



*The State Senate
Senate Research Office
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**FINAL REPORT
OF THE SENATE
PROPERTY TAX ASSESSMENTS AND APPEALS
STUDY COMMITTEE**

Honorable Chip Rogers, Chair
Senator, District 21

Honorable Jim Butterworth
Senator, District 50

Honorable Ronnie Chance
Senator, District 16

Honorable Mitch Seabaugh
Senator, District 28

Honorable Steve Thompson
Senator, District 33

2009

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Attachment: Flow Chart Depicting Assessment and Appeal Process

I. INTRODUCTION

The Senate Property Tax Assessments and Appeals Study Committee was created pursuant to Senate Resolution 685 of the 2009 Legislative Session and sponsored by Senator Chip Rogers of the 21st Senate District. The Senate Property Tax Assessments and Appeals Study Committee (PTAA Study Committee) was authorized to examine "current methods used to assess residential and commercial property...the process to which an appeal to an assessed value can be made...and the overall property assessment process" in order to "stabilize declining property values and benefit all Georgians by helping them keep their property."

The PTAA Study Committee was chaired by Senator Chip Rogers of the 21st Senate District. The following members served on the PTAA Study Committee:

- Senator Jim Butterworth of Habersham County;
- Senator Ronnie Chance of Fayette County;
- Senator Mitch Seabaugh of Coweta County; and
- Senator Steve Thompson of Cobb County.

The PTAA Study Committee convened on three separate occasions in Atlanta, Georgia:

- Thursday, October 29, 2009;
- Tuesday, December 15, 2009; and
- Wednesday, January 6, 2010.

The PTAA Study Committee convened to hear from property owners, state and local tax officials, tax attorneys, and other interested parties about the current nature of property tax assessments and appeals in Georgia, its merits and demerits, apparent and silent inequities in the process, and discuss applicable remedies and potential solutions that may ease the ongoing frustrations of Georgia property owners under the current assessment and appeals system.

II. EXECUTIVE SUMMARY

The PTAA Study Committee arose out of a need to review how Georgia's local governments determine the value of real property so that it may be taxed and how property owners may appeal that valuation assessment.

All Georgia local governments rely upon ad valorem taxation of real property as a primary revenue source; in order to levy this tax, the fair market value (FMV)¹ needs to be assigned to the real property in question so that it may be taxed at 40 percent of the FMV. Georgia law provides for a basic method to assess the value of all property, yet there are 159 local ways of effectuating this method under the umbrella of the law. A property owner in Dade County should enjoy the same level of expectation in terms of value assessment as do property owners in Camden County, Rabun County or any other Georgia county.

Current assessment and appeals laws are neither succinct or overtly fair; it is not transparent; it allows for too many arbitrary decisions to be made during the assessment process; it is simply not taxpayer-friendly.

Greater education and training requirements are needed for local offices and respective boards; alternative methods and forms of payment should be afforded for taxpayers; tax assessors must abide by specific deadlines to respond to notices of appeal; property owners should be notified of their assessments regardless if there is a change in value and be provided with important information about their rights; and the definition for FMV should be redefined to ensure the current use of the property is the only criteria to be considered.

Senate Bill 346 is the product of the PTAA Study Committee. It seeks to further the intended goals of Senate Bills 55 (2009) and 240 (2009) to address existing inequities, correct lack of fairness, and prevent arbitrary valuations.

¹ Fair Market Value is defined as the amount a knowledgeable buyer would pay for the property and a willing seller would accept for the property at an arms' length, bona fide sale taking into consideration: zoning, uses, foreclosures and bank sales, and limitations or restrictions on the property.

III. PERSPECTIVE AND DISCUSSION

Senator Rogers opened the study committee by noting that study committees were scaled back in light of the state of the economy and budget situation and that there would be a focus on issues in which taxpayers' dollars are saved. The PTAA Study Committee would proceed like an open book and that there was no end result already planned. The goal of this specific study is to discuss a property tax system that receives much complaint and is difficult to understand by property owners; moreover, the system is archaic and hard to grasp. The study process does not seek to blame but rather to uncover errors and inequities.

A. Thursday, October 29, 2009

1. Mr. W. Wheeler Bryan, Attorney

Mr. W. Wheeler Bryan, an Atlanta tax attorney, presented information to the PTAA Study Committee. He noted that he has practiced in the area of property tax since 1974, and has been working with a study group including the Georgia Association of Assessing Officials and interested taxpayers. The group is recommending changes to Senate Bills 55 and 240 that passed during the 2009 Legislative Session.

