

WINNING THE AV TAX GAME



Brandy Manning
Long-Weaver & Manning, LLP
222 S. Main St.
Big Spring, TX 79720
Phone: 432.219.4383

1

Session Plan

- Basics of ad valorem taxation
- Residential valuation
- Oil and gas valuation

2

2



3

“So What’s Your Problem?”

- “It’s too high” isn’t enough!!
- Instead: Discover/create combination of legal standard and facts demonstrating violation of that legal standard
 - *Code provision, Constitutional provision, case, Comptroller’s instruction, etc.*



4

Pro Tip: Keys to Victory

- Understand valuation parameters to effectively evaluate the appraisal
- Protect the right to protest
- Utilize statutory tools to collect data
- Protect the record
- Arm yourself to negotiate a reduction in value (or prevail in court)



5

5

“Market Value”



- “All property is **appraised at its market value** as of January 1 . . .”
- “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.*

6

6

“Appraised Value”



- “Appraised value” means the value determined as provided by Chapter 23 of this code.
- A formulaic approach to value (vs. the “willing buyer/willing seller” market value).
 - Ex: Oil or Gas Interests
- Generally, appraisal districts prefer the “market value” measure, because it is easier to defend.

7

7

Residential Value Statement:

- Improvements + Land = MV
- Assessed vs. Market Value

Property Valuation History						
Values by Year		2016	2015	2014	2013	2012 n/a
Improvements	+	\$328,820	\$306,690	\$312,360	\$260,660	\$240,690 \$0
Land	+	\$25,940	\$25,940	\$25,940	\$25,940	\$25,940 \$0
Production Market	+	\$0	\$0	\$0	\$0	\$0 \$0
Personal	+	\$0	\$0	\$0	\$0	\$0 \$0
Mineral	+	\$0	\$0	\$0	\$0	\$0 \$0
Total Market	=	\$354,760	\$332,630	\$338,300	\$286,600	\$266,630 \$0
Agricultural Loss	-	\$0	\$0	\$0	\$0	\$0 \$0
Homestead Cap Loss	-	\$19,130	\$27,510	\$60,920	\$34,430	\$37,390 \$0
Total Assessed	=	\$335,630	\$305,120	\$277,380	\$252,170	\$229,240 \$0

Value subject to tax this year

8

8

Residential Homestead: Assessed vs. Market Value

- “Homestead Cap” – limitation on magnitude of increase in appraised value in a single year.
 - Lesser of:
 - Previous year’s market value
 - Previous year’s appraised value + 10%, plus improvements
- Tax statement will show both Market Value and Assessed Value
- Assessed Value: Market Value limited by the Tax Code
 - “As much of the market value as the Code permits you to be taxed on . . . THIS YEAR.”
- Pay according to AV, but can’t ignore MV
 - **MARKET VALUE ACTS AS A “CAP” ON VALUE**
 - **SUBJECT TO TAX IN ANY GIVEN YEAR**
 - “Frog in Boiling Water”



9

Reduce Assessed (Taxable) Value This Year . . . And Next Year

This Year:

Argue that Market Value is less than the Assessed Value (blue)

EX: Reduce MV to \$300,000,

new Assessed (Taxable) value is also \$300,000, because you cannot be taxed at anything above current MV.

Property Valuation History						
Values by Year		2016	2015	2014	2013	2012
Improvements	+	\$328,820	\$306,690	\$312,360	\$260,660	\$240,690
Land	+	\$25,940	\$25,940	\$25,940	\$25,940	\$25,940
Production Market	+	\$0	\$0	\$0	\$0	\$0
Personal	+	\$0	\$0	\$0	\$0	\$0
Mineral	+	\$0	\$0	\$0	\$0	\$0
Total Market	=	\$354,760	\$332,630	\$338,300	\$286,600	\$266,630
Agricultural Loss	-	\$0	\$0	\$0	\$0	\$0
Homestead Cap Loss	-	\$19,130	\$27,510	\$60,820	\$34,430	\$37,390
Total Assessed	=	\$335,630	\$305,120	\$277,380	\$252,170	\$229,240

10

10

. . . And Next Year

If you cannot reduce MV below Assessed Value this year, argue it anyway – MV acts as “cap” on Assessed Value in future years.

No “cap” on increases in Market Value, so challenge every year to keep it low!

