NO. CV 05 4009473S	:	SUPERIOR COURT
PJM & ASSOCIATES, LC	:	JUDICIAL DISTRICT OF FAIRFIELD
V.	:	AT BRIDGEPORT
CITY OF BRIDGEPORT	:	JULY 27, 2007
NO. CV 05 4009474S	:	SUPERIOR COURT
BRIDGEPORT TOWERS, LLC	:	JUDICIAL DISTRICT OF FAIRFIELD
V.	:	AT BRIDGEPORT
CITY OF BRIDGEPORT	:	JULY 27, 2007

MEMORANDUM OF DECISION

The unrelated plaintiffs, PJM & Associates, LC (PJM) and Bridgeport Towers, LLC (Bridgeport Towers), agreed to have their separate appeals tried together because both appeals involve the same issue.

Each plaintiff owns income-producing property located in the city of Bridgeport (city). PJM's real property is located at 1100 Boston Avenue. Bridgeport Towers' real property is located at 68 Ocean Terrace and its personal property is located at 199 Yacht Street.

These appeals are taken from the action of the city's assessor imposing upon each plaintiff a penalty for failure to file with the assessor, by June 1, 2004, information

concerning the rental income and operating expenses applicable to each of the subject properties, pursuant to General Statutes § 12-63c (d).

The plaintiffs claim that they failed to file income and expense information because they never received the questionnaire forms requesting the information. The parties stipulated to the following facts:

> "The questionnaire regarding income and expenses for the rental property at 68 Ocean Terrace/199 Yacht Street, Bridgeport, for the Grand List of October 1, 2004 was sent by the City of Bridgeport but was never received by the appellant Bridgeport Towers and that is the reason that the appellant Bridgeport Towers did not file the questionnaire with the Bridgeport Tax Assessor by June 1, 2004.
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> "The questionnaire regarding income and expenses for the rental property at 1100 Boston Avenue (Parcels 04A and 04B) for the Grand List of October 1, 2004 was sent by the City of Bridgeport but was never received by the appellant PJM & Associates, LC and that is the reason that the appellant PJM & Associates, LC did not file the questionnaire with the Bridgeport Tax Assessor by June 1, 2004."

Section 12-63c recites, in relevant part, as follows: "Disclosure of income and expense information of rental property. (a) In determining the present true and actual value in any town of real property used primarily for purposes of producing rental income, the assessor . . . shall have power to require, subject to the conditions in subsection (b) of this section, in the conduct of any appraisal of such property pursuant to the capitalization of net income method, as provided in section 12-63b, that the owner of such property annually submit or make available to the assessor not later than the first day

of June, on a form provided by the assessor, the best available information disclosing the actual rental and rental-related income and operating expenses applicable to such property.

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"(d) Any owner of such real property required to submit or make available information to the assessor in accordance with subsection (a) of this section for any assessment year, who fails to submit such information or fails to make it available as required under said subsection (a) or who submits information or makes it available in incomplete or false form with intent to defraud, shall be subject to a penalty assessment equal to a ten percent increase in the assessed value of such property for such assessment year."

The context in which § 12-63c comes into play relates to General Statutes § 12-63b. Section 12-63b (a) directs an assessor, when there are no comparable sales available to determine the fair market value of real estate, as required in General Statutes § 12-63 (a)[1], to consider the cost approach, the gross income multiplier approach and the income approach. Subsection (b) of § 12-63b recites that, "[f]or purposes of subdivision (3) of subsection (a) of this section [(the income approach)] and, generally, in its use as a factor

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[1] General Statutes § 12-63 (a) provides, in relevant part, that "[t]he present true and actual value of all other property shall be deemed by all assessors and boards of assessment appeals to be the fair market value thereof and not its value at a forced or auction sale."

in any appraisal with respect to real property used primarily for the purpose of producing rental income, the term 'market rent' means the rental income that such property would most probably command on the open market as indicated by present rentals being paid for comparable space. *In determining market rent the assessor shall consider the actual rental income applicable with respect to such real property under the terms of an existing contract of lease at the time of such determination*." (Emphasis added.)

