

IAAO PREPARATION AND TRIAL OF THE PROPERTY TAX APPEAL
“A Successful Defense Starts with a Fair Assessment”
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A healthy office culture recognizes that absolutely no one can have a legitimate stake in an improper, illegal, incorrect or unfair property tax assessment. Assessing officials have a very significant stake in the fairness and equity of the *ad valorem* taxation system as a whole, upon which taxpayers who pay the bills, taxing bodies which require steady income streams, and the public in general must rely.

Consequently, initial values should be as accurate as possible to reflect the true market—as well as it may be discerned and understood. Then, a vibrant appeal process should be encouraged to give the final assessment credibility and reliability so that the public may have confidence in its fairness. In the end, taxpayers have the right to expect that valuations will not only be ascertainable, transparent and understandable but also that they reflect some measure of continuity, consistency, and predictability over time. Too often we merely focus on how to triage appeals when they are filed rather than to reflect on how a more reasonable assessment could have avoided the appeal. Moreover, if an appeal is made to the assessing official, how can it be best resolved to eliminate further appeals and protracted litigation?

➤ APPRECIATE AND EMBRACE THE ROLE OF ALL OF STAKEHOLDERS

- Taxpayers
 - ✓ This is not the government’s money. It is the taxpayer’s money.
 - ✓ Tax statutes are fundamentally oriented towards the due process and equal protection rights of the taxpayer.
 - Burdens of proof
 - Burdens of going forward
 - Presumption (or lack of presumption) of correctness
 - Type and levels of administrative review
 - Additional *de novo* review at any or all levels
 - ❖ Board of Equalization or Board of Review
 - ❖ State agencies or Department of Revenue
 - ❖ State Appeal Board or State Tax Tribunal
 - ❖ Specialized or general jurisdiction courts
 - Who has the right to appeal at particular levels?
 - Appellate review process and legal standard of review

- Restricting decisions to specific tax years and the impact, if any, on the remaining years of tax assessment period
 - State constitutional commands and/or statutorily-based “uniformity” requirements
- Assessing Officials
 - ✓ The core function is to establish “fair market value” as mandated by the state constitution, statutes, ordinances, regulations, and rules particular to your jurisdiction.
 - Various other public agencies or authorities are charged by law with budgetary decision-making, operating within tax levy authority, setting rates, providing public services, and allocating public financial resources.
 - Focusing on “shifting” tax burdens, equalization factors, and responsibilities of other legal entities, and the like, can create valuation distortions and other distractions which deflect attention and resources from the core function.
 - Fairness to all taxpayers requires monitoring homeowner, homestead, senior citizen, long-term occupant, disabled veterans, disabled persons, senior freeze, income-based limitations and caps, and home improvement exemptions or circuit-breakers to ensure that (a) unqualified recipients are purged and (b) any improperly lost tax revenues are recouped. Consider supporting and advancing necessary enabling legislation to assist you in policing this system.
 - ✓ An appeal process keeps everyone “honest”. It challenges the office to confront diverse opinion, review additional evidence, consider alternate valuation approaches, and adjust the assessment in order to achieve fairness. Volume and time pressure create errors. Fix them.
- Taxing bodies
 - ✓ Create budgets, allocate public resources, determine local policies and expenditures
 - ✓ Collect data and perform public information roles
 - ✓ Request property investigations
 - ✓ Facilitate timely filing of building permit and construction data
 - ✓ Monitor assessments of major (*e.g.* so-called Class A or “trophy”) properties within area
 - ✓ Engage appraisal and other experts and assemble evidence when appropriate to assist assessing officials or attorneys

- ✓ Pursue substantive rights of intervention or appeal
- Advocates, experts, and intervening parties
 - ✓ Jurisdiction and/or taxing body attorneys
 - ✓ Taxpayer attorneys
 - ✓ Taxpayer representatives
 - ✓ Appraisers
 - ✓ Accountants
 - ✓ Building manager and agents, brokers, leasing agents
 - ✓ Environmental consultants
 - ✓ Architects, engineers, and surveyors
- Taxation and Public Policy
 - Jean Baptiste Colbert (c 1675): “The art of taxation consists in so plucking the goose as to obtain the largest possible amount of feathers with the smallest possible amount of hissing.”
 - David Hume (1753): “Exorbitant taxes, like extreme necessity, destroy industry, by producing despair”.
 - Benjamin Franklin (1789): “In this world nothing can be said to be certain, except death and taxes.”
 - Thomas Chandler Haliburton (1856): “Death and taxes might be inevitable; but they shouldn’t be related.”
 - Mark Twain (1906): “We’ve got so much taxation. I don’t know of a single foreign product that enters this country untaxed except the answers to prayer.”
 - Justice Oliver Wendell Holmes:
Compania General De Tabacos De Filipinas v. Collector of Internal Revenue (1927): “Taxes are what we pay for a civilized society”.
 - Judge Learned Hand:
Helvering v. Gregory (1934): “Anyone may arrange his affairs so that his taxes shall be as low as possible; he is not bound to choose that pattern

which will best pay the treasury; there is not even a patriotic duty to increase one's taxes."

