

A Spotlight on “Dark Stores”

The valuation of all “big-box” stores nationwide has been controversial for the last few years. Courts and legislatures have struggled with how to value these properties. TTARA describes the issues and existing Texas law.

Things to Know

- The Tax Code requires that property be appraised at its market value as of January 1 each year.
- Market value is defined as the amount for which an individual property would sell.
- Generally accepted appraisal procedures must be followed and three methods of determining market value are authorized: market sales comparison, cost, and income.
- Valuing “big-box” stores for property tax purposes is a controversial issue nationwide. The controversy concerns the use of “dark store” values as comparables in valuing operational “big-box” stores.
- “Dark store” appraisal means that occupied big-box stores would be valued as if they were vacant.
- While taxing units have expressed concern that “dark store” appraisals threaten to erode local tax bases, the theory has never been applied in Texas.

In the past few years, the method for valuing large retail properties has become a subject of controversy. Generally, the market value of a property may be determined using one of three methods:

- the income the property may generate,
- the cost of replacing the property, or
- a comparison to sales of similar properties.

Sales of large retail stores are infrequent, so comparable sales may be few, and when stores do sell, it is often because they have not been successful and have closed—a so-called “dark store.” Appraisal districts commonly use the income method for many types of business properties, including large retail stores, often referred to as “big-box” stores.

Should the value of a successful operational store be determined by comparing it to the value of a “dark store”?

Many taxpayers say “yes,” arguing the market value of their building is the value of the bricks and mortar—the physical property itself. Valuing an operational store higher is a tax on the business, rather than the building.

Chief appraisers say “no,” arguing that a property must be valued at its “highest and best use.” The market value of a closed store bears no relationship to the value of a successful one.

Property owners have had limited success in other states arguing the “dark store” appraisal theory. It has never been successfully litigated in Texas. Still, the issue concerns taxing units, chief appraisers, and property owners alike.

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What is a “big-box” store?

There is no accepted definition; however, these retail stores typically exceed 100,000 square feet and are located on 15 to 20-acre sites. The defining characteristic of a big-box store is its large size and windowless, box-like appearance.

What is a “dark” store?

The term generally describes a vacant store. The dark store appraisal theory means that occupied big-box stores should be valued as-if-vacant and available for sale or rent to a future hypothetical user rather than as currently used.

Arguments from owners

- Values should include the structure and land—not business use.
- Deed restrictions of any kind, even if placed on a property by an owner, limit property marketability, thus diminishing the value of big-box stores.
- If a property is a similar size, regardless of its investment class, occupancy, or deed restrictions, it is an appropriate comparable property for appraising an occupied big-box store.
- The property tax does not apply to intangible business value.
- Sales of vacant or “dark” stores are valid indicators of market value.

Arguments from government appraisers

- Vacant stores are not comparable to operational stores.
- If a big-box store is operating successfully, the current use is its highest and best use.
- Market value of real property is an estimate based on the property’s current physical condition, use, and zoning on the appraisal date.
- The fact that a big-box store is occupied is evidence that demand for the property exists.
- Leases may be considered in determining the market value of any property and are part of fee simple ownership.

Source: *Commercial Big-Box Retail: A Guide to Market Based Valuation*, Journal of Property Tax Assessment and Administration, International Association of Assessing Officers, Vol. 15, Issue I, 2018



What have the courts said?

Court decisions have been inconsistent around the country. Recent examples are:

- *Menard, Inc. v. City of Escanaba* (2017): The Michigan Supreme Court declined to hear Menard’s appeal of its store’s value. The appeals court ruled in favor of the City in 2016, rejecting the “dark” store value argument.
- *Home Depot v. Assessor for the Town of Queensbury* (2015): The New York Supreme Court ruled in favor of the property owner and rejected the use of comparable sales of operating properties subject to long-term leases.
- *Daniel G. Kamin Cleveland Ents. v. Cuyahoga Cty. Bd. of Revision* (2015): An Ohio appellate court rejected sales of vacant stores in determining the value of an operational K-Mart.

Texas courts have yet to rule on the issue.

Are special laws needed regarding appraisal of “big-box” stores?

The Tax Code provides the methodology for appraising “big-box” stores. Generally accepted appraisal procedures must be used and the characteristics of comparable properties are listed. These procedures permit consideration of highest and best use, legal restrictions, and other matters. They are comprehensive and permit appraisers to consider the individual characteristics of “big-box” and “dark” stores in order to determine market values according to Texas law.

