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PROPERTY TAX

Keep Austin Weird

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The article in the September *IPT Insider* detailed the action taken by The City of Austin (the City), which challenged the Travis Central Appraisal District's (TCAD) 2015 tax roll.

The city's challenge was based on a study they commissioned in 2014 from The Aegis Group (a commercial real estate appraisal and consulting firm located in Austin, Texas). Said report concluded that the 2015 proposed valuations of commercial and vacant properties were undervalued by a "median" under-valuation of 40%. The city asserted that Texas Property Tax Code Sections 41.03 and 42.031 gave them the right to challenge "...the level of appraisal of any category of property" and "...to appeal the appraisal review board (ARB) decision."

On May 29, 2015, the city filed the challenge with TCAD's ARB. However, it quickly became apparent that such a protest would delay tax roll certification by numerous municipalities within Travis County and thus interfere with the timely issuance of 2015 tax statements. The attorneys for both the city and TCAD then agreed to jointly ask the ARB to deny the challenge. The ARB complied, its denial concluded the challenge at the ARB level, and thus relieved the concerns of other local taxing entities.

The ARB on June 22, 2015, issued its written denial of the city's appeal. On July 6, 2015, the city filed its Notice of

Appeal, notifying TCAD of its intent to appeal the denial of its challenge to district court. On August 24, 2015, the city, as Plaintiff, filed suit in district court against the TCAD, Owners of C1 Vacant Land, F1 Commercial Real property, and Glenn Hegar, Texas Comptroller of Public Accounts, as Defendants.

Austin Mayor Steve Adler, told local media that the language of the lawsuit had been shared with TCAD and its attorneys prior to the filing so that they could have an opportunity to suggest changes, effectively admitting to collusion between the lawsuit plaintiff and one of the defendants in preparing the litigation. State Senator Paul Bettencourt observed in an op-ed piece in the *Texas Tribune* that "...Amazingly, even though the City of Austin named the Travis County Appraisal District as a defendant in the lawsuit, the chief appraiser herself joined Mayor Steve Adler at the press conference announcing it —creating a serious question of a conflict of interest with one named defendant supporting the suit."

The city's petition asked the court to overturn Section 41.43 (b)(3), entitled "Protest of Determination of Value or Inequality of Appraisal" and 42.26 (a)(3), entitled "Remedy for Unequal Appraisal," and generally hold that the current state property tax appraisal system is unconstitutional as it relates to appeals based on Unequal Appraisal. Additionally, it requested a judgment declaring that mandatory sales disclosure is necessary to enable appraisal districts to appraise all properties at their market value.

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Ultimately this claim was dropped from suit. The city's requested relief, if granted, would require reappraising C1 and F1 properties for tax year 2015 and would deprive any property owners dissatisfied with the results of that reappraisal of any right to relief based on unequal appraisal. The city argued that this result would ensure compliance

with statutory and constitutional requirements to appraise these categories of properties at market value. Further it argued that Article 8, Section 1 of the Texas Constitution requires that all property be taxed "in proportion to its value" and that this taxation be "equal and uniform."

The first obstacle the city faced in its litigation was serving all the property owners of C1 and F1 properties located within TCAD boundaries. The list of named C1 and F1 taxpayers was 625 pages long and included the names and account numbers of thousands of properties. Citing the burden and expense (estimated by the city at as much

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as \$229,000) of actually serving that many defendants, the city filed a motion for determination of parties or, in the alternative, substitute service on September 8, 2015. This motion sought relief from serving all C1 and F1 defendants and asked for permission to instead serve TCAD as, essentially, a "virtual" representative of the commercial owners. After both Junk Yard Dogs LP, (a named commercial property owner defendant) and TCAD itself filed responses opposing the city's motion, the court held a hearing and ultimately denied the city's motion.

On September 9, 2015, a group of homeowners intervened on the basis that the city's attacks on Tax Code Sections 41.43 (b)(3) and 42.26 (a) (3) affected both residential and commercial taxpayers. Therefore, it argued that it had a vested interest, with a direct stake in the outcome of the lawsuit and thus a basis for participating in the case. The city argued that since the group was not named as defendant it had no standing in the case. The court ultimately struck down its intervention.

Junk Yard Dogs LP, filed a first motion for summary judgment asserting that the city failed to send a notice of appeal to TCAD within 15 days (42.06(a) and afterwards forward a notice to all affected taxpayers within 10 days (42.06(c)). The court denied summary relief on these issues.

Junk Yard Dogs LP, ultimately filed a second motion of summary judgment in which it stated that the city had failed to exhaust its administrative remedy and as such were precluded from appealing to district court. Specifically it argued that the record showed that the city had failed to present any evidence at its hearing supporting its challenge. The city said in the record of the proceedings; "...We're here today in the spirit of collaboration and cooperation to ask the Appraisal Review Board to grant the agreed order which will deny the City's challenge. Further it stated, "...We believe that the district court is really a better forum for exchanging information, for the parties to exchange information and data, and to explore data results will change valuations for commercial properties." Finally it closed with "...So, again, we're here before you with the Travis County Appraisal District to ask our challenge be denied and that we be allowed to take it up in district court. Thank you." The argument advanced by Junk Yard Dog LP, was that if no evidence was actually presented to the ARB, thus the city had failed to exhaust the Code's mandatory administrative remedies. Exhaustion of such remedies has long been required by Texas Courts as a mandatory prerequisite before taking a property tax dispute on to court.

Junk Yard Dogs, LP, also stated in its motion that Sections 41.43 (b)(3) and 42.26 (a)(a) had already been held constitutional by the courts (specifically in the 2001 case of *Harris County Appraisal District v. United Investors*). The city also lacked legal standing to either challenge tax appraisal mechanisms or ask the court to "legislate from the bench" to create a requirement for mandatory sales disclosure where none exists. This latter request, it was argued, would violate the separation of powers doctrine in the Texas Constitution.

Shortly before that second hearing, the State of Texas, through Texas Attorney General Ken Paxton, intervened in suit, noting, in its Plea in Intervention, that "...The City of Austin has challenged the constitutionality of Texas Property Tax Code, sections 41.43(b)(3) and 42.26(a) (3). It is difficult to imagine a stronger State interest than defending the will of people and homeowners of Texas relating to tax law and policy manifested through the legislative process."

The *Austin American Statesman* reported that at the hearing held on Friday November 6, 2015, State District Court Judge, Tim Sulak, stating that he wanted to get the case "teed up squarely for the court of appeals." After hearing arguments from all parties, the court granted the motion for summary judgement by Junk Yard Dogs LP and dismissed the city's lawsuit.

Austin Mayor Steve Adler expressed frustration with the decision and repeated his desire for a court to rule on the "fairness" of the property tax system.

Joseph Harrison, one of the attorneys representing Junk Yard Dogs and the prior homeowner intervenors, described the ruling as entirely correct and consistent with the Texas Tax Code's well-documented prohibitions against taxing units either meddling in areas of appraisal reserved to appraisal districts and property owners.

Debbie Cartwright, a lawyer for the Travis Central Appraisal District, said TCAD was "glad the case is over for now."

City attorney, Meghan Riley was asked if the city would appeal and she said, "We'll talk to our clients first."

The City of Austin has 30 days to appeal Judge Sulak's ruling and Keep Austin Weird.