U.S. v. Lambert (1944): "Each piece of land is *sui generis*; there are no others like it. . . Hence, we think . . . that a judge is wise, in deciding the issue, to be guided by the impression which the experts make upon him."

Commissioner v. Newman (1947): "Nobody owes a public duty to pay more than the law demands."

- Dave Mason (1977): *We Just Disagree*: "There ain't no good guy. There ain't no bad guy. There's only you and me and we just disagree."

➤ UNDERSTAND THE USES AND LIMITATIONS OF CAMA AND OTHER MODELS IN MASS APPRAISAL VALUATION PROCESS.

- CAMA and all models are just that, and only that, "models".
 - ✓ They set parameters, guidelines, and ranges for the typical.
 - ✓ Inherently, there will be exceptions or special cases.
 - ✓ This focus is "macro".
 - ✓ "There is no music of the spheres" in this universe.
 - ✓ Medians and averages are just that, and nothing more.
 - ✓ Models are tools; not ultimate decision-makers
 - ✓ CAMA is a "system" to process and organize information
 - ✓ Mass appraisal is a legitimate and acceptable "process"
 - effectively and efficiently promotes consistency, fairness, and uniformity of assessments system-wide;
 - is uniquely within the expertise of the assessing officials;
 - often produces highly predictable and reasonable results
 - ✓ Understand the technical limitations of the models
 - Regressivity
 - Outliers
 - IAAO "Standard on Mass Appraisal of Real Property"
- There is always a reasonable value within a reasonable range of values over which reasonable people may disagree.
- Mass appraisal is not simply an empirical exercise

- There is no eternal reward in the afterlife for pure stubbornness.
- Do not be “defensive” about the mass appraisal process.

➤ VIEW THE VALUATION PROCESS AS AN ART AND A SCIENCE

- Assessment—as is all appraisal—is
 - ✓ a behavioral science that reflects what real market participants in the real world do:
 - owners
 - sellers
 - buyers
 - lessors
 - lessees
 - brokers
 - managing and leasing agents
 - lenders and investors
 - developers and speculators
 - ✓ both an art and a science;
 - ✓ an opinion; and
 - ✓ the beginning, not the end, of the process
- Continuing challenges:
 - ✓ “Right” versus “wrong”
 - ✓ “Protect the public fisc.”
 - ✓ “Taxpayers just want a lower value.”
 - ✓ “Us” versus “Them”
 - ✓ Effective data collection and compliance with information requests

➤ BE OPEN-MINDED AND RECEPTIVE TO REASONABLE DIFFERENCES OF OPINION ON VALUE

- A vibrant appeal process “double checks” and maintains the integrity and fairness of the assessment.
 - ✓ Appeals should be encouraged not avoided.
 - Does a lack of appeals indicate satisfaction?
 - Does a lack of appeals indicate frustration and despair?
 - ✓ The appeal process should be readily available and understandable.
 - ✓ The goal is not to produce a value, hold your breath in the hope no one complains, and then sigh with relief that you got away with something.

- ✓ Unacceptable goals:
 - Taxpayer: The lowest possible calculable value.
 - Assessor: The highest possible ascertainable value.
- ✓ This focus is “micro”.
- ✓ All property is *sui generis*.
- ✓ All taxpayers have a story to tell.
- The “system” needs a “pressure valve”.
 - ✓ The public must maintain faith in the process.
 - ✓ Taxpayers and voters simply want to be heard.
 - If possible, correct what they perceive as the “problem”.
 - If unable to do so, explain and educate.
 - ✓ Voluntary payment on a timely basis is essential.
 - ✓ The *ad valorem* property tax is the most local, stable, reliable, enforceable, collectible, and democratic of taxes.
 - ✓ Predictability, stability, and consistency of valuation over time help create public confidence, cooperation, and engagement. (This can be a particularly challenging goal in a large, complex jurisdiction!)
- Explain to the public and appealing taxpayers what is being requested from them and why it is needed.
 - ✓ Establish and promulgate “rules of engagement” which are to be routinely followed.
 - ✓ Specifically identify the appropriate type of documentation and evidence needed to support successful appeals.
 - ✓ Employ an understandable and formal appeal “process”
 - ✓ Create a “culture of compliance” by “communicating”.
 - Meet with stakeholders through an established “outreach” process, defining your expectations.
 - Prove that a favorable resolution of an appeal results when proper documentation and evidence is provided.
 - Demonstrate that negative consequences will result when those materials are not provided.
 - Apply laws, rules, regulations, policies, and procedures fairly in an open transparent predictable, even-handed, and consistent manner.

