



January 21, 2015

Chairman Kleeb and Members of the House Standing Committee on Taxation,

In the change from COTA to BOTA through SB 231, enrolled into law effective July 1, 2014, improvements were made in the responsiveness of BOTA to requests for BOTA opinions; provision that all taxpayers are entitled to a neutral interpretation of state tax laws; and the prohibition of BOTA from impeding any agreement or settlement between a county and a taxpayer. There are still issues to be resolved in the process and it is our intent to identify these issues with specific experiences and request changes to legislation to enable amenable solutions to all parties.

Valuation Methodology

To facilitate better communication between the County Appraiser and the taxpayer, a predictable valuation model and methodology needs to be adopted. The current model used by the county is a market based appraisal approach which applies metrics to all properties in a given area to derive the property valuation using assumptions for Rental Rates, Vacancy Rates, Net Operating Income and the Capitalization Rate. This approach does not always result in accurate property valuations. In addition to the market based appraisal approach, additional criteria should be used to address how to determine value on an individual parcel basis. To create transparency between the county and the taxpayer and to facilitate productive discussion regarding property valuations, a line item approach which specifically outlines the above factors is necessary. The base structure for this valuation model should include individual line items for Rental Rates, Vacancy Rates, Net Operating Income, Capitalization Rate, as well as Deferred Maintenance, Re-Tenant Reserves and Tenant Improvement Depreciation. The absence of this line item detail approach has caused communications to break down between the county and the taxpayer due to differences in methodology. Each of these items is discussed in greater detail below.

In the private market, property valuations are adjusted for immediate and Deferred Maintenance items, Re-Tenant Reserves and Tenant Improvement Depreciation. Immediate and Deferred Maintenance items generally include parking lot repairs and building repairs such as caulking and window replacement. Re-Tenant Reserves are reserves required by lenders and the private market to be maintained to repurpose spaces in the event tenants vacate the property. Tenant Improvements are depreciated over the term of the lease and factored into the valuation model as the improvements are only of value to the in place tenant and carry no value should the tenant vacate the space. Vacant spaces command almost zero value in the private market.

Additionally, valuations factor in leases with short expiration dates as they are of inherent less value in the private market. A valuation of the property is performed on an income approach using Net Operating Income and then a Capitalization Rate is applied prior to these items to determine a value. The valuation is then adjusted for Deferred Maintenance, Re-Tenant Reserves, Tenant Improvement depreciation, amount of vacant space and leases with short term expirations. As a matter of course, in any valuation protest we pursue, we provide the county pictures of the Deferred Maintenance items along with bids to complete the repairs. In addition, we present calculations for Re-Tenant reserves and identify vacant spaces in the certified rent roll we submit. These items have been disregarded by the county as having any effect on their assessment of the property's value.

I recommend the state and counties adopt a line item approach to performing property valuations which specifically identifies all the elements which comprise a true market valuation.

Individual Parcels

Currently, the county valuations are prepared on an economic unit summary basis without regard to the individual parcels. Valuations should be performed on an individual parcel based on the unique characteristics of the parcel.

Reserve Parcels

Reserve parcels are by definition parcels which cannot be developed. Most often, these areas are detention ponds for a development. Reserve areas carry zero value, yet consistently, a county will assign a value to the parcel and require the developer to challenge the valuation to re-establish the zero value. I request that counties be required to assign a zero value to reserve areas.

Fee Appraisals

Currently, the only way to ensure an adjustment of property valuation with the county is to present a fee appraisal. Fee appraisals are expensive and not readily available due to the relative shortage of qualified commercial real estate appraisers in the state. To allow the taxpayer to recover the cost of the appraisal and any associated fees including protest fees, legal fees and travel expenses, I suggest that counties be required to hold the value stipulated in a fee appraisal for a three year period and the cost of the taxpayers fee appraisal be deducted from the tax liability. Understandably, the value would not stand should the property be sold in the market pursuant to an arms-length transaction.

County Valuation Frequency

To allow more effective valuations to be performed of all properties, the state should consider implementing a two year valuation process in which each property is valued on an every other year basis. This process is currently in use in California and would contribute to better overall valuations and a more predictable revenue stream at the state and county level.

