



MEMORANDUM

TO: Mayor and Council Members

FROM: Kevin Johns, Director
Economic Development Department

DATE: October 23, 2014

SUBJECT: Analysis of property tax appeals by companies receiving
Chapter 380 incentive agreements

On June 12, 2014, City Council approved Resolution 20140612-066 which directed the City Manager to develop a policy relating to property tax valuation appeals by companies that enter into multi-year Chapter 380 Agreements and public-private development agreements on City-owned property with the City of Austin. The Council also requested analysis on patterns of appeal among incentivized companies, metrics that could be applied to ensure that exceptions to the policy are flexible enough to provide for various scenarios, best practices from other jurisdictions, and determination on whether or not there is evidence that a policy like this might deter companies from going through the incentive process with the City.

The Economic Development Department (EDD) analyzed the appeal behavior among projects that received Chapter 380 payments between 2005 and 2013. Whereas companies receiving property tax-based incentives have appealed their property valuations, companies receiving job-based incentives have not. This is primarily because companies that receive job-based incentives typically do not own the facility, make improvements on-site, or make significant capital investments. For this reason, staff's analysis focused on the incentivized parcels, which encompass both real and personal property, of Chapter 380 projects that have received property-tax based incentives.

Upon analysis of Travis Central Appraisal District's (TCAD) historical property tax valuation data, staff concluded there is no pattern of appeal among incentivized parcels. Staff also identified inherent relationships in the City's current incentive policy – in both property tax based incentives and projects located in Tax Increment Financing (TIF) districts – that neutralize the effect of property tax appeals. The only best practices staff identified regarding the restriction of property tax valuation appeals were relevant to TIFs, and the general consensus of industry professionals was that such a provision restricting property tax valuation appeals would harm a City's competitive advantage.

Staff recommends the City join TCAD and Travis County's efforts to reform state law related to property tax appeals; rely on existing protections in the City's economic incentive policy regarding property tax-based incentives; codify existing practices for prohibiting the property tax incentive option for projects locating in TIFs; and, implement a property valuation appeal for development on City-owned land located in TIFs where the City has issued debt to be paid from TIF revenues.

Should you have questions concerning data with the report, please contact me at 512-974-7802.

Attachment: Report on property tax appeals by Chapter 380 incentivized companies

xc: Marc A. Ott, City Manager
Sue Edwards, Assistant City Manager
Rodney Gonzales, Deputy Director, Economic Development Department

Property Tax Appeals:

An Analysis of Property Tax Valuation Appeals as They
Pertain to Incentivized Companies in the City of Austin



Photo Courtesy of M. Knox

CITY OF AUSTIN: ECONOMIC DEVELOPMENT DEPARTMENT

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Executive Summary

On June 12, 2014, City Council approved Resolution 20140612-066 which directed the City Manager to develop a policy relating to property tax valuation appeals by companies that enter into multi-year Chapter 380 Agreements and public-private development agreements on City-owned property with the City of Austin. The Council also requested analysis on patterns of appeal among incentivized companies, metrics that could be applied to ensure that exceptions are flexible enough to provide for various scenarios, best practices from other jurisdictions, and determination on whether or not there is evidence that a policy like this might deter companies from going through the incentive process with the City.

With the assistance and data from the Travis Central Appraisal District (TCAD), the Economic Development Department (EDD) analyzed the appeal behavior among incentivized companies that received Chapter 380 payments between 2005 and 2013. Staff observed companies receiving job-based have not appealed their property tax valuations, for these companies typically do not own the facility, make improvements on-site, or make significant capital investments. Therefore, this sub-group of incentivized companies and their respective parcels were excluded from analysis due to the lack of available appeal information.

However, companies receiving property tax-based incentives have appealed their property valuations. For these reasons, the analysis was restricted to companies receiving property tax-based incentives. The property valuation appeal data is collected by TCAD on a parcel basis, therefore the analysis is presented on a parcel basis. Reference to “incentivized parcels” means a parcel owned by a company that has received a Chapter 380 economic incentive.

Staff concluded there is no pattern of appeal among incentivized parcels based on the following:

- The inconsistency of appeals among incentivized parcels;
- The weak appeal behavior among incentivized parcels relative to all business-related parcels in terms of both absolute appeals and share of initial value appealed; and,
- The untested effect of exogenous variables.

Several other conclusions were drawn from the analysis, including the following:

- In the case of property tax-based incentives, the impact to the City is offset due to the direct correlation between property taxes paid and the incentive dollars received by the company.
- Companies receiving job-based incentives do not appeal their property tax valuations.
- EDD practice is to not include tax revenues from business real property and business personal property in the WebLOCI analysis for projects locating in TIF's.
- EDD practice is not to offer property tax-based incentives for projects locating in TIF's.

The recommendations, which are elaborated further in this report, are to:

- Join TCAD and Travis County efforts to reform state laws related to property tax appeals.
- Rely on the existing financial protections in the City's economic incentive policy regarding property tax-based incentives.
- Codify existing practices for prohibiting the property tax incentive option for projects locating in TIFs.
- Implement a property valuation appeal for development on City-owned land located in TIFs where the City has issued debt to be paid from TIF revenues.

Introduction

Following the Council request on June 12th, the EDD worked closely with TCAD to gather data on property tax appeals as they pertained to incentivized companies. EDD analyzed the data extensively from multiple perspectives to better understand the appeal behavior of the City of Austin's incentivized companies. In addition, EDD reached out to its partners, professional organizations, and various municipalities to gauge the disposition and practices surrounding the issue of restricting incentivized companies from appealing property taxes. EDD's analysis of the data surrounding appeals and the responses from independent sources provided valuable insight; this allowed the department to develop prudent considerations for protecting the City of Austin's assets from property tax appeals.

I. City of Austin Economic Development

Economic Incentive Policy

EDD and its allies promote the City as an economically competitive location for attracting the expansion or relocation of targeted industry sectors that provide strategic and sustainable growth in Austin. Through the EDD's work with Opportunity Austin, EDD strategically develops relationships and approaches companies that could locate an investment in Austin, create quality jobs, and cause a large multiplier effect by interacting with our local companies.



The EDD uses WebLOCI to measure and forecast the fiscal impact of the project to the City, with an eye toward determining whether or not the City will financially profit from a project. EDD also utilizes the Council-approved matrix to evaluate each project based on core community values that determine whether the company and the project are a strong and sustainable partner for the City.

There are two options for financially incentivizing these types of projects – (1) developing an incentive that refunds a portion of property taxes paid by the company on a significant capital investment, or (2) developing a “per job” incentive for projects that are not capital intensive. In both cases, the incentive is only negotiated from the City's financial profit as computed through the WebLOCI analysis.

Incentive payments are performance-based, meaning they are only made after the company's performance has been monitored to ensure that the company has complied with the terms of their agreement, including investment, creating jobs with appropriate wages, complying with the City of Austin's MBE/WBE ordinance, and meeting any of the bonus criteria that further strengthens Austin's socioeconomic landscape.

To promote transparency and integrity, EDD updates and provides information on incentive agreements to the public. To that effect, EDD recently received a perfect score for Transparency of Economic Agreements by Good Jobs First, and has since updated its online reporting platform

further to incorporate more information on the agreements in a more organized and user-friendly format.

Incentive Options and Their Relationship to Property Tax

A project's property tax value appeal behavior greatly depends on the type of asset and value in question. A general understanding of the incentive options as they relate to the two types of assets that generate property tax – real property and business personal property – will provide context to the prevalence of appeals in certain groups of projects and the lack thereof in others.

Companies eligible to receive property tax based incentives typically own their real property improvements as well as their business personal property, and within these categories, the investment may be in one or more parcels. Companies with property tax based incentives typically own multiple property parcels, each of which is evaluated individually by TCAD.

Real property

Companies that receive property tax incentives from the City will typically own real property, while those receiving job-based incentives typically do not own the facility or improvements made on-site. If a company receiving a property tax incentive from the City successfully appeals the value their real property, and if they achieved all benchmarks for a successful compliance year, the relationship already exists between the value and the incentive such that the payment is reduced.

A company receiving a job-based incentive from the City will not have the opportunity to appeal real property valuations, as they are typically leasing space that is owned by another entity that controls the decision whether or not to appeal.

