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THE COUNSELOR

PROPERTY TAX TURMOIL - THE COMING OF OFFICE BUILDING VALUATION APOCALYPSE

— Donald F. Leistman

Of all types of property, the values of office buildings may be the most adversely affected by the pandemic. Accordingly, owners of office buildings should carefully monitor their real estate tax assessments to make sure the valuations reflect the new post-COVID economic reality.

There are four main factors in the valuation of office buildings for real estate tax purposes: (1) income; (2) vacancy and collection loss; (3) expenses; and (4) capitalization rates. All four factors have deteriorated post-COVID.

First, office building revenue is stagnant or declining. The exodus of workers from office buildings to remote locations has significantly lessened the demand for dedicated office space. With employees working remotely, many companies have realized they can function as well as before while occupying much less space and, as leases that were originally executed 5 – 10 years ago expire, those tenants choosing to renew may be doing so at flat or lower rates with a smaller area.

Second, owners are facing the problem of an increased amount of vacant space as companies continue to downsize, move out of state, or simply expand their remote workforce, considerably decreasing the need for physical space.

Third, building expenses have skyrocketed. Rapid inflation has helped to propel insurance and general property maintenance costs, which have surged upward by more than 15% since 2020. Lingering COVID-19 health concerns have led to enhanced cleaning protocols and upgraded air filtration systems, which have likewise raised expenses.

Lastly, the increase in mortgage interest rates has reduced property values by increasing the cost of financing. That, together with greater risk, has resulted in overall capitalization rates increasing 2 – 3 basis points over the past year. Higher capitalization rates generate much lower appraised values.

For property tax purposes, buildings must be valued for the upcoming year according to their current use and condition. The large shift in lease renewal rates, occupancy percentages, expenses and capitalization rates have or will result in a drop in market values of 10% - 40% over pre-pandemic market values. Most municipal taxing authorities have responded to this valuation apocalypse in the same manner as they have with any other issue affecting their tax base — they have simply ignored it. Consequently, property owners must be vigilant in challenging assessments to ensure current taxes are based on this new valuation reality — which can make the difference of several dollars per square foot in taxes.

Forchelli Deegan Terrana's tax certiorari practice group has over 200 years' collective experience in property valuation appeals. Please contact us for any property valuation assistance. ■



Donald F. Leistman, Partner



BANKING & FINANCE

James C. Ricca, on behalf of New York Community Bank, negotiated and closed a \$80,084,000.00 loan for the refinance a Nassau County Shopping Center.

Steven G. Gaebler negotiated and closed a revolving line of credit in the amount of \$35,000,000.00 on behalf of an Institutional Lender secured by the Borrower's assets.

James C. Ricca and **Lindsay Mesh Lotito** negotiated and closed a \$24,265,000.00 mortgage loan on behalf of New York Community Bank, secured by an apartment building in Stratford, Connecticut.

On behalf of an Institutional Lender, **James C. Ricca** and **Lindsay Mesh Lotito** negotiated and closed a \$38,625,000.00 mortgage loan secured by an apartment complex in Cumberland, Rhode Island.

James C. Ricca, **Steven G. Gaebler** and **Lindsay Mesh Lotito**, assisted in the closing of a \$120,000,000 mortgage loan for a mixed-use building in Los Angeles, California for which our Institutional Lender client contributed \$45,000,000 of the total closing funds.

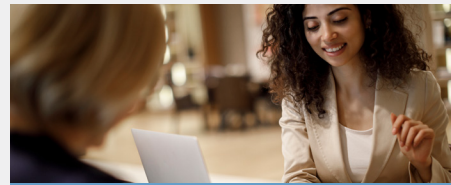
Lindsay Mesh Lotito and **James C. Ricca** negotiated and closed a \$20,000,000 mortgage loan on behalf of BCB Community Bank secured by an office building in Somerset, New Jersey.

Lindsay Mesh Lotito negotiated and closed a \$8,250,000.00 mortgage loan on behalf of

Republic Bank secured by the purchase of commercial property in Westbury, New York.

Steven G. Gaebler and **Lindsay Mesh Lotito** negotiated and closed a \$11,962,500.00 mortgage loan on behalf of an Institutional Lender secured by commercial property in New Jersey.

Zachary J. Manasia negotiated and closed a \$9,600,000.00 first mortgage loan on behalf of Hanover Community Bank for the purchase of apartment buildings in Brooklyn, New York.