Section 12-63c, therefore, provides the assessor with the power to require the owner of income-producing property to submit to the assessor information disclosing the actual rental and rental-related income and operating expenses of the subject property in order to determine market rent, pursuant to § 12-63b (b).

The plaintiffs raise the following points in opposing the penalties imposed by the assessor for their noncompliance with § 12-63c (a):

> (1) The submission of the actual rental and rental-related income and operating expense information for their income-producing property was not required because the city's last revaluation took place on October 1, 2003, and therefore, the submission was not required for revaluation purposes in 2004.
>
> (2) The penalty imposed by the assessor under § 12-63c (d) cannot be levied because the failure to submit the information to the assessor was not done with an intent to defraud the city.
>
> (3) As to PJM & Associates only, if the penalty were properly imposed, the assessor improperly calculated the penalty based upon the original assessment, before a reduction in the assessment value was considered under an exemption that PJM was entitled to pursuant to General Statutes

§ 12-81 (59).[2]

See Plaintiffs' joint memorandum of law, dated February 28, 2007 (hereinafter plaintiffs' 2/28/07 MOL), pp. 4-5.

The plaintiffs submitted actual rental and rental-related income and operating expense information to the assessor in accordance with § 12-63c for the last city-wide revaluation of October 1, 2003 and filed similar submissions for the years 2005 and 2006, in compliance with the statute.

The plaintiffs argue that § 12-63c (a) grants power to the assessor to require the submission of actual rental income and expense figures only when the assessor is conducting an appraisal of the property pursuant to a revaluation, as provided for in § 12-63b. In other words, the plaintiffs claim that because the assessor had completed a city-wide revaluation of real estate on the Grand List of October 1, 2003, the assessor was not granted authority to require the rental information in the years when a revaluation did not occur.

The city counters that the submission of actual rental income and expense information is required under § 12-63c (a), even if the year in question was not the year mandated by the legislature for city-wide revaluation. The city argues that according to General Statutes § 12-62 and General Statutes § 12-62a, each year is an assessment year,

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[2] See footnote four.

although it may not be a revaluation year. See defendant's joint memorandum of law, dated March 30, 2007 (hereinafter defendant's 3/30/07 MOL), p. 4.

Although § 12-63c (a) starts out by stating that the assessor shall have the power to require submission when the assessor is in the process of determining the present true and actual value of the property, it is clear that an assessor is not limited to appraising real estate only at the time of a city-wide revaluation, as suggested by the plaintiffs. For instance, the court in DeSena v. Waterbury, 249 Conn. 63, 91, 731 A.2d 733 (1999), concluded that "although § 12-55 permits assessors to conduct interim revaluations of property, it cannot be used to compel such revaluations." "Once the assessor determines the fair market value, that valuation remains the same until the next statutorily mandated revaluation takes place, unless the assessor decides to undertake an interim revaluation." Waterbury Hotel Equity, LLC v. Waterbury, 85 Conn. App. 480, 491-92, 858 A.2d 259, cert. denied, 272 Conn. 901, 863 A.2d 696 (2004).

When the city's assessor conducted a city-wide revaluation of all property for the Grand List of October 1, 2003, the plaintiffs complied with the assessor's request for the submission of income and expense figures of their respective properties for purposes of the revaluation. Subsequent to the October 1, 2003 revaluation year, income-producing rental properties located in Bridgeport were not revalued for the Grand Lists of October 1, 2004, 2005 or 2006.

The plaintiffs argue that the assessor can require a submission of rental information from the owners of income-producing property, pursuant to § 12-63c (a), only when the assessor is in the process of determining the present true and actual value of the property. If the assessor is not in the process of doing an interim revaluation of the plaintiffs' property pursuant to § 12-55, the court agrees with the plaintiffs' argument that there would be no purpose in submitting such rental information for the 2004 assessment year. As the plaintiffs point out, "rental information cannot be required by the Assessor out of mere curiosity or for the purpose of attempting to predict the future value of real property. The information cannot be required for hypothetical reasons or for statistical analysis or for any purposes other than those expressly permitted by the statute." (Plaintiffs' 2/28/07 MOL, p. 9.)

