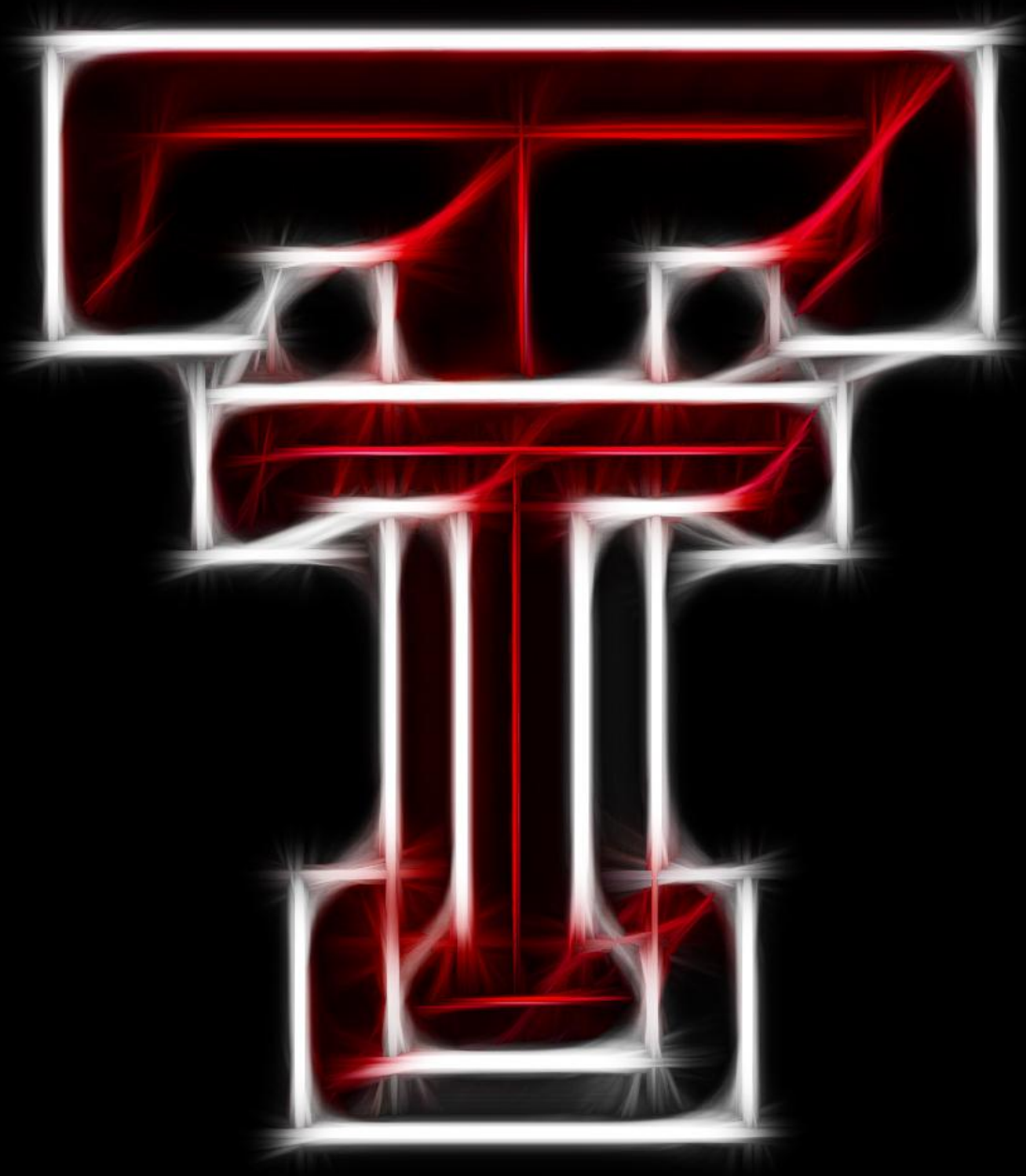




44th Annual Conference & Trade Show

CRIMINAL LIABILITY: WHAT EVERY CAD BOARD SHOULD KNOW; ETHICS FOR CAD BOARDS







No place but Lubbock...

