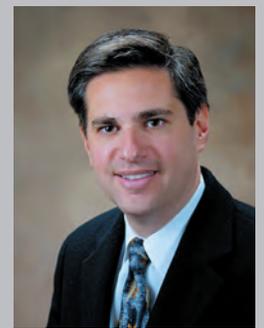


Law Report

THE RIGHT WAY TO ORDER AN APPRAISAL

by Michael J. Elliott



Michael Elliott

"The key is to understand what the client's needs are and to pick a competent appraiser who can serve those needs at a fair price."

Appraisals can be a powerful tool in a tax appeal case and are often the best evidence of value. A good appraisal presented by an experienced lawyer can result in big tax savings.

Inexperienced lawyers, tax consultants and property owners often operate under a false belief that all they need to do is simply order an appraisal — and then hope for the best. That strategy can yield acceptable results. But, acceptable results are not good enough today. Property owners should expect EXTRAORDINARY results – the lowest tax bill possible. This requires a more thoughtful and strategic approach.

Step 1: Pick The Right Appraiser

The first critical decision is to pick the right appraiser, as all appraisers are not alike. Some specialize in a particular property type, while others are generalists. Some focus their work in a particular County or sub-market. Some provide relatively inexpensive reports that may be well suited for lower value properties, but won't hold up at trial. Others charge higher fees, but provide thoughtful analyses supported by ample data and defensible conclusions. When much is at stake, the higher price tag may be justified. Some are well known to the assessing officials and well respected. Some are willing to testify at trial and make experienced, effective witnesses, and others are not.

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1430 Lee Street
Des Plaines, Illinois 60018
Phone 847-298-8300
Fax 847-298-8388



The key is to understand what the client's needs are and to pick a competent appraiser who can serve those needs at a fair price.

For example ...

- When valuing a hotel or nursing home, you need an appraiser who understands how to properly allocate market value between the taxable real estate (land, building and permanent fixtures) and the non-taxable assets (personal property, trade fixtures, intangible assets and goodwill). This is important because the non-taxable assets of a hotel or nursing home business can be worth 30% to 40% of the total value of the business.
- When valuing an office building, you need an appraiser who understands the dynamics and economics of the office market. Does supply exceed demand forcing landlords to make costly concessions (payment of high brokerage commissions, tenant improvement allowances, free rent, etc.)? How much are those concessions and what are the (lower) effective rents that result? And, what adjustments should be made to sales comparables to reflect the true differences between the subject and the comparable. When these issues are properly articulated and supported, the appraiser can opine to a much lower value than otherwise and can defend that value at a tax appeal hearing.

Step 2: Develop a valuation theory

It is critical for the attorney to develop a theory of what the property is worth and why. This is the story he needs to tell when trying to convince the assessing officials what the property is worth. He also needs to convey this story to the appraiser at the outset to make sure the appraiser is on the same page.

For example, an attorney might encounter a fully leased office building with relatively high rents that support the current assessment leading the attorney and/or his appraiser to conclude there is no chance for reducing the assessment. However, the landlord likely incurred substantial up-front costs to acquire his leases, including brokerage commissions of \$1.00 to \$1.50 psf per year; tenant improvement costs ranging from \$8.00 psf to \$40.00 psf; free-rent of one month per lease year or more; and moving allowances. These costs can be substantial and can amount to 10% to 30% of total rent payments over the term of the lease.

It is customary for landlords to negotiate higher rents and pay lease-acquisition costs up-front because high contract rents support a higher building value. But, lease acquisition costs need to be accounted for in a tax appeal setting because the high rents could not be achieved unless the lease acquisition costs were incurred. Often, attorneys, appraisers and

assessing officials value the property based on the (high) contract rents and ignore the costs incurred to obtain them, thereby over-valuing the property. Properly accounting for these costs will result in a substantially lower market value for tax purposes. The lawyer needs to understand this point and make it the theme of his valuation argument. And, he needs to make sure his appraiser understands this fact as well and accounts for these costs in his appraisal report. You might be surprised how often lawyers and appraisers miss this critical point.

The lawyer's valuation theory provides the foundation of the case. It is important to develop a theme that will support a value as low as possible. Then, it is critical to convey that theme to your appraiser.

Step 3: Reach Your Own Conclusion Of Value

The lawyer must understand – at least in general terms - what the property is worth. Otherwise, he will be driving blindfolded and at the mercy of the appraiser who may conclude the subject is fairly valued, or provide a value opinion that is higher than it should be.

Attorneys usually request preliminary valuation opinions before commissioning appraisals. A preliminary appraisal opinion that concludes the property is fairly assessed may be correct, or it may really mean that the appraiser does not want or can't handle the job.

In addition, appraisers often try to take the easy way out by valuing property at or above the prior assessed market value. For example, if the Assessor increases the assessed market value from \$1M to \$1.5M, the appraiser may provide a value



range at or above the \$1M level, knowing that a value under \$1M will probably be controversial. And, appraisers often prefer to avoid controversy. But, if the value is truly under the \$1M level, tax money will be left on the table. This happens more than you might think.

