

DIMENSIONS

TAX APPEALS FOR CONSTRUCTION PARTIALLY COMPLETED AND STRADDLING TAX YEARS

By: C. Justin McCarthy, Esq. and John A. Giunco, Esq., Giordano, Halleran & Ciesla, P.C.

New Jersey has 566 municipalities, 21 counties, 188 fire districts and 611 school districts, the budgets for which are financed largely by ever increasing property taxes. For builders and developers of real property the threat of rising tax obligations is especially menacing in the context of an ongoing development site, especially where the construction time frame from start to finish will extend through multiple tax years. The looming concern that builders and property owners face as construction occurs is the imposition of higher assessed property values, which inevitably leads to higher carrying costs. What then can developers do to limit what will likely be an increasing tax burden as new residential, commercial or industrial construction is completed?

The short answer is two-fold. First, file a regular tax appeal to reduce the assessed value of property. Second, rigorously defend against asserted assessment increases imposed by a municipality.

As structures that are part of a development project are completed, the owner of such property should expect that the assessed value may be adjusted upwards by the local assessor. The municipal assessor may increase the assessments of real property in the regular course by re-assessing as of October 1st of the pre tax year or by utilizing the statutory procedure for added assessments. To better understand the assessing process that often applies to new construction, the scheme for added assessments (N.J.S.A. 54:63.1 et seq.) must be understood. The underlying purpose of added assessments is to allow for the taxation of real property which was improved or became taxable during the tax year after the regular pre-tax year assessment date of October 1st. When any parcel of real property contains any

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building or other structure which has been erected, added to, or improved after October 1, the municipal assessor shall determine the taxable value of such parcel as of the first of the month following such completion. If the new value exceeds the value as of the prior October 1st date, the assessor then enters an added assessment against the parcel in the added assessment list for the tax year.

This process allows the municipality to levy tax against the value of structures and improvements completed during that tax year that were not originally included in the pre-tax year assessment. The applicability of an added assessment corresponds directly with the assessor's determination of when a structure(s) is "completed". This has been interpreted to mean when they are ready to conduct their intended use.

Taxpayers have a right to appeal an added assessment to the applicable county board of taxation or the Tax Court by December 1st of the year in which the assessment is made or 30 days from the completion of the municipal tax collectors bulk mailing of the added assessment tax bills, whichever is later. For regular assessment appeals, the

statutory deadline to file a tax appeal is April 1st of the tax year. The appeal deadline for both regular and added assessment appeals is strictly enforced and failure to file a timely appeal is a fatal defect for the appeal.

While each situation is often unique there are a few common areas of dispute as they relate to added assessments. The first involves the interpretation of what constitutes "complete" structures. The Tax Court has held that a property is "complete" and therefore subject to assessment and taxation when it is able to be used for its intended purpose. While one would assume the issuance of a certificate of occupancy would govern this determination, the Tax Court has found that the issuance, or non issuance, of a certificate of occupancy alone is not a determinative factor. Where licenses are required for the operation of a particular structure, the 'completion' of the structure may be determined by the date of the receipt of the necessary licensing. This is a fact-sensitive determination that varies from situation to situation.

The definition of what constitutes "erected, added to or improved" to qualify for added assessment is also an area of common conflict. This term has been subject to multiple interpretations by the Tax Court.

A third area of frequent disagreement with regard to added assessment appeals is the application of the "Freeze Act", N.J.S.A. 41:51A-8. Where there is a 'change in value' during that freeze act period, such as the construction and completion of additional structures, a municipality may attempt to change the assessment and overcome the application of the freeze act to the assessment. The municipality must bear the burden of showing a "change

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such an application is usually nominal at best (i.e., \$25). A small price to pay to buy your client some peace of mind before moving forward with a real estate purchase.

About the Author:

Donna M. Jennings, Esq., is a shareholder on the Land Use Team at [Wilentz, Goldman & Spitzer, P.A.](#) in Woodbridge, New Jersey. She represents developers and redeveloper in all phases of land use approvals, and related environmental and regulatory matters, as well as litigation and appeals involving the approval and permitting process. Ms. Jennings can be reached at 732-855-6039 or djennings@wilentz.com.

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in value" by demonstrating an internal or an external change occurred after the base year assessing date which meaningfully increased the property's value.

It is important that builders remain vigilant with regards to the imposition of regular and added assessments against property that is under construction with substantial pending improvements or even property that has pending or recently received subdivision approvals. An assessor could easily 'jump the gun' and assign substantial taxable value to a property for which approvals are

pending but not yet received, or where construction is ongoing but not yet completed.

About the Authors:

C. Justin McCarthy, Associate in [Giordano, Halleran & Ciesla's](#) Land Use & Development Department focuses his practice on matters associated with residential and commercial real estate including, but not limited to development, property taxation, land value, exemption and farmland assessment. Mr. McCarthy has experience with property tax, property value, property exemption and municipal law issues. He can be reached at 732-741-3900 or jmccarthy@ghclaw.com.

John A. Giunco, Chair of [Giordano, Halleran & Ciesla's](#) Land Use & Development Department devotes his practice to the acquisition, development, sale and financing of real estate. He advises clients with regard to the acquisition of land, its suitability for development, and methods of sale and financing. He can be reached at 732-741-3900 or jgiunco@ghclaw.com.



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