Mr. Bryan stated that the standard rule for taxing property is that it is to be fair market valued and assessed to be taxed at 40 percent.² Georgia law requires counties to only *consider* varying criteria to determine FMV. The tax rate is the millage set by the local governing authority.³ He furthered explained that the current system evolved in the 1960s.

Mr. Bryan explained that there are three levels of appeals: 1) to the county board of tax assessors; 2) to the county board of equalization; and 3) to the county superior court for *de novo* (new trial) proceeding. The board of tax assessors is the first appeal step and if the board of tax assessors fails to change the value, and the property owner has 21 days to appeal that decision. The appeal can either be heard before the board of equalization or through arbitration. It is important to note that the equalizers (who are appointed by the local grand jury) do not visit the property in question nor is attendance by the aggrieved property owner even required.⁴

² See O.C.G.A. § 48-5-7(a). There are numerous exceptions to the fair market value/forty percent rule including timber, agriculture preferential, special value for historic and landmarks, conservation use, residential, transitional, brownfields, and forest land. See generally O.C.G.A. Title 48, Chapter 5.

³ A millage is the cost per thousand.

⁴ Senate Bill 240 (2009) afforded taxpayers with the binding arbitration option which is selected at the time of appeal.

Under current law, both non-binding and binding arbitration are an option for the aggrieved property owner.⁵ The arbitrator(s) must be an attorney and must determine the correctness of the board of equalization's decision; however, under binding arbitration, the property owner presents a private appraisal to the board of tax assessors. If the assessors do not agree with the appraisal then the appeal goes before an arbitrator who must choose either the private appraisal or the valuation set by the county. The final determination cannot be further appealed.⁶ It is interesting to note that Georgia law requires that real property tax returns must be filed with the county in order to guarantee an appeal of the valuation, and these returns must be filed annually by March 1 or April 1; this requirement and deadline is widely confusing to property owners.

Senator Thompson commented that the three year reassessment requirement evolved because of a lack of uniformity, but the overwhelming decrease in property values over a multiyear period was not contemplated, and that the current economic situation are "new waters" being experienced.

Senator Chance asked about the rules governing boards of equalization, and Mr. Bryan replied that there are no concrete rules to govern their function.

Mr. Bryan further noted that House Bill 233 (2009) provides a moratorium on all increases in the assessed value of all classes of property subject to ad valorem taxation.⁷ The moratorium extends through the Sunday immediately preceding the second Monday in January 2011; however, this does not apply to counties which performed a comprehensive revaluation of all properties in 2008 or were under contract for one by February 28, 2009, nor does it apply to counties where there is an existing local constitutional amendment imposing millage rate limits on real property; however, research shows about 30 counties are reporting increased tax digests in contradiction to the spirit of the moratorium. The higher digest might reflect a nominal inflationary increase in value in counties that fall within the statutory exemption.⁸ The inflationary growth should trigger a millage rollback so that the tax digest does not inflate during the effective years of the moratorium.

On another issue, Mr. Bryan discussed Georgia Department of Revenue (GDOR) training classes being closed to the public, and noted that the Attorney General stated in correspondence to former Senator Ed Boshears dated October 6, 1997 that the classes may legally be closed to the public and the training classes are

⁵ A flow chart depicting the assessment and appeal process is attached with this report.

⁶ See generally O.C.G.A. §48-5-311 (f).

⁷ See O.C.G.A. § 48-5B-1(b).

⁸ Some of these counties include: Athens-Clarke, Baker, Bibb, Camden, Chattooga, Crawford, Decatur, Effingham, Elbert, Evans, Fayette, Gordon, Hancock, Hart, Jeff Davis, Jefferson, Morgan, Meriwether, Peach, Pike, Polk, Quitman, Schley, Spalding, Sumter, Talbot, Thomas, Twiggs, Union, Walker, Wheeler, Wilkes, Wilkinson, and Worth Counties. This does not include counties that have yet to report their 2009 tax digest to GDOR: Banks, Bibb, Hancock, Hart, Laurens, Marion, Washington, and Wilkes Counties (as of February 1, 2010).

not subject to the Open Meetings Act.⁹ Further, these classes are not necessarily open to members of the General Assembly or legislative staff.¹⁰ Subsequent correspondence from the Attorney General to a GDOR director explains that these classes are statutorily required for tax office employees, assessors, and boards of equalization and not for a purpose under general authority. These closed training classes have raised the ire of many property owners seeking education about property tax appraisal and assessments. Mr. Bryan also noted that *Quo Warranto* petitions to seek permission from the judiciary to review boards of equalization decisions are outdated.¹¹

Senator Thompson commented that assessors and equalizers should not be comingled or dependent on one another, and that the burden always seems to fall upon the aggrieved taxpayer.

