



# Bias In Reassessment?

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# Appeals Court: NYC Property Tax System Violates Federal Law

Story by Andrew Sanders 4/22/2024

The New York State Court of Appeals ruled that New York City's property tax system violates federal housing discrimination law and state law.

The court sided with plaintiff Tax Equity Now NY (TENNY), which had sued the city and state over a tax system that subjects minorities to higher property taxes compared to majority-white areas.

Specifically, the complaint alleged that multi-million-dollar properties are taxed at similar or lower rates than less valuable properties, and that real property in majority-minority districts are overassessed.

While a lower court had dismissed the case, the Court of Appeals found the complaint sufficiently alleged causes of action against the city for having an **unfair, inequitable system with a discriminatory disparate impact on certain property owners.**

“We conclude that, although TENNY’s complaint failed to state claims against the State defendants, the complaint exceeds our pleading standard and sufficiently alleges causes of action against the City defendants ... on the general basis that **the system is unfair, inequitable, and has a discriminatory disparate impact on certain protected classes of New York City property owners,**” the ruling stated.

“According to the complaint, the numbers tell the story of a taxation scheme that requires lower-income property owners and renters in **majority-minority New York City neighborhoods to pay more than their fair share** of the tax burden in violation of the law,” the ruling added.

Section 305 (2) of Real Property Tax Law (RPTL) and the federal Fair Housing Act (FHA) (42 USC § 3601 et seq)

Result: lawsuit may now move forward.

Concern: Issues regarding tax system may be negotiated outside the legislature.

# How was this determined?

## Stratified Sales Ratio Analysis

- *By sale price ranges*
- *By assessed value ranges*
- *By inferred economic data*
- *By inferred racial data*

**A woman made an offer on a Virginia Beach condo. Then the seller learned she's Black.** (Virginian Pilot, 6/4/2024)

“You could hear the fear and disbelief in his voice,” \_\_\_\_\_ said, recalling what her broker told her next. “He said, ‘I don’t know how to tell you this, but she doesn’t want to sell the home to you, and it’s because you’re Black.’”

A multiyear undercover investigation by the National Fair Housing Alliance, a Washington-based nonprofit coalition of housing organizations, found that 87% of real estate agents participated in racial steering, opting to show their clients homes only in neighborhoods where most of the neighbors were of their same race. Agents also refused to work with Black buyers and showed Black and Latino buyers fewer homes than white buyers.



## *Definitions*

- **Bias:**

- A process is said to be biased if it produces results that vary systematically with some factor that should be irrelevant.
- A preference or inclination that precludes an appraiser's impartiality, independence, or objectivity in an assignment. (USPAP, 1/1/2024)

## *Definitions*

- **Mass appraisal:**

- the process of valuing a group of properties as of a given time and date and using common data, standardized methods, and statistical testing.
- the process of valuing a universe of properties as of a given date using standard methodology, employing common data, and allowing for statistical testing. (USPAP 1/1/2024)

## *Definitions*

### • **Market Behavior:**

- a broad economic term that refers to **the behavior of consumers**, businesses, or the stock market.
- **The actions of buyers and sellers of real estate**
  - Supply and Demand Issues
  - Mortgage/Loan Interest Rates
  - Availability of New Construction
  - Sales Prices
  - Consumer preferences

## *Definitions*

- **Virginia Fair Market Value Definition:**

- the price which it will bring when it is offered for sale by one who desires, but is not obliged, to sell it, and is bought by one who is under no necessity of having it.

*Tuckahoe Woman's Club v. City of Richmond*, 199 Va. 734, 737, 101 S.E.2d 571, 574 (1958).

**It's our job to assess property on a periodic basis at market value in a uniform and equitable manner.**

## *Virginia Code 58.1-3984(b)*

In circuit court proceedings to seek relief from real property taxes, there shall be a presumption that the valuation determined by the assessor or as adjusted by the board of equalization is correct. The burden of proof shall be on the taxpayer to rebut such presumption and show by a preponderance of the evidence that the property in question is valued at more than its fair market value or that the assessment is not uniform in its application, and that it was not arrived at in accordance with **generally accepted appraisal practices, procedures, rules, and standards as prescribed by nationally recognized professional appraisal organizations such as the International Association of Assessing Officers (IAAO) and applicable Virginia law relating to valuation of property.** Mistakes of fact, including computation, that affect the assessment shall be deemed not to be in accordance with generally accepted appraisal practice.

