AAP Journal
Assessors' Association of Pennsylvania

AAP
ASSESSORS' ASSOCIATION OF PENNSYLVANIA

Spring 2016
Issue 2 Volume 13

CCAP COUNTY COMMISSIONERS ASSOCIATION OF PENNSYLVANIA
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Assessors and the Law of Trespass

Joan Righter Price, Esquire

One of the most common questions I have been asked over the past several months is how the law of trespass applies to assessors. Property owners have also asked whether an assessor who enters a property without explicit permission is a violation of the 4th Amendment. The answer is that they are generally not. An assessment is not considered a "search" because the assessor is making observations of a house's plainly visible exterior attributes and dimensions without entering or looking into the house. See *Widgren v. Maple Grove Township*, 429 F.3d 575 (2005).

The question of whether an assessor has "entered" a property is not necessarily an easy one to answer under the law. Clearly, an assessor (or data collector) may not go through a door into the interior of a structure unless invited in by an owner or someone with authority to grant access to the structure. The best course of action is to knock at the front door of a home and wait for someone to answer. If no one is home, it is wise to leave a note explaining the purpose of the visit along with a business card asking the owner to call. Assessors are cautioned to show identification to whomever answers the door and explain why they are at the property. Ask the person answering the door to identify who they are and ask for permission to measure the property. Likewise, assessors visiting new construction should identify themselves and check with the builder before entering a home under construction to take measurements.

But, what about an exterior inspection alone? Assessors may go onto a property to perform their official duty of assessing property. As long as assessors restrict their movements to places that any visitor to the property would be expected to go (such as sidewalks, driveways, and porches), there is no trespass. See *Carroll v. Carman*, 135 S.Ct. 348 (2014).

How about if an assessor goes through a closed gate or into a fenced-in area? Is this an "entry" such that the law of trespass is called into play? This is not so clear-cut. An argument can be made that going into a fenced or gated area is no different than passing through a closed door into the interior of a property such that it raises a question of possible trespass. The law is not so clear in this area and assessors are cautioned to check with their department's solicitor for legal advice when confronted with this situation.

The question turns on whether there is a reasonable expectation of privacy. The answer will depend on the facts of each particular situation such as whether there are "no trespassing" signs or other indicia that indicate that no one, even "official" visitors, are permitted access without the owner's explicit permission. The best plan for an assessor faced with this situation is to not enter the fenced or gated area and, where possible, leave a note explaining the purpose of the visit

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About Us

The PA GIS Conference is supported by staff of the County Commissioners Association of Pennsylvania (CCAP). The Planning Committee consists of representatives from the Pennsylvania geospatial community.

Registration is Now Open!

What's Inside

President's Message, Legislative Update, latest County Corner, AAP People

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President's Message

For someone who loves to write, this has been one of the hardest messages for me to even start. This year has been so much more than I expected. I was honored to represent AAP at the CCAP Conference in Pittsburgh. It was fun to compare the two conferences…FYI, assessors rock! Seeing first-hand how much is involved in making our organization so successful was an eye opener. There are a lot of dedicated individuals behind the scenes who work tirelessly to keep things organized and professional. It has been a pleasure to work with them and to serve as your president. Be assured, you will be in good hands with your next president. Angie Tennies may live in McKean County, Pennsylvania, USA, but her ancestors are of the House of Windsor….now THAT is royalty!

We have a great Spring Conference lined up. I am looking forward to seeing all of your smiling faces. The Wednesday night dinner will be "in the pink"….please wear your prettiest pink attire. I'm anxious to see how many "real men" we have that will come out sporting their pink! Ladies, let's show them how it's done!

This next paragraph is the tough one….



There comes a time in everyone's life, when all you can see are the years passing by . . . .

After 31 years of service to Bedford County, two county-wide reassessments, "several" marriages, two awesome kids and one perfect granddaughter….and a second perfect grandchild on the way, I believe it's time to slow down and enjoy the beautiful life I have been blessed with. I will be retiring to my new job as wife to my soulmate, Kevin, mother to my babies, Jordan and Reagan, and MeMe to my granddaughter, Lydia and Baby Young #2. Wait one minute ….. Don't get all excited…you're not getting rid of me that easy! I plan to keep my certification active, serve on the board and continue to be the CPE Intro instructor….you know, to keep up my wicked awesome math skills!