Business Personal Property

In both property tax incentives and job-based incentives, the depreciation schedule for business personal property is included in the WebLOCI analysis. This is a very important note to the City's assumptions in that the value for business personal property is anticipated to decrease over time. A project receiving a property tax incentive will typically have a longer depreciation schedule, as they are depreciating more investments that have a higher value such as machinery and equipment. Meanwhile a project receiving a job-based incentive will have a shorter schedule for depreciating investments with a lower value, such as office fixtures and furniture.

For companies that receive a property tax incentive, a successful appeal of business personal property value will result in a reduced incentive from the City, similar to the relationship of real property described above. We found no instance where a company receiving a job-based incentive has appealed their business personal property value.

The following table highlights the relationships between the City of Austin's incentive options as they relate to degrees of investment and property tax variables.

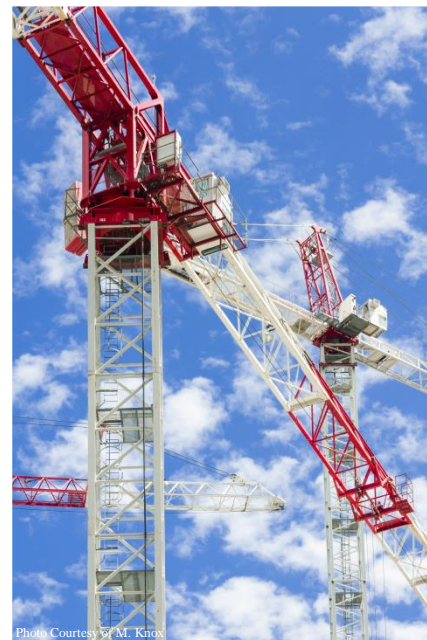


Photo Courtesy of M. Knox

Figure 1: Relationship Between Property Tax Variables and Incentive Options

		Incentive Options	
		Property Tax-Based Incentives	Job-Based Incentives
		<ul style="list-style-type: none"> Significant capital investment Incentive is a percentage of property tax paid 	<ul style="list-style-type: none"> Typically lease real property Local investment in tenant improvements and/or business personal property High yield benefits in jobs created
Property Tax Variables	Business Personal Property <ul style="list-style-type: none"> Property that is on-site but not considered real property (printers, desks, chairs etc.) 	✓ Usually a considerable investment	✗ Usually not a considerable investment
	Real Property <ul style="list-style-type: none"> Land and facility improvements made on-site 	✓ Usually a considerable investment	⊘ Not applicable: Incentivized companies typically do not own their real property improvements

II. Information Received from TCAD on Property Tax Appeals

Staff's collaboration with TCAD lent to valuable insight on the appraisal and appeal process of all parcels across Travis County. A summary of the information relevant to the property valuation appeal discussion includes the following:

- According to 2014 TCAD data, commercial parcels represent 26 percent, or \$40,840,754,782, of the total market value in Travis County (\$154,755,571,834) despite representing 4 percent (15,382 parcels) of the total parcel count in the County (406,575 parcels).
- Although commercial parcels represent a minority share of the total value, and an even lower share of the total parcel count, commercial parcels appealed \$39,154,049,266, or 52 percent of the total appeal portfolio value of \$75,561,827,259.
- After the 2005 passage of the uniform and equal remedy in Texas Property Tax Code Section 42.26 (a) as a legitimate provision to appeal property tax value, the method has represented up to 81 percent of appeals as of 2013; the Appraisal Review Board and TCAD have insufficient information to justify an initial valuation due to legislation prohibiting sales price disclosure.

III. Property Tax Appeal Behavior of Incentivized Companies

EDD analyzed past and active incentive agreements to determine which projects were appropriate to be included in the sample set, and determined the following: Although there have been 21 Chapter 380 agreements within the past 11 years, only nine (9) have received an incentive payment from the City. Dropbox, US Farathane, SunPower, eBay, and National Instruments terminated their incentive agreements prior to any payment being made. The investment made by five companies - Apple, HID Global, Visa, athenahealth, and Websense – has not yet been assessed, so their appeal behavior was excluded from analysis. Friday Night Lights did not own property, so the project was excluded from analysis.

Historical Appeal Behavior

To determine whether a pattern of appeal exists, EDD gathered data that reflected the appeal behavior of companies that received an incentive payment between 2005 and 2013, as displayed in Figure 2 (see Appendix A for full details). Of note, companies have the ability to appeal multiple parcels, either real, business personal property, or both, in any given year.

Of nine projects identified, four appealed their property tax valuations at least once – none of which were projects that were attracted to Austin through the use of a job-based incentive. Due to appeal behavior of job-based incentivized companies (or lack thereof) and other factors that would deflate the rate of appeal among all incentivized projects, these projects were excluded from the sample and further analysis.¹

Figure 2: Historical Appeal Behavior of All Incentivized Projects

Project	Incentive Based On:	Appealed?
Domain Mixed Use Development*	Property Tax, Sales Taxes Generated	<u>Yes</u>
Home Depot Austin Technology Center**	Property Tax	No
Advanced Technology Development Facility/SVTC**	Property Tax	<u>Yes</u>
Samsung Austin Semiconductor 300 mm Fab	Property Tax	<u>Yes</u>
Hewlett Packard Data Center**	Property Tax	No
HelioVolt Manufacturing Plant**	Property Tax	<u>Yes</u>
Hanger Headquarters	Job Creation	No
LegalZoom Regional Headquarters**	Job Creation	No
Advisory Board Company Software Center	Job Creation	No

Appeal Behavior of Property Tax-Based Incentive Projects

Figure 3 highlights projects that composed staff’s sample set; the year each project received incentives; the year and number of successful appeal; and, the percent reduction in taxable value as a result of all successful appeals by the respective project. Of note, incentives can apply to multiple parcels, one or more of which may have been appealed during one year. This explains the appearance of discontinuity between “# of Successful Appeals” and “Years of Appeal.” Of the remaining six projects – all of which received property tax-based incentives – the Domain², Advanced Technology Development Facility, Samsung, and HelioVolt successfully appealed their property taxes, while Home Depot and Hewlett Packard did not.

Figure 3: Appeal Behavior of Property Tax-Based Incentivized Projects (sample set)

Project	Years Receiving Incentives	# of Successful Appeals	Year(s) of Appeal	% Reduction in Taxable Value
Domain Mixed Use Development	2008-2014 (7)	6	08’, 09’, 11’, 12’, 13’	-20.89%
Macy’s	N/A	1	13’	-25.3%
SWD Hotel LLC	N/A	N/A	N/A	N/A
Heritage Communities LP	N/A	5	09’, 10’, 12’, 13’, 14’	-8.6%
LPF Villages Domain LLC	N/A	4	10’, 11’, 13’, 14’	-7.9%
Home Depot Austin Technology Center	2005-2007 (3)	N/A	N/A	N/A
Advanced Technology Development Facility / SVTC	2005-2007 (3)	1	07’	-8.9%
Samsung Austin Semiconductor 300 mm Fab	2007-2014 (8)	5	08’, 09’, 11’, 14’	-31.5%
Hewlett Packard Data Center	2007-2008 (2)	N/A	N/A	N/A
HelioVolt Manufacturing Plant	2009-2011 (3)	3	10’, 11’	-13.6%

¹ Companies incentivized on a job-creation basis do not make significant investment. Neither do they own their leasehold improvements, so the value of their real property improvements are not distinguishable from the value other properties owned by their landlords. Therefore TCAD has no information on the appeal behavior on these real property valuations. For these reasons, companies with job-based incentives were excluded from staff’s analysis – only the appeal behavior of projects receiving property tax-based incentives, which have discretion and benefit from the value of their real property, was analyzed.

² The Domain is a mixed-use development that receives incentives based on the incremental value increase of developed parcels. A portion of these properties are currently owned and operated by independent retail and residential owners. In effect, the Domain relinquished control to appeal property values subsequent to selling the property to the independent party. The City will not execute project-based deals such as the Domain the future, in accordance with City Ordinance 20090312-005.

