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Sandra Dennies, Director
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Stamford, CT



Re: *Successive phased-in assessments — proper methodology*

Dear Ms. Dennies:

You have asked for an opinion concerning an option available to the City with respect to the recently-completed real property revaluation (Grand List of October 1, 2007). Some members of the Board of Representatives have suggested that this latest revaluation be phased-in (under authority of §12-62c of the Connecticut General Statutes), and the question presented relates to the manner of implementation of a phase-in, given the somewhat unique situation presented.

In particular, the City elected to phase-in the 2006 revaluation over a period of five years, such that in the initial year under that revaluation, only 20% of any increase in property value (as compared to value of the property as of the 1999 valuation date) was recognized for purposes of assessment. The City then performed another revaluation as of October 1, 2007. The question that has been raised is the manner of calculation of the assessment, should the City elect to phase-in *this* latest revaluation as well — specifically, what would be the proper reference value for purposes of calculating the phased-in assessment for October 1, 2007?¹ One school of thought is that the proper “before” assessment would be the full 2006 revaluation figure; the other school of thought is that the phasing-in of the 2006 revaluation

¹ Assuming that the City would elect to utilize the methodology in §12-62c(b)(1) (as it did in 2006), the calculation of the 2007 phased-in assessment would be (for each property): subtract the assessment for the year preceding the revaluation from the new revaluation value; divide that difference by the number of years for the proposed phase-in (yielding an annual increment); and add that increment to the assessment for the year preceding the revaluation. (In each subsequent year, an additional annual increment would be added, until full value was reached in the final year of the phase-in.)

should continue, thereby resulting in an overlay of the current phase-in on top of the 2006 phase-in (sometimes referred to as stacking or compounding the phase-in).

The argument in favor of the overlay process has been stated as follows (subject to limited editing, but emphasis as in original):

Section 12-62c provides that a phase-in is based on the increase of the new revaluation assessment vs. *the assessment in the year preceding the revaluation*. Last year our “assessments” were based on the phase-in. So now, the “assessment in the year preceding the revaluation” is the *phase-in* value of last year. There is nothing to suggest that we can use any other value than this phase-in value for the “assessment of the prior year.”

This is further supported by the language that instructs the assessor to *gradually increase the assessment*, in compliance with the phase-in. Obviously, this means that the assessment must be changing over the course of the phase-in period. Over the course of the phase-in the assessment for any prior year is obviously the phase-in value for the prior year. For us, a year later after the first phase-in year (i.e., now), the assessment for the prior year in our phased-in values used to calculate taxes last year.

Although we agree that this overlay approach *appears* to be consistent with the language of the statute, we believe that upon closer examination, it is inconsistent with the intent and functioning of the statute, and leads to inconsistent and somewhat arbitrary results.

1. Just recently (early this year), this office issued an opinion relating to the proper relationship between the phase-in statute (§12-62c) and the statute governing the assessment of recently-improved property (§12-53a). In that opinion, we rejected a procedure that we labeled “method 2” under which a phased-in revaluation would use the actually-applied (calculated) pro rata assessment in the preceding year as the reference point for a subsequent phase-in. Instead, we concluded that the actual full value of the assessment should be used, even though that full-value figure *never* actually was used as an operative assessment for purposes of calculating taxes owed. The language quoted above would be equally applicable in the situation of recently-improved property under “method 2,” essentially only requiring substitution of references to “pro rata” for “phase in.” To put it more directly: if “assessment of each parcel of real property for the assessment year preceding that in which such revaluation is effective” is to be applied literally in the context of a subsequent phase-in (such that an earlier phased-in figure is used), there does not appear to be a rational basis on which it should not also be applied literally in the context of recently-improved property. Unless the earlier opinion is to be revisited (rejected?), we do not see how the two positions could be reconciled.

2. Other language in §12-62c supports use of the full 2006 value as the “before” figure for purposes of a 2007 phase-in. Subsection (b) provides for three alternate methods of implementing a phase-in of a revaluation. Although the focus of attention in the City of Stamford has been on the first method, which relies on a calculation for each individual property, the other two methods rely on aggregate measures of the increase in value of property in the City — either as a whole or on the basis of enumerated classes of property. Those two aggregate methods appear to rely on assessed *values* for properties, not the actually-operative (calculated) assessments. Although different methods in the statute *could* rely on inconsistent base-line concepts, it seems more likely that all of the methods are intended to operate from the same reference points, i.e. full assessed values, prior to the revaluation sought to be phased in.

