

Property Lawsuits Skyrocket in Bexar County



The JW Marriott San Antonio Hill Country Resort & Spa as it neared completions in 2010. It has sued over appraisals each year.

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SAN ANTONIO - Business owners are suing Bexar County over their property appraisals at a record pace, a practice that has reduced the tax rolls by hundreds of millions of dollars in the past six years, costing school districts and local governments millions in potential revenues.

Businesses filed more than 600 lawsuits against the Bexar Appraisal District last year to protest more than \$10 billion in appraised values, out of the total tax base of \$120 billion.

And as recent history has shown, the vast majority of those suits will be settled by the district, which lacks manpower to fight the litigation and tries to avoid expensive trials.

Settlements reached a high mark in 2009, when lawsuits stripped more than \$843 million from tax rolls, with some suits still pending. This year's reduction could be even higher.

The disputes largely are centered around different ways to value properties.

Commercial property owners typically argue for appraisals based on an equity approach, or how similar properties are valued. County appraisers rely on a market approach, which largely is based on sales prices.

The appraisal district says the "equity" approach allows tax lawyers to cherry pick properties for comparisons that are favorable to their case. Tax lawyers say they are suing more than ever because the appraisal district has aggressively sought higher values.

"The methods in place are truly, extremely vulnerable to abuse," said Karen Evertson, a lawyer in Austin who spends 80 percent of her time representing the Bexar Appraisal District in litigation. "If you negotiate with one person, another person with a similar property views that settlement and wants an adjustment. The cases are almost exclusively commercial, and it's shocking. The system is definitely abused."

Businesses account for about \$21 billion in the county's overall property value, a much smaller share of the pie than residences. But business owners file the most lawsuits because the disputed values can reach into the millions of dollars.

The lawsuits rarely go to trial but can take years to settle. The delay leaves millions of dollars of property values on the table, reducing the flexibility of local governments to pam on annual tax revenues.

The impact is tangible. If local governments and school districts tax properties at higher values assigned by the appraisal district that then are lowered, they have two months to reimburse the property owners for overpaid taxes, plus inflation.

This year, San Antonio's budget anticipates that property value settlements will be about \$2 billion lower than originally appraised, a loss that would translate to about 9.5 million in tax revenues.

The Judson Independent School District usually spends about \$400,000 a year out of its \$166 million operating budget to settle reimbursements. But with the increase in lawsuits and settlements, it already had spent that much midway through last year, a spokesman said.

That would have covered about eight teachers. And the losses don't yet include Judson's highest taxpayer, the JW Marriott San Antonio Hill Country Resort & Spa, whose owners have trimmed more than \$100 million from its appraised value in recent years.



This is the pool at the Alteza Residence, where a penthouse sold for \$2.95 million. It's on this year's tax rolls at \$1.12 million.

“It’s not an easy thing to plan for,” Judson spokesman Steve Linscomb said. “If our local funding level goes down, which it does because of lawsuits being settled , the state will make up the difference, but there’s quite a bit of time lag. It does put us in and awkward position.”

Northside Independent School District, the state fourth largest with more than 100,000 students, stays up to date with the lawsuits and is aware of the equal and uniform concern. But, superintendent Brian Woods said, the district doesn’t have to deal with many cases.

“It’s a concern, not just for school districts, but for any taxing entity that’s involved in the infrastructure of a community,” he said.

Since 2008, the total appraised value in Bexar County has hovered between \$110 billion and \$112 billion, then rose to \$120.6 billion last year. With no state income tax in Texas, local governments and schools rely heavily on property taxed to pay their bills, leaving them vulnerable to steep declines in values.

For last year, \$10.2 billion still is under litigation, the appraisal district reports, so the true effects of the increased lawsuits in 2013 has yet to be determined.

Setting different values

Different interpretations of property values are embedded in law.

While the Texas Constitution mandates that appraisals be equal and uniform, the state's tax law demands that properties are appraised at market value, or the value that they would sell for in normal market conditions. Either standard can be used, but courts have decided that if those two appraisals are different, the equity price prevails.

But exactly which appraisal that means - the initial value assigned to the property or the value after appeals and litigation - is up for discussion.

Property tax lawyers say it's beneficial to stall if a case under appeals is similar to another further along in the litigation pipeline, in order to take advantage of the lowest comparables. It's that practice that appraisal districts say threaten a community's tax base.

District officials say it's not fiscally responsible to fight these cases with taxpayer dollars in court. If the property owner was the trial, the appraisal district has to pay all legal fees.

