



Property Assessment Appeal Board Review Committee

Iowa State Association of Assessors
David Kubik, Dubuque County Assessor
December 11, 2012
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OFFICE OF
MUSCATINE COUNTY ASSESSOR
DALE L. MCCREA, ICA
ASSESSOR

December 3, 2012

Honorable Members of the Property Assessment Appeal Board Review Committee

Enclosed you will find documents compiled by the Iowa State Association of Assessors for your consideration as you review the Property Assessment Appeal Board (PAAB). The documents are submitted in the hope of improving the process and increasing the efficiency for all parties involved as appeals of local board of review decisions are filed with the PAAB. We would ask that you take these documents into consideration as you move forward with your review and, if you see fit, include them in your final report.

The five documents detail the issues, provide history regarding the issues and include recommended solutions for the following areas:

1. Presumption of Correctness
2. Scope of Evidence
3. Filing Fees
4. Member requirements
5. Electronic Submission of Records

From these documents, the ISAA Executive Board has determined that, while all of the documents present valid issues and possible solutions, Presumption of Correctness and Scope of Evidence address issues that would improve the entire appeal process for all parties involved and may require additional consideration by the committee. By implementing Presumption of Correctness, the Board of Review decisions would carry additional weight and, as a result of the presumption, the property owners would be more willing to present valid information for the Board of Review to consider as they arrive at their decision. The Scope of Evidence solution would also encourage the property owner to submit information to the Board of Review and would establish a schedule wherein additional information would be exchanged to facilitate both settlement agreements and scheduling of hearings before the PAAB.

In order to answer questions regarding these documents during the meeting scheduled December 11, 2012, Mr. David Kubik, Dubuque County Assessor, will be present. In the meantime, please contact me or any of the contributing members at your convenience if you have comments, questions or require additional information.

Sincerely

Dale L. McCrea, RES, ICA
Muscatine County Assessor



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To: Property Assessment Appeal Board Review Committee

Submitted by: Iowa State Association of Assessors

1. **Title:** Property Assessment Appeal Board - Presumption of Correctness
2. **Describe the issue.** The local Board of Review is charged with hearing protests to the assessed value or classification of real property. Each board consists of 3 or more appointed members who reside in the assessment jurisdiction. In the case of a county jurisdiction, one of these members must be a farmer. Additionally one member is preferred to be a real estate agent and another is preferred to be someone experienced in construction. These board members represent a wide spectrum of occupations and traditionally have substantial knowledge of local real estate markets, yet their findings on issues before them hold no weight on appeal to PAAB.
3. **History of the issue.** Prior to 1960 the courts gave wide discretion to all public officials and boards who carried out their duties in a responsible manner. This "presumption of correctness" was widely known and accepted by the courts, and was cited by the Supreme Court on at least two occasions (Janson v. Fuller 162 N.W.2d 438,442 and Juda v. State Del., 234 A.2d 910, 911). Prior to 1960, this "presumption of correctness" also covered the local Board of Review actions and was cited numerous times by the Supreme Court in assessment appeals. About 1960, Iowa Code 441.29 was changed to state "there shall be no presumption as to the correctness of the valuations or assessment appealed from".
4. **Why does the issue need to be addressed?** It is common for local Board of Review members to have intimate knowledge and insight on specific properties. Additionally the realtor on the Board of Review conducts business in the real estate market on a daily basis, thus providing substantial insight as to the value of property. All this experience is given no weight or consideration on appeal to PAAB, even though Board of Review members may be in the best position to know the market value of some properties. A secondary issue is that with no weight given to the local Board of Review's decision, appellants are under no compulsion to put forth a real effort on an appeal thus circumventing the intent and function of the local Board of Review.
5. **What is the suggested solution?** Remove the sentence "The court shall consider all the evidence and there shall be no presumption as to the correctness of the valuation or assessment appealed from" from Iowa Code 441.39. Removing this sentence will place the Board of Review on the same footing as other public officials or boards. Appellants would still be able to overturn board of review rulings, but PAAB would be required to give weight to the local board insight and knowledge before finding for the appellant.

Statements from Court decisions:

Furthermore, there is a recognized presumption, absent evidence to the contrary, that public officials will carry out their duties in a prudent, proper manner. See *Janson v. Fulton*, 162 N.W.2d 438,442 (Iowa 1968).