- IAAO Standards:
  - Assessment Appeal
  - Automated Valuation Models (AVMs)
  - Contracting for Assessment Services
  - Data Quality
  - Digital Cadastral Maps and Parcel Identifiers
  - Manual Cadastral Maps and Parcel Identifiers

- IAAO Standards:
  - **Mass Appraisal of Real Property**
  - Oversight Agency Responsibilities
  - Professional Development
  - Property Tax Policy
  - Public Relations
  - **Ratio Studies**



- IAAO Standards:
  - Valuation of Personal Property
  - Valuation of Properties Affected by environmental Contamination
  - **Verification and Adjustment of Sales**

**All available free of charge on the IAAO  
webpage!**

**Is USPAP a product of a nationally  
recognized professional appraisal  
organization?**

## *Let's Talk About USPAP*

- USPAP was developed with the express purpose of promoting and maintaining a high level of **public trust** in professional appraisal practice.

## *Let's Talk About USPAP*

- USPAP changes are made in response to:
  - Changes in the appraisal profession
  - Changing needs of clients
  - Social changes?

## *Let's Talk About USPAP*

- **Are Virginia Assessors required to adhere to USPAP?**

**18 VAC 130-20-180. Standards of professional practice.**

A. The provisions of subsections C through L of this section shall not apply to local, state, and federal employees performing in their official capacity.

G. Mass appraisals. In developing and reporting a mass appraisal for ad valorem tax purposes, a licensee shall comply with the requirements of the Uniform Standards of Professional Appraisal Practice as defined in this chapter or in the prior edition in effect at the time of the reports' preparation.

- **Is an assessment considered to be a federally-related transaction?**

## *Let's Talk About USPAP*

- **New Nondiscrimination** section added to the Ethics rule:
  - *An appraiser must not use or rely on unsupported conclusions relating to **race, color, religion, national origin, gender, marital status, familial status, age, receipt of public assistance, income, handicap** – or an unsupported conclusion that homogeneity of such characteristics are necessary to maximize value.*

## *Let's Talk About USPAP*

- **The Nondiscrimination** section states it is a prohibition of USPAP to violate:
  - *The Fair Housing Act*
  - *The Equal Credit Opportunity Act*
  - *The Civil Rights Act of 1866*
  - *Any other applicable state or local antidiscrimination law.*

## *Let's Talk About USPAP*

- What is “Disparate Treatment”?
  - Treating individuals of one protected group differently from and less favorably than others NOT in that group.
- And “Disparate Impact”?
  - Employing practices that disproportionately harm members of a protected group



## *Let's Talk About USPAP*

- **Fair Housing Act (FHAct)** prohibits discrimination in residential appraisal:
  - On the basis of **Race, Color, Religion, Sex, Disability, or Familial status.**
  - An appraiser may not use or rely upon information relating to these protected characteristics.

## *Let's Talk About USPAP*

- **The Equal Credit Opportunity Act (ECOA)**
  - If the intended use of the appraisal is for a credit transaction, the appraiser must not base their opinion of value in whole or in part on **race, color, religion, national origin, sex, marital status, age, source of income, or good faith exercise of rights under the Consumer Protection Act.**

- **The Civil Rights Act of 1866**

- Prohibits discrimination regarding the making and enforcement of contracts with respect to the purchasing, leasing, selling, holding, and conveyance of real and personal property.
  - *Applies to real and personal property appraisals.*

## *Let's Talk About USPAP*

- Any other state or local anti-discriminatory laws.