3. Actual implementation of the overlay approach would create a seemingly insurmountable conflict. The premise of the overlay approach is that the first phase-in continues to operate even as a new revaluation also is being phased-in. The problem, however, is that the earlier phase-in cannot co-exist with a new phase-in calculation, at least as articulated in the quoted passage. The quoted passage seems to indicate that the proper calculation for a 2007 phase-in would require subtraction of the 2006 phased-in value from the 2007 value, dividing by the number of years of the new phase-in, and adding that increment to the 2006 phased-in value. That, however, would constitute a violation of the 2006 phase-in (which in this scenario continues to be operational), since 2007 is/would be the second year under *that* phase-in, such that an additional 20% increment of the 2006 (5-year) phase-in needs to be recognized.²

That suggests an alternate approach — use the second year of the 2006 phase-in (40% increment to 1999 value) as the base for the 2007 phase-in. The problem with this solution is that the 40% incremented value is not the assessment for the preceding year.

That suggests yet another approach — do the subtraction using the actual 2006 phased-in value (20% increment) and add the resulting increment to the second year value required by the 2006 revaluation (40% increment). But this is not what the statute says to do.

Finally, another approach perhaps comes closest to the “spirit” of the statute (if not the actual language) — do two independent calculations, one reflecting the continuation of the 2006 phase-in (40% of the increment due to the 2006

² Failing to add an additional increment under the 2006 phase-in would be tantamount to termination of the 2006 phase-in, but if that is the case, the statute expressly prohibits a termination with continued use of a value less than the full assessment. Section 12-62c(a)(2) is intended to prohibit locking in at a phased-in value less than the full assessment.. (The situation would be presented most starkly in the case of a property that went down in value from 2006 to 2007. For purposes of the 2007 phase-in, a reduction in value would need to be recognized immediately and not phased-in (since only increases can be phased in); if the 2006 phase-in were still operative, an unavoidable consequence would be that 2007 is the second year in the 2006 phase-in, requiring recognition of an additional 20% increment in value.)

revaluation) and a separate calculation implementing a portion of the difference between the 2006 full assessment and the 2007 assessment. Again, this is not consistent with what the statute says to do.

None of these approaches literally complies with the statute, and a selection of any of them would be inherently arbitrary.³

4. Approximately one year ago, this office expressed concerns about the legality of a new revaluation in 2007, immediately after the first year of a five-year phase-in. The concern focused on the provision in §12-62c(a)(2) requiring utilization of the full value in the year after discontinuance of a phase-in — since a new revaluation, by replacing the earlier revaluation, implicitly discontinues or terminates a phase-in of that prior revaluation. In that context, a letter was obtained from the Attorney General, indicating that our concerns probably were unfounded. Although not addressing the issue at hand, the letter observed that the purpose of the statutes was to “ensure that the latest revaluation — or the closest approximation of fair market value of property within the municipality — remains the basis for levying property taxes. A new revaluation accomplishes the same purpose and intent.” Implicit in these comments is that a new revaluation is the functional equivalent of termination of the phase-in and implementation of full (if new) values. The overlay interpretation of the statutes, however, defers, potentially indefinitely, the goal of having assessments reflect actual market values prevailing in the municipality, and therefore would not seem to come within the scope of the approval-type comments expressed in that letter.

5. Ultimately, the inherent flaw in the proposed overlay method is that it does *not* address only the increase in value attributable to the 2007 revaluation, but also incorporates a substantial portion of the increase in value that resulted from the 2006 revaluation, precisely because it does not use the full 2006 assessed value.⁴ The proposed use of the 2006 phased-in value as the base for a phase-in calculation (which only incorporated 20% of the increment from 1999) necessarily means that the 2007 phase-in also would be phasing in a portion of the increment in value due to the 2006 revaluation — in this case, 80% of the 1999-2006 increase in value. (The fourth approach set forth in point 3, above, accomplishes the stated goal of only phasing in increases from revaluations, but at the cost of ignoring the statutory directives as to how to do the calculations.)⁵

³ Attached is a worksheet, illustrating each of these alternate approaches, concluding with what we believe to be the correct approach to calculating the 2007 phase-in (assuming one were to be implemented).