TAX CERTIORARI

Nicole S. Forchelli resolved a property tax matter for a Fortune-500 company relating to a bundle of properties in Upstate New York. She employed methodologies from both the leased fee and fee simple schools of thought, supported by the actual financial experience of the subject property, and boosted by comparable sales of similar properties in the area. After negotiations, Ms. Forchelli obtained a real estate tax benefit of more than \$300,000 for the client.

Douglas W. Atkins and **Robert L. Renda** were co-counsel in a property tax matter of first impression in the Town of Huntington. At issue were 146 distinct tax lots, which were merged for zoning lot purposes. Because the tax lots should have remained as one tax parcel, the client was forced to over-pay their taxes by approximately

\$200,000. Atkins and Renda were able to demonstrate the zoning and tax errors, and recover the over-payment for the client.

Donald F. Leistman resolved a property tax appeal for a national department store located in Nassau County that resulted in a \$2.3 Million tax benefit for the client, successfully demonstrating that the decline in sales at the location supported a reduction in appraised market value.

Jason M. Penighetti successfully negotiated a six-figure property tax refund for a condo development in North Hills, bringing the total amount recovered to over \$2,250,000 in the past ten years alone.



TAX, TRUSTS & ESTATES

Stephanie M. Alberts successfully represented an Administrator of the Estate of a 9/11 victim in removing restrictions on Letters of Administration. The Surrogate's Court not only removed the restrictions so that the Administrator could collect payments due the Estate at this time from a fund established to compensate 9/11 victims, but the Surrogate's Court also gave the Administrator the authority to receive and distribute future payments from this fund up to the amount set forth in the Decree. This relief obviates the need for a future application by the Estate should additional payments be available to the Estate.



LAND USE & ZONING

Andrea Tsoukalas Curto obtained approvals from:

- The Town of North Hempstead Board of Zoning and Appeals for a new café at the Americana Shopping Center which will be operating as Ralph's Coffee. The application converted a portion of the existing Ralph Lauren store to a food use which required a conditional use permit. The Board and community members supported the application explaining that food uses are a welcomed amenity that attract customers to retail locations and boost business throughout the center.



- The Town of North Hempstead Town Board to expand the parking lot for a commercial mixed-use building in Westbury on Old Country Road. The building is used as office space as well as high-tech data storage.
- The Town of North Hempstead Board of Zoning and Appeals for a new accounting office on Plandome Road, Manhasset.

The expert testimony presented established that the variance should be granted because the office is in a downtown area across the street from the LIRR, the use would draw from local residents and businesses and there is sufficient street parking and municipal lots to satisfy the projected demand.

Erik W. Snipas obtained:

- Variances from the Town of Oyster Bay Zoning Board of Appeals in connection with a 4-lot subdivision. Mr. Snipas successfully argued that the variances for the 4-lot subdivision would bring the lots into greater conformity with the surrounding neighborhood than an as-of-right 3-lot subdivision.
- Site plan approval from the Village of Oyster Bay Cove Planning Board in connection with the construction of a new dwelling. Mr. Snipas worked with the Village Attorney, Village officials, and the project's consultants to overcome existing conditions on the site and allow our client to construct a new home for his family.

Kathleen Deegan Dickson

obtained necessary variances from the Town of North Hempstead BZA for the reconfiguration of an outdated shopping center in Manhasset including the addition of a SweetGreen restaurant and new medical spa.



Gianni V. Sbarro obtained a three-lot subdivision from the Nassau County Planning Commission for property in Manhasset which was developed with three non-conforming homes on a private road over 100 years ago. He worked with the Town of North Hempstead to obtain zoning compliance certificates for each building. After the subdivision, the owner was able to separate the properties for sale and financing purposes.

Gianni V. Sbarro obtained parking variances and a conditional use permit from the Town of North Hempstead BZA for a new nationally-known revolving sushi restaurant opening in Carle Place.



After five years of litigation, it took the jury less than 15 minutes to find in favor of our client, the owner and landlord of a large commercial warehouse, was sued by a prior tenant. The prior tenant sought hundreds of thousands of dollars from our client based upon tenant's allegation that our client retaliated against the tenant for failing to timely vacate the leased space. The case was tried by **Richard A. Blumberg** and **Danielle B. Gatto** in Nassau Supreme Court. In a total victory, the jury, in a 6-0 decision, determined that tenant's claims had no merit and found for our client.

Richard A. Blumberg and **Danielle B. Gatto**, with assistance from **Danielle E. Tricolla** and **Gabriella E. Botticelli**, won a motion for summary judgment involving a

complex commercial lease dispute between our client, the nation's largest shopping center REIT, and its landlord. The landlord claimed that our client, which leased a 108,000 square foot shopping center in Garden City Park, was in breach of certain lease provisions and sought to terminate our client's 99-year ground lease based upon that allegation. The Court held that our client was not in breach of any of the provisions of the lease. In so doing, the Court rejected all of landlord's claims. The Court reached this decision without the need for a trial saving the client significant litigation costs.



