

General Information Regarding Protests

Introduction

The protest process generally involves two events, an informal meeting with an appraiser and a subsequent, formal hearing before the ARB. These two events will usually be scheduled on different days. Hearings are usually scheduled on a docket type system with multiple accounts scheduled in succeeding order.

Informal Meeting with an Appraiser

A property owner will usually meet first with an appraisal district representative. This is often referred to as a settlement conference or informal meeting. The purpose of this meeting is to address and understand the issues involved and to encourage the amicable resolution of the protest. The property owner is asked to sign an electronic affirmation stating that testimony and any evidence submitted in connection with the meeting is truthful.

Although a property owner is not required to meet with an appraiser, experience demonstrates that many protests can be resolved at this stage and thereby avoid a formal hearing. If, however, the protest cannot be resolved at this level, then a formal hearing will proceed before an ARB panel.

If a protest or correction motion is resolved by written agreement, the matter is final and the ARB has no jurisdiction to consider it.

Formal Hearing with the ARB

If a property owner cannot resolve his or her protest with the appraiser, a "formal" hearing before a panel of the Appraisal Review Board is set.

Important: The ARB is not bound by any of the discussions or settlement negotiations made between the property owner or representative, and the appraiser.

What happens in a formal hearing - The appraiser may begin recording the hearing when the parties are ready to begin. The panel chair begins the hearing by introducing its members and swearing in the participants. The account number and type of hearing are read into the record. The property owner is asked to sign a disclosure form using an electronic pen pad, and both the property owner and appraiser are asked to acknowledge they are under oath. Each panel member signs an affidavit attesting that they had no prior discussions about the property or the matter to be considered. If a panel member cannot truthfully sign this affidavit, that member should recuse himself/herself from the hearing. If a panel member is related to the property owner, by affinity within the second degree or third degree by consanguinity, the member should recuse themselves for that protest hearing. If a panel member owns a business interest in the property protested, that member should also recuse themselves from that hearing. Texas Tax Code §41.69.

The Panel Chair will ask the appraiser to describe the property, and state the basis for the protest and the noticed value. The Chair will then ask whether the property owner agrees with the appraiser's statements. If not, the Chair should clarify any disagreement, determine any necessary changes, and continue with the hearing.

The property owner/agent presents their case by testifying and providing evidence concerning the matter under consideration. Property owners/agents are required to provide four (4)

copies of all documentary evidence, three for the ARB and one for the appraiser. After the property owner/agent completes their presentation, the district's representative will present the district's evidence and arguments to the panel and make their recommendation.

Once both sides present their case, the panel chair shall ask for closing remarks from the property owner/agent. Remarks should be restricted to the evidence and arguments presented. The panel should not consider information that has not been provided within the scope of the hearing; this includes any previous settlement negotiations.

After all parties have an opportunity to offer evidence, examine or cross-examine witnesses or other parties, and present a closing argument, the panel chair will announce that the evidentiary phase of the hearing has concluded. The panel will then deliberate to reach a decision. Once the panel reaches a consensus, either by majority or by unanimous decision, the recommendation shall be announced. A copy of the panel's recommendation will be printed and provided to the property owner/agent.

Approval by the Full ARB

Once the hearing has been completed, the ARB sitting *en banc* will consider the panel's recommendation at their next meeting. This recommendation must be approved by a majority vote of the ARB in order to represent the final determination of the Board. The final decision is issued in writing and sent by certified mail to the property owner or designated agent. Occasionally, the full ARB does not approve a panel recommendation. If this occurs, a new hearing is scheduled before three members who did not hear the matter originally.

Standards of Proof

Introduction

The Texas Tax Code defines the burden of proof required for an appraisal district in order for it to prevail in a protest before the ARB. To be specific, an appraisal district has the initial responsibility to show a property is neither over-appraised nor unequally appraised when compared with other properties.

Pursuant to Section 41.43 of the Texas Tax Code, the district must prove, by the preponderance of the evidence that the market value of the property and that the property is neither over appraised nor unequally appraised when compared to other properties. In some cases the evidentiary standard placed on the district will be higher. This will occur if the owner submits an appraisal for property valued at one million dollars or less at least fourteen days before the hearing date and it complies with the conditions set forth in the statute. If these conditions are met, the district must provide "clear and convincing" evidence to prove its case.

