

REAL ESTATE TAX APPEALS AOBA/VACRE/VML/ASSESSORS

Discussion Agenda

July 9, 2002

Background

- Virginia has most difficult burden in the US – Assessments are presumed to be correct. Presumption is overcome by plaintiff showing the assessment is the result of “manifest error” or “total disregard of controlling evidence.” If successful in overcoming the presumption, the plaintiff must then prove the case by a preponderance of the evidence. See Tab 1, Mark R. David, Burdens of Proof and Presumptions in Property Tax Litigation, IAAO 21ST Annual Legal Seminar, New Orleans, La., 2000.
 - ◆ specific injustices
 - ◆ Supreme Court cases
 - ◆ use of standard as sword, not shield
 - ◆ inability to get lawyers to take cases
 - ◆ strongly contested litigation
 - ◆ legislative studies suggest unfair process (See Tab 2, Final Report of the Commission on State and Local Government Responsibility and Taxing Authority, 1998, House Document No. 88, p. 17, recommendations 4 and 6)
- trend in other states (e.g. Fla. Ga. Ill. Tex.)
- trend in Virginia (e.g. BPOL, business personal property tax appeals – See Tab 8, Guidelines for Appealing Local Business Taxes, Va. Dept. of Taxation)

Goals

- increase fairness of both process and result
- establish better dialogue with assessor
- decrease litigation
- produce better results

Alternatives Considered

- make USPAP standards applicable to assessors
- limit to certain jurisdictions
- place burden of proof on locality or create shifting burden
- apply only to commercial property
- attorneys fee awards

History

- 1999 legislation – SB 1008, SB 1009 (See Tab 3)
- 2000 legislation – HB 1175 (See Tabs 4 and 5)
- 2001 study resolution – HJR 782, HJR 685 (See Tabs 6 and 7)

House Bill 1175 (2000) (See Tabs 4 and 5)

- preserves presumption of correctness
- preserves burden of proof on plaintiff
- strong support by roughly 20 groups
- change in level of proof required to overcome presumption
- modeled on New York case law (See Tab 9)
- requirement for administrative appeal or appeal to Board of Equalization
- Fla. experience suggests decrease in litigated cases (See Tab 10)
- issue identification

Discussion