FDT represented a prominent NYS family in the sale of their Glen Cove estate. This sale involved many issues, including the real estate transaction, a tax certiorari case, estate issues, potential bankruptcy strategy and 2 lawsuits: a foreclosure defense in Federal Court and a Supreme Court action for breach of contract. The FDT team consisting of **Jeffrey D. Forchelli, Nathan R. Jones, Richard A. Blumberg, Nicole S. Forchelli, Robert L. Renda, Robert H. Groman, Gerard R. Luckman, James C. Ricca, Gabriella E. Botticelli, Lisa Coppola** and staff, put in a real team effort and resulted in a victory.

James P. Rosenzweig represented:

- A partnership managed by The First Development Corporation in connection with the sale of its commercial property in Huntington, NY, which was occupied by a Porsche car dealership. James also negotiated a medical office lease for First Development at the Company's new, commercial property in Smithtown, NY.
- A long-time client, The Riese Organization (TRO), in connection with a net lease of TRO's strategic retail building opposite Madison Square Garden in NYC. The Tenant will operate a sports bar themed restaurant. James also represented TRO in connection with an asset sale and long-term net lease to a TGI Friday's restaurant at another TRO property located across from Penn Station.
- A firm client, LNK International, Inc., in negotiating and closing a 100,000-square-foot warehouse lease in Central Islip, NY. ■



Keith J. Frank and **Lisa M. Casa** successfully opposed a motion to dismiss by the CEO of a national corporation that was filed in the United States District Court for the Central District of California. The Court held that there were sufficient allegations tying the CEO to his company's withholding of commissions from one of their top performing sales managers. As a result of the Court's ruling, after nearly three years of litigation in California, FDT was able to negotiate a highly favorable resolution for our client in four actions related to this motion which had been ongoing between the two national corporations regarding allegations that our client raided all of the West Coast operations of the opposing corporation.

**BUILDING YOUR
TOOLBOX: NUTS
AND BOLTS FOR
WHEN THE IRS
THROWS YOU A
WRENCH**

Rachel L. Partain co-presented a CLE with Jessica Terranova, General Counsel of Optum. The CLE provided an overview of the stages of an IRS tax controversy and discussed strategies for a successful resolution should your business ever be audited.

Gerard R. Luckman spoke on a virtual panel, "What is Bankruptcy Law?" for 2L and 3L students at St. John's Law School. Jerry was invited by the Executive Affairs Editor on the American Bankruptcy Institute Law Review at St. John's Law to participate in this program.



Lisa M. Casa participated on a NY Cannabis Insider Live conference panel "The downside of rescheduling". The panel topic discussed president Joe Biden's rescheduling directive regarding marijuana pardons and rescheduling cannabis, and what it could mean for the burgeoning industry in New York.

Danielle E. Tricolla, Rachel L. Partain and **Lisa M. Casa** gave a presentation to the Estate Planning Council of Suffolk County, Inc. on the Marijuana Regulation & Taxation Act (MRTA). Their program was entitled, "Introduction to Cannabis Law." ■

FIRM MENTIONS

NEW YORK REAL ESTATE JOURNAL PUBLISHED:

- **Judy L. Simoncic & Gregory W. Carman's** article, "IRA promotes development of battery energy storage systems and other green technologies".
- **John M. Comiskey's** article "Liability and Insurance Considerations for an Owner of Vacant Land".
- **Louis H. Fiore's** Page 2 article "Leasing Under an Industrial Development Agency Transaction".

BEST LAWYERS PUBLISHED:

- **Danielle E. Tricolla** and **Gabriella E. Botticelli's** article "Be Careful What You're Waiving," in "The Litigation Issue".

NORTHEAST REAL ESTATE BUSINESS PUBLISHED:

- **Jason M. Penighetti's** article "Net-lease Tenants in New York Can Appeal Property Tax Assessments".

LONG ISLAND BUSINESS NEWS

- A special section of the newspaper featured profiles of those identified as top leaders across Long Island's robust business, nonprofit and government communities. The following partners were featured.

The Book of Long Island Influencers of 2022



John V. Terrana
Law



Daniel P. Deegan
60 Most Influential Long Islanders



Kathleen Deegan Dickson
Women Leaders

CONGRATULATORY HIGHLIGHTS



Anthony V. Curto, Of Counsel, released the book, *A Mind of Their Own: A Lawyer's Life: Six Decades Serving Some of America's Most Remarkable Entrepreneurs, Artists and Adventurers*. This is Curto's second published book illuminating the unique and varied spirit of those individuals he represented, and sharing stories of those who have crossed his path.

