

# 2019 Travis ARB Advanced Workshop

Roy L. Armstrong  
Armstrong & Armstrong, P.C.

©2019 Armstrong & Armstrong, P.C



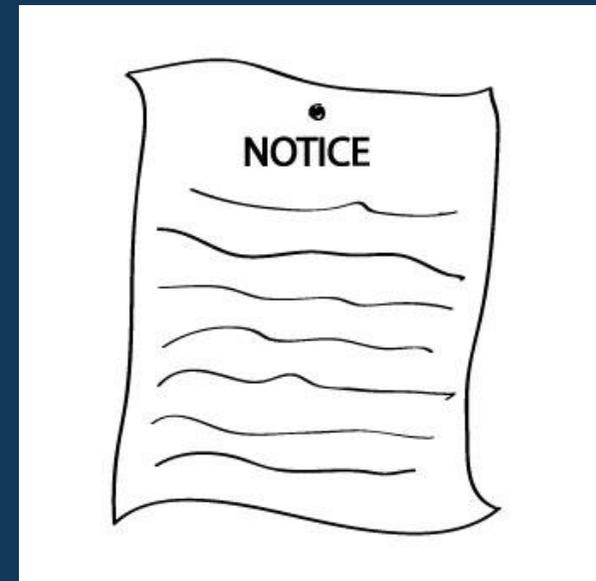
# Due Process of Law

- The government may not take a person's life, liberty or property without **Due Process Of Law**
- Due Process requires notice **reasonably calculated** to let the person know what the government is doing
- Due Process gives the PO the **opportunity to be heard** at some point in the process, before the tax liability becomes final
  - It does not dictate the particular steps of the process
  - The complexity of the process varies with what is at stake



# §25.19 Notice of Appraised Value

- Appraisal District should send a notice if:
  - Property reappraised since last year
  - Appraised value is greater than rendered value
  - Property was not on last year's roll
  - Ownership of property has changed
  - PO or agent makes written request for a notice



# Other Notices

- If something is likely to come as bad news to the property owner, send a notice
  - E.g., denial of exemption or ag appraisal, retroactive cancellation, change of use of ag property, penalty for failure to file rendition or report, etc.
- ARB sends notices such as notice of hearing



# Rights of a Protesting Property Owner

- A protesting property owner is entitled to :
  1. have written notice of the ARB hearing delivered at least 15 days before the hearing
  2. have the following information delivered at least 14 days before the hearing"
    - a) A copy of the Comptroller's pamphlet
    - b) A copy of the ARB's hearing procedures
    - c) Notice of the right to inspect the appraisal district's evidence



# Before the Hearing

A PO may inspect and copy evidence that the appraisal district plans to introduce during the fourteen days before the hearing



# Before the Hearing

- Be careful to avoid *ex parte* communications
- Don't communicate about:
  - The evidence, arguments, facts, merits, or any other matters related to an owner's protest; or
  - The property that is the subject of the protest
- An improper communication means that you cannot participate in hearing or deciding that protest

# Before the Hearing



" We're sending in several members of our elite small-talk team for tonight's cocktail party. "

- You can talk about administrative, clerical or logistical matters
- You can have social conversations
- But don't create the wrong impression

# Model Hearing Procedures

- The Comptroller creates Model Hearing Procedures
- An ARB can still have its local hearing procedures
- They must *follow* the Model Hearing Procedures
  - Pretty closely



# Conflicts of Interest

- Rules apply when:
  - A member has some ownership interest in the property or the P.O; or
  - The protesting P.O. is closely related to the member
- The member may have to file a form stating why he is not participating
- A member doesn't have to recuse himself just because he is acquainted with the P.O.

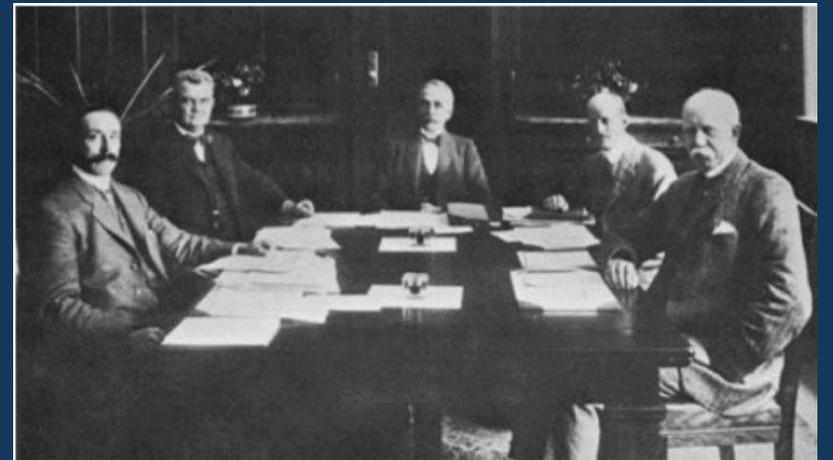


# IV. Conduct of ARB Hearings

- Read this:

“We are the appraisal review board that will be hearing your protest today. We do not work for the appraisal district. We are appointed to perform an independent review of your protest. At the end of the hearing, you may complete a survey regarding your experience today. [provide instructions on where to fill out the survey]. The survey is voluntary. You also have the right to appeal our decision. Appeal information will be provided to you with our determination.”

You don't have to read it if it has already been read to it to the same PO or agent that day.



# IV. Conduct of ARB Hearings

## 1. Open Hearings

a. Commence the hearing and announce the assigned protest number, property location and owner, and other identifying information.

- Identify the grounds of protest
- Are there are any that might be withdrawn?

