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The Evaluator Spring 2023: Valuation Analysis

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Valuation Headlines

California Appeals Court Determines Giants Stadium Must be Revalued by the County Board

Torres v. S.F. Assessment Appeals Bd. No. 1, Cal. Ct. App., 1st Dist., No. A162440, unpublished 3/15/23.

A California appeals court determined that the San Francisco Giants may owe more in property taxes after ruling that the valuation method utilized by the Assessment Appeals Board (the Board) was flawed. The decision found that deducting the estimated cost of maintaining the baseball facility through 2042 from the cost of rebuilding the stadium from scratch failed to comply with accepted appraisal methodology.

Before the Board, both the assessor and taxpayer stipulated that the cost approach was the best method to value the ballpark, which was originally constructed in 2000 and located on public land leased by the taxpayer. The value of the stadium had been contested several times prior for tax years 2015-2017. Previous cases challenging the value of the stadium determined that the cost approach was the best approach to estimate value. In the immediately prior appeal for tax years 2011-2014, the Board found that ongoing capital improvements and renovations were necessary to prevent functional obsolescence in the future, and no party sought judicial review of that decision. To support the deduction from the cost approach, the taxpayer presented evidence that fan and advertiser expectations will require ongoing capital improvements and renovations beyond ordinary maintenance and that a reasonable buyer would anticipate these costs. The Board then assumed a buyer would account for these expenses by funding a contingency reserve through the term of possession, and then deducted the present value of the reserve – more than $180 million for each year to arrive at value.

The assessor appealed the decision and argued that the cost approach was improperly applied. The appeals court rejected the approach utilized by the Board reducing the value of the stadium determining that the methodology utilized was not likely to approximate fair market value. On remand, the court did not specify a particular approach for the board to find value on remand, but did suggest that depreciation could be used when evaluating the future income of the stadium.

The Texas Legislature's Dueling Tax Relief Packages

Cutting the state's high property tax burden has been a top priority for Texas lawmakers during the legislature's current session. Both the Senate and the House have proposed two very different property tax relief packages.

The House, through House Bill (HB) 2, has proposed lowering the state's cap on property appraisals from 10% to 5% and would expand that cap to all types of properties, not just personal residences. To make up for lost tax revenue from lower assessments, HB 2 would also contribute additional state money to public school districts. Senate Bill (SB) 3 and 5, on the other hand, proposes to increase the amount of the homestead exemption and increase the business personal property exemption from $2,500 to $25,000. As of writing, the Senate bills were passed by the Senate and have been sitting before the House. The House bill was also recently passed.

There is a significant conflict developing between the House and the Senate and the dueling legislation. The appraisal cap proposal in HB 2 has been criticized by leaders in the Senate, housing experts and business groups, who believe it would lead to major inequities among property owners and drive up housing costs. Currently, there has not been much discussion between the Senate and the House on these bills and much negotiation is anticipated, with the two chambers publicly clashing over the appraisal-cap proposal. If any of these bills make it through both the House and the Senate, there are additional hurdles including the voters who decide whether to authorize a Constitutional Amendment at the November 7, 2023 election.

Iowa Court of Appeals Rejects Walmart's "Dark Store" Argument, Upholds Assessment

Wal-Mart, Inc. v. Dallas Cty. Bd. of Review, Iowa Ct. App. No. 21-1831, Mar. 29, 2023.

An Iowa appellate court recently upheld a trial court's ruling that a Wal-Mart store located in Des Moines was valued appropriately. The matter involved the tax year 2019 value of the store, which the county assessed at $19.9 million. Wal-Mart Sought a decrease to $17.9 million based on the "dark store" theory, under which big box stores are valued as if vacant.

At trial, both the property owner and the Board of Review relied upon the comparable sales method to value the property. The Board of Review's appraiser only used properties subject to long-term leases and sold to high-credit tenants, which he testified best captured the subject property's present use. The owner had two appraisers testify. The first used only vacant properties as comparables. The second used a combination of leased and vacant properties.

The trial court acknowledged that there was nothing in appraisal practice or Iowa law that prohibits the use of vacant or leased properties as comparables, "so long as suitable adjustments are made to take the status of the property into account." However, Wal-Mart's appraisers made no adjustments to account for the vacant comparables. Overall, though the trial court found that all three appraisals were flawed, it found the Board of Review's appraisal to be the most reliable. On appeal, the Court of Appeals declined to "get too far into the weeds" on the dark store theory and, noting that that trial court is in the best position to weigh the credibility of dueling experts, affirmed the trial court's ruling.

The Pennsylvania Supreme Court Issues Split Decision on Uniformity Clause Challenge - "Welcome to the Neighborhood" Assessment Appeals Likely to Continue

GM Berkshire Hills LLC v. Berks County Board of Assessment and Wilson School District, No. 16 MAP 2022, Pennsylvania Supreme Court

The Pennsylvania Supreme Court issued a 3-3 split decision on the question of whether it is constitutional for school districts to challenge the assessments of recently sold properties. The split decision has no precedential value, which means the system utilized by the school district can, and likely will, continue until it faces a future court challenge.

