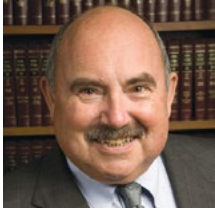


VALUATION OF REAL PROPERTY WHEN THERE HAS BEEN A RECENT PURCHASE PRICE



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In any trial to determine the value of real property, whether it be an eminent domain taking, or an application to reduce assessed taxes, a recent sale of the parcel will be extremely relevant. If a sale was an open market transaction with a buyer under no compulsion to buy and a seller under no compulsion to sell, the transaction, unless explained away, will be considered a fair market sale at the time of the sale.¹

Normally, appraisers will utilize the market data or comparable sales approach for valuation. In this approach, the subject is valued by comparison with other properties. In order to be considered comparable, the sales are to be sufficiently: (i) near in time to the valuation date; and (ii) alike with respect to character, size, situation, usability, and zoning. This is to make clear that sales are comparable in value and that the cash equivalent price realized for the properties sold may fairly be considered as shedding light on the property being valued.²

The Ohio Supreme Court made clear that a recent sale price is not an absolute determinant of a property's valuation. Instead, it held that where the parcel has been the subject of a recent arm's-length sale, the sales price is the best evidence of the true

value of the property, but this presumption may be rebutted by evidence which indicates otherwise.³

The California Supreme Court held that the sale price of the subject may be considered even if it may have reflected "project enhancement value." The court must be able to reasonably determine that that sale price, even if it reflected some project enhancement value of the land, still evinced fair market value. It's an interesting decision: if a jury is instructed to disregard that part of the compensation representing project enhancement, a claimant could be awarded less than it paid.⁴

The rule is that "the sale of real property in an arm's-length transaction, if recent and not explained as extraordinary, is the best evidence of value for tax assessment purposes because it directly reflects the property's market value and does not require the Court to engage in speculation."⁵ Put another way, "[a] recent sale has been characterized as evidence of the "highest rank" in determining value."⁶

We eliminate from recent purchases sales which are not fair market transactions. This would include obvious distress sales such as foreclosures, bankruptcy sales, and liquidated sales by financial institutions. Sales which may include financial incentives or tax benefits would also not be fair market sales. This

is one of the reasons why an attorney or appraiser should not simply rely on real estate reporting services, but examine the actual deed and/or interview the parties to the sale.

Tax reduction proceedings

What happens when the tax assessor uses recent sales as a basis for the local tax authority's valuation of a parcel of real estate? Generally, in any challenge to an assessed valuation, the petitioner carries the burden of proof by a preponderance of evidence. It is well-established that a recent arms-length sale is evidence that should be given the highest rank with respect to the value of the subject property.

The challenged real property assessments are presumed valid as a matter of law, and the petitioner has the initial burden of rebutting that presumption and producing substantial evidence that a credible dispute exists as to the valuation of the subject property.⁷⁷ "[S]ubstantial evidence will most often consist of a detailed, competent appraisal based on standard, accepted appraisal techniques and prepared by a qualified appraiser."⁷⁸ Moreover, the appraisal must be based on "objective data and sound theory."

"The ultimate strength, credibility and persuasiveness are not germane for the threshold inquiry. The Court's inquiry is limited to a determination of whether the documentary and testimonial basis proffered by the Petitioner is based upon sound theory and objective data."⁷⁹

As a general rule, the sale of real property that is an arm's-length transaction, if recent and not explained as extraordinary, is the best evidence of value for tax assessment purposes because it directly reflects the property's market value and does not require the court to engage in speculation.¹⁰ "The best evidence of value, of course, is a recent sale of the subject property between a seller under no compulsion to sell and a buyer under no compulsion to buy."¹¹ A recent sale has been characterized as evidence of the "highest rank" in determining market value.¹² In *Matter of Meditrust c/o Conifer Park Inc. (The Mediplex Group Inc.) v. Rosalie Fahey, as Assessor of the Town of*

Greenville, et al., the court rejected petitioner's claim that the \$51,000,000 sales price was "not indicative of the fair market value of the property since it was an arbitrary figure established as a business convenience"¹³ and reiterated that "taxpayers are bound by the manner in which they elect to structure a transaction ... particularly as it may be reasonably inferred that it is continuing to utilize the \$51,000,000 sales price to obtain corporate and income tax advantages." In *Rite Aid Corp. v. Otis*, the court held that the sale of the property in question was an arms-length transaction, and that the price paid by the purchaser in this matter was consistent with the value of the property as determined by respondents' expert (subject to market trends).¹⁴

Can a real estate tax assessment appeal be admissible in a condemnation case?

New York's Eminent Domain Procedure Law provides that a condemnation claim may only be tried by a supreme court justice, or if against the state, a court of claims judge.¹⁵ First, it is important to note that the New York State Constitution provides two different formulas for fixing value in the two valuation contexts.

In a condemnation proceeding, the subject property must be valued at its highest and best use regardless of actual use.¹⁶ The valuation of the subject property is set forth in the parties' appraisal reports. At trial, all parties shall be limited in their affirmative proof of value to matters set forth in their respective appraisal reports.¹⁷ Article I, section 7 of the New York State Constitution provides that "private property shall not be taken for public use without just compensation." The constitutional requirement of just compensation requires that the former property owner be indemnified so that it may put in the same relative position, insofar as that is possible, as if the taking had not occurred.¹⁸ So, in condemnation, the subject property must be valued on its highest and best use.