"The fact of the matter is, we're losing hundreds of millions of dollars, and it's because of the equal and uniform appeals." Bexar Chief Appraiser Michael Amezcuita said.

Lawyers on the other side beg to differ.

"I think that's a hyperbole," said Joseph Harrison IV, a Floresville-based property tax lawyer. "The system is what it has been. We will still have pretty well-defined standards of market value, and the equal and uniform law goes back 15 years now."

Lorri Michel, an Austin-based property tax lawyer who used to represent appraisal districts said the disputes aren't "anywhere near the crisis situation" portrayed by some districts.

"I personally think that Bexar Appraisal District and a few other have basically launched a public relations campaign directed at the next legislative session to whittle down the equal and uniform provision," said Michel, who does most of her work in Bexar County and is headed to trial in February in a lawsuit over an apartment complex in the Medical Center.

Millions lost

The Bexar Appraisal District, tax lawyers argue, doesn't have enough time to properly assign value to every building in the county. Tax rolls are certified in July, meaning that at that point, 95 percent of all accounts must be final. But soon after that, Amezcuita said, the appraisal district starts to receive notices of lawsuits. Negotiations begin, and the appraisal district is legally required to settle at the appraised value or less. It can't raise values again in the legal process.

High-end examples show what's at stake.

Take the JW Marriott resort, which sues over its appraisals every year.

It originally was valued at \$145.7 million in 2009, but lawsuits reduced the property's value in 2010 and 2011, by \$25 million and \$100 million, respectively. In 2011, the resort was appraised at \$150 million; last year, the appraisal jumped to \$210 million - \$2 million more than its 2012 appraised value. Lawsuits for both years are pending.

The resort reportedly cost more than \$600 million to build and was granted a 29 year nonannexation agreement in 2005 from the city of San Antonio, representing a loss of tax revenues to the city of about \$50 million.

"I don't comment on specific cases that are pending, other than to say that my client is simply using the available remedies to ensure they're treated fairly," said Mark Hutcheson, the resort's Austin-based lawyer.

Hutcheson is one of the most prolific property tax lawyers in Bexar County, as is Harrison, who handled litigation for the the TPC San Antonio golf courses surrounding the Marriott resort.

In 2009, Harrison tried to prove that 375 acres of land used for the golf courses merited a wildlife management valuation, which would have resulted in million of dollars in tax savings. He lost that appeal.

"I'm an advocate on the taxpayer's side, always," he said. "There's hundreds of thousands of accounts in Bexar County that have to be valued every year. The appraisal district gets a lot of them right, but by definition, it's mass appraisal. You're going to have variation."

Harrison also has represented Tx Riverwalk Residences, the holding company for unsold units in the Alteza, 147 condos perched atop downtown Grand Hyatt hotel.

In 2012, the company owned 122 units, and sued the appraisal district over the values of each one. Settlements ensued, and as a result \$20.2 million was taken off of the county's tax rolls. Last month, the Alteza Residences boasted that its largest penthouse sold for \$2.95 million, "making it the most expensive condominium ever sold in San Antonio," a news release states.

Based on appraisal district records, that 5,600-square-foot, two-story unit with five bedrooms and 6 1/2 baths was valued at \$1.76 million in 2011. The unit's appraised value was among those disputed in 2012, resulting in a value reduced to \$1.23 million, or removing \$500,000 from the tax rolls. It dropped even more - to \$1.12 million - on this year's tax rolls.

Harrison said that in 2012, the appraisals were litigated because condos weren't being built or sold, and the units were unoccupied. This year's value wasn't disputed because "it was not necessary to sue," Harrison said. "Sometimes it works that way, when you had prior year litigation, that there's enough information and everybody gets educated on both sides."

Michel, the Austin-based lawyer, said her client this year wanted to sue over the Abbey at Medical Center, at 5459 Rowley Road. Valued in 2011 for \$7 million, the property jumped to \$15 million in 2012

and \$19.7 million this year. She is challenging both of those appraisals under the equity provision, and said that the district's comparables have much higher rents than her client's property.

"We completely disagree on the set of comps and the methodology," Michel said. "I don't know why our property was bumped up so high."

Mary Kieke, deputy chief appraiser in Bexar County, said the two parties haven't settled because the property owner won't sign a clause that essentially said the district can change his value next year even though a state law makes it harder to change values that have been appealed for one year. The clause is intended to waive from that rule the appraisals of properties settled through the lawsuits.

"We are trying to desperately to settle things that are set for trial very quickly," she said, "but the reality is that people are getting more aggressive and less likely to settle."