Mr. Bryan further opined that O.C.G.A. § 48-5-311 needs to be reviewed and broken apart.¹²

Senator Rogers asked what percentage of taxpayers prevail on appeal, and Mr. Bryan responded that over 70 percent of appeals result in no change by assessors and equalizers generally following the primary assessment.

2. Ms. Vicki Lambert, Director Local Government Services Division of the Georgia Department of Revenue

Ms. Vicki Lambert discussed the amount of revenues collected via ad valorem¹³ taxes at all levels of government; she noted that school taxes account for over half of all ad valorem collections (58% of the total at approximately \$6 billion annually) while counties collect the next largest portion (34% of the total near \$4 billion annually). Georgia cities collect the next largest share (7% of the total at approximately \$1 billion annually), and the state collects the least (1% of the total at approximately \$150 million annually). She noted that the five-year trend for total property tax revenue collection has grown by over \$2 billion.

Property tax is based on the principal that the amount of tax paid should depend on the value of the property owned. To determine this value, the local board of assessors lists the FMV of all taxable property to produce the tax digest; the digest is provided to the county governing authority, the school board, and any applicable municipalities or special taxing jurisdictions. The local tax commissioner submits the tax digest to the GDOR for approval, and, if granted, the tax commissioner delivers tax statements to local property-owning taxpayers.

⁹ Citing O.C.G.A. §§ 48-5-268, 291 and department regulations.

¹⁰ Citing 1988 Op. Att’y Gen. U88-33.

¹¹ Black’s Law Dictionary 7th Edition defines *Quo Warranto* as “A common-law writ used to inquire into the authority by which a public office held or franchise is claimed.”

¹² O.C.G.A. § 48-5-311 governs county Boards of Equalization.

¹³ Ad Valorem generally means “according to value.”

Ms. Lambert further noted that the role of tax assessors can be described as an inverted pyramid of: Discovery (locate, identify, inventory, and classify taxable property), Valuation (estimate FMV), Assessment (calculate taxable value), and then the Tax Digest (certify the assessment roll of the jurisdiction); moreover, the role of tax assessor is defined by dozens of deadlines that accrue annually commencing with the valuation date on January 1st.¹⁴ The valuation process takes into consideration three factors: market, income, and cost. Ms. Lambert then briefly discussed the appeals process noting in part that if tax bills are issued while the property is under appeal, the tax bill is based either on 85 percent of the assessor's valuation or the taxpayer's return value—whichever is higher. Millage rates are set by determining the local government operating expenses--less revenue from other sources--which equals the budgeted need to be raised by property taxes--divided by the total assessed value of all local taxable property, and the sum is the necessary millage rate.

Senator Rogers asked what is meant by the term "consider" in determining FMV—is it permissive. Ms. Lambert responded that it is an instruction to take in all the statutory factors.

Ms. Lambert explained that the 1999 Georgia Taxpayer Bill of Rights Act requires that taxpayers are to be informed as to the assessed value of all property, proposed millage rate, the total tax for current and previous years, the amount of change in terms of dollars and percentage, and applicable public meetings.¹⁵ This Act was passed to prevent "back door" tax increases. Changes in real property values on the tax digest are due to increased values stemming from new construction/new parcels or inflation.

Ms. Lambert also discussed the current Homestead Valuation Freeze and its applicable exemptions. The freeze is also referred to as a "tax freeze" and it applies to a base year valuation; increases in value are exempt from taxation and only apply to the county *or* the school portion of the tax bill. Under House Bill 233 which provided for a moratorium on increases in assessment valuation through January 2011, many more counties are claiming the statutory exemption for comprehensive reviews than originally forecast.¹⁶

Senator Rogers questioned whether intra-county appraisals/valuations are a problem and further asked how this process prevents "cherry-picking" since a parcel cannot be valued until all similar-situated parcels have been valued. Ms. Lambert responded that it can be a problem for large counties with many parcels and numerous sales transactions and that "cherry-picking" cannot be completely prevented. Senator Rogers then asked how many counties have rolled back millage rates; Ms. Lambert responded that 36 counties increased their 2009

¹⁴ See O.C.G.A. § 48-5-5B.

¹⁵ See O.C.G.A. § 48-5-32.

¹⁶ See Footnote 7.

millage rate over the previous year, but noted that 82 counties submitted increased tax digests over the previous year.