Pattern of Appeal: Data Interpretation

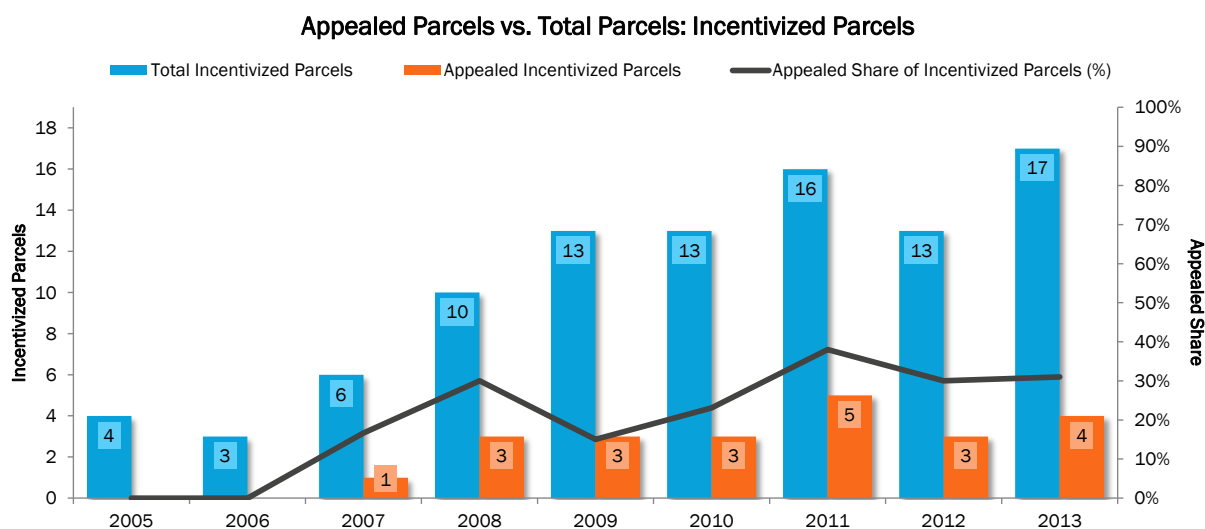
To determine the existence of a pattern of appeal among incentivized companies, staff chose to analyze the data beyond the static representation seen in Figure 3. Therefore, staff not only analyzed the historical appeal behavior among the incentivized parcel data between 2005 and 2013, but also compared the behavior of incentivized parcels to that of all business-related parcels in Travis County in the same period. Business-related refers to the set of all commercial and business personal property parcels. The purpose of this exercise was to measure the frequency, rate, and timing of appeals as they related to the general population of all business-related parcels.

Perspective 1

In Perspective 1, staff graphed the rate of incentivized parcels against the rate of appealed parcels, and overlaid a measure of the appealed share of incentivized parcels as a percent of the total incentivized parcels. The purpose of this perspective was to identify a direct correlation between the rate of incentivized parcels and the rate of appealed parcels.

Between 2005 and 2013, the share of appealed incentivized parcels relative to all incentivized parcels remained below 40 percent, as seen in Figure 4. Furthermore, the correlation between the increase in incentivized parcels and appealed parcels was not significant enough to make a determination that there is a pattern of appeal: if a pattern did exist, one would see a stronger relationship between the number of incentivized parcels and the number of appealed parcels. This, however, was not the case.

Figure 4: Perspective 1



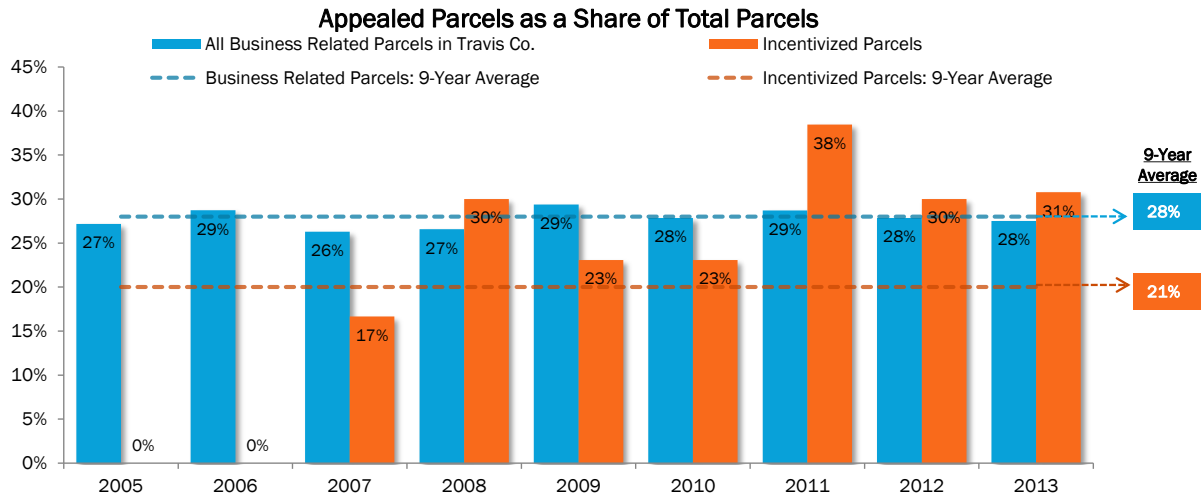
Perspective 2

In Perspective 2, staff compared the appealed share of incentivized parcels to the appealed share of all business-related parcels; furthermore, staff measured the nine-year average of the two samples to determine which group of parcels had a larger share of appeals across time. In addition, staff had the opportunity to observe the variance in the share of appeals among the two groups over the nine year period to gauge the consistency, in effect a pattern, of appeal.

A pattern of appeal among incentivized parcels was difficult to establish for two reasons: First share of appealed incentivized parcels relative to all incentivized parcels exhibited a lower nine-year average compared to the share of all appealed business-related parcels relative to all business-related parcels – 20 percent and 28 percent, respectively (Figure 5). Next, the appealed share of incentivized parcels exhibited an inconsistent rate of appeal over time compared to the

stable trend of appeal illustrated by business-related parcels (the standard deviation for appeal among all business-related parcels was 1, while the standard deviation for appeal among incentivized parcels was 12.78).

Figure 5: Perspective 2



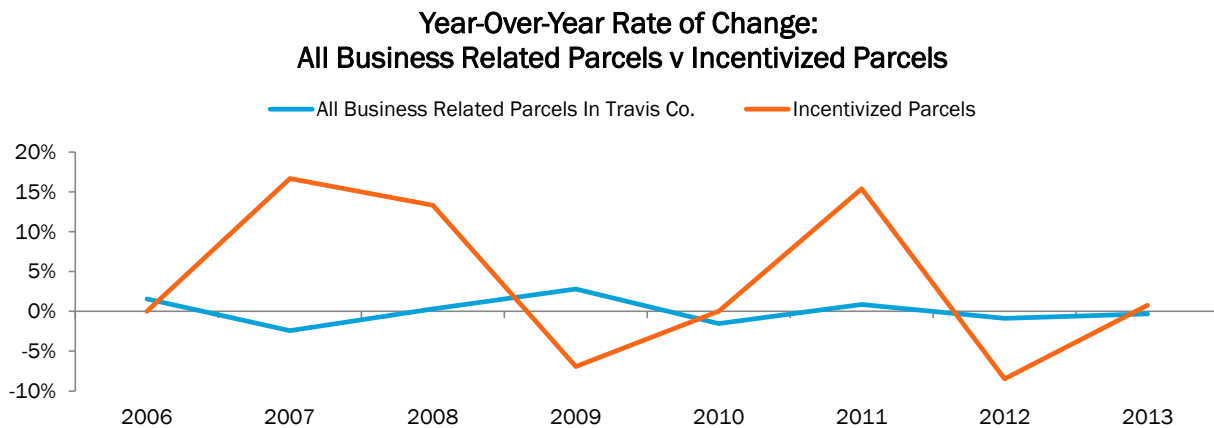
Perspective 3

In Perspective 3, staff plotted the year-over-year rate of change in the appealed share of incentivized parcels and all business-related parcels. The purpose of this perspective was to compare the variance that existed between incentivized parcels and all business-related parcels, as variance is a strong proxy of a pattern.