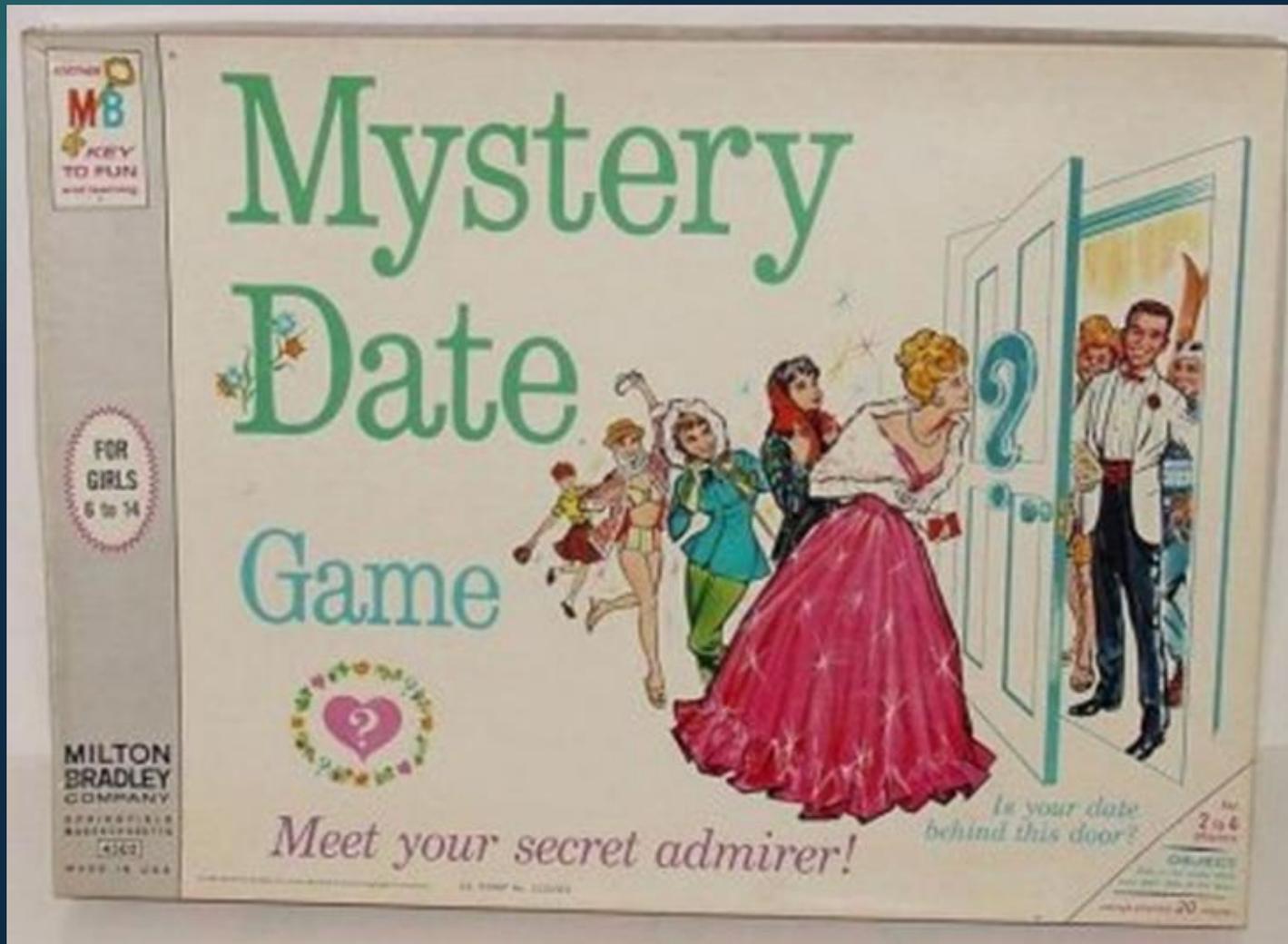


# Authorized Agents §1.111

- Tax consultants (and most other agents) must be authorized in a signed AOA form filed with the **TCAD**
  - Agent cannot sign his own form
- Form must be filed at or before the hearing
- Only one agent at a time
- A person does not need an AoA form if the person;
  - Is a business's owner or employee and is authorized to represent the business
  - Is a lawyer licensed in Texas

# Authorized Agents §1.111

- Controversy
- Can a PO name a business entity as an agent?
  - A business entity cant be registered by the state as a tax consultant
- If so, which human beings can show up to represent the property owner.



# Lessee's Right to Protest §41.413

- A party who does not own a property but who leases it may file a protest concerning the property if:
  - The party is contractually obligated to pay the taxes and
  - The owner has not filed a protest.
  - A lessee may appoint an agent



# IV. Conduct of ARB Hearings

b. Announce that, in accordance with Tax Code Section 41.45(h), all written material and electronic evidence that has not been provided must be provided.

- Property owner should provide copy to CAD or allow scanning
- **More on a new rule later**



# IV. Conduct of ARB Hearings

- c. State that the ARB members who are considering the protest have not communicated with anyone about the protest and have signed affidavits to that effect.
- d. Welcome the parties and remind them of the content of the hearing procedures, time limits for the hearing, and other relevant matters.
- e. Ask if any testifying witness holds a license or certificate from the Texas Appraiser Licensing and Certification Board and if the witness is appearing in that capacity.

