

# Possessory Interest & Boat Tax Workshop



**Boaters for Dana Point Harbor**

*August 16, 2011*

# Disclaimers

Boaters for Dana Point Harbor is incorporated in the State of California as a Not For Profit Public benefit Company.

Many of the Board members have been working on the Possessory Interest Tax Issue since 2007 when it first surfaced as an issue in Dana Point Harbor.

*None of us are experts and none of us are authorized to provide legal or tax advice. Before taking action you should consult your tax professional.*

# Agenda Workshop

- Opening/Introductions
- Boat Property Tax
- What is Possessory Interest Tax
  - History – “The Escape Years”
  - History – Past Appeals
- Filing an Appeal
- Planning/Organizing to Defend

# Boat Property Tax

- ~1% of Value
- State Audit of OC Assessors Enrollment Process:
  - Must use BUC + Sales Tax
- BUC – Subscription based model
  - Sale based data
  - Nationwide
- Show me the Comps
- Latency of Comps – Vital
- Supporting Documentation

# Problems With Possessory Interest Tax

*Boaters for  
Dana Point  
Harbor*

- Applicability of Tax
- Valuation of Property
- We've Already Paid This Tax!

# What Is Possessory Interest Tax

*Boaters for  
Dana Point  
Harbor*

## Three + One Tests

1. Independence
2. Exclusivity
3. Durability

Plus 4. Private Benefit

---

Analogy: Property Tax for Home =

Tax on Home + Tax on Land

Property Tax on Boat =

Tax on Boat + Possessory Interest Tax

# Possessory Interest Tax...History

*Boaters for  
Dana Point  
Harbor*

In the beginning...

- Three Marina Companies
- 30 Year Leases
- Paid PI Tax every year

Leases began expiring....

- Leaseholders → Contractors
- County doesn't pay County Taxes

# Possessory Interest Tax...History

*Boaters for  
Dana Point  
Harbor*

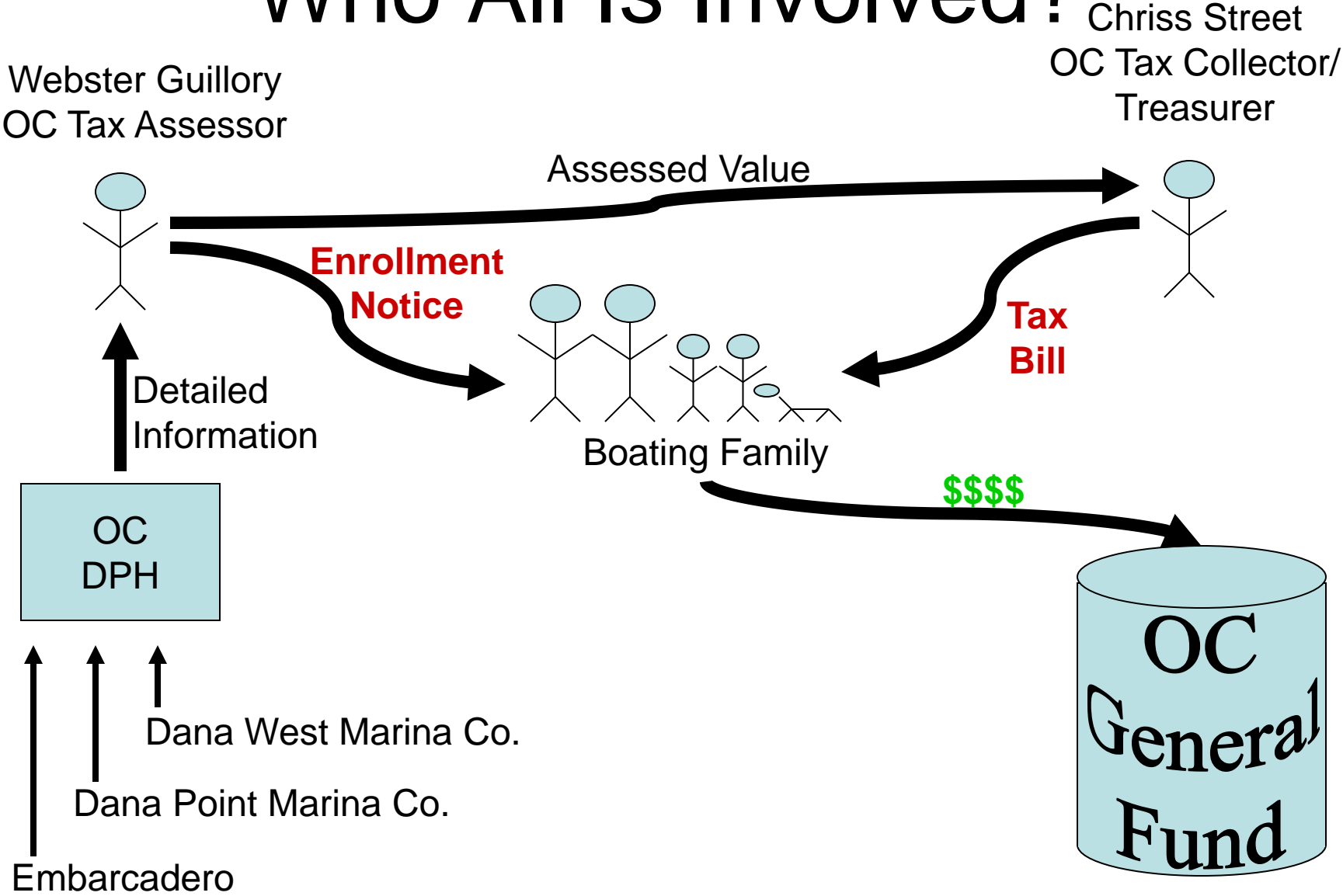
- County Board of Supervisors - Resolution LIMITING Slip Fee Increases
- Assessor Begins Investigation Fall 2006
- DPHD (OCDPH) Enforce Max Increases
- DPHD – Boater meeting – (pay or reduce)
- “Escape Enrollments Issued” - Spring 2007
- Boaters engage Tax experts:
  - Webster Guillory – Tax Assessor
  - Chriss Street – Tax Collector/Treasurer
  - DePasquale Kelley and Company
  - Paul Van Loon and Associates

