

# Publications

## The Evaluator: Fall 2022 Valuation Analyses

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## Valuation Headlines

### California Landlords Seek To Slash Real Estate Tax Assessments Due To Economic Impact Of The Covid-19 Pandemic And Remote Work

"Tishman Speyer, Hines Appeal SF Property Tax Assessments," *The Real Deal*, [www.therealdeal.com/sanfrancisco/](http://www.therealdeal.com/sanfrancisco/) (August 29, 2022)

Some of the largest commercial property owners in San Francisco are seeking significant real estate tax assessment reductions on their assets due to the lasting impact of the COVID-19 pandemic. Remote work arrangements and declining demand for office and retail space have forced businesses to reconsider their physical footprint. The landlords are seeking 50% assessment reductions on highly visible assets that primarily include office towers and mixed-use buildings. All of these properties are currently being valued at well over \$100,000,000 for tax assessment purposes. The assessment appeals for these properties are currently pending before the San Francisco Assessment Appeals Board.

### Colorado Governor Signs Two Significant Property Tax Bills Into Law

*Colorado Senate Bill 22-238*  
*Colorado House Bill 22-1416*

The Governor of Colorado recently signed Senate Bill 22-238 (SB 238) and House Bill 22-1416 (HB 1416) into law. SB 238 will require commercial property to be assessed at 27.9% of the actual market value for the 2023 tax year and will require multi-family residential property to be assessed at 6.765% of the actual market value for the 2023 tax year. The prior assessment ratio for commercial property was 29% and the prior assessment ratio for multi-family residential property was 7.15%.

Meanwhile, HB 1416 addresses numerous property tax administrative issues. The bill will move the annual assessment appeal deadline to June 8<sup>th</sup> from June 1<sup>st</sup> for most counties in the state. The bill also requires county assessors to include an estimate of property tax owed

on valuation notices and provide information on the retroactive abatement appeal process. Finally, the bill limits the amount of valuation increase that the Board of Assessment Appeals (BAA) can adopt if an appeal proceeds to a hearing. The BAA will only be able to increase a valuation by a maximum of 5% above the original valuation that is being appealed

### **Indiana Board Of Tax Review Determines Mall Anchor Department Store Should Be Valued Based Upon Income Approach**

*Dillard Department Stores, Inc. v. Clark Cty. Assessor*, Indiana Board of Tax Review, petition numbers 10-011-18-1-4-00169-19, et al. (July 25, 2022)

The Indiana Board of Tax Review (IBTR) found that Dillard's was entitled to a reduction in value because it presented better valuation evidence than the county assessor. Dillard's presented an appraisal that opined to value of \$5.2 million for 2018 and \$5.11 million for 2019 and 2020. In contrast, the Clark County Assessor asserted that the property should be valued at \$10.8 million for 2018, \$10.5 million for 2019 and \$10.3 million in 2020.

The appraisers of both parties presented sales comparison and income approaches to value, and the assessor's appraiser also developed a cost approach to value. In evaluating the appraisal evidence presented, the IBTR found that both sales comparison approaches suffered from a lack of comparable data. In evaluating the assessor's evidence, the IBTR found that the cost approach did not properly account for obsolescence and noted that serious issues in each approach undercut the reliability of the value conclusions. The property owner's appraiser utilized an income approach that projected a rental rate based on a percentage of gross retail sales. The IBTR found this approach to be an accepted method to value mall anchor department stores. Based on the strength of the income approach utilized by the property owner's appraiser, the IBTR ultimately found their appraisal to be more persuasive and a better representation of the market value-in-use of the property.

### **Idaho Supreme Court Reverses District Court's Decision In Dispute Over Mountain Resort Valuation**

*Shoshone Cty. v. S&W OPS LLC*, Idaho S.C. No. 48418 (June 30, 2022)

This matter involved the tax year 2017 valuation of a mountain resort. The taxpayer disputed the county's valuation of \$23,700,000 for taxation purposes and sought review by the County Board of Equalization, and subsequently the Board of Tax Appeals (BTA). The BTA reduced the assessed value, and the county appealed to the district court. The district court determined that the county's appraisal evidence was more credible than the taxpayers' evidence. Nevertheless, the district court found the county had not satisfied its burden of showing how the BTA decision was erroneous and thus affirmed the BTA. The county then appealed to the Supreme Court, arguing that the district court applied the wrong standard of review by requiring the county to prove "how or why" the BTA decision was erroneous instead of simply concluding that the market value of the property was different than what was found by the BTA.