# Testimony by Licensed or Certified Appraiser

- Licensed or certified appraiser appearing before the ARB must state the capacity in which he/she is appearing
- If the person is not appearing in his/her capacity as a licensed or certified appraiser, he/she is not subject to the appraisal standards and ethical rules that apply to appraisals
  - Consider the person to be a layperson
  - The person's level of objectivity may be affected



# Testimony Under Oath

- “A member of the appraisal review board may swear witnesses who testify in proceedings under this chapter. All testimony must be given under oath.” §41.66
- This includes testimony identifying a document or thing
- “We will give you a few minutes to talk to us, but we cannot consider what you say to be evidence unless you are under oath”



# IV. Conduct of ARB Hearings

- f. Inform witnesses that all testimony must be given under oath and swear-in all witnesses who plan to testify.
- g. Ask the property owner to decide if he/she wishes to present his/her evidence and argument before or after the appraisal district
- h. If the property owner or agent presents his/her case first, he/she shall present evidence (documents and/or testimony). If witnesses are present, the property owner or agent may examine the witnesses as part of the presentation of evidence. At the end of the presentation, an opinion of value (if applicable) for the property must be stated.

# IV. Conduct of ARB Hearings

- i. Next, the appraisal district representative may cross-examine the property owner, the agent, or the representative and/or witnesses.
- j. If the property owner or agent presented his/her case first, the appraisal district representative shall present evidence (documents and/or testimony) next. If witnesses are present, the appraisal district representative may examine the witnesses as part of the presentation of evidence. At the end of the presentation, an opinion of value (if applicable) for the property must be stated.

# IV. Conduct of ARB Hearings

- k. Then, the property owner or agent may cross-examine the appraisal district representative and/or witnesses.
- l. Members of the ARB shall not be examined or cross-examined by parties.
- m. The party presenting its case first may offer rebuttal evidence (additional evidence to refute evidence presented by the other party).
- n. The other party may then offer rebuttal evidence.

# IV. Conduct of ARB Hearings

- o. The party presenting its case first shall make its closing argument and state the ARB determination being sought.
- p. The party presenting its case second shall make its closing argument and state the ARB determination being sought.
- q. The ARB or panel chairman shall state that the hearing is closed.
- r. The ARB or panel shall deliberate orally. No notes, text messages, or other form of communication are permitted.

# IV. Conduct of ARB Hearings

- s. The ARB or panel chairman shall ask for a separate motion for each matter that was the subject of the protest hearing. The motion should include the exact value or issue to be determined. A vote shall be taken and recorded by a designated appraisal district staff person or member of the ARB assigned for this purpose. Separate motions and determinations must be made for each protested issue (i.e., excessive appraisal and unequal appraisal must have separate ARB motions and determinations).
- t. Thank the parties for their participation and announce the determination(s) of the ARB and that an order determining protest will be sent by certified mail.

# Telephone Hearings

- Property owner must make a request in writing at least 10 days before the hearing
  - It can be in the notice of protest



# Telephone Hearings

- Property owner may offer **argument** by phone
- Any **evidence** must come by affidavit
  - If there's an affidavit, it isn't a no show



# Telephone Hearings

- Property owner should not say:
  - Let me tell you about the damage to my roof
  - I know of a comparable property that sold last year for . . .
- Property owner might say:
  - The CAD made an error in its calculations
  - My comps are closer or more recent than the CAD's comps
  - You can see from my affidavit that the NOI of my property has gone down two years in a row



# Telephone Overview



- Determine who is on the line?
  - Property owner?
  - Authorized agent?
  - Stranger breathing heavily?
- Get a call-back number
- Is there an affidavit?

# Affidavits in General

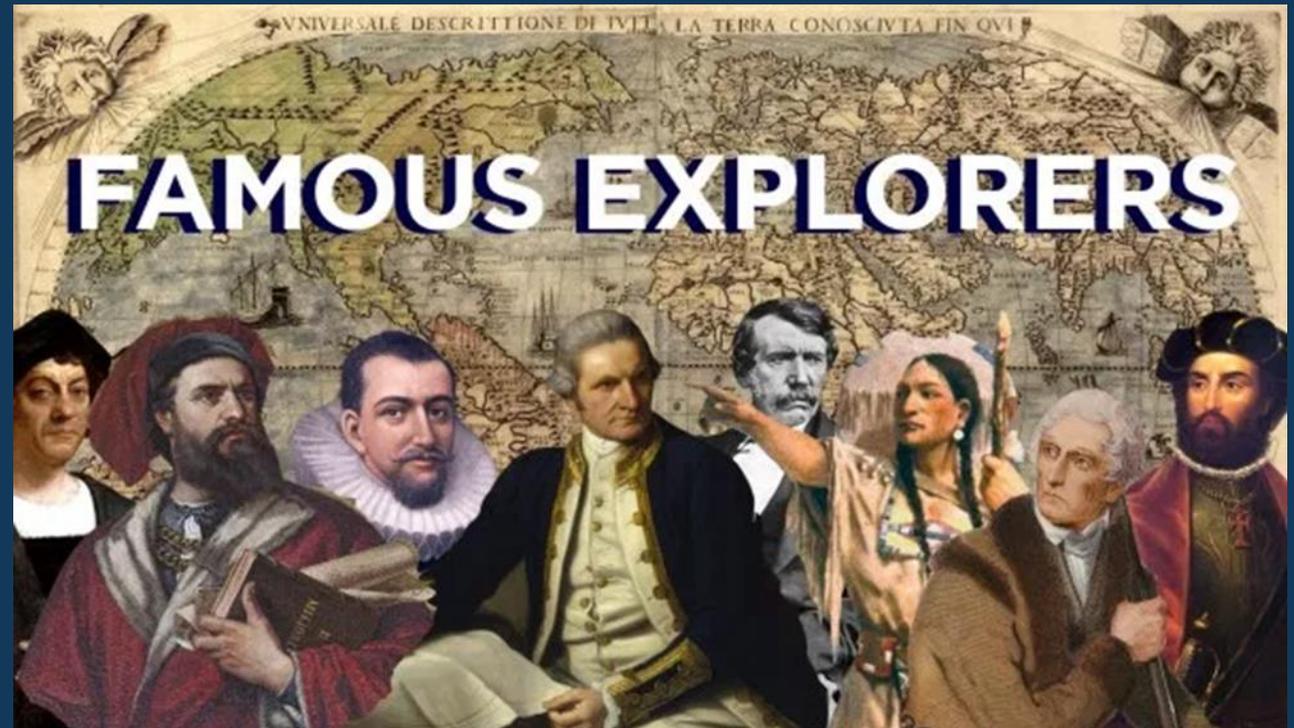
- An affidavit is a written statement made under oath before a notary or other person authorized to administer oaths
- An affidavit has to include only:
  - The name of the protesting property owner;
  - A description of the subject property'
  - Evidence or argument
- Must be submitted before the hearing begins
- May incorporate other things like photos or documents
- **ARB doesn't have to read the whole affidavit aloud**