# Possessory Interest Tax...History

*Boaters for  
Dana Point  
Harbor*

- Supervisor Moorlach:  
*A tenant must be aware of a possible Possessory Interest Tax liability before a lease is signed.*
- Boaters visibly gear up Appeal Process
- June 2007 – County Board of Supervisors agree to pay “Escape Years”
- Sign new BSL or leave or be evicted
- Assessed 2007 Tax
  - Where were you on Jan 1, 2007.
- Filed ~200 PI Tax Appeals for 2007

# Who All Is Involved?



# What Am I Paying For?

*Boaters for  
Dana Point  
Harbor*

- Land = water within slip, even though ocean water isn't taxable!
- Improvements = dock around slip

*Also paying for common areas (buildings,  
**parking lots**, bathrooms.....)*

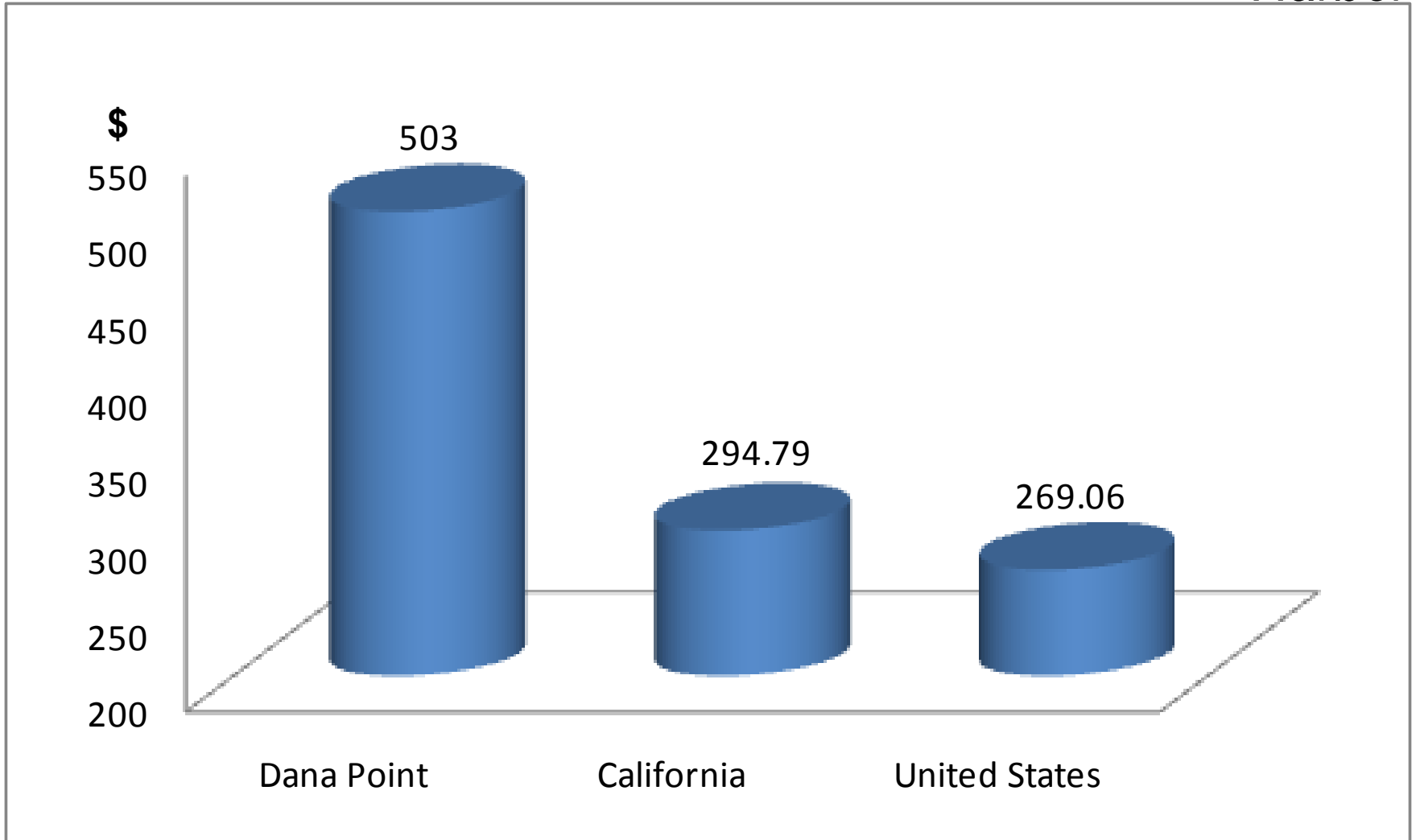
# How Is My Tax Calculated

*Boaters for  
Dana Point  
Harbor*

- Value = Annual Slip Fees (less expenses)
- Present Value Calculation
  - Cost of Funds: 10%
