



Welcome to the Florida IAAO Webinar “2010 Value Adjustment Board”



Presented by: Will Shepherd, General Counsel for the Hillsborough County Property Appraiser’s Office

Date/Time: October 27th and 28th, 2010 / 9:30 – 10:30 am

Instant Poll!

How Many Petitions did your county have this year?

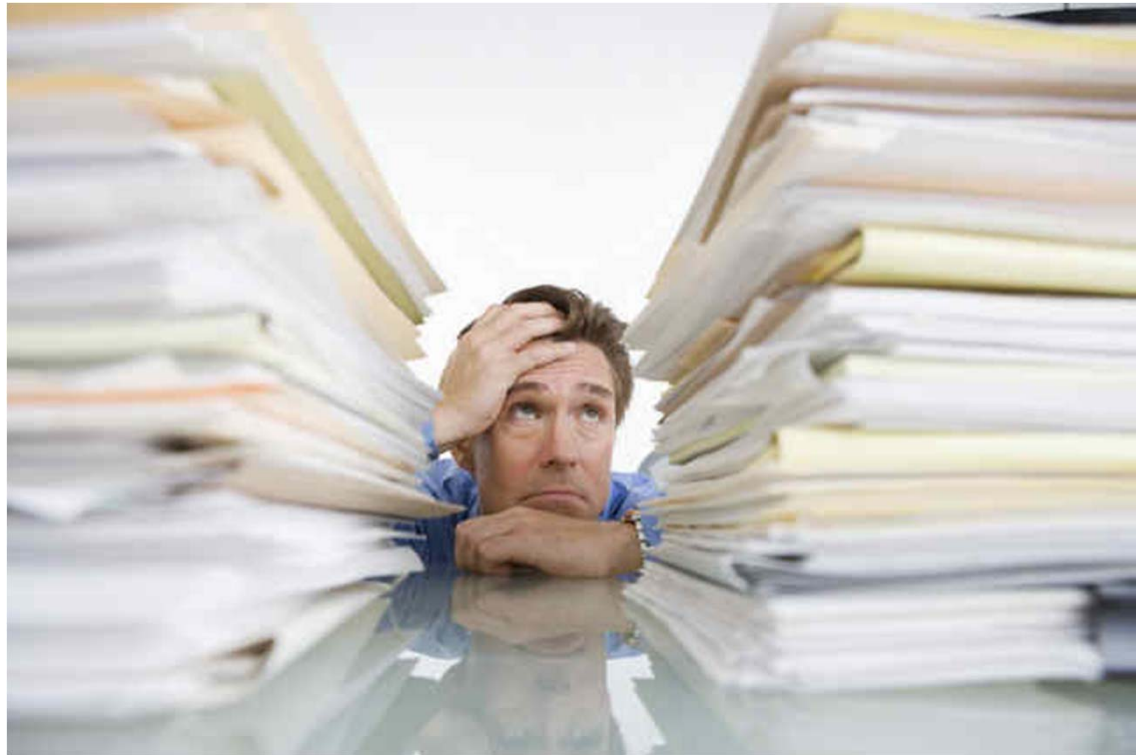
- a. *0 – 100 petitions*
- b. *101 – 500 petitions*
- c. *501-1000 petitions*
- d. *1000-5000 petitions*
- e. *Over 5,000 petitions*



Instant Poll!

Does your county have more petitions this year than in 2009?

- a. More in 2009*
- b. More in 2010*



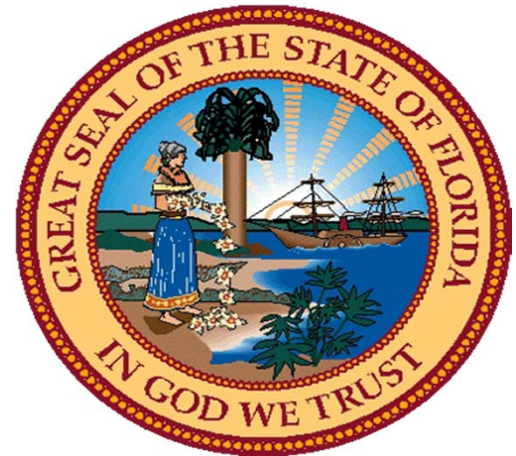
Value Adjustment Board Topics

1. Florida Statute 194.301

- a. Presumption of Correctness
- b. Professionally accepted appraisal practices (USPAP?)

