



Commercial vs. Residential Appeals

Setting the Record Straight

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Commercial vs. Residential Appeals: Setting the Record Straight

As one might expect, winning a property tax appeal requires an in-depth understanding of the law, as well as knowing how to apply it to the subject's facts. Furthermore, in some counties, corporations, including limited liability companies ("LLCs"), need to utilize an attorney to file a property tax appeal.

The strongest evidence for most residential and commercial property tax appeals consists of recent sales (post-2014 this year) of similar properties...three or more properties located in the same geographic area as the subject property. The sales prices must be less than three times the subject's assessed value. However, finding residential comparables is typically much easier than finding comparable commercial properties ...Sales of comparable residential properties often consist of sales of virtually identical tract houses, requiring few, if any, adjustments to the sales prices (such as for the lack of a finished basement) when preparing the appeal.

Unlike residential properties, comparables for commercial properties are almost always different, even if they are in the same geographic area. Some common differences often include:

- Variances in building and / or land square footage;
- The number of loading docks;
- The heights of ceilings; and
- The percentage of warehouse space.

Due to these differences, finding sales of comparable commercial properties is typically more challenging than doing so in the residential arena. In fact, at times, Lake County Appeal ("LCA") recommends an appraisal when an appraisal is cost-justified. A *certified appraiser*, unlike a tax attorney, can make appropriate sales price adjustments, even to similar properties located rather far from the subject.

LCA also files some, but vastly fewer, appeals on *the grounds of*

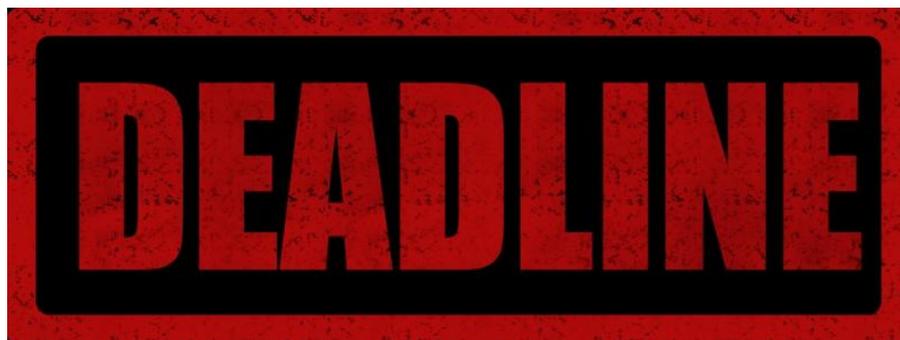
*uniformity...*three or more of the subject's neighbors' identical properties are taxed less than the subject. While it may be difficult to make a uniformity case in the residential setting, it is virtually impossible (except for commercial / industrial office condominiums) to make the case in a commercial setting, due to the common differences among properties, as noted above. It is also difficult to make a case, whether residential or commercial, based upon a "matter of law" ...essentially a legal technicality, as the appropriate facts for such cases are "far and few between".

Unlike the laws governing appeals for residential properties, the laws governing appeals for commercial properties offer two additional legal theories that may support an appeal. The first one is based upon *vacancy*. A vacancy appeal requires the subject property to have been vacant or partially vacant for a substantial period during the prior year, where no rent was collected and the property was advertised for sale or lease during that period



The best result that LCA could obtain for a client based upon a tax appeal due to vacancy *is a one year, 50% reduction in the subject's building's assessed value* (i.e., not the land's assessed value).

LCA also files commercial property tax appeals based upon the subject's owner's last three tax returns relating to the property. In order to file this type of appeal, an adjusted net operating income for each of the years is derived and is then divided by a capitalization rate (i.e., the *rate* of return on a real estate investment property based on the income that the property is expected to generate) in order to derive market value. This type of appeal requires the investment in the subject to be passive...It is not available where the subject is owner-occupied.



The following counties and townships have published, or will soon publish, their 2016 property tax appeal deadlines. **Learn more about your county by clicking below.**

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