

# Perspectives

An American Property Tax Counsel Newsletter

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Perspectives offers ideas, concepts and methodologies for property tax reductions

## Shopping Centers Pay High Property Taxes

### Steps to Take to Reduce Your Taxes

Today, retail property owners, from enclosed malls to strip centers, face a "double whammy," the loss of tenants along with an increasing demand by government for additional tax dollars. And each day brings additional bad news on the retail front whether it's about poor sales figures or more store closings.

Happily, many opportunities exist for retail property owners to fight the onslaught of inappropriate property taxes by presenting to the assessor financial information other than comparables. This information must demonstrate the need for tax relief no matter which of the three approaches to value is used in arriving at the tax assessment.

#### The Cost Approach

The advantage of the cost approach is that it represents the only pure approach to value when it comes to valuing the real estate, the sticks and bricks involved in a retail business. The disadvantage arises from the assessor's reliance on a computer generated cost approach that typically only adjusts for "age/life" depreciation.

Rarely does the assessor make the necessary adjustments for economic or functional obsolescence. It is incumbent upon taxpayers to provide the assessor with this obsolescence information. What better evidence of economic obsolescence could be found

than store closings, bankruptcies, increasing vacancies and no sales of comparable properties? Then, too, no better proof of functional obsolescence exists than the loss of an anchor that occupied a space designed specifically for them. It may turn out that no replacement tenant can be found for that design or size.

#### The Sales Comparison Approach

If there are simply "no sales" or "too few sales" then the sales comparison approach to value has limited applicability but may demonstrate the problems facing shopping center owners due to the lack of transactions. If a sufficient number of sales are available, then each sale must be carefully considered. Some sales may be comparable in terms of size, age and location but may not be comparable in terms of vacancy rates, occupancy costs and tenant mix.

Take, for example, the sale of a 100% occupied lifestyle center occupied by national tenants averaging over \$400 per square foot in sales and enjoying lower than average occupancy

costs. That sale is not comparable to a lifestyle center of the same size that is only 65% occupied, has \$200 per square foot in sales and higher than average occupancy costs.

Presenting demographic information may also assist in distinguishing between your property and the property that sold. Be prepared to distinguish with clear details your and comparable properties.

### The Income Approach

Mall owners, like many investment property owners, have protected their proprietary tenant sales information for years. But, there are alternative procedures available in many locations that may permit you to use this information and still protect it. Tax counsel may be able to negotiate a confidentiality agreement or protective order with the assessor to facilitate the exchange of this information.

In the times ahead, occupancy rates alone won't likely tell the whole story. Using national publications, you can demonstrate median numbers for sales per square foot, property tax payments and occupancy costs. Educate the assessor concerning what occupancy cost ratio puts a tenant on the "watch list." A mall may be 90% occupied and have a substantial number of tenants "at risk" to leave or not renew their lease due to unsustainable occupancy costs.

A simple case can be made that when store closings are announced, typically, the first group involved is composed of

locations with the highest occupancy costs. Additionally, if the owner is making rent and expense concessions to tenants, this information will assist the assessor in understanding the economics of retail investment property.

The falling economy will cause lower tax receipts for local governments. Their budgets will be stretched, making it more difficult for them to agree to reductions and refunds. Under these circumstances, a bit of creativity may achieve the results you need:

- Negotiate a reduction and agree to take the reduction as a credit for the next year if the county does not want to write you a refund check.
- The local government's concerns may be the "certainty" of the valuation of your mall for the next few years. In some places, you may be able to negotiate a

better number if you can agree to the valuations for the next few years.

- Agree to a higher valuation for the current year in exchange for more substantial relief the following year.
- Explore with the taxing jurisdiction alternative dispute resolution methods. The jurisdiction may prefer mediation over the risks of litigation.

Even in these difficult economic times, owners of retail properties can succeed in lowering excessive property taxes by using the creative, fact-filled arguments suggested here.

American Property Tax Counsel (APTC) is the only national affiliation of property tax law firms in the U.S. and Canada. Our member firms have represented more than 200 of the Fortune 500 and over 25 of the 50 largest REITs in property tax appeals at the administrative level and in the courts. The organization focuses on developing cutting edge strategies to reduce property taxes and works at state and local government levels to push these new concepts to acceptance.

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Smart, Aggressive Property Tax Advocacy



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