

The Society of Professional Assessors 2011 Annual Connecticut Seminar

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*Leased Fee/Value in Use
v. Fee Simple/Value in Exchange
Do the Courts Know the Difference?*

Introduction

- Ad valorem valuation = fee simple value / market value in exchange
- Is this standard(s) universally honored?
- To what degree do courts (and valuation experts) become distracted by evidence of leased fee/use value?
- Example: The fully net leased industrial facility in a market in which rents are sharply lower and vacancy is significantly higher.

Introduction

Connecticut General Statutes § 12-63b(b)

For purposes of income capitalization:

- Market rents are the test: but . . .
- Assessors are required to consider “actual rental income”.
- Does this mean actual rents whether or not market – or only if they are at market?



Definitions

- *Value in use*: “The value a specific property has for a specific use.”
- *Value in exchange*: Based on the collective value judgments of market participants; typical “buyer-seller” formulation
- *Leased fee*: The lessor’s ownership interest including the right to contract rent plus the reversionary right.
- *Fee simple*: Absolute ownership encumbered by any other interest or estate.

Source: The Appraisal of Real Estate, 13th edition, 2008.

David Paul Rothermich, MAI - 1998

- Special design features
- Unique business needs
- Existing contract rentals reflect unique business needs
- Existing contract rentals reflect market conditions as of lease negotiation/execution
- Vacancies on valuation date do not necessarily reflect vacancy in the market as of lease execution date

USPAP

- Standard 6
- Standards Rules 6-2(c)(4)
- Standards Rule 6-3
- Standards Rule 6-8(n)
- Advisory Opinion 32
- FAQ 132



Some Cases

- * *United Technologies Corporation v. Town of East Windsor*, 262 Conn. 11 (2002) refused to overturn a clearly erroneous the trial court's (cost approach) ruling supporting a value based on a building design and construction for the needs of a specific tenant.

“... [t]he plaintiff's continued profitable use of its East Windsor property supports the trial court's highest and best use conclusion” at 28.



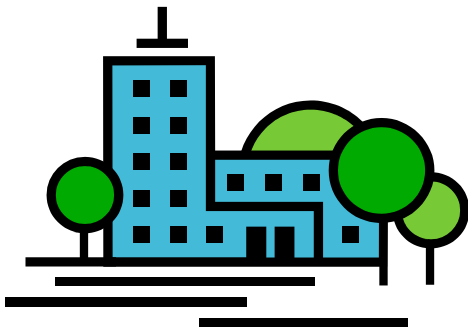
Some Cases (cont.)

- * *Aetna Life Insurance Company v. City of Middletown*, 77 Conn. App. 21 (2003) appears to reject USPAP Standard Rule 1-4(b)(iii) that an appraiser must account for accrued depreciation – including functional obsolescence -- when valuing a corporate HQ building held in a sale/leaseback via the cost approach! (N.B. When the leaseback term expired, the owner announced plans to demolish this huge building due to functional and physical obsolescence!).

* Disclaimer: The speaker was involved in these cases.

Some Cases (cont.)

“Aetna’s use of the subject property and its value to Aetna are clearly representative of the subject property’s general market value as a corporate headquarters” at 37.



Some Cases (cont.)

Pilot's Point Marina v. Westbrook, 119 Conn. App. 604 (2010).



“If the property is devoted to the use for which it is best adapted and is in a condition to produce or is producing its maximum income, the actual rental is a very important element in ascertaining its value” at 603-604.

Some Cases (cont.)

- *First Bethel Associates v. Town of Bethel*, 231 Conn. 731 (1995) – Solomonic approach approved – did we lose the baby too?!



Some Cases (cont.)

- *Stop and Shop Supermarket v. City of Danbury*, August 17, 2010 (Superior Court). Solomon followed.
- *AEI Net Lease Income & Growth Fund v. Erie County Board of Revision*, 895 N.E. 2d 830 (2008): Court could rely on a sale leaseback transaction involving a fast food tenant.

Some Cases (cont.)

- *Higbee Company v. Cuyahoga County Board of Revision*, 839 N.E. 2d 385 (2006): In accepting a valuation based on the current business use of the property, rather than a valuation based on value in exchange, the owner's business success or lack thereof in the building determines value rather than the underlying value of the real estate.

Some Cases (cont.)

(Higbee – continued). "The business factors and the real property factors must be separated when the real property is being valued for tax purposes."

"(While) the economics of real-property transactions involving anchor stores and mall developers is different from the usual types of real estate transactions, for ad valorem tax purposes the property still must be valued on the basis of what a willing buyer would pay a willing seller"

Why does this challenge exist?

- Subjective aspects of valuation litigation
- Expert/ Appraiser credibility
- Lack of judicial experience
- Judicial sympathies
- Frequent inability of court to distinguish between market value of the real estate at valuation date and value to the individual property owner
- Attorney skills/experience



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