# Grounds to Consider

- Owner/agent should not attempt to bring up issues not raised on the written notice of protest, but, if he does:
  - CAD may object
    - Panel should not hear the issue
    - Make that clear in the audio record
  - CAD may address the new issue without objection
    - Panel may hear and decide the issue
    - Owner may appeal
- Don't need motions or votes on grounds not properly raised by the property owner

# Member Questions

- There is nothing in the Tax Code or in the Comptroller's rules that prohibits questions or limits them to any particular time during a hearing
- Time is used more effectively if questions are used to help understand what the parties are saying
- Try to avoid boldly going where no one has gone before



# Cross Examination

- Allow cross examination
- Legitimate purposes of cross examination:
  - Get additional information
  - Impeach (discredit) the person
- Don't allow the parties to just argue
- ARB or panel may enforce time limits



“Honestly Madam, do you expect this court to believe that *all* of your husbands mysteriously disappeared at this same time in November?”

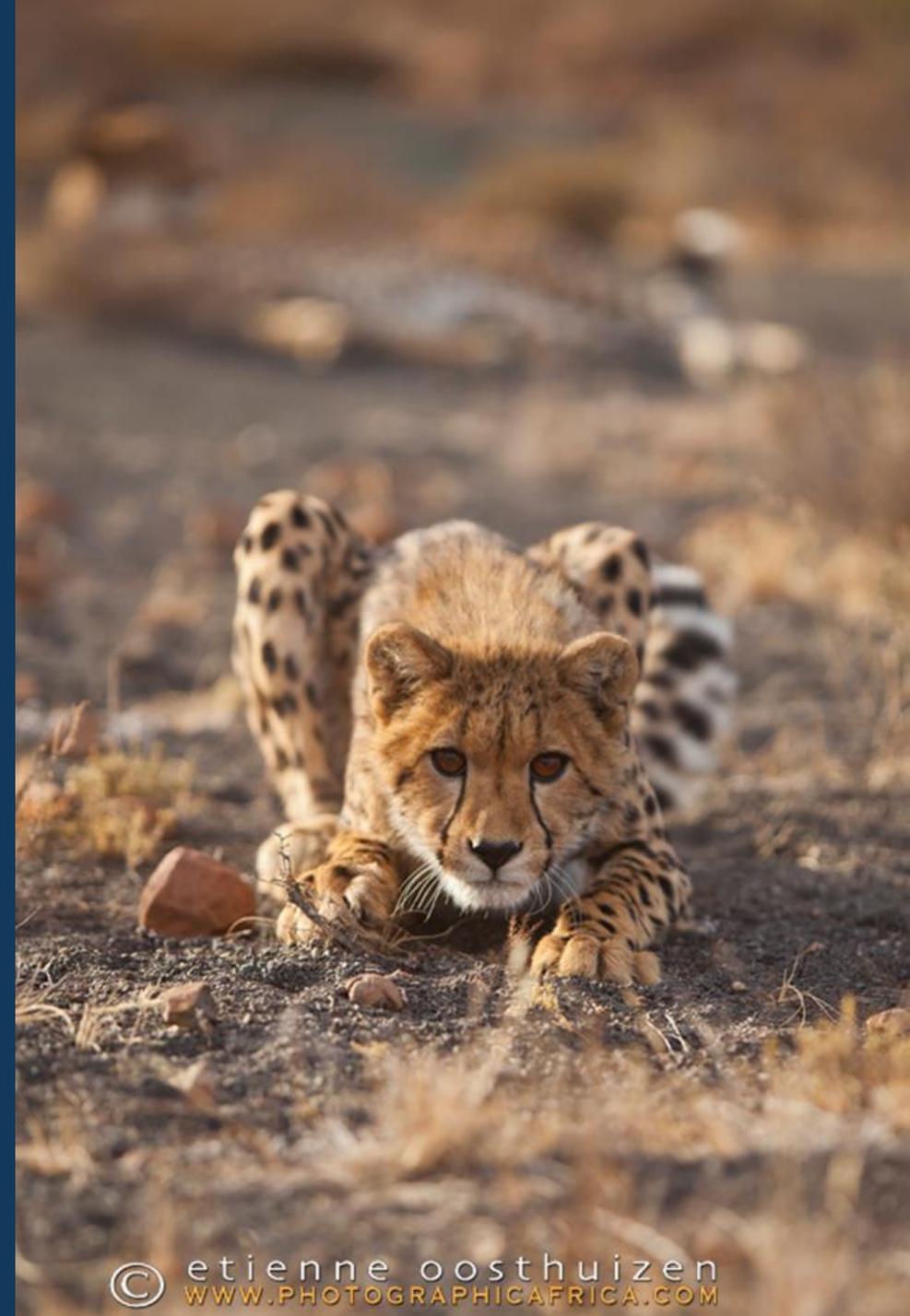
# Evidence Issues

- Hearings are generally not subject to formal rules of evidence
  - Take it with a grain of salt, but take it
- Consider only the evidence presented
- **Settlement offers mean nothing**



# Evidence Controversy

- Arises from a PO's right to inspect and copy evidence that the appraisal district plans to introduce during the 14 days before the hearing
  - If the property owner objects, ARB should not consider evidence that the CAD should have produced but didn't
  - The best hearing is one in which neither side is tricked or ambushed
  - Postponement may be an option
  - Owner/agent may withdraw objection



# General Thoughts

- The procedures are for the benefit of the parties
  - The parties may agree to waive some rights or otherwise modify the procedures
  - A party may decide to pass on an opportunity to speak
  - Conduct the hearing in a way that lets them know that they have that option
    - “Do you have any questions for the CAD representative
    - Do you have anything else that you would like to present in response to the Appraisal District?”