## *A Few Questions*

- Who is more likely to either purposely or inadvertently become involved in a real estate discrimination issue?
  - *A realtor?*
    - *Acceptance of clients*
    - *"pre-qualifying" for what the client can afford to buy*
    - *Questions to "get a feel" for the needs and desires of the client*
    - *Choice of showings*

## *A Few Questions*

- Who is more likely to either purposely or inadvertently become involved in a real estate discrimination issue?
  - *A loan officer?*
    - *Determining risks of the loan*
      - *Is the credit score a discriminatory issue?*
      - *Source of income, marital status?*

## *A Few Questions*

- Who is more likely to either purposely or inadvertently become involved in a real estate discrimination issue?
  - *An independent appraiser?*
    - *Isn't this where the discussion started?*
    - *Selection of comparable sales*
    - *Quality of improvements*
      - *Depreciation, obsolescence*

## *A Few Questions*

- Who is more likely to either purposely or inadvertently become involved in a real estate discrimination issue?
  - *The assessor?*
    - *The assessor follows the market, examining historical data based on the actions (market behavior) of buyers and sellers.*
    - *What if there are discriminatory practices built into the local market?*



**It's our job to assess property on a periodic basis at market value in a uniform and equitable manner.**

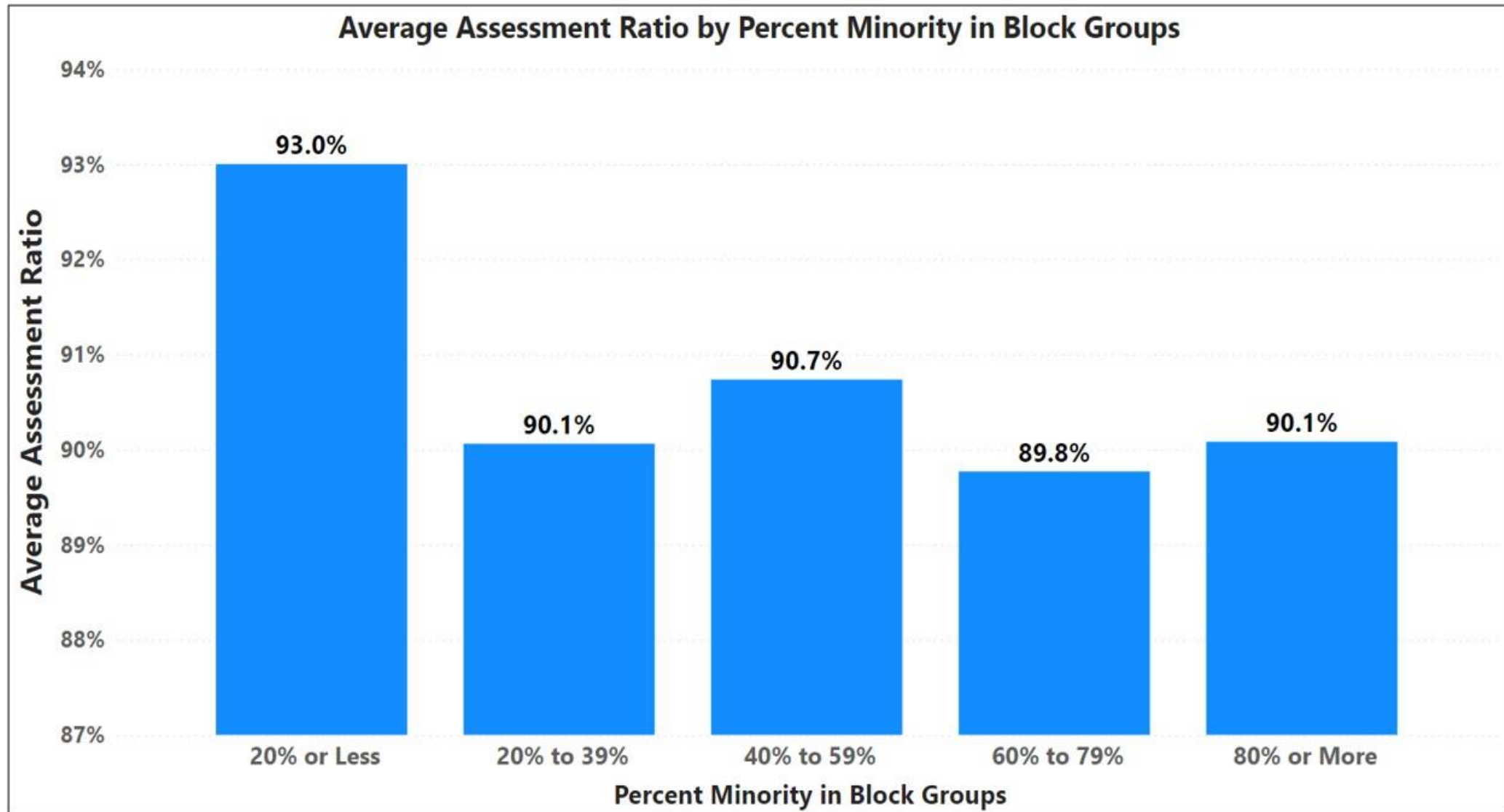
*Let's Look At The Data – From CivicLab Norfolk*

