

New England

Conomo Point residents prevail over town of Essex

- \$14 million reduction in property assessment

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After a generation of real estate disputes with town officials the residents of Conomo Point in Essex, Mass., win big with a \$14 million reduction in assessed real estate values. You would never think by flying over, driving to, or even visiting Conomo Point, located in the small North Shore town of Essex, that a serene, small peninsula of land, at the mouth of the Essex River could generate as many real estate controversies as it has over the last 25 years. Conomo Point certainly has done that and unfortunately many of the controversies continue. Conomo Point is a section in the town surrounded by water with scenic views. It is well populated with numerous roads, streets and houses that vary greatly in size and construction.

The most recent dispute between the Conomo Point residents and town officials was the resolution of 109 real estate tax abatement applications, the denial of which was appealed to the Appellate Tax Board (ATB). These ATB cases involved 70 properties and were all handled by our office. Despite the resolution of all of these cases in favor of the residents of Conomo Point, the overall litigation between the residents and the town is far from over.

There are still two appeals pending from related Massachusetts Superior Court cases. Since 1826, the town has owned virtually all of the approximately 138 acres of land located on Conomo Point. Between 1875 and 1915, the town was entering into leases with private individuals for the purpose of allowing people to build and maintain structures on individual leased lots. At the heart of one of the matters currently on appeal is whether

there was an express or implied agreement between the Conomo Point residents that the builder/lessee could remove the cottages that they built on the land. There is no question that historically the town encouraged and consented to residents building the cottages because it resulted in higher rents. The problem that arose is, what happens to the structures at the end of the leases? The town never claimed that it owned the structures on the leased properties during the time of the leases. In fact, many records kept by town officials refer to the residents of Conomo Point as "homeowners." The residents argue that equity, fairness and an implied agreement indicate that all of the lessees who built structures on their leased land should be allowed to move their structures at the end of their leases. Most leases contained a "right of first of refusal" which is also relevant to the dispute.

Beyond the emotional issues and the equitable arguments, which favor the residents, the case deals with long established case law holding that the determination can only be made by examining factual issues such as how a property is annexed or attached, what kind of foundation, if any, cost of removal, and destruction resulting from the removal. To further complicate the legal issues, it could certainly be said that "unjust enrichment" is fatal to the town's claims that it owns both the land and the dwellings when the land leases terminate.

Another Superior Court case which was brought against the town involved the rental value being charged by the town. This case is also on appeal from a decision in which the Superior Court



Judge wrote that he had great respect for the professional capabilities of the real estate experts involved. However, real estate appraisers engaged in the Conomo Point matters were put in a position to value "something that does not exist and has never existed in Conomo Point." They were being asked to establish fair market rental value for the land only. However, the lots being appraised were not vacant but, rather, improved by cottages or houses and the land was owned by the town. In Conomo Point, there was no rental history or data to support land only rentals. The judge pointed out that there was not even sufficient rental data for leases with both land and structures on Conomo Point. In the judge's opinion there was insufficient information related to market rate land rentals in the surrounding areas as well.

Prior to litigation, the town had been directed by the Massachusetts legislature to determine and adopt a town by-law which would provide that all of the leases would be negotiated in accordance with an open and fair, competitive process. This allowed the town to negotiate bridge leases, but it required that the leases represent, at the very least, fair market rental value. The by-law also mandated that an appraiser with a general certification license and MAI/SRA designation be

retained to determine the rental value. The town's appraiser was hired, and income to the town was based on his fair market rental value determinations. Those values obviously become known to the Conomo Point residents. The questions in this second appeal, are (1) whether or not fair market value for 2013 established by the town was fair and (2) did the town enter into the leases in an open and fair process.

With these two Superior Court cases as a back drop to the Conomo Point residents' successful Appellate Tax Board settlement, it should be noted that a very significant Supreme Judicial Court case had already been decided and controlled how the value of these properties must be determined for tax purposes. Long before the 2012 / 2013 abatement applications were filed, in 1998 the Supreme Judicial Court of Massachusetts issued a decision in the matter of *Sisk v. Board of Assessors of Essex*. The SJC held that, even though the properties in Conomo Point were under lease with the town, for the purposes of tax assessment the value of property had to include the entire parcel, land and buildings, as if owned entirely by the taxpayer (*Sisk*) in fee simple. Even though it was agreed that the town owned the land and the lessees owned the buildings, the SJC required that lease agreements had to

be ignored for valuations purposes. The SJC even suggested that the residents could seek legislative relief because of the unfairness, stating: "Although it would appear to be a tremendous disadvantage to the lessees/ residents of Conomo Point, for valuation purposes the town assessor and the tax payers were bound by the Court to utilize fee simple only comparable sales." Such sales could only be found outside of the locus and mostly in abutting communities. Many of those sales for comparison to seasonal Conomo Point properties were year-round residences. The town in fact shuts off the water to Conomo Point in October, and most residents do not have central heat or town sewer. Septic issues, seasonal use, marketability, financing constraints, and property condition in comparison to the comparable properties utilized by the experts demonstrated that the assessed values of the Conomo Point properties were far above market value.

While the town made the argument that during the lease term it applied a 30% reduction to the land value, the residents and their expert (John Petersen) had strong market evidence that the 30% "discount" was never effectuated by the town. Nevertheless, the town eliminated the purported discount in 2013 thereby increasing the 2013 assessment by thirty percent with no market support to do so. The ATB cases were strong and based on the substantial evidence but they were made even stronger by that increase going into 2013. In the end, 70 residents achieved a total reduction of \$13.9 million in assessed real estate valuations.

There are a number of other issues in the overall Conomo Point saga, but the residents prevailed on this important issue of tax relief for 2012 and 2013. Further, the town indicates that the assessments for 2014 will remain at the settled 2013 amounts for all of the petitioners involved in these cases.

Although the appeals from the Superior Court trials remain and other issues will be presented in the future, the Conomo Point leadership group has maintained remarkable solidarity during the process. One particular resident, Nina Walker, was able to coordinate over 70 landowners and facilitate the ATB petitions. Without her supervision, the reduction of nearly \$14 million could not have been achieved.

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