Solar Array/Tax Assessment: Rhode Island Supreme Court Addresses Challenge to Property Valuation

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The Supreme Court of Rhode Island ("Appellate Court") in a February 21st Opinion addressed a tax assessment issue involving a solar array. See *Polseno Properties Management, LLC v. Keeble*, 2023 WL 2125824.

The question was whether a municipal tax assessor improperly increased the value of a facility due to the addition of a solar array.

Polseno Properties Management, LLC ("PPM") owns a 14.6-acre tract of land ("Property") in Lincoln, Rhode Island.

PPM entered into a long-term lease with Green Development, LLC, for the construction and operation of a solar array (i.e., solar energy development) on approximately 10 acres of the Property. It was subsequently developed with a strip mall and a 3.0 megawatt solar array.

The Town of Lincoln tax assessor's assessment for the 10 acres upon which the solar array was located increased from $7,500 per acre to $40,000 per acre.

PPM appealed to the tax review board and filed a Complaint with the Superior Court challenging the valuation. Both actions were unsuccessful. The Superior Court rejected an argument that § 44-5-3 expressed an intent to exempt from taxation the land on which a renewable energy system is built. As a result, it ruled that the Property:

1. Should be assessed by the assessor at its full and fair cash value; and
2. If the assessor may value the land, then it is relevant that the solar energy development exists upon it

The Appellate Court in addressing PPM's appeal reviews 44-5-3(c) which states:

"Notwithstanding any exemption provided by this section, and except for the exemptions created by §§ 44-3-3(a) (22), 44-3-3(a)(48) and 44-3-3(a)(49), which exemptions shall remain intact, cities and towns may, by ordinance or resolution, tax any renewable energy resources, as defined in § 39-26-5, and associated equipment only pursuant to rules and regulations that will be established by the office of energy resources in consultation with the division of taxation after the rules are adopted, no later than November 30, 2016. The rules will provide consistent and foreseeable tax treatment of renewable energy to facilitate and promote installation of grid-connected generation of renewable energy and shall consider

the following criteria in adopting appropriate and reasonable, tangible property tax rates for commercial renewable energy systems[.]" (Emphasis added.)

This provision was noted to have the objective of facilitating consistent and foreseeable tax treatment of renewable energy. However, the Appellate Court noted the absence of a reference to real property. The language of the statutory provision was interpreted to indicate that it does not address real property on which a solar energy development is located and therefore its presence should be considered an element of value assessed to real property.

The Appellate Court also rejected the argument that if renewable energy resources and equipment are included in the value of real property, the assessment will exceed full and fair cash value of the property – because the solar energy development is a tax-exempt asset that can be taxed only as a tangible asset. The underlying real estate was deemed not tax exempt and the real property taxable. It was therefore considered reasonable for an assessor to include the existence of a solar energy development when assessing the fair market value of the underlying real Property in accordance with § 44-5-12.

Finally, the Appellate Court rejected the argument that the tax assessor had effectively created a new tax classification for Property on which the solar energy development is located.

Consequently, the Appellate Court upheld the judgment of the Superior Court.

A copy of the Opinion can be downloaded here.