Further answer to this argument is found in 'a well established presumption that, in the absence of evidence to the contrary, those responsible for certain services to the public will carry out their duties in a proper, careful and prudent manner.' *Judah v. State*, Del., 234 A.2d 910, 911. There a number of incidents are set forth where courts of various jurisdiction have applied this presumption.

Unless it is manifest the valuation is grossly excessive and is result of will and not judgment, assessment will be sustained. *Chicago & N.W. Ry. Co. v. Iowa State Tax Commission*, 1965, 137 N.W.2d 246, 257 Iowa Where evidence as to value of taxpayer's property was highly conflicting, trial court properly sustained assessment as fixed by assessor and confirmed by board of review. *Corn Belt Theatre Corp. v. Board of review, City of Oskaloosa, Mahaska County*. 1944, 12 N.W. 2d 820, 234 Iowa 355.

The assessor's opinion as to valuation of property for tax purposes is not conclusive, but when properly based and apparently not erroneous, excessive or out of proportion, it is to be held as true value of property. *Trustees of Flynn's Estate v. Board of Review of City of Des Moines*, 1939,

It has often been said every determination of property value requires an opinion of judgment and that the court is not free to substitute its judgment and opinions for that of the proper officials unless it finds the action of the assessor is "arbitrary or capricious or so wholly out of line with the actual values as to give rise to the inference that for some reasons he has not properly discharged his duty.***." *Butler v. City of Des Moines*, supra *Daniels v. Board of Review*, supra. Stated another way " unless it is manifest that the assessment is grossly excessive and is a result of the exercise of the will and not of the judgment" a mere showing of the difference of opinion between the assessor and the taxpayer will not justify court interference. *Clark. V. Lucas County Board of Review*, 242 Iowa 80, 97, 44 N.W. 2d 748, 757 and citations; in re *Appeal of Bankers Life Co. v. Zirbel* 239 Iowa 275, 279, 31 N.W. 2d 368

Does it justify the further conclusion of the trial court: "that the presumption in favor of the assessor to the effect that as a public official he has properly carried out his duties has been overcome by the evidence in this case" While it is the judgment of the assessor which the statute demands, this court has recognized that it is proper for the assessor to make inquiry and as best he can arrive at and fix values. *Butler v. City of Des Moines*, supra, 219 Iowa at page 958, 258 N.W at page 756 citing *Burnham v. Barber*, 70 Iowa 87, 30 N.W. 20

We think the conclusion of the trial court on this branch of the case was correct. We do not condemn the proper use of an appraisal by an independent expert. Such an appraisal, properly used, might be of great value to the assessor but it should not be substituted for his judgment. When it is, the presumption usually indulged in support of the assessment is overcome.

To: Property Assessment Appeal Board Review Committee

Submitted by: Iowa State Association of Assessors

1. **Title:** Property Assessment Appeal Board - Scope of evidence to be presented at appeal
2. **Describe the issue.** Currently the hearing before the PAAB is trial de novo, or in layman's terms new trial. It has become increasing common for appellants to the local Board of Review to provide scant, if any, evidence to the Board, thus bypassing the local body and applying to the PAAB. This has enabled, especially the cottage industry of commercial tax representatives, to blanket jurisdictions with appeals with little effort on their part.
3. **History of the issue.** Before the PAAB, appellants to the local Board of Review would generally make a good faith effort to educate the Board on the relevant issues that lead them to conclude the assessment was erroneous. They did this because, while the appeal to District Court was also trial de novo, the judge had the authority to dismiss the case if they felt the appellant had not exhausted their administrative remedy at the local level. The PAAB has not used this option to discourage the practice of filing an appeal at the local level, providing the Board of Review with minimal or no documentation to support the appeal, and then proceeding to file an appeal with PAAB.
4. **Why does the issue need to be addressed?** The assessment community does not believe the PAAB was formed to replace the local Boards of Review, but to give the appellant a "second opinion" as to the fairness of the assessment. With the local Boards not being presented with the facts the appellant utilized to come to the conclusion of overvaluation, the Board of Review is effectively circumvented.

