

GR *e*view

TAX TITANS CLASH, TAX PAYERS BLEED

By Frederick R. Dempsey

The media has been full of stories recently about property taxes. Headlines warn “Expect Delays in Tax Appeals,” “Property Values Jump 20 Percent,” and “Bill Could End Cook County Appeals of Assessments to State Board.” What’s it all about?

The taxation of real property in Cook County has become a battleground. The big players, like the taxing bodies (e.g., City of Chicago, Board of Education, the County of Cook), the Assessor, the State’s Attorney of Cook County, and the Property Tax Appeal Board (PTAB), are litigating against each other in open, internecine governmental warfare. Taxpayers get to watch the fighting on the sidelines, like the Sabine women of ancient lore.

About half of the property owners in Cook County have already received their Notice of Proposed Assessment for year 2003 taxes payable in 2004 from Assessor James M. Houlihan. [Be forewarned

that, in Assessor-speak, the assessment is “proposed” in the same sense that a trial judge “proposes” a verdict and sentence: You have a right of appeal.] For tax year 2003, townships in the City of Chicago are being reassessed as part of the County’s triennial reassessment schedule. Assessed values on commercial and industrial properties appear to be increasing at levels of five to 20 percent above the figures for the 2000 triennial. Loop office buildings are expected to be increased at even higher percentages; and, residential assessments...well, some are doubling while others have increased only 60%.

Any property can be appealed for any current tax year. Even properties that are not subject to reassessment for tax year 2003 can be appealed. Many properties are clearly entitled to tax relief. Watch for these telltale signs:

- Taxes on commercial property greater than 7.5% of Fair Market Value

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A Newsletter from
the Law Firm

GOULD & RATNER

The GR Review is published by the law firm of Gould & Ratner to update clients and friends on legal trends and developments of interest. The material contained in this newsletter is only a synopsis of recent cases and legislative developments and is not legal advice. If you have a question or an individual claim involving a topic covered in this newsletter, you should seek a legal opinion based on the law as a whole and the facts of your particular case. Professional rules in some jurisdictions may treat the GR Review as advertising.

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TROUBLED LOANS

By Mark E. Leipold

Mark Leipold addressed the Bankruptcy Section of the Young Lawyers Division of the Chicago Bar Association at its September meeting. The Chair of the Bankruptcy Section asked Mark to provide young lawyers (those with less than ten years of practice) with his insights in working out lending relationships that have become troubled. A "troubled loan" is a loan that is either headed toward default or under which a default has already occurred. Mark examined issues from both the lender's and the borrower's perspective. He also examined the strategies before, during and after bankruptcy.

When asked by a participant what one issue he wanted the audience to take away from his presentation, Mark stated "Communication. When a borrower starts to experience trouble he has a tendency to curl up in a ball and hope the problem goes away. This is human nature. However, as a result, the borrower fails to keep the lender informed. In turn, the lender grows more and more concerned and agitated. The lender becomes less inclined to work with the borrower facing a problem because the lack of communication damages the borrower's credibility. When things get tough, a borrower should talk more to his lender -- not less." Mark's presentation and the following question and answer period was well received.

Mark is a partner in our Creditor's Rights and Bankruptcy Group and has significant experience representing borrowers, lenders and other parties in loans, workouts, restructurings and bankruptcy. For more information, please contact Mark at 312/899-1651 or mleipold@gouldratner.com.

REDEVELOPING A CENTRAL BUSINESS DISTRICT

How do you reverse a 25 year decline of a suburban downtown planned around a failed regional mall? This is the challenge facing Village officials in Park Forest, Illinois, a town of just over 24,000 people located 35 miles south of Chicago. The Village asked the Urban Land Institute and the Campaign for Sensible Growth to organize a panel of experts in residential and commercial real estate development led by Gould & Ratner Real Estate Partner, John Mays, to answer this question. John's panel was asked how to improve the tenant mix of commercial space, finance and develop vacant parcels, pursue residential development, deal with the county tax assessor, and work to improve sometimes dilapidated properties ringing the central business district, called DownTown Center.