2. Administrative Rules

- a. Exchange of Evidence
- b. Rebuttal Evidence
- c. No show hearings
- d. Who goes first
- e. Increasing assessments at VAB
- f. Remand



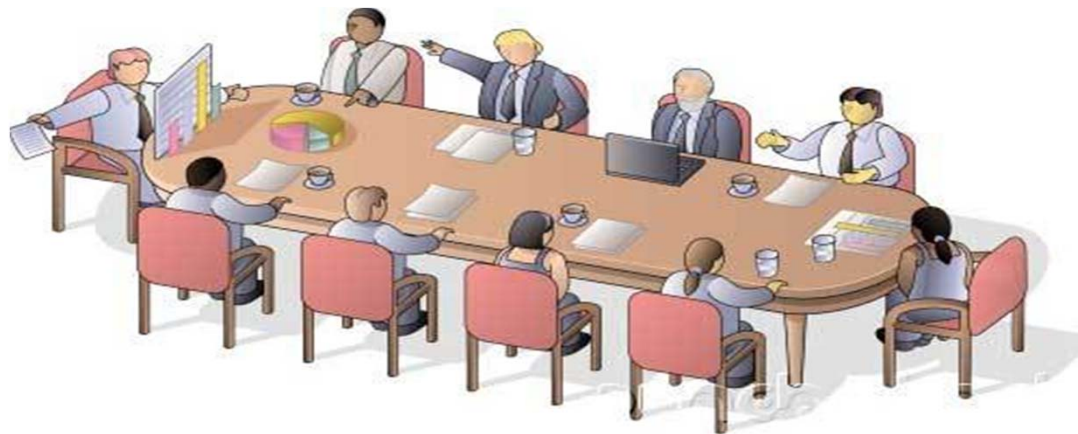
3. DOR's Value Adjustment Board Training

- a. Higgs v. Good
- b. The Eighth Criteria (15% Cost of Sale)

Florida Statutes

F.S. 194.301 Challenge to ad valorem tax assessment

(1) In any administrative or judicial action in which a taxpayer challenges an ad valorem tax assessment of value, the property appraiser's assessment is presumed correct if the appraiser proves by a preponderance of the evidence that the assessment was arrived at by complying with s. 193.011, any other applicable statutory requirements relating to classified use values or assessment caps, and professionally accepted appraisal practices, including mass appraisal standards, if appropriate.



Florida Statutes

F.S. 194.301 Challenge to ad valorem tax assessment (Continued)

(2) In an administrative or judicial action in which an ad valorem tax assessment is challenged, the burden of proof is on the party initiating the challenge.

(a) If the challenge is to the assessed value of the property, the party initiating the challenge has the burden of proving by a preponderance of the evidence that the assessed value:

1. Does not represent the just value of the property after taking into account any applicable limits on annual increases in the value of the property;
2. Does not represent the classified use value or fractional value of the property if the property is required to be assessed based on its character or use; or
3. Is arbitrarily based on appraisal practices that are different from the appraisal practices generally applied by the property appraiser to comparable property within the same county.



Florida Statutes

F.S. 194.301 Challenge to ad valorem tax assessment (Continued)

(2)(b) If the party challenging the assessment satisfies the requirements of paragraph (a), the presumption provided in subsection (1) is overcome, and the value adjustment board or the court shall establish the assessment if there is competent, substantial evidence of value in the record which cumulatively meets the criteria of s. 193.011 and professionally accepted appraisal practices. If the record lacks such evidence, the matter must be remanded to the property appraiser with appropriate directions from the value adjustment board or the court, and the property appraiser must comply with those directions.



Florida Statutes

F.S. 194.301 Challenge to ad valorem tax assessment (Continued)

(c) If the revised assessment following remand is challenged, the procedures described in this section apply.