- **Norfolk Residential Property Sales from 2016 to 2020**
  - 19,947 transfers
    - 11,200 valid transfers
    - 1,876 not listed on open market
    - 1,718 foreclosures
    - 1,509 sale after foreclosure
    - 3,644 various other disqualifications

*Let's Look At The Data – From CivicLab Norfolk*

- **Norfolk Residential Property Sales from 2016 to 2020**
  - 19,947 transfers (assessment at time of sale)
    - Ratio with Minority Population >50% = **90.1%**
    - Ratio with White Alone Population > 50% = **91.3%**
    - Average Among All Groups = **90.7%**
  - Properties were matched with Census block groups containing race and ethnicity populations percentages.

## Let's Look At The Data – From CivicLab Norfolk

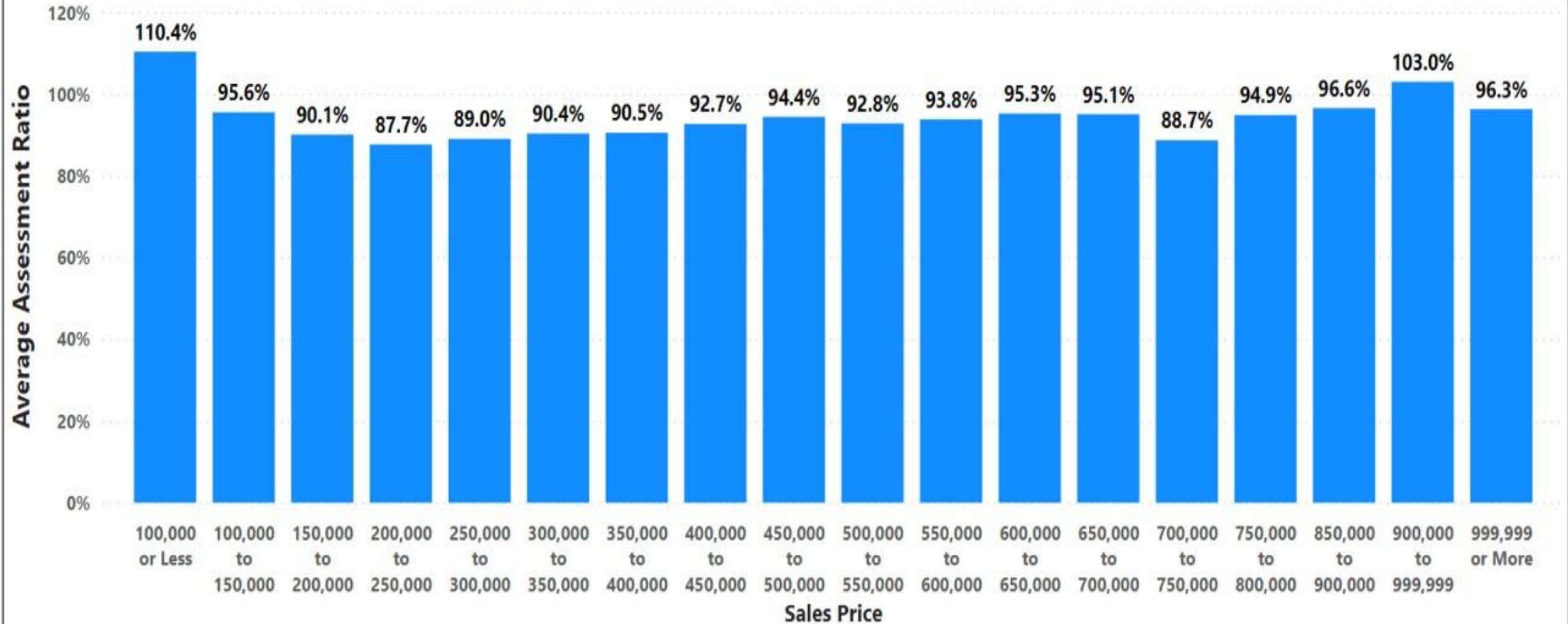


## *Let's Look At The Data – From CivicLab Norfolk*

<b>Income Brackets</b>	<b>Assessment Ratio</b>
<b>\$25,000 or <u>Less</u></b>	90.2%
<b>\$25,001 to \$40,000</b>	90.2%
<b>\$40,001 to \$60,000</b>	89.6%
<b>\$60,001 to \$80,000</b>	90.3%
<b>\$80,001 to \$99,999</b>	94.7%
<b>More than \$100,000</b>	95.0%

## Let's Look At The Data – From CivicLab Norfolk

Average Assessment Ratio and # of Transfers by Sales Price



## *Thoughts*

- Avenancio-Leon & Howard 2020 do not validate sales
  - their analysis includes all sales, whether valid or not.
- Avenancio-Leon & Howard utilized racial and ethnicity information for Federally-related housing transactions.
- There does not appear to be evidence the Norfolk Assessor's Office is over-assessing minority owned properties.
  - An exception may be with transfers with sale prices less than \$100,000

## *Thoughts*

- Would the results of a study such as this be influenced by discriminatory practices within the local market?



## *Common Issues Among Assessors*

- **CAMA System**

- Does your CAMA system maintain demographic information?
  - *Age for Senior Citizen exemption?*
  - *Social Security Numbers for exemptions?*
  - *Income information?*
- Is this information used in the assessment process?

## *Common Issues Among Assessors*

- **Stratification of Sales Ratio Analysis**
  - Neighborhoods/Market Areas/Submarkets
    - By Geographic or Physical Boundaries
  - Census Tract?
  - Political Boundaries
    - Jurisdictional boundaries
    - Special districts
    - School districts?