  - Time Horizon: 5 yrs (month to month)

# Dana Point Slip Fees

*Boaters for  
Dana Point  
Harbor*



Based on a comparison of 30' slip fees of 35 municipal marinas in North America

# Why Did Tax Go Down?

*Boaters for  
Dana Point  
Harbor*

- 2007 → 2008
  - Approximately 30% Reduction (some cases)
  - Updated Profit (expenses) Information OC DPH Department

# Why Is Mine Different From My Neighbors?

*Boaters for  
Dana Point  
Harbor*

- Been Here Long/Short Time
- Pay Different
  - “Right Sized”
  - Lower Rate Crowd
  - Dinghy Storage?
  - Lowered during Appeal Hearing? Not Yet.

# Should I Pay & Pay Every Year

*Boaters for  
Dana Point  
Harbor*

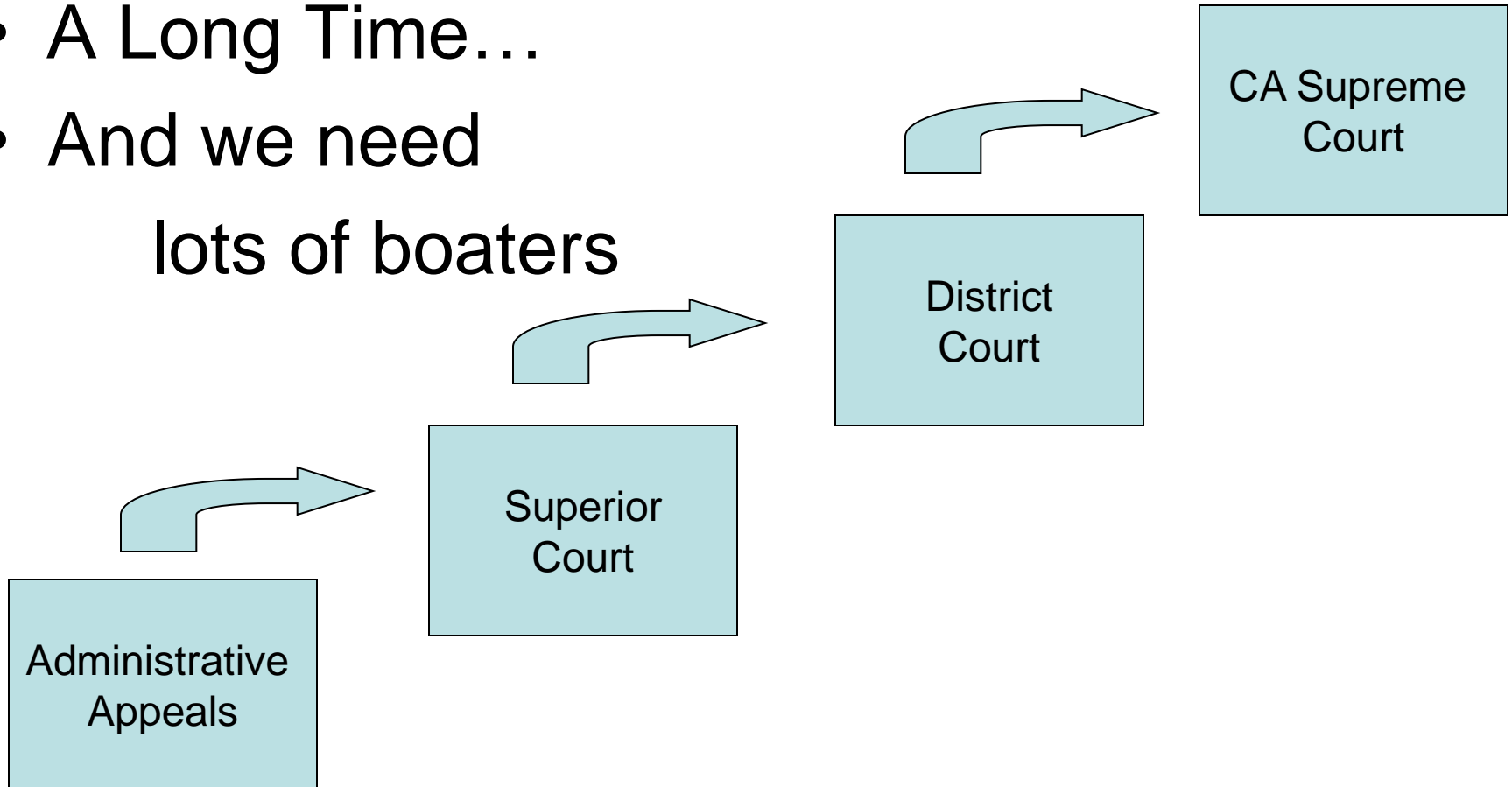
- We Do, We Think You Should
- Consequences of Failure to Pay:
  - Required by Law
  - Unsecured Tax
  - Stiff Penalties
  - Barred from Administrative Process (Appeals Hearings)
  - Access to Courts