BOARD OF DIRECTORS

- CAD is a political subdivision governed by a Board of Directors.
- Populous Counties (pop>75,000) composed of 9 members, 3 elected, 5 appointed by the levy method by eligible voting taxing units, and County Tax Assessor-Collector, who may vote. Quorum 5.
- Non-Populous at least 5-13 members and if not appointed County Tax Assessor-Collector is ad hoc non-voting member.
- Elect chair and secretary of Board.
- CAD is creature of the Tax Code and may only do that which the Tax expressly authorizes.

DUTIES OF THE BOARD OF DIRECTORS

Authority, duties and responsibilities are limited.

- Appoints the chief appraiser who operates the appraisal office and employs the personnel.
- Nothing to do with exemptions or value.
- Select bank depository.
- Approve budget.
- Appoint taxpayer liaison officer for county with population more than 120K.
- Approve contracts; CAD has same contracting authority as a city.
- Cause financial audit to be prepared.



Hard working chief appraiser with new mobile mass appraisal system.

DUTIES OF THE BOARD OF DIRECTORS

- ARB Populous Counties- Board appoints, removes ARB members, selects chair and secretary of ARB; Appointment of ARB by majority with at least 2 of the majority being elected Board members.
- ARB Non-Populous Counties-Administrative Judge is appointing authority.
- Have Board meetings at least once each calendar quarter.
- Develop and implement policies regarding reasonable access to the Board and speaking before Board.
- Prepare information describing the Board's functions and complaint procedures.

DUTIES OF THE BOARD OF DIRECTORS

Limited authority regarding value and exemptions.

- Board does not appraise property or review individual values. Tax Code assigns those functions to chief appraiser and ARB.
- Adopt biannual re-appraisal plan (may affect values).
- Consent to appointment of Agricultural Advisory Board.
- Adoption of budget indirectly may affect appraisal in the budget approval of funds for personnel and operation.
- Approve contracts with private appraisal firms to perform appraisal services.
- Approve chief appraiser appeal of ARB determination.

DUTIES OF THE BOARD OF DIRECTORS

- Purchase, sell or lease real property; construct improvements to establish and operate the appraisal office.
- Contract with taxing unit to assess and collect taxes.
- Increase the number of ARB members.
- Employ general counsel.
- By resolution, may prescribe the specific actions of chief appraiser relating to finances and disbursements.

IF MY DUTIES ARE LIMITED WHY PAY ATTENTION? BECAUSE IT IS THE LAW!



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**Have confidence when making
the tough decisions.**

YOUR RIGHTS

- May you protest your property? YES.
- May you discuss protest with the chief appraiser? NO.
- May you attend informal hearing like other taxpayers? NO.
- May a quorum of the Board attend a conference or training? YES.
- May a committee of Board meet without posting the meeting? Mostly, NO.
- May you talk to others about appointment of ARB? NO, limited exceptions.

OPEN GOVERNMENT TRAINING

- Each member must complete open meetings and public information training course not later than 90 days after the member takes the oath of office or assumes the responsibilities of the office.
- CAD has designated a public information coordinator to satisfy the open records training requirement.
- Course taken one time only.

OPEN MEETINGS ACT

- Every regular, special or called meeting of BOD is open to the public unless a closed meeting is authorized by the Act.
- 72 hours prior written notice of the date, hour, place and subject of each meeting, including authorized closed meetings.
- Notice sufficient to inform the public of the subject matter that will be considered; more critical the topic, the more specific the notice.
- If not on the agenda may not discuss the item or take action, except to determine whether to place the item on a future agenda.

YES, the public has a right, subject to reasonable access, to tape or videotape Board meetings.



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VISITOR SECTION AND RIGHT TO SPEAK LAW

- In addition to Tax Code Section 6.04 (d) allowing public comment at each Board Meeting to speak on any issue under the jurisdiction of the Board and provide comment on CAD and ARB policies and procedures.
- Public has the right to speak at the visitor section of an open meeting of the BOD on any item listed on the agenda for action either before or during the BOD's consideration of action of the item; and on items listed for action or contemplated action as result of executive session prior to the BOD taking such action.
- Right to Speak Law does not apply to work or study sessions.
- May adopt reasonable rules, time limits, require persons to register to sign up to speak.

OPEN MEETINGS ACT

- Applies to committees consisting of BOD members less than a quorum when the committee meets to discuss public business or to receive information from third party.
- Does not apply to conventions, seminars or workshops, if no formal action is taken and any discussion of public business is incidental; social meetings unrelated to public business; testimony before legislature and agencies and candidate forums.
- Applies to any discussion or deliberation between a quorum, or between a quorum and another person, about public business or policy which the Board controls or supervises, or during which formal action is taken.
- Gathering of a quorum of the BOD and another person, to ask questions, receive information about public business or policy which Board controls or supervises.



