NO. CV 07 4006068S	:	SUPERIOR COURT
SNAKE MEADOW CLUB, INC.	:	JUDICIAL DISTRICT OF WINDHAM
	:	AT PUTNAM
v.		
TOWN OF KILLINGLY	:	JULY 24, 2008

MEMORANDUM OF DECISION

This action is a property tax appeal by the plaintiff, Snake Meadow Club, Inc. (Snake Meadow), a fish and game club, challenging the valuation placed upon its property by the town of Killingly's assessor as of the last revaluation date of October 1, 2006.

Snake Meadow owns approximately 300 acres of land located in the towns of Plainfield and Killingly. This appeal only deals with that portion of the 300 acres located on Ross Road in Killingly.

On August 29, 2002, Snake Meadow entered into an agreement with AT&T Wireless (AT&T)[1] to lease a 10,000-square foot portion (100' x 100') of the 300 acres, together with the right to construct a telephone cell tower on the site. As part of the lease

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[1] Count one of the plaintiff's complaint recites that a portion of the plaintiff's property was leased to Cingular Wireless for a cell tower. The 3/11/08 stipulation of facts refers to the tenant as AT&T Wireless PCS, LLC. For the purpose of this decision, Cingular Wireless and AT&T will be considered as the same entity.

agreement, the lessee was granted the right of ingress and egress throughout the term of the lease and any extensions thereto.

The lease further provided that the cell tower and any attachments to be constructed on the premises would remain the personal property of AT&T and would not be considered a fixture attached to the land.

With regard to the payment of taxes, the parties stipulated that the "[t]enant will pay all personal property taxes assessed on, or any portion of such taxes directly attributable to the Communication Facility. Tenant, upon presentation of sufficient and proper documentation will pay, within 30 days, an increase in real property taxes levied against the Property, excluding additional taxes that relate to the period prior to the Commencement Date, i.e., roll back taxes, which is directly attributable to Tenant's use of the Property, provided Tenant will be entitled to appeal any such increase payable by it. Landlord agrees that it will cooperate with an appeal of such taxes and will promptly pay all real estate taxes levied against the Property." (¶ 23 of Exhibit A attached to 3/11/08 stipulation.)

The parties further stipulated that "[s]ubsequent to the execution of the agreement marked as Exhibit A, a cell tower was erected on Snake Meadow Club, Inc. property and [an] easement was granted to the cell tower provider allowing ingress and egress to the tower itself. The assessor for the Town of Killingly at all times relevant herein has assessed taxes and has billed the Snake Meadow Club, Inc. for any evaluation of the cell

tower, its component parts, and the real estate on which it was constructed." (¶¶ 7-8 of 3/11/08 stipulation.)

The plaintiff has brought this tax appeal making the following allegations in its complaint:

1. In ¶ 5 of count one, that the assessor increased the assessed value of the subject property from $1,040 to $111,770 "based upon the existence of the cell tower."

2. In ¶ 2 of count two, that the assessor "assessed the Applicant's property based, in part, upon the inclusion of the cell tower located on Applicant's property."

3. In ¶ 3 of count two, that "[a] tax was levied on said property, which tax could not have been arrived at except by disregarding the statutes for determining the valuation of such property."

In contradiction to the allegations in the plaintiff's complaint, the plaintiff recites in its brief dated April 11, 2008 that "[t]here is no dispute as to valuation of the cell tower and appurtenances, and, likewise no dispute to the valuation of the realty. The dispute hinges upon the responsibility for the taxation occasioned by the cell tower." (Plaintiff's 4/11/08 brief, p. 2.) In other words, the plaintiff takes the position that, as the landowner, the cell tower is not a fixture attached to the land – it is personal property, the value of which, should be taxable to AT&T.

The plaintiff frames the issue in this case as whether under General Statutes § 12-64 "the assessor should deem the cell tower and appurtenances personal property of

AT&T . . . and not a fixture of the Snake Meadow Club, Inc." (Plaintiff's 4/11/08 brief, p. 2.)

The town frames the issue as whether "[i]t is proper for a town to assess the owner of real property for the value of a structure placed upon real property, regardless of the contract between the owner and a third party." (Defendant's 5/12/08 brief, p. 2.)

This tax appeal does not challenge the valuation of the subject property; it challenges the assessor's determination to include the cell tower as part of the real estate for assessment purposes. The assessor's determination does not recognize the parties' agreement that (1) the cell tower shall remain AT&T's personal property; (2) AT&T will pay all personal property taxes; and (3) AT&T will pay any increase in real property taxes levied which are directly attributable to AT&T's use of the property.

The key issue then, in this tax appeal, is whether the assessor is required to abide by the agreement of the parties designating what is real estate and what is personal property for the purpose of tax assessments. If the assessor were to separate out the cell tower on the leased 10,000-square foot portion of land and assess the cell tower in the name of AT&T as personal property, Snake Meadow would thereby have the assessment on its real property reduced for taxation purposes.

As a general proposition, municipalities have no powers of taxation other than those specifically granted by the legislature, and therefore, assessors cannot act on their own, but must carry out the statutory mandates enacted by the legislature related to taxation. See Sheridan v. Killingly, 278 Conn. 252, 264, 897 A.2d 90 (2006). "It is well

settled in Connecticut that tax assessments may only be made in strict conformity with the taxation statutes." Metropolitan District v. Burlington, 241 Conn. 382, 398, 696 A.2d 969 (1997).

