

BIG BOX ASSESSMENT

**WHAT NOW?**

# Where were we, starting off?

- Board of Equalization & Review, Informal Review: what information did we gather; what did we learn?
- What information do we already have about sales comps, income comps, cost information?
- What information can we gather from databases?
- What information can we gather from other Counties?
- Highest & best use?

# Statewide Information

- Do other Counties have sales, income, cost information about similar properties? Is there a mechanism for such sharing?
- Does DOR have any relevant information, insights?
- Example: convened meeting about Lowe's, some informal sharing of information.

# Discovery

- Basic Information: Ownership, Valuation Claim
- History of Property: Purchase Price, Condition, Construction Costs, Repairs, Upfits
- Financial: Leases, Appraisals
- Valuation Methodology, Appraiser Identity
- Document Request: Appraisals, Sales, Leases, Construction & Repair Costs, Profit & Loss, Rent Rolls, Comparable Sales & Leases.

# Informal, Formal Discovery

- Informal: E-mailed or Oral Requests. Many cases can be settled just by comparing information and reaching common ground.
- Formal: Interrogatories & Request for Production of Documents—same as Civil Litigation.

# Responding to Discovery

- Consult with attorney at earliest possible moment. For this case, it was at the Board of Equalization & Review stage.
- Educate your attorney. What is the history of this property? What other information do we have? What does the relevant market look like?

# Team

- Internal staff: collect & analyze data; assist attorney with discovery; add expertise & review; catch mistakes of others—bad math, bad assumptions, bad methodology
- Attorney: Either in-house or outside counsel, need someone with some degree of PTC expertise and trial experience.
- Outside Appraiser: may be necessary for more complicated cases.

# Almost all cases are complicated!

For certain cases, taxpayers are going all-in. In the Lowe's case, they called 2 Lowe's witnesses, a NC appraiser and a nationally recognized appraiser---all over a single home improvement center in Kernersville. 2 attorneys argued on behalf of Lowe's.

If the County had relied solely on internal appraisers, we would have been severely outgunned.



# Alternative Facts?

- There is no viable market for home improvement centers in Kernersville because the **one-mile** radius around the store doesn't contain sufficient demand.
- The only way to value this store is to look at fee simple sales.
- Leases, construction costs are irrelevant because they are not market-based.

# More Alt-News

- This store is obsolescent because it is X-brand; no one else would want the building; deduct 45% of value.
- You need to consider that most operators of such properties aren't investment grade. X is not investment grade.
- The most comparable sales properties are abandoned, inferior, smaller stores in Sioux City, Iowa, and Plano, Texas.

# Subject Property



Is this the most comparable property  
in the United States?



# Research!

- Don't just believe the slick appraisal report:
- Where are these properties?
- How old? Why were they closed?
- How big? Same use or type of property?
- Any restrictions in the deeds?
- Cap Rate assumptions: investment-grade?
- What is the market for this property?

# What we found

- Restrictions not allowing use of up to 66% of property
- Competitive use restrictions for all conceivable competitors of the former owner---as a matter of corporate policy
- Buildings which had sat vacant for up to 10 years
- Existing Lease on a “fee simple” sale

# Prepare for Trial, Deposition

- Have multiple eyes on everything, especially both sets of Appraisal Reports
- Mistakes are inevitable—explain them
- Play the devil's advocate; probe weaknesses in your own case
- Meet with Appraiser; communicate; share expectations.

# Where We are Now

- At hearing, Forsyth County moved for dismissal of the Taxpayer's case. The County did not present its case, even though its witnesses were called by the Taxpayer
- PTC granted this dismissal.
- Lowe's appealed.



# COURT OF APPEAL HEARING

## ISSUES:

- WHAT IS “COMPETENT, MATERIAL, AND SUBSTANTIAL EVIDENCE?”
- DOES COUNTY WAIVE PRESUMPTION OF CORRECTNESS IF ITS VALUATION AT HEARING DOES NOT EQUAL ITS ASSESSMENT?

# Ongoing Issues

- National experts opining that FEE SIMPLE is the only way to value property; use of dark stores.
- Taxpayers only consider use by third party (*Corning; Parkdale*); obsolescence
- Use of restricted sales
- Expert arms wars; expense of trying cases
- Problems with retail
- Need to support each other