



Portfolio Media, Inc. | 111 West 19th Street, 5th floor | New York, NY 10011 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Austin's Court Fight Over Commercial Property Tax Booted

By **Jess Krochtengel**

Law360, Dallas (November 10, 2016, 2:40 PM EST) -- The city of Austin's lawsuit arguing commercial and vacant property is being undervalued during property tax appraisals raises policy questions outside the purview of the court system, a Texas appellate court held Thursday, affirming dismissal of the case.

Austin **had sued** the Travis Central Appraisal District after an appraisal review board in Travis County denied the city's formal challenge to what it said was the systematic undervaluation of two classes of vacant and commercial properties. The city alleged the state's property tax appraisal system is unconstitutional and creates two different standards of assessment, resulting in arbitrary and unequal taxation.

The Third Court of Appeals said, though the city does have statutory standing to challenge the level of appraisals of any category of property in the district, Austin had effectively foregone the administrative determination of its challenge, depriving the district court of jurisdiction. The court said the city could bring its concerns over tax policy to the attention of the Legislature, but that Austin "has no standing to pursue such a debate in this court."

"The city's constitutional challenge is a transparent attempt by a taxing unit to debate an issue of tax policy that is within the prerogative of the Legislature, rather than the judiciary," the court said.

According to the opinion, Austin appeared at an appraisal review board hearing for the sole purpose of requesting its challenge petition be denied. The court said that deprived the review board of any opportunity to decide the merits of the challenge, making Austin's subsequent lawsuit improper because the city didn't sufficiently exhaust its administrative remedies. Requesting the denial of an administrative challenge to fast-track a court case thwarts the intent of the administrative process, it said.

"The district is pleased with the court's judgment and opinion and believes the court correctly ruled on each of the issues before it to uphold the trial court's earlier dismissal," Todd Stewart of Olson & Olson LLP, who represents the appraisal district, said.

Austin filed the suit in August 2015, two months after the appraisal review board's ruling, also naming as defendants several individual property owners it claimed held undervalued properties. It argued commercial and vacant properties weren't being appraised at market value because property owners aren't required to disclose real estate sales data, which the city said created an imbalance in information available for different properties.

The **state intervened** in October 2015, arguing the city was using litigation to try to raise property taxes without input from lawmakers or taxpayers.

In November 2015, a Travis County District Judge **dismissed the case**, saying the city didn't have standing to pursue constitutional claims over state tax policy because it's not the entity that implements property tax exemptions.

"We are very pleased with the result," Danny Smith of Popp Hutcheson PLLC, an attorney for the property owners, said Thursday. "The city's position never made any sense — how is the city protecting taxpayers by challenging the very equal and uniform statute that we all benefit from? Hopefully, the city will now devote its resources to a cause that actually benefits the taxpaying public and focus on setting fair tax rates."

Texas Attorney General's Office spokesman Marc Rylander said Thursday the office is "glad to see the Austin Court of Appeals reject the city of Austin's blatant attempt to use this legal challenge to significantly raise property values in violation of state law."

The city of Austin did not immediately respond to requests for comment.

Austin was represented by its own Andralee Cain Lloyd and Michael Siegel.

The TCAD was represented by Tammy White-Chafer and Todd Stewart of Olson & Olson LLP. Texas was represented by Scott Keller and Kristofer Monson of the Attorney General's Office. The Texas Association of Realtors, Lowe's Home Centers LLC and HE Driskill LLC were represented by Jim Popp, Mark Hutcheson and Daniel Smith of Popp Hutcheson PLLC.

The case is Austin v. Travis Central Appraisal District et al., case number 03-16-00038-CV, in the Texas Court of Appeals for the Third District.

--Additional reporting by Caroline Simson and Vidya Kauri. Editing by Jack Karp.

All Content © 2003-2016, Portfolio Media, Inc.