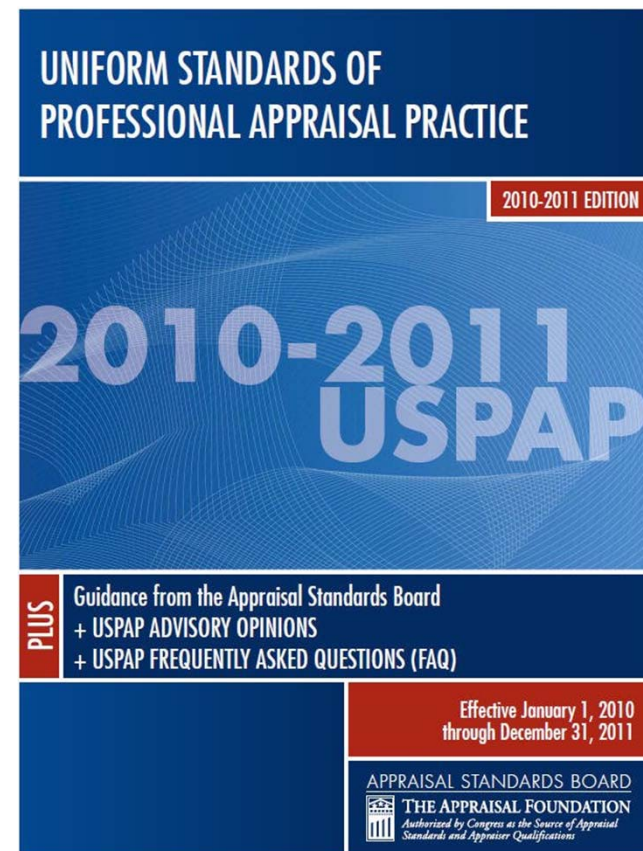


USPAP

Applicability of USPAP in Hearings

DOR's 2010 VAB training, Module 6, page 80 of the PowerPoint: "The Board and special magistrate are not authorized to determine whether a party to a value adjustment board proceeding is required to comply with the Uniform Standards of Professional Appraisal Practice (USPAP)"

"The Board and special magistrate are not authorized to determine whether any evidence presented by a party complies with the Uniform Standards of Professional Appraisal Practice (USPAP)."



Florida Statutes

Three main issues raised by Florida Statute 194.301:

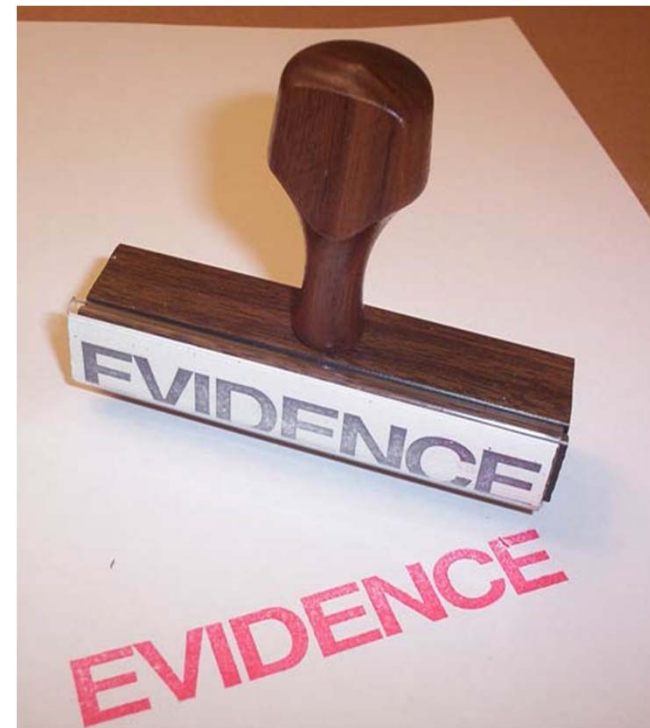
1. How is the presumption of correctness overcome?
2. Can the property appraiser prevail if the presumption is overcome?
3. What does professionally accepted appraisal practices mean? USPAP?



Administrative Rules

Rule 12D-9.020(1) The petitioner **has the option** of participating in an exchange of evidence with the property appraiser. If the petitioner chooses not to participate in the evidence exchange, the petitioner may still present evidence for consideration by the board or the special magistrate. However, as described in this section, if the property appraiser asks in writing for specific evidence before the hearing in connection with a filed petition, and the petitioner has this evidence and knowingly refuses to provide it to the property appraiser a reasonable time before the hearing, the evidence cannot be presented by the petitioner or accepted for consideration by the board or special magistrate.

Exchange of Evidence



Administrative Rules

FS 194.011 (4)(a) At least 15 days before the hearing the petitioner **shall provide** to the property appraiser a list of evidence to be presented at the hearing, together with copies of all documentation to be considered by the value adjustment board and a summary of evidence to be presented by witnesses.

