CGS §12-117a(2) – Year 1 - by Patrick Wellspeak

November 10, 2023 - Appraisal & Consulting

Patrick Wellspeak

In 2022, the Connecticut General Statutes were changed with the addition of 12-117a(2) that required for any assessment appeal application made on or after July 1, 2022 that “the applicant shall file with the court, not later than one hundred twenty days after making such application, an appraisal of the real property that is the subject of the application. Such appraisal shall be completed by an individual or a company licensed to perform real estate appraisal in the state. The court may extend the one-hundred-twenty day period for good cause. If such an appraisal is not timely filed, the court may dismiss the application.”

This change in the Connecticut General Statutes was supported by municipalities who were seeking to reduce the number of assessment appeals filed and to tilt the procedural scales in their favor. While there were likely an excessive number of assessment appeals filed over the years, warranting some change, there were certainly a significant number of egregious overvaluations by municipalities needing to be rectified. In trying to curb the number of appeals, the new order of doing business has proven to be an overreaction to the problem. Reflecting on the first year since this change took place I wanted to share my observations from the ground.

Historically, aggrieved property owners had multiple opportunities to challenge their assessments following a revaluation. These included informal meetings with the firm conducting the revaluation; a hearing with the Board of Assessment Appeals (BAA); and, as a last resort, filing a civil action with the court seeking relief. In recent years the Boards of Assessment Appeals for more and more municipalities have taken advantage of §12-111a(1) that allows them to deny hearings on “any commercial, industrial, utility or apartment property with an assessed value greater than one million dollars.” With a recent pattern of municipalities not holding BAA hearings, property owners have already lost one of their tools in challenging the assessment of their real property asset. Furthermore, when cases historically reached the litigation stage it had been the custom and the standing order of the tax session of the Superior Court that both sides would simultaneously exchange appraisals. Under the new system I have seen that there have been either intended or unintended consequences associated with the statute change. In addition there are lessons that I have learned over this past year with these points shared as follows:

Intended or Unintended Consequences:
While not opining as to whether these are intended or unintended the reality is:

Under the new system municipalities receive an appraisal and effectively have an opportunity to rebut the plaintiff’s position as opposed to having their own expert independently reach a value conclusion.

With 12-117a(2) municipalities are trying to use “gotcha” strategies of dismissing cases where the appraisal has not been filed within the one hundred twenty day time frame.

12-117a(2) requires that the appraisal be filed with the court. Within appraisals are numerous confidential details regarding properties including tenant names, lease expiration dates and other business terms. Owners of competitive properties could seek this information to poach tenants – clearly not something that the legislature considered when drafting the language in the statutes.

Lessons Learned:
Because there is a limited pool of qualified appraisers able and willing to take on assessment appeal assignments if an owner wants to pursue an appeal after being denied by the BAA their attorney should wait as close to the two months they are allowed to wait before filing an action with the Court. This will allow more time to get an appraisal done as the clock starts once the appeal is filed with the Court (there is some debate about the operative date the clock starts that owners should check with their counsel on).

If an owner thinks the appraiser they have retained needs more than 120 days to complete their work, the plaintiff's counsel should ask the Court for an extension early - and be reasonable about their request. From Year 1 it seems if these two criteria are met that the request will be granted.

The fact that the Statute calls for filing an appraisal with the Court can be problematic with respect to confidential information owners may not want in the public domain (such as tenant names, lease expiration dates, etc.). Legally, it seems challenging to protect the information. Therefore, I would suggest as a remedy that counsel for the plaintiffs provide the court with a Restricted Appraisal Report (think the value and not much more) but provide the municipality an Appraisal Report (think all the bells and whistles inclusive of confidential information). This meets the municipalities' objective of obtaining a full report with the plaintiff's support and conclusions so a meaningful dialogue can occur. It also respects the owner's desire to keep confidential information away from the public domain.

Patrick Wellspeak, MAI, is principal at Wellspeak Valuation & Advisory Services, LLC, Cheshire, Conn.