An added benefit of the appellant providing the Board of Review with the appraisal is the probability of a settlement increases substantially. Because the Board now has information that can be reviewed, they have the opportunity to negotiate with the property owner regarding the value of the subject property. The cost of additional appraisals and/or attorney fees would not be passed on to the property owners of the jurisdiction

5. **What is the suggested solution?** Only evidence presented to the local Board by either party could be presented to the PAAB, with exception of the submittal of appraisals and the testimony of the appraisers who prepared the appraisals, recognizing the time constraints the Code of Iowa imposes on obtaining an appraisal in a timely manner for the Board of Review to consider while in session.

To facilitate the timely resolution of the appeal, the Board shall establish a time line or scheduling order delineating the deadlines for submission of any appraisals and the names of expert witnesses expected to testify at the hearing. The schedule would require the appellant to provide copies of any appraisal(s) and expert witness list to the Board of Review and the Appeal Board within 120 days of filing the appeal. The Board of Review would have 60 days after the receipt of the appraisal(s) and list to present the Appeal Board and the property owner a settlement offer or declare the intent to proceed with the hearing and, within 60 days of the declaration, submit appraisal(s) and the names of expert witnesses expected to testify at the hearing to the Appeal Board and the Appellant. If the Board deems an extension of the initial 120 days is appropriate, the response deadline of the Board of Review will begin at the time the appraisal(s) are received by the Board of Review.

To: Property Assessment Appeal Board Review Committee

Submitted by: Iowa State Association of Assessors

1. **Title:** Property Assessment Appeal Board - Filing fees
2. **Describe the issue.** The Property Assessment Appeal Board does not charge a fee to file an appeal.
3. **History of the issue.** The Property Assessment Appeal Board was created as an alternative option for the ordinary property owner to appeal the assessment of property from the local Board of Review without filing an appeal to district court. Code of Iowa Chapter 421.1A (2) (e) allows PAAB the authority to set fees for filing appeals, but has chosen to pass the total cost of operations to the taxpayers of Iowa.
4. **Why does the issue need to be addressed?** While the Property Assessment Appeal Board was created as low cost alternative to district court, the current policy of free assessment reviews, has inflated the Board’s dockets to the point of the Board not being able to issue rulings on appeals before tax bills are sent out based upon the appealed value. In addition, it should also be noted that the Board has yet to increase any appealed assessment, though an increase was warranted by the evidence presented. Under current policy, property owners file for a free review, with no chance of an increase in assessment.

This “I’ve got nothing to lose” environment, costs both the Board and the assessment jurisdiction time and money. In many cases the assessment jurisdiction, funded by taxpayers, has paid for an outside fee appraisal in preparation for defense of the valuation. In addition to the cost of preparation to defend the appeal, there have been many instances when the property owner or their representative does not appear at the scheduled hearing and the Board requires the Board of Review/Assessor to present their arguments in spite of the no-show by the appellant. The operational costs for the Board have risen sharply since was first created and it is unfair for the citizens and other property owners of Iowa to fund a “no-lose” scenario like this.

5. **What is the suggested solution?** Direct the Property Assessment Appeal Board to establish a fee schedule for filing of an appeal with the Board. Implementing a fee schedule will minimize the filing of appeals on small differences in value and allow the Board to focus on the most serious appeals. The fee to file an appeal with the Property Assessment Appeal Board should coincide with the fee to file with the District Court. A schedule of fees for appealing valuation to the Kansas court of tax appeals is also shown below as an example of what at least one other state has done regarding this issue.

| | |
|---|----------|
| Current District Court Fee | \$185.00 |
| Kansas Court of Tax Appeals | |
| Single-family residential property & farmsteads | \$25.00 |
| Properties valued at \$250,000 or less | \$125.00 |
| \$250,001 through \$1,000,000 | \$200.00 |
| \$1,000,001 through \$5,000,000 | \$300.00 |
| \$5,000,001 through \$10,000,000 | \$400.00 |
| Greater than \$10,000,000 | \$500.00 |

To: Property Assessment Appeal Board Review Committee

Submitted by: Iowa State Association of Assessors

1. **Title:** Property Assessment Appeal Board – Member requirements
2. **Describe the issue.** The current membership of the Property Assessment Appeal Board is to have at least two years' experience in the area of government, corporate, or private practice relating to property appraisal and property tax administration.
 - a. One member of the Board shall be a certified real estate appraiser or hold a professional appraisal designation.
 - b. One member shall be an attorney practicing in the area of state and local taxation or property tax appraisals.
 - c. One member shall be a professional with experience in the field of accounting or finance with experience in state and local taxation matters.

