

COURT OF APPEALS OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION 5

JOAQUIN TORRES, SAN
FRANCISCO ASSESSOR-
RECORDER,
Petitioner/Appellant,

v.

SAN FRANCISCO ASSESSMENT
APPEALS BOARD NO. 1,
Respondent.

CHINA BASIN BALLPARK
COMPANY, LLC,
Real Party in Interest.

Case No. A162440
San Francisco Superior Court
No. CPF-19-516833

Appeal from San Francisco Superior Court,
The Honorable Ethan P. Schulman, Case No. CPF-19-516833

**APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF
AND [PROPOSED] *AMICUS CURIAE* BRIEF OF CALIFORNIA
ASSESSORS' ASSOCIATION AND CALIFORNIA STATE
ASSOCIATION OF COUNTIES IN SUPPORT OF APPELLANT**

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

There are no interested entities or persons that must be listed under California Rules of Court, Rule 8.208.

DATED: September 28, 2022 Respectfully submitted,

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**APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF IN
SUPPORT OF APPELLANT**

TO THE HONORABLE PRESIDING JUSTICE OF THE
CALIFORNIA COURT OF APPEAL, FIRST APPELLATE DISTRICT:

Pursuant to California Rules of Court, Rule 8.200(c), putative *Amici Curiae* the California Assessors' Association and the California State Association of Counties respectfully submit this application to file the accompanying brief in support of Petitioner/Appellant Joaquín Torres, San Francisco Assessor-Recorder. Pursuant to California Rules of Court, Rule 8.200(c)(1), this application is timely, as it is being filed within fourteen (14) days after appellant's reply brief was, and could have been, filed. *Amici* have not filed any prior applications in this proceeding

I. INTEREST OF *AMICI CURIAE*

The California Assessors' Association ("CAA") is a statewide non-profit professional association for County Assessors representing each of California's 58 counties. The CAA was formed in 1902 and is dedicated to improving California assessment procedures and laws for the public good. By virtue of their roles as assessors, the members of CAA possess considerable expertise with respect to property appraisal and assessment.

The California State Association of Counties ("CSAC") is a non-profit corporation, and its membership consists of the 58 California counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsels' Association of California and is overseen by the County Counsels' Association Litigation Overview Committee, comprised of county counsels throughout the State. The Litigation Overview Committee monitors litigation of concern to counties statewide and has determined that this case is a matter affecting all counties.

CSAC members, through their Assessors and Assessment Appeals Boards, and CAA members are responsible for assessing or equalizing the value of property within their jurisdictions. This responsibility includes enforcing the cardinal principle of California’s property tax law, that all property must be assessed at its “full value”—that is, the fair market value of the property. (Cal. Const., art. XIII, § 1; Cal. Rev. & Tax. Code, § 401; *De Luz Homes v. County of San Diego* (1955) 45 Cal.2d 546, 565.) The Assessment Appeals Board’s (“AAB”) deviation from established property tax assessment principles in this case resulted in a significant undervaluation of the San Francisco Giants’ ballpark at China Basin and has significant ramifications for the accuracy of property tax assessments and associated tax revenue throughout California. This flawed approach threatens to reduce the funding available for school districts and local governments that provide essential social services to California residents. Given counties and assessors’ obligations to ensure that all property is taxed at its full value, CAA and CSAC have a significant interest in assisting the Court in this matter.

II. THE PROPOSED *AMICUS CURIAE* BRIEF WILL ASSIST THE COURT IN DECIDING THIS MATTER

In light of counties and assessors’ responsibilities for property tax assessment, *Amici* are well-qualified to address the AAB’s deviation from established property assessment principles, as well as the implications if the Superior Court’s decision in this case were affirmed. As explained in greater detail in the proposed *Amicus Curiae* brief, the AAB’s decision to reduce the value of the ballpark based on the novel concept of “Future Functional Obsolescence” was inconsistent with the principles that underpin the cost approach and resulted in an artificially low valuation. Furthermore, the *Amicus Curiae* brief will explain how allowing consideration of Future Functional Obsolescence under the cost approach

***AMICUS CURIAE* BRIEF IN SUPPORT OF APPELLANT**

I. INTRODUCTION

This matter involves an appeal from the Superior Court’s denial of the writ petition filed by Petitioner/Appellant Joaquín Torres, San Francisco Assessor-Recorder (“Assessor”), challenging the San Francisco Assessment Appeals Board’s (“AAB”) reliance on the novel concept of “Future Functional Obsolescence” to reduce the value of the San Francisco Giants’ baseball stadium under the cost approach. *Amici Curiae* the California Assessors’ Association and the California State Association of Counties submit this *Amicus Curiae* brief in support of the Assessor.

