

# Taxpayers Take More Hits

By **John Garippa, Esq.**, as published by **GlobeSt.com**, April 2009



By all accounts, more tax appeals were filed in New Jersey as of the April 1st filing deadline than at any time in recent memory. Across all classification of properties, owners filed appeals in both the New Jersey Tax Court and at the County Boards of Tax Appeals.

While the flood of appeals would have normally been filed as of April 1, 2009, a recent law allowed property owners who experienced a revaluation to file as late as May 1, 2009. This means the tidal wave of appeals that swept across New Jersey as of April 1st will continue right through May 1st.

These mass filings will take a toll on the judicial system and ultimately the taxpayer. The first impact will be significant backlogs in the Tax Court. In the recent past, a typical commercial tax appeal might take two years in order to get a hearing and resolution. In this current environment, considering the fact that no new judges will be added to the Tax Court, that backlog will easily reach three years or more.

Even more important for hard pressed taxpayers, under New Jersey law, in order to have standing before the court, all property taxes must be paid in full. If the taxes are unpaid by any amount in any year, that year's tax appeal will be subject to dismissal. This is a difficult pill to swallow for a commercial property owner with significant vacancies.

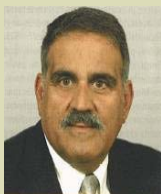
A review of commercial real estate's current status underscores why a torrent of appeals exist. Many commercial landlords are losing retail tenants at an ever-increasing pace. According to the April 8th *Wall Street Journal*, with research provided by Reis Inc., the amount of occupied space in shopping centers and malls throughout the US declined by 8.7 million square feet in the first quarter of 2009. This loss of more than 8 million square feet of retail space in just one quarter was more than the total amount of space retailers handed back to landlords in all of 2008.

The decline in occupied space increased the vacancy rate for malls and shopping centers in the top 76 US markets to 9.1%. According to Reis, the vacancy rate is now at its highest level since the 1990's. Even as landlords cut lease rates in order to attract tenants, the vacancy rates continue to rise.

Another unforeseen impact will be visited on taxpayers in this current market maelstrom. The burden of proving the value of a property in a tax appeal has always rested on the taxpayer. It will not be enough for a taxpayer to cite a plethora of empty stores and a growing vacancy rate as proof of a low value.

The Tax Court will demand that competent market evidence be brought before the court to prove, by the preponderance of the evidence, the current market value of the property in question. And to make the task even more daunting for the taxpayer, there may not be enough comparable rentals to prove value, since it is near impossible to find anyone to rent retail stores. Also, it may be equally impossible to prove a capitalization rate because banks are not lending on any type of commercial property.

Property owners will be severely challenged as they try to manage depressed property values in an environment where one road block after another confronts them. Understanding the nature of the road blocks and where they can be found, offers the best potential for attacking the problems.



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