The panel spent weeks of preparation and two days of on-site study in order to provide guidance to the Village. In its first day on-site, the panel toured the community, received a briefing from Village officials on the history of Park Forest and the central business district by community leaders, and conducted intensive interviews of community stakeholders. On the second day, the panel met to evaluate what they had learned and prepare a set of recommendations based on the experience and knowledge base of the experts on the panel.

At a public meeting in the Park Forest Village Hall, John's panel delivered their

report to Village officials, the press, and the citizens of Park Forest. Among the recommendations given to the Village were: to reduce the amount of commercial space available in the DownTown Center area, to encourage residential development within walking distance of the DownTown Center in order to provide some of the "critical mass" necessary for successful retail use, to add additional staff to oversee DownTown Center redevelopment, to engage professional assistance in leasing and promoting DownTown Center buildings and to extend the current three year terms of Village Trustees to provide more continuity and cohesive vision within the Village administration.

In a subsequent report to the Campaign and ULI membership, John, along with Park Forest's Mayor and Village Manager, was able to report that many of the recommendations of the Panel were already being implemented or seriously studied by the Village. Asked about his experience, John said: "Acting as Chair of the Park Forest Panel gave me the opportunity to utilize the knowledge I have gained in my years of practice in real estate development while allowing the firm to give something back to the community. It was a truly rewarding experience."

If you wish a copy of the Park Forest Panel's report, please contact John at 312/899-1618 or at jmays@gouldratner.com.

GERALD RATNER ATHLETICS CENTER



The Gerald Ratner Athletics Center, dedicated at the University of Chicago campus on October 11, 2003, was named in honor of our partner, Gerald Ratner. It is an outstanding dramatic structure, with many architectural innovations, designed by the world famous architect, Cesar Pelli, who has designed the world's tallest building in Malaysia as well as many other award-winning structures in the United States and elsewhere.

The Athletics Center is one block long, located at 55th Street and Ellis Avenue, at the north entrance to the University campus. The new student dormitories are adjacent. The north portion contains an Olympic-sized swimming pool. The south portion contains gymnasiums. The center is a rotunda, housing facilities for students, as well as the University of Chicago Hall of Fame honoring former athletes, from the famous Coach Alonzo A. Stagg to Jay Berwanger, winner of the first Heisman Trophy in football. The upper floor contains fitness centers, a dance studio, an observation deck, the athletics department offices, and other facilities.

At the dedication, it was predicted that the Athletics Center will be the second most-used building on the campus –

second only to the Library. Its facilities will be used by students, faculty and staff – both men and women – for team sports or as individuals – for intercollegiate or intramural competition – for club sports – for swimming in the huge swimming pool – or for regular workouts in the superbly-equipped Fitness Center.

Mr. Ratner stressed, however, that scholarship comes first at the University of Chicago. It is desirable, he said, for every student to exercise, to work out, to stay fit, to engage in sports; and he also noted that athletics are a valuable supplement to academics. However, he reiterated, the primary purpose of attending the University of Chicago is to get a fine education. The University is a haven for scholar/athletes, but also the home of Nobel prize winners.

Mr. Ratner won his letter on the University baseball team in the early 1930's, when the University was a member of the Big Ten Conference. He graduated with high honors from the College in 1935 (Phi Beta Kappa) and from the Law School in 1937 (Order of the Coif). He received the Law School's Distinguished Law Alumni Award in 1999.

REGULATIONS INCREASE CONSUMER PROTECTION

*By Stephen Cole, Hewitsons
Cambridge, England*

Any business, wherever based, selling or supplying goods in the UK needs to be aware of increased consumer rights under regulations introduced with effect from 31 March 2003 - The Sale and Supply of Goods to Consumers Regulations 2002 (the "Regulations") implement Directive 1999/44/EC.

A consumer is defined for the purposes of the Regulations as any natural person (thereby excluding incorporated entities etc.) who, in the contracts covered by the Regulations, is acting for purposes which are outside his trade, business or profession.