There is an exception to the burden of proof requirement for protests involving business personal property. If a property owner has not delivered a rendition as required by Chapter 22 or responded to the Chief Appraiser's request for information regarding how a property owner's estimate of value was derived, then the burden is on the property owner to show the property is appraised incorrectly.

To understand the meaning of this statute, it is important to first look at the legal concepts on which the statute is based. The following is a brief overview of these concepts and a discussion of common issues that frequently arise.

Legal Concepts

Burden of proof refers to the principle that the person who makes a claim has the obligation of presenting some grounds to show that the claim is true. When a person has this obligation, that person has the burden of proof on that issue.

For purposes of a protest, it is generally the responsibility of the appraisal district to present some evidence, i.e., information or documentation based upon fact that supports the value listed in the appraisal records.

Preponderance of the evidence is the general legal standard a party with the burden of proof must meet in order to prevail. This means that the party who introduces the greater weight and degree of credible testimony or evidence should have the issue decided in their favor.

In simple terms, proof by preponderance of the evidence means that the party on whom the initial burden exists, must persuade the fact-finder that the fact is probably more true than not. This in no way means that the fact-finder must be absolutely convinced of the truth of the claim. Nor does it mean, as is true for a criminal case, that the fact-finder must be convinced beyond a reasonable doubt. Rather, the fact-finder must simply believe that the evidence supporting the claim is better or more reliable than the evidence disputing the claim.

Sometimes an issue of substantial evidence exists. For example, if the appraised value of property in a tax year is lowered through the protest process (not by agreement), in the following tax year the appraised value of the property cannot increase unless that increase is supported

by substantial evidence. In this instance, *substantial evidence* requires more than a mere scintilla, but less than that needed to sustain a decision by a preponderance of the evidence.

The trier-of-fact (the ARB panel) is the sole judge of a person's credibility and to the weight given to the testimony. The panel may accept or reject all or any part of argument or testimony. If the panel does not side with one party, this does not conclusively mean that they were wrong. All it means is that the panel was not persuaded by that side's arguments.

Sometimes the law refers to substantial compliance with the code. (Be careful not to confuse substantial evidence with substantial compliance; substantial evidence is not the same as substantial compliance. This is a fact based determination, which the ARB must decide on a case by case basis. To show *substantial compliance*, a party would have to show more than a simple majority of something; likely most of something would have to be shown or that only a de minimis or negligible amount remains.

As mentioned previously, if a property owner submits an appraisal that meets certain conditions, the standard of proof required to prove the district's claim will be greater. The standard as mandated by state law requires the district to prove its claim by "clear and convincing" evidence.

Clear and convincing evidence is a higher level of proof required to prove a claim. To show something by "clear and convincing evidence," the district must convince the ARB that it is substantially more likely than not that the thing is in fact true. Although this is a less rigorous requirement than "*proof beyond a reasonable doubt*" (the standard commonly employed in criminal matters) it is more stringent than proof by "*preponderance of the evidence*," which merely requires the matter asserted to seem more likely true than not.

Summary of Burdens of Proof

	Highest Level of Proof
Beyond a Reasonable Doubt	
	↑
Clear and Convincing Evidence	
	↓
Preponderance of the Evidence	
	Lowest Level of Proof

Common Questions

Must the ARB be absolutely convinced that the appraisal district is correct before ruling for the district?

No. The ARB must simply be persuaded that the evidence tends to support the appraisal district's position more than it tends to support the property owner's position.

Must the ARB make the appraisal district present its argument to the panel first since it has the burden to establish and justify the appraised value?

No. The order of presentation in a hearing is a procedural matter for the ARB to decide. While it is customary in judicial proceedings that the party with the burden of proof goes first, it often proves more efficient for the property owner to state his case first in order to narrow and clarify the issues to be ruled on by the ARB.

What happens if the property owner presents no evidence at the hearing?

When the appraisal district has the burden of proof, the appraisal district must present some evidence to support its position in order to prevail. If the property owner presents no evidence, it should be easy for the district to meet its initial burden by presenting evidence that defends its position. When the property owner has the burden of proof, the property owner must present some evidence to support his/her position in order to prevail.

What do you do if the property owner does not speak or understand English?

Occasionally you will have a property owner who does not speak or understand English. When this occurs the appraisal district may assign a staff member to translate for the benefit of the property owner.

What if the property owner does not present evidence that tends to support his or her opinion of value and instead concentrates on criticizing the appraisal district's evidence?

