

Dark Stores

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There are many worthy assessment-related questions posed on [PTAX](#) and elsewhere that I hope we can address during the life of this new blog. But given our blog title, *Death and Taxes*, and a topic looming around us that some have coined *Dark Stores*, it seems like a dark and creepy coincidence to start right here.

The Dark Store Theory, if it hasn't already premiered nearby, is coming to a town near you. It sounds like a scary movie, and some assessors wish it was fictional, but this is a real story. The story goes like this: "Big box" store owners, such as NC-Based Lowes, contend that the value of their relatively new buildings is comparable to the value of similar, but vacated, "dark" buildings. Many times, store owners want to use comparable sales. It is typical for owners that eventually sell their buildings to use deed restrictions limiting buyers that have competitive uses. So, they argue, assessors should look at sales of stores that have gone out of business and are vacant, since that's the only way their current, subject store would ever come on the market. The result in jurisdictions where this theory has been argued successfully has been devastating to local governments relying on the property tax. According to the [Michigan Municipal League](#), in their state, Lowes stores are assessed at \$22.10 per square foot. Those same stores here in North Carolina are valued at \$79.08 per square foot. Michigan assesses property at the municipal level, and when putting all related [Michigan Tax Tribunal](#) cases together, it's estimated to have cost their municipalities about \$200 million since 2010. This has become such a big deal, that Northern Michigan University recently premiered a documentary, [Boxed In](#), about the whole experience. So in some ways, it has really become a scary movie. Fortunately for Michigan local governments, and all other property owners who share in the local property tax burden, this thing might be turning the other way as their legislature is working on a fix [with HB 5576](#) and a recent [Court of Appeals](#) decision that [seems to mirror the proposed legislation](#).

If you're hoping to read an opinion on the merits of each side of the opposing appraisal arguments in these cases, I'm going to let you down this time. But I hope you'll consider responding with your thoughts. There are particulars of these appraisal arguments, such as highest and best use, value in use, legal attributes of property and property rights, comparable sales, [market analysis](#), and market data, which I believe we can discuss and develop into future blog posts. One small note: I have no problem with vacant stores or vacant homes being chosen as comparables to their respective occupied subjects. I think what matters more is a [thorough market analysis](#) to determine if there are market influences, perhaps contributing to the vacancy of the comparable, that may be

different than the market influences affecting the subject.

Opinions on both sides of the argument are already available, written by well-credentialed and knowledgeable appraisers. The authors of these opinions are sometimes seen as expert witnesses on either side of many court cases across the country. I plan to stay out of that arena for now.

At present, I want to share a few of my takeaways from the experience in Michigan, and open the floor for your takeaways, comments and questions. Your enthusiasm will be substantially increased if you first watch the documentary referenced above, [Boxed In](#).

In the first five minutes of the documentary, I heard the Michigan Tax Tribunal Chief Judge imply that the reason big box store owners are winning is simply because they can afford a better legal team and that the real issue is the inability of local governments to financially defend their assessments. Really? That is the real issue? Certainly I agree there is an advantage to a well-prepared legal team, but there are really two areas here where we can focus: (1) We should use the proper resources surrounding our county property assessments, and (2) We should maintain assessment decision-making bodies that can and will seek-out, respect, and utilize the true merits of a case.

1. For assessor's offices, if we don't first perform good appraisal work, using accurate data, with a well-educated, well-equipped, and qualified staff, it's going to be a lose-lose for us and our taxpayers. We must be aware of the magnitude and steps required to get a project done at a level of quality that our citizens deserve. Then, we need to be aware of the resources available to get the job done, and how much those resources cost. An appraisal that is not backed up with good data, even one that might be close to actual market value, is subject to exposure from an appellant, and of course it's the ones with deep pockets that cost the most. A jurisdiction that wants to avoid exposure of poor appraisal, but perhaps did not have or use the resources needed to acquire good income and expense data, or comparable sales, or perform a quality data collection process in the years prior to reappraisal, probably will find it easier to fall in one direction – lowering an appealed value. So an attempt to save money before hand, by not doing what is needed, really costs a jurisdiction more due to the inability to defend values in appeals, especially big appeals, the ones that can add up to millions, like big boxes. Assessors and appraisers are steaming now and getting angry at the author. I know assessors and appraisers don't control their own budgets.....But we do need to be knowledgeable about the resources needed, request them objectively, then document those requests along with the responses.
2. At the next level, for the assessor's boss (county commissioners, manager, or a host of other arrangements I've seen ----this will be another blog post for later). I hope you encourage and enable the department that makes up the largest source of unrestricted revenue in your county to do good appraisal work, use accurate data, and employ a well-educated, well-equipped and qualified staff. A bad reappraisal can be detrimental for everyone. It seems it would be a positive thing as a boss to rely on their appointed

assessor to be aware of the resources needed to do the job they have been legally [required, certified, and educated](#) to do. I support good government ([buy a mug online or at our SOG bookstore](#)). “The budget is a reflection of how much political support exists for accurate and equitable assessments. Legal and administrative responsibilities cannot be met if resources are inadequate. ” -[Assessment Administration” pg 119, IAAO, 2003](#)