➤ EDUCATE YOUR OFFICE CONCERNING THE EVOLVING, NEW OR CONTROVERSIAL AND CHALLENGING VALUATION THEORIES

- Theories and the body of scholarly, legal, and professional opinion

- ✓ Definitions, re-definitions, re-evaluations of “market value”
- ✓ Leased Fee and Fee Simple debate
- ✓ Contract Rent and Market Rent (Is the contract rent above, equal to, or below the market rent? Valuation implications?)
- ✓ Business enterprise value
- ✓ Dark store theory (legal estate or interest \neq current use, property status, value; implications of confusing fee simple with individual property use (or non-use) as opposed to the actual typical market)
- ✓ First and second-generation sales
- ✓ Intangibles in hotels, regional malls, and department stores
- ✓ Going concern value
- ✓ Build-to-suit
- ✓ Sale and Leaseback
- ✓ Environmental impairment or contamination
- ✓ Use and limitations of the cost approach
- ✓ Reasonableness of adjustments to comparable sales
- ✓ Use and misuse of discounted cash flow analysis
- Examples of difficult, complex, unique or special purpose properties
 - ✓ agricultural buildings, barns, sheds, shelters, shops, orchards, and vineyards
 - ✓ automobile assembly plants
 - ✓ big box stores
 - ✓ billboards
 - ✓ bulk storage facilities
 - ✓ cell and transmission towers
 - ✓ churches/houses of worship and schools
 - ✓ condominiums and cooperatives
 - ✓ corporate headquarters campuses and conference centers
 - ✓ data centers
 - ✓ drug stores
 - ✓ farmland
 - ✓ golf courses and country clubs; recreational property; vertical gym
 - ✓ government buildings
 - ✓ grain elevators and silos
 - ✓ greenhouses and horticultural centers
 - ✓ high rise office towers and apartment complexes
 - ✓ hotels and motels
 - ✓ hydroelectric and nuclear power plants
 - ✓ junk yards
 - ✓ low-income housing tax credit projects

- ✓ marinas and boat slips
- ✓ mixed use office, laboratory, and industrial uses
- ✓ nursing home, assisted living, and senior care facilities
- ✓ office parks
- ✓ partial, possessory, and leasehold interests
- ✓ power generation plants
- ✓ regional malls
- ✓ research and development facilities
- ✓ resort properties, waterparks, and timeshares
- ✓ riparian rights
- ✓ self-storage facilities
- ✓ solar and wind farms
- ✓ sports arenas and venues
- ✓ subsidized housing and §42 housing
- ✓ tank, fuel or chemical farms
- ✓ telecommunications centers
- ✓ theaters
- ✓ transportation and distribution facilities
- ✓ “trophy” buildings
- ✓ utility properties
- Sources of information and education
 - ✓ Professional and educational organizations
 - IAAO
 - ❖ Webinars, education series, publications, seminars
 - ❖ Professional certification programs
 - ❖ Annual Conference
 - ❖ Preparation and Trial of Property Tax Appeal Sem.
 - ❖ Annual Legal Seminar
 - ❖ Library—search by author, title, topics, publication
 - ❖ Research and Data Exchange
 - Annual Conferences (2016-2024)
 - Legal Seminars (2013-2024)
 - Research Symposiums (GIS, International, and Mass Appraisal) (2019-2024)
 - *Assessment Journal* (1994-2003)
 - *Journal of Property Tax Assessment and Administration* (2003-2025)
 - *Assessment and Valuation Legal Reporter* (2015-2018)
 - *Fair and Equitable* (2022-2024)

