

Texas Is Losing Out on Millions of Dollars Thanks to Its Defective Property-Tax System

Across the state, private companies are able to slash their property-tax assessments, but homeowners aren't as lucky with their county appraisal districts.



After the private company Houston 8th Wonder purchased the former Six Flags AstroWorld site at Kirby Drive and Loop 610 for \$77 million in May 2006, the Harris County Appraisal District turned around and said the empty 104-acre lot was worth \$74 million. Instead of taking the \$3 million savings and going home, Houston 8th Wonder's hired-gun lawyers bulldozed HCAD for the next six years in multiple courts and slashed the AstroWorld site's value to \$31 million, resulting in significant lost property-tax revenue for Harris County.



Michael Amezcuita, chief appraiser of the Bexar County Appraisal District, says a majority of San Antonio's luxury hotels are ditching millions of dollars in property taxes due to a loophole in the state tax code.

Over the past 18 years, the Dallas Country Club, a members-only group that boasts a 100-acre golf course and dynamite views of the downtown Dallas cityscape, has routinely sued and prevailed over the Dallas Central Appraisal District. In 2013, the Highland Park property was appraised at a little under \$22 million, a sum that critics say is ridiculous and allows the Mockingbird Lane club to skirt significant property-tax responsibility.

And in San Antonio, the posh JW Marriott Hill Country Resort & Spa, with a construction price tag that nearly eclipsed \$600 million, has been able to lower its value by \$125 million by winning multiple lawsuits against the Bexar County Appraisal District. At press time, two outstanding court cases — and millions more in property-tax revenue — are at stake between the resort and the appraisal district.

There are hundreds more cases — from El Paso to East Texas and at many points in between — that will likely be marked in the loss column for appraisal districts. At press time, the Travis Central Appraisal District was locked in a colossal tussle with the owners of Austin's Circuit of the Americas Formula One racetrack while in Port Arthur, a recent win by a Valero refinery forced the Jefferson County school districts to give back \$16 million in tax revenue.

The sobering big-picture outcome: hundreds of millions of lost dollars for Texas's school districts, roadways, emergency medical services and fire protection.

"I've been sued every year by [JW Marriott]," says Michael Amezcuita, the fiery chief appraiser of the Bexar County Appraisal District, which is currently facing \$10.3 billion in appraisal-reduction litigation compared to the annual \$4 billion to \$5 billion average. In the 2011 tax year, BCAD's ten most expensive courtroom losses to class A commercial and industrial property owners resulted in an absence of \$1.8 million in tax revenue for San Antonio-area school districts.

"Valero sues every year," Amezcuita adds. "H-E-B [based in San Antonio] is suing every year now. They never used to sue me before." The Houston Press's interview request with Bill Day of Valero's media relations department in San Antonio fell on deaf ears.

Appraisal districts and property-tax experts say the uniform and equal (sometimes called "equity") provision, cemented into the Texas Constitution in 1997 amid yawns from lawmakers, is the evil responsible for Texas's defective property-tax system. Also known as the Taxpayer's Bill of Rights, the statute created an annual circus in which big-money property owners and appraisal districts argue over how best to value the land, the sticks and the bricks, with the property owners almost always winning.

A 2011 study by Texas Comptroller of Public Accounts Susan Combs concluded that the state's property-tax system generated more than \$40 billion in revenue (or 47 percent of total tax revenue) in

fiscal year 2011. There are billions of dollars on top of the \$40 billion that should be there but aren't, according to District 13 Senator Rodney Ellis. The Democratic lawmaker from Houston says that for every million dollars removed from the tax rolls, school districts, fire departments and emergency medical services are squeezed out of approximately \$30,000.

The problem has been exacerbated by Texas's absence of sales-price disclosure, which gives property owners a running start in property-tax disputes because appraisal districts must rely on private databases to procure sales numbers. Even then, it's impossible to seize reliable data for every property — in 2013, HCAD was able to grab decent sales information on only 681 of Harris County's 3,838 commercial transactions.