Section 12-63c is a tool enacted by the legislature for the assessor's use in the process of appraising the present fair market value of income-producing property for valuation purposes. As a result, the assessor has the power to obtain current income and expense figures from the owner of the income-producing property. This statutory section does not obligate the property owner to automatically file annual income and expense statements with the assessor by the first day of June. Instead, the statute empowers the assessor, when he or she is in the process of appraising the value of real estate, to require the owner to submit actual income and expense figures from the operation of the

property. Unless the assessor demands such income and expense figures from the property owner during the process of revaluation, for purposes of determining the present true and actual value of the property, there is no statutory obligation for the property owner to file such information annually.

The plaintiffs further point out that "[t]he Assessor acknowledged during his testimony that there were no appraisals done in the year 2004 of the class of properties to which these plaintiffs' properties belonged. Therefore, the rental information from the plaintiffs, even if submitted, would not have been used for the purpose set forth in the statute of conducting a contemporaneous appraisal of the property to determine its present value in 2004." (Citation omitted.) (Plaintiffs' 2/28/07 MOL, pp. 10-11.) The court agrees with this analysis. Section 12-63c (a) is not a statute that authorizes an ongoing yearly submission, but rather it has the specific purpose of aiding an assessor in the process of conducting a "present" valuation of a taxpayer's property for assessment purposes.

The city refers to this court's decision in Spicer v. Groton Board of Assessment Appeals, Superior Court, judicial district of New London, Docket No. CV 000555218 (December 6, 2002, *Aronson, JTR*), for the proposition that the filing of income and expense reports, when requested by the assessor, is mandatory, as is the penalty attached to the nonfiling of the report. See defendant's 3/30/07 MOL, p. 5. The issue in Spicer dealt with the then requirement of § 12-63c that the assessor furnish the taxpayer a form

prescribed by the Secretary of the Office of Policy and Management (OPM). In Spicer, the plaintiff argued that the penalty imposed by the assessor was improper because OPM had not approved of the form that the assessor sent to taxpayers. The court disagreed and held that "[t]he plaintiff's obligation as a taxpayer was to furnish rental income and operating expenses related to his property to the assessor upon the request of the assessor. The plaintiff cannot decline to furnish such information on the basis that the form used by the assessor was not approved by OPM. This procedure was for the benefit of the assessor, not the taxpayer."

Unlike the Spicer case, the present actions do not deal with the type of form the assessor issued to the taxpayers. Instead, these cases deal with whether the assessor may impose penalties when taxpayers fail to respond to the assessor's request to furnish a completed form, in the absence of the assessor performing a revaluation or interim valuation of the income-producing properties.

The first question that confronts the court is whether the failure of the taxpayers to receive the assessor's forms absolve the taxpayers from being penalized for their unresponsiveness. The parties stipulated that the taxpayers did not receive the questionnaire forms that the assessor sent to them. The parties also stipulated that the assessor mailed the forms to addresses the plaintiffs had previously on file with the assessor, which apparently changed and were not known to the assessor.

There is no actual notice requirement set forth in §§ 12-63b or 12-63c dealing with the valuation of rental income property. The only notice is that of the assessor sending a form to the property owner directing the owner to return the form to the assessor with actual income and rental expense information of the property or a direction to the owner to make such information available to the assessor. Section 12-63c (d) provides that the failure to file the information only *subjects* the owner to a penalty. There is no language in § 12-63c (d) that automatically imposes a penalty upon the property owner. In this way, the statute confers upon the assessor some review of the property owner's actions in order to make a determination on whether the imposition of a penalty is warranted. As an example, before the assessor may impose a penalty, § 12-63c (d) requires the assessor to determine whether or not the submission is incomplete, false or fraudulent.

Although § 12-63c (d) subjects the owner to a penalty for failure to reply to the assessor, there is no provision for notice to the owner that the penalty is being imposed and further, there is no provision in this section for the owner to appeal the imposition of the penalty. Section 12-119, the statute generally used to appeal the action of an assessor when the claim is that the assessor's action was illegal, is limited to "a tax [that] has been laid on property. . . [that] was computed on an assessment which, under all the circumstances, was manifestly excessive and could not have been arrived at except by

disregarding the provisions of the statutes for determining the valuation of such property[.]" The language of § 12-119 deals only with valuation, not the imposition of penalties.