The property owner can argue the case this way. However, remember that the general standard is simply whether the evidence tends to support the appraisal district's position more than it tends to support that of the property owner. In order for this approach to be successful, the property owner must completely invalidate the credibility of the appraisal district's evidence. Otherwise, if the property owner presents no evidence of his own and any portion of the appraisal district's evidence still lends some degree of credibility to the appraisal district's position, the ARB should side in the appraisal district's favor.

What if, upon considering all of the evidence presented, the ARB determines that the evidence is evenly balanced and does not support one side more than the other?

The ARB should rule in favor of the property owner. The appraisal district has not proved its case by a preponderance of the evidence.

What if the property owner has suggested an unrealistically low value and the appraisal district has presented no evidence?

To rule in favor of the property owner means that the ARB must make its own determination of the market value of the property and set aside the appraisal district's determination. If the appraisal district has presented no evidence, the ARB must make its best decision of the market value of the property based upon the property owner's evidence. In no way is the ARB bound to find the same value that the property owner advances. To do so would undermine the ability of the ARB to render its own independent decision on the matter.

Protests Based on Unequal Appraisal

Introduction

Prior to the enactment of the Texas Property Tax Code, a long line of Texas cases held that if a property owner could show discrimination in the pattern of taxation, i.e., that some classes of property were assessed at a smaller proportion of market value than the owner's property, then the owner was entitled to relief from the discriminatory tax scheme.

These same principles were incorporated into the Texas Tax Code under section 41.41, which entitles a property owner to protest unequal appraisal, and is sometimes referred to as an "equity" protest. Section 41.43 describes how an unequal appraisal protest is handled. There are two common problems with equity protests. The first is that it is very difficult to assess the evidence without doing some preliminary analysis on the property group sampled. The second and more common problem is that property owners often try to use a proxy without making appropriate adjustments. The most common of these are a value per square foot or value per unit that has not been properly adjusted to account for inherent differences in property characteristics when compared with the subject property.

Unequal Appraisal Protest Requirements

Although most protests involve overvaluation or "excessive appraisal," equity protests are quite common. Here, the owner claims not that the property has been overvalued but rather that the property is valued unequally; the property is being appraised at a higher percentage of its true market value than other properties. The Texas Tax Code uses the term "unequal appraisal" to describe an equity claim.

In order to be entitled to relief under the Tax Code, a property owner must, at a minimum, do the following two things: (1) file a protest that objects to the unequal appraisal and (2) appear either in person, by agent, or by affidavit at the hearing.

If these two requirements are met, the appraisal district must then present evidence to substantiate its position that the property is equally appraised. The district can do this by presenting evidence tending to show that the property is equally appraised and persuading the panel that the district's evidence is more persuasive than that presented by the property owner.

Evidentiary Issues

Evidence in the form of a "ratio study" is not needed to prove property is equally appraised. Instead, evidence may be submitted to show what the median level of appraisal is for a property and, provided the evidence is persuasive enough, entitle the property owner to relief. This is usually done by collecting a reasonable sample of comparable properties, making appropriate adjustments to each as required by law, and then determining the median appraised value for the group. If this value is lower than the appraised value of the property being evaluated, then a viable argument exists for unequal appraisal.

It is important to understand that the Texas Tax Code stipulates that a property owner shall prevail if the appraisal district presents no evidence. This is a rare occasion where the property owner can prevail by merely raising the issue of unequal appraisal without presenting any evidence.

The circumstances in which this would be apparent would be where no evidence is offered by the district's representative and nothing is contained in the hearing file to showing the property

is properly appraised. If, however, the appraisal district presents some evidence, i.e., appears and gives testimony, the property owner must likewise present evidence in order to prevail. In fact, once the appraisal district provides evidence, the owner must present evidence that is at least as credible as the district's; if not, the value should be sustained.

A common error in proving an unequal appraisal is the presentation of evidence of comparable properties which are valued lower than the subject property, without making appropriate adjustments. A party can certainly present this evidence, but if appropriate adjustments were not made, the analysis would be insufficient. Statutory requirements mandate that appropriate adjustments be made.

If these adjustments are determined to have not been made, the analysis is faulty and would be considered unreliable.

Hearing Issues

Due to the complexity of an unequal appraisal protest, a summary of the evidence is encouraged. A person may present a summary, as long as the supporting documents are available for review.