The AAB’s consideration of Future Functional Obsolescence under the cost approach was error for the reasons set forth in the Assessor’s brief, in which *Amici* join, and for the additional reasons set forth below. The cost approach already accounts for depreciation caused by functional obsolescence, rendering any additional reduction in present value based on *Future* Functional Obsolescence unnecessary and duplicative. Furthermore, by considering the cost of future improvements that would cure functional obsolescence but ignoring the net benefits the buyer would receive from these improvements, the AAB distorted the cost approach in a manner that is inconsistent with a fair market analysis.

If broadly adopted, this flawed approach will result in the systemic undervaluation of properties throughout California. In light of their expertise and obligations with respect to local property tax assessment, *Amici* are well-situated to address the implications of the Superior Court’s ruling and respectfully urges the Court to reverse the Superior Court’s decision.

II. ARGUMENT

The AAB’s erroneous usage of Future Functional Obsolescence threatens to undermine the soundness of the cost approach, which plays an important role in California property tax assessment. The State Board of Equalization recognizes three approaches to property tax assessment: (1) the comparative sales approach, (2) the income approach, and (3) the cost approach. The cost approach “is the most universally applied approach in [property tax] appraisal” and is the preferred approach when neither reliable income nor comparative sales data are available. (State Board of Equalization Assessors’ Handbook [Assessors’ Handbook] Section 501, Basic Appraisal, p.74.)

A. **The AAB’s Usage of Future Functional Obsolescence Was Error**

The AAB’s reliance on the novel concept of Future Functional Obsolescence to reduce the value the San Francisco Giants’ ballpark at China Basin was error. As explained in the Assessor’s opening brief, the cost approach accounts for depreciation caused by functional obsolescence that is present as of the valuation date for the relevant Tax Year. If additional functional obsolescence appears in *future* years, that obsolescence will be captured in the valuations for those future Tax Years. (See Cal. Rev. & Tax Code, § 51.) By improperly reducing the *present* value of the ballpark based on anticipated *Future* Functional Obsolescence, the AAB has created a situation where functional obsolescence will be double counted—both as anticipated future obsolescence and then again as actual obsolescence.

Under the cost approach, an appraiser begins by calculating the value of the unimproved land, combined with the cost of constructing the property. The appraiser then subtracts the depreciation adjustment, which reflects the difference in value between a brand-new property and the

subject property given its present condition (including any obsolescence) as of the appraisal date. (Assessors' Handbook Section 501, Basic Appraisal, pp. 80-81 [“[E]stimate the remaining value of the property (compared to its cost when new), as ... of the date of the appraisal”].) This depreciation adjustment includes, among other things, depreciation resulting from any functional obsolescence as of the valuation date. (*Ibid.*) Because the cost approach already includes a mechanism to ensure that any reduction in value caused by functional obsolescence is appropriately captured, any additional reduction based on *Future* Functional Obsolescence is unnecessary, duplicative, and will necessarily result in an undervaluation of the property. This novel concept of a reduction in present value for predicted Future Functional Obsolescence is not recognized by any appraisal practice within the public or private sectors.

When the AAB's analysis is viewed in light of this framework, it becomes clear that the AAB's usage of Future Functional Obsolescence was based on an error in timing. Any up-to-date property, whether a stadium, a data center, or a sandwich shop, may suffer from Functional Obsolescence in the *future* as user preferences, or other external factors, change. If Functional Obsolescence arises in future years, it will be captured and result in a lower valuation of the property *for the years when the Functional Obsolescence appears*, as contemplated by Section 51 of the Revenue and Taxation Code. (See Cal. Rev. & Tax Code, § 51 [authorizing a reduction in the assessed value of a property for years where the market value of the property is lower than the assessed value].) Because any depreciation over the useful life of the property caused by Functional Obsolescence will be fully accounted for when it appears, including an

additional *Future* Functional Obsolescence deduction is duplicative and will result in an undervaluation of the property.¹

Finally, to the extent the AAB wishes to consider the future expenses associated with remedying or preventing Future Functional Obsolescence, it must also consider future revenue, as required under the income approach. Unlike the cost approach, the income approach analyzes both future expenses and future revenue streams to estimate *net* future income. (Cal. Code Regs., tit. 18, § 8 [Property Tax Rule 8].) And for good reason. When evaluating a property, a rational investor will consider the *net* benefit they expect to receive from a property, not just the expenses associated with the property.

