

ATTN OWNERS: BEWARE OF PROPERTY TAX INCREASES DURING COVID-19

What do you need to know to fight excessive increases in Texas this year and next?

By Darlene Sullivan of Popp Hutcheson PLLC

As if a global economic contraction and an unfolding recession across the United States were not enough, many commercial real estate owners across Texas have seen their taxable property values increase this year. While many of these owners are calling for property tax relief to offset the financial burden they are suffering due to stay-at-home orders and business closures triggered by the COVID-19 pandemic, they may be unsure of potential remedies to pursue or arguments to make.

Given that the date of valuation is Jan. 1, 2020, property owners searching for relief are limited as to the information that appraisal districts will consider for this tax year. Potentially limited relief in 2020 does not mean taxpayers lack options, however.

There are three key strategies that commercial property owners need to implement in 2020 if they want to maximize reductions in taxable value for this and future years.

1. Consider filing a 2020 appeal — even if the taxable value did not increase from the prior year.

The state was already shutting down nonessential activities as appraisal districts were preparing to mail out their 2020 Notices of Appraised Value. Most appraisal districts delayed the mailings while exploring various options, including freezing property values and granting temporary exemptions for properties affected.

In the end, most appraisal districts conducted reappraisals as originally planned and the Texas Attorney General shot down the idea of temporary exemptions. In his view, the statutory authority allowing issuance of exemptions did not cover purely economic, nonphysical damage to property. The result of this was that, in the majority of cases, the values sent out had no consideration for losses due



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to the pandemic.

A taxable value that did not increase year over year in an up market may not warrant an appeal during ordinary times, but these are not ordinary times. In 2020, such appeals are important to taxpayers for several reasons.

First, the focus on the pandemic has shifted the narrative that dominated the news cycle in the months in and around the date of valuation. Does anyone remember the retail apocalypse? According to *Business Insider*, over 9,300 stores closed in 2019 and thousands more were slated for closure in 2020. This was all before COVID-19. If your property was affected by this or other economic factors, a freeze in value may not appropriately reflect the market value of the asset.

Secondly, appealing now may be a sound decision because the 2020 value may be used as a benchmark for future relief. In Texas, each year stands on its own and is valued independently of prior years. However, given that the effects of the pandemic are unlike anything we have seen before, it is reasonable to predict that in order to track the decline in value, appraisal districts may look to the 2020 appraisal roll as a starting point.

In Texas, the deadline to appeal property tax values is May 15, or 30 days from the date the Notice of Appraised Value was delivered to the property owner. Given that some jurisdictions delayed their mailings, it is important to review your Notice of Value to determine your deadline to appeal.

2. Consider the tax rate as well as taxable value.

It is important to remember that a value freeze without a freeze in tax rates may still result in an increase in taxes. While actions taken by the Texas Legislature in 2019 promised relief by addressing tax rates, even those measures are currently up for debate as local districts are questioning whether the pandemic allows them to exceed the revenue-raising limits put in place by the Legislature.

Texas may not resolve this dispute until it assesses the full extent of economic damage and weighs it against the needs of the taxing units to meet their budgets. The appeals process

will still be the first avenue for relief, but a very close second will be to lobby the local taxing jurisdictions to not raise, and perhaps even lower, property tax rates.

3. Keep track and provide documentation of COVID-19 losses.

Even though COVID-19 losses may not be fully considered for the 2020 tax year, taxpayers need to initiate conversations about the economic impact to the property's financials so that appraisal districts can start building the valuation models for 2021 with these factors in mind.

In 2021, property owners should be ready to present documentation demonstrating any declines in occupancy or revenue, as well as any bankruptcies affecting the property. If the taxpayer's current record keeping does not reflect slow-paying or non-paying tenants, consider tracking those items. Changes to business models, such as adding patio seating or curbside pick-up lanes, may also

affect the ultimate indication of value for 2021, so keeping track of those expenses will be equally important.

As property owners go through the 2020 appeals process, it may be beneficial to consider keeping the option open to file a lawsuit in district court to seek additional relief. The longer the property owner and its advisors have to gather information and calculate the depth of the economic impact, the better positioned the team will be to obtain a fair 2020 value.

In the end, being proactive during these times is essential to obtaining relief where it appears there may be no relief in sight.

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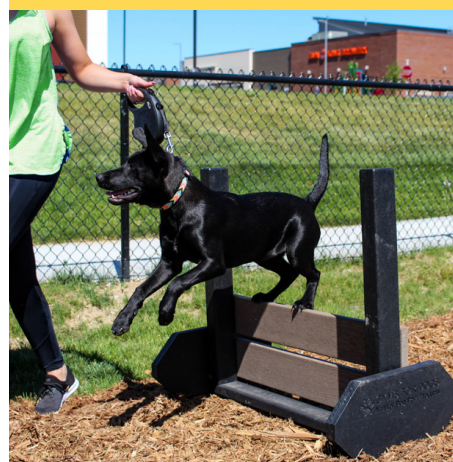
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