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Your land is our land? Examining commercial real estate property assessments and taxes in N.Y.C.

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It was the fall of 2008 and former New York City commissioner of finance Martha Stark was busy, with other city officials, defending a nearly six-fold increase to the value of the land under new Yankee Stadium. A congressional panel suggested this was done to substantiate the bonds issued by the city to finance the project. Accordingly, Congress demanded that the city provide evidence to support the land valuation utilized.

In January of 2009 the city released its assessment roll for the 2009/10 tax year, which mysteriously included wild increases to the valuation of vacant land throughout the five boroughs. Since there are no legal limits imposed by state or local laws to commercial property tax assessment increases, landowners could not seek expedited relief in court. Conspiracy theorists point out paradoxical increases to the value of property during the worst real estate market since the Great Depression.

Of course this was soon after the collapse of Lehman Brothers along with the world financial and real estate markets, making the increases impossible to fathom. Subsequent to multiple exposÃ©s, the New York City Department of Finance unilaterally reduced the real estate tax assessments on many of the artificially inflated parcels in June of 2009. Despite those reductions, many other vacant parcels still remain grossly over-assessed and potentially headed for lien sales or even bankruptcy.

Take the case of a seemingly ordinary lot on West 146th St. in Harlem. In 2008, the assessment for this 27,000 s/f lot was $202,500 and the corresponding taxes were roughly $14,000. By January of 2009, those figures skyrocketed to $4,576,214 and $110,000! After a tax protest and consequent review by the New York City Tax Commission, the assessment was reduced substantially, with similar corrective action necessary in 2010.

The new assessment just released in January is up, again, to $5,491,350 with anticipated taxes of about $145,000. To fully appreciate the impact of these higher assessments, one must understand the city's intricate methodology of phasing-in assessment changes over five years. If the new assessment of $5,491,350 goes unadjusted, in another four years the taxes would be approximately $566,000. In other words, only the tip of the real estate tax iceberg has revealed itself.

One of my clients, who owns two contiguous vacant lots on Staten Island that received similar unjustifiable increases opined, "the city is trying to steal my properties!" While the clients' characterization of the city's actions is hyperbole, the end result can be fairly convincing. Alternatively, is this phenomenon nothing more than an illustration of what results from "shoestring" municipal budgets, leaving the Assessor's Office without sufficient resources to discover and prevent such egregious over-assessments? Considering the measures undertaken by the city Department of Finance to facilitate a private entity's needs, like a new Yankee Stadium, what resources could be available for the "public's" benefit?

Municipalities have the power to take property they need for a "public purpose" via eminent domain.

But eminent domain requires that "just compensation" be paid to the landowner. At a time when municipal coffers are weakened, exercising eminent domain powers to obtain property is costly. Promulgating excessive assessments, like the West 146th lot, could either circumvent the need for "just compensation" or force the owner to develop immediately.

While most municipalities promote development to, among other reasons, expand their tax roll, there are several ways to accomplish this laudable goal without forcing landowners to sell or lose their property without compensation. In fairness, New York City is arguably the most aggressive jurisdiction in New York when it comes to development incentives, such as the 421a and ICAP programs. Nonetheless, obtaining financing to build any project these days is challenging at best. Now try convincing a prospective financier in the 2011 real estate landscape that exorbitant land based real estate taxes isn't going to doom a project.

Regardless, cities were and will be built by savvy landowners who wait for the right moment to develop their vision for a particular location. Having municipalities intentionally dictate the timing and the "who," by enforcing unjustifiable real estate taxes, leaves one to question whose land it truly is.

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