

IAAO Tampa - August 2016

PART II

1. How do the factors considered in Part 1 above in the creation of the assessment provide the foundation for a successful defense?

Having a defensible value is only half the battle. You must have a witness that can explain how that value was derived, breaking down complex mass appraisal and statistical concepts so that a judge can understand that the assessment was the product of a thoughtful and careful appraisal process. Even though you will probably defend the assessment via a single property appraisal, it is important for both the trial and for the image of the office to show that the office follows sound appraisal principles that give everyone confidence in the competence of the office and its work product.

- A. Defensible value
- B. Knowledgeable explanation
- C. Thorough explanation
- D. No “exotic” theories, no matter how justifiable.
- E. Explain the CAMA system factors, but remember that Mass Appraisal is the basis, not CAMA
- F. Just because the deputy assessor says it is so, maybe it isn’t. Third party testing to support conclusion is critical. (3rd party may be in-house or “out-house”.)
- G. Appraisal value opinions are like a table with multiple legs, every one has two or three or four. Take one leg away and the others may not be secure enough to avoid falling.

2. How should the assessing official prepare internally for testimony at trial or hearing?

The assessing official should have counsel present training sessions with staff on how to present cases at administrative hearings and respond to questions likely to arise. Preparing for a trial or hearing starts long before a challenge is even presented. Remember, the office staff is made up of appraisers, not professional witnesses. Giving them a few pointers and hearing strategies will go a long way. When trial does come, picking the best witness is key. It does not necessarily have to be the person that had primary responsibility for the assessment. It could be the head of the department, or even someone higher up that had management responsibility, but that also has a thorough understanding of mass appraisal concepts and the full picture of how assessments are determined.

A. Informal Conference

1. Deputy only. Need to know how the value is determined.
2. Talk with authority and conviction regarding the assessment process and the assessment.
3. Be able to fully explain the property record card and what the information means and how it is used.
4. Demonstrate on paper how the specific assessment was derived. (Go through the calculation depicted on the PRC).
5. Above all, be kind, courteous and non-confrontational.
6. Exemptions - Know the technical requirements to qualify for exemptions.

B. Administrative Hearing

1. All of the items set forth in Informal Conference above, together with:
2. Pick the person to be the appropriate appraisal witness. Sometimes it is not the deputy who did the specific work up; especially if it is a more intensely complicated property or issue; such as:
 - a. environmental contamination;
 - b. business enterprise value;
 - c. governmental property leases to private enterprise
 - d. Exemptions
3. Be able to demonstrate prior education and experience in the assessment field. Prepare a resume or CV and be as current as reasonably possible in your appraisal area, whether it be residential, commercial, industrial, tangible personal property, etc.

C. Court Hearings -

1. All of the above related to Informal Conferences and Administrative Hearings, together with demeanor, presentation and stage presence.
2. Be prepared. Rehearse, practice, try and find holes in your own theory before the taxpayer or his representatives find them.

3. What data is useful, necessary, or absolutely indispensable?

There can be data that carries over from a prior assessment year that is an important part of the assessment. Don't let the office dispose of information that is necessary to provide a good defense.

Historical data can make or break an assessment.

A. Useful -

- ! Out of local market data as to possible trends and treatments
- ! Anything that may reflect on the use or value of the category or classification of property.
- ! Prior zoning and/or land uses applicable to the category and changes thereto.
- ! Historic actual use of the property.

B. Necessary -

- ! Market sales, rents and cost analysis
- ! Local studies
- ! Regional and national services such as Marshall Swift, Corelogic, Korpaz, etc.

C. Indispensible -

- ! Property detail such as size, frontage, zoning, occupancy, use, income, condition and prior sales of subject property (in Florida review the items contained in FS 193.011)
- ! Prior documentation supplied by the taxpayer on the subject property, whether it is good or bad (to assessor's office, at administrative hearings, lenders, government offices)
- ! Prior representations and other factual matters put forth by the taxpayer in other forums, such as mortgage loan applications and appraisals

4. What are the hallmarks of a healthy symbiotic relationship between you, as the assessor and your office and legal counsel?

As legal counsel, the more familiarity you have with the staff and the mass appraisal process the more likely that (1) you will have a better grip on the issues, potential pitfalls and strengths of the case; and (2) you will be able to guide the office to better practices that will make future assessments more defensible in court or in administrative hearings.

A. Relationships -

- ! Don't be a stranger to the deputies at the assessor's office.
- ! The attorney should get to know all who work at the assessor's office in the areas that are addressed by legal representation and vice versa.
- ! It is much easier to talk with a lawyer when you know him or her and he or she knows you.
- ! Full and complete disclosure whether good or bad - know the "warts" in advance.
- ! Be sure that the deputy assessor is clear on how and why he arrived at the value conclusion.
- ! Keep up to date on current laws, regulations and court decisions, as well as participating in professional associations such as county or statewide property appraiser organizations.
- ! Many times the deputy appraiser learns information before the lawyer regarding pending changes in the law, regulations and appraisal practice. This information should be routinely and periodically shared between the assessor's office and the attorney.
- ! Unless you have a dedicated "in house" lawyer, the flow of new information coming out of the appraisal world generally arrives at the assessor's office first, necessitating communication to the attorney representing the assessor.
- ! A professional organization such as IAAO or state or regional assessor organizations should be utilized for the purpose of obtaining the most current information available and reviewing methodologies or theories which have been used successfully, or unsuccessfully, in other jurisdictions.
- ! Lawyers should strive to keep lines of communication open

with other lawyers who represent assessors and encourage the exchange of opinions, theories, local court decisions, especially trial court decision where they are not generally reported in a timely or discoverable manner.

