



# nyrej

## **Owners must seek to avail themselves of the opportunity the current economic climate presents**

September 18, 2009 - Long Island

As the recession continues to cut a swath through the real estate industry, property owners are bracing for an adverse impact, assuming they haven't had their portfolios damaged already and rare is the owner who will escape completely unscathed.

Aside from the obvious financial implications, a common complaint regarding property taxes is the lack of transparency in the manner by which they're levied. Therefore, it is incumbent upon your tax certiorari counsel to elucidate this process and identify any and every possible avenue available for owners to minimize the impact of these taxes, especially in a depressed market.

Fortunately, the drafters of New York's Real Property Tax Law had the foresight to establish law that adjusts to the market. Their prudence has been furthered by judges throughout the state who must base their decisions upon the changing market conditions.

Regardless of the effect the economy has had on your property, all owners must seek to avail themselves of the opportunity the current economic climate presents to reduce their tax burden. However, just as each property is unique, so is the manner by which each property's tax case should be approached which can be organized into three categories.

### Those Already Damaged

These owners are amongst the many whose vacancies and expenses have increased dramatically over the past year. Asking rents that were once thought to be reasonable are now distant memories and securing a stable tenant without giving away too many rent concessions is now the goal.

In these circumstances communication is the key. Local municipalities have felt the sting of the economy as well and now, more than ever, will contest cases that they believe lack merit. Therefore, it is the responsibility of the property owner's tax counsel to ensure the assessor and ultimately the courts have the most accurate and up to date portrayal of your property.

If the last time you heard from your property tax counsel was when you were fully occupied and you are now 50% vacant, then this must be communicated to the municipality so the property can obtain desperately needed tax relief.

### Those Bracing for Impact

Some owners have seen the storm swirling around them, but have managed to reduce its impact by slashing rents in order to retain tenants, rather than find their property with unsightly vacancies. These landlords have come to the realization that demand far outweighs supply to the point that some rent, albeit considerably less than previously paid, is better than no rent at all.

On the surface, these properties appear to be operating the same as they had in the past. Therefore, it is again the responsibility of the owner's tax counsel to show the assessor a substantial change has occurred. If a property that once projected to earn class A rents has been forced to reduce 50% of its tenants to class B rentals, this change needs to be adapted to valuation

methodology and presented to the assessor.

This change may not be as obvious as a vacant building, but its consequences can just as profoundly affect an owner's bottom line and the tax refunds that may result can be tremendous.

#### The Insulated Owner

Some owners have found themselves either prepared for the downturn or have just been lucky to not have their profits decline during the economic downturn. These owners will be happy to learn that the misfortune of others can help decrease their own property taxes.

When valuing a property for tax certiorari purposes, certain factors in the market at large must be analyzed and applied to the subject property. For instance, a fully occupied property still retains the benefit of applying a market vacancy factor under the law.

These owners may have escaped the eye of the storm, but know their rents will not be renewed at such high numbers as they now exceed the market for their type of space. The law allows consideration of market rents as of each year's valuation date. Therefore, despite having high actual rents, the application of market rents may produce a more accurate portrayal of value which will result in lower property taxes.

While property taxes may be seen as another cost which owners dread in a down economy, the law does allow the changes at each property and the market to be taken into account. This can produce the optimal scenario for the owner to not only recoup some of his tax payments, but also reduce his burden going forward.

Brad Cronin is attorney/partner for Cronin, Cronin & Harris, P.C., Mineola, N.Y.

New York Real Estate Journal - 17 Accord Park Drive #207, Norwell MA 02061 - (781) 878-4540