Exchange of Evidence



Administrative Rules

Rule 12D-9.025(2)(c), F.A.C., Rebuttal evidence is relevant evidence used solely to disprove or contradict the original evidence presented by an opposing party.”

Rule 12D-9.020(8), F.A.C., A petitioner’s ability to introduce the evidence, requested of the petitioner in writing by the property appraiser, is lost if not provided to the property appraiser as described in this paragraph. **This provision does not preclude rebuttal evidence** that was not specifically requested of the petitioner by the property appraiser.

What exactly is rebuttal evidence?

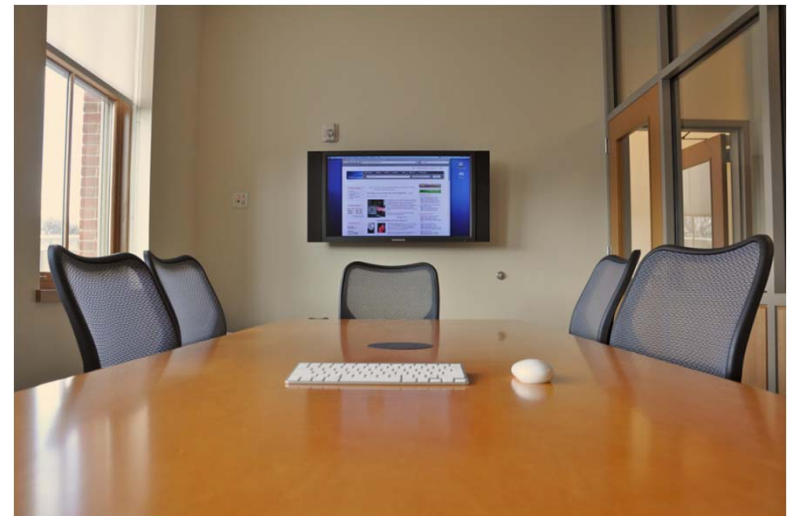
Rebuttal Evidence



Administrative Rules

12D-9.021 (6) When a petitioner does not appear by the commencement of a scheduled hearing and the petitioner has not indicated a desire to have their petition heard without their attendance and a good cause request is not pending, the board or the special magistrate shall not commence or proceed with the hearing and shall produce a decision or recommended decision as described in this section.

No Show Hearings



Administrative Rules

Who goes first?



Rule 12D-9.024(7) - “After the opening statement, and clarification of any questions with the parties, the board or special magistrate shall proceed with the hearing. The property appraiser shall indicate for the record his or her determination of just value, classified use value, tax exemption, property classification, or “portability” assessment difference, or deferral or penalties.

Under subsection 194.301(1), F.S., in a hearing on just, classified use, or assessed value, the first issue to be considered is whether the property appraiser establishes a presumption of correctness for the assessment. The property appraiser shall present evidence on this issue first.”

Administrative Rules

Raising Assessments at VAB



Rule 12D-9.025(6)(c)(1) - “The board or special magistrate shall ensure that such additional evidence is limited to a correction of a factual error discovered in the physical attributes of the petitioned property; a change in the property appraiser’s judgment is not such a correction and shall not justify an increase in the assessment.”

Administrative Rules

Remand at VAB



Rule 12D-9.029(9)(b) - “The board clerk shall schedule a continuation hearing if the petitioner notifies the board clerk, within 25 days of the date the board clerk sends the written remand review, that the results of the property appraiser’s written remand review are unacceptable to the petitioner and that the petitioner requests a further hearing on the petition...”

(c) “At a continuation hearing, the board or special magistrate shall receive and consider the property appraiser’s written remand review and additional relevant and credible evidence, if any, from the parties. Also, the board or special magistrate may consider evidence admitted at the original hearing.”

DOR's Value Adjustment Board Training

“The case of Higgs v. Good does not apply to proceedings of the value adjustment board.”

Source: DOR's VAB training, Module 4, page 40 of the PowerPoint

*“We conclude that it was an error for the trial court to allow Good to defer the submission of the income data until it pleased him to submit it (tardily), then used the data to demand either **administrative** or judicial reduction of his property's tax assessment valuation.”*

Source: Higgs v. Good, 813 So. 2d 178 (Fla. 3d DCA 2002)

Higgs v. Good – Does it apply?