Sometimes, the question is posed as to whether the panel can grant relief based on equity if the property owner protested on some other basis. The answer is "No." The ARB only has jurisdiction to hear the matters timely protested. If the owner hasn't protested based on unequal appraisal, then the panel cannot grant relief since it's not being contested. The panel can only decide issues brought forth for its consideration. To decide issues that have not been raised would constitute an improper use of the ARB's authority.

Finally, the question often arises as to whether state law allows a correction to the appraisal roll based upon unequal appraisal. Again, the answer is "No." The correction statutes found in section 25.25 do not expressly provide this type of remedy, which is unlike the remedies associated with a protest under Chapter 41.

Appraisal Methodology

Methods of Appraising Property

Introduction

Property taxes help pay for public schools, community health care, ambulance services, animal control, recreational centers and parks, street improvement, police and fire protection, libraries, and many other public services. They are local taxes, assessed and collected for everyone's benefit in accordance with state law.

The primary function of an appraisal district is to appraise property for each taxing unit that imposes property taxes on real and personal property located in the district. The appraisal district does not set tax rates nor does it assess or collect property taxes. This is the responsibility of local taxing units, including the county, school districts, cities, hospital districts, municipal utility districts, and other special districts, which require these funds to operate.

This section is intended to provide general information about appraisal methods so that you might gain a better understanding of how the appraisal district values property.

How Property is Valued

Section 23.01 of the Texas Tax Code provides appraisal districts with the following parameters in appraising property:

- property is appraised at its market value as of January 1, except as otherwise provided by law;
- generally accepted appraisal methods and techniques must be used to establish market value;
- a district must comply with the Uniform Standards of Professional Appraisal Practices ("USPAP") if it appraises property using mass appraisal standards;
- same or similar appraisal techniques must be used in appraising the same or similar kinds of property;
- each property shall be appraised based upon the individual characteristics that affect its value.

The appraisal district must follow these guidelines. This is especially true as it relates to appraising property as it exists on January 1. For instance, if a home is worth \$135,000 on January 1 and two days later the home burns down, the appraisal district is still required, by law, to appraise that property as it existed on January 1. Even though the property may no longer be worth \$135,000, the appraisal district must still report this value to the taxing units for purposes of property taxation for the entire year. Similarly, the ARB is responsible for determining the value of the property as of the appraisal date. Should the property appreciate or depreciate after January 1 is of no significance.

The appraisal district appraises property by considering the three most common appraisal methods to value property - cost, income, and market approach.

Cost Approach The cost approach is the most commonly used method of appraising improved, real property in the property tax profession. It relies primarily on information about construction costs. This method assumes you can value a property by estimating its various components and then add them together. This results in a single value for the entire property.

The main steps an appraiser follows in applying this method are:

- 1) Estimate the market value of the site (land value)
- 2) Estimate what it would cost to replace the improvements (buildings). This is sometimes referred to as the "replacement cost new" of the improvements or "RCN."
- 3) Subtract an amount for accrued depreciation affecting the value of the improvement. This is to account for the wear and tear associated with the use of the building or other "non-physical" influences affecting the property's value such as obsolescence.
- 4) Add the site value and the depreciated cost of improvements together for a final estimate of value (market value).

Cost Formula

$$\begin{array}{r} \text{Land Value} \\ + \text{RCN} \\ - \text{Depreciation} \\ \hline \text{Market Value} \end{array}$$

Market Approach The market approach estimates value based on sales of similar, existing properties in today's real estate market. In an active market, this approach usually gives the best results. This method is also known as the "market data approach" or "direct comparison sales method."

It is very easy to confuse the terms "market value" and "market approach." Appraisers often use them together in practice. The two are not interchangeable. "Market approach" describes the appraisal method based on property sales. "Market value," on the other hand, defines the amount a property would sell for if the buyer and seller are knowledgeable about the property, and are under no unusual constraints to sell/buy the property.

The first step in using this method is for the appraiser to collect as much information as possible on sales of properties similar to the one being appraised. These properties are called "comparables." For residential property, "[A] sale is not considered to be a comparable sale unless the sale occurred within 36 months of the date as of which the market value of the subject property is to be determined". Texas Tax Code §23.013(b-1). Next, the appraiser compares each of the comparables with the subject property. The appraiser should take into account differences in property characteristics and adjust the sales price for each comparable accordingly. Finally, the appraiser adjusts the sales price of each comparable and develops an estimated value for the subject property.

