korean “sounds the same way as the word for death – which is why many buildings in Asia do not have a 4th floor,” Vatner

reports. In a mixed-use building in Queens, almost every floor is occupied by Asian concerns except the 4th floor, which is the office of “a non-Asian educational institute,” the reporter notes.

To comply with the Uniform Standards of Professional Appraisal Practice (USPAP), commercial real estate appraisers in Manhattan must now be aware of a new property attribute which may affect their comparable sales analyses!

For more information, please contact Elliott B. Pollack, Esq. at 860.424.4340 or [ebpollack@pullcom.com](mailto:ebpollack@pullcom.com) or Tiffany G. Kouri, Esq. at 860.424.4360 or [tkouri@pullcom.com](mailto:tkouri@pullcom.com).

## Attorney Notes

Laura A. Bellotti and Gregory F. Servodidio commented on recent property valuation developments at a seminar sponsored by the Society of Professional Appraisers in Old Saybrook on October 28, 2010.

Department chairman Elliott B. Pollack’s article “Property Revaluations Demand Owner Attention” was published in the November 1, 2010 *Hartford Business Journal*. Attorney Pollack addressed important property valuation court rulings at the 2010 University of Connecticut Commercial Real Estate Conference in Farmington on November 9.

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