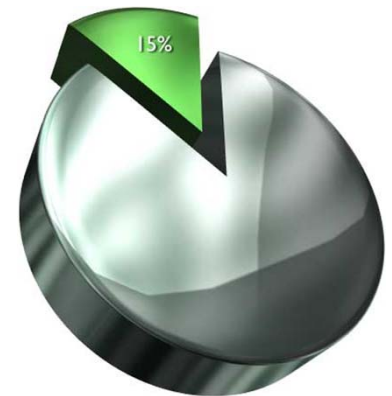


DOR's Value Adjustment Board Training

Eighth Criterion and 15% Cost of Sale

Example of When to Revise a Just Value Based on the Eighth Criterion

1. The Board or special magistrate determines from the accepted Form DR-493 that the property appraiser has reported and the Department has accepted a certain percentage adjustment for the eighth criterion for all property within the use code group that contains the use code of the petitioned property.
2. The Board or special magistrate determines from the admitted evidence that the property appraiser has not made an eighth criterion adjustment for the petitioned property.
3. The Board or special magistrate should make, to the just value of the petitioned property, the same eighth criterion adjustment reported by the property appraiser on Form DR-493 and accepted by the Department.



DOR's Value Adjustment Board Training

Eighth Criterion and 15% Cost of Sale (Continued)

Example of When NOT to Revise a Just Value Based on the Eighth Criterion

1. The Board or special magistrate determines from the accepted Form DR-493 that the property appraiser has reported and the Department has accepted a certain percentage adjustment for the eighth criterion for all property within the use code group that contains the use code of the petitioned property.
2. The Board or special magistrate determines from the admitted evidence that the property appraiser has already made, for the petitioned property, an eighth criterion adjustment that is equal to the adjustment reported for the subject use code group on Form DR-493.
3. The Board or special magistrate must avoid repeating the eighth criterion adjustment that has already been made by the property appraiser to the just value of the petitioned property.

DOR's Value Adjustment Board Training

Considering the Eighth Criterion and Evidence of a Real Property Sale

When considering admitted evidence of an arm's length sale of real property presented by one of the parties, the Board or special magistrate must determine whether an eighth criterion adjustment to the presented sale price is justified.

The Board or special magistrate is not precluded from making an eighth criterion adjustment to a presented arm's length sale price when such adjustment has not already been made to the presented sale price and when such adjustment is justified by sufficiently relevant and credible evidence.

The Board or special magistrate must avoid double counting this adjustment and not repeat any adjustment amount that has already been made.

In considering whether an eighth criterion adjustment to a presented sale price is justified, the Board or special magistrate must first determine the basis or origin of the presented sale price and determine whether the presented sale price has already been adjusted for costs of sale or personal property, or both.

DOR's Value Adjustment Board Training

Considering the Eighth Criterion and Evidence of a Real Property Sale (Continued)

In considering whether an eighth criterion adjustment to a presented sale price is justified, the Board or special magistrate may consider the adjustment lawfully made and lawfully reported by the property appraiser on Form DR-493 for the use code group that contains the use code of the sold property.

If the Board or special magistrate determines that an arm's length sale price presented by one of the parties is equal to the recorded selling price, the Board or special magistrate should make, to such sale price, a percentage adjustment for the eighth criterion that is equal to the percentage adjustment lawfully made and lawfully reported by the property appraiser on Form DR-493 for the use code group of the sold property.



DOR's Value Adjustment Board Training

Is the 15% Cost of sale adjustment a statistical allowance under mass appraisal – or an adjustment required to eliminate non-realty aspects of a valuation?

Should it apply to all 3 approaches to value?

The DOR says “Since its enactment and amendments, this eighth just valuation criterion has functioned to create, in effect, a net just value that is less than fair market value”

Source: DOR's 2010 VAB training, Module 6, page 23 of the PowerPoint



DOR's Value Adjustment Board Training

If Florida Statute 193.011(8) was deleted tomorrow, would Florida property appraisers be correct in eliminating the 15% adjustment?

