



Not all appraisals are the same: Appraisal technique in property tax proceedings

June 09, 2014 - Long Island

In working towards resolution in a property tax proceeding, there are stages where it may become necessary to retain an appraiser to perform an analysis on the property. It is imperative to engage an appraiser who is familiar with the rules of tax certiorari. Even the most experienced appraiser will have his or her appraisal report dismissed by the court if they do not comply with the strict rules and practices required for appraising real estate for property tax cases.

Commercial property owners have offered to supply appraisals completed for other purposes, such as financing, to take the place of the appraisal in their property tax case. While these appraisals can be valuable sources of information, they typically do not conform to the most basic tax certiorari requirements and, therefore, are in danger of being disqualified after a submission.

Appraisal reports made for different purposes also do not avail themselves of the rules that can work to the property owner's benefit as well. Depending on the jurisdiction where the property is located, the correct valuation date can be nine months to a year prior to the tax year that is being protested. With the recent past providing for tremendous market volatility, this timing difference alone can have a significant impact.

Tax certiorari also requires that the property be valued in its condition on taxable status date each year. This prevents the appraiser from taking into account the future potential changes for the property such as conversion or alterations to its present condition. Different from an investment perspective that looks beyond the initial acquisition and takes into account benefits that may occur later in time, a tax certiorari appraisal is restricted to taking a "snapshot" of a property on taxable status date and valuing it as it exists on that day only.

Tax certiorari is a field that is constantly being updated by decisions wherein judges provide guidance and clarification of prior rulings that addressed appraisal technique. Earlier this month, the Court of Appeals, New York's highest court, issued a decision that ruled to dismiss an appraisal based on the appraiser's testimony not having a basis in sound theory and objective data. This resulted in what the court referred to as a "deficiency in proof" and the proceeding was dismissed.

We keep the appraisers we work with aware of all the most recent court decisions in the state and advise them of required changes when completing their report. As counsel, we often review the case law with them to provide our interpretation of how the judge expects the ruling to apply to future appraisal reports. This communication and rapport are important as the appraiser must have an understanding of the reasoning behind these rules and case law should he have to testify in court.

While the threat of dismissal is the most serious concern, an oversight of the application of a rule or court decision has the potential to cost the taxpayer hundreds of thousands of dollars. There are nuances in regards to market vacancies that can be deducted despite a history of consistent occupancy. Analogous circumstances exist in regards to the treatment of different expenses.

Different than other types of valuation, because the property taxes are the very item being protested, there is an "assessor's formula" that analyzes the property's value by incorporating the property taxes as an element of the risk component in the cap rate. The courts have cited to the assessor's formula on many occasions as a means to address the subject property taxes as opposed to deducting them as an expense.

There are also unique circumstances, such as how to account for environmental issues like contamination that has occurred at a property and the expenses involved in the clean up process. Under the law, a deduction of the cost to cure amount can be made which can provide a windfall to the taxpayer in a manner far different from an appraisal that takes into account future potential.

For these reasons, those appraisers who have focused their expertise in the field of tax certiorari have proven to be valuable assets during negotiations and at trial. It is important that your tax certiorari counsel have a qualified appraiser to work with in representing you to the fullest extent in your property tax case.

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