## *Common Issues Among Assessors*

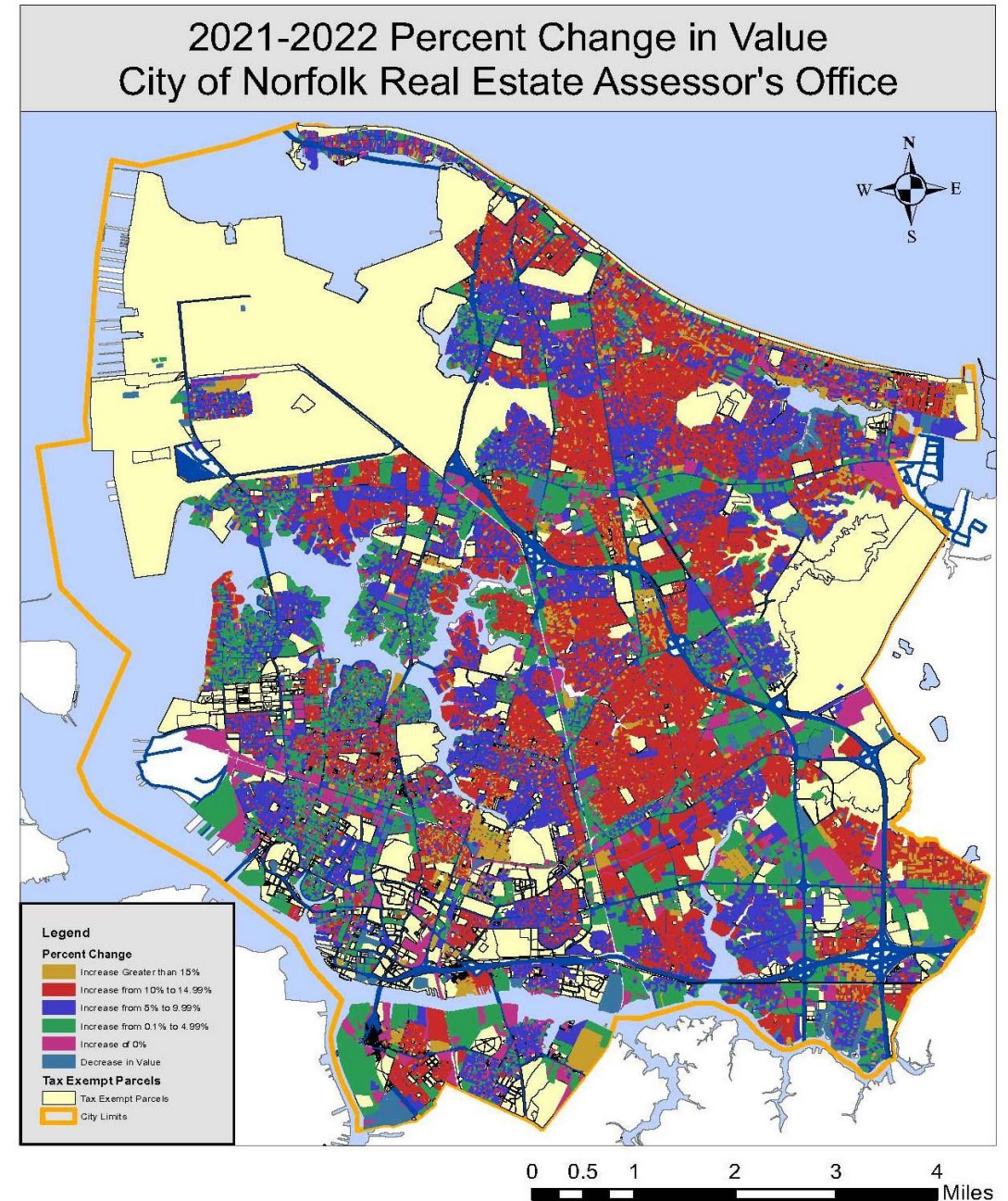
- **Stratification**

- **Sales**

- By neighborhoods/market area/submarket
    - Sale Price Range
    - Assessed Value Range
    - Size of homes
    - Quality, condition, age
    - Property Class or Type

Do appraisal neighborhoods (market areas or submarkets) for assessment purposes reflect local bias?

What if old red-line maps were compared with neighborhood boundaries?



## *Common Issues Among Assessors*

- Too many appraisal neighborhoods!
  - *How many sales are needed for accurate results?*
    - *At least 10 sales per year?*
  - *Common factors*
    - *Size and Layout of the Improvements.*
    - *Quality of the Improvements.*
    - *Age and Condition of the Improvements.*
      - *Not the owners!*

## *Common Issues Among Assessors*

- **Use of Census Information**
  - *There is a lot of great census data available, but under USPAP some is not to be used for appraisal purposes:*
    - *Age, Income, Sex, Race, Familial Status, etc.*
  - *That said, is it worthwhile to conduct assessment studies using Census data?*

## *Common Potential Problems For the Assessor*

- **Flipping**

- *Remodeler or Developer purchases a property at a discount*
- *Substantially remodels home; or*
- *Demolishes and replaces the structure.*
- *Sales Ratio implications?*

# *Could These Be Misinterpreted as Bias in the Local Real Estate Market?*

- Location, location, location
- Older versus newer homes
- Schools
- Age of residents
- Income of owners
- Community services



## *Common Potential Problems For the Assessor*

- **Flipping**

- *Where are such properties located?*
- *If the assessor is not aware of the interior condition, could the property be over assessed?*

# *Market Preferences*

- **Consumer (Market) Behavior**
  - Supply and Demand.
  - Location.
  - Size and Layout of the Improvements.
  - Quality of the Improvements.
  - Age and Condition of the Improvements.
  - Other Factors....