There are two advantages in applying this technique over the cost approach and income approach. First, any type of property can be appraised. It does not matter if the property is real or personal. Second, appraisal accuracy increases when a large number of market sales exist.

This method has limitations as well. If few or no sales exist, the market approach would not necessarily be the best way to appraise property. With insufficient sales of comparable properties, an appraiser is ill equipped to make an estimate of market value. Similarly, if the type of property is unique, like a petrochemical refinery or specialized laboratory, this technique proves less reliable than others. In cases like that, the cost or income approach to value may be more appropriate.

Income Approach The premise underlying the income approach is that a property's income can be converted into an estimate of present worth. Appraisers recognize this method as being the most accurate whenever the property to appraise is an income-producing asset. This method is seldom used in valuing owner occupied, residential properties.

The income approach is most often used to appraise apartment buildings, retail stores, shopping centers, storage facilities, and other income generating properties. Appraisers also use this approach if a property is unique and both the market approach and cost approach fail to provide a good indicator of market value. A high-rise office building provides a good example.

The value of a high-rise office building is very difficult to determine using the market approach since few sales of comparable properties may exist. The cost approach is difficult to apply since most construction depreciation schedules associated with the entire facility are extremely difficult to calculate; leaving the income approach to consider. Given that most high-rise buildings operate to generate profit, this method works best.

Mass Appraisal. Mass appraisal is the process of valuing a large number of properties simultaneously. Computer programs based on the three approaches to value do much of the work in the mass appraisal process, resulting in an efficient and uniform appraisal of all properties as of January 1.

For property taxation, mass appraisal is vital. Without it, the appraisal district would be unable to fulfill its statutory duties and obligations. It simply would prove too costly to commit resources to inspect and perform individual appraisals for every property within the district's jurisdiction.

To begin the process, detailed characteristics of all properties in the district are collected. The district then develops a classification system based on various factors, such as size, use, and construction. Next, the district identifies certain properties within each of the major classes. By looking at cost and sales information, values are refined for each property. Likewise, adjustment modifiers are developed to account for differences between the typical property and others located in the class. The result of all this is that the district is able to value any one specific property; without necessarily having to go out and review each one individually.

In this manner, mass appraisal provides a fairly accurate assessment of thousands of properties through statistical analysis and by applying, with some modification, the three appraisal methods mentioned.

ARB Panel Hearing Script

Step 1: Introduction

Chair: Mr. / Ms. Property Owner, I would like to welcome you. We are a panel of the Harris County Appraisal Review Board, separate and independent from the Harris County Appraisal District.

My name is _____. To my right is Mr. / Ms. _____, to my left is Mr. / Ms. _____.
Across from you is Mr. / Ms. _____ representing the Harris County Appraisal District.

Step 2: Legal / Jurisdiction Inquiry

Chair: Mr. / Ms. Appraiser please state you are under oath, announce the assigned protest number, a brief legal description, basis for the hearing and any legal reason we cannot proceed.

Chair: Is this a good description of your property and protest?
(Wait for the property owner to answer; resolve discrepancies if appropriate)

Chair: Everyone who will testify please answer the following:

“Do you solemnly swear or affirm that the testimony and evidence you shall present to the Harris County Appraisal Review Board is true and correct.”
(Wait for response “I do” or “Yes”).

Chair: Do any witnesses hold a license or certificate from the Texas Appraiser Licensing and Certification Board? (If “yes”): Do you intend to testify in your capacity as a licensed appraiser?

Chair: Mr. / Ms. PO / Agent, Please sign the disclosure statement projected on the screen using the pen pad in front of you.

Chair: Please note that the ARB Affidavit is also signed at this time. It simply states that we know nothing about your property and have not discussed your protest with anyone prior to this time.

Chair: The ARB Affidavit and Disclosure statement have been signed for the record.

Step 3: Hearing Testimony and Evidence

Chair: The panel will hear and determine the outcome of the protest or motion between you and the Appraisal District. Please note this is a (value hearing, correction hearing, exemption hearing, etc.) and that you have approximately 4 minutes to present all your evidence and arguments. Total maximum duration of hearing shall be 13 minutes for agents and 18 minutes for property owners.

In accordance with Tax Code Section 41.45(h), all written material not previously provided must be provided at this time. (Property Owner / Agent must present all documentary evidence to ARB.)
(Allow the property owner to present the case.)

Mr. / Ms. Property Owner, we are now ready for your evidence and testimony.