The requirements of the Board members do not take into consideration the complexity of the appraisal process that the Board members encounter as they hear appeals of commercial and/or industrial properties. The requirements do not specify that, at minimum, one member be required to have experience in commercial/industrial property appraisal by specifying a certified general appraiser as a requirement to be appointed.

3. **History of the issue.** Based on information provided to the Committee, from 2007 to 2009 the appeals related to Commercial properties averaged 27% per year. The period from 2010 to 2012 the average percentage of appeals related to commercial properties rose to 40% per year with high of 65.1% recorded for 2012. The trend would indicate that the number of commercial appeals will continue to be a substantial part of the appeals filed with the Property Assessment Appeal Board. This percentage does not include appeals of properties that are operated as apartment complexes with a condominium classification.
4. **Why does the issue need to be addressed?** A review of the data regarding the appeals, the trend appears to indicate commercial property appeals will continue to be a substantial portion of the appeals brought before the Board. The review of residential appeals will also benefit from the expertise of the Board members if they are Certified Appraisers. Also, should it be required that one of the members be a practicing attorney when the rules allow for general counsel to provide legal advice?
5. **What is the suggested solution?** Amend Iowa Code Section 421.1A (2) (b) and revise Administrative Rule 701-71.21(1) (b) to require
 - a. All members of the Board shall be certified real property appraisers or hold a professional real property appraisal designation from one of the organizations listed below.

The Appraisal Institute of Canada, Appraisal Institute, American Society of Appraisers, American Society of Ram Mangers and Rural Appraisers, International Association of Assessing Officers, International Right of Way Association, National Association of Independent Fee Appraisers or National Society of Real Estate Appraisers
 - b. A minimum of one member of the Board shall be a Certified General Real Property Appraiser.

The Board would then have member(s) with expertise to review the complex data presented during the appeal of commercial and/or industrial properties as well as the review of all other classes of property. Determination of issues of law would be obtained from the general counsel, currently on staff, and included in any decisions rendered by the Board.

To: Property Assessment Appeal Board Review Committee

Submitted by: Iowa State Association of Assessors

1. **Title:** Property Assessment Appeal Board - Electronic submission of petitions, records, exhibits and information.
2. **Describe the issue.** Currently the Property Assessment Appeal Board does not allow affected parties to file appeals electronically, nor do they accept any records, information or exhibits in an electronic/digital format.
3. **History of the issue.** From the implementation of the Property Assessment Appeal Board, the Board has not accepted any information in an electronic/digital format.
4. **Why does the issue need to be addressed?** Iowa Code Chapter 554D currently allows any governmental agency to receive electronically filed documents. In many jurisdictions the local Board of Review is receiving information from the property owners in electronic format and in some cases, has scanned all documents associated with an appeal to maintain a record of the Board of Review action. It is not uncommon for the scanned records to include one or more appraisals, which may run seventy-five to one hundred fifty pages in length, in addition to the Board of Review documentation. Also, when a property owner appeals the valuation of an apartment complex organized as a condominium, they may file a separate appeal for each unit which must then be copied and sent as part of the record to the Appeal Board. In at least one case, this amounted to over 150 appeal forms filed for one apartment complex. The Board of Review/assessor is also required to send copies of the same materials to the property owner who filed the documents with the Board of Review originally.

In addition to the cost of making the copies or printing the documents, considerable staff time is spent gathering, sorting and preparing the documents to be mailed to the Appeal Board and the property owner/agent. Even a relatively simple appeal on a residential property can take four hours or more to print or copy the data, organize it and prepare it for mailing. The more complex appeals will take much longer to copy and organize due to the magnitude of material that may be involved. Currently there is also the added cost of verifying delivery of the package by using certified mail and return receipt. If the material was able to be sent electronically, verification of receipt can be registered automatically and the one page notice can be archived or printed to be attached to the digital file.

5. **What is the suggested solution?** Direct the Property Assessment Appeal Board to accept electronic/digital records from both parties and allow submission/exchange of electronic/digital documents between the parties in accordance with Iowa Code Chapter 554D.