Anthony says, "My new book is about seventeen amazing people, each of whom, in their own way, made a difference to the world we live in, as told to you through the eyes of their lawyer. Their individual stories are unique; however, they contain a common thread, which all artists, entrepreneurs and adventurers share: Each had A MIND OF THEIR OWN."



Forchelli Deegan Terrana LLP was recently selected to be the New York Property Tax Representative (excluding New York City) of the American Property Tax Counsel (APTC). APTC is a national organization of law firms, with a member firm from each State, which provides major commercial portfolio owners a single source for their property tax appeal needs. **Donald F. Leistman** was chosen as the designated representative for the firm.



Brooklyn Law School Endowments

The Forchelli family has maintained deep roots at Brooklyn Law School for nearly 100 years. FDT's founding partner **Jeffrey D. Forchelli**'s father, Don Forchelli, earned his Juris Doctor from the School in 1931. Mr. Forchelli earned his Juris Doctor in 1969, followed by his daughter, **Nicole Forchelli**, who graduated in 2007.

Mr. Forchelli created two endowed professorships at Brooklyn Law School. The first, to honor his late father, is the Don Forchelli Professor of Law, which is held by Catherine Yonsoo Kim. The second is the Jeffrey D. Forchelli Professor of Law, which is held by Frank Pasquale.



pictured l to r
Catherine Yonsoo Kim, Jeffrey D. Forchelli



pictured l to r
Frank Pasquale, Jeffrey D. Forchelli

Kevin Sheehy '67 M'70 M'92 H'99 Alumni Leadership Medal

for his consistent leadership and service to the Wagner College Alumni Association



Jeffrey D. Forchelli earned his bachelor of science degree in business administration from Wagner College in 1966. Ten years later, after graduating from Brooklyn Law School, he became a founding partner of the law firm known today as Forchelli Deegan Terrana, which employs a total of 150 people out of its Uniondale, New York, office. Today, he is chairman and co-managing partner of the firm. He has won numerous professional distinctions, most recently appearing on the Long Island Business News 2021 Power 25 Lawyer List.

"Our firm is a proud corporate citizen," Forchelli says. "Over the years, we have collectively supported many charitable and nonprofit organizations by providing the time, legal services and contributions needed to help them thrive."

Jeff Forchelli has served on the Wagner College Board of Trustees for a total of 12 years so far, first from 2005 to 2015, and again beginning in 2020. He served as vice chairman of the board for two years (2013-15) and will begin serving as chairman on Sept. 1.

Forchelli served his country as a captain in the U.S. Army Reserve's Judge Advocate General Corps, retiring in 1975. He has been a member of the Nassau County (N.Y.) Republican Executive Committee, and he has served as an elder of Marble Collegiate Church (2005-13) and trustee of Nassau Community College (1986-90). He is currently a Brooklyn Law School trustee and a board member of the St. Francis Hospital Foundation and the Columbus Citizens Foundation.

Forchelli has endowed two faculty chairs at Brooklyn Law School, which named the Jeffrey D. Forchelli Conference Center in his honor. He and his firm have also endowed two scholarships at Hofstra University's Maurice A. Deane School of Law.

Jeff and Sadie Forchelli have four daughters: Nicole, Linda, Debra and Pamela.

NOTABLE APPOINTMENTS

WE ARE PROUD TO ANNOUNCE THE FOLLOWING ATTORNEYS PROMOTED TO PARTNER



Lisa M. Casa
Employment &
Labor
Department



John P. Gordon
IDA Benefits &
Government
Incentives



Brian W. Kennedy
Land Use &
Zoning
Department



Alexander Leong
Employment &
Labor
Department



Erik W. Snipas
Land Use & Zoning
and IDA Benefits &
Government
Incentives



Lindsay Mesh Lotito
Banking &
Finance
Department

FDT LAUNCHES A CONDEMNATION PRACTICE GROUP

Condemnation, or eminent domain, is the taking of private property by the government for public purposes. The practice group handles proceedings on behalf of clients with any interest in the property taken.



Jason M. Penighetti, a partner and member of the firm's Tax Certiorari practice group, chairs our newly founded Condemnation practice group. Mr. Penighetti is a seasoned commercial property tax and condemnation attorney, author and speaker on issues pertaining to this area of law. He has obtained millions of dollars on behalf of clients throughout New York State.