



# There's a new kid in town

## Unveiling the 'eSales Theory'

BY JIM TURNER

**I**t seems there has been an increase in property tax appeals that to the assessment community might appear frivolous but to the layperson and even the trier of fact can seem credible.

Just look at the chaos created in property tax assessment circles by the dark-store theory.

This theory at its core declares that an occupied, big-box store in a vibrant location is worth no more than a big-box building gone dark.

A new theory brewing recently in courts in Florida and North Carolina advocates that one can accurately appraise installed, operating, tangible personal property (TPP) based upon the value garnered from, "used comparable tangible personal property" either sold or for sale through online sales sites like eBay.

The focus of this article is to unveil the TPP concept referred to as "the eSales theory." The article focuses on:

1. A look at a few deficiencies within the eSales theory;
2. Identification of TPP assets that trade in active and reliable used markets and TPP assets that don't;
3. The adjustments to consider when using the sales comparison approach to value TPP.

Similarities between the dark store and eSales

theories are identified, which could be pertinent to real property appraisers and assessors.

## The internet and the eSales theory

In a nanosecond, one can find all sorts of used property for sale, from restaurant equipment to robotics.

And the lure of this method is that it is arguably much easier for the non appraiser to understand than the cost or income approaches.

Essentially, the proponents of this approach to valuing TPP argue that a used asset that is advertised for sale or sold online is sufficient to be used as a comparable for an asset that is installed and in use.

Advocates of the eSales theory claim that almost all used TPP sold on the internet represents an arm's-length transaction at the retail level of trade.

But as the American Society of Appraisers points out in its book on equipment appraisal, to properly use the sales comparison approach, the property must be exchanged in an active and reliable market.

Examples of TPP that are readily traded in an active and reliable market include automobiles and trucks, computers, aircraft, standard machine tools, and other TPP with verifiable information.

These categories of TPP you can see they share the following qualities:

- The items are mobile.
- Installation costs are minimal.
- The cost to disassemble and reassemble is insignificant

What about used equipment identified for sale online that is not easily moved and requires substantial disassembly and reassembly?

The judicious appraiser will recognize the material costs involved to move and make such items fully operational. At this point the appraisal is guided by generally accepted appraisal methods, which require the appraiser to consider the following:

- Direct labor costs for installation or erection of the item
- Rigging and moving, freight and handling
- Electrical, piping, and foundations
- Indirect costs
- Engineering, architect, and other professional fees, accounting, consulting, and legal fees
- Insurance during installation and licenses, permits, and fees during installation or construction
- Debugging and testing costs.

There are caveats given to the appraiser who uses the sales comparison approach.

The ASA said,

*The sales comparison approach is not feasible when the subject property is unique, and it generally will not be feasible if an active market for the property does not exist ... the implementation of the sales comparison approach may differ significantly depending on whether the subject is an individual asset, a group of assets, or an entire facility.*

Assuming the appraiser can identify an active market for the subject TPP, which also provides a sufficient number of comparable sales, then the sales com-

parison approach can lead to an accurate TPP appraisal.

When comparable sales are found, adjustments are often necessary to modify the price of the comparable for differences with the subject property. These adjustments are essential for credible assignment results.

The adjustments are made to the comparable sales, not to the subject property, for the following differences:

- Vintage and effective age condition, adjustment for differences in condition
- Capacity
- Features (accessories)
- Geographical location (some geographical locations results in higher prices than others due to differences in dismantling and moving costs.)
- Manufacturer
- Motivation of parties
- Price (cash equivalents)
- Quality
- Time of sale
- Circumstances of sale (e.g., level of trade or "as is/where is" condition).

As indicated in the last bullet point, the appraiser must recognize that there are distinct levels of trade (measurable marketplaces) and each may generate its own data.

Most TPP assessments in the United States are made within the retail market context.

One of the biggest drawbacks of the eSales approach is that many of the assets for sale online are listed based on circumstances unknown to the apprais-

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er, making it difficult to discern the level of trade.

In a pertinent Florida case, the court said,

*A fundamental and overriding defect in ... valuation methodology is that (the appraiser) failed to provide any competent evidence that those internet sales listings represent arm's length transactions that are reliable and appropriate for valuing TPP.*

Research performed by the judicious appraiser could reveal that the assets were acquired at auction or directly from a compelled previous owner.

Thus "fee appraisals" prepared for protesting TPP assessments should include adjustments to the asking price of eSales if the comparable for sale" or sold TPP was within a market context which USPAP refers to as "various auction conditions."

## eSales and dark store theory similarities

One of the evident similarities is that the comparable sales used to value property currently being used at its highest and best use are taken from the liquidation market.

For TPP, the comparable sales are obtained from TPP that is uninstalled, as to real estate when comparable sales are extracted from comparable sales of defunct locations.

Another similarity of both theories is the tendency for the proponent to ignore the seller's perspective. In that, the comparable sales used in both theories contain an element of compulsion; the seller that is not under compulsion (going concern premise) is ignored by the appraiser.

Finally, both theories ignore that the current owner could also be a potential

hypothetical buyer.

Sales data garnered from internet-based sales of TPP will likely continue to spark challenges of TPP assessment by businesses.

This leads to another paramount issue created by using internet sales listings to value TPP, that is, accurately determining and quantifying the causes of the observed value differences (between the internet listings versus in-place assessable TPP).

The Florida court noted that the appraiser used internet sales listings for items of personal property he found on websites like eBay as comps, which may or may not be an arm's-length transaction.

The court goes on to say that, "the appraiser used internet sales listings for items of personal property as comps to value the majority of Darden's TPP."

Darden is a multibrand restaurant ownership corporation based in Orlando, Florida.

The appraiser then attributed all of the difference in the "for sale" price of the internet comps and the in-place TPP at Darden to depreciation (physical, functional, and/or economic obsolescence) without considering the reality that the internet sales were uninstalled and could be trading under a liquidation premise.

The methodology used by Darden's appraiser was similar to finding a used car for sale on eBay and then attributing all the price difference between the car for sale at auction and the exact car for sale at a retail dealer ... to depreciation.



In reality, the difference in price should not all be attributed to depreciation, but to the fact that the vehicles are for sale at different levels of trade.

Finally, "level of trade" differences are the catalysts behind Blue Book pricing guides depiction of three or four unique values for the same car (not depreciation).

But the judicious appraiser will identify whether the sales occurred in an active, reliable market and will gather the necessary information to determine the motivation of the sale, the level of trade, the condition, etc.

These are the basic tenets of using the sales comparison approach that are often overlooked by the layperson and perhaps even the trier of fact, so be prepared to share what you know.



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