"Whoever heard of doing an appraisal without sales information?" says Amezcuita. Idaho, Utah and Alaska — whose combined population is only 928,000 more than the total number of residents of Harris County — are the only other states that lock away all sales figures on taxable properties.



District 13 Senator Rodney Ellis (Democrat-Houston) isn't hopeful that the Texas Legislature will take a hard look at the state's property-tax problems, which have been aggravated by the state's lack of sales-price disclosure, during the 84th Legislature in 2015.

**O'Connor:
"HCAD will be so busy that they will likely offer a reduction just to get you out the door."**

"It's like boxing with one hand tied behind your back," says former HCAD chief appraiser Jim Robinson, who retired from HCAD in May 2013 after serving 28 years at the agency. "What we see happening time and time again is tax consultants get everything that's out there and they'll pick a set of alleged comparables at the very bottom of the list and argue that they should be adjusted to that."

What happens next, says Ellis, is that "as properties above the median are reduced to the target valuation, the median drops. The result is a constant and growing erosion of the tax base" on which Texas's public-school finance channels are dependent.

As uncovered by the Press last year ("Shakedown," Steve Jansen, April 18, 2013), homeowners who have deeds to properties in the \$80,000-to-\$150,000 range are fronting the heavy tax burden.

HCAD, in a practice that property-tax experts have called an Enron-like scam, routinely cries uncle when confronted by big-money property owners but becomes an immovable wall with moderate-income homeowners over their assessed values. Since 2000, according to figures provided by Ellis's office, the overall property-tax burden for the state's single-family homeowners has increased from 45 percent to 54 percent while the property-tax load for businesses has decreased from 21 percent to less than

20 percent. (The remaining 26 percent consists of more than ten property categories, including vacant lots; utilities; and oil, gas and minerals.)

Earlier this year, HCAD twisted the knife on Houston's homeowners by inflating the values of Harris County's residential properties by an average of 16 percent, the highest increase Patrick O'Connor has seen in his long career as president of O'Connor & Associates. However, for the first time, residential property owners who file a formal protest by the June 2 deadline could prevail en masse.

"HCAD will be so busy that they will likely offer a reduction just to get you out the door," says O'Connor, who heads the state's largest property-tax protest business. Because Texas's other major metropolitan appraisal districts will be buried with lawsuits and protests — the Dallas Central Appraisal District typically processes 100,000 protests in an eight-week period — a similar result in Dallas-Fort Worth, San Antonio and Austin is possible.

(DCAD, whose losses from successful equal and uniform appeals in 2011 took \$1.1 million off the tax base, refused the Press's repeated requests to speak with chief appraiser Kenneth Nolan. The Press also tried unsuccessfully to get Dallas County Tax Office tax assessor/collector John Ames to answer our questions.)

HCAD's burden with the ambiguous uniform and equal law is one thing, but bringing a weak game plan to important court cases is another, according to a lawyer formerly with the agency. The ex-employee, who cited the attorney-client privilege and wished to remain anonymous, says that every day homeowners are partially saddled with additional property taxes because HCAD has bungled case after case against Harris County's formidable business-property owners.

Current HCAD chief appraiser Sands Stiefer tells the Press that his lawyers are pressed into hit-or-miss decisions due to the thousands of lawsuits that HCAD sifts through each year. "Often, the plaintiff will withdraw at the last minute," says Stiefer. "This poses an extraordinary challenge for us because we don't know which cases will go to trial and which will not."

After years of silence, HCAD, which was nearly sued in January by the Harris County Commissioners Court for undervaluing high-dollar commercial properties and shifting the tax load to homeowners, finally appears poised for a fight.

Along with raising 2013 values on a handful of Class A commercial and industrial properties by 50 percent, Harris County has commissioned Ted Whitmer, a highly regarded independent appraiser and property-tax lawyer, to conduct a study that could uncover some ugly truths about HCAD's commercial valuation and settlement practices. The first-of-its-kind analysis probably won't be like the Texas Comptroller's much-ballyhooed property value study, which in 2013 concluded that HCAD is only one percentage point away from perfection with commercial property and business-personal appraisals.

