

Smith Peters Kalail C.O., L.P.A.
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OSBA
Capital
Conference

Settling Real Estate Tax Valuation Cases

PRACTICAL GUIDANCE TO HELP
RESOLVE CASES AND MAXIMIZE VALUE

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Presented by

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Settlement

WHY SETTLE?

“SETTLEMENT IS CHOOSING HOW
TO WIN ON YOUR TERMS”

SETTLEMENT BASICS

- The majority of disputed property tax cases can settle.
- Few cases are worth fighting over until the bitter end.
- On the whole, property owners like to settle.
- Several factors help districts decide whether to settle.

Settlement

SETTLEMENT FACTORS



SETTLEMENT FACTORS

- The amount we stand to gain over a period of time
- The amount we stand to lose over a period of time
- Legal costs
- Cost to produce evidence
- Risk of losing the case (Court trends/BTA trends)
- Politics/External forces
- Counsel for the property owner

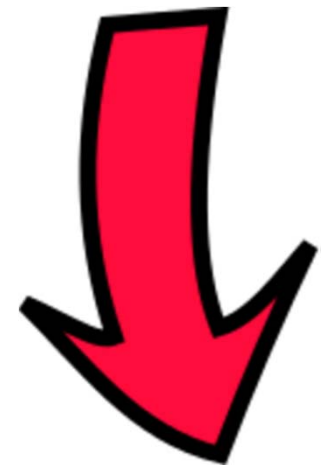
INCREASE COMPLAINTS

- How much do we stand to gain?
- For how long – when did the triennium begin?
- Are there factors surrounding the sale which put into question its validity?
- Was personal property mistakenly included in the price?
- At what increased amount is the case worth settling?



DECREASE COMPLAINTS

- What do we stand to lose?
- For how long – when did the triennium begin?
- Will the district need to issue a refund if there is a reduction?
- How many years of a refund?
- Will settlement now help rejuvenate the property in the near future?



LEGAL COSTS

- Legal Research
- BTA hearings
- Motion practice
- Discovery
- Ultimately: is the amount at stake worth the cost?



COST OF PRODUCING EVIDENCE

A district needs to present evidence at the Board of Tax Appeals in order to have a chance of winning cases it appeals.

- Appraisals
- Expert witnesses
- Comparable sales



RISK OF LOSING THE CASE ON THE MERITS

Willingness To Settle	High								X
								X	
						X			
					X				
				X					
		X							
	Low	X							
		10%	20%	30%	40%	50%	60%	70%	80%+
Risk of losing the case									

TRENDS AT THE BTA AND COURT

- The current state of the law greatly affects the risk of loss of each case.
- What might have been good facts last year are inconsequential this year.
- Changes in the law happen all the time.
- Knowing the weaknesses and strengths of a case help us make better decisions on a settlement figure.

POLITICS AND EXTERNAL FORCES

- Local politics can affect settlement
 - Disgruntled business owners
 - Reluctant boards of education
 - County administrators and employees
- Eternal forces
 - Legislation attempting to take away the rights of districts

OPPOSING COUNSEL

- Some firms seek out settlement
 - Less time waiting for a result
 - Time is of the essence
 - Counsel wishes to reduce his or her case load
- Knowing how opposing counsel typically operates is highly beneficial in trying to settle cases.

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Examples

REAL-WORLD CASES THAT SETTLED



EXAMPLE # 1

- Well-known retailer
- Recent sale for nearly \$4.5M – Current value approx. \$4M
- School district filed an increase complaint to reflect sale price
- Property owner filed a decrease complaint reflecting appraisal at \$1.8M
- The BOR made no change in value

What do you do?

CONT'D

- Both parties appealed to the BTA and engaged in discovery and filed briefs
- Settlement discussions stalled throughout the case
- The parties settled just days before the hearing

Why?

- The law had changed so a sale was not necessarily the best evidence of value (sale leaseback transaction)
- Neither party was willing to risk losing on the merits
- Only one tax year at stake – at the end of a triennium.
- Each side was willing to accept no change in value

SAME CASE FOR THE NEXT TAX YEAR

- Full triennium at stake
- Still no clarity on the new law re: sales
- Settled at the BTA for the triennium:
 - Effectively split the difference

EXAMPLE # 2

- Typical increase complaint filed by the district
- Vacation home valued at nearly \$200K sold for \$330K
- Sale was an arm's length transaction
- Property owner claimed it was only worth \$270K
- Appraisal vs. Sale at the BOR
- The District agreed to settle at the BOR hearing for \$280K
- Not worth fighting over at the BTA when the District already gained a significant increase

EXAMPLE #3

- Restaurant valued at \$1.3M
- Property owner sought \$670K based on an appraisal
- The district had no evidence but criticized the appraisal
- The BOR made no change in value
- Property owner appealed
- Not enough income at stake to warrant our own appraisal
- The parties settled the day before the hearing at \$850K
- The appraisal may have carried the day but the parties did not want to incur the time and cost

EXAMPLE # 4

- Vacant retail strip center valued at \$345K
- Property owner filed a complaint seeking \$200K
- No appraisal or sale
- BOR reduced it to \$200K
- The district appealed hoping to settle despite having no independent evidence
- Rather than spend time and resources the parties agreed to a reduction to \$245K
- Very typical case

Examples

REAL-WORLD CASES THAT DID NOT SETTLE

CASES THAT DO NOT SETTLE

- Unequivocal Arm's Length Transactions warranting a full increase or decrease to the purchase price.
- Properties where the range in asserted values is so wide that both parties are willing to take a chance on the merits.
- Properties where one of the parties is unwilling to settle based on principle.

NO SETTLEMENT: EXAMPLE # 1

- Large retailer commercial property valued at \$2.2M
- Property owner filed a complaint seeking a reduction to \$2M based on an appraisal report
- The district countered and sought an increase to \$4.4M due to a recent sale of the property
- The BOR increased the value to the sale price
- On appeal, the parties argued their positions on briefs and waived hearing
- Neither party was willing to settle – the district won at the BOR due to the sale
- The BTA upheld the increase to the sale price

NO SETTLEMENT: EXAMPLE # 2

- Vacant commercial property valued at \$1.1M
- Property owner sought a reduction to \$60,000 due to vacancy and supposed land-locked nature
- An appraisal supported the property owner's position
- A cell tower was also placed on the property
- Lots of questions – huge disparity in values
- Too much at stake to settle
- District won at the BTA – the property was not truly land-locked, a conclusion which the appraiser relied upon to demonstrate value

NO SETTLEMENT: EXAMPLE 3

- Apartment building in relatively poor condition valued at \$225,000
- Property owner filed a complaint requesting \$80,000
- No substantial evidence produced, no sale, no appraisal
- BOR makes no change – BTA makes no change
- Appealed to District Court of Appeals
- Property owner refused settlement at every step
- Court of appeals affirmed no change in value
- On appeal once again for the next tax year

FINAL NOTE ON POLITICS & EXTERNAL FACTORS

- Increase complaints rattle property owners
- Pending Senate Bill 85 – Prohibits schools from filing increase complaints
 - Referred to the ways and means committee
- Illusions of impropriety
 - Cash settlements rather than adjusting property values
 - Other consideration for settlement

TIME FOR COMMENTS AND QUESTIONS

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