The year-over-year rate of change among all business-related parcels and incentivized parcels experienced large variation, and as demonstrated in Figure 6, a pattern of appeal was difficult to establish for several reasons. First, the average rate of change in year-over-year appeals among incentivized parcels was 4 percent, compared to 0.04 percent observed among all business-related parcels in Travis County. As highlighted in Figure 8, the standard deviation for incentivized parcels and all business-related parcels in Travis County was 0.87 percent and 0.03 percent, respectively. Meaning, the nine-year distribution of year-over-year rates of change in all business-related parcels in Travis County is significantly closer to its average, whereas that figure among incentivized parcels has a larger variance and less predictability. This observation argues against a pattern of appeal among incentivized parcels.

Next, the timing of points of inflection observed in the year-over-year change in pattern of appeals among incentivized parcels suggested there may be multiple factors that influence the decision to appeal. The increase in 2007 was due to the first observed appeal among incentivized parcels; however, the increases in 2010 and 2011 parallel the instability in the real estate market. Presumably, the decision to appeal a tax valuation may be sensitive to external variables such as the broader economy, rather than sheer profit maximization. Therefore, appeal behavior appeared to wax and wane as a result of the volatility in real estate and the corresponding lag between property values and the tax rolls. TCAD confirmed staff's finding, suggesting that appeals across all land types increase when the market experiences fluctuations in either direction.

Figure 6: Perspective 3



Perspective 4

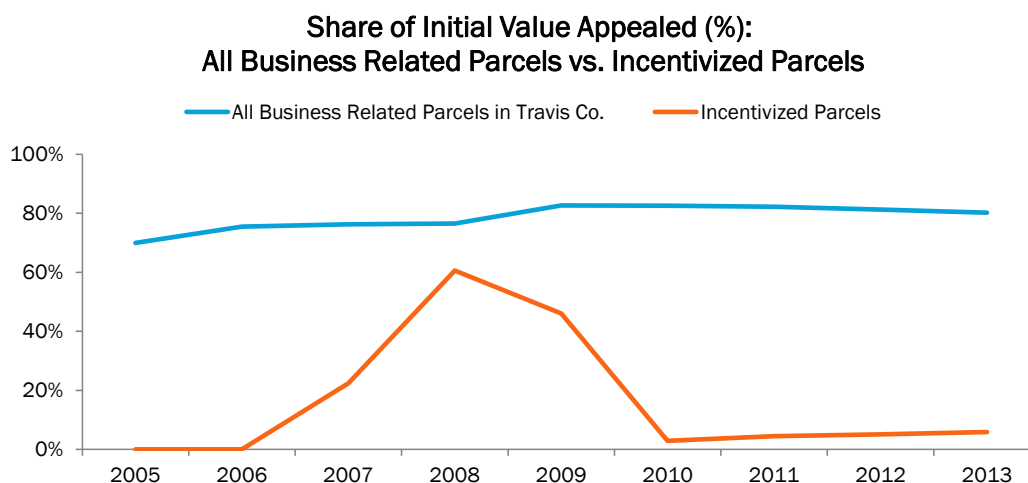
The purpose of Perspective 4 was to compare the contested portion of the total initial valuation of property among incentivized parcels and all business-related parcels. This illustration would help staff determine if incentivized parcels were more antagonistic compared to all business-related parcels. If a pattern of appeal did exist, one would expect a strong and consistent share of initial valuations being appealed across time.

Figure 7 displays the share of initial value appealed across all business-related parcels in Travis County and all incentivized parcels. Consistently, a smaller share of value across all incentivized parcels was contested in comparison to all business-related parcels in Travis County. The percentage of value appealed by all business-related parcels in Travis County, on average, was 80 percent; meanwhile, that figure stood at 16 percent for incentivized parcels. [Of note, due to the small sample size for incentivized parcels, a successful appeal by a company, such as Samsung, can trigger a steep increase in the share of initial value appealed as it did in 2008. In that period, the initial value of Samsung's assets alone that were appealed to a lower value accounted for 54 percent of the total incentivized property value— both real property and business personal property].

Overlaying the data interpretation from Figure 5, the 20 percent of incentivized parcel owners appeal, on average, 16 percent of initial property values. Meanwhile, 28 percent of all business-related property owners appeal, on average, 80 percent of initial property values.³

³ Staff's finding that 80 percent of initial business-related property values were appealed differs from the 90 percent figure calculated by TCAD because the appraisal district does not include business personal property, whereas staff's analysis does.

Figure 7: Perspective 4



Data Analysis: Summary

Observations in Perspective 1 suggested the correlation between the increase in incentivized parcels and appealed parcels was not significant. Perspective 2 illustrated the phenomenon that the rate of appeal among incentivized parcels maintained a lower nine-year average compared to all business-related parcels in Travis County. Perspective 3 highlighted the high lack of consistency in the year-over-year rate of change in appeal among incentivized parcels compared to all business-related parcels; furthermore, the data suggested appeals may have been catalyzed by external variables such as the broader economy. In Perspective 4, staff observed the relatively low share of initial value appealed among incentivized parcels relative to all business-related parcels.

Figure 8: Data Analysis Summary

	All Business Related Parcels	Incentivized Parcels
Rate of Appeal	<ul style="list-style-type: none"> 28% 9-year average Low: 27%, high:29% 	<ul style="list-style-type: none"> 21% 9-year average Low: 0%, high: 38%
Year-Over-Year Rate of Change in Appeal	<ul style="list-style-type: none"> Small variance (predictable) Standard deviation: 0.03% 	<ul style="list-style-type: none"> Large variance (unpredictable) Standard deviation: 0.87%
Initial Value Appealed	<ul style="list-style-type: none"> Consistent initial value appealed each year Low: 70%, high:83% 	<ul style="list-style-type: none"> Inconsistent initial value appealed each year Low: 0%, high:61%
Portion of Parcels Representing Initial Value Appealed	<ul style="list-style-type: none"> An average of 28% of parcels appealed roughly 80% of initial valuation 	<ul style="list-style-type: none"> An average of 21% of parcels appealed roughly 16% of initial valuation

The correlation, frequency, rate, variance, and timing of appeals among incentivized parcels were consistently inconsistent; and compared to all business-related parcels, incentivized parcels demonstrated weaker appeal behavior in terms of both absolute appeals and the value of appeals. **Upon analyzing the data in a range of perspectives, staff was unable to establish a pattern of appeal among incentivized parcels.**

IV. Austin's Competitive Advantage

Per Council's request, staff analyzed the potential impact on the City of Austin's competitiveness should a policy that prohibits incentivized companies from appealing property tax valuations come to fruition.

To accomplish this task, EDD reached out to companies that currently have an incentive agreement with the City, professional economic development organizations that could leverage large member bases for response, and, other municipalities that have been observed restricting property tax appeal valuations.

Feedback from Incentivized Companies

Companies and their affiliates that have an active incentive agreement with the City were polled to measure their likelihood of expanding in Austin had there been a provision restricting the company from appealing its property tax valuation. Of the 12 companies polled, five responded. All respondents strongly discouraged the City from taking this type of action. Responses suggested that such a provision would significantly hamstring the City's competitiveness, and its candidacy as a site for expansion would be adversely affected (see Appendix B).

Feedback from Professional Organizations

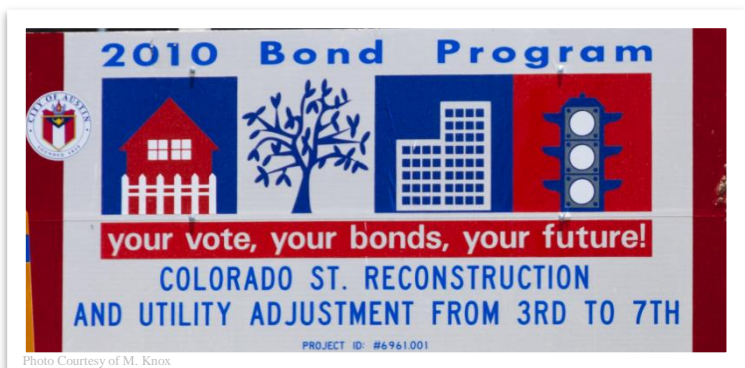
EDD petitioned the following six professional organizations for insight on best practices:

- Council of Development Finance Agencies
- International Economic Development Council
- Economic Development Council
- Site Selectors Guild
- Texas Economic Development Council
- TCAD

There were three main takeaways from their responses: 1) there are no "best practices" for restricting incentivized companies from appealing their property tax; 2) restricting companies that receive incentives from appealing their property tax values seems like a self-defeating strategy; and, 3) projects located in a TIF are the only exception to restricting property tax valuation appeals (because financing relies on TIF revenue). See Appendix C for all responses.