# The ARB is like a Court

- A judge :
  - Is impartial
  - Is Dignified
  - Is in charge
  - Doesn't make the law
  - Applies the law even if she doesn't like it
  - Doesn't introduce evidence
  - Doesn't switch places with lawyers
  - Doesn't become an advisor to a party



# It's the law

- Somebody telling you the law, may not necessarily know it himself.
  - Or he may cite only part of it
- Use Tax Code and its index
- Consult officer about possibly calling A&A



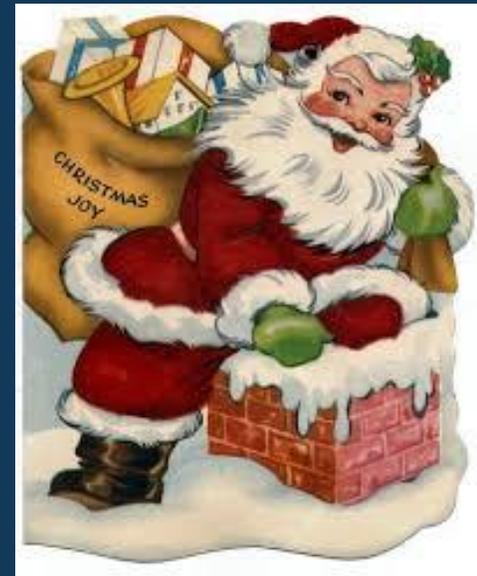
# Remember

- You are **IN CHARGE**
- Don't let anybody bully you or intimidate you
  - Disrupting a meeting of a governmental body is a criminal offense
- Don't defer to the Appraisal District
  - It is okay to ask both sides, "What do you suggest we do?"



# Attitude

- Every PO is entitled to have the ARB members listen to him and consider his protest with open minds
  - He isn't necessarily entitled to win, even if he is a nice guy
  - You really just shift the burden of taxes; you don't eliminate it
  - It's tempting to be generous with other peoples' money



# Not Exactly Settlement Agreements

- Sort of a settlement and sort of not
- Tax consultant generally appears through an affidavit
- Value is recommended to the value but not technically agreed to
  - Wink, wink
- Preserves the P.O.'s option of going to court, arbitration, etc.



# Order Determining the Protest

- When the full ARB has voted on a protest it will prepare a written order
- Notice describes right to appeal and deadlines
- Certified mail
- At the time of a hearing, a panel will not be in a position to promise a date





# Excessive Value

- Most common claim
- ARB doesn't appraise properties to begin with
  - It decides disputes about appraisals done by the Appraisal District
- Owner says the value placed on his property by the CAD is higher than the value required by law
- In most instances the law requires that property be appraised at its **market value** as of **January 1**
- The legislature has prescribed some special rules for appraising certain properties



# Market Value §1.04(7)

- "Market value" means the price at which a property would transfer for cash or its equivalent under prevailing market conditions if:
- (A) exposed for sale in the open market with a reasonable time for the seller to find a purchaser;
- (B) both the seller and the purchaser know of all the uses and purposes to which the property is adapted and for which it is capable of being used and of the enforceable restrictions on its use; and
- (C) both the seller and purchaser seek to maximize their gains and neither is in a position to take advantage of the exigencies of the other.

# Market / Appraised Value

- A property's appraised value should generally be its market value, but there are a few exceptions:
  - For an agricultural property, the appraised value will be the agricultural value, not the market value
  - For a homestead with a capped value, the appraised value will be the capped value, not the market value

# Tax Code Requirements §23.01

- The market value of property shall be determined by the application of generally accepted appraisal methods and techniques.
- An appraisal district's mass appraisals must comply with the Uniform Standards of Professional Appraisal Practice.
- The same or similar appraisal methods and techniques shall be used in appraising the same or similar kinds of property.
- Each property shall be appraised based upon the individual characteristics that affect the property's market value, and all available evidence that is specific to the value of the property shall be taken into account in determining the property's market value.

# Three Approaches to Value

- Market Approach is based on actual arm's-length sales of comparable properties
  - Sales prices are more easy to get when we are looking at single-family residences sold through MLS
  - With other types of properties, sales prices may be difficult to get
  - Texas law does not require disclosure
- Income Approach is based on the income expected from the property
- Cost approach is based on estimating replacement cost and subtracting depreciation
  - Land value based on market approach

# Market Approach §23.013

- An appraiser should use comparable sales data and shall adjust the comparable sales to the subject property.
- Use only sales that occurred within 24 months of the relevant appraisal date, unless there aren't enough.
- In a county with more than 150,000, a sale must have occurred within 36 months of the relevant appraisal date.
- A sale that occurred this year can be considered
  - The TCAD usually looks for sales through the end of February

# Market Approach §23.013

- A sale of a comparable property must be appropriately adjusted to account for changes in its market value over time
  - The closer is to January 1, the less need for a time adjustment
  - Adjustments should be supported by evidence
- Whether a property is comparable to the subject property shall be determined based on similarities with regard to location, square footage of the lot and improvements, property age, property condition, property access, amenities, views, income, operating expenses, occupancy, and the existence of easements, deed restrictions, or other legal burdens affecting marketability.