# How Long Will This Take

*Boaters for  
Dana Point  
Harbor*

- A Long Time...
- And we need

lots of boaters



# Tax Appeal Hearings

- 2007
  - Delayed by Assessors Office Twice
  - Notices Confusing and Intimidating
  - ~5 Boaters Defended on Their Own
  - August 21, 2008
    - Three Points
    - Duration: 9:00 to 5:00 PM
    - Only one Point Covered
    - Attorney Present
    - Finding of Fact Requested
    - Continued till 9.18.08

# November, 2008 Decision

*Boaters for  
Dana Point  
Harbor*

## DECISION

1. The Board unanimously finds that the boat owners who lease boat slips at the Dana Point Harbor do have a taxable possessory interest in their use of the boat slip. The Board also finds by a 2 to 1 vote that the Assessor's methodology in calculating the value of the possessory interest is valid. However, because the actual use of the boat slip by a boat owner is subject to numerous limitations, the Board believes the value of the possessory interest should be reduced. The Board reduces the values of the possessory interest to 40 percent of the originally assessed value, as shown in the table below:

# Problems With This Tax

- Applicability of Tax
  - Independence – NO
  - Exclusivity - NO
- Valuation of Property
  - Five Year vs. Month to Month
  - Our slip fees are too high
- We Already Pay This Tax (Issue for CBOS not Appeals Board)
  - Double Taxation
  - What is next

# File and Appeal – Every Year

*Boaters for  
Dana Point  
Harbor*

- Administrative & Infrastructure Resources
  - Communications
  - Information Meetings
- Mount Defense
  - Coordinate Hearings for same Day
  - Work Groups to Formulate
    - Strategy
    - Arguments
    - Book
    - Testimony

# Disclaimers

Boaters for Dana Point Harbor is incorporated in the State of California as a Not For Profit Public benefit Company.

Many of the Board members have been working on the Possessory Interest Tax Issue since 2007 when it first surfaced as an issue in Dana Point Harbor.

*None of us are experts and none of us are authorized to provide legal or tax advice. Before taking action you should consult your tax professional.*

# How to Win

- Prepare
- Be Professional
- Do your Homework
- Focus
  - Cogent issues
  - Stick to Their Purview
- Bring a Briefing Book
  - Make it easy to QUICKLY Digest

# Relevant Documents

- Tidelands Trust
- Tidelands Doctrine
- Boat Slip License Agreement
- Summary Findings
- 2007 DPK Submittal Package
- Section 107 of the Tax Code

# Warnings

- The form is confusing
- Appeals Rejected – Incorrect Form Completion (SBE FORM AH 305/OC)
- Notices – Scare Tactics – Stay the Course

# Filling Out The Appeal Form

*Boaters for  
Dana Point  
Harbor*

**SBE FORM AH  
305/OC**