I'm going to end my last message by encouraging each and every one of you to find peace in your soul, love in your heart and happiness in your life.

Thanks for a great year!

Your Highness,

Melissa



Legislative Update

By Jonathan B. Schuck, Co Chair
Government Information Committee and
Director of Assessment/Tax Claim, Chester County

Greetings fellow assessment professionals throughout the Commonwealth of Pennsylvania. By the time you receive this issue of the *AAP Journal*, the vestiges of winter should be melted and the first signs of spring should be bursting forth. With the transition of seasons in progress, I hope this *Update* finds you healthy, safe and enjoying the warmer weather.

At this juncture in the 2015/2016 Session, more than 3900 bills/resolutions have been introduced, 52 of which pertain to assessment-related matters. The Legislature in Harrisburg remains largely focused on 2016-2017 budgetary matters. However, since my prior Update, there has been some activity: two companion House Bills were passed unanimously and two Senate Bills of note were introduced. Also, for those who are responsible for assessment and tax claim functions, two House Bills were enacted in late December 2015. Following is a summary for your reading pleasure:

House Bills 1330/1331

These bills would amend the Act of July 28, 1953 (P.L.723, No.230), known as the Second Class County Code and Title 53 (Municipalities Generally) of the Pennsylvania Consolidated Statutes by adding language that includes millage rates set by referendum. The bills would also modify the language to cover multiple tax rates in a single taxing district. Both bills passed 189-0 on December 4, 2015 and are currently in the Senate Finance Committee. Also refer to Senate Bills 898/899.

Senate Bill 1109

This constitutional amendment would extend the Veteran's exemption to the unmarried spouse of a service member who is killed or dies from injuries received in active service, provided the surviving spouse and service member owned and resided in the residence prior to the service member being called to active service and provided the State Veteran's Commission determines the unmarried surviving spouse needs the exemption. Introduced January 28, 2016 and referred to the Finance Committee.

Senate Bill 1128

This constitutional amendment would authorize local taxing authorities to impose a rate of taxation on residential real property that is different from a rate of taxation on commercial real property if local taxing authorities reduce wage and business income taxes in proportion to the aggregate revenues derived from the imposition of the different rates of taxation authorized under this clause. Introduced February 8, 2016 and referred to the Finance Committee.

Act 77 (House Bill 909)

This amendment allows county tax claim bureaus to recover at upset sale costs incurred by the county for property rehabilitation and maintenance. Recovery is prior to other distributions under the law. The change assists counties in addressing safety and maintenance of the property or other improvements reasonably necessary to improve the property's sale-ability. Enacted December 17, 2015.

Act 85 (House Bill 907)

This amendment establishes standard requirements for posting tax delinquent property prior to a potential or actual sale of a property by a tax claim bureau. Specifically, the posting must occur on the assessed structure if it is conspicuous to the owner and the general public or, if there is no structure or one is not conspicuous, the notice must be on a stake secured on or adjacent to the property within 25 feet of the entrance in a reasonably conspicuous location. Enacted December 20, 2015.

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The *AAP Journal* is published four times a year.
Deadline for the Summer 2016 issue is June 6, 2016

Article submissions are welcome.
Please send to:
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Law of Trespass

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along with a business card asking the owner to call. If confronted by a property owner and asked to leave, the assessor or data collector should leave immediately and then notify their supervisor about what occurred. I would suggest following up with a letter to the property owner explaining the purpose for the visit and that the measurements will be estimated based on what can be viewed from the street unless the owner is willing to give a date and time for a physical inspection and measurement.

In conclusion, assessment offices are well-advised to establish a clear policy regarding the rights and responsibilities of an assessor when visiting a property, particularly residential properties. Hopefully this brief outline will raise awareness in assessment offices about the importance of developing guidelines to help assessors and the public understand assessors' rights and responsibilities.

Note: We hope this information is helpful to you. Please note that this article should not be taken as legal advice nor an official position on this issue by AAP. Assessors are reminded to consult with their department's solicitor for legal advice.