# Homesteads

- A residence homestead is a property that qualifies for a residence homestead exemption
  - Principal residence of owner
  - More when we talk about exemptions
- Generally, homestead should be appraised at market value, but there are some special rules



# Special Rules for Homesteads

- The value of a residence homestead shall be determined solely on the basis of the property's value as a residence homestead, regardless of whether the residential use of the property by the owner is considered to be the highest and best use of the property [§23.01(d)]



# Special Rules for Homesteads

## §23.01 (c)

- TAD cannot exclude from consideration the value of other residential property that is in the same neighborhood as the subject and that would otherwise be considered because the other property:
  - was sold at a foreclosure sale within three years prior to the appraisal date (if the foreclosed property was comparable to other residence homesteads in the neighborhood at the time of the sale); or
  - has a market value that has declined because of a declining economy
- Adjustments may be required

# Residence Homestead Cap

- Designed to spread out effect of sharp value increases
- Applies to residence homesteads
- Begins in second year the property receives homestead exemption
- Ends when homestead exemption ends



# Formula for Homestead Cap

- This year's appraised value may not exceed:
  - the appraised value of the property in the prior year, plus
  - 10% plus
  - the value of new improvements made to the property since the most recent appraisal

# Homestead Cap Example

- In 2018, a homestead had an appraised value of \$300,000.
- The 2019 maximum appraised value would be \$\_\_\_\_\_, plus the value of any new improvements made since the most recent appraisal
- Generally, this should not be a source of controversy
  - Except value added by new improvements



# More on Homestead Caps

- New improvement does not include repairs or ordinary maintenance of an existing structure or the grounds or another feature of the property
- The cap continues as long as the qualifying owner or his/her spouse retains a homestead exemption on the property
  - Then, in the following year, the property will be appraised at its market value

# Inventory Appraisal §23.12

- General rule: The value of an inventory is the price for which it would sell as a unit to a purchaser who would continue the business
  - Developer's lots can be inventory
  - September 1 is alternative appraisal date if owner requests it before August 1
- Special sales-based tax applies to inventories of motor vehicles; small boats and motors; manufactured homes; and heavy equipment
  - Value is 1/12 of previous year's sales with certain sales excluded (an average month's sales)

# Excessive Value Protests: Burden of Proof

- The appraisal district has the burden of proof by a preponderance of the evidence



# Excessive Value Protests: Burden of Proof

- There may be more than two possible answers



\$270K

\$282K

\$285K

\$288K

\$295K

\$299K

# Excessive Value Protests: Burden of Proof

- Evidence has the weight that the ARB members think it has
- Does this really make me believe that the value is higher or lower? By how much?



# Expert Opinions

- Expert opinions have come to be scrutinized by courts much more in recent years
- This is consistent with the overall spread of “tort reform” and efforts to reduce the costs and burdens that lawsuits impose on big companies
- It is sometimes expressed as a goal of keeping “junk science” out of the courtroom

# Expert Opinions

- Rule 702. Testimony by Expert Witnesses - A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue.



# *Houston Unlimited Case*

- *Houston Unlimited, Inc. v. Mel Acres Ranch*
- *Texas Supreme Court 2014*
- The Supreme Court decided that the trial judge should not have let the jury hear an appraiser's testimony
  - Nobody questioned her credentials as an appraiser

# *Houston Unlimited Case*

- A court should not just accept an appraiser's opinions at face value
- It is not enough for the appraiser to simply state that her opinion is based on information of a kind upon which appraisers reasonably rely
- The court should examine the validity of the facts and assumptions on which the experts opinion is based
- "If an expert's opinion is unreliable because it is based on assumed facts that vary from the actual facts, the opinion is not probative evidence."

# *Houston Unlimited Case*

- An expert must “connect the data relied on and his or her opinion and to show how that data is valid support for the opinion.”
- When the facts might support alternative conclusions as well as the expert’s conclusion, the expert must explain why her conclusions are superior based on verifiable evidence.



# *Beware the Ipse Dixit*

*and shun the frumious bandersnatch*

- Expert testimony that is based on unreliable data or flawed methodology is unreliable
- An appraisal cannot be based on the appraiser's ipse dixit



# USPAP

- The Property Tax Code expressly requires adherence to USPAP only in the course of mass appraisals
- Courts, however, generally insist that an appraisal comply with the Uniform Standards of Professional Appraisal Practice



# Appraisers – Private Sector

- Licensed or certified by the Texas Appraiser Licensing and Certification Board
- A person must be licensed or certified in order to prepare an “appraisal,” a written statement of a property’s market value
  - Another person may have an opinion but may not call it an appraisal
- Private-sector appraisers are usually also certified by a private trade organization like the Appraisal Institute

# Appraisers – Public Sector

- Must be registered with the Texas Department of Licensing and Regulation
- Must have (or be pursuing) certification as a Registered Professional Appraiser
- Sometimes a person may also have private-sector credentials



# Appraisers

- Shocking though it may seem, appraisers are sometimes wrong
  - An appraiser may make mistakes
  - An appraiser may manipulate information or shade his interpretation in order to support a particular result
    - Known as backing into a number
- It is unethical for an appraiser to be compensated for a particular appraisal based on the result produced
  - But an appraiser's self interest may affect him in different ways
  - By the way, this rule does not apply to tax consultants

# Opinions from Lay People

- Historically, courts have allowed property owners to testify to their opinions about the values of their properties
- A court will generally *presume* that the owner of a property is familiar with its value
- But courts have gotten stricter in recent years
- “[A]s with expert testimony, an owner's property valuation may not be based solely on the owner's *ipse dixit*. An owner may not simply echo the phrase “fair market value” and state a number to substantiate the owner's claim; the property owner must provide the factual basis on which the opinion rests.”