Case Examples of Restricting Appeals

A cursory search of practices in other U.S. cities revealed only two cases in which projects waived the right to appeal property tax valuations. Both projects are in Tax Increment Financing (TIF) districts in blighted areas needing redevelopment stimulus; and neither project was competitive. As a result, these cases were deemed irrelevant to the City's practices regarding Chapter 380



agreements, which is competitive in nature and tailored for marketing and business attraction. However, the cases are relevant for an arrangement where the City is financing debt for the development within a TIF.

The City of Houston: Houston Baptist University (HBU)

The City of Houston's incentive agreement with HBU is the only agreement containing language relating to the appeal of property tax value. If HBU appeals the value of the incentivized parcels below \$10 million, the agreement is considered breached. However, that \$10 million figure represents 6.25 percent of the total \$160 million investment, thus serving a nominal purpose.

The HBU agreement is pertinent to the recommendation regarding property tax valuation appeals by companies that enter into public-private development agreements on City-owned property.

The City of Fort Collins: Urban Renewal Authority's 'Covenant Not to Protest'

The Urban Renewal Authority (URA) of the City of Fort Collins contains another example that is relevant to property tax valuation appeals and public-private development agreements. For a short time, the URA reimbursed projects upfront through City-issued debt. The URA now reimburses projects over time based on the actual tax increment generated by the development, which significantly mitigates the risk to the URA. The URA's initial practice of using City-issued debt to make upfront reimbursements put the City of Fort Collins at risk of property tax revenues not being achieved as expected to pay off the annual debt requirements. Therefore, the URA implemented a Covenant Not to Protest. In only one case was a project allowed to waive its Covenant Not to Protest with the City of Fort Collins because the City's bond attorneys were uncomfortable with the legal language in the agreement. Although projects are now reimbursed over time, the URA still inserts the Covenant Not to Protest in redevelopment agreements.

V. Staff Recommendations

Upon analyzing the data regarding appeal behavior of incentivized companies, as well as input from current business partners, professional organizations, other municipalities, EDD concluded the following:

Property Tax-Based Incentives

Companies that protest their property tax valuations do so with the understanding that the City's annual incentive is reduced as well. **Staff recommendation is to rely on existing financial protections already provided in the property tax-based incentive policy.**

Chapter 380 Projects Located in a TIF

EDD excludes tax revenue from business real property and business personal property from the WebLOCI analysis because the tax revenues are included in the TIF revenue projections. And, it is current EDD practice not to offer a company locating into a TIF a property tax-based incentive. **Staff recommendation is to codify the current practice of prohibiting the property tax incentive option to projects located in TIF districts on City-owned land.**

Public-Private Partnerships of City-owned Located in a TIF

In the case where the City issues TIF debt for the development of a project on City-owned land, **staff recommendation is to develop a policy prohibiting property tax appeals within public-private development agreements.**

Legislative Reform

The County Commissioners Court directed Travis County to develop a working group comprised of a technical advisory committee and citizen's committee. **Staff recommendation is to join Travis County's efforts and create a joint working group to analyze the appeal behavior of all commercial parcels and develop equitable recommendations.**

Appendices

Appendix A-1:
Historical Appeal Data of Property Tax-Based Incentivized Companies

Legend

= Successful Appeal = Incentivized Amount
 = Non-Incentivized Parcel = Additional Info Resulted in Higher Assessment

ProjName	Parcel Owner	Parcel Type	Parcel ID	Geo ID	2005			2006			2007				2008				2009							
					Initial Valuation	Final Valuation	Initial Value	Valuation	Valuation	Initial Value	Initial Valuation	Final Valuation	Initial Value	% Change	Initial Valuation	Final Valuation	Initial Value	Change	Initial Valuation	Final Valuation	Initial Value	% Change				
Advanced Technology Development Facility / SVTC	incentivized business	Personal	700479	NA	17,039,325	17,039,325		16,958,380	16,958,380		24,951,072	22,729,358	(2,221,714)	-8.90%	20,030,097	18,547,514			14,412,098	14,016,929						
	incentivized business	Personal	780479	NA	388,850	388,850													17,512	17,512						
Home Depot Austin Technology Center	incentivized business	Real	459999	2332005030000	29,672,768	29,672,768		11,889,488	11,889,488		16,949,785	16,949,785			22,505,145	22,505,145			22,272,711	22,272,711						
	incentivized business	Personal	703409	NA	913,616	913,616		39,324,756	39,324,756		38,646,137	38,646,137			40,742,162	40,742,162			42,857,353	42,857,353						
Domain Mixed Use Development	Domain Shopping Center LP	Real	569368	02560602010000	10,272,179										113,735,165	85,327,666	(28,407,499)	-25.0%								
	Domain Mall LLC	Real	767635	02560602030000											112,222,016	66,871,125	(45,350,891)	-40.4%								
	Domain Mall LLC	Real	737156	02560603020000											24,693,167	24,693,167							24,693,167	30,637,433	5,944,266	24.1%
	SPGIL Domain LP	Real	737157	02560603030000											14,485,380	14,485,380							14,485,380	14,485,380		
	SPGIL Domain LP	Real	774411	02560603050000																			4,491,013	4,491,013		
	Domain Shopping Center LP	Real	585637	02540601050000											3,694,242								6,892,715	6,892,715		
	Macy's	Real	767636	02560602040000																						
	SWD Hotel LLC	Real	767637	02560602050000																						
	Heritage Communities LP	Real	737158	02560603040000											31,431,163	22,746,330	42,045,121	42,045,121			57,269,552	47,497,393	(9,772,159)	-17.06%		
	LPF Villages Domain LLC	Real	774412	02560603060000																			1,912,894	1,912,894		
Hewlett Packard Data Center	incentivized business	Real	735290	2092601440000							17,550,000	17,550,000			33,617,557	33,617,557			32,890,623	32,890,623						
	incentivized business	Real	783965	2072603010000																						
	incentivized business	Personal	747818	NA							2,150,480	2,150,480			105,256,078	105,256,078			89,529,487							
Samsung Austin Semiconductor 300 mm Fab	incentivized business	Real	754867	02423102310006							11,100,000	11,100,000			112,827,670	104,335,289	(8,492,381)	-7.53%	104,335,289	104,335,289						
	incentivized business	Real	844835																							
	incentivized business	Real	844836																							
	incentivized business	Personal	766977	NA							823,450,475	471,315,579	(352,134,896)	57.24%	1,108,381,466	1,080,618,258	(27,763,208)									
	incentivized business	Personal	844837	NA							457,367,750	457,367,750			1,080,273,700	1,080,273,700										
HelioVolt Manufacturing Plant	LIT Industrial	Real	785778	03181001090000											553,902	553,902			7,241,757	7,241,757						
	incentivized business	Personal	767878	NA											2,731,812	2,731,812										
Apple Inc. Americas Operations Center	incentivized business	Real	832280	02680310050000																						
	incentivized business	Real	832281	02680310060000																						
	incentivized business	Personal	824753	NA																						
HID Global Manufacturing & Distribution Center	incentivized business	Real	837012	02622604010000																						
	incentivized business	Personal	836604	NA																						