Values by Year		2016	2015	2014	2013	2012	n/a
Improvements	+	\$328,820	\$306,690	\$312,360	\$260,660	\$240,690	\$0
Land	+	\$25,940	\$25,940	\$25,940	\$25,940	\$25,940	\$0
Production Market	+	\$0	\$0	\$0	\$0	\$0	\$0
Personal	+	\$0	\$0	\$0	\$0	\$0	\$0
Mineral	+	\$0	\$0	\$0	\$0	\$0	\$0
Total Market	=	\$354,760	\$332,630 \$290,000	\$338,300 \$290,000	\$286,600 \$286,600	\$266,630	\$0
Agricultural Loss	-	\$0	\$0	\$0	\$0	\$0	\$0
Homestead Cap Loss	-	\$19,130	\$27,510	\$60,920	\$34,430	\$37,390	\$0
Total Assessed	=	\$335,630	\$305,140 \$290,000	\$277,380	\$252,170	\$229,240	\$0

11

11

So . . . What do you do?

- Challenge Market Value every time it increases.
- Use MV as cap – if you can drop MV below this year’s assessed value, save money this year (and start ahead next year!)
- How do you successfully challenge market value?
 - Mistakes
 - HCAD’s Comparables (41.461 request, “evidence packet”)
 - Neighboring properties
 - Exemptions

12

12

Mistakes: Check online tax statement

- “Backup” to HCAD’s Market Value
- Go to: <https://www.howardcad.org/>
- Choose “Property Search” icon located at top right
- Search by Name, using last name
 - *Tip: Choose “Advanced” and search by name & house number*
- Scroll through detail and check for accuracy
- Compare to previous year – choose grey box, arrow down to 2019
- Compare to neighborhood – use map to locate, then search by property number

13

13

Collect Data: Section 41.461



(a) *At least 14 days before a hearing on a protest, the chief appraiser shall*

(2) inform the property owner that the owner or the agent of the owner may inspect and may obtain a copy of the data, schedules, formulas, and all other information the chief appraiser plans to introduce at the hearing to establish any matter at issue.

- **NEW!** Cannot charge for copies
- **NEW!** Have to deliver by FC mail, electronic format, or by secure website.
- **NEW!** If taxpayer requests, must provide by first-class mail.

- Informally: ask questions!

14

14

“... Except as otherwise provided herein.”

- “Special” Appraisal Provisions
 - *Contains appraisal provisions, unique to particular kinds of property— oil and gas interests, inventory, mobile homes, agricultural interests, etc.*
- “Appraised Value” ≠ “Market Value”
 - *means the value determined as provided by Chapter 23 of this code.*



15



Oil and Gas Interests

- “... Except as otherwise provided herein”
 - *“Special” appraisal provision*
- Appraisal must follow Section 23.175
- NOT a market value measure

16

16

Section 23.175. Oil or Gas Interest

- (a) If a real property interest in oil or gas in place is appraised by a method that takes into account the future income from the sale of oil or gas to be produced from the interest, the method must use the average price of the oil or gas from the interest for the preceding calendar year multiplied by a price adjustment factor as the price at which the oil or gas produced from the interest is projected to be sold in the current year of the appraisal. The average price for the preceding calendar year is calculated by dividing the sum of the monthly average prices for which oil and gas from the interest was selling during each month of the preceding calendar year by 12. If there was no production of oil or gas from the interest during any month of the preceding calendar year, the average price for which similar oil and gas from comparable interests was selling during that month is to be used. Except as otherwise provided by this subsection, the chief appraiser shall calculate the price adjustment factor by dividing the spot price of West Texas Intermediate crude oil in nominal dollars per barrel or the spot price of natural gas at the Henry Hub in nominal dollars per million British thermal units, as applicable, as projected for the current calendar year by the United States Energy Information Administration in the most recently published edition of the Annual Energy Outlook by the spot price of West Texas Intermediate crude oil in nominal dollars per barrel or the spot price of natural gas at the Henry Hub in nominal dollars per million British thermal units, as applicable, for the preceding calendar year as stated in the same report. If as of March 1 of the current calendar year the most recently published edition of the Annual Energy Outlook was published before December 1 of the preceding calendar year, the chief appraiser shall use the projected current and preceding calendar year spot price of West Texas Intermediate crude oil in nominal dollars per barrel or the spot price of natural gas at the Henry Hub in nominal dollars per million British thermal units, as applicable, as stated in the Short-Term Energy Outlook report published in January of the current calendar year by the United States Energy Information Administration in the price adjustment factor calculations. The price for the interest used in the second through the sixth calendar year of the appraisal may not reflect an annual escalation or de-escalation rate that exceeds the average annual percentage change from 1982 to the most recent year for which the information is available in the producer price index for domestically produced petroleum or for natural gas, as applicable, as published by the Bureau of Labor Statistics of the United States Department of Labor. The price for the interest used in the sixth calendar year of the appraisal must be used in each subsequent year of the appraisal.
- (b) The comptroller by rule shall develop and distribute to each appraisal office appraisal manuals that specify the formula to be used in computing the limit on the price for an interest used in the second through the sixth year of an appraisal and the methods and procedures to discount future income from the sale of oil or gas from the interest to present value.
- (c) Each appraisal office shall use the formula, methods, and procedures specified by the appraisal manuals developed under Subsection (b).