It is not the assessor's function to change marketplace "playing fields." It is his duty to tax marketplaces as he finds them. In that process the individual assessor's sense of marketplace business morality has no place. If that marketplace "playing field" needs leveling it is, solely, absent any illegality, the function of the legislature to make those changes.

*RE: Belk-Broome v Catawba County, NC, NC Supreme Court, 1995*

## *Why Is This Important?*

- Is there a perception that racial bias exists within assessments;
- Is there a perception that higher-priced homes are assessed at a lower ratio than lower-priced homes.

## *Why Is This Important?*

- University of Virginia School of Law was asked by the Governor's Commission to Examine Racial Inequity in Virginia Law to investigate a study on racial bias in assessments prepared by Avenancio-Leon/Howard.
- This led to HB30 Proposal 2:
  - Propose legislation directing the Department of Taxation to study and develop a proposal to **require** that all individuals who conduct local property tax assessments receive state certification and ongoing recertification.

## *Why Is This Important?*

- In performing a reassessment:
  - Do homes with higher sales prices (greater than say \$800,000) have a lower sales ratio than lower prices homes (say \$75,000 or less?)
  - Do older homes have a lower median sales ratio than newer homes?
  - Are stand-alone Wal-Marts, Targets, Best Buy, Kohls, Macys, etc. valued similarly?
  - What about Family Dollar, Dollar General and Dollar Tree?

# Cornerstones of Fair and Equitable Property Assessment

**Appraise  
Regularly at  
Market Value**

**Follow IAAO  
Technical  
Standards**



**IAAO**

INTERNATIONAL ASSOCIATION  
of ASSESSING OFFICERS

*Valuing the World*

**Allocate  
Adequate  
Resources**

**Provide  
Training to  
Assessors**

## *Appraise Regularly at Market Value*

- **Reassessment Cycles Vary in Virginia**
  - Annual to 6-year cycles
  - What happens in your local real estate marketplace over time?
    - Values tend to increase – some may decrease.
    - Is the real estate market uniform and consistent?
- **Are there obstacles to more frequent reassessment?**
  - Budget, staffing levels, training, equipment, political concerns



*Duh?*



## *What Can Create the Perception of Inequity?*

- Inconsistency in Property Data Collection
  - Are quality grades for improvements the same for similar properties across the jurisdiction?
  - Are condition adjustments administered appropriately?
  - Is Depreciation (Effective Year Built, Functional and Economic) administered uniformly?



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## *So How Can we Avoid Unintentional Bias?*

- Review appraisal and sales validation procedures
- Train staff members continually
  - Make sure staff understands the procedures
  - Make the staff knows how to perform the work
- Monitor the work!
- Require photographs on each field visit

## *So How Can we Avoid Unintentional Bias?*

- Field checks.
- Assessment Ratios other than for Reassessment and State Purposes?
- Hold employees accountable when procedures are not followed.
  - Performance Reviews?

## Pete's Conclusions:

- I do not believe appraisers *intentionally* allow personal bias to influence their work.
  - Indications of bias may be due to *not* following appropriate procedures
- Appraisers must take the market as they find it without substituting personal beliefs.
- It is a very good idea to follow IAABO Standards pertaining to real property in mass appraisal practice – including sales validation and analysis.

## Pete's Conclusions:

- Be prepared to explain deviations and exceptions.
  - Are the explanations reasonable and have a basis in fact?
  - Is the reasoning supported by the market?
- With a great deal of our assessment data readily available on the Internet, inconsistencies can be found and misinterpreted.





# Bias in Reassessment?

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