Or, the Appraiser might just blow it. We often see preliminary value opinions that are simply too high based on our review of sales and income data. The only practical solution to this

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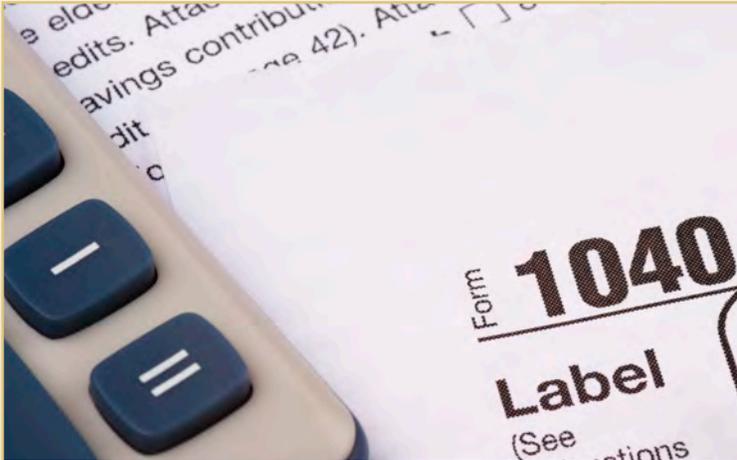
COOK COUNTY EXPANDS TAX INCENTIVES

by Joanne Elliott

Cook County offers tax incentives to owners of commercial and industrial properties. These incentives are generous and reduce taxes by 60% for 10 years, with a phase up of taxes in years 11 and 12. Recently, the Cook County Board expanded these incentives.

The pertinent incentives are known as Class 6b (industrial property) and Class 8 (commercial property). They apply when property owners build new buildings, substantially rehabilitate or expand existing buildings and re-occupy vacant buildings (referred to as “abandoned property” in the law). For commercial properties, Class 8 also requires that the property be located in a blighted area¹. Class 6b does not include the blight requirement.

The new law relaxes the vacancy requirement and allows industrial businesses who have operated in the same location for 10 years or more and can demonstrate an economic hardship to obtain an incentive. As a result of these changes, more properties will qualify for these incentives.



Vacant Property

If property has been vacant long enough, the ordinance considers it “abandoned property” and incentives may apply. Over the years, the definition of abandoned property has been expanded several times. The most recent changes continue the expansion allowing more taxpayers to take advantage.

Under the new rules, “abandoned property” includes:

- Property sold to a bona-fide purchaser that was vacant for at least 24 months prior to the sale.
- Property sold to a bona-fide purchaser that was vacant for less than 24 months if there is a finding of “special circumstances” (more about that later).

- Property that has not been sold, but has been vacant for at least 12 months if there is a finding of special circumstances. This is a recent change to the law and is called the TEERM Program.

The term “special circumstances” is not defined in the County ordinance, but typically means the property possesses some negative attribute (such as functional or economic obsolescence) that would justify granting the incentive. The finding of special circumstances must be made by both the municipality and the Cook County Board. Furthermore, the governmental officials may incorporate a “but-for test” meaning they will not support granting the incentive unless the taxpayer proves that the construction project or re-occupancy will not occur unless the incentive is granted.

Applications for exemption under the TEERM program must be filed by November 30, 2018 and are not renewable.

Industrial Properties Without Vacancy

Prior to the recent changes in the law, occupied industrial properties were not eligible for Class 6b incentives. Under recent changes, however, occupied industrial properties may obtain Class 6b incentives under a program known as the SER Program if the municipality and County Board conclude a financial hardship exists and the business is not viable without the incentive. The specific requirements of the SER Program are as follows:

- An industrial enterprise must have occupied the property for at least 10 years;
- The industrial enterprise must prove the tax incentive is necessary for the business to “continue operations at the current location and maintain its staff” and without the incentive, the business would “not be economically viable causing the property to be in imminent risk of becoming vacant and unused”.
- The applicant does not receive any other tax incentives for the property.
- The municipality and the County Board find special circumstances exist and that the property is qualified for the SER Program.
- Application must be made before November 30, 2018.

The incentive under the SER Program is not renewable.

If you think your property may qualify for a tax incentive, please feel free to contact us.

¹ The term “blighted area” means an area “certified as in need of substantial revitalization” under the Cook County Classification Ordinance, an “enterprise community” or properties located in Bloom, Bremen, Calumet, Rich and Thornton Townships.

1430 Lee Street, Des Plaines, Illinois 60018

ELLIOTT & ASSOCIATES
ATTORNEYS AT LAW



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THE LAST WORD ON APPRAISALS

problem is for the attorney to fully understand the valuation issue(s), develop his own conclusion of value and share that conclusion (and supporting data) with the appraiser when requesting the prelim. That way, the appraiser is more likely to render the correct valuation opinion. As Si Simms says, “An educated consumer is our best customer”. Appraisers might agree.

Step 4: Review The Appraisal Report

Lastly, the attorney needs to review the appraisal report to check for factual errors, logical inconsistencies and un-supported conclusions. Mistakes like these can be embarrassing and, at a minimum, undermine the appraiser’s opinions. So, it is best to correct them before the report is submitted.

Appraisals can be a useful tool in winning tax appeals and saving tax dollars. Obtaining the best results possible requires a knowledgeable attorney who understands valuation theory and market dynamics. It also requires a good appraiser who is properly advised of all pertinent facts and who writes a good appraisal report with well supported conclusions.