Furthermore, the AAB was required to consider not only what discounts the buyer might ask for, but also what reduction in price the seller would accept. (*See* Cal. Rev. & Tax. Code, § 110.) As a practical matter, a property owner will remedy functional obsolescence only if it is economically viable, meaning that the benefits of the improvement (e.g., higher future income) would outweigh the costs of fixing the obsolescence. But a rational fair market seller would not agree to lower the price of an *up-to-date* property in order to subsidize the buyer's future, profitable remodel of the property—unless the seller was granted a right to the profits that flowed from that remodel. Said otherwise, a fair market seller would not agree to bear the future expenses associated with a non-obsolete property, just as they would not expect to receive the future profits that result from those expenditures.

¹ In addition, predicting whether or to what extent a property will suffer from *Future* Functional Obsolescence presents a practical problem. Appraisers do not have a reliable way to predict how user preferences will change in the future, much less how those changes will affect a specific property's value.

In sum, to the extent a fair market buyer and seller would consider the expenses associated with updating a property to address functional obsolescence, they would also consider the additional income generated by those expenditures. By considering the cost of potential future improvement but ignoring the benefits the owner would receive from these improvements, the AAB imported a distorted version of the income approach that does not reflect a fair market analysis.

B. The AAB’s Modification of the Cost Approach Undermines the Accuracy of Property Tax Assessment

If the cost approach is modified to subtract Future Functional Obsolescence from the *present* value in the manner adopted by the AAB, this change will undermine the accuracy of the cost approach and result in the undervaluation of both real and personal property in California. As previously noted, the cost approach is widely used in property tax appraisal. (See Assessors’ Handbook Section 501, Basic Appraisal, p. 74.) The cost approach is, by far, the most common approach used to value personal property, which is defined as “all property except real estate.” (Assessors’ Handbook Section 501, Basic Appraisal, p. 26; *see also* Assessors’ Handbook Section 504, Assessment of Personal Property and Fixtures, p. 50.) Examples of taxable personal property include portable machinery and equipment, mobile homes, boats, and aircraft.

Appraisers also use the cost approach to assess real property including, for example, valuable, special-use properties such as sports stadiums and other unique entertainment venues. Special-use properties assessed under the cost approach include PETCO Park in San Diego, Levi’s Stadium in Santa Clara, and Microsoft Theater in Los Angeles, to name just a few examples. However, the impact of the cost approach on real estate appraisal extends far beyond highly valuable special-use properties.

Because “more than one approach to value is used in an appraisal,” widespread adoption of the AAB’s flawed cost approach will also affect properties analyzed primarily under the income or comparative sales approaches. (Assessors’ Handbook Section 502, Advanced Appraisal, pp.108-109; *see also* Cal. Code Regs., tit. 18, § 3 [Property Tax Rule 3].) As the Assessors’ Handbook explains, independent application of the three assessment approaches “will lead to separate indicators of value.” (Assessors’ Handbook Section 501, Basic Appraisal, pp.74, 109-110.) The appraiser must then “reconcile the separate indicators into a final value estimate.” (*Ibid.*) So even in cases where the cost approach is not the *primary* method used to assess a property, it could still factor into the valuation of many different types of real properties ranging from restaurants, to data centers, to large business campuses.

In sum, if the cost methodology is modified to subtract *Future* Functional Obsolescence from the *present* value in the manner adopted by the AAB, it will cause significant undervaluation of both real and personal property across California. This will, in turn, reduce the funding available for school districts and local governments that provide essential social services to California residents.

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CERTIFICATION OF WORD COUNT

Counsel of record hereby certifies that pursuant to Rule 8.204(c)(1) of the California Rules of Court, the brief of *Amici Curiae* California Assessors' Association and California State Association of Counties was produced using 13-point Roman type, including footnotes, and contains approximately 1,680 words, according to the word count of the computer program used to prepare the brief.

/s/ Rachel A. Neil
Rachel A. Neil