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MEMO: Budget transfer - CVS Pharmacy Excessive Assessment litigation
DATE: August 21, 2014
TO: City Finance Committee
FROM: DeAnn Brosman, City Assessor

This year we concluded the circuit court trial with CVS Pharmacy regarding their Excessive Assessment claim. Year-to-date we have incurred expenses of \$176,600 with an additional \$25,000 expected through year-end, for a total of \$201,600. Our expenses include: outside council fees, expert witness fees, court reporter/transcription fees, etc. Earlier this year, \$76,500 of 2013-2014 carryover funds were appropriated to help pay these expenses. At this time, we are requesting an additional transfer of \$125,100 in contingency funds into the Attorney's 2014 budget to cover the remaining expenses.

We received your authority in February to move forward with the trial and incur related expenses. Mediation was scheduled in May, but was cancelled by CVS due to the unlikelihood of a settlement. The circuit court trial took place over 7 days from May 27th to June 4th, 2014. We expect the judge's decision to be issued by year-end.

It was necessary to strongly defend this case, because the outcome will likely affect the future assessed values on all commercial property that contain long-term leases. The assessed value of CVS, rather than the appealed value, represents the most probable price that the property will sell for on the open market. The city provided 120 exhibits of evidence and over 15 hours of court testimony to support its value. The evidence included: two recent sale prices of the property, sales prices of comparable pharmacies, the actual cost to develop the property, the property's net rental income, and many subpoenaed documents supporting our value.

As the trial date became closer, the case became more complex, cumbersome, and costly. The CVS attorneys created many roadblocks including refusing to comply with subpoenas issued by the city which required pretrial hearings and court orders to comply discovery. In the eleventh hour, CVS hired additional appraisers and expert witnesses which required more work from our expert witnesses, required us to prepare more trial exhibits, and spend more time on pre-trial depositions and trial preparation. CVS hired two attorney firms and had six trial witnesses of which four were paid experts. The trial was extended from 4 days to 7 days due to the number of witnesses and the many issues being litigated. On three of those days, testimony continued into the evening hours.

To help keep costs down, city staff prepared all 120 exhibits, printed all the copies, provided the office supplies, and provided two staff members to assist in the courtroom for seven days. Due to the hard work of our hired professionals and city staff we are expecting a positive outcome to this case at the circuit court or appellate level.