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THE COUNSELOR

NASSAU'S REASSESSMENT - A CLOSER LOOK

—By: *John V. Terrana, Esq. and Robert L. Renda, Esq.*

Nassau County recently completed the first county-wide reassessment in eight years. The results of the reassessment were published earlier this month on the 2020/21 Tentative Assessment Roll. The goal of the reassessment is a laudable one in that it aims to provide a fair assessment for every property owner in Nassau County. Unfortunately, based upon our review of the reassessment, we do not believe the County's goal will be accomplished.

Our review indicates that many properties are being over assessed. In addition, many properties whose assessments were finally fair after years of tax certiorari challenges, have seen dramatic increases. In the majority of these instances, the resolution of the tax certiorari challenge was reached as a result of a mutually agreed upon value for the property by Nassau County and the property owner. For example, we recently filed a tax certiorari challenge for a commercial property for the 2019/20 tax year. After negotiations with Nassau County, we agreed that \$3.5 million was the correct value for the property. As a result of the reassessment, Nassau County has set the value at \$6 million for the 2020/21 tax year.

Further exacerbating the situation are the "Tax Impact Notices" sent out by Nassau County. The purpose of these notices was to give property owners an estimate of the actual "tax dollar" impact the reassessment would have on their properties. Unfortunately, the "Tax Impact Notices" significantly understate the increase in taxes. This is problematic as it will likely lead many property owners to forego challenging their assessment, when in reality they should.

First, the tax estimates in the "Tax Impact Notices" are calculated using the 2017/18 tax levy. However, the new assessments will be used for the 2020/21 tax levy. As real estate taxes have historically increased yearly, it is reasonable to assume that the actual real estate taxes paid in 2020/21 will be significantly higher than the "Tax Impact Notices" indicate, given the three-year gap between 2017/18 and 2020/21.

Second, state law requires that any increase in assessment on commercial properties, other than increases attributable to a physical change, be phased in over a five-year period. The assessment upon which a property is taxed during the five-year phase in period is referred to as a "transitional assessment." The County based the estimates in the "Tax Impact Notices" on only the first year's transitional assessment, i.e., the estimates are based upon only the first 20% of the increase in assessment. This ignores the fact that the assessment will increase by 20% annually for the four years following the reassessment, thereby causing significant, additional increases in the taxes over this period of time.

Finally, all commercial properties have to pay a "Disputed Assessment Fund" or "DAF" charge. The "DAF" charge represents a significant portion of a property's real estate tax bill. Nassau County did not account for the "DAF" charge in the tax estimates on the "Tax Impact Notices." Again, this leads to an understatement of what the actual tax bill will be as a result of the reassessment.

The reassessment is a complex matter and will significantly increase real estate taxes for many properties. It is imperative that property owners consult with their property tax attorneys to determine the consequences of the reassessment and explore all possible courses of action.



John V. Terrana

Robert L. Renda

FIRM NEWS



Andrew E. Curto Named Chair of the Litigation Practice Group

The Firm is pleased to announce that Andrew E. Curto has been named Chair of the Litigation practice group. Andrew is an experienced litigator with more than two decades of experience handling complicated commercial and employment law matters.

FDT's Litigation practice includes prominent trial lawyers, including former Judges, and experienced arbitrators and mediators who serve on national and local panels. Our attorneys appear in federal and state courts in New York and throughout the United States, as well as in alternative dispute resolution fora.

FIRM MENTIONS

LONG ISLAND BUSINESS NEWS

MARY E. MONGIOI WAS PROFILED IN THE NEWS' WHO'S WHO: WOMEN IN PROFESSIONAL SERVICES. ONES TO WATCH: LAW PROFILED PARTNER DAVID J. BORKON, AND ASSOCIATES ERIK W. SNIPAS AND LISA M. CASA. BRIAN R. SAHN WAS FEATURED IN THE WHO'S WHO IN REAL ESTATE LAW SPECIAL SECTION.