The principal changes which have been made are:

- Subject to certain conditions, any public statements on the specific characteristics of goods made about them by the seller, the producer or his representative, particularly in advertising or on labelling, are to be included in the assessment of whether the goods supplied to a consumer comply with the requirement that they are of satisfactory quality. For these purposes, a producer includes the manufacturer, the importer of the goods into the European Economic Area and any purporting to be a producer by placing his name, trade mark or other distinctive sign on the goods. The seller could well find himself bound by such statements.
- Goods sold to a consumer remain at the seller's risk until they are delivered to the consumer. If under the contract the seller is authorized or required to send the goods to the buyer, delivery of the goods to the carrier does not meet this requirement.
- If the goods sold to a consumer do not conform to the contract of sale at the time of delivery, the consumer has the right to:
 - (i) require the seller to repair or replace the goods within a reason-

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REGULATIONS INCREASE CONSUMER PROTECTION (CONTINUED)

able time (unless it is impossible or disproportionate to certain other remedies) but without causing significant inconvenience to the consumer and to bear any necessary cost incurred in doing so. For these purposes, subject to exceptions, any goods which do not conform to the contract at any time in the six months following delivery to the consumer are to be taken as having not conformed at the date of delivery.

- (ii) require the seller to reduce the purchase price of the goods by an appropriate amount or to rescind the contract if, having been required by the consumer to repair or replace the goods, the seller has failed to do so within a reasonable time and without significant inconvenience to the consumer.

Important changes have been made in relation to consumer guarantees. These are defined as any undertaking to a consumer by a person acting in the course of his business, given without extra charge, to reimburse the purchase price paid or to replace, repair or handle consumer goods in any way if they do not meet the specifications set out in the guarantee statement or in relevant advertising.

Where goods are sold with such a guarantee, this takes effect as a contractual obligation owed by the guarantor under the conditions set out in the guarantee statement and the associated advertising. Accordingly, manufacturers who issue a consumer guarantee will come under contractual obligations to the consumer, even though the goods were not purchased directly from them.

Hewitsons has offices in Cambridge and Northampton. For further information, contact Stephen Cole at +44 1604 233233 or stephencole@hewitsons.com.

Hewitsons is a member of LawExchange International, a group of law firms from commercial centers around the globe. Gould & Ratner is also a member of LawExchange International.

TAX TITANS CLASH, TAX PAYERS BLEED (CONTINUED)

- High vacancy rate
- Substantial destruction or damage to premises (e.g., fire, flood)
- Declining or stagnant market values
- Obsolete function and design.
- Higher assessed valuation than comparable properties.

The Cook County Assessor has not yet completed the "first pass" in the 2003 assessment process. An appeal can still be made to the Assessor for some townships. If it is too late to appeal the reassessment of your property to the Assessor, appeal can be made to the Board of Review *without prior appeal to the Assessor*. For those townships that are still open for appeal with the Assessor, you should act quickly. Attorneys can represent you through the entire process, including representation at the Property Tax Appeals Board and in Circuit Court. Property tax consultants, accountants and advisors may represent their clients only before the Assessor.

Assessment appeals should continue to be filed even in the uncertain legal atmosphere of the litigation now pending throughout the courts, from the Circuit Court to the Illinois Supreme Court; even though legislatures are ready with bills to do or undo whatever the courts decree. The post Board of Review legal process (i.e., PTAB or Specific Tax Objections) will certainly take longer than it has in the recent past, but the Assessor is on schedule with the certification and publication of the A-Roll, and the Board of Review improved its closure

date by several weeks last year. Advisors to property owners and managers, including brokers whose listings of significant commercial and industrial properties might be on the market for months (and which would be more attractive to buyers if their real estate taxes were within reason), should have a professional "crunch the numbers." Real estate tax deductions fall straight to the bottom line of the balance sheet.

Gould & Ratner's Real Estate Property Tax group is comprised of attorneys Theodore M. Swain and Frederick R. Dempsey, and assisted by paralegal Juana Correa. They stand ready to analyze your assessment. For a confidential discussion of your property, call Messrs. Swain or Dempsey upon receipt of your Notice of Proposed Assessment. Mr. Dempsey may be reached at 312/899-1685 or fdempsey@gouldratner.com

This article was previously published in the September, 2003, issue of CB Richard Ellis' Private Client Group Newsletter covering the Chicago Apartment Market.