



May 2, 2006

Paul Plouffe, MAA
Principal Assessor
Town Hall, 55 Main Street
Westford, MA 01886

Re: Taxable Status of Cellular Tower
Our File No. 2006-95

Dear Mr. Plouffe:

You ask whether the board may assess a tax on real estate for a cell tower located on the roof of a commercial office condo. The board of assessors appears to have assessed the tower to Westford Executive Office Condo Trust, John P. Bellantoni, Trustee (WEOCT) by capitalizing a lease. WEOCT filed an abatement application for FY2006 claiming the rooftop space has no market value because it cannot be sold to a separate entity. A lease for the rooftop space appears to have been negotiated originally between WEOCT and AT&T Wireless in 1997. AT&T assigned its interest to New Cingular Wireless PCS, LLC and an amendment to the lease was executed with the assignee in May 2005.

Based on the master deed of March 23, 1987, John P. Bellantoni, Trustee of Westford-West Realty Trust created the condominium under the name 319-321 Littleton Road Condominium. Under that master deed the unit owners each have a percentage ownership of the common areas, which include the roof. An amendment to the master deed in 2000 authorized a lease of the roof for telecommunications purposes. The amendment purports to amend the master deed of the Westford Executive Office Condominium, which we assume is a new name for the 319-321 Littleton Road Condominium.

The amendment is signed by the trustees of the WEOCT and the trustee of Summerfield Realty Trust, purporting to be an owner entitled to more than 75% of the beneficial interest. We are not provided with an explanation of who these signers are and what relationship they may have to the owners of the condo units.

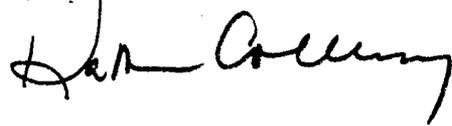
The value of real estate may be increased by the ability to receive income from a lease of the property not previously taken into consideration. Capitalizing the lease or what would be a market lease is a method of capturing the value. The cost of any "tower" that is firmly attached to the real estate may also be included. However, an antenna and other equipment used to transmit the signals is part of personal property and should not be included in the real estate value. We assume for the balance of this opinion that WEOCT is acting as agent for the unit owners, and that the rent is attributable to or for the benefit of

the unit owners. However, that fact should be verified before the board takes any further action.

Since the roof that is being leased for use by the telecommunications company is part of the common area, any value associated with the lease should be included in the assessment of each of the units on a percentage basis, as set out in the master deed. As suggested by the abatement application, it may not be separately assessed to WEOCT. See GL c. 183A, §14. In that case the board of assessors could issue revised assessments to the unit owners including their proportionate share of the increased value, under GL c. 59, §76, to the extent the unit assessments do not already reflect that value. This must be done on or before June 20, 2006, since the FY2006 tax bills were issued in December 2005. Upon issuing the revised assessment the board should abate the separate tax assessed pursuant to the application for abatement filed by WEOCT.

If there are further questions, please do not hesitate to contact us.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kathleen Colleary". The signature is fluid and cursive, written over a faint horizontal line.

Kathleen Colleary, Chief
Bureau of Municipal Finance Law

KC/GAB