The Court agreed with the county's position. The Court determined that the county's burden before the district court was to prove that the BTA's valuation was erroneous and that the county had met that burden by providing evidence of fair market value that even the district court found to be more probative than the owner's evidence. The court found the requirement that the county prove errors beyond the BTA's

valuation went beyond what was required. The Court held that the “decision” of the BTA was its valuation of the property, not the rationale underpinning that valuation. Thus, there was no requirement to show “how” or “why” the BTA erred.

### **Kansas Supreme Court Kicks Wal-Mart Case Back To Board Of Tax Appeals With Instructions To Consider Build-To-Suit Leases**

*In re Equalization Appeals of Wal-Mart Stores, Inc.*, No. 122,162 (Kan. Jul. 1, 2022)

The Kansas Supreme Court reversed an appeals court ruling that had prevented the Kansas Board of Tax Appeals (BOTA) from considering unadjusted build-to-suit lease data in determining the property tax valuations of big box retail stores. The court remanded the matter back to BOTA with instructions to reconsider the County’s appraisal evidence.

The case concerns the 2016 and 2017 tax year valuations of 11 Wal-Mart properties in Johnson County, KS. BOTA had concluded that the county’s valuations for the properties were too high because they improperly relied on unadjusted sales and rental rate data from other big box properties that were subject to build-to-suit leases. BOTA’s reasoning for rejecting the county’s appraisal evidence was that they were simply following precedent established by a prior Court of Appeals ruling in *In Re Prieb Properties, LLC (Prieb)*. In *Prieb*, the Court of Appeals effectively held that rental rates from commercial build-to-suit leases do not reflect market conditions and may not be relied upon by appraisers without making proper adjustments. The Court of Appeals agreed with BOTA’s decision.

The Kansas Supreme Court overruled the decision from the Court of Appeals and found that *Prieb*’s “rationale invades BOTA’s longstanding province as the fact-finder in the statutory process for appraising real property at its fair market value for ad valorem tax purposes.” Rather than simply considering its weight and credibility, BOTA, the Supreme Court found, had imposed an exclusionary rule on the county’s appraisal evidence. The Supreme Court remanded the case back to BOTA with instructions to consider the county’s appraisal evidence without *Prieb*’s constraints.

### **Michigan Tax Tribunal Rejects Claims That External And Physical Obsolescence Impacted The Value Of A Former Big Box Store**

*Oakland-Summit Investments, LLC v. Waterford Twp.*, MTT Case No. 20-004545. (June, 30, 2022)

This matter involved a former Sam’s Club “big box” property has been converted into a boat sales and storage facility. The 1991 vintage building is 110,526 square feet in size and sits on 14.9 acres of land. For the 2020 tax year, the owner challenged the true cash value of the property seeking a reduction from \$3,323,000 to \$1,700,000. As part of its case, the owner argued that the property suffered from substantial economic and functional obsolescence. An appraisal was submitted in support, which made significant adjustments to value to account for the asserted obsolescence.

The Michigan Tax Tribunal (MTT) rejected the appraisal for a number of defects it found in methodology, assumptions, and data. As to economic obsolescence, the MTT found that the record did not support a finding that such obsolescence existed. The owner argued that the demolition of the adjacent mall devastated the area and destroyed retail demand. The owner’s appraiser argued that the area was blighted

and showed no sign of activity. The MTT, however, found 1) no evidence on the record that there was decay or a failure to maintain public services or infrastructure; 2) no evidence of contamination, debris, or condemnation for governmental renewal projects; 3) no abandoned buildings, no adverse land use mixes, or declining property values; 4) the immediate subject neighborhood includes several commercial businesses as well as retail shopping centers; 5) the county administrative offices are near the subject, and 6) the subject market showed an appreciation of 3% per year. Thus, the MTT concluded the owner's application of economic obsolescence to be inappropriate.

As to physical obsolescence, the owner argued that it is difficult to move boats in and out of the property because the property's truck wells were filled in. Moreover, the owner argued that the property's high ceilings and freezer/coolers, which were a part of the original design as a big box retail property, does not suit the needs of a boat retailer. The MTT found no obsolescence. The MTT noted that the high ceilings allowed the owner to show taller boats and there was no evidence that other design characteristics of the building were impeding the current use of the property.

Having rejected the owner's claims of obsolescence and having found the owner's appraisal to be unpersuasive, the MTT determined a value of \$3,323,000 for the property.

### **Oregon Tax Court Orders Dismissal When Property Owner Failed To Establish That Riot Damage Impacted Valuation Of Office Building**

*4310 Building LLC v. Multnomah Cty. Assessor*, TC-MD-220154N (OR Tax M Div, August 23, 2022)

The Oregon Tax Court found that it lacked jurisdiction to decrease the 2021-2022 tax year valuation for an office building in Portland based on the owner's valuation complaint. The owner of the office building was seeking a reduction in their property tax liability due to the damages sustained from riots and the lack of protection and intervention by the city's police and fire services in response to the riots. The riot events, which had occurred in 2018, caused broken windows, structural damage and fire damage to the property.