17

17

Key Variables

- “Future Income”
 - $(V \times P) - E * DF$
- Volume
- Price
 - *Current & Future*
- Expenses
- Discount factor



18

18

“Equal and Uniform”

- Applies to both “market value” and “special” appraisals
- Statutory definition: “the appraised value of the property exceeds the median appraised value of a reasonable number of comparable properties appropriately adjusted.”
- Constitution art. VIII, § 1:
 - (a) *Taxation shall be equal and uniform.*
 - (b) *All real property and tangible personal property in this State, unless exempt as required or permitted by this Constitution, whether owned by natural persons or corporations, other than municipal, shall be taxed in proportion to its value, which shall be ascertained as may be provided by law.*
- Case Law: suggests “equality” trumps “market value.”

19

19

Implementing Your Strategy: Perfecting your Protest

- Form
 - *Usually comes with appraisal notice.*
 - *Use is optional.*
- Indicate the grounds on which you are protesting
 - *Market/Appraised Value*
 - *Inequality*
 - *Other*



20

20

Other Bases for Protest

- Property Owner
- Exemptions
 - Homestead
 - Over 65/disabled
 - "Other" homestead
 - Agricultural
 - Others
- Notice
 - Must protest



21

21

Perfecting Your Protest



- *Grounds for Protest*
 - Will generally have to file protest before you receive any meaningful data.
 - If you fail to raise a particular ground, you waive the right to protest on that ground.
 - Form categories - Check anything that might conceivably apply.
- *Independent Statement of Grounds*
 - Violates Tax Code, Statutes, Common Law, Constitution, "generally accepted appraisal principles".

22

22

Place Your Bet!

- Time frame is jurisdictional – if you do not timely mail your protest, you waive the right to protest!!
 - *Key date is postmark date, so make sure your envelope is postmarked.*
 - *Also send by certified mail.*
 - *Can also email/fax – just keep receipt.*

23

23

Reading the Cards

- Collect Data
 - *Formally: Section 41.461*
 - *Informally: ask questions!*
- Don't Show Your Hand!



24

24

Plot Your Next Move

- DO gather all of the available data.
 - *Formal request*
 - *Who, What, When, Where, Why*
- DO ask questions informally.
- DO NOT suggest a value.
- DO NOT provide “facts in support of your protest” too early.



25

25

The Appraisal Review Board

- Panel of taxpayers with varying degrees of experience and sophistication.
- Appear:
 - *In person*
 - *Through agent*
 - *By affidavit*
- Procedure:
 - *15 minute hearing*
 - *District technically has burden of proof*
 - *Practically, familiarity breeds credibility*
 - *“Pre-hearing” conference/settlement offer*



26

26

Order

- District will mail formal order granting or denying the protest.
- Receipt of that order starts timetables for further appeals, so record date when received.



27

27

Appeal to District Court

- Appeal is “de novo.”
- Timeline to file is jurisdictional – if you miss the deadline, you have waived your right to appeal.
- Have to pay the amount of undisputed taxes.
- Analysis of whether to appeal should be made on multi-year basis.
- “Frog in boiling water.”



28

28

Arbitration in Lieu of Litigation

- “As an alternative to filing an appeal under Section 42.01, a property owner is entitled to appeal through binding arbitration under this chapter an appraisal review board order determining a protest filed under Section 41.41(a)(1) or (2) concerning the appraised or market value of property if:
 - (1) *the property qualifies as the owner’s residence homestead under Section 11.13; or*
 - (2) *the appraised or market value, as applicable, of the property as determined by the order is \$3 million or less.”*
- Determined by a member of the Comptroller’s Arbitration Panel.
- Generally, “split the baby.”

29

29

Pay “Undisputed Amount” by January 31

- Calculating “Undisputed Amount”
 - *Tax rate on tax bill*
 - *Percentage of value/percentage of tax*
- Consequences
 - *Too High – set floor for negotiation*
 - *Too Low – potential P&I*



30

30

Practical Tips

- Protect ability to protest on broad grounds.
- Acquire data:
 - *Formally, though Code provision*
 - *Informally – ask questions*
- Do not commit to facts too early.
- Hold the taxing entities to their duties under the Code
 - *Special Appraisal provisions*
 - *Providing data*
 - *Burden of proof*
- Don't be the frog – any gain you make in any given year will assist you in years to come.