Enforcement of January 1st valuation date

The state statute states that property valuations are to be performed as of January 1st of each year. Subsequent events are not to be considered in the valuation process. This process is not universally applied. My company purchased a property in Overland Park via auction in April 2014. Recently, we were approached by the Johnson County Appraiser and advised that a lease we announced on January 6, 2015 would be factored into the 2014 protested and future 2015 valuation. Under the statute, this information is irrelevant to the protested 2014 and 2015 valuation. Additionally, the lease in question requires a great deal of renovation for the tenant and is not set to be delivered to the tenant until late fall 2015. I respectfully request that counties be held to the January 1st valuation date as stated in the statute.

County Interrogatory Process

As a part of the current property valuation protest process, the county sends the taxpayer a set of Interrogatories requesting information supporting the taxpayer valuation of the property under protest. Included in this document is a request for all lease documents and architectural drawings for the property. The request for individual lease copies and architectural drawings is cumbersome and time intensive and places an undue burden on the taxpayer. As a matter of practice, most lease documents contain confidentiality and privacy provisions prohibiting the disclosure of the individual lease documents unless so ordered by a court. In addition, any lease documents provided would then be a matter of public record and subject to the state's open record laws. This would violate our confidentiality agreement with the tenant and place us at a competitive disadvantage in the market place. Occidental routinely submits a certified rent roll to the county for any property under protest. The rent roll includes tenant names, tenant spaces, square footages, lease start and end dates and lease rates. I then certify the information is true and accurate.

In the same set of Interrogatories for properties in development, the county requests construction contracts and invoices. The private market establishes the value for development properties on largely an income approach as the value is commensurate with the amount of tenant leases in place. This is another example of the undue administrative burden and expense placed upon the taxpayer.

I recommend allowing a certified rent roll to be sufficient to satisfy the county's request for lease information for valuation of existing and developmental properties.

Protest Payments

Currently, the taxpayer is required to pay the county tax bill upon receipt for properties under protest without regard for the protested value. This process does not provide compelling motivation on the part of the county to resolve the valuation protest with the taxpayer. Such motivation would be provided should the tax difference between the county valuation and the protested valuation be held in escrow and unavailable for county use until the time in which final resolution of the valuation protest is achieved.

Stabilized Property Valuation Caps

The majority of property tax protests we file are on stabilized properties. These properties have minor variations from one year to the next in lease rates, occupancy, etc. Yet under the current valuation practices, we have experienced an annual valuation increase of over 10% at some properties. This is not supported by market valuations but a function of the mass appraisal process previously mentioned. I suggest that stabilized properties be identified in the county valuation records and that a cap on annual valuation increases is put in place for these properties. The result will be fewer taxpayer protests and a more predictable process for both the county and taxpayer.

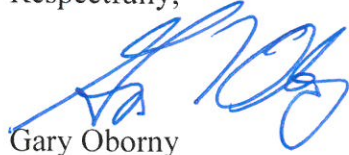
Agricultural Use Status

The process to designate a property for agricultural use should not be subjective rather it should be rooted in basic requirements. We recently presented a case before BOTa in which we purchased a property from USD 259 school district in Sedgwick County. At the closing, we completed the Sales Validation Questionnaire and identified the property as being held for agricultural use. The Sedgwick County Appraiser arbitrarily changed the classification to vacant status without any due process or opportunity to request redress. Despite having a farm lease in place with a farmer for the property, agricultural status was denied. At the time of the discussion with the county, we presented a farm lease for the year subsequent to the year in question, only to be awarded agricultural status by the Sedgwick County Appraiser. This information was presented to BOTa during the hearing, yet they ruled against not awarding agricultural status for the year in question.

We suggest that county appraisers not be allowed to challenge the agricultural classification of a property without first having a hearing with the taxpayer. Furthermore, the classification of a property as agricultural should not be based on production alone. We live in a diverse state and drought is a reality. The existence of a farm lease and contract should demonstrate sufficient evidence of agricultural status.

We appreciate the Committee's time and considerations of the issues noted above and believe that effective property tax reform benefits the state, counties and taxpayers.

Respectfully,

A handwritten signature in blue ink, appearing to read 'G. Oborny', is written over the printed name.

Gary Oborny
Chairman and Chief Executive Officer
Occidental Management, Inc.