

Panel sides against Lowe's in Bexar County 'dark store' property value dispute

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A Bexar County arbitration panel rejected arguments by Lowe's Home Centers to value some of its San Antonio area stores as if they were empty instead of functioning businesses, according to a seven-page decision issued Wednesday.

It's an argument the North Carolina-based company has successfully used in Michigan and Indiana where major retailers have driven down property values and tax revenue. City officials say a victory for Lowe's could cost area taxpayers more than \$272 million over five years if the home improvement retailer wins.

Lowe's is suing Bexar County to try to cut its property values in half for 10 area stores. The decision by the three-person panel is non-binding and only applies to four local stores, allowing Lowe's to still challenge its property valuations in court.

"We're evaluating the decision," Lowe's spokeswoman Karen Cobb said in an email, adding, "It would be inappropriate to comment further at this time."

Lowe's, Home Depot Inc., Kohl's Department Stores, Target and Walmart are trying to persuade judges in Texas and elsewhere that their stores should be appraised as so-called "dark stores" — which are vacant buildings instead of fully functioning businesses. Appraisers generally value a property at its "highest and best use," meaning at whatever function makes the most money from the property in its current condition.

However, retailers argue that their stores should be assessed as if the building were vacant and the property carried onerous deed restrictions — thus lowering its marketability and value to potential buyers.

The chain's 10 stores in Bexar County were valued between \$80 and \$85 per square foot in 2016. The appraisal district estimates those values would drop to roughly \$30 a square foot if Lowe's prevails in its lawsuit.

Lowe's has said it's seeking a "[fair assessment](#)" of its properties while the appraisal district estimates a \$64.3 billion loss in commercial property value within five years if the big box chain is victorious — and other retailers and businesses employ the same "dark store" appraisal strategy. Using the Bexar County Appraisal District's figures, the city of San Antonio projected [a \\$272.5 million loss in tax revenue within five years](#) if the courts favor Lowe's.

"Recognizing the arbitration panel's decision is advisory, we are pleased with the outcome and agree with the panel's legal analysis and determination," City Attorney Andy Segovia said in a statement. "We will continue to monitor the litigation process and work with other stakeholders to ensure statutory appraisal methods are preserved." The "dark store" strategy is still relatively novel in Texas but has been successfully used in other states.

Lowe's cut its Indiana property taxes by \$120.8 million, resulting in a \$49.9 million jump in taxes for Indiana's other residents and businesses, according to a 2015 study commissioned by the Indiana Association of Counties. Taxpayers in Michigan have returned almost \$100 million to retailers since 2013 after the Michigan Tax Tribunal handed down several favorable rulings to retailers who used the "dark store" argument, a 2015 study by the Michigan Association of County Treasurers showed.

Meanwhile, retailers including Lowe's, Home Depot Inc., Kohl's Department Stores, Walmart and Target have sued appraisal districts around Texas to try to bring down their property values. [In many instances](#), appraisers have sought to settle out-of-court for fear drawn-out court battles could drain their meager budgets.

With at least one pending lawsuit from Lowe's in Harris County, this likely marks the most progress a property value challenge using the "dark store" theory has made in a Texas court.

"There have been no decisions from the court or an arbitration that have addressed this issue," said Karen Everston, an Austin-based attorney representing Bexar County Appraisal District. "This is the first."

Though the decision is not binding, the document can be used as admissible evidence should the spat go to a full trial, Everston said.

Lowe's and the appraisal district opted for the non-binding arbitration process after failed mediation attempts, according to the panel's decision. The panel heard five days of testimony in October from witnesses and property appraisal experts.

Expert witnesses for Lowe's testified that "because the pool of potential buyers is small, there is great risk that the property will lie vacant and unrented for a long time," according to the document.

David Lennhoff, senior director of real estate consulting firm Altus Group, likened big box stores to a "house with a built-in racquetball court: useful to the owner, but a drawback and a negative feature to most potential buyers, expensive to remove," the document said. Therefore, expert witnesses argued, the appraisal district should compare occupied stores to vacant big box properties.

The panel ultimately sided with the appraisal district, which argued that "comparable properties must reflect the same or highest and best use," according to the document. "Texas law does not support the notion that appraisal of the subject properties should be conducted as if they were vacant," the panel wrote.