

82nd ANNUAL IAAO ANNUAL CONFERENCE
“A Successful Defense Starts with a Fair Assessment”
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PART I

A healthy office culture recognizes that no one has a stake in an improper, illegal or incorrect assessment. Assessing officials have a significant stake in the fairness and equity of the assessment upon which the *ad valorem* taxation system as a whole, the taxpayers who pay the bills, taxing bodies which require steady income streams, and the public in general must rely. Consequently, values must as accurately as reasonably possible reflect the true market—as well as it may be discerned and understood. A vibrant appeal process must be encouraged to give the final assessment credibility and reliability so that the public may have confidence in its fairness. To achieve these goals, assessing officials must:

➤ APPRECIATE AND RESPECT THE ROLE OF ALL STAKEHOLDERS

- Taxpayers
 - ✓ It 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 and/or statutorily-based “uniformity” requirements
- Assessing Officials
 - ✓ The core function of an assessing official is to establish “fair market value” according to the law (constitution, statutes, ordinances, regulations) 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.
 - Considering extraneous factors such as the “shift” of real estate tax burdens, equalization factors, and actions of other legal authorities including further administrative and judicial review creates a distraction (or deflects your attention) from the core function.
 - Fairness to all taxpayers requires (and consider advancing necessary enabling legislation) monitoring the homeowner/senior citizen/disabled-type exemptions to ensure that unqualified recipients are purged from the system and improperly saved tax revenues are recouped.
 - ✓ 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.
- Taxing bodies
 - ✓ Create budgets, allocate public resources, determine local policy policies and expenditures

- ✓ Collect data and perform public information roles
 - ✓ Request property investigations
 - ✓ May facilitate timely local filing of building permit and construction data
 - ✓ Monitor assessments of major 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
 - ✓ Attorneys
 - ✓ Tax representatives
 - ✓ Appraisers
 - ✓ Accountants
 - ✓ Managing agents
 - ✓ Environmental consultants
 - ✓ Architects and engineers
 - ✓ Food for thought:
 - 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.”
 - 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): “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/LIMITATIONS OF CAMA AND OTHER MODELS USED IN THE 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;
- 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 for pure stubbornness.
- Do not be “defensive” about the mass appraisal process.

➤ VIEW THE VALUATION PROCESS AS BOTH AN ART AND AS A BEHAVIORAL SCIENCE

▪ Assessment—as is all appraisal—is

✓ a behavioral science, if it is a science at all. It reflects what real market participants in the real world do:

- owners
- sellers
- buyers
- lessors
- lessees
- brokers
- managing agents
- lenders
- developers
- speculators
- investors

✓ an art and a science;

✓ an opinion; and

- ✓ the beginning, not the end, of the process

- Challenges

- ✓ “Right” versus “wrong”

- ✓ “Protect the public fisc.”

- ✓ “Taxpayers just want a lower value.”

- ✓ “Us” versus “Them”

- ✓ Effectively gathering data and encouraging compliance with information requests

➤ ARE 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.

- ✓ The process for appeal should be readily available and understandable.

- ✓ The goal is not to produce a value, hold your breath in the hope that no one complains, and sigh with relief that you got away with something.

- ✓ 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.

- ✓ 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.

- ✓ There must be predictability, stability, and consistency of valuation over time to create public confidence, cooperation, and engagement.

- 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 “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 rules, policies, and procedures fairly in a predictable, even-handed, and consistent manner.

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

- Theories and the body of scholarly, legal, and professional opinion
 - ✓ Definitions, and re-definitions, of “market value”
 - ✓ Business enterprise value
 - ✓ Environmental impairment or contamination
 - ✓ “Leased fee” and “fee simple”
 - ✓ “Dark stores” and “operating stores”
 - ✓ First and second “generation” sales
 - ✓ “Contract” rent and “market” rent
 - ✓ Use and limitations of the cost approach
 - ✓ “Intangibles”
 - ✓ “Going concern” value
 - ✓ “Reasonableness” of adjustments to sales comparables
 - ✓ Use and misuse of discounted cash flow analysis
- Examples of difficult, complex, unique or special purpose properties
 - ✓ agricultural buildings, sheds barns, shelters, shops
 - ✓ 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
 - ✓ drug stores
 - ✓ farmland
 - ✓ government buildings
 - ✓ grain elevators and silos
 - ✓ 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
 - ✓ office parks
 - ✓ partial, possessory, and leasehold interests
 - ✓ regional malls
 - ✓ research and development facilities
 - ✓ self-storage facilities
 - ✓ solar and wind farms
 - ✓ sports arenas
 - ✓ subsidized housing
 - ✓ tank, fuel or chemical farms
 - ✓ telecommunications
 - ✓ theaters
 - ✓ transportation facilities
 - ✓ “trophy” buildings
 - ✓ utility property
- Sources of information and education
 - ✓ Professional and educational organizations
 - IAAO
 - ❖ Webinars, education series, publications, seminars
 - ❖ Certification program
 - ❖ Annual Conference
 - ❖ Preparation and Trial Seminar

- ❖ Annual Legal Seminar
- ❖ Library

- The Appraisal Institute (MAI)
- Royal Institute of Chartered Surveyors (RICS)
- Institute for Professionals in Taxation (IPT)
- State appraisal and assessment certifying agencies
- State chapters of assessing officials
- State Continuing Legal Education organizations
- Lincoln Institute of Land Policy
- National Association of Review Appraisers and Mortgage Underwriters (NARA&MU)
- National Conference of State Tax Judges
- National Tax Lien Association (NTLA)
- Bar associations
- Local CPA societies
- Academic institutions

- ✓ Court decisions
- ✓ Journals and publications; recognized national surveys and services (*e.g.* Korpacz, Marshall & Swift)

➤ COMMIT TO A PHILOPOSPHY OF CONFLICT RESOLUTION

- Be willing to “do the right thing for the right reasons.”
- Exercise leadership
 - ✓ 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 lowest possible administrative level
 - Seek settled expectations at the outset
 - The best “defense” to an appeal is a fair assessment which is not appealed because all parties can accept it as being reasonable.
 - Listen—hear—think—engage—ponder—question—accept doubt.
- ✓ 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 the adverse impact of post-tax collection refunds
 - Remember the costs of litigation
 - Understand the financial impact of later paid refunds
- ✓ 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 actual historical use and economic performance of the subject property
- Assessing officials have *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, the taxpayer, and the taxing bodies rely, and which must be defended on subsequent review.