NEWSDAY

KATHLEEN DEEGAN DICKSON WAS QUOTED FOR HER REPRESENTATION OF CLIENTS MEDMEN AND CURALEAF. DANIEL P. DEEGAN WAS QUOTED FOR HIS REPRESENTATION OF CLIENTS ALTICE USA INC., MATTRESS FIRM, INC., SOUTHERN GLAZER'S WINE & SPIRITS, AND SANDERS EQUITIES.

NEW YORK REAL ESTATE JOURNAL

PUBLISHED VARIOUS FIRM ARTICLES INCLUDING: JOHN V. TERRANA'S AND GABRIELLA E. BOTTICELLI'S ARTICLE, "REAL ESTATE TAX EXEMPTIONS FOR SOLAR ENERGY SYSTEMS," JOSEPH P. ASSELTA'S ARTICLE, "OWNERS BEWARE: PAYMENT BONDS MUST BE FILED WITH COUNTY CLERK," AND LINDSAY E. MESH'S ARTICLE, "ELECTION OF REMEDIES: LENDERS CHOOSE CAREFULLY."

SUFFOLK LAWYER

PUBLISHED JANE CHEN'S ARTICLE, "GRAFFITI ARTISTS AWARDED \$6.75 MILLION FOR DESTROYED MURALS."

THE NEW YORK TIMES

FIRM ATTORNEYS WERE NAMED SUPER LAWYERS OR RISING STARS AND WERE FEATURED IN A NEW YORK TIMES SUPPLEMENT AND SUPERLAWYERS MAGAZINE. THE LIST INCLUDED: JEFFREY FORCHELLI, DAN DEEGAN, JOHN TERRANA, JOSEPH ASSELTA, FRANK BRENNAN, WILLIAM BONESSO, ANDREW CURTO, GREGORY LISI, GERARD LUCKMAN, JUDY SIMONCIC, PETER SKELOS, AND RUSSELL TISMAN. THE RISING STARS WERE DOUGLAS ATKINS, STEPHANIE ALBERTS, RAY CASTRONOVO, DANIELLE GATTO, NATHAN JONES, JESSICA LEIS, LINDSAY MESH, ROBERT RENDA, AND DANIELLE TRICOLLA.

AWARDS, PRESENTATIONS & EVENTS

The Firm co-hosted a panel discussion titled, "Retirewise," with Daniel Gale/Sotheby's International Realty. **Robert B. Moy** was a panelist and discussed estate planning, estate taxes and international issues.

Gregory S. Lisi and **Elbert F. Nasis** presented to the Long Island Veterinary Medical Association (LIVMA). Lisi presented on the latest legislative updates for New York State on Sexual Harassment and Nasis presented on Interviewing Best Practices and the Law.



The Italian-Americans in Government, Inc. honored **William F. Bonesso** at its Annual Celebration of Columbus Day Dinner. (Bonesso, center with fellow honoree Edward Grilli).



Lindsay E. Mesh was honored by the Long Island Business News with the 30 Under 30 award.



Elbert Nasis and **Lisa Casa** were honored by the Long Island Business News with the Leadership in Law Awards.

The Firm's "Long Island General Counsel Network" managed by **Joseph V. Cuomo** and **David J. Borkon** co-hosted a networking event with the Association of Corporate Counsel (ACC). The event was a cocktail reception in the Founders Room at The Paramount in Huntington, New York.

Daniel S. Dornfeld presented on "Common Commercial Leasing Pitfalls," to the Commercial Network of the Long Island Board of Realtors.

Peter B. Skelos presented, "The Do's and Don'ts of Mediation," to the Long Beach Lawyers Association.



John P. Bues was recognized by Schneps Communications at the "Kings of Queens" event, which honors influential men for their outstanding leadership as well as their contributions to the community.

Judy L. Simoncic moderated the "Transit Oriented Development and Downtown Revitalization Projects" panel at the 2018 Vision Long Island Smart Growth Summit.