⁴ As noted in our recent opinion (mentioned earlier), in §12-62c, the phrase “increase ... from such revaluation” or something similar appears 4 times in subsection (a), in the introductory sentence of subsection (b), and the first sentence of subsection (d) — in addition to the title of the section.

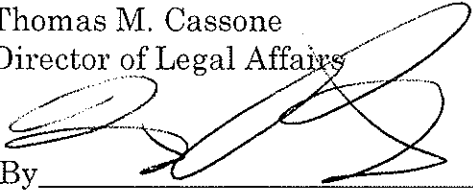
⁵ In connection with the issue identified in point 4, one of the concerns that had been expressed by this office was the potential for sequential phase-ins with “early” revaluations, and the potential for deferring full recognition of a revaluation — in a Zeno’s paradox sense, forever. Thus, if the City were to repeat the cycle of opting for a five year phase-in, with a new revaluation after the first year of each phased-in revaluation, in the fifth year of such a process, almost 33% of the increment in value due to the first revaluation still would not have been recognized for tax purposes (as compared

To the extent that it has been suggested that the overlay approach makes sense because it is consistent with the apparent intent of the phase-in statute, as demonstrated above, we disagree. To the extent that it has been suggested that it makes sense from a minimization of assessment error and tax stability standpoint, we disagree as to the first part — by requiring continued utilization of prior values, any errors that may have been made continue to have an influence into the future. Thus, in the overlay approach, any errors that were made in the 1999 revaluation will still have an effect for the life of the 2007 revaluation, whereas under the alternate approach, any errors made in 1999 would no longer have any impact on assessments after 2006. The overlay approach *may* have an impact on tax stability, but at the cost of frustrating the oft-repeated purpose of the revaluation system itself, ensuring that taxes are based on relatively recent actual values of property, reflecting changes in a relatively contemporaneous manner.

Accordingly, it is our opinion that if the City were to elect to phase in the October 1, 2007 revaluation, the appropriate “before” values to use — “the assessment in the year preceding the revaluation” for each property — would be the full values as determined by the 2006 revaluation without regard to the election to phase-in that revaluation.

Yours truly,

Thomas M. Cassone
Director of Legal Affairs

By 
Kenneth B. Povodator
Assistant Corporation Counsel

KBP

cc: David Martin
Francis Kirwin
William Forker

to the statutory goal/requirement that in the fifth year of a five year phase-in, the full value be reflected in the assessment used for tax purposes).

CALCULATIONS OF 2007 PHASED-IN ASSESSMENTS, USING ALTERNATE APPROACHES AS SET FORTH IN POINT #3:

Assume \$2000 value as of 1999

\$4000 value as of 2006

Therefore, phased-in value for 2006 is \$2400, and the phased-in value for 2007 would have been \$2800 if there had not been another revaluation in 2007

\$5000 value as of 2007

Assume further that 2007 revaluation is to be phased in over 5 years, using statutory method 1 (as was chosen by Board of Representatives in 2006))

Alternate 1: $5000 - 2400 = 2600$

$2600 / 5 = \$520$ (annual increment, using first year of 2006 phase-in as base)

Phased in value for 2007: 2400 (year 1 of 2006 phase in) $+ 520 = 2920$

Alternate 2: $5000 - 2800 = 2200$

$2200 / 5 = \$440$ (annual increment, using second year of 2006 phase-in as base)

Phased in value for 2007: 2800 (year 2 of 2006 phase in) $+ 440 = 3240$

Alternate 3: $5000 - 2400 = 2600$

$2600 / 5 = 520$ (annual increment, using first year of 2006 phase-in as base)

Phased in value for 2007: 2800 (year 2 of 2006 phase in) $+ 520 = 3320$

Alternate 4: $5000 - 4000 = 1000$

$1000 / 5 = 200$ (annual increment, using full 2006 revaluation as base)

Phased in value for 2007: 2800 (year 2 of 2006 phase-in) $+ 200 = 3000$

CORRECT approach: $5000 - 4000 = 1000$

$1000 / 5 = 200$

Phased in value for 2007: $4000 + 200 = 4200$