31

31

QUESTIONS?

Brandy Manning
Long-Weaver & Manning, LLP
222 S. Main St.
Big Spring, TX 79720
Phone: 432.219.4383

32

Volume



- Unlike price, no “curbs” on volume
 - *Last year’s average?*
 - *Running average?*
 - *Last few months? (If valued as of January 1, one could argue that more recent data is more relevant)*
 - *Some combination?*
- Decline curve! Particularly in a declining price environment, Districts tend to flatten the decline curve.

33

33

Price

- “Average price”
- Adjustment Factor
- Escalation years 2-6
 - *Cap*
 - *Formula*
- Flat from year 6 through end of period

34

34

Expenses



- Operating Expenses – include all variable expenses associated with getting oil and gas out of the ground.
- Watch interplay between expenses and optimistic volume projections—will it cost money to maintain the projected level of production?
- In declining price environment, ensure that the District uses a longer period to average expenses. Otherwise, price is disproportionately high given expected declining costs as companies renegotiate service contracts.

35

35

Discount Factor

- The percentage rate required to calculate the present value of a future cash flow.
 - *Example = If you invest expecting a 5% return, then dollars are worth more now than later because you have the opportunity to increase them at 5% per year. The present value is discounted by 5% as it is worth less than future earnings due to interest.*
- Counter-intuitive – higher rate yields lower value.
- More risk = higher rate = lower value
- May be the most influential variable

36

36

Discount Factor

- Mandates uniform procedure for determining discount rate:
 - *“The comptroller by rule shall develop and distribute to each appraisal office appraisal manuals that specify the . . . methods and procedures to discount future income from the sale of oil or gas from the interest to present value.”*
- As a practical matter, still lots of leeway
 - *So room to argue*



37

37

Discount Factor – Practical Tips

- Evaluate discount factor in light of Appraiser's projections.
 - *Combining “best case” volumes and prices with low- to medium-risk discount factors overinflates value.*
- Each appraisal should include “property-specific risk.”
 - *A relatively higher-risk property should have a higher discount factor.*
- Comptroller's manual has a non-exhaustive list of “property-specific risk” factors. This is a good starting point for evaluating the discount factor and discussions with the appraiser.

38

38

Sheriff's Sales/Deeds

- Validity of deed depends on validity of underlying judgment
 - *Review underlying file*
- Redemption Provisions
- Scope of interest conveyed
- Legal description

39

39

END - Delete this and everything
behind it if you don't want it. JM

40

40

Price

- Average price: . . . “the method must use the average price of the oil or gas from the interest for the preceding calendar year multiplied by a price adjustment factor as the price at which the oil or gas produced from the interest is projected to be sold in the current year of the appraisal.”
- “The average price for the preceding calendar year is calculated by dividing the sum of the monthly average prices for which oil and gas from the interest was selling during each month of the preceding calendar year by 12.”
- “Adjustment Factor” . . . by dividing the price of imported low-sulfur light crude oil in nominal dollars or the spot price of natural gas at the Henry Hub in nominal dollars, as applicable, as projected for the current calendar year by the United States Energy Information Administration in the most recently published Early Release Overview of the Annual Energy Outlook by the price of imported low-sulfur light crude oil in nominal dollars or the spot price of natural gas at the Henry Hub in nominal dollars, as applicable, for the preceding calendar year as stated in the same report.

41

41

Price

- “The price for the interest used in the second through the sixth calendar year of the appraisal may not reflect an annual escalation or de-escalation rate that exceeds the average annual percentage change from 1982 to the most recent year for which the information is available in the producer price index for domestically produced petroleum or for natural gas, as applicable, as published by the Bureau of Labor Statistics of the United States Department of Labor. The price for the interest used in the sixth calendar year of the appraisal must be used in each subsequent year of the appraisal.”
- 23.175 (b) The comptroller by rule shall develop and distribute to each appraisal office appraisal manuals that specify the formula to be used in computing the limit on the price for an interest used in the second through the sixth year . . .

42

42



43

COST-SAVINGS OPPORTUNITIES: CONTESTING PROPERTY TAX APPRAISALS OF OIL & GAS INTERESTS

INSERT DATE



Brandy Manning
Property Tax Partner
Long-Weaver, Manning, Antus & Antus LLP
Phone: 432.242.0470
Email: BManning@WMAFirm.com

44

Agenda

- Understand valuation parameters to effectively evaluate the appraisal
- Protect the right to protest
- Utilize statutory tools to collect data
- Protect the record
- Arm yourself to prevail in court or more likely, negotiate a reduction in value



45

45

“Market Value” vs “Appraised Value”

- “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.*
- “Appraised Value” - means the value determined as provided by Chapter 23 of this code.