George Scott — a former HCAD employee who has exposed many of HCAD's issues on his website, George Scott Reports — says the results of Whitmer's audit, which HCAD fast-tracked following the

Harris County Commissioners Court's lawsuit threat, could have legs in the 84th session of the Texas Legislature, scheduled to meet from January 13 through June 1, 2015.

"Two things are going to happen this year," says Scott. "Properties will substantially hold values or they won't hold value and the legislature will wake up."

Debbie Cartwright, director of the property-tax assistance division of the state comptroller's office, says that her office has no say in leveling the field between powerful property owners and appraisal districts. "Only the Texas Legislature can address this matter," Cartwright says. "The Comptroller has no authority to intervene, review or provide advice regarding value protests and litigation."

As for the state's ultimate gatekeeper, Ellis says, "Unless it is put front and center, [the Texas Legislature] won't look for ways to go after vested, entrenched interests in Texas."

In other words, appraisal districts may not want to count on the folks in Austin.

In a few months, after property owners have ripped open their 2014 notices and filed lawsuits, protest season, which typically runs from May to August, will be in red-alert mode for appraisal districts.

Western Refining didn't even wait to find out the value of its West Texas refinery before suing. Despite winning a settlement in 2013 that knocked down the value of its \$1 billion industrial parcel by \$440 million — and, as a result, took \$12 million off its tax base — the company jumped the gun and decided to take the El Paso Central Appraisal District through the litigation gauntlet for the fifth year in a row.

Because appraisals occur annually, a property owner can sue every single year, even if he has just knocked down a building's value by millions. The carnage in 2014 could become the worst ever seen.

"It's not a one-time shop," says Todd Stewart, an attorney at Olson & Olson, one of the law firms that HCAD retains to defend the agency in appraisal lawsuits. "That's how we ended up with 33 of the 34 downtown [Houston] skyscrapers in litigation this year. This is what happens when you end up with 99.99 percent of everybody afraid that they're going to get left behind if they don't at least buy a dance card by filing a lawsuit."

The state tax code's "remedy for unequal appraisal" section — the statute that has given central appraisal districts migraines for nearly 20 years — was added to the Texas Constitution in 1997, sans debate, after Representative Paul Hilbert offered the amendment in the waning moments of the 75th Texas Legislature.

"It was one of about 34 floor amendments offered that day...they said, 'We're just offering it for some technical cleanup,'" says Stewart, who has been working in appraisal litigation since 1985. "If I had been a member of the House and this had come up as a floor amendment with no fiscal notes or legislative comment, I would've voted for it. It was innocuous."

Amezquita, in a phone interview with the Press, can rattle off the Section 42.26, Paragraph a3, provision from memory, nailing word after arbitrary word with heartfelt disgust: "The district court shall grant relief on the ground that a property is appraised unequally if the appraised value of the property exceeds the median appraised value of a reasonable number of comparable properties appropriately adjusted."

Prior to 1997, property owners who took issue with an appraisal district's value would protest based on Section 42.26, Paragraphs a1 and a2 — the part of the tax code that deals with appraisal ratio studies. Now "no one challenges on [paragraphs a1 and a2]," says Amezquita. "[Paragraph a3] is where the money is. Any blind monkey can win that deal. If I wanted to work for the other side, I could triple my money tomorrow."

Since it was enacted, the law has been expanded in multiple sessions of the Texas Legislature, the most significant change coming in 2003, when "appropriately adjusted" was tacked onto the end of Paragraph a3. With the additional broad stroke of interpretation, ace lawyers have curried favor with the courts, leading an overwhelming majority of judges to side with property owners because there isn't a definition of comparability in the tax code.

"Nobody has to use the yardstick of market value to keep you honest. They can just get an appraiser — and there are plenty of them out there who are hungry — to come in and pick properties," says Stewart. "The way the courts are interpreting the statute, they say that's permissible, and that's what created the problem."