ProjName	Parcel Owner	Parcel Type	Parcel ID	Geo ID	2010					2011					2012					2013					2014				
						Final Valuation	Initial Value	% Change			Final Valuation	Initial Value	% Change			Final Valuation	Initial Value	% Change			Final Valuation	Initial Value	% Change			Pro-tested	Final Valuation	Initial Value	% Change
Advanced Technology Development Facility / SVTC	incentivized business	Personal	700479	NA	8,689,110	8,911,216				12,630,372	9,079,070				8,209,947	6,002,240													
	incentivized business	Personal	780479	NA	18,447	18,447																							
Home Depot Austin Technology Center	incentivized business	Real	459999	2332005030000	22,272,711	22,272,711				22,272,711	22,272,711				22,833,434	22,833,434				22,506,278	21,177,353				20,947,010				
	incentivized business	Personal	703409	NA	44,615,249	44,615,249				42,529,884					47,088,632					52,033,266					43,872,475				
Domain Mixed Use Development	Domain Shopping Center LP	Real	569368	02560602010000																									
	Domain Mall LLC	Real	767635	02560602030000	57,886,440	57,886,440				72,016,693	72,798,871	782,178			75,596,588	71,479,824	(4,116,764)	-5.45%		73,320,987	72,770,100	(550,887)	-0.75%		82,755,446	Yes			
	Domain Mall LLC	Real	737156	02560603020000	24,906,650	24,906,650				41,421,179	28,443,871	(12,977,308)	-31.33%		31,702,518	29,500,000	(2,202,518)	-6.95%		30,184,167	30,184,167				35,827,204	Yes			
	SPGIL Domain LP	Real	737157	02560603030000	14,485,380	14,485,380				782,852	782,852				732,855	732,855				732,855	732,855				732,855	Yes			
	SPGIL Domain LP	Real	774411	02560603050000	5,558,487	5,558,487				5,774,494	5,774,494				6,100,435	6,100,435				6,148,132	6,148,132				6,778,802	Yes			
	Domain Shopping Center LP	Real	585637	02540601050000																									
	Macy's	Real	767636	02560602040000	10,020,960	10,020,960				10,020,960	10,020,960				10,518,069	10,518,069				12,848,214	9,591,974	(3,256,240)	-25.34%		10,399,161	Yes			
	SWD Hotel LLC	Real	767637	02560602050000	28,268,075	28,268,075				44,144,128	44,144,128				48,861,648	48,861,648				57,442,657	57,442,657				64,639,160	Yes			
	Heritage Communities LP	Real	737158	02560603040000	42,252,643	37,934,244	(4,318,399)	-10.22%		39,948,486	41,393,771	1,445,285			49,070,117	48,300,000	(770,117)	-1.57%		54,251,966	49,000,000	(5,251,966)	-9.68%		60,620,131	Yes	58,080,000	(2,540,131)	-4.19%
LPF Villages Domain LLC	Real	774412	02560603060000	4,385,496	4,318,261	(67,235)	-1.53%		4,749,931	4,338,379	(411,552)	-8.66%		5,306,313	5,306,313				5,985,530	5,370,202	(615,328)	-10.28%		5,762,587	Yes	5,198,649	(563,938)	-9.79%	
Hewlett Packard Data Center	incentivized business	Real	735290	2092601440000	4,176,730	4,176,730																							
	incentivized business	Real	783965	2072603010000	32,890,623	32,890,623				31,397,045	31,397,045				36,257,990	32,005,341				32,201,104	32,201,104				32,298,133	Yes			
	incentivized business	Personal	747818	NA		68,058,928					45,054,424					39,394,427				55,133,157					52,458,266				
Samsung Austin Semiconductor 300 mm Fab	incentivized business	Real	754867	02423102310006	104,335,289	104,335,289				109,192,259	94,439,269	(14,752,990)	-13.51%		93,022,680	93,022,680				88,372,960	88,372,960				93,984,853	Yes	82,186,823	(11,798,030)	-12.55%
	incentivized business	Real	844835																						6,195,600				
	incentivized business	Real	844836																						6,362,000				
	incentivized business	Personal	766977	NA	793,295,026	793,295,026				2,626,608,296	2,626,608,296				2,783,446,311	2,783,446,311				2,122,606,976	2,122,606,976				2,340,228,243		1,309,282,273	1,030,945,970	
	incentivized business	Personal	844837	NA	793,295,026	793,295,026				1,399,541,819	1,399,541,819														1,030,945,970				
HelioVolt Manufacturing Plant	LIT Industrial	Real	785778	03181001090000	7,191,520	6,259,886	(931,634)	-13.0%		6,177,600	5,406,583	(771,017)	-12.5%		6,903,357	6,235,290				6,202,916	6,202,916				6,676,960	Yes			
	incentivized business	Personal	767878	NA	7,892,790	7,892,790				34,952,361	30,095,607	(4,856,754)	-13.90%		35,364,966	17,731,791				20,516,168	15,277,688				16,231,572	Yes			
Apple Inc. Americas Operations Center	incentivized business	Real	832280	02680310050000																1,055,894	1,055,894				10,115,503	Yes			
	incentivized business	Real	832281	02680310060000																6,240,447	6,240,447				84,198,810	Yes			
	incentivized business	Personal	824753	NA																					6,352,405				
HID Global Manufacturing & Distribution Center	incentivized business	Real	837012	02622604010000																22,229,235	22,229,235				22,229,235	Yes			
	incentivized business	Personal	836604	NA																						No			

Appendix A-2: Historical Appeal Data of Job-Based Incentivized Companies

ProjName	Parcel Owner	Parcel Type	Parcel ID	2010			2011			2012			2013			2014			
				Initial Valuation	Final Valuation	Final Value - Initial Value	Initial Valuation	Final Valuation	Final Value - Initial Value	Initial Valuation	Final Valuation	Final Value - Initial Value	Initial Valuation	Final Valuation	Final Value - Initial Value	Initial Valuation	Pro-tested	Final Valuation	Final Value - Initial Value
Hanger Headquarters	incentivized business	Personal	802223					5,129,933			7,993,130			12,118,200		8,777,765	No		
LegalZoom Regional Headquarters	incentivized business	Personal								587,954			720,756			Moved to 9900 Spectrum in Williamson CAD			
Facebook Sales & Operations Office	incentivized business	Personal	800861					623,237			1,609,044			1,523,815		1,527,850	No		
Advisory Board Company Software Center	incentivized business	Personal	761695		30,800			303,875			332,903			1,708,966		2,458,808	No		
Visa Global IT Center	incentivized business	Personal	833389												0	2,457,736	No		
Athenahealth IT Services Center	incentivized business	Personal														Account dne 6/13/14			
Websense Austin Center	incentivized business	Personal														Account dne 6/13/14			

Appendix B: **Responses from Incentivized Companies and Site Selectors**

If Austin were to require that companies waive their right to appeal property tax valuations (real property and business personal property) in order to receive economic development incentives, would this have impacted your consideration of choosing Austin as the location for your project?

How would this have impacted or altered your consideration of Austin for a project?

In regards to the property tax appeal matter referenced in the memo issued by Kevin Johns on July 11, 2104 I do have a few comments for you to consider.

Requirements by companies to waive their right to appeal property tax valuations in order to receive incentives is not unusual in parts of the country; thus, this matter would not be unique to Austin.

The valuation of property should not be impacted whatsoever as it should follow specific valuation techniques used by the County Assessor (e.g. fair market value, cash value, etc.) It should not be influenced/restricted on whether an incentive is tied to the project. In a perfect world every property would be assessed appropriately to market conditions, but unfortunately that is not always the case. Thus, I see this matter as an opportunity for the Assessor to not properly devote the full focus on defining an assets valuation as he/she would know that the property owner would have no recourse no matter the valuation. [Company] has a robust property tax appeal practice so we have healthy experience in matters of overvalued assets.

Because property taxes are often difficult to fully define early on in a project's life-cycle, in particular in new construction examples, the valuation of the property could have a significant impact on a project's operational costs. This would be especially valid for projects with a unique/specific use that would be hard to assess.

To be candid, given that the City's requirements for companies to get local incentives are already some of the most onerous that I have seen in my 10+ years in this business and essentially void the incentives benefits provided by the City, I would find this additional property tax issue to be an adder to an already difficult incentives policy.

For projects with larger than average property tax investments I would definitely raise this as a point of concern to a client and would recommend to eliminate the site taking into account all other administrative/compliance requirements.

I would say altering tax implications for us in anyway would have had an impact on our decision. Without knowing full impact or studying it, I don't know whether it would have changed our view, but it would not have helped in anyway.

In response to your inquiry, having to waive our right to a property tax appeal would have had a profound impact on our decision to choose Austin as the location for our project(s). While the decision to locate here in Austin is not based wholly on any one factor, a significant determining

factor is the property tax incentives we receive. We are the largest property taxpayer in all of Travis County, so it is a huge consideration for us. As well, our Headquarters takes this into account when deciding between Austin and other locations (both in and outside of the U.S.). Because of Texas' high property tax rates and tax, other locations are often more appealing when looking at that factor [sic] alone. It is because of our incentives that we are able to make the argument to management and Headquarters that Austin makes sense economically for us all.