DR-493
R. 06/92 Hillsborough County 2010 Assessment Roll
(year)

Summary of Section 193.011(8), Florida Statutes, Adjustments Made to Recorded Selling Prices in Arriving at Assessed Value


% Adjustment		% Adjustment	
Use Code 00	15%	Use Code 03	15%
Use Code 10	15%	Use Code 08	15%
Use Code 40	15%	Use Code 11 – 39	15%
Use Code 99	15%	Use Code 41 – 49	15%
Use Code 01	15%	Use Code 50 – 69	15%
Use Code 02	15%	Use Code 70 – 79	15%
Use Code 04	15%	Use Code 80 – 89	15%
Use Code 05	15%	Use Code 90	15%
Use Code 06 & 07	15%	Use Code 91 – 97	15%

Pursuant to Chapter 12D-8.002(4), Florida Administrative Code, complete, clear, and accurate documentation must be provided to the Executive Director justifying any adjustments in excess of fifteen percent.

Submission is required pursuant to section 192.001(18), F.S.

INSTRUCTIONS: Complete this form indicating the appropriate eight criterion adjustments made to recorded selling prices in arriving at assessed value. Send original form to the Department with the initial assessment roll.

Witness my hand and official signature at _____ Tampa, Florida _____ this
the 24th day of June, 2010
(year)



Property Appraiser

Instant Poll!

In addition to deducting 15% from sales, does your county also deduct 15% from the Cost Approach and Income Approach?

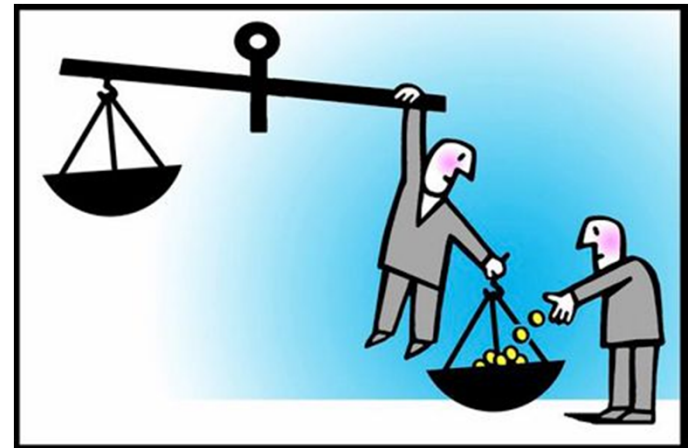
- a. Sales only*
- b. Sales and Cost Approach*
- c. Sales and Income Approach*
- d. All 3 approaches*



Instant Poll!

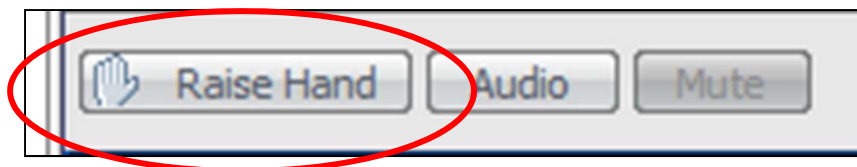
How do you think the changes in the law related the Value Adjustment Board have affected hearing?

- a. Levels the playing field*
- b. Gives the petitioner the advantage*
- c. Gives the PA the advantage*
- d. No real change from prior years*



Questions?

To ask a question – Click the “raise hand” icon at the bottom of the participants window. Your phone or mic will be un-muted and you will be called on to ask your question.



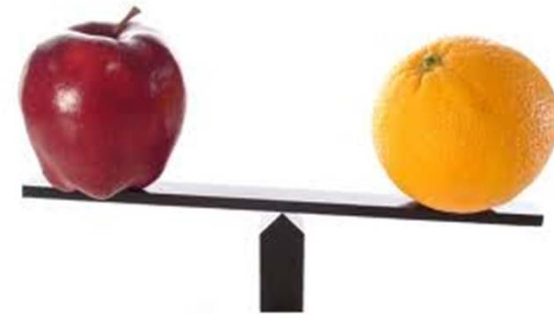
If you are using computer speakers instead of a phone and you do not have a microphone, you can type your question into the chat window.



Comparing Assessments

Deltona v. Bailey, 336 So. 2d 1163 (Fla. 1976). In Deltona, the Florida Supreme Court stated:

“It is fundamental that property in Florida is legally required to be assessed at 100% of its actual fair market value and a court may not reduce a taxpayer’s assessment below 100% on a mere showing that parcels of some other taxpayers are assessed at a lesser amount”





Happy Halloween and Enjoy your Hearings!



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