# Evaluating Opinion Evidence

- An ARB panel will not normally be asking whether opinion evidence should be admitted
- The panel will normally allow the evidence to be presented but ask:
  - “Will this evidence help us at all to determine the value of the property or to answer the other questions raised by the protest?”
  - If so, just how helpful is it and how does it stack up against the other evidence?”

# Excessive Value Protests: Burden of Proof

- Owner has the burden of proof if he has not filed required rendition or supporting information requested by CAD
- Appraisal District has a different burden under three circumstances (next slides)



# Excessive Value Protests: Burden of Proof

- If a property's value was lowered last year as the result of a protest, lawsuit or binding arbitration and the CAD raises it this year, the raised value must be supported by **"substantial evidence"**
  - The substantial-evidence standard that courts apply is not difficult to meet
  - The CAD should have some reason other than, "The ARB or court was wrong last year."

# Substantial Evidence

“**Substantial evidence**” does not mean a large or considerable amount of evidence, but such relevant evidence as a reasonable mind might accept as adequate to support a conclusion of fact. The test is not whether the agency made the correct conclusion in our view, but whether some reasonable basis exists in the record for the agency's action. We must uphold an agency's finding even if the evidence actually preponderates against it, so long as enough evidence suggests the agency's determination was within the bounds of reasonableness.

*Slay v. Texas Comm'n on Environmental Quality (Austin 2011)*

# Excessive Value Protests: Clear and Convincing Evidence

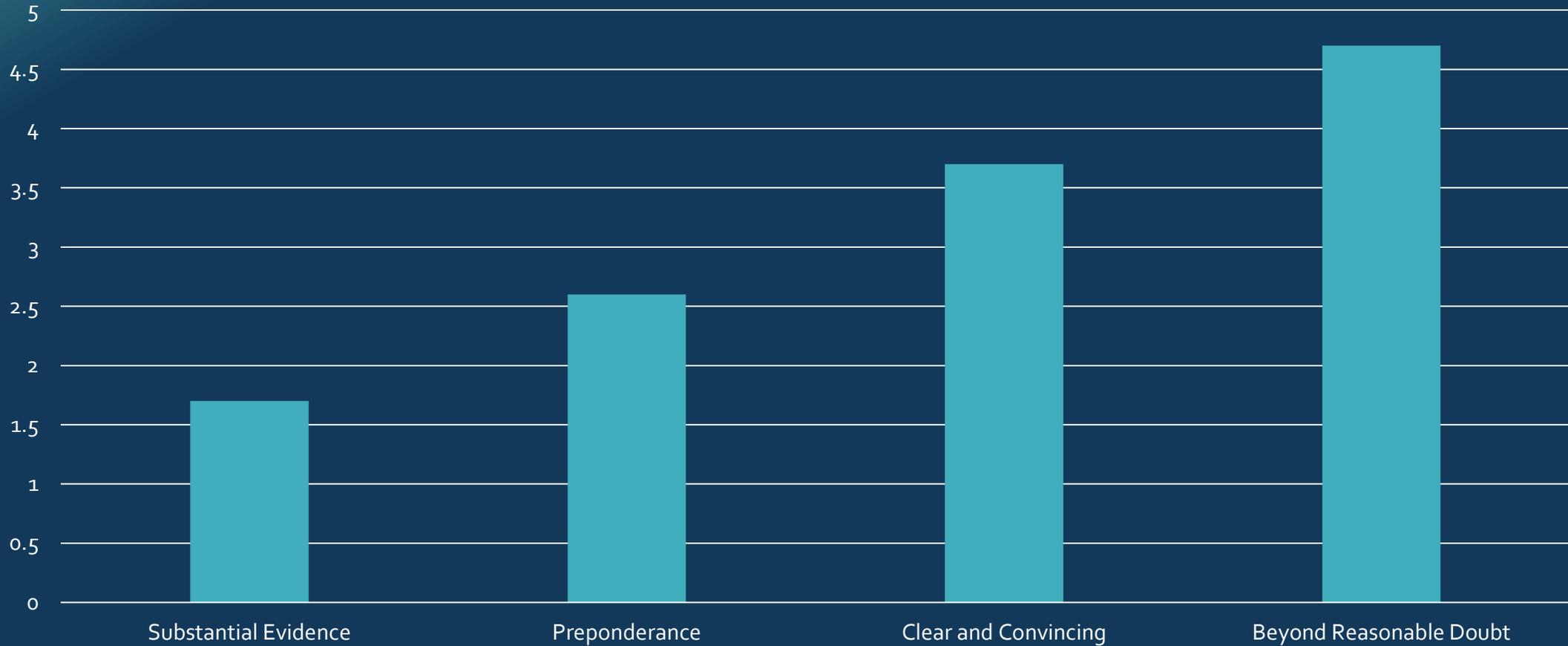


- The CAD may have to prove its value with “clear and convincing evidence” if:
  - The property owner has her own appraisal and all requirements are satisfied; or
  - The appraised value was lowered last year, the property provides her evidence in advance and all requirements are satisfied

# Excessive Value Protests: Burden of Proof

- Protests where the clear and convincing evidence standard applies probably won't happen by accident
  - The owner or agent will plan in advance to take the steps that will impose this burden on the CAD
  - The owner or agent will let you know
  - Refer to the Tax Code, the ARB manual or a checklist to see whether all of the requirements have been satisfied
- CAD can still prevail if it provides clear and convincing evidence

# Burdens of Proof



# Excessive Value Protests

- Does the ARB have to accept the value claimed by one side or the other?
  - No, but try to have some explainable basis for the value that you find
  - Don't just split the difference