As well, while we aim to work with TCAD and CAGI as well as our property tax consultants on a fair property tax valuation before values are set, this cannot always be ensured. For instance, back in 2011, TCAD admittedly and improperly assessed [company] with a property value in excess of \$1B over its true value. [company] had to sue TCAD to get this corrected. In the subsequent years, we've needed to appeal various property values due to inaccurate information, new properties being acquired, etc. to result in a fair and accurate property value assessment. Having to waive our right to this basic insurance for fair and equitable treatment would definitely deter Headquarters from considering Austin as a fair and economically sound location for current and future projects. Although we would not necessarily appeal our property tax values, waiving the right to an appeal essentially waives our right to ensuring we receive a fair and accurate assessment.

It's difficult for us to answer hypothetical questions such as this one post decision. Our decision to move to Austin was based on myriad of factors, but the ability to appeal property taxes was not taken into consideration. Our belief is the incentives should be tied to economic development (employment and capital investment); incentives are a tool to help attract. We wanted to be treated like every other corporate citizen if and when we made the decision.

You asked specifically whether such a requirement “would have impacted [company’s] consideration of choosing Austin as the location for [its] project.” The answer is simple: of course such a requirement would have impacted our decision, as we suspect it would impact the decision of any company considering expansion in Austin. Requiring a company to waive a substantive right, at unknown and unknowable potential future cost, in order to participate in a program intended to attract business growth and investment would inevitably undermine the objectives of the incentives program. Worse, such a requirement would be a very real disincentive to the kind of capital investment [company] is currently making in [a facility]; investment which, as you know, creates additional jobs and generates additional city revenue.

Appendix C-1:
Responses from Members of the Council of Development Finance Agencies (CDFA)

If a municipality were to require that incoming companies waive their right to protest property tax valuations (real property and business personal property) in order to receive economic development incentives how would this impact or alter the company's consideration of that location for a project?

While we don't deal directly in the application of tax incentives, it would say that "it depends" and that the municipality may want to consider a materiality threshold in applying such a role. Said another way, in GE closing the largest incentive deal ever to build a new building the Banks in Cincinnati, a request like that is not unreasonable. But in a much smaller deal, I think a company would look at it more prohibitively.

If our URA bonds for a project that is based on property tax income, we include a provision in the DDA that requires the company to ensure that their annual property tax revenues will be enough to pay the annual debt OR the company has to make up the difference. That requirement means that the bonds are not tax exempt.

If we did a performance-based incentive, that is reimburse the company a certain amount of \$\$, we generally include in the DDA, that the property tax revenue we receive for the company is enough to cover the reimbursement or the reimbursement falls short by the amount of the shortfall or additional percentage thereof.

Our deals all have this term within the agreement. We use TIF as our capital for incentives which requires increasing real estate assessments. Without the increases then there is no increment and no incentive. We do not limit or regulate their business personal property. It can affect the company's P&L but typically the incentive more than make-ups for a nominal increase in property taxes

We have contemplated property owners' right to protest property tax valuations in our offered incentives. But when we've done so, it's typically when we're offering tax increment financing (TIF) and we specifically require the property owner to agree – within the terms of the TIF agreement – that s/he will work with the city and the county auditor to "set" the property valuation at an amount agreed upon within the TIF agreement. Put another way, to ensure that our TIF revenue stream is unimpeded by the owner, or subsequent owners, undertaking a property valuation protest (which would reduce the amount of payments-in-lieu-of-taxes paid, because valuation would be lower than projected), we bake into the TIF agreement that we all agree what the property valuation will be for taxing purposes during the entire term of the incentive.

In this way, the impact to the company shows up in calculated repayments from pilots paid into the TIF fund based on the set valuation. (This is the case for real property taxes. Our state no longer assesses personal property taxes.)

I would argue this approach could be adopted across incentives offered by the municipality. By way of example, a job tax credit could include – should include - within the tax credit agreement, a requirement that the owner not protest the property valuation. This is a cost of receiving an incentive from that jurisdiction.

The city of Cleveland requires it for all TIF's and Ent. Zone tax abatements. There have not been any issues.

I think it's a matter of property rights and due process. I would not be supportive of a company waiving the rights to protest. No matter the location, property evaluations tend to ebb and flow. I think a community would be viewed negatively by companies considering locating within a municipality if this is put into place.

I am not sure I understand the question. I believe you are asking about property tax assessments, when raised, will not be challenged by the company in exchange for abatements or incentives.

This could trigger a couple issues:

The abatement amount, let's say 75% property tax abatement for 10 years, would likely only be slightly affected by any raises in assessment. It should impact location decisions only slightly and only if property taxes in the community are already high and increasing quickly.

If other incentives are involved, a \$100,000 development grant for instance, this must be weighed against property tax rates within the specific community. Remember high property taxes usually also mean high property re-sale values too.

I am not sure I am able to answer the first question since I work on the side of the deal that would prohibit the tax appeal.

Agreeing to such a waiver would have a negative impact on a company's decision since in my view such action gives away the right of the company to challenge assessments in the future if, for example, there is a business downtown turn.

In Pennsylvania the municipality is on 1/3 of the property tax trio, also there is no Personal Property Tax. You also need to consider the County and School District. Typically the School District tax bill is 50-60% of the total; the county and municipality come in to split the remaining 40-50%.

Now if value of the incentives is greater than the amount of a potential property tax increase paid (or estimated amount saved through an appeal over a determined period of time) then go with the incentives, otherwise you may want to take your chances with an appeal. If you are only speaking of municipal property taxes...you may want to put a PILOT (Payment in lieu of Taxes) agreement

together for the municipality and then challenge the taxes knowing it will not affect the municipal taxes.

I have heard of and been involved in deals where a company was asked to waive property tax credits in order to receive an incentive in the form of a loan or grant, and that is usually well received because it represents funds up front versus savings over time. However, I have never heard of a company being asked to waive the right to appeal (protest) tax assessments in order to receive incentives. The business would be faced with a fairly straight forward analysis: the value of the upfront incentive versus the risk of property taxes rising higher than they would tolerate. When given the ability to make an objective analysis of the numbers and the risk factors, the company would probably be okay with it. They would object to surprises or unknown factors later in the process that might skew the analysis.

In my opinion based on over 30 years in ED, I would say this is a difficult game changer and would probably place this community in a very unfavorable position for site/location consideration. In our legal documents pertaining to any real property tax abatement that is tied to assessment, the company always has the right to challenge its assessment. We have no business personal property tax in our state.

DURA has required the prohibition of protesting property taxes as a requirement of receiving tax increment bond financing assistance. Certainly it would be inappropriate for tax increment bonds, which require the incremental taxes to be available to meet debt services requirements, to be put at risk due to the beneficiaries desire to lower their property taxes. We have found that the developers approach their projects with an expectation regarding the payment of property taxes and generally do not object to the “no protest” requirement in return for the public investment. We typically do not include the same prohibition if the tax increment assistance is paid as a developer reimbursement. In this scenario if the incremental taxes are lessened as a result of a protest, the developer may not be fully reimbursed for their eligible costs.

In Lancaster County, PA the County is responsible for completion of property assessments, including properties in the City of Lancaster. I have not researched this but I believe the appeal process in Pennsylvania may preclude the City from creating a program where economic development incentives were conditioned on not appealing property tax valuations. If the City operated its own property assessment process we could do so. I don't have any experience about the potential impact on location decisions by a business when restricting their ability to appeal property assessment values.

That's a fascinating question, and one that I've actually heard discussed before. I think the prevailing economic development thought is that any restrictions placed on a prospective company could negatively impact their decision, even if they are getting incentives. I would add though that it may not be that cut and dry. We would want to define what incentives we were really talking about. Some communities consider fast-tracking the permitting process an incentive. If that is all a company was to receive, and their tax values were to plummet for some reason, it wouldn't seem like a reasonable

restriction for that instance. However, a company that receives a million dollar local incentive, even if they keep to their end of the bargain related to job creation, etc., might not be justified in requesting adjustment. I would imagine that Rodney will have a differing opinion, as I would guess most folks on the actual taxing end would.