Although the property owner asserted that the property had suffered substantial damage from the riots, it admitted that the damage was insufficient to reduce the property's valuation. Moreover, the property owner declined to allege its own real market valuation opinion for the property. In seeking to dismiss the complaint, the county assessor argued that the Tax Court did not have jurisdiction over the claim that the property was impacted by a lack of city services and also that the property owner was not aggrieved because they failed to allege a value that would result in a property tax reduction. The Tax Court ultimately determined that the property owner failed to state a claim upon which relief may be granted and dismissed the complaint.

### **Missouri State Tax Commission Rejects Property Owner's Highest And Best Use Conclusion That Land As Vacant Was More Valuable Than Four Year Old Ikea Store**

*Ikea Property, Inc. v. Michael Dauphin, Assessor, St. Louis County*, Missouri State Tax Commission Appeal No. 19-20030, (May 6<sup>th</sup>, 2022)

The Missouri State Tax Commission (STC) rejected Ikea's appraiser's highest and best use analysis for a recently constructed Ikea retail warehouse store. Specifically, the STC found that the appraiser's contention that the land value exceeded the value of the property as currently improved was unsupported and not based on any reliable data.

The subject property was located on 20.7 acres of land in an area called CORTEX, a 200 acre innovation hub and technology district. The Ikea warehouse was a 376,358 multi-level structure containing retail space, warehouse space, offices, restaurants, kitchens and a children's play area. At the St. Louis Board of Equalization (BOE), the BOE determined a value of \$75,700,000 as of January 1, 2019 for the property.

Ikea appealed the BOE's decision to the STC. At the hearing, Ikea presented an appraisal report as of January 1, 2019, an appraisal report as of September 10, 2020, and a review appraisal report. In its appraisal reports, Ikea's appraisers determined that the value of the subject property's land value exceeded the value of the property as currently improved. The appraiser noted that the specific design elements of the building created substantial functional obsolescence but offered no market data quantifying functional obsolescence. The appraiser concluded that the highest and best use was to demolish the existing improvements and make the site available for redevelopment. One of the appraisers reviewed 24 sales to support his highest and best use conclusion. Nearly all of the 24 sales were significantly older and smaller than the subject property. The STC noted that most of the properties were vacant at the time of sale and that the appraiser did not make any adjustments to the sales to account for location or physical differences. Ikea's appraisers did not perform a cost approach, sales approach or income approach.

The city's appraiser presented an appraisal report utilizing the cost approach and the income approach to valuation. After rejecting the analysis by Ikea's appraisers, the STC found that the city had produced substantial and persuasive evidence of value and determined the true value in money of the subject property was \$62,500,000.

### **Connecticut Court Conducts Independent Assessment To Value Mall Property**

*Danbury Mall LLC v. City of Danbury*, Superior Court, Judicial district of New Britain, Docket No. HHB-CV-18-6046738 (March 24, 2022)

After a trial on the merits including testimony from appraisers from both the property owner and city, the Court determined its own value for the Danbury mall property. The subject mall consisted of a traditional mall concourse with anchors stores and inline retail, a former Filene's store that was converted to a multi-tenant property and a Sears store, all of which the Court viewed as inextricably intertwined and best viewed together.

The Court determined that the highest and best use was continued use as retail properties. The Court also found that the income approach was the best method to value the subject mall and that the sales comparison approach employed by the property owner's appraiser was not convincing as there was not sufficient evidence of the comparables and transactions to support the conclusions made.

In reviewing the income approaches by the property owner's appraiser, the court adopted a substantial portion of the income approach but for all three portions of the mall property determined a lower cap rate than that utilized by the appraiser. The court found that the mall was an A- minus grade property and

based on the data supplied by the appraiser could support a cap rate as low as 5.5%. It determined a cap rate of 6% plus a tax load factor of 1.9%. The Court also noted that the rent utilized for certain portions of the Filene's and Sears properties were too low, and determined a higher market rent.

In adopting much of the property owner's analysis, the Court noted that there had been substantial competition and effects to the mall as a result of the rise of online commerce and bankruptcies of certain of the anchor tenants. The Court also noted that a new mall, which would be increased competition, was being constructed in the nearby area. The Court determined a value for the mall of \$300 million, a value for the former Filene's as \$40.2 million and the Sears property at \$19 million for the applicable tax years.