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Municipal tax litigation: How to get great results with less time and money

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Like most litigation, property tax appeals tend to take on a life of their own. Some are framed for having an open and honest dialogue about market value that includes competing though reasonable opinions. Others are framed in clouds of secrecy and mistrust. Limited credible opinions are offered. Information is tightly held as if its mere dissemination threatens the case. The life an appeal takes on depends on who frames the debate. Who your attorney is will matter.

Very soon property owners will be asking attorneys to file appeals into court. Some of these cases will take a path toward negotiations and relatively early settlement in favor of the property owner. Some of these cases will take a path toward several years of litigation, large legal bills and a resolution no more favorable than if the case had been tracked toward negotiation in the first place. Of course there are some cases that will have to be seriously litigated. Formal discovery will have to be answered. Depositions will have to be taken. Negotiations will take place only at the court house steps, if at all. But, by the very nature of tax appeals the number of such cases are few and the exception to the rule.

By far the best policy is for your attorney to approach these cases as matters to be settled with aggressive negotiation. There is always time to turn up the heat if negotiations fail.

So, how can you tell if your attorney is working toward a negotiated settlement before he starts cranking up the case (and legal fees):

1. Your attorney obtains and discloses an appraisal at the onset of the case, even before requested by the other side. Tax appeals are ultimately and, usually only, about the proper valuation of a parcel of real estate. There are set methods to valuing real estate used by all competent appraisers. There is no mystery to the process and usually the information upon which opinions of value are based, are open and available to both sides.

Tax assessors understand that professional appraisers often have better access to this information than they do and welcome the opportunity to reevaluate their decisions in light of better information. Also, most assessors will not start serious negotiations until they have good, complete market data which supports the property owner's claim. Further, towns hate to hire appraisers and would much rather have their experts review your report. This starts the discussion right where your appraiser wants it on his ground.

2. Your attorney delays formal discovery until negotiations break down. Usually both sides of an appeal will file written sets of questions and requests for producing documents at the outset of the case. Formally responding to these requests is time consuming and expensive. The Rules of Practice say that answers must be filed within 30-60 days. Nonetheless your attorney can ask the town's counsel to agree to delay formal answers until settlement negotiations fail. Both sides can agree on what information needs to be informally exchanged before negotiations commence.

3. Your attorney takes the attitude that an issue of value is something that reasonable people can reach an agreement upon. In many types of litigation there is often a strong contentious component. The attorneys immediately square off like dogs in a ring and look for a leg to chew on. In tax appeals this sometimes is required where there might be a clear issue of bad faith, but it is very, very rare. The vast majority of tax appeals should be based on an unemotional cost/benefit analysis. And usually the costs are lessened and the benefits increased by your attorney establishing good working relationship with opposing counsel from the outset.

I have successfully litigated personal injury actions, professional malpractice cases, contract disputes and a variety of real estate actions. Municipal tax appeals are an entirely different type of action. Proper lawyering in a tax appeal consists, from the outset, of aggressively pursuing the client's position in a forum of negotiation. Nine out of ten times this will succeed in giving the client a very favorable outcome with a reasonable expenditure of time and money.

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