46

46

Chapter 23 – “Appraisal Methods and

- “All property is appraised at its market value as of January 1 . . .

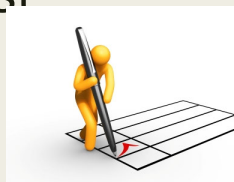


- except as otherwise provided herein.”
- Subchapter B – “Special Appraisal Provisions”
 - Contains appraisal provisions, unique to particular kinds of property—inventory, mobile homes, agricultural interests, etc.
 - One of these “special appraisal” provisions is 23.175, titled “Oil or Gas Interests.”

47

47

Perfecting your Protest



- Form
 - Usually comes with appraisal notice.
 - Use is optional.
- Time frame is jurisdictional – if you do not timely mail your protest, you waive the right to protest
 - Key date is postmark date, so make sure your envelope is postmarked.
 - Also send by certified mail.

48

48

Perfecting Your Protest







- *Grounds for Protest*
 - Will generally have to file protest before you receive any meaningful data.
 - If you fail to raise a particular ground, you waive the right to protest on that ground.
 - Form categories - Check anything that might conceivably apply.
- *Independent Statement of Grounds*
 - Violates Tax Code, Statutes, Common Law, Constitution, “generally accepted appraisal principles”.

49

49

Protect the Record



- DO gather all of the available data 
 - Formal request
 - Who, What, When, Where, Why
- DO ask questions informally 
- DO NOT suggest a value. 
- DO NOT provide “facts in support of your protest” too early. 

50

50

Appraisal Review Board

- Panel of taxpayers with varying degrees of experience and sophistication.
- Appear:
 - *In person*
 - *Through agent*
 - *By affidavit*
- Procedure:
 - *15 minute hearing*
 - *District technically has burden of proof*
 - *Practically, familiarity breeds credibility*
 - *“Pre-hearing” conference/settlement offer*



51

51

Order

- District will mail formal order granting or denying the protest.
- Receipt of that order starts timetables for further appeals, so record date when received.



52

52

Appeal to District Court

- Appeal is “de novo.”
- Timeline to file is jurisdictional – if you miss the deadline, you have waived your right to appeal.
- Have to pay the amount of undisputed taxes.
- Analysis of whether to appeal should be made on multi-year basis.
- “Frog in boiling water.”

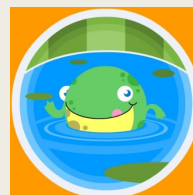


53

53

Practical Tips

- Protect ability to protest on broad grounds.
- Acquire data:
 - *Formally, though Code provision*
 - *Informally – ask questions*
- Do not commit to facts too early.
- Evaluate full appraisal against your understanding of the property—is the going-forward price to high? Decline curve flat?
- Evaluate full appraisal against the statute – and ask those specific questions of the appraiser.
- Don't be the frog – any gain you make in any given year will assist you in years to come.



54

54

QUESTIONS?

Contact:

Brandy Manning

Property Tax Partner

Long-Weaver, Manning, Antus & Antus LLP

Phone: 432.242.0470

Email: BManning@WMAFirm.com

55

Market Value Caps Assessed Value - "Homestead Cap"

Limitation on magnitude of increase in assessed value in a single year.





Makes Current Year's Assessed Value (what is taxable) the Lesser of:

This year's market value (blue arrow)

Previous year's appraised value + 10%, plus improvements (green arrow)

"Homestead Cap" is difference between this year's Market Value and Assessed Value – portion of Market Value that you cannot be taxed on THIS YEAR.

Property Valuation History						
Values by Year		2016	2015	2014	2013	2012 n/a
Improvements	+	\$328,820	\$306,690	\$312,360	\$260,660	\$240,690 \$0
Land	+	\$25,940	\$25,940	\$25,940	\$25,940	\$25,940 \$0
Production Market	+	\$0	\$0	\$0	\$0	\$0 \$0
Personal	+	\$0	\$0	\$0	\$0	\$0 \$0
Mineral	+	\$0	\$0	\$0	\$0	\$0 \$0
Total Market	=	\$354,760	\$332,630	\$338,300	\$286,600	\$266,630 \$0
Agricultural Loss	-	\$0	\$0	\$0	\$0	\$0 \$0
Homestead Cap Loss	-	\$19,130	\$27,510	\$60,920	\$34,430	\$37,390 \$0
Total Assessed	=	\$335,630	\$305,120	\$277,380	\$252,170	\$229,240 \$0

+ 10%
 \$335,632

56

56