**3. Mr. Steve Swindell, Deputy Chief Appraiser
Cherokee County**

Mr. Steve Swindell addressed the PTAA Study Committee, and noted that Georgia law has two essential concepts in valuing property for tax purposes: FMV and uniformity. Uniformity is required for two properties with similar utility to be valued alike. These two concepts are inseparable in tax assessments across the industrialized world. Mr. Swindell noted that the framers of Georgia's property tax law used the common sense approach to property tax that has been tested over time. The current system is imperfect, he added, because it is designed and managed by humans, but it is practical, efficient, and a fair way for people to finance their local governments. Uniformity is the concept that seems to draw the most ire among taxpayers, but uniformity guarantees that all property owners in a county are treated alike and ensures that the tax burden is spread across the spectrum as fairly as possible. Mr. Swindell urged the PTAA Study Committee to not divorce FMV from the concept of uniformity.

Mr. Swindell further discussed that the law was written with specific instructions that taxpayers bear the burden of proof if they feel aggrieved. This was seen as a protection of the entire body of taxpayers against devices of individuals who could use the appeal process to transfer his tax burden onto his neighbors. Mr. Swindell asserted that, currently, the burden is borne by the tax assessor. In Cherokee County, there were approximately 2,700 appeals filed out of 94,000 parcels, and of the 2,700 there were 2,000 resolutions without proceeding further into the process. Two property owners requested binding arbitration, but these were settled beforehand, and there were ten appeals filed with the Superior Court. He continued that it is manifestly unfair for an individual that knowingly files a misleading appeal to be automatically granted an adjustment which effectively passes their tax burden to fellow citizens when the tax assessor can prove the appeal had no merit; moreover, it is equally derelict for the tax assessor to collude to grant an adjustment without due diligence and fact-finding into the appeal at hand. Mr. Swindell stressed that uniformity protects the individual by balancing burdens on the assessor and the taxpayer.

Senator Thompson noted that the right to appeal is very important, and asked Mr. Swindell which recommendations he preferred. Mr. Swindell answered by noting that assessors will consider whatever criteria they are instructed to use, and that the word "apply" is very important to stress. He further answered that banks are generally not part of the free market, but now it is deemed to be. Bank sales and foreclosures are where buyers are going to get good deals on real estate. Senator Thompson further stated that including all bank sales in comparables could have a negative impact on neighborhood values.

Mr. Swindell responded that banks have been looking to counties to ascertain the proper values for their bank-owned properties.

4. Public Comments

Mr. Roger Land, an Atlanta tax attorney, testified that education is key. The provisions of Senate Bill 55 are not being followed, nor are requirements of evidence and burden of proof. Mr. Land further stated that the entire assessment and appeal process is functioning wrongly. Senate Bill 240, he noted, is a good start to address these wrongs, but it needs to be reviewed with other forms of appeal. The weakest link, he opined, are the boards of equalization; they are underpaid and undereducated on tax issues.¹⁷ Mr. Land suggested that the state eliminate the requirement to file a return in order to appeal a property value, and all appeal forms should be required to be provided online.

Mr. Joe Roberts, Cherokee County property owner, addressed the PTAA Study Committee to discuss his grievance. He owns a business in Woodstock; his property value increased \$96,000 in one appraisal year, but it decreased by only \$4,000 the following year. He stressed that small businesses are struggling, and that values should not be allowed to fluctuate so widely over such a short period of time. Mr. Roberts said he purchased the property when no one else desired to buy it—there was no competition for it.

Senator Thompson asked if Mr. Roberts' accountant noticed the sharp increase in value, and Mr. Roberts answered that he did point out the value increase, and that he doubts the ability of the tax assessor's office to properly assess every property annually and correctly.

Mr. John Sherman with the Fulton County Taxpayer Foundation, stated that bigger wrongs need to be corrected, and that there are many abuses. He noted that development projects are worth over \$5 billion in bonded debt but the properties receive huge discounts on assessments. This, he added, just adds the burden on other taxpayers especially when these properties receive tax abatements for ten-year periods.

Mr. R.J. Morris of Atlantans for Better Government provided strong opinions about the current system of assessments and appeals. He provided information showing that appeals to Fulton County Board of Equalization suffer a five percent success rate while appeals to the Fulton Superior Court enjoy a 95 percent success rate. Mr. Morris also referenced a recent report commissioned by the Atlanta Neighborhood Development Partnership.¹⁸ The effort studied 15 zip codes with the highest rates of foreclosure in the metropolitan Atlanta region and found that these zip codes account for an estimated \$118.5 million in potential property tax overpayment. It concludes that when average sales prices are

¹⁷ Mr. Land referenced Coffee County that only pays its equalization members \$20 per day.