Along with the state's lack of sales-price disclosure, Stiefer says that Texas prohibits its appraisers from auditing any and all sales transactions. "This means the playing field isn't level," says Stiefer. "A homeowner can't hide her house, but businesses can — and do — hide assets."

West Virginia, Illinois, Mississippi, Louisiana and Arkansas also ensure equity among taxpayers in their respective state constitutions. However, none of those states boasts the complex mix of properties, population size or big-money dealings that Texas has.

"This isn't a Democrat or Republican thing. This has been going on since 1997," Amezquita says. "It's not a tax policy. This is nothing more than a scam."

Houston 8th Wonder was able to knock down the value of the AstroWorld site two separate times by millions due to the favorable equity statute as well as HCAD's ineptitude in district court proceedings, according to the former in-house lawyer with HCAD, whom we'll call Edward.

In 2008, HCAD, represented by Olson & Olson, lost a pricey case to Houston Laureate Associates, which operates and leases commercial buildings and office parks in Harris County, because HCAD walked into the 234th District Court without an expert. It was an appalling oversight by HCAD, says Edward, because historically, the court proceedings have become a battle of the experts. HCAD pleaded to the 14th Court of Appeals and the Texas Supreme Court to hear the case. Both courts refused.

A year later, according to Edward, Riverway Holdings, which owns two upscale office buildings on South Post Oak Lane near the Galleria, sued HCAD and submitted an expert report by the 281st District Court's cutoff date. Riverway's lawyer, after learning that HCAD had blown its deadline, filed a motion for summary judgment, which basically argues that a case doesn't need to go to trial if one of the parties hasn't submitted evidence. The court agreed.

Instead of giving up, HCAD, led by Olson & Olson, again went to the 14th Court of Appeals and was shown the door. The district again appealed to the Texas Supreme Court, which negated HCAD's petition for review.

In these and similar cases, "HCAD never had an expert witness or report on uniform and equal, and they lost every single one," says Edward. HCAD chief appraiser Stiefer, who says that Olson & Olson billed the agency \$5.8 million in 2013 and who expects to receive an \$8 million bill from the Wortham Tower-stationed firm for 2014, disputes this claim.

"Currently we have thousands of lawsuits filed every year, and we produce hundreds, if not thousands, of expert reports for them," explains Stiefer. "Whether to put an expert on the stand, report or no, is a tactical decision. It is also dictated by the cost of preparing the reports. It is not unusual for us to have 20 or 30 trial settings a week."

Against Houston 8th Wonder, Edward says, HCAD shot off every one of its mangled toes.

During a Harris County Appraisal Review Board hearing, Houston 8th Wonder protested its \$74 million appraised value, which was already \$3 million lower than what the company had paid for the AstroWorld site, a fact HCAD wouldn't discover until much later. The ARB, which functions independently of HCAD, slashed the value to \$44 million. An upset HCAD sued the property owner, who countersued.

The case went to the 234th District Court, where "HCAD went full blast on market value based on newspaper clippings. [Houston 8th Wonder] argued uniform and equal and brought in a uniform and equal expert. HCAD had no expert to counter," says Edward. The value sank another \$13 million, to \$31 million.

HCAD argued to the First Court of Appeals that the uniform and equal provision is unconstitutional. The court disagreed. Again, HCAD appealed to the Texas Supreme Court, which instead of simply denying its petition for summary review issued a petition denied and adopted a decision by the 234th District Court into its own standard in summer 2013.

"Basically, it lets a pseudo-expert give unsupported testimony as to what's comparable," says Robinson, who had transitioned to his new position as deputy director of special projects at the Harris County Budget Management Department by the time the Texas Supreme Court rendered its decision. "You can testify as an expert if you aren't an expert, and there aren't defined guidelines on how you measure comparability and how you make adjustments."

Robinson explains that HCAD can now get dragged into a dark alley when each of Harris County's five refineries files its inevitable lawsuits.