As is the case in Clayton County, though, the majority of the actual incentives dollars or programs are state or federal in nature. State tax credits, REBA grants from the Governor's office, Foreign Trade Zone status, etc. Tax abatement is really our strongest local incentive.

I agree with (the previous comment), it would largely depend on how the incentives are structured and the value in the location for the project. The longer the tax abatement terms are the more beneficial it becomes to the company and perhaps may deter an appeal. Shorter terms clearly would work in the opposite as the tax umbrella is shortened and the percentage of value escalates rapidly. Market conditions can and have fluctuated from year to year. With no appeal rights in fast appreciating areas, companies may find themselves with high assessments and high taxes. This will ultimately affect the bottom line.

In my experience property taxes are just as important as location when companies are deciding to expand, relocate, or start a business. I will also say being on this of the abatement waiving appeal rights wouldn't be a bad thing.

Are there any alternatives that you would suggest or best practices that you would recommend in place of prohibiting such protests?

Couple of thoughts, 1) you can choose to not regulate at all but have an increment share agreement in place (i.e. Provide 30% of increment to the employer) so if they challenge then they get less incentives. Would need to be a pay as you go incentive. 2) You can allow a challenge but with a limiter of some type i.e. Applicant is allowed to challenge property tax assessments if 135% over market rate assessments. You would need to be very confident and transparent in your property tax forecast to ensure that both parties on the same page of where property taxes are going. A good company will already have inflation built into their P&L so they can withstand inflationary increases but need to minimize extraordinary events like their assessment doubling. It sounds like there is root problem that is creating both parties to be on different pages. It is a public private partnership so openness and transparency is needed on both sides to craft a workable redevelopment agreement.

I would argue our handling, described above, is a best practice to keep the owner from protesting valuation. Make the incentive contingent on what the property valuation is – as is the case in TIF deals that pay the property owner – so the property owner is induced to see the valuation amount needs to be the same as that is desired by the local political jurisdiction / school district.

Alternatives would be to have clawback provisions in the contract – incentives are subject to performance – failure gives right to clawback/be compensated for providing the incentives. Because we use TIF we always require a waiver from protesting property valuations – another way to look is there must be an agreed upon minimum valuation/payment.

I would just add that an alternative is to include some sort of clawback in the award. The real issue at hand is that you don't want to provide a company a benefit and then they leave. This would have an adverse impact on the ability to issue future awards.

There are other ways a community can ensure revenues, through income tax, through stepped-down incentive programs, through gift in exchange for an abatement (a new ballfield for the school district or safety service vehicle, for instance) through clawbacks for non-performance (although politically difficult). All these measures are probably more palatable as an inducement to the company to locate in your community.

The alternative is to more tightly define that incentive to which the company would have access, aligned with the value of the potential tax appeal. For example if the appeal is potentially worth \$1,000,000 over 10 years, what is the NPV of the appeal and how can the City assistance be repackaged on the front end to reflect this amount?

Property tax valuations should be projected over a time period – 10-20 years based on current and historical rate and valuation increases to provide a company comfort that the initial decision to locate based on this issue is valid. To request a waiver of the right to challenge is a red flag consequently.

We have investigated the concept several times over the past 15 years. We call it “value maintenance”. This would mean that the incentive contract would require that the property could not be reduced in value on the tax rolls for the 10 years of the incentive (i.e. protested or depreciated). The Commissioners Court members have consistently rejected the idea as running counter to the concept of economic development in that most of our incentive programs yield smaller savings than the recipient’s ability to reduce its tax bills through depreciation or protest. Our real hope is that our appraisal district will start appraising commercial properties accurately.

Mentioned above...PILOT agreements.

Our municipality has never been involved in requiring a waiver on property tax valuation in exchange for some type of economic incentive. Our township has taken a more liberal approach on trying to stimulate economic development which is due to high unemployment and limited growth in our area. Unfortunately, the local school board has taken the exact opposite approach and is not willing to cooperate in any type of incentive that may reduce or limit their intake of tax dollars. The school board just denied a TIF with an upfront cash donation of \$500,000, 15 year term and a 60/40 tax ratio.

Our municipality would entertain any reasonable proposal that would enhance economic development. We would be willing to think out of the box on something like this, so a prospective

developer or company would, in my opinion be attracted in locating in our municipality. However, the company's commitment to a freeze on tax valuations would depend on the specifics of that business in their future sustainability.

Given the unwillingness of our local school board to cooperate in tax incentives to attract development, I would like to see the Pennsylvania state legislature expand the concept of the Public Private Partnership concept that would allow local and county government bodies to advance economic development without having our hands tied by school boards that lack the incite and understanding when it comes to economic development.

We have allowed for limited protests to occur provided the assessed value does not go below an amount that would result in an agreed upon tax payment. This approach needs to be done in combination with sources of revenue needed for debt service. E.g. Make sure the reduced amount of property taxes, in combination with the amount of sales tax increment, is still sufficient to meet debt service requirements. We have also required a "payment in lieu of taxes" to supplement ordinary property tax increment in the event the projected amounts are not realized. If there is any type of protest prohibition, make sure the assessor is aware of it. The developer may forget (or ignore) the restriction so the assessor is often the way we are made aware of the attempt to protest. We then remind the developer of the limitation. Generally the developers are accepting of this provision if they can get comfortable that the assessment process is fair and consistently applied.

Without specific information, I offer the following opinion.

Usually a municipality would offer economic incentives to a developer for projects with the intent that new development would encourage growth and an increase in property taxes in a particular area. It would be against the municipality's best interest to front economic incentives then not realize the potential income that the project would incur by allowing the tax valuation to be protested.

The developer can always choose not to receive the incentive and incur the total cost of the project so that they may freely protest future tax valuations.

Possible solutions: Thinking outside of the box...

The business, I assume, could look at the value it receives on the front end (economic incentive) as a 'pseudo loan" that the municipality would in turn be "repaid" through the increase in tax revenue it "may" receive over a period of time. After the "incentive" has been recaptured, then the valuations should be allowed to be protested.

-OR-

The municipality could possibly agree to hold the tax valuation of the project at a certain or "not to exceed" percentage amount over a period of time then allow it to be properly valued at market rate after the expiration of that time frame.

Whatever the solution, it should be contained within the four corners of the development agreement so that the developer receives protection in the event there are subsequent property tax increases.

Appendix C-2:
Responses from Members of the International Economic Development Council (IEDC)

Municipalities are currently investigating the impact of commercial property tax protests on local economies. If such municipalities were to require that incoming companies waive their right to protest property tax valuations (real property and business personal property) in order to receive economic development incentives, how would this impact or alter your consideration of this location for a project? Are there any alternatives that you would suggest or best practices that you would recommend in place of prohibiting such protests?

Thank you for contacting IEDC's Clearinghouse Information and Research Service (CIRS). My colleague Tye Libby recently forwarded me your inquiry regarding companies that receive economic development incentives and their ability to appeal their property tax assessments.

This detailed and complicated subject would take significantly longer to research than the 1.5 hours allotted under IEDC's free CIRS offerings. However, I am writing to provide you with the research and information that I have gathered thus far while looking into your inquiry. I hope that this will steer you in the right direction.

After running into numerous dead ends, I reached out to both IEDC President and CEO Jeff Finkle and Texas Economic Development President and CEO Carlton Schwab (both CCed here) for input. Ultimately, the following points were the results of our conversations.

- 1) Both gentlemen noted that restricting companies that receive incentives from appealing their property tax seems like a losing strategy. Mr. Finkle expressed concern that the case would get thrown out in court.
- 2) Mr. Finkle also believes that a significant portion of the property tax appeals are likely being instigated by a company that is reaping a financial reward for winning the appeals (a piece of the savings).
- 3) Mr. Schwab noted that the Austin property market is particularly overheated, and as property values have continued to climb, companies have tried to reduce some of their expenditures. Yet, he noted that such rapid increases in property value are not happening (with a couple of exceptions) throughout the rest of Texas.
- 4) Neither Mr. Schwab nor Mr. Finkle know of any cities that have dealt with this issue in an effective or systematic method.