WHAT do I do when I hear this?

**Can I count on
your vote?**



DO NOT SAY

SHOW ME THE MONEY..!

FINAL ACTION; MINUTES

- Decision must be made in public.
- No voting in closed session or by secret ballot.
- Actions taken in violation of the act are voidable but may be cured by subsequent lawful meeting.
- Must prepare and retain minutes or a recording of each of its meetings – staff function.
- Minutes state the subject matter of each deliberation, vote, order, decision, or other action and are available to the public.
- You can vote to approve minutes of a meeting where you were absent.

VIOLATIONS

- Members who knowingly conspire to circumvent the Act by meeting in numbers less than a quorum for the purpose of secret deliberations are in violation of the Act and have committed a misdemeanor.
- Members who knowingly call or aid in calling or organizing an illegal closed meeting or participate in an illegal closed meeting or close or aid in closing the meeting to the public have committed a misdemeanor.

SECRET DELIBERATIONS OPEN MEETINGS ACT

- May not use telephone, email/voice/text messages (or social media) to arrive at a decision or consensus concerning public business.
- May not meet in numbers less than a quorum for the purpose of secret deliberations.
- “Walking Quorum” an overlapping series of meetings, texts or telephone conferences with less than a quorum is prohibited.
- Do not “reply all” to emails to the entire Board, as this could be considered as a violation of the Texas Open Meetings Act.

EMERGENCY MEETINGS

- Must be imminent threat to the public health or safety or reasonably unforeseen situations requiring immediate attention with notice posted at least 1 hour before the scheduled meeting and clearly state the urgent public necessity or emergency.
- Notice given by telephone, email or facsimile to news media previously requesting notice and agreeing to pay cost of providing the notice.
- Hiring attorney or settling lawsuit is not emergency.

EXECUTIVE SESSIONS

- Limited to specific purposes: examples include:
 - Personnel matters (limited)
 - Real estate
 - Consult with an attorney
- Notice posted that sets forth the specific section of the Government Code with a brief description with applicable description (e.g. Section 551.074 evaluation of chief appraiser).

PROCEDURES FOR EXECUTIVE SESSION

- First convene open session; Chair announces a closed meeting will be held and states applicable section of Government Code and subject matter.
- Tape recording or Certified agenda must be kept; includes announcement at beginning and end of meeting stating the date and time, subject matter and any action taken in public meeting.
- Attendance limited to persons necessary for the discussion and whose interest are not adverse, to the CAD.
- Act does not prohibit members from making public statements about the subject matter of closed session.

CONFIDENTIALITY AND VIOLATIONS

- Act does not prohibit members making public statements about the subject matter of closed session, but members should respect the privilege afforded to the Board to conduct a closed meeting.
- If do not intend to keep the matter privileged and confidential, then the Board should not deliberate in a closed meeting.
- Disclosure of the certified agenda or tape recording of a closed meeting is a misdemeanor.
- An offense occurs if a member participates in a closed meeting knowing that a certified agenda or tape recording is not being made.
- Members are liable for damages, attorney's fees and court costs if an individual is slandered during a closed meeting.

CONSULTATION WITH ATTORNEY

- If during a meeting the Board legal advice for an item on the agenda, Board may convene a closed meeting to preserve the attorney/client privilege, even though not specifically listed.
- May use telephone; video conference call or internet communication to consult with an attorney in open or closed meeting, if the attorney is not an employee of the CAD.
- Common practice to include: AS AUTHORIZED BY SECTION 551.071(2) OF THE TEXAS GOVERNMENT CODE, THIS MEETING MAY BE CONVENEED INTO CLOSED EXECUTIVE SESSION FOR THE PURPOSE OF SEEKING CONFIDENTIAL LEGAL ADVICE FROM THE GENERAL COUNSEL ON ANY AGENDA ITEM LISTED HEREIN

VIDEOCONFERENCE CALL

- **May conduct video conference call but each participant's face in the videoconference call, while speaking, must be clearly visible and audible to each other participant and, during the open portion of the meeting, to the members of the public in attendance at the location where a quorum is present (with quorum in single location), and at any other location of the meeting that is open to the public.**

SOCIAL MEDIA

- First Amendment right.
- Focus on message content and not the media through which it is transmitted.
- Avoid appearance that Board members are deliberating by posting comments about public business.
- Posting comments may be construed as a meeting and a may be a crime.
- Social media posts by Board member regarding public business is public information that must be preserved by the member and surrendered to CAD.