There is a fundamental difference in the valuation of property for tax assessment purposes. Real Property Tax Law section 302(1) states that "the taxable

status of real property in cities and towns shall be determined annually according to its condition and ownership as of the first day of March and the valuation thereof determined as of the appropriate valuation date.” The New York State Office of Real Property Services (ORPS) has set forth its opinion on this issue, which opinion discusses when property should be valued according to its current use and when it should be valued based on its highest and best use.¹⁹ New York courts have adopted current use as the general standard for tax assessment purposes in valuing improved properties.

The cardinal principle of property valuation for tax purposes set forth in the New York State Constitution is that property assessments shall in no case exceed full value.²⁰ A tax certiorari determination requires an inquiry as to the property’s condition and ownership on the applicable valuation date.²¹

This controlling principle of valuation has been interpreted to require valuation of improved property according to its existing use, not a potential one contemplated in the future.²²

There are other reasons why a tax assessment review proceeding is irrelevant to a condemnation proceeding. First, the date of title vesting in a condemnation proceeding is different than a tax assessment date.²³ Second, building values in tax certiorari proceedings cannot exceed certain amounts.²⁴ Specifically, the building value in a tax certiorari proceeding cannot exceed the building’s reconstruction cost less depreciation. No such limitation exists in establishing just compensation in an eminent domain proceeding. And third, evidence of earnings in a tax certiorari proceeding carries less weight than in a condemnation proceeding.²⁵ 🍌

Notes

- 1 Keator v. State of New York, 244 N.E.2d 248 (N.Y. 1968).
- 2 Dennis v. County of Santa Clara, 215 Cal. App.3d 1019 (Cal. Ct. App. 1989).
- 3 Ratner v. Stark City Bd. of Revision, 517 N.E.2d 915 (Ohio 1988).
- 4 Los Angeles v. Retlaw Enterprises, Inc., 546 P.2d 1380 (Cal. 1976).
- 5 Blue Hill Plaza v. Assessor of the Town of Orangetown, 720 N.Y.S.2d 527, 527 (N.Y. App. Div. 2002) (citing 50540 Realty, Inc. v. Tax Commission of City of New York, 524 N.Y.S.2d 55 (N.Y. App. Div. 2d Dept. 1988)).
- 6 Rite Aid Corp. v. Huseby, 12 N.Y.S.3d 753, 755 (N.Y. App. Div. 2015).
- 7 Board of Managers of French Oaks Condominium v. Town of Amherst, 23 N.Y.3d 168, 175 (N.Y. App. Div. 2014); FMC Corp. v. Unmack, 92 N.Y.2d 179 (N.Y. App. Div. 1998).
- 8 Matter of Niagara Mohawk Power Corp v. Assessor of the Town of Geddes, 92 N.Y.2d 192, 196 (N.Y. App. Div. 1998).
- 9 Matter of Mavis Tire Supply Corp. v. Town of Ossining, 2009 N.Y. Slip Op. 52365(U), 25 Misc.3d 1231(A), 2009 WL 4043412 (N.Y.Sup.Ct. Nov. 17, 2009).
- 10 Blue Hill Plaza v. Assessor of Orangetown, 720 N.Y.S.2d 527 (N.Y. App. Div. 2d Dept. 2001) (citing 50540 Realty, Inc v. Tax Commission of City of New York, 524 N.Y.S.2d 55 (N.Y. App. Div. 2d Dept. 1988)).
- 11 Matter of Allied Corp v. Town of Camillus, 604 N.E.2d 1348, 1351 (N.Y. 1992).
- 12 Rite Aid Corp v. Huseby, 11 N.Y.S.3d 889 (N.Y. App. Div. 4th Dept. 2015); see also Matter of F.W. Woolworth Co. v. Tax Commission of City of New York, 20 N.Y.2d 561, 565 (N.Y. App. Div. 1967).
- 13 641 N.Y.S.2d 202, 203-04 (N.Y. App. Div. 3d Dept. 1996).
- 14 Rite Aid Corp v. Otis, 102 A.D.3d 124 (N.Y. App. Div. 3d Dept. 2012).
- 15 N.Y. Em. Dom. Proc. Law § 501; see also Accessocraft Products Corp. v. City of New Rochelle, 7 A.D.2d 703 (N.Y. App. Div. 2d Dept 2004).
- 16 Matter of City of New York (Clearview Expressway), 174 N.E.2d 522 (N.Y. 1961).
- 17 N.Y. Comp. Codes R. & Regs. tit. 22, § 202.61(e).
- 18 Buffalo v. J.W. Clement Co., 269 N.E.2d 895 (N.Y. 1971).
- 19 N.Y. Dep’t Tax’n & Fin., Volume 10—Opinions of Counsel SBRPS No. 45 (Mar. 6, 1996), available at https://www.tax.ny.gov/pubs_and_bulls/orpts/legal_opinions/v10/45.htm.
- 20 N.Y. Const. art. XVI, § 2; see also Matter of Commerce Holding Corp. v. Board of Assessors of the Town of Babylon, 673 N.E.2d 127, 129 (N.Y. 1996).
- 21 N.Y. Real Prop. Tax Law § 301(1).
- 22 Matter of Gen. Motors Corp. Cent. Foundry Div. v. Assessors of the Town of Massena, 146 A.D.2d 851, 852 (N.Y. App. Div. 3d Dept. 1989).
- 23 Matter of Lincoln Square Slum Clearance Project, 22 Misc. 2d 260 (N.Y. Sup. Ct 1959), aff’d and mod. 15 A.D.2d 153 (1st Dept. 1961), aff’d 16 N.Y.2d 497 (N.Y. 1965).
- 24 Id.
- 25 Id.