As noted above, the process in determining the value of rental income property starts with the assessor being empowered by § 12-63c (a) to send a form to the property owner requesting the submission of income and expense information no later than the first day of June. This ties in with the requirement in § 12-63b (b) that "[i]n determining market rent the assessor shall consider the actual rental income applicable . . . ."

When an assessor begins the valuation of income-producing property for assessment purposes, § 12-63b (b) requires that the assessor determine fair market rent based upon the open market. In determining what the market rent is, the statutory section requires the assessor to *consider* the actual rent and income of the subject property in the determination of fair market rent.

Outside of § 12-63c (a), there is no other statutory requirement that an owner of income-producing property furnish to an assessor actual income and expense figures applicable to the operation of the income-producing property.

Upon review of notice requirements in various statutory sections dealing with an assessor increasing an assessment of specific property, there appears to be an inconsistency in the type of notice to be given. For example, § 12-60 requires written

notice of the increase to a property owner's last-known address when the assessor corrects clerical omissions or mistakes in the assessment. Section 12-55 (b) requires the assessor to "mail a written notice of assessment increase to the last-known address of the owner of the property the valuation of which has increased." Section 12-53 (b) requires an assessor, when imposing a penalty of twenty-five per cent of the assessment of the property omitted from a property declaration, to give notice in accordance with § 12-55.

Furthermore, § 12-53 (c) (1) requires an assessor, when performing an audit of a taxpayer's personal property, to give notice to the property owner by either personal service or by registered or certified mail to the last-known place of residence or business. Section 12-53 (d) requires an assessor to notify the owner of personal property by giving "notice in writing by mailing the same, postage prepaid, to such person's last-known address" when the assessor adds personal property to a property owner's declaration or makes out a declaration for a nonfiling property owner or increases or decreases the valuation of taxable personal property.[3]

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[3] For example, in Trap Falls Realty Holding Limited Partnership v. Board of Tax Review, 29 Conn. App. 97, 102-03, 612 A.2d 814, cert. denied, 224 Conn. 911, 617 A.2d 170 (1992), the court reviewed the legislative history behind General Statutes § 12-111 dealing with notification to an aggrieved property owner of a decision of the board of tax review and noted that "a sponsor of the bill . . . stressed his concern for a notification provision that would avoid a situation where the time for appeal to the court would have elapsed before the taxpayer would have been aware of the disposition of his case. . . . The concern of the entire [legislative] debate was clearly that taxpayers get sufficient written notice of a board's decision in a timely fashion. The consequences of an untimely or

More specifically, § 12-55 (b) recites that "[t]he assessor . . . may increase or decrease the valuation of any property as reflected in the last-preceding grand list, or the valuation as stated in any personal property declaration or report received pursuant to this chapter. In each case of any increase in valuation of a property above the valuation of such property in the last-preceding grand list, or the valuation, if any, stated by the person filing such declaration or report, the assessor . . . shall mail a written notice of assessment increase to the last-known address of the owner of the property the valuation of which has increased. All such notices shall be subject to the provisions of subsection (c) of this section." Subsection (c) (2) provides, in relevant part, that "[e]ach . . . notice shall be mailed not earlier than the assessment date and not later than the tenth calendar day immediately following the date on which the assessor . . . signs and attests to the grand list."

There is something fundamentally wrong when the assessor may impose a penalty without the requirement of giving notice to the property owner and the property owner is denied the right to challenge the assessor's imposition of the penalty. The issue here is whether § 12-63c (d) affords the plaintiffs with a constitutional right of due process to receive notice first, as well as an opportunity to challenge the imposition of the penalty.

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delayed notice are obvious . . . a taxpayer might be denied the opportunity to appeal the board's decision in a number of situations in which the taxpayer is faultless." (Citation omitted.)