SOCIAL MEDIA; TEXTS, EMAILS AND MEETINGS

- Elected members have constituents and may feel (like other local elected officials) compelled to address taxpayer values and other concerns through social media posts, emails, texts, taxpayer meetings or other communications; However, Board has no control or authority over taxpayer values.
- Consider the potential impact of social media statements prior to posting.
- Posts that express favoritism and/or bias for or against any individual or group of individuals reflect poorly on the official, as well as the CAD.
- Posts that express favoritism and/or bias for or against any individual or group of individuals reflect poorly on the official, as well as the CAD.

TAAD Conference Rocks

**One
Board
Member
Posted
This
Picture**



PUBLIC INFORMATION ACT

- Text, voice mail and emails regarding public business regardless of device is public information.
- Don't mix personal and public business.
- Say or write it as if everyone in the world would read or hear it.
- Crime to withhold or alter public information.
- You are temporary custodian.

Remember...



"On the Internet, nobody knows you're a dog"

GOLDEN RULE REGARDING THE PUBLIC INFORMATION

Is the Cowboys' defense ready to 'man up'? SPORTSDAY 1C

The Dallas Morning News

Section 1, Leading Newspaper 2100 Dallas, Texas, Thursday, October 2, 2008

Sunny
High 84
Low 64

TEXAS
They want Mexico to help find body
The Texas state trooper who was killed in a crash on the border with Mexico last week is being sought by the state's attorney general. The trooper, who was on duty at the time of the crash, was killed by a Mexican truck driver who fled the scene.

WORLD
U.S. 2 Japanese fishermen rescued
Two Japanese fishermen who were rescued from a sinking ship in the Pacific Ocean last week are being held in a U.S. military prison. The fishermen were rescued by a U.S. Navy ship and taken to a military base in Hawaii.

NATION
House panel says health care reform is needed
A House panel of lawmakers says that the current health care system is in crisis and that reform is needed. The panel's report says that the current system is too expensive and does not provide adequate coverage for many Americans.

Percentage indicates security of bases
A new survey shows that a majority of Americans believe that the U.S. military bases in Iraq and Afghanistan are secure. The survey also found that most Americans support the U.S. military's operations in these countries.

BUSINESS
Overseas tax breaks up for grabs
The U.S. government is offering tax breaks to companies that invest in foreign countries. The breaks are intended to encourage investment and create jobs in other parts of the world.

In-Or-Out Burger they want to be
A new fast-food chain called In-Or-Out Burger is looking for investors. The chain is based in Texas and is known for its burgers and fries.

METRO
Safe lanes show signs of success
A new program of safe lanes for bicyclists in Dallas is showing signs of success. The program has resulted in more bicyclists using the lanes and fewer accidents.

FOCUS
FD
A new focus on food safety is being implemented by the U.S. government. The focus is on preventing foodborne illnesses and protecting public health.

SPORTS
Liverpool soccer team sale a mess for Hicks
The sale of the Liverpool soccer team is a mess for Hicks, the owner of the team. Hicks is trying to sell the team for a record price, but the sale is being delayed by various issues.

HOME FRONT
Americans help Marines with radios for Afghan villagers
Americans are helping Marines by providing radios for Afghan villagers. The radios are being used to communicate with the Marines and to provide information about the villagers' needs.

GAME 1: RANGERS 5, RAYS 1
BASES: Rangers lead 1-0 NEXT GAME: Texas at 10:30 p.m.

A roaring start

IN SPORTSDAY: Series is now Rangers' to win, Evan Grant writes, 1C



Screeing against a crowd that ultimately only realizes the effort will be

SCHOOL'S AP rule debated

Screeing against a crowd that ultimately only realizes the effort will be

REPORTS say response mishandled

Administration denies having extent of problem from public and being able to address it

WASHINGTON — The Obama administration's response to the public's concerns about the health care reform bill is being criticized by some lawmakers and the public.

