

Lease Fee vs. Fee Simple Property Rights Valuation Issues to Court Proceedings

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Ownership Interests

Fee Simple Estate

- Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat.

Lease Interest

- One of the real property interests that results from the division of the bundle of rights by a lease, i.e., the leased fee estate of the leasehold estate.

The Dictionary of Real Estate Appraisal, Fourth Edition

Ownership Interests (Continued)

Leased Fee Interest

- An ownership interest held by a landlord with the rights of use and occupancy conveyed by lease to others. The rights of the lessor (the leased fee owner) and the lessee are specified by contract terms contained within the lease.

Leasehold Interest

- The interest held by the lessee (the tenant or renter) through a lease transferring the rights of use and occupancy for a stated term under certain conditions.

The Dictionary of Real Estate Appraisal, Fourth Edition

Market Rent

- The most probable rent that a property should bring in a competitive and open market reflecting all conditions and restrictions of the specified lease agreement including term, rental adjustment and revaluation, permitted uses, use restrictions, and expense obligations; the lessee and lessor each acting prudently and knowledgeably, and assuming consummation of a lease contract as of a specified date and the passing of the leasehold from lessor to lessee under conditions whereby:
- Lessee and lessor are typically motivated.

Market Rent (Continued)

- Both parties are well informed or well advised, and acting in what they consider their best interests.
- A reasonable time is allowed for exposure in the open market.
- The rent payment is made in terms of cash in United States dollars, and is expressed as an amount per time period consistent with the payment schedule of the lease contract.
- The rental amount represent the normal consideration for the property leased unaffected by special fees or concessions granted by anyone associated with the transaction.

The Dictionary of Real Estate Appraisal, Fourth Edition

Contract Rent

- Contract rent is the actual rental income specified in a lease. It is the rent agreed on by the landlord and the tenant and may be higher than, less than, or equal to market rent. Also, it is important to compare rents of properties with similar division of expenses, similar lease terms, or a similar level of finished space.

The Appraisal of Real Estate, Thirteen Edition

Pertinent CT Statutes (Cont.)

Sec. 12-63. Rule of valuation.

-The present true and actual value of all other property shall be deemed by all assessors and boards of assessment appeals to be **the fair market value** thereof and not its value at a forced or auction sale.

Pertinent CT Statutes (Cont.)

Sec. 12-63b. Valuation of rental income real property.

-when determining the present true and actual value of real property...purpose of producing rental income...assessor shall determine such value on the basis of an appraisal... Replacement cost less depreciation...the gross income multiplier **...capitalization of net income based on market rent for similar property.**
- the term "**market rent**" means the rental income that such property would most probably command on the open market as indicated by present rentals being paid for comparable space....**assessor shall consider the actual rental income** applicable with respect to such real property under the terms of an existing contract of lease at the time of such determination.

Pertinent CT Statutes (Cont.)

Sec. 12-63c. Disclosure of income and expense information of rental property.

- ...In determining the present true and actual value in any town of real property used primarily for purposes of producing rental income, the assessor...shall have power to require, that the owner of such property annually submit or make available to the assessor not later than the first day of June, on a form provided by the assessor, the **best available information disclosing the actual rental and rental-related income and operating expenses applicable to such property.**
- ...Any such information....related income and operating expenses and not already a matter of public record....**shall not be subject to the provisions of section 1-210.**
- ...Any owner ...who fails to submit such information or makes it available in incomplete or false form with intent to defraud, shall be **subject to a penalty assessment equal to a ten per cent increase in the assessed value of such property for such assessment year.**

Pertinent CT Statutes

Sec. 12-64. Real estate liable to taxation

- Any interest in real estate shall be set by the assessors in the list of the person in whose name the title to such interest stands on the land records.

Pertinent CT Statutes (Cont.)

Sec. 12-110. Sessions of board of assessment appeals

-in each town shall meet in the month of March to hear appeals related to the assessment of property.

Sec. 12-111. Appeals to board of assessment appeals

- in writing, on or before February twentieth. The written appeal shall include...reason for the appeal, appellant's estimate of value,.... board may elect not to conduct an appeal hearing for any commercial, industrial, utility or apartment property with an assessed value greater than one million dollars.

Sec. 12-113. When board of assessment appeals may reduce assessment

-may reduce the assessment of any person

Sec. 12-115. Addition to grand list by board of assessment appeals

-add to the grand list...any taxable property which has been omitted by the assessor...an assessment at seventy per cent of the present true and actual value of such owner's taxable property from the best information that it can obtain...

Pertinent CT Statutes (Cont.)

Sec. 12-117a. Appeals from boards of tax review or boards of assessment appeals

-Any person...claiming to be aggrieved by the action of the board of tax review or the board of assessment appeals... may within two months from the date of the mailing of notice...make application...superior court... The court shall have power to grant such relief as to justice and equity appertains....the assessment is so reduced shall be the assessed value of such property on the grand lists for succeeding years until the tax assessor finds that the value of the applicant's property has increased or decreased.

Sec. 12-119. Remedy when property wrongfully assessed

- When it is claimed that a tax has been laid on property not taxable in the town...**computed on an assessment which, under all the circumstances, was manifestly excessive and could not have been arrived at except by disregarding the provisions of the statutes for determining the valuation of such property** ...may...make application for relief to the superior court...within one year from the date as of which the property was last evaluated for purposes of taxation

Significant CT Court Cases

Uniroyal v Town of Middlebury – 1978

- In 1978, in Uniroyal v. Middlebury, the Supreme Court affirmed a trial court decision that it was proper to capitalize actual rental income, whether or not it equated to market rent.

Court Cases (Continued)

First Bethel v Town of Bethel 1993

- Trial court's thoughtful analysis **considered both contract and market rent and properly applied the law.**
- In First Bethel Associates v. Town of Bethel, interpreting the new law for the first time, the **Supreme Court affirmed a trial court ruling which melded contract and market rents (contract rents were below market rents).**

Court Cases (Continued)

Sear Roebuck v Town of West Hartford 1997

- Because the burden of proving overvaluation rested on the plaintiff, **the town was under no obligation to submit expert evidence in support of its valuation.** The defendant waives their right to appeal the trial court's ruling by introducing evidence.

Court Cases (Continued)

Aetna Life Insurance Company v City of Middletown (AC22826)

- It is clear from the court's memorandum of decision that it gave serious consideration to several methods of valuation in reaching its final conclusion, including the comparable sales, income capitalization, reproduction and replacement cost approaches.....**We conclude that the court's decision to utilize a reproduction cost approach is not clearly erroneous** because it is supported adequately by the facts and is not contrary to §12-63b (a).

Before You Go To Court

- Hear out the taxpayer, tax representative or attorney.
- Prepare your BAA.
- Encourage the BAA to hear every appeal, don't just send them to court.

What to Expect at Court

What the property owner and attorney often bring to court to substantiate their case.