Our Supreme Court has recognized that "[a]t their core, the due process clauses of the state and federal constitutions require that one subject to a significant deprivation of liberty or property must be accorded adequate notice and a meaningful opportunity to be heard." Bhinder v. Sun Co., 263 Conn. 358, 373, 819 A.2d 822 (2003). See also ACMAT Corp. v. Greater New York Mutual Ins. Co., 282 Conn. 576, 591 n.13, 923 A.2d 697 (2007) ("As a procedural matter, before imposing any such sanctions, the court must afford the sanctioned party or attorney a proper hearing on the . . . motion for sanctions . . . . There must be fair notice and an opportunity for a hearing on the record.") (Internal quotation marks omitted.)

In the absence of the assessor giving notice to the plaintiffs of the imposition of the penalties and without affording the property owners an opportunity to contest the imposition of the penalties, the property owners' due process rights would be violated. As the plaintiffs point out, "[i]n the present case, there is no evidence that comparable sales did not exist that could be used by the Assessor in determining the present value of the properties in question. In fact, the properties at issue are not unique and therefore comparable sales are readily available." (Plaintiffs' 2/28/07 MOL, p. 18.)

It is well recognized that every statute is presumed to be constitutional. See Donahue v. Southington, 259 Conn. 783, 794, 792 A.2d 76 (2002). "In the absence of weighty countervailing circumstances, it is improvident for the court to invalidate a

statute on its face. . . . In construing a statute, the court must search for an effective and constitutional construction that reasonably accords with the legislature's underlying intent." (Internal quotation marks omitted.) Thalheim v. Greenwich, 256 Conn. 628, 775 A.2d 947 (2001).

Although § 12-63c (d) purports to impose a penalty, in the present appeals, the penalties were imposed by increasing the assessed values of the properties for year 2004. Therefore, as an example, it could be construed that the allegation in the Bridgeport Towers' appeal that "[t]he Assessor of the City of Bridgeport issued an undated notice to the applicant entitled, 'NOTICE OF CHANGE IN ASSESSMENT' . . . which reflects that the assessed value of the property was changed from $6,999,090.00 to $7,698,999.00 as a 'penalty for failure to file income and expense information'" was an appeal challenging the valuation of the property under General Statutes §§ 12-117a or 12-119. (Bridgeport Towers' complaint, dated June 7, 2005, count one, ¶ 2.) Where the penalty imposed under § 12-63c (d) relates to an increase in the assessed valuation of the owner's property, in order to preserve the constitutionality of the statute, the imposition of a "penalty" can be challenged under either §§ 12-117a or 12-119, without the necessity of a specific statutory provision authorizing an appeal from the imposition of a penalty pursuant to § 12-63c (d).

In regard to the issuance of notice to the plaintiffs, it certainly would have been

provident for the assessor to have given the plaintiffs notice that penalties for failure to file the questionnaires would be imposed. This notice would have given the plaintiffs an opportunity to challenge the reason for the penalties. However, it is the city's position that once the property owners missed the assessor's deadline for filing the questionnaires, the penalties became automatic, not discretionary.

With the parties stipulating that the plaintiffs did not receive the questionnaire forms and that the assessor mailed the forms to the plaintiffs at addresses that apparently were on file with the assessor, but subsequently changed, and recognizing that the assessor did not conduct a revaluation of the plaintiffs' properties for the Grand Lists of 2004, 2005 and 2006, it was not necessary for the assessor to require the plaintiffs to submit rental income and expense figures for the subject properties and therefore, the penalties increasing the assessments of the subject properties by ten percent were not properly triggered.[4]

Accordingly, the plaintiffs' appeals are sustained with judgment to enter in favor of the plaintiffs, without costs to any party. Furthermore, all penalties imposed by the assessor against the plaintiffs are hereby nullified, without costs to any party.

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[4] Because the court finds that the penalties were not properly imposed, it is unnecessary for the court to address the issue of whether the exemption under General Statutes § 12-81 (59) should apply for purposes of reducing the assessment value of the PJM property as well as the amount of the penalty.

Arnold W. Aronson
Judge Trial Referee