- ❖ Standards
 - Assessment Administration (June 2016)
 - Assessment Appeal (July 2016)
 - Automated Valuation Models (July 2018)
 - Data Quality (April 2021)
 - Mass Appraisal (July 2017)
 - Property Tax Policy (Jan. 2020)
 - Ratio Studies (April 2013)
 - Environmental Contamination (Nov. 2016)
 - Verification /Sales Adjustment (April 2020)
- ❖ White Papers
 - Tax Policy (November 2023)
 - Artificial Intelligence (January 2022)
 - Fee Simple (August 2019)
 - Big Box (September 2017)
- ❖ Books and Anthologies
 - *Property Appraisal and Assessment Administration* (1990)
 - *Property Assessment Valuation* (1996)
 - *Glossary for Property Appraisal and Assessment* (1997)
 - *Issues Confronting Properties Affected by Contamination or Environmental Problems* (2002)
 - *Valuation of Subsidized Housing* (2003)
- ❖ Litigation Tax Appeal Defense Workshop (2024 Annual Conference) [Valuation Issues: Fee Simple, Dark Store Theory, Department Stores, Intangible Property Expert Reports, Hotel & Regional Mall Intangibles, Build-to-Suite, Sale/Leaseback, Going Concern)
- The Appraisal Institute (MAI)
 - ❖ Education programs
 - ❖ Certification
 - ❖ Extensive library of publications
- Institute for Professionals in Taxation (IPT)
- Royal Institute of Chartered Surveyors (RICS)
- Lincoln Institute of Land Policy (Cambridge, MA)
 - ❖ Programs and courses
 - ❖ Symposiums, seminars, and conferences

- ❖ Array of publications
- ❖ *Landlines* Magazine
- ❖ Sponsor of the National Conference of State Tax Judges (programs and court cases on website)
- National Association of Review Appraisers and Mortgage Underwriters (NARA&MU)
- National Tax Lien Association (NTLA)
- American Bar Association: Real Property, Trust, and Estate Law Section (various publications)
- State Bar associations
- State appraisal and assessment certifying agencies
- State chapters of assessing officials
- Local CPA societies
- State Continuing Legal Education organizations
- Academic Institutions and Programs
 - ❖ Appraisal Institute of Canada, Saunder School
 - ❖ Columbia University, Paul Milstein Center
 - ❖ New York University, Schack Institute
 - ❖ Simon Fraser University (Greater Vancouver)
 - ❖ University of British Columbia
 - ❖ University of Illinois at Chicago, Center for Urban Planning and Policy
 - ❖ University of Wisconsin-Madison, Department of Real Estate and Urban Land Economics
 - ❖ Wichita State University, Property Tax Conference
 - ❖ York University, Schulich School (Toronto)
- ✓ Property Tax Appeal decisions
 - State Supreme and Appellate Courts
 - Specialized trial courts, Boards of Equalization/Revision and state tax courts, commissions and tribunals (*e.g.* AZ, CA, CT, ID, IL, IN, KY, MA, MD, MI, MN, MO, MT, NC, NE, NH, NM, NJ, OH, OR, TN, UT, WA, WY)
- ✓ Journals and publications; national surveys and services

➤ COMMIT TO A PHILOSPHY OF CONFLICT RESOLUTION

- If an internal appeal is filed, “do the right thing for the right reasons.”
- Listen—hear—think—engage—ponder—question—accept doubt.
- Exercise leadership—make decisions.

- ✓ Project honesty and integrity in the process and in dealing with the public and taxpayer representatives
- ✓ Commit the office to fairness
- ✓ Communicate with confidence
- ✓ Establish public outreach
- ✓ Delegate responsibility
- ✓ Empower and support decision makers
- ✓ Exhibit creativity, flexibility, and a willingness to improve
- Office philosophy: “We made these numbers, and we can change them with the proper evidence.”
- Encourage dispute resolution at the lowest possible administrative level.
- Seek settled expectations at the outset.
- The best “defense” is a fair assessment which is not appealed at all, or if it is appealed, it is resolved at the lowest administrative level possible because parties can accept the result as reasonable.
 - ✓ If it is equally likely that your value may be “right” or “wrong”, is it reasonably possible that it can be made “less wrong”?
 - Consider the present worth of money.
 - Recognize there are adverse financial impact of post-tax collection refunds.
 - Remember the costs of litigation and allocation of office resources.
 - Recognize that the more the taxpayer feels compelled to appeal, the more difficult it will be to settle the case. Unreasonableness will embolden the taxpayer.
 - ✓ Be knowledgeable, reasonable, thorough, and professional
 - ✓ Advance logical, supportable, reliable, and proven positions and theories (rather than the novel, abstract, and speculative)
 - ✓ Do not lose sight of the historical use and actual economic performance of the subject property
 - ✓ Look at pictures of the property!
- An assessing official has *some stake* in the consistency of the numbers created by the model; *less of a stake* in any particular initial valuation made purely in isolation; and *no stake* in stubbornly maintaining his or her numbers in the face of significant contrary evidence.
- Assessing officials have *the most significant stake* in the fairness and equity of, and the market-based support for, the ultimate assessment—upon which the system, taxpayers, and taxing bodies rely, and which must be defended on subsequent review.