The Firm selected the Toys for Tots campaign spearheaded by the **Nassau County Assessment Review Commission, Options for Community Living** not-for-profit organization, and the St. John's Bread and Life charity spearheaded by the **St. John's University School of Law Alumni Association** to be this year's holiday charitable recipients.



This fall, the Firm sponsored associate **Jane "The Real Estate Deal" Chen** and the Long Island Fight For Charity. Over 10K was raised for organizations including: The Long Island Community Chest, The National Foundation for Human Potential and the Genesis Program. **Jane Chen** was interviewed by Fios and Channel 12, as well as Newsday for her fundraising efforts.

REAL ESTATE/LAND USE/IDA

Managing Partner **Jeffrey D. Forchelli** successfully secured Site Plan Approval from the Town of Oyster Bay for the development of a warehouse building and distribution facility in Bethpage to be occupied by Federal Express. Mr. Forchelli and **Dan Deegan** secured IDA financing for the transaction and Mr. Forchelli and **Brian R. Sahn** handled the acquisition necessary to assemble the property. This project will result in a new \$51 million warehouse and distribution facility.

Jessica A. Leis, William F. Bonesso and **Erik W. Snipas** successfully obtained approval from the Village of Mill Neck Planning Board, Zoning Board and Board of Trustees for a zoning permit to develop New York American Water's new water treatment building which will service the Association of the Owners of Mill Neck Estates.

Andrea Tsoukalas Curto and **Jessica A. Leis** obtained approvals from the Village of Sands Point Planning Board and Zoning Board of Appeals for a minor subdivision. The Planning Board approved the division of a two-acre parcel into two one-acre parcels. Mrs. Tsoukalas Curto established that the proposed development was consistent with the Village's comprehensive plan and a prior filed map. Ms. Leis obtained variances from the zoning board to maintain the existing house and accessory structures after she established that the setbacks were legally nonconforming and that maintaining the structures would not have a negative impact on the character of the community.

LITIGATION

Peter B. Skelos, Danielle B. Gatto and **Aaron Gershonowitz** successfully defended firm client, Merritt Environmental Consulting Corp. (MECC), in Federal Court from an alleged negligence and breach of contract action, seeking multimillion-dollar damages (BankUnited, N.A., v. Merritt Environmental Consulting Corp., 17-CV-5268, SDNY). While confident MECC would have been vindicated on the underlying merits of the case, we persuaded the court to dismiss the action based on the plaintiff waiting too long to commence the lawsuit, pursuant to the applicable statute of limitations. We successfully argued that CPLR 214 (6), a three (3) year statute of limitations reserved for negligence actions against "professionals", applied to MECC, an environmental consulting corporation, as well. The significance of the court accepting MECC as a "professional" under New York law, is that a negligence claim against a "professional" cannot also be asserted as a disguised breach of contract claim, which has a longer six (6) year statute of limitations period. The court's decision was the first of its kind in the Southern District of New York and will be certain to be relied on and cited in the future. Although confident the lawsuit lacked merit, the dismissal saved MECC the expense of further litigation and allowed our client to get back to focusing on important environmental work.



Forchelli Deegan Terrana LLP has been awarded a 2018 Top Workplaces honor by *Newsday*. The list is based on employee feedback gathered through a third-party survey. The anonymous survey measures several aspects of workplace culture.

TAX CERTIORARI

John V. Terrana and **Robert L. Renda** collaborated in representing a luxury fitness center in Nassau County. Property tax proceedings were pending in state supreme court and the county review commission. Messrs. Terrana and Renda represented the client in both forums, wherein they presented a complicated valuation analysis of the ground lease and leased fee interests. The result was a benefit of over \$600,000 to the client.

Nicole S. Forchelli settled three commercial tax certiorari cases for a Fortune 500 client, which resulted in significant property tax savings for the relevant properties for the next three years.