¹⁸ See the report: <http://www.andpi.org/UpdatedTaxReport.pdf>

compared to average values within a zip code, homes in the zip codes with the highest rate of foreclosures are overvalued by 43 percent compared to 12 percent overvaluation in other zip codes. Some of these zip codes represent some of the poorest areas in metropolitan Atlanta, and the deterioration in home prices is dramatic; some parcels are selling for only 20 percent of their value. The appraised values for some of these parcels are four to five times their actual sales value; therefore, too many property owners are being overtaxed by large amounts, and many of these parcels are in poorer and traditionally minority-based neighborhoods. Mr. Morris noted, too, that underassessment is a problem where some affluent neighborhoods are nearly \$30 million below what should be collected.

Senator Rogers asked whether this situation was systemic in Fulton County. Mr. Morris answered affirmatively, and further responded that the lagging economy hurts poor areas the hardest and assessments are behind the curve on the drastically lower values.

Mr. Shane Masters of DeKalb County stated that the laws seem to lack consistent language to require counties to perform accurately. Mr. Masters asked what happens when counties do not perform timely within the law, and who is there to provide relief to taxpayers when counties do not meet deadlines? He stated there is no consequence for non-performance by a county.

Mr. James Roberts, a commercial real estate tax consultant, asserted that the valuation process needs more transparency by requiring assessments annually. He also stated that the need for tax returns are archaic and should be eliminated; moreover, he offered that property taxes should be collected in arrears so that value can be accurately obtained. He cited the Florida Truth in Millage law which requires estimated tax bills to be provided to property owners.¹⁹

B. Tuesday, December 15, 2009

1. Mr. Ron Silver, Gwinnett County Property Owner

Mr. Ron Silver opened by stating that the current appeals process for property tax assessments is just used to appease taxpayers; the process is weighted against the taxpayer even if proper documentation is provided at appeal. He asserted that assessments should be objective, fair, unbiased, and equal; however, they are instead subjective, unfair, biased, and unequal. Mr. Silver thinks that no entity wishes to take responsibility for any dysfunction in the system: counties or the state.

¹⁹ In 1980, the Florida passed the "Truth in Millage" (TRIM) act. This law is designed to inform taxpayers which governmental entity is responsible for the taxes levied and the amount of tax liability owed to each taxing entity. The Notice of Proposed Property Taxes is known as the TRIM notice.

Mr. Silver told of his experience of building a home in Chateau Elan in 2003. The purchase price for the lot in 2002 was \$87,900. The value of the land increased to \$150,000 by 2008: a 72 percent increase despite declining property values since 2007. He stated that many property values in his area doubled in one year. Mr. Silver appealed his value by the deadline date, and took the appeal before the Gwinnett Board of Equalization. The value was set at \$640,000 when it should have been set at \$450,000. Tax refunds were submitted per the board's instructions, but the tax assessor chose to use comparables more than a mile away in more affluent neighborhoods despite the fact that there were qualified comparables in the neighborhood. Further, he complained, that the assessor's office just looked at square footage to determine the value of the structure on the land, but Mr. Silver complains that not all same square footage structures are similar. Mr. Silver contends that valuation should be based solely on the land and not the structure; moreover, he mentioned that Australia would serve as a good reference.²⁰

Mr. Silver closed by stating that there are too many subjective and arbitrary decisions made by humans in the valuation process.

Senator Butterworth asked if he simply refers to human error, and Mr. Silver responded that there should be a simple formula for land valuation used by each county. For example, he suggested totaling all county square footage by class and dividing by budgetary needs.

2. Mr. Mark Chastain, Commissioner Gilmer County

Mr. Mark Chastain, Gilmer County Commissioner, stated that the complaints heard by the PTAA Study Committee are similar across Georgia, and his county is not immune. Inequities exist within neighborhoods and between various neighborhoods. The appraisal itself, he noted, is inequitable, for it is a very subjective and inaccurate system. Mr. Chastain provided three distinct concepts to consider.

The first concept turns on restructuring the law to acknowledge that FMV is unattainable in reality and move to a "uniform assessment" system. This concept is based on the presumption that property taxation must continue, and the downturn in the economy has demonstrated the vulnerability of funding government services. The current law mandates FMV and uniformity; however, it requires achievement through mass appraisal, and Mr. Chastain opined this is an oxymoron. He noted that GDOR rules state that these procedures are designed under normal circumstances²¹ and under the traditional definition of FMV;²²

²⁰ In Australia, local property taxes are known as land rates; that rate is taxed against the land's value without consideration of any structure or improvements thereon.

²¹ See GDOR Rule 560-11-10-.01(2).

²² See Footnote 1.