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To: Owners and Those Representing Owners of Developable Texas Agricultural Use Land

Re: San Antonio Fourth Court of Appeals ruling in *Bexar Appraisal District v. Sivage Investments, Ltd. et. al.,* (Case No's Nos. 04-14-00227-CV, 04-14-00228-CV, 04-14-00229-CV and 04-14-00230-CV (consolidated for appeal)

The ***Sivage*** decision is now final for purposes of appeal. ***Sivage*** declared void language in the Texas Manual for Appraisal of Agricultural Land which purported to authorize not only the 5 year "Ag. Rollback" penalty upon a change of use, but also appraisal (or re appraisal) at full market for the year of change. Being final, this case is binding precedent in the 32 counties under the appellate authority of the Fourth Court, and also authoritative elsewhere as the only appellate decision in Texas on this issue.

Applying the reasoning of the decision holding the Ag manual language authorizing year of change re-appraisal "void" because it conflicts with Tax Code Section 23.55, if someone is currently using land for qualifying agricultural/open space purposes and receiving Ag. valuation, then, say, tomorrow, removes the cows, opens the gates or removes fencing, and starts developing (a common scenario), can the CAD hit them with a rollback penalty for five prior years 2010-14? Yes, unless your situation fits one of 23.55's exceptions. Can they further penalize the owner by appraising or re-appraising them at full market value for the current year of change, even though the land still qualified for Ag valuation on assessment date January 1? No. Because only the Ag. manual says that, not anything in the actual Tax Code. As to CAD reliance on the Ag. manual for authority to appraise the year of change at market, the Court said:

"*While courts do recognize that agency rules have the same force and effect as statutes, agency rules must not contradict the plain language of the statute. Texas Mut. Ins. Co. v. Vista Community Medical Center, LLP, 275 S.W.3d 538, 548 (Tex. App. - Austin 2008, no pet.); Employees Retirement System v. Jones, 58 S.W.3d 148, 151 (Tex. App. - Austin 2001, no pet.). "An agency can adopt only such rules as are authorized by and consistent with its statutory authority." Railroad Comm'n of Texas v. Lone Star Gas Co., a division of Enserch Corp., 844 S.W.2d 679, 685 (Tex. 1992). "A rule* ***of an administrative agency is void if it conflicts with the statute, regardless of how long-standing such rule may be.*** *" Jones, 58 S.W.3d at 154. "In determining if a rule exceeds statutory authority, we must ascertain whether the rule complies with the general objectives of the statute." Id. at 151. "That*

determination requires us to look not only at a particular provision, but to all applicable provisions." Id.

Immediate acceptance of this ruling, both within Fourth Court counties and elsewhere. may vary. In addition, at least one ARB attorney web site mistakenly described this decision as "unpublished," (which it is not), and vaguely inferring some reduced level of authority to the decision. Some Districts may grab onto this misinformation as an excuse to “slow walk” implementation of the ruling. In fact, however, the opinion itself (which will be published, just like all civil appellate decisions have been since 2003), is clear, succinct and fully authoritative.

Also unknown at this point is whether the decision will prompt any CAD efforts to legislate around it. The only action that SHOULD happen, if anything, would be to revise the Ag. manual to remove the rollback section, which never should have been in the manual to begin with, since the Texas Legislature never delegated rollback rulemaking authority in the first place.

Very truly yours,

Joseph M. Harrison IV