Douglas W. Atkins and **John V. Terrana** represented a medical practice in pursuing property tax refunds for a medical office park in Babylon. The legal issues were complex as the client operated as both a employee of a large health system, and also a landlord of that health system at the medical office park. After isolating the real estate tax issues, the firm obtained a \$100,000 tax refund for the medical practice.

CONSTRUCTION

On behalf of their client, **Joseph P. Asselta, Gerard R. Luckman** and **Raymond A. Castronovo** successfully recovered nearly \$1,000,000 from a Pennsylvania company in connection with a New York judgment entered against it following a successful arbitration award obtained by Mr. Asselta. The judgment debtor was a Pennsylvania corporation that had formed many subsidiary and related entities to disguise the true ownership of its assets

(which included real property, construction equipment and accounts located in Pennsylvania) and the overall financial viability of the debtor corporation. Through creative collection efforts, which were vigorously contested by the judgment debtor, Messrs. Asselta, Luckman and Castronovo obtained nearly 95% of the judgment amount for the client.

BANKING

James C. Ricca has been acting as counsel to the John W. Engeman Theatre in Northport in connection with its financing and plans to develop a hotel and restaurant at 225 Main Street, Northport, New York.

Steven G. Gaebler negotiated and closed a two-loan transaction: the first for a \$9,200,000 first mortgage loan secured by a building in New York City containing various medical offices; and the second for a \$3,997,500 first mortgage loan secured by medical condo units in New York City.

Lindsay E. Mesh negotiated and closed a \$4,350,000 first mortgage loan on behalf of an institutional lender secured by a single-story strip mall located on North Country Road, St. James, New York.

John P. Bues and **Lindsay E. Mesh** negotiated and closed a \$28,920,000 first mortgage loan on behalf of New York Community Bank secured by a large apartment complex consisting of 27 buildings and a clubhouse located in Middle Island, New York.

John P. Bues negotiated and closed a \$3,820,000 purchase of a residential condominium unit in Manhattan.

TAX, TRUSTS & ESTATES

In a case involving almost \$1 million in excise taxes and penalties asserted against a private foundation for failure to abide by the restrictions governing payments made in furtherance of its charitable purposes, **Barry C. Feldman** presented arguments which convinced the Internal Revenue Service to reduce the proposed assessment by 71 percent.



The Firm sponsored a six-week strength and conditioning program for veterans at the Omni Fitness Center based in Uniondale, New York. Partners James C. Ricca and Elbert F. Nasis represented the Firm in a photo with program participants.



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FIRM NEWS & ADDITIONS

In January, the Firm announced that attorneys John P. Bues, Nicole S. Forchelli and Nathan R. Jones have become Partners. The Firm also welcomed Partner Jay S. Hellman and Associate Gabriella E. Botticelli.



John P. Bues concentrates his practice in real estate and banking transactions and litigation. He represents numerous institutional and individual clients in complex commercial lending and financing transactions, real estate conveyances, contract disputes, mortgage and lien foreclosure actions, mortgage workouts, bar claim actions, and title disputes.



Nicole S. Forchelli concentrates her practice in tax certiorari and municipal law. Currently, her tax certiorari practice includes representing a national Fortune 500 company, and other large-scale commercial clients.



Nathan R. Jones concentrates his practice on complex commercial litigation, and municipal, tax and land use litigation and investigations. At the Firm, Mr. Jones has helped deliver significant victories for clients, including several favorable judgments following civil trials.



Jay S. Hellman is the Firm's newest Partner and concentrates his practice in construction law and commercial litigation. Mr. Hellman represents clients with complex bankruptcy and commercial matters, as well as appellate litigation, in state and federal courts. He has represented high-profile construction, architectural and engineering firms on contract negotiations, construction claims and the defense of malpractice actions.



Gabriella E. Botticelli joined the Firm as an Associate and concentrates her practice in tax certiorari and real estate. She has experience with properties throughout New York State, specifically Suffolk, Nassau and Westchester counties.