If you would like copies of the referenced court decisions, please contact Terry Cochran at the AAP at *tcochran@pacounties.org* or check with your county's solicitor.

Joan Righter Price *is the AAP Solicitor as well as the solicitor for the Montgomery County Board of Assessment.*

AAP People & Chapter News

Robert "Bob" Edwards

With great sadness, AAP learned of the passing of former AAP Executive Director, Bob Edwards, on February 13. Bob is survived by his wife, Judith A. Edwards and their nine children.

Bob will be remembered as not only a great leader, but as a kind and good person. Memorial contributions may be made to the Edwards Family Endowed Scholarship in Secondary Education c/o Office of University Advancement, East Stroudsburg University, 200 Prospect St., East Stroudsburg, PA 18301.

South Central Chapter

The South Central Chapter meets quarterly beginning with a business meeting at 9 a.m. with seminars immediately after the meeting and are held at the Adams County Agricultural and Natural Resources Center in Gettysburg. Please contact Barb Walter at (717) 337-9837 for more information. The next meeting is June 3, 2016.

Clinton County

Chief Assessor **Keith Yearick** is a first-time grandpa! His granddaughter Hartlyn Kimberly was born on October 28! Congratulations to Keith and his family!

Monroe County

Congratulations to **Lynda Kyttle** who welcomed her latest grandchild, Dakota Mae, on January 24!

Philadelphia County

Philadelphia County and the AAP experienced a great loss this past December with the passing of **Bernie Camins**. Bernie was a longtime member of AAP, taught many classes at conferences and wrote the Wind Farm Valuation for Real Estate Tax Assessment report for the Association.

Bernie will be remembered as a longtime consultant, coworker, instructor, mentor, and friend. He is survived by his wife Judith, daughter Jennifer and granddaughter Danica.

Union County

Congratulations to **Joan Duncheskie** who was named Union County's new chief assessor after the retirement of George Zeyn.

Wayne County

Chief assessor, **John Nolan**, retired in December 2015. John served on the AAP board and several committees. The county's new chief assessor is **John McCormick**. Congratulations to both!

Send Your Chapter & County News!

Don't forget to send your county or chapter news for the next *AAP Journal.* Our next deadline is **June 6**.

Please send your news to **Terry Cochran** at *tcochran@pacounties.org*.

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Consider Joining IAAO!

Have you ever considered becoming an IAAO member?

The International Association of Assessing Officers (IAAO) is a nonprofit educational and research association of individuals in the assessment profession and others with an interest in property valuation. Membership is open to anyone and includes individuals working in government, private industry and academia, as well as members of the general public.

Key Reasons to Become a Member

Education: Cost effective education programs help you meet the challenges of an increasingly complex career. IAAO offers a range of educational opportunities for the beginner to seasoned professional.

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Peer Networking: Meet other assessment professionals to share common ideas, concerns and interests. Tap the IAAO brain trust with IAAO's new on-line networking forum AssessorNET. Share and receive ideas at conferences and seminars. Locate other members through Member Look-Up.

Publications: Subscriptions to the monthly magazine, *Fair & Equitable,* quarterly *Journal of Property Tax Assessment and Administration and* semi-monthly electronic newsletter, *Assessing Info*, bring you up-to-the-minute perspectives and research on today's assessment issues.

