

Assessors Allowed to Use “Anticipated” Vacancy in Making Assessments

In the Dirt: A Real Estate Legal Update

By Joseph Tierney IV on February 20, 2024

Developer beware! In Wisconsin, assessors may use an “anticipated” vacancy in making assessments. Veritas Village LLC, the owner of a property with 189 apartments in Madison, contested the city's assessment of its property at \$17.78 million. Veritas argued that the assessment was excessive, proposing a lower value of \$6.8 million.

There are three tiers of analysis when determining a property's fair market value for an assessment. A tier 1 examination is based on a recent arm's-length sale, a tier 2 examination involves an analysis based on recent sales of comparable property (the “sales comparison approach”), and a tier 3 examination allows consideration of various factors like cost, income, and location (the “income approach.”). Tier 3 is used if data from the first two tiers are unavailable.

In this case, the main disagreement between the appraisers was the vacancy rate used in the assessment. Veritas' assessor used the actual vacancy rate as of January 1, 2018, and the city appraiser, using the income approach, assessed the value based on the vacancy rate after considering anticipated future leases. Veritas argued that anticipated future leases cannot be considered when assessing value under the income approach.

After the Madison Board of Assessors and the Madison Board of Review upheld the city's assessment, Veritas filed a legal action under Wis. Stat. § 74.37 for excessive assessment. The circuit court, followed by the court of appeals, ruled in favor of the city, stating that Veritas did not overcome the presumption of correctness given to the city's assessment.

Under Wis. Stat. § 70.49(2), a tax assessment is given a “presumption of correctness.” The presumption considers a tax assessment correct, unless proven otherwise. However, the presumption can be overcome if the challenging party provides significant evidence that the assessment does not adhere to the principles outlined in the Wisconsin Property Assessment Manual (the “Manual”).

The court of appeals held that the city's assessment is deemed correct and not excessive under Wis. Stat. § 74.37. The court emphasized that the city appraiser's consideration of anticipated future leases was in accordance with the Manual's

principles and did not violate the standards for the "income approach" to assess the property.

This decision underscores the difficulty in overcoming the presumption of correctness. As the city's assessor used a permitted approach from the Manual, the city's assessment was valid, and Veritas could not successfully argue that their approach was superior. Going forward, this ruling sets a precedent for assessing new buildings and determining vacancy rates during the lease acquisition period. New property owner's should be mindful that taxes may be higher based on how the assessor considers the building's vacancy rates.

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