Chair: What is your opinion of value for the property? (if applicable)

Chair: (Restate the opinion of value for the property and the record.)

Chair: Are there any questions, panel members?
(Allow the ARB members to ask relevant questions.)

Chair: Mr. / Ms. Appraiser do you have any questions of the PO/Agent/Witnesses?

Chair: Mr. / Ms. Appraiser please proceed with the district's presentation and recommendation.
(Allow the appraiser to present the case.) (Appraiser should state the value for the record)

Chair: Are there any questions panel members?
(Allow the ARB members to ask relevant questions).

Chair: Mr. / Ms. Property Owner/Agent do you have any questions of the District/District's Witnesses?

Chair: Mr. / Ms. Property Owner/Agent do you have any rebuttal evidence (NOT new evidence) to refute the testimony of the Appraiser?

Chair: Mr. / Ms. Appraiser do you have any rebuttal evidence (NOT new evidence)?

Chair: Mr. / Ms. Property Owner/Agent are there any closing comments? Please be brief.
(Allow for brief comments from the property owner / agent or wait for a pause).

Chair: Mr. / Ms. Appraiser are there any closing comments? Please be brief.

Chair: Testimony is now closed; we are in deliberation.

NOTE: If after the initial testimony of the parties, either party expresses agreement to the value proposed by the other party, immediately skip to Step 5B.

Step 4: Deliberation

Openly discuss the evidence and arguments presented. Each member MUST voice an opinion for the record giving two values when applicable. Once a consensus is reached, the Chair will announce the panel recommendation on the protest.

Step 5A: Announcement of Results (depending the issue protested, the announcement may slightly differ)

Chair: Based on the testimony and evidence presented on account ending in _____ (4 digits), the panel has determined the value based on Market is \$ _____.

(If unequal appraisal is raised):

The value based on Equity is \$ _____. The lower of the two values shall prevail.

The final value will be \$ _____.

This concludes the hearing. The panel recommendation will be printed shortly.

Step 5B: Harmony of Opinion

Agreement Between the Property Owner / Agent and the District

Chair: There is "HARMONY OF OPINION" regarding the value of \$ _____ for the account ending in _____ (last 4 digits of account number). This constitutes an agreement between the parties which is final.

That concludes this hearing.

Step 6: Concluding the Hearing

Panel Recommendation printed; one member and Chair cross check result prior to handing to the Property Owner

Chair: Here is your copy of the panel recommendation, in approximately 4 to 6 weeks you should receive the final ARB order by certified mail. Thank you for coming.

Formal Hearings

Fiduciary Requirements - Representation before the ARB

Before someone can represent a property owner as an agent, that person must be authorized to do so. Questions about how this is accomplished often prove difficult to answer. This is especially true when the designation of agency was not filed with the appraisal district.

A property owner can designate a lessee or other person as an agent. This designation must be (1) in writing and (2) signed by the property owner, or a property manager or other person authorized to designate an agent. If any one of these requirements is lacking, the designation is invalid.

Only one agent can be designated for a property. This designation remains in effect until the property owner files a written revocation of the designation or the appointment of agency expires by its own terms. If more than one form is on file designating different agents, the form bearing the later date of appointment revokes all others, as of the effective date.

Individuals who do not have to file a designation of agency include attorneys, employees of the property owner or of a corporate parent, affiliate, or subsidiary. However, relatives trying to represent other family members must file a completed form with the appraisal district prior to the hearing, if they do not have an ownership interest in the property.

Delinquent Taxes and their Impact in the Hearing Process

State law provides that generally, a property owner must pay undisputed taxes before they become delinquent or file an Affidavit of Inability to Pay Taxes and hold a hearing on that issue. If this is not done the ability to protest before the ARB may be forfeited. Although simple in theory, applying this law can be quite difficult.

If this issue arises, and the property owner asserts that undisputed taxes were paid timely but provides no evidence of payment, the owner may sign and present an affidavit attesting that the undisputed property taxes are not delinquent. (A standardized form is available for this purpose.) Unless the district presents contradictory evidence, or an Affidavit of Inability to Pay Taxes was filed, the hearing should proceed without further deliberation being required. If the property owner was unable to pay undisputed taxes, then the property owner must have filed an Affidavit of Inability to Pay Taxes and corresponding financial statement. The ARB will then hold a hearing on the property owner's ability/inability to pay undisputed property taxes before proceeding. Note that a designated agent may not sign the payment affidavit, or the inability to pay affidavit and corresponding financial statement, unless the agent affirms under oath that he/she has personal knowledge of that fact.

