Property Tax Litigation Update:
Courts Are Limiting the Scope of Discovery in Equal and Uniform Lawsuits

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The scope of permissible discovery in equal and uniform lawsuits has been debated for decades. Appraisal districts routinely serve discovery requests seeking sales prices, bank information, loan documents, financing agreements, and appraisal reports previously prepared for financing purposes. Naturally, these requests are met with resistance from property owners, who claim that such information is irrelevant and unnecessary to determine an unequal appraisal challenge. The disagreement regarding what is discoverable and what is not has been based on apparent confusion regarding the nature of the equal and uniform remedy. To some property owners, though, it seems more like an appraisal district attempt to engage in a fishing expedition for financial records and appraisal reports unrelated to their property tax lawsuit.

When contesting appraised values, Texas property owners have two basic remedies. They can claim that their appraised value is excessive (i.e., above market value). Tex. Tax Code § 42.25. They can also claim that their property has been unequally appraised (i.e., has not been appraised in an equal and uniform manner when compared to other properties). Tex. Tax Code § 42.26. The Texas Tax Code provides an efficient cause of action for correcting unequal appraisal. Specifically, Section 42.26(a)(3) provides that a "district court shall grant relief on the ground that a property is appraised unequally if the appraised value of the property exceeds the median value of a reasonable number of comparable properties appropriately adjusted." This remedy is rooted in the Texas Constitution's mandate that "[t]axation shall be equal and uniform." Tex. Const. art. VIII, § 1(a). The guarantee of equal and uniform taxation is so important that a number of courts have held that, "[i]f a conflict exists between taxation at market value and equal and uniform

taxation, equal and uniform taxation must prevail." *Harris County Appraisal District v. United Investors Realty Trust*, 47 S.W.3d 648, 654 (Tex. App.—Houston [14th Dist.] 2001, pet. denied); *see Harris County Appraisal District v. Kempwood Plaza Ltd.*, 186 S.W.3d 155, 162 (Tex. App.—Houston [1st Dist.] 2006, no pet.).

Over the last three years, courts of appeals have considered the permissible scope of discovery in equal and uniform lawsuits. They have ruled that appraisal reports, sales prices, and other information concerning the "market value" of property are generally irrelevant and not discoverable. The scope of discovery for equal and uniform lawsuits, accordingly, is remarkably different and more restrictive than lawsuits contesting "above market" appraised values.

In *In re Catherine Tower, LLC*, the Austin Court of Appeals prohibited the Travis Central Appraisal District from obtaining any "appraisals, valuations, or estimates of value performed in connection with the loan" concerning a luxury high-rise apartment complex. 553 S.W.3d 679, 682, 686–687 (Tex. App.—Austin 2018, orig. proceeding [mand. denied]). The property was financed through a bank loan, which originated from a financing agreement that included extensive financial and business information regarding the property and its owner. In rejecting the "litigation tactics of the local appraisal district," the court explained that unequal appraisal actions do "not hinge upon whether the subject property's appraisal is consonant with its market value." In its reasoning, the court stated that while detailed information in a financing report may have some relevance to a property's market value, similar information is not permitted to prove an unequal appraisal claim. The opinion underscored that an equal and uniform action is an independent claim that "stands in contrast to a taxpayer's challenge to the underlying determination of the appraised value in itself . . . ."

Similarly, in *In re APTWT, LLC*, the Houston Fourteenth Court of Appeals clarified that, for purposes of equal and uniform lawsuits, sales prices found in closing statements and value opinions stated in appraisal reports are irrelevant. 612 S.W.3d 85, 90–91 (Tex. App.—Houston [14th Dist.] 2020, orig. proceeding [mand. pending]) (application for mandamus filed January 29, 2021). The court prohibited the Harris County Appraisal District from accessing "appraisals, sales documents, and closing statements" arising out of the purchase of an apartment complex. Agreeing with *In re Catherine Tower,* the court explained that if "proof of market value is not required [in equal and uniform lawsuits] and market value does not prevail over uniform taxation in a property owner's unequal appraisal action . . . , then it logically follows that evidence of market value of the subject property is not necessarily relevant in such action." The opinion further highlighted that relief under Section 42.26(a)(3) of the Texas Tax Code does not independently determine the market value of either the subject property or the comparable properties.

These two opinions provide a bright-line rule prohibiting market value-related discovery in equal and uniform property tax valuation lawsuits. The one minor exception is for portions of appraisal reports and financing records that provide detail about the selection of comparable properties and the application of appropriate adjustments (i.e., property size, age, and depreciation). As clearly stated in *In re Catherine Tower*, to determine the merits of an equal and uniform claim, "one merely takes the appraised values of the subject property and of the comparison properties as 'found on the tax rolls' and compares them, and 'the only independent analysis required is adjusting the appraised values [of the comparison properties] to put the properties on equal footing.'" *In re Catherine Tower*, 553 S.W.3d at 686. Courts are protecting the efficiency of this remedy by confirming the limited scope of discovery.