5. What challenges are inherent in defending your mass appraisal system when under attack by an expert taxpayer appraiser?

First and foremost, there are very few “experts” in mass appraisal that are not on the government side. A single property appraiser should not be allowed to critique a mass appraisal system. They are different skill sets and bases of knowledge. Again, having someone testify that understands the mass appraisal system and that is able to articulate it is vital. This does not necessarily have to be an employee. You could have an expert review the mass appraisal system and provide an opinion of its effectiveness. Of course, at the end of the day, a single property appraisal expert is still a necessity.

Devote more time to the affirmative side and use of the Mass Appraisal System rather than “defending” it. CAMA is not the process, Mass Appraisal is the process, CAMA is just a “system” to process information in a more efficient manner. Don’t defend Mass Appraisal; treat it as the positive approach to “fair and equitable”

Fee Appraiser v. Mass Appraisal

- ! Few verses many
- ! Selective comparable sales verses many sales that are “strained” to provide a total market treatment of types of properties to gain the most logical and supportable factors in determining the assessment
- ! Mass Appraisal looks at all sales in the jurisdiction to determine the market and then they are categorized into types: SFR, MFR, Commercial, Industrial, etc...Each category is going to reflect trends or changes and their effect on value. Then the universe of sales in one category can be refined by area, then neighborhood, then subdivision, then street and block. “Objective” approach
- ! Fee appraisal works in reverse and tries to match the subject to selected sales or adjust sale to the subject in a very limited way. The universe of sale used by the fee appraiser is understandable much smaller. “Subjective” approach

Regarding One's Opponent and Their Entourage

- A. Know their reputation; know their experience; know their publications; discover prior testimony in similar cases, if at all possible.
- B. Most appraisers schooled in the Mass Appraisal system work either for the assessor or a company that develops and markets CAMA or Mass Appraisal software. "If you don't know it, how can you develop and sell it?"
- C. Sometimes the CAMA system third party employee may be too system oriented. Concentrating on the Xs and Os of the CAMA system and not the goal of the CAMA program.
- D. Choose "wisely" your third party experts. If you choose "poorly", you may dilute your chances of success:
 - i) one for CAMA/Mass appraisal system function, and,
 - ii) one for the value specific property

6. How can you maximize your resources and devote the necessary time and effort to a successful defense?

Have the office assign someone to help you gather information and research facts. Then find an expert witness that you work well with is incredibly important. Remember as counsel, you have to be just as knowledgeable about appraising as the other side's witness for purposes of depositions and cross-examination. Be conversant in The Appraisal of Real Estate.

- A. Budgets are always a consideration in addressing value and exemption appeals. It is very difficult to predict the next twelve months when it comes to issues and challenges to assessments
 - i) Remember the best defense to an appeal is not to have one.
 - ii) Second best defense is to resolve it at the end of Informal Conference
(Routinely in our jurisdiction we resolve 70-80% of all appeals before they are ever formally filed and generally with no legal help at all)
 - iii) 20-30% of the appeals can go to an Administrative Hearing. They are divided into three categories:
 - a. Those Petitioners that realize in the risk reward analysis the risk outweighs the benefit. They file and then make the best deal they can and withdraw. (Minimal legal participation by

the Assessor's attorney for minimal outside cost.)

- b. Those that file and present cogent supportable documentation and appraisal support most times new or theretofore unknown information is provided and they are generally quickly resolved.
- c. Go to administrative hearing - time is a big issue. Schedule a time for hearings can fluctuate; especially if there is a one-time notice for all morning or all afternoon hearings and you must wait. Are you close to the hearing location, which affords some relief, but insisting on precise scheduling and adherence to time restraints would be better. Good luck there!

B. Preparation is the key. As Joe Friday would say, "the facts and nothing but the facts".

7. How can you learn to say what you want to say in a compelling and persuasive manner which effectively establishes your knowledge, experience, reasonableness and fairness to the trier of fact?

Analysis of the facts and conclusion

- A. Some dockets for administrative hearings in larger jurisdictions can be daunting; a well reasoned well presented cogent argument avoiding the trivial is always appreciated by the decision maker or recommending body. The taxpayer, typically without representation, generally tends to talk and talk and talk and not address the salient facts in an organized manner.
- B. Rules of evidence are somewhat ignored and in fact, some administrative procedures tend to waive or limit their use entirely.
- C. A very small percentage of administrative appeals use lawyers and/or tax representatives and appraisers for the taxpayer. This adds time and work in the process. Some of the lawyers and tax "reps" are competent in this field and some are not.
- D. Be sure you have a written guide for every witness to explain to them "how" they are to answer questions as presented by the opponent; not as to the content, but as to answering the question asked and nothing but the question asked.

- E. Don't give in to big money! Just because a taxpayer is represented by appraisers and lawyers and tax "reps" does not mean that their case is any better or more important than any other case to be heard. We must deal with concepts and uniformity in a fair and equitable manner in order to produce the best assessment possible.

And, then...Practice, practice, practice, practice.