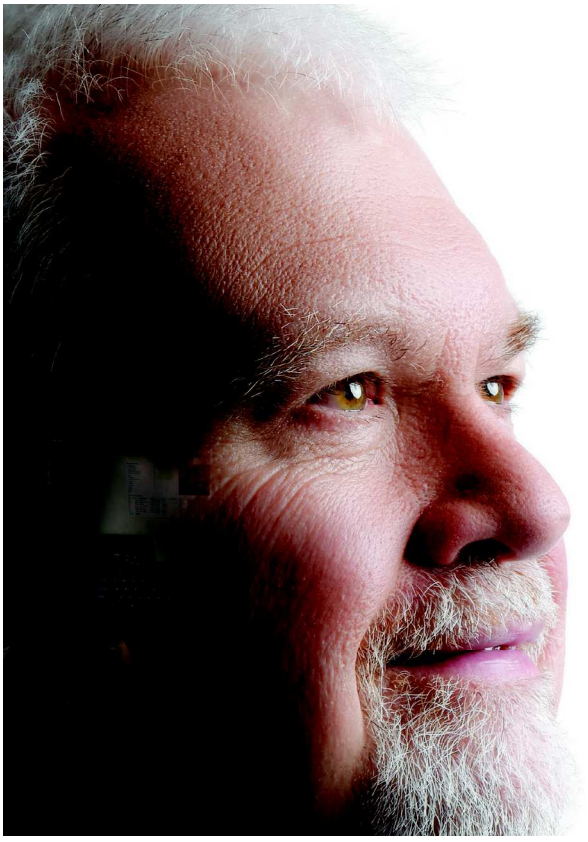
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Members-only Access and Discounts: Receive special rates on publications, text books, technical standards, seminars, and conference registration. Utilize special sections and resources on the IAAO Website including access to the library through LibraryLink and the Glossary for Property Appraisal and Assessment.

Leadership Opportunities: Leadership opportunities through service as an IAAO Representative, committee volunteer or Executive Board member.

The IAAO's 82nd Annual Conference will be August 28 to 31 at the Tampa Convention Center in Tampa Bay, Florida! This year's Conference theme is Charting New Waters and Building Bridges to Assessment Excellence.

Get more information on IAAO and the Annual Conference at *www.iaao.org*.



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John McCormick

Chief Assessor

Wayne County

Years in assessment field: 32

Marital Status and family: Divorced, stepson Andrew, daughter Emily, son Sean, six brothers and six sisters.

What irritates me most in the assessment business: Laws constantly changing.

Most people would be surprised to know: I am ninth of 13 siblings.

Biggest challenge as an assessor: Clean and Green

First Job: Farmer

If I couldn't be an assessor, I'd be: A carpenter

If I won millions in the lottery, I would: Share with my family and friends.

Favorite food and drink: Steak on a grill and a cold beer

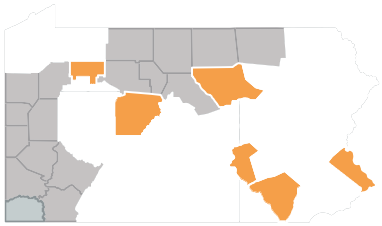
Favorite vacation: Fishing trips to Canada

Three people living or dead that I would invite to dinner: Mom, Dad and my brother, Gerry

If I could live in the past for one day, I would change... Nothing

My best friend: My son, Sean

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County Corner - Chester County

Chester County Facts:

- Chester County was one of the three original Pennsylvania counties created by William Penn in 1682. It was named for Chester, England.
- The original county seat was the city of Chester, a center of naval shipbuilding, at the eastern edge of the county. In an effort to accommodate the increased population of the western part of the county, the county seat was moved to a more central location in 1788; in order to mollify the eastern portion of the county, the village, known as Turk's Head, was renamed West Chester. Apparently, this did not work: the eastern portion of the county separated from Chester County on September 26, 1789, becoming Delaware County. West Chester remained the seat of the reduced Chester County, and still is.
- Much of the history of Chester County arises from its location between Philadelphia and the Susquehanna River. The first road to "the West" (meaning Lancaster County) passed through the central part of Chester County, following the Great Valley westward; with some re-alignments, it became the Lincoln Highway and later U.S. Route 30. This road is still named Lancaster Avenue in most of the Chester county towns it runs through. The first railroad (which became the Pennsylvania Railroad) followed much the same route, and the Reading Railroad progressed up the Schuylkill River to Reading. Industry tended to concentrate along the rail lines. Easy transportation allowed workers to commute to urban jobs, and the rise of the suburbs followed. To this day, the developed areas form "fingers" extending along major lines of transportation.
- During the American Revolutionary War, the Battle of Brandywine was fought at what is now the southeastern fringe of the county. The Valley Forge encampment was at the northeastern edge.
- Famous Chester County residents include artist Andrew Wyeth, film director M. Night Shyamalan, civil rights leader Bayard Rustin and James Smith, a signer of the Declaration of Independence.



Chester County Courthouse
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