General Statutes § 12-62a (a)-(b) provide for each municipality to establish a uniform assessment date of October first and rate of seventy per cent of present true and actual value, as determined under § 12-63. Furthermore, General Statutes § 12-64 (a) recites, in relevant part, as follows: "All the following-mentioned property, not exempted, shall be set in the list of the town where it is situated and, except as otherwise provided by law, shall be liable to taxation at a uniform percentage of its present true and actual valuation, not exceeding one hundred per cent of such valuation, to be determined by the assessors: Dwelling houses, garages, barns, sheds, stores, shops, mills, buildings used for business, commercial, financial, manufacturing, mercantile and trading purposes, ice houses, warehouses, silos, all other buildings and structures, house lots, all other building lots and improvements thereon and thereto . . . all other lands and improvements thereon and thereto . . . machinery and easements to use air space whether or not contiguous to the surface of the ground."

In compiling the municipality's grand list, § 12-64 (a) also directs the assessor to assess taxes on real property against the owner of the property even when the property has been leased. See Sheridan, 278 Conn. 264. In other words, all real estate, whether or not leased, must be taxed against the owner of the real estate and not the tenant. The Sheridan

court further found that the town had no authority to assess a tax on the tenants of the leasehold tracts for the value of their leasehold interests. See id., 265.

In count one, the plaintiff alleges both an increase in the assessed value of the subject property from $1,040.00 to $111,770.00 and an appeal to the board of assessment appeals challenging the assessor's valuation. Although not specifically identified as a § 12-117a tax appeal, the allegations contain all of the elements of such an appeal. However, for a taxpayer to be an aggrieved party in a § 12-117a tax appeal, the taxpayer must allege and prove that the assessor's valuation was excessive. See Breezy Knoll Assn., Inc. v. Morris, 286 Conn. 766, 775-76, 946 A.2d 215 (2008). In this instance, the plaintiff has acknowledged that valuation is not an issue and therefore count one is not applicable to the plaintiff's basic claim.

Consequently, the plaintiff's sole claim is that, pursuant to § 12-119, the assessor should have recognized AT&T's interest in the cell tower as personal property by virtue of the lease between the parties, rather than consider it to be a fixture attached to the real estate and assessed under the plaintiff's name.

"In contrast to § 12-117a, which allows a taxpayer to challenge the assessor's valuation of his property, § 12-119 allows a taxpayer to bring a claim that the tax was imposed by a town that had no authority to tax the subject property, or that the assessment was manifestly excessive *and* could not have been arrived at except by disregarding the provisions of the statutes for determining the valuation of [the real] property . . . . § 12-119 requires an allegation that something more than mere valuation is at issue."

(Emphasis in original; internal quotation marks omitted.) Pauker v. Roig, 232 Conn. 335, 339-41, 654 A.2d 1233 (1995).

Contrary to the plaintiff's claim, it is General Statutes § 12-64 (a) itself that governs the assessor's action in listing property for taxation, not the parties' agreement. Section 12-64 (a) further recites that "[a]ny 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. If the interest in real estate consists of an easement to use air space, whether or not contiguous to the surface of the ground, which easement is in the form of a lease for a period of not less than fifty years, which lease is recorded in the land records of the town and provides that the lessee shall pay all taxes, said interest shall be deemed to be a separate parcel and shall be separately assessed in the name of the lessee."

As the defendant notes in its 5/12/08 reply brief, p. 5, the stipulation of facts does not mention anything about the lease being recorded on the Killingly land records, nor does the term of the lease run for a period of fifty years or more. See Exhibit A attached to 3/11/08 stipulation.

Hartford Electric Light Co. v. Wethersfield, 165 Conn. 211, 332 A.2d 83 (1973) is instructive on the issue of the taxation of cell towers. In Hartford Electric, the issue was whether the plaintiff's recorded easement in land was taxable under § 12-64. Although the court recognized that an easement is an interest in land, such an easement was not taxable pursuant to §12-64. The court stated that "[n]o mention is made of leaseholds or easements per se [in § 12-64]. Unquestionably this language gives the assessors authority

to impose a tax on any of the enumerated items situated in their respective towns. Since a municipality has no authority to tax except as granted by the General Statutes, the exercise of its taxing power, to be lawful, must strictly conform to the terms by which they were given." Id., 218-19.

Although the legislature is aware of cell towers and has issued legislation regarding them[2], nowhere in § 12-64 has the legislature provided for the separate taxability of cell towers. But see, e.g., General Statutes § 12-80a, providing for the taxation of personal property used in rendering telecommunications services; taxpayers must submit a list of all personal property to the Commissioner of Revenue Services and the Secretary of the Office of Policy and Management not later than the thirtieth day of November of each year of rendering telecommunication services. See also Public Act (P. A.) No. 08-130, effective July 1, 2008, which provides that a taxpayer, which is subject to tax with respect to the rendering of telecommunications services, is required to submit a list of the personal property it owns to each municipality in which the personal property is located by October 1 of each year. Whether a cell tower is encompassed within the term "telecommunications" is not relevant here because this appeal deals with property on the Grand List of October 1, 2006 while the provisions of P. A. No. 08-130 became effective on July 1, 2008.

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[2] See, e.g., Public Act No. 07-222 entitled "An Act Concerning the Connecticut Siting Council and Cellular Towers."

Accordingly, since the court can find no statutory authority requiring the assessor, under these facts, to separately recognize the plaintiff's agreement with AT&T treating the cell tower as personal property, the plaintiff's appeal is dismissed. Judgment may enter in favor of the defendant, without costs to either party.

Arnold W. Aronson
Judge Trial Referee