"In any given year, there's going to be at least one, maybe two or more in litigation. Each one of them argues for a different way of determining comparability," Robinson explains. "What's good for Shell might be terrible for Exxon, and what's good for Exxon might be terrible for Valero. But each one says, 'My way is the only way you can do this.' They pick the way that's more beneficial to them."

In the meantime, HCAD will stick to its guns in court and argue that the uniform and equal statute is unconstitutional, even though the agency "keep[s] recycling this old public policy argument and [has] thrown away millions of dollars," argues Edward.

"We haven't changed our view that Section 42.26, Paragraph a3, to the extent that it allows reductions in appraisals without a showing that the property is appraised at a higher percentage of market value than is true for other properties, is unconstitutional," Stiefer says.

On the other hand, Stewart of Olson & Olson says that HCAD may need to reconsider its legal strategies.

"You can argue that the statute, on its face, is unconstitutional — that's a very tough burden to get past — or you can argue that it may not be unconstitutional on its face, but it's unconstitutional as it's being applied," Stewart says. "I think that's the direction that taxing authorities and appraisal districts and everyone else ought to be focused on."

Given HCAD's struggles with big-time commercial properties, the appraisal district says the opposite occurs with residential parcels. "HCAD does a super job with appraising homes, and they're very consistent with the values," says former HCAD chief appraiser Robinson. "The state's studies continue to show that."

The Texas comptroller's 2013 property value study — the same one that concluded that HCAD is nailing commercial appraisals — found that HCAD appraised residential property at a median level of 97 percent of market value, or only three percentage points from so-called flawlessness.

Not so fast, says O'Connor. The property-tax agent cites Ted Whitmer's cordial but scathing presentation before HCAD in July 2013 — as well as Harris County's decision to hire Whitmer to conduct an independent market valuation study — as indicators that HCAD hasn't been playing by the rules.

"Mr. Whitmer is correct. HCAD's unequal appraisal evidence generates a predetermined value, thus misleading taxpayers and members of the Harris County Appraisal Review Board," says O'Connor. "There is no question in my mind that HCAD management knows they report results that are predetermined and misleading. These types of seeming minor transgressions can be the stepping-stone to more serious violations."

Independent property-tax agent John Osenbaugh, who claims to have evidence of transgressions — ranging from cherry-picking properties in order to achieve higher values to targeting low-income neighborhoods for increases — opines that HCAD may already dabble in white-collar crime.

"There are grievous errors, and the people involved are too qualified for this to have been happenstance. They know what they're doing," Osenbaugh told the Press last year. "It's one thing if it's by accident; that's okay and somewhat forgivable, but when it's clearly not, this is a scheme that makes Enron look like amateurs."

With backlash at a high, some Texas lawmakers have tried to tailor the law to favor appraisal districts and homeowners.

Toward the tail end of the 83rd Texas Legislature, District 10 Senator Wendy Davis (Democrat-Fort Worth) and District 139 Representative Sylvester Turner (Democrat-Houston) co-authored a Senate bill that would have forced a hard look at the language of the equal and uniform provision and a House bill that could have redefined market value. But each proposed law died with the close of the 2013 session.

Ellis, who's fairly outspoken on property-tax issues, is willing to stick his neck out only so far during the 84th Legislature in 2015.

"I'm perfectly capable of starting forest fires of my own. I've done it for 30 years, since I've been in public office," says Ellis, who adds that he needs the major participants — the chief appraisers in Houston, Dallas, San Antonio and Austin — to team up with him. "I want them to step out there with me, and I'll work with them."

Sounds good in theory, but according to Amezcuita, who has been attending legislative sessions since 1997, Texas's chief appraisers are invisible at the State Capitol, partly because they have no one representing their interests.

"I can tell you that chief appraisers don't have any more stroke at the legislature than you or I or a man on the moon...there's just so much apathy," says Amezcuita, who asked the Bexar County Commissioners Court to sue him "so that we could play this out in a public venue." His request failed.