If it is determined that undisputed taxes have not been timely paid on the property or there is not a finding by the ARB that payment of taxes will create an unreasonable restraint on the property owner's right of access to the board, then the hearing cannot continue. The protest is dismissed unless the ARB finds that the property owner substantially complied with the statute, or complies with the determination of the ARB within thirty (30) days.

Burden of Proof

Burden of proof refers to the legal principle that the party who makes a claim has the obligation of presenting some grounds to show that the claim is true. For protests based on unequal or excessive appraisal, the Tax Code places the initial burden on the appraisal district to present some evidence, i.e. information or documents based upon facts that support the value listed on the appraisal records. Failure to do so will cause the ARB to find in favor of the property owner.

If the protest concerns unequal appraisal, the district must present evidence showing that the property is not unequally appraised. This can be done by showing the appraised (market) value of the property is equal to or less than the median appraised value for a group of comparable properties adjusted appropriately. Evidence that the appraisal ratio of the property is equal to or less than the median level of appraisal as provided for in the Tax Code can also be used to show equal appraisal.

In the event the initial burden is met, the ARB must weigh the evidence presented from both sides and base its decisions upon the preponderance of the evidence. The ARB must then rule in favor of the party that presents the more persuasive evidence.

This does not mean that a panel must be absolutely convinced by either side. The standard means it must simply be persuaded that the evidence tends to support one side's position over the other.

Substantial Evidence: Evidence that a reasonable mind would accept as adequate to support a conclusion and requires more than a mere scintilla (hint or trace), but less than that needed to sustain a decision by a preponderance of the evidence.

Preponderance of the Evidence: Evidence that supports the greater weight and degree of the credible testimony or evidence introduced before the panel and admitted in evidence.

Clear and Convincing Evidence: Evidence that is highly probable that the claim or affirmative defense asserted is true.

Determining Excessive Appraisal (Above-market)

Most taxable property is appraised at its market value as of January 1. One of the key responsibilities of the ARB is to resolve disagreements about fair market value for purposes of property taxation. Here are some suggested questions to ask either party in making this determination.

- 1) When did the owner buy the home and for how much? Is there a recent sale of the property and if so, were there any unique circumstances associated with the sale? If the property is currently for sale, what is the listing price (Most sales occur under little or no duress, which customarily sets the property's market value.)
- 2) What are the sales prices for comparable properties in the neighborhood?
- 3) Are the property characteristics shown in the records accurate? Over-valuation often occurs because errors in the data relied upon in appraising the property exists.
- 4) Do any value adjustments need to be made based upon the location of the property, underlying easements, condition, or deed restrictions?
- 5) Has the property owner or agent performed a separate appraisal on the property?
- 6) For leased property, have rent rolls and expenses been provided?

Determining Unequal Appraisal

Unequal appraisal occurs when a property is appraised at a higher percentage of its value than is typical for properties appraised by the appraisal district. For instance, if a property is appraised at 90% of market value while others are appraised at 80% of market value, the property is said to be appraised unequally. Percentage of market value is usually called the appraisal ratio or level of appraisal. If the property owner protests unequal appraisal, the panel must render a decision on the issue. Here are some guidelines that can help ensure that a correct decision is rendered.

Step 1 - Determine the market value of the property. This is always the first thing a panel should do in a value protest, especially where the property is claimed to be both unequally appraised and over-appraised.

Step 2 - Give both sides the chance to present evidence. The district must present evidence that shows the property is NOT unequally appraised. The district must do this in one of two ways:

Ratio Study: By showing that the property's appraisal ratio is equal to or less than the median appraisal ratio for a sample of other properties. HCAD usually uses a study of properties in the particular school district for this purpose.

Comparable Appraisal Analysis: By showing the property's appraisal is equal to or less than the median appraised value of a sample of other comparable properties, after adjustments.

If in either instance the evidence indicates that the property's ratio or value is higher than the applicable median, the ARB must reduce the value. For ratio study evidence, multiply the property's true market value by the median ratio. For comparable appraisal evidence, reduce the market value to the median value of the sample.

Step 3 - Announce the decision by making the following ruling:

The market value of the subject property is _____.

The median appraised value (or median appraisal ratio) is _____.

The final value is the lower of the two, which is _____.