

HB 2780 Proponent Testimony - written only
County to pay costs associated with property tax appeal
House Taxation Committee
Dave Trabert - President
March 20, 2018



Chairman Johnson and Members of the Committee,

We appreciate this opportunity to testify in support of HB 2780, which require the county to pay costs associated with a taxpayer's success property tax appeal.

Currently, counties have no incentive to reasonably resolve property tax appeals; their out-of-pocket costs are minimal but commercial property owners can spend tens of thousands of dollars even before going to the Board of Tax Appeals. And adding insult to injury, property owners report counties often offer to settle just before going before the Board, leaving property owners with at least the impression that government prolongs the appeals process hoping that the cost of the appeal will exceed the potential tax savings and force the case to be dropped.

The most recent example of the need the county-pays provision is explained in "JoCo Boosts Big Box Appraisal 85% in Single Year, Retailers See Red (attached)." The Johnson County appraiser boosted big-box retailers' appraisals by an average of 85 percent in 2016, prompting owners like Target, Walmart, Home Depot and others to incur significant costs to appeal and pay millions in higher taxes under protest.

We encourage the Committee to support HB 2780 and stand in support of fairness in the appeals process.

JoCo Boosts Big Box Appraisal 85% in Single Year, Retailers See Red

 sentinelksmo.org/joco-boosts-big-box-appraisal-85-single-year-retailers-see-red

March 1, 2018

Dark Store Showdown: Executives Back Bus over JoCo Tax Assessments

Johnson County is ground zero in “dark store theory” controversy, an ongoing legal and legislative debate about how commercial real estate is assessed. Business executives and a commercial tax attorney had harsh words for Johnson County’s commercial assessment process during a Senate committee meeting Wednesday.

“The truth is the Dark Store Theory has a lot in common with the tooth fairy,” commercial tax attorney Linda Terrill told committee members. “It’s just a pivot and diversion from what is happening with property values in retail.”

Commercial assessments, especially for big box stores like Target, Walmart, Best Buy, and Home Depot, are skyrocketing. According to “Dark Store Theory,” big box retailers are seeking a valuation loophole to have their properties assessed as if they’re vacant. Though the term sounds scary, Terrill says real estate should be valued for what it would sell for on the market and not valued based on the success of the business inside the building. As she described it, in Johnson County, the value of the building is different based on whether the name on the outside of it reads “Nordstrom” or “Dillons.”

As far as she knows, every big box store in Johnson County has filed an appeal of its 2016 assessed valuations, Terrill told the committee.

“That’s an amazing statistic,” Terrill said.

Assessed values for the 57 Johnson County big box stores larger than 40,000-square-foot increased from more than \$400 million in 2015 to more than \$742 million in 2016, an 85 percent increase in a single year. The 10 Johnson County Walmart stores saw their valuations increase from \$10 million to \$22 million in a single year.

Although officials throughout the country are discussing dark store theory, David LeVan, a senior director at Walmart, told the committee Johnson County’s valuation increases are outpacing the rest of the nation.

“We haven’t seen those types of increases anywhere else in Kansas or in the rest of the country,” he said.

Terrill says the big valuation jumps coincided with a property tax law, or lid, that limits the ability of counties and cities to raise property tax rates above inflation unless citizens approve the increase via the ballot box. The lid was phased in, giving cities and counties time to increase

property values and set a baseline. Commercial property values skyrocketed between the time the law was passed and its phase in.

“These are valuations that companies don’t plan for and can’t absorb,” she says.

Dan Kurz, a partner in the investment firm that owns the Overland Park Marriott Hotel, said the Johnson County Appraiser’s Office is the biggest threat to the hotel’s solvency.

Kurz’s investment group, Integrated Capital, purchased the Marriott property in 2007. They’ve protested their tax assessment nine out of the last 10 years. The one exception, he said, is the year they were able to negotiate a two-year tax appeal settlement. He called the Johnson County Appraiser’s Office “out of touch with economic realities.”

“We’re very concerned with growth prospects for Johnson County and our Marriott without changes to the Johnson County Appraiser’s Office,” he said.

Johnson County Board of Commissioners Chair, Ed Eilert, sat in the audience shaking his head in disagreement as speaker after speaker criticized the county’s assessments. Eilert fired Dark Store Theory missives to Shawnee Mission School Board members a day earlier, asking school officials to get involved in the debate. He told the Shawnee Mission board that a recent decision by the Kansas Board of Tax Appeals to use “dark store” valuations for Target stores caused that retailer’s tax liability to plummet by 30 percent.

“That’s a lot of money that’s not collected. And if it’s not collected from that class of property, who pays?” Eilert told the Shawnee Mission school board. “All of us that are left, and that means primarily residential properties.”

Terrill won a property tax appeal for Target stores in Sedgwick County. It may result in the county refunding some of the \$1.13 million it paid in property taxes in 2015.

Eilert said if all retailers are assessed using dark store methods, the Johnson County stands to lose tens of millions, and school districts and cities would lose \$70 million in revenue. Terrill says, however, that continuing to assess real estate based on the success of the business would require a law change and possibly, a constitutional amendment.

The drive to assess properties based on a business’s success started with McDonald’s, Terrill explained. The fast food chain started putting golden arches on their buildings.

“Suddenly, we’re branding a building. That branding technique spread,” she said.

Home Depots adopted orange buildings. Walmarts are blue. Targets became red. Meanwhile, the retailers financed their expansions through leaseback agreements in which investors purchased a big box store and leased it back to the retailer with rental rates that included the value of sales within the store and the merchandise itself. Assessors began using those numbers for tax valuations rather than what it would cost to sell the building and the real property alone.

For a time, retailers didn’t have comparable sales in order to properly protest the changes in

assessments.

“But we have sales now,” she says. “We have a huge database of sales of properties that were available on the market. And they’re coming in on big box stores at between \$25 to \$40 per-square-foot.”

Many times, however, their tax valuations are for \$130 or more per-square-foot.

“Every year, I get clients who say, ‘I’m budgeting for next year. What should I put in the budget for an expected valuation increase?’ Not once have I uttered, ‘128 percent would be a good number,’” Terrill told the committee.

According to Eilert, dark store theory only values the walls and the ceiling of a commercial building, and that’s it.

“Even though the property has thousands of people going in and out of the store every day, and they’re doing tens of millions or maybe a hundred million dollars in sales or more every year, the theory that’s been advanced is that the value of that property is that it’s empty,” Eilert said.

If every big box store in Johnson County wins its tax appeal, the county will owe some big refunds. According to Terrill, that is why there’s a public relations push to change laws to disallow dark store valuations or legalize other theories of property assessment.

“If a guy robs a bank, and we find him a couple of months later, and he tells the prosecutor that he already spent the money, we don’t expect the bank robber to come into the legislature and say, can you legalize bank robbing here? I’m kind of in trouble,” she says.

Terrill didn’t recommend changes to existing law, but she said it’s time for a deeper examination of property taxation in the Sunflower State. There are 105 county appraisers in the state, charged with valuing properties every year. Terrill says there’s a perception that appraisers who work at the pleasure of a county commission have an incentive to value properties based on how much commissioners want to spend.

“Whether that’s reality or not, that’s the perception,” she told the committee. “If they were state employees, you couldn’t draw that direct line between what the county needs assessments to be and what the county wants to spend.”