# Unequal Appraisal Protest

- Property owner is not necessarily saying that the appraised value of his property exceeds its market value
  - Owner may admit that CAD's estimate of market value is accurate or even low
- He is saying that his property is appraised unfairly compared to other properties
  - Because owner's property is appraised too high and/or other properties are appraised too low



# Unequal Appraisal Protest

- Equality can be looked at in two ways:
  - One of them involves comparing the appraisal ratio for subject property with appraisal ratios for other properties
    - Less common
  - One involves comparing the appraised value of subject property with appraised values of comparable
    - More common

# Comparing Appraisal Ratios

- Appraisal ratio

$$\frac{\text{CAD's appraised value}}{\text{Actual market value}}$$

- Example:

$$\frac{\text{CAD value - \$9.5M}}{\text{Actual value - \$10M}}$$

- Ratio is 95%

# Comparing Appraisal Ratios

- ARB should determine (based on the evidence presented) the appraisal ratio for the subject
- Compare that ratio with:

the median appraisal ratio for a sample of properties consisting of a **reasonable number** of properties similarly situated to, or of the same general kind or character as the subject

the median level of appraisal of a reasonable and representative sample of other properties in the appraisal district;

- If the ratio for the subject is higher than the median for other properties, lower the subject

# Comparing Appraisal Ratios

Subject's CAD Value  
Subject's Actual value

Comp 1 CAD Value  
Comp 1 Actual Value

Comp 2 CAD Value  
Comp 2 Actual Value

Comp 3 CAD Value  
Comp 3 Actual Value

Comp 4 CAD Value  
Comp 4 Actual Value

Comp 5 CAD Value  
Comp 5 Actual Value

Comp 6 CAD Value  
Comp 6 Actual Value

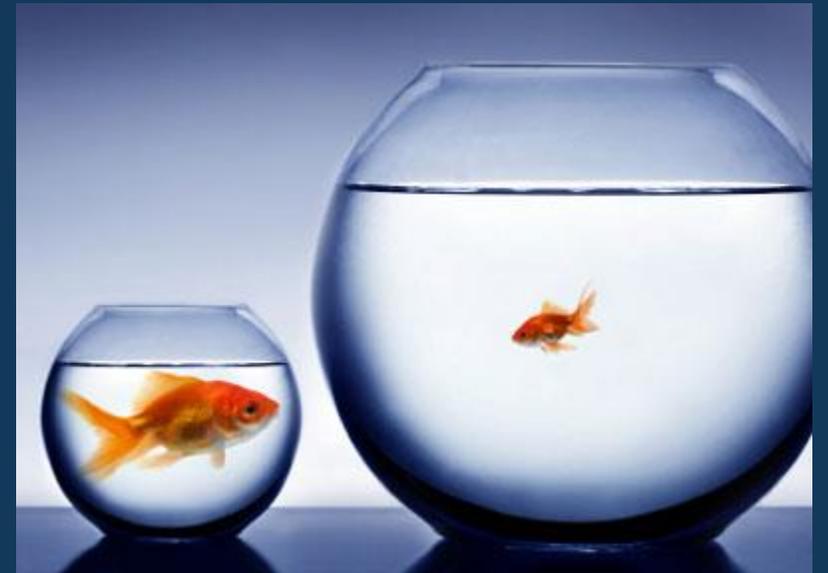
Comp 7 CAD Value  
Comp 7 Actual Value

Comp 8 CAD Value  
Comp 8 Actual Value

Comp 9 CAD Value  
Comp 9 Actual Value

# Comparing Appraised Values

- ARB should compare the appraised value of the subject with the median appraised value of a **reasonable number** of **comparable properties** appropriately adjusted



# Comparing Appraised Values

- Party offering evidence needs to show:
  - A **reasonable number** of **comparable** properties
  - Whether adjustments are appropriate for factors such as: location; size of land and improvements; age; condition; access; amenities; views; etc.
    - What appraised value would the district have put on the comparable property if it had the same qualities as the subject?
  - The amounts of and reasons for any adjustments

# Comparing Appraised Values

- If the appraised value for the subject is higher than the median appraised value for the comparable properties with appropriate adjustments, then lower the value of the subject down to the median
- E.G., the subject is appraised at \$350,000
  - The median appraised value of the comparables, after adjustments is \$327,000
  - The ARB should lower the value of the subject to \$327,000

# §23.01

- In an unequal-appraisal analysis, the selection of comparable properties and the application of appropriate adjustments will have to be based on generally accepted appraisal methods and techniques.
- Adjustments must be based on recognized methods and techniques that are necessary to produce a credible opinion.
- This rule will not prevent a property owner who is representing himself from stating his opinions.



# Unequal Appraisal Protests: Burden of Proof

- The CAD has the burden of proof by a preponderance of the evidence
- The CAD can compare appraisal ratios or appraised values
- The parties may address both appraisal ratios and appraised values
  - If the different methods produce different results, the ARB should go with the method that benefits the property owner most.
  - Any method used by one side is subject to being challenged by the other side

# APPEALS



# Options for Appeals

- Either party can appeal to a court for a **trial de novo**
  - TCAD appeal requires value of \$1 million or more
- PO may appeal to binding arbitration
  - Value is \$3 million or less
  - Issue is value or unequal value
- PO May appeal to the State Office of Administrative Hearings
  - Value is \$1 million or more
  - Issue is value or unequal value



# Due Process of Law

- Courts have ruled that the Tax Code's procedural requirements fully protect a property owner's Due Process rights
- If an ARB or panel makes a mistake in conducting a hearing, the property owner is protected by his right to appeal
- The owner may not sue the ARB or otherwise pursue the ARB or its members
  - You should be motivated to do things right, but that motive should not be fear