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IF YOU DON'T WANT SOMETHING YOU SAY OR DO IN RELATION TO THE CONDUCT OF BOARD BUSINESS PUBLISHED ON THE FRONT PAGE OF THE NEWSPAPER Or On The WEB FOREVER...DON'T TYPE IT, WRITE IT DOWN, OR RECORD IT IN ANY FASHION!!!

TAX CODE PROHIBITION OF VALUE DISCUSSIONS

- Board and Chief Appraiser may not communicate on any matter relating to the appraisal of property in the district.
- Exceptions: during posted meeting or public forum, closed meeting discussion with attorney regarding litigation, routine communication with county tax assessor relating to appraisal roll, certification, correction or collection of an account, and transmitting a complaint to the chief appraiser.
- Board may not communicate with Chief Appraiser or employee for purpose of influencing an appraised value.

TAX CODE ARB COMMUNICATION PROHIBITIONS

- Except during a hearing or other ARB proceedings BOD may not communicate with a member of ARB member about training courses, or any matter presented or discussed during the course.
- BOD may not communicate with others with limited exceptions regarding appointment of ARB members, a ranking, scoring or reporting of the percentage by which the ARB or ARB reduces the Appraised Value of property; does not apply to removal or increasing number of ARB, administrative duties related to appointment of ARB.

TAX CODE PROHIBITION

- BOD May Not Have delinquent taxes.

A person is ineligible to serve on the board of directors if the person owns real or personal property on which delinquent taxes are owed for more than 60 days after the date the person knew or should have known of the delinquency.

Exception: paying under installment payment agreement or has deferred or abated a suit to collect the delinquent taxes.

TAX CODE PROHIBITIONS

- BOD May Not Have A Close Relative Who is A Tax Agent Or Appraiser. Example: Can not be on the board if parents, children, sisters, brothers appraise property for property tax purposes or represent taxpayers at the appraisal district.
- Ineligible to serve if BOD member appraised property for use in or represented property owners in proceedings under the Tax Code in the district for the preceding 3-years.

TAX CODE PROHIBITIONS

- Board member may not contract with the CAD, or with a participating taxing unit that relates to the performance of an activity governed by Property Tax Code of if the individual has a substantial interest with a business that is a party to such contract.

TAX CODE PROHIBITIONS

- **BOD Commits a Criminal Offense.**

A board member commits a class B misdemeanor offense if Board member continues to hold office knowing that an individual related within the 2nd degree by consanguinity or affinity to the board member appraises property or represents property owners for compensation in proceedings under the Tax Code in the appraisal district in which the member serves.

TAX CODE PROHIBITIONS

- Chief Appraiser May Not Employ Close Relative of Board Member.

Chief appraiser may not employ person related to a BOD within the 2nd degree by affinity or within 3rd degree by consanguinity.

Directors may not serve if these relatives are employed by the appraisal district.

Continuous employment exception under State nepotism statute does not apply.

ETHICS AND THE LAW

- Members must be knowledgeable of the State Law.
- Chapters 171 and 176 of the Local Government Code, Tax Code and Penal Code.
- No statutory code of ethics specifically for Board.
- Board members have fiduciary obligation to CAD.
- Mere appearance of impropriety impacts the effectiveness of local public officials.

ETHICS AND THE LAW

- Penal Code: “Offenses Against Public Administration”.
- Bribery, honoraria, impermissible gifts and abuse of office.
- Chapter 572 Tex. Gov. Code governing Nepotism. Can’t participate, confirm or vote for appointment or compensation of a relative.
- Board members are not required to file a financial disclosure statement unless such member is required to do by virtue of another elected office (e.g. council member of city with population over 100K).
- Board may not adopt a policy requiring such filing.

ETHICS AND THE LAW

- Crime for Board member to offer, solicit or accept any benefit for the exercise of the official's discretion.
- Anything reasonably regarded as pecuniary [monetary] gain or advantage.
- A gift or benefit is considered anything reasonably regarded as monetary gain or a monetary advantage.
- Prohibits misusing government property, services, personnel or any other thing of value belonging to the government with the intent to obtain a benefit or to harm or defraud another even if the public entity is fully reimbursed for the value of the property or the services after the fact.
- Token gifts under \$50 are ok.

