

# REAL ESTATE Connection

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## A Lawyer's Perspective

# Tax appeal settlements

BY DENNIS SCARDILLI

**K**ee in mind that many real property tax assessment appeals, like other legal proceedings, are often settled "on the courthouse steps". Be prepared for the hearing, but first try to negotiate a settlement.

I can't emphasize this enough. Pursuing a tax appeal is like driving on an Indy track. A can could do it, but it takes a Danica Patrick to win. Contact a state licensed or certified real estate appraiser to create an estimate of value for your property for the tax appeal. Hire a knowledgeable lawyer. Knowledgeable appraisers will also be able to negotiate with the assessor as a fellow "valuation professional". Depending on property ownership, the attorney may have to set up that meeting.

Not a great number of really "down-market" comparable sales took place before the Oct. 1, 2007 statutory date of value. Because the municipality's tax assessment is given a statutory "presumption of correctness", the property owner has the burden of proving that the assessment is incorrect. How can that be done when there are few, if any, comparable sales that would prove your case?

That question was the topic of a panel discussion at the Southern New Jersey Chapter of the Appraisal Institute recent annual joint meeting with the New Jersey Association of Municipal Assessors (NJAMA). The title of the session was "assessors and appraisers working together to determine value in an uncertain market". I was the moderator and the panel included John Lloyd, NJAMA counsel, Tom Glock, NJAMA president, Tom

Efstathiou, president of the NJ County Tax Boards Association and Mary Fox, an MAI appraiser from Cape May.

In the course of that discussion, it became clear that tax appeal petitioners would have two basic options: negotiate a settlement with the tax assessor based on whatever market data was available; or, present their appeal to the County Tax Board and take their chances. Panel participants also considered the flip side of the present dearth of "comps". While tax appeal petitioners will face a major problem this year, municipalities may be faced with large number of successful appeals in a subsequent year when "down-market" sales data is plentiful. Both sides will have to weigh the pluses and minuses of settlement this year.

Rather than argue theory, both sides should focus on reality. An assessor should consider market evidence showing that older sales should be adjusted downward even if that evidence is less-than-traditional. The appraiser must thoroughly research and provide that actual market evidence to the assessor and not just rely on his or her own opinion or experience.

For example, in certain sectors such as single family housing the "slow market" of 2006-2007 turned into a dramatic downturn in sales volume and price over the past three to six months. Does this show in sales closed after Oct. 1, but negotiated before that date? Listings are not given the weight of sales, but if there are less than three sales comps, is their marketing time, aka "days on the market", significantly greater than that of older comparable sales? Has there been a significant

increase in listing inventory? Did the property under appeal have a change in its "highest and best use", as evidenced by developers not starting, or not completing, similar projects? Are bank or distress sales valid comparables? It depends. To address these issues appraisers need to thoroughly research comparable sales before negotiations, or hearings, begin.

While traditional indicators of sales and rentals may show little market evidence of a decline in value, everyone in the market knows that the market dropped. That includes the tax assessor. The petitioner must provide sufficient evidence to overcome the burden of correctness and convince a county tax board or the tax court. This year a smart tax assessor will negotiate with the knowledge of sales activity in their municipality since Oct. 1, as well as reasonable projections of near-future market trends. It may be better to give a little now, rather than have a big drop in assessments during a future year when "down market" comparables are plenty. The deal breaker for both parties is whether they should agree to less than the standard three-year "freeze" of a negotiated assessment. That issue will be the topic of a future column.

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*Dennis A. Scardilli is an attorney-at-law in the Atlantic City area. The information in this article has been provided only for informational and educational purposes and is not intended to provide legal advice. For legal advice on this or any other topic, contact a qualified attorney.*