Critics of the mass appraisal system say that the power players in Austin need to step up their game before a change in the law is seriously discussed. Blogger George Scott suggests that the state be tasked with valuing properties of more than \$50 million, while Amezcuita thinks the state should commission a market-value study to see how those values may have eroded. "I guarantee they're not going to come back with a pretty picture for the legislature," Amezcuita says.

Travis Central Appraisal District chief appraiser Marya Crigler thinks the real hitch is in the absence of sales-price disclosure, an issue that's kicking sand in the face of TCAD during its donnybrook with Circuit of the Americas. Crigler declined comment when asked about the pending litigation between TCAD and the property owners of Austin's F1 racetrack, which was assessed at \$4.2 million in 2013, according to a records search on TCAD's website.

In the absence of sales information, the lawyers representing the property owners of the track, the only one of its kind in the United States, will insist that the sleek piece of real estate, which has attracted international acclaim and big bucks from overseas, is overvalued. Without a comparable piece of property in this country, the powerhouse attorneys and experts will look at similar tracks in Korea, Turkey, China and Bahrain and come up with an "appropriately adjusted" lowball value. And they will probably win the argument.

Whitmer tells the Press that he's been backed with a \$150,000 budget from Harris County to test HCAD's 2014 appraised values for Houston's high-end office towers, office parks and apartment complexes. Depending on his results, which are due May 15, the lawsuit threat by Harris County Commissioners Court might be executed.

"It's going to be limited since I'm not taking the entire sample, but maybe it starts a discussion that says it's statistically significant enough to know that there has been a downward push on numbers," says College Station-based Whitmer. "What it won't do is tell us what's really going on. We can guess, talk about it, debate it, but I think it's going to give us a starting point."

On the residential property side, O'Connor, at the time of writing, said his firm, which hadn't even started its 2014 marketing campaign, has seen a 49 percent increase in new business from homeowners thirsting to file protests. O'Connor & Associates, which represents homeowners in front of the Harris County Appraisal Review Board, takes half of a client's tax savings from successful protests and no money if the protests fail.

He won't be shocked if more than 500,000 Harris County homeowners overwhelm HCAD's Northwest Freeway offices during protest season. The current record, according to O'Connor, is 387,000 protests in 2009, the year HCAD increased single-family values by 7 percent.

The added pressure on the appraisal district could delay tax-roll certification from the end of September till the middle of November. "If there is a large increase in the number of hearings, HCAD is going to need to find a method to resolve them much more quickly or the HCAD Board of Directors and tax entities will be most upset," explains O'Connor.

The surge of homeowner protests has spawned Jubally, a one-year-old, two-person enterprise that charges \$69.99 in exchange for a TurboTax-like report as well as tips to help Harris County homeowners represent themselves at protest hearings. According to Jubally co-owner Blake Roberts, 97 percent of his company's clients who have gone through a formal hearing process have received an average reduction of \$623 in saved tax money. The company plans to expand to Travis County in time for the 2014 protest season.

In the meantime, HCAD appears to have climbed through the ropes and entered the ring.

In March, HCAD won a district court order that forces Valero to disclose financial data in order to generate an accurate market value for the Harris County refinery. If the appraisal district prevails in the appeals stage, "it will once and for all help break this despicable cycle of corporate welfare for property-tax purposes on major industrial property, of which Valero is just the tip of a huge iceberg," Scott says.

It could also be a needed power shift toward appraisal districts and ordinary homeowners, which, according to BCAD's Amezquita, have become chew toys that the rich and mighty tear to shreds every year.

"My file is probably going to be \$130 billion this year. So what if I lose \$5 or \$6 billion? Well, the 'So what?' is that the people who should be paying those taxes aren't paying, even though they can afford to pay," says Amezquita. "Homeowners are picking up those taxes because they cannot avail themselves of this same process.

"I've been at this 33 years, and I've never seen anything like it. I don't even know what I'm supposed to do next."