HONORARIUMS

- State law generally prohibits public servant from soliciting, accepting or agreeing to accept an honorarium in consideration for services that the public servant would not have been requested to provide but for the public servant's official position or duties. Speech because you are on BOD and not because of your expertise.
- Prohibition does not prohibit accepting payment for meals, transportation or lodging expenses in connection with a conference or similar event in which the public servant renders services, such as providing a speech, to the extent that those services are more than merely perfunctory.

GOVERNMENT PROPERTY AND PERSONNEL

- State law prohibits BOD from misusing government property, services, personnel or any other thing of value belonging to the government with the intent to obtain a benefit or to harm or defraud another; and the use of government property or the services of government employees by a public official for his or her private use even if the public entity is fully reimbursed for the value of the property or the services after the fact.
- Does not prohibit the use of the services of a public employee if the work is done on the employee's own time and without the use of any public resources.

MISUSE OF OFFICIAL INFORMATION

- Prohibits a BOD from disclosing or using confidential information to which the official has access by virtue of the office to gain a benefit or advantage or with intent to harm or defraud another.
- Applies only to information to which the public does not generally have access and that is prohibited from disclosure under PIA.
- An offense of this law is generally a felony of the third degree.

CONFLICT DISCLOSURE STATEMENT

CHAPTER 176 TLGC REQUIRES

- File a “conflicts disclosure statement when a vendor enters a contract with the CAD or CAD is considering entering a contract (for sale or purchase of real property, goods or services) with the vendor if during the 12 months prior to the Board member becoming aware that CAD executed a contract or CAD is considering contracting with the vendor.
- Applies to Chief Appraiser and certain employees and consultants involved in recommending the Contract
- Disclosure requirement is in addition to any other disclosure required by law.
- Only required when the triggering events occur. No annual requirement.

STATEMENT IS REQUIRED WHEN

- Board member or family member has an employment or other business relationship with a vendor which results in the Board member or family member receiving taxable income of more than \$2,500 in the preceding twelve months (excluding investment income); or
- Board member or family member accepts one or more gifts from a vendor that has an aggregate value of more than \$100 in the preceding twelve months (gift includes transportation, lodging, and entertainment, even as a guest). Gift does not include (a) a political contribution; (b) food accepted as a guest; or (c) if the gift is offered on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient; or
- Board member has a family relationship with the vendor
- Required to file no later than 5:00 p.m. on the seventh business day after the date on which Board member becomes aware of facts that require the filing.

CHAPTER 171 CONFLICT OF INTERESTS

- Board member commits an offense if the member knowingly participates in a vote or decision on any matter involving a business entity or real property in which the Board member has a “substantial interest”.
- File an affidavit revealing the nature and extent of the interest with Board secretary before the item comes up on agenda.
- Abstain from further participation on the matter
- Failure to file the affidavit and to abstain constitutes a Class A Misdemeanor, punishable by a fine of up to \$4,000 and a one-year jail sentence.

SUBSTANTIAL INTEREST

In a Business Entity: the official owns at least 10% share of the voting stock or shares of the business entity, or at least \$15,000 of the fair market value of the business entity; or funds received by the official from the business entity exceeds 10% of the official's gross income for the previous year

**In Real Property if: It is reasonably foreseeable that an action on the matter will have special economic effect distinguishable from its effect in the public; and
Member's interest is an equitable or legal ownership with a fair market value of \$2,500 or more**

SUBSTANTIAL INTEREST

- Also have “substantial interest” if a relative in the first degree, by either consanguinity or affinity, would have a substantial interest in a business entity or real property under these tests.

- Consanguinity

- Parents

- Children

-

-

-

-

-

Affinity

Spouse of those
under consanguinity

Spouse

Spouse’s parents

Spouse’s children

Stepparents or

Stepchildren

LAWSUITS AGAINST BOD

- Remote.
- Tax Code provides the exclusive administrative and judicial remedies. Trial de novo judicial review of appraisal review board determination eliminates most collateral constitutional attacks.
- Federal Tax Injunction Act bars taxpayer suits in Federal Court relating to property tax matters.
- Appraisal district is a labor and technology intensive organization and therefore litigation involving employment and contract matters should not be unexpected.

LAWSUITS AGAINST BOD

- CAD has insurance and coverage includes the payment of the legal costs to defend you and payment of damages for claims.
- Defamation, libel and intentional torts are excluded.
- Should not expect to be sued unless personally involved in some action or policy that is a violation of civil rights or is a violation of some other statute.
- Immunity.

QUESTIONS