3. At the various levels of appeal in our state, I hope board and commission members would never (due to the inability or lack of desire to hear and understand the merits of a case) lean toward favoring the more financially powerful party. That hope remains when local government is the more financially powerful party, for example in cases with [pro se](#) appellants. All of our taxpayers deserve judicial or [quasi-judicial bodies](#) that have the desire to become learned enough to see through potentially misleading appraisal opinions. Credit goes to our [NC Property Tax Commission](#), which has demonstrated their knowledge of appraisal with [this decision](#) of the first PTC case on the dark stores issue. The current NC Property Tax Commission includes at least two members who, among other qualifications, are state-certified appraisers, hold the MAI designation, and other designations awarded by the Appraisal Institute. I've even seen members attending assessment related courses here at the School of Government. Very cool. When making appraisal decisions for our citizens, it seems like a good idea to have a sound understanding of appraisal concepts.

And here was another lesson for me. At first I was confused by the concern of the permanency of the \$200 million loss from the dark store Michigan Tax Tribunal decisions. Then I understood that in 1994, Michigan voters passed Proposal A, allowing tax caps. Now, years after passing Proposal A, many taxable values are no longer really tied to a resemblance of a recent estimate of market value. During the real estate boom that occurred in the years before our nation went into recession, around the end of 2007, other states ran towards the idea of tax caps. At that time, tax caps were discussed, but not implemented, in North Carolina. But in recent years, real estate prices have been increasing again in many parts of the country. I completely understand why taxpayers might have property tax concerns when they see their taxable values increase, but if the issue comes up again in our state, let's thoroughly discuss alternative solutions to tax caps. The property tax is an “ad valorem” tax. This means a tax based on the value of the property. A whole new blog post can go here, but an ad valorem tax should involve equalization through frequent reappraisal at fair market value. I think transparency and the “easy button” can be beneficial. Those beneficial items are the opposite of tax caps and varying assessment levels. Beware of unintended consequences of tax caps. Tax Caps and laws that vary assessed value from market value [can be confusing](#) and costly to administer. [Check out this 4 and a half minute video](#) that attempts to simplify things for Michigan taxpayers who have trouble calculating, or understanding the source of, the taxable value of their home. To Michiganders, please accept my apologies for any offense taken. I'm only using Michigan as an example because it is tied to the big box issue. I am not claiming that we have it all figured out here. The truth is, most other states have some system of varying assessment levels or tax caps. But as opposed to the above, what do readers see to be the pros and cons in North Carolina's system? Ours is one that has no varying

assessment levels and also ties taxable value to 100% market value as of the date of the most recent general reappraisal. Period. Because of tax caps, the dark store Michigan Tax Tribunal decisions lowering values of relatively new stores to those of abandoned dark stores will restrict those values from increasing at a rate faster than the published rate of inflation, even if very qualified appraisers in Michigan find out that those earlier decisions were wrong. In North Carolina, because we don't have tax caps, our assessors and appraisers, at each reappraisal, adjust taxable value to 100% of fair market value.

Finally, I will share from an old personal property guy's perspective, a case that dealt with the assessment of inventory back before it was exempt. It's our well-cited NC Supreme Court case, [In re Amp](#), 287 N.C. 547, 215 S.E.2d 752 (1975). This case seems to support our assessors' understanding of big box appraisal. [A 2008 School of Government bulletin](#) analyzed the case along these lines:

With regards to inventory that was not defective, and had no real purpose for anyone except the owner, the court pointed to the obvious fact that no ongoing business entity would sell its in-process inventory for scrap prices. Amp's assertion that it could only realize scrap value from the sale of such uncompleted items failed to recognize the assumption that the entity was ongoing, thereby contradicting the purpose of the statutory requirement that all property be valued at its true value in money. The court noted that the mere fact that there was no market for particular property did not deprive it of market value, which could be established by reference to factors other than sales. The proper standard for valuing such property, according to the court, was replacement cost plus labor and overhead.

Doesn't Amp's assertion seem akin to one of a big box retailer who claims they could only realize a sale price of their non-defective big box store similar to one that has been scrapped, because they will not sell their big box store as of the assessment date? Is this an assertion that there is no market at the same highest and best use that the current owner enjoys?