In the instant case, the lower court considered whether the school district's system of appealing properties that were recently sold and where the fair market value, calculated using the common level ration (CLR) was more than $150,000 less that the sales price, is constitutional. This $150,000 threshold identified by the school district took into account the costs of litigating an appeal. The subject property was an apartment building that had an assessed at a value of $10,448,700, an implied market value of $37,161,300 and a recent sale price of $54,250,000. Because the difference between the implied fair market value and sale price was over $150,000, the school district filed an assessment appeal.

The lower court ruling found that the appeal, which was filed based upon recent sales, was "neutral" as to selection of properties to appeal and did not violate the uniformity clause as described in *Valley Forge Towers v. Upper Merion Area School District*, 163 A.3d 962 (Pa. 2017). In *Valley Forge*, the Court upheld the right of school districts and municipalities to contest real estate assessments, but held that if the school district targeted certain types of properties, those appeals would violate the uniformity clause.

The group of justices writing in favor of affirming the lower court ruling focused their analysis on the fact that the schools were not specifically selecting types certain types of properties as they had in *Valley Forge*. Here the school district demonstrated that in using this monetary threshold it had filed appeals on commercial, residential, farm, and industrial properties. These justices also stated that filing on "recent sales" was facially neutral because all properties could be sold and the sale, so long as it was arm's length, was representative of the fair market value. These justices also noted that by utilizing the CLR to determine market value, the appeal was designed to equalize the assessment for the property with those in the same district.

The justices seeking reversal of the lower court's opinion focused on the fact that the criteria utilized by the school district still singled out and created a subclass of properties in violation of the holding in *Valley Forge*. The justices were critical that the monetary threshold used by the school district was not neutral nor was it supported by the dicta in *Valley Forge*. The justices also criticized those justices relying on the

claimed “uniformity” of the CLR as justification for the affirmance of the school district’s methods. Justice Donahue also made specific mention in the opinion that the issues with lack of uniformity amongst property assessments could be addressed by the legislature mandating more frequent reappraisals by the county governments.

Washington Board of Tax Appeals Affirms $200 Million Assessment of High-Rise Luxury Apartment Building

Tritell, LLC v. John Wilson, King County Assessor, Board of Tax Appeals, State of Washington (18-025, 19-017, 19-081)

The Washington Board of Tax Appeals has sustained an almost $200 million valuation of a 41-story luxury apartment building constructed in 2016 and 2017. The taxpayer appealed three years 2016, 2017 and 2018. The Board reduced the Assessor’s 2016 value by $20 million, but sustained the original values for the consecutive years. The appeal was primarily focused on the testimony and exhibits of dueling experts. The Board was ultimately persuaded by the actual cost of construction and two predevelopment appraisals.

The taxpayer’s appraiser relied on the cost approach to conclude the 2016 value and the income approach to conclude the 2017 and 2018 values. He did not complete a sales comparison approach. In its findings of fact, the Board criticized his failure to use the sales comparison approach and noted this contributed to its ruling that the Assessor’s appraisal and the two predevelopment appraisals were more persuasive. Each of these appraisal relied upon both the income and sales comparison approaches.

In addition to its appraisal evidence, the taxpayer also argued that the Assessor had changed appraisal techniques pre and post appeal. The Assessor used mass appraisal technique prior to the appeal, but completed a full appraisal after the appeal began. The Board recognized the Assessor’s statutory authority to use mass appraisal techniques and found this change in appraisals techniques did not meet the requirements for shifting Washington’s presumption of correctness from the Assessor.

Ultimately, the Board determined that the taxpayer had failed to provide “clear, cogent and convincing evidence” to show that the Assessor’s original assessment was incorrect.

Wisconsin Supreme Court Strikes Blow to "Dark Store" Theory in Lowe's Appeal

Lowe’s Home Centers, LLC v. City of Delavan, Wis., No. 2023 WI 8 (2/16/2023).

The Wisconsin Supreme Court recently blasted the “dark store” theory of valuation, rejecting an appeal brought by Lowe’s Home Improvement Store without dissent. In its precedent-setting decision, the Court sided with the city assessor, rejecting Lowe’s independent appraisal that relied upon long vacant, or dark stores, to value its operating big box retail store in Delavan, Wisconsin. The decision undermines a valuation methodology that had been common practice in Wisconsin and favored by big box stores across the country.

Lowe’s was seeking an almost 50% reduction in value for tax years 2016 and 2017 and relied upon an appraisal that utilized vacant – or “dark” - sale comparables, including a former K-Mart and a former Lowe’s that had been vacant for two years. The city assessor’s appraisal, on the other hand, utilized comparable

properties that were all still occupied when sold. The Court's decision hinged on what it referred to as the adequacy of these comparables, noting that it was not appropriate to use "dark" stores or "distressed" properties to compare to the occupied Lowe's store.

The Court stated that a "site that can sustain a business is more valuable than one that cannot" and explicitly differentiated operating businesses from failed big box stores for assessment purposes. The Court had never addressed the dark store question before and its ruling will have far-reaching consequences for pending litigation and future big box assessments across the state.