

DECIDING TO LITIGATE: Legal, Practical, and Political Considerations

The Owner's Perspective

- I. Potential Upside
 - A. Short/Long Term Reduction
 - A. One Year Benefit or Caps on Future Years
 - B. Unmotivated assessor/taxing authorities
 - A. Cost/Benefit analysis by assessor/taxing authorities
 - C. Unprepared assessor
 - A. Assessor does not have the right team
- II. Potential Downside
 - A. Can the assessment increase?
 - A. Is the court's duty to arrive at the correct value or just determine if the property is overassessed?
 1. Several states allow assessments to increase
 - B. What will the P.A. do in the following years if a court finds the assessment should be higher?
 - C. Costs
 - D. Prevailing party statutes
 - B. Public Perception
- III. Issues Determining Success
 - A. The right team
 1. Attorney
 - a. Property Tax
 - i. Specialized Property Type Attorney
 - b. Eminent Domain
 2. Appraiser
 - a. Property Tax Appraiser
 - b. Specialized Property Type Appraiser
 - c. Familiar with property type and industry
 - d. Prior experience
 - i. Prior experience means prior appraisals – will they help or hurt the expert?
 3. Attorneys may already have go-to experts
 4. Other witnesses
 - a. Review Appraiser
 - b. Industry expert
 - c. Economist
 - B. Understanding the law
 1. Value Premise
 - a. Fair Market Value
 - b. Value-In-Use
 - C. Burden of proof

1. Preponderance of the evidence
 2. Clear and convincing evidence
- IV. Unforeseen Challenges
- A. Other appraisals
 - B. Admissions by party
 1. F.R.C.P. 801(d)(2)
 - a. Party's own statement
 - b. Statement in which party has manifested a belief
 - c. Statement by person authorized to make statement
 - d. Statement by agent concerning matter w/l scope of agency
- V. Costs
- A. Attorneys
 - B. Expert Witnesses
 - C. Various Court Costs
 - A. Length of trial
 - D. Appeal Costs
 - E. Prevailing Party Statutes
- VI. End Game
- A. Agreeing to future years
 - B. Open dialogue for future years
 - C. Settlement

The Assessor's Perspective

- Do you have the administration's support (even if they have no authority in the decision)?
- Do you have confidence in your legal counsel?
 1. Do you have an attorney versed in assessment law and/or experience?
 2. Is your attorney an experienced litigator or do they not have sufficient trial experience? (many municipal attorneys do not significant actual litigation experience).
 3. Does your attorney support your position?
- All aspects of a tax appeal are paid for with taxpayer funds (the assessor salary, the judges salary etc.,)
 1. What is the cost/benefit analysis?
 2. What is the value delta?
 3. Where is the assessor's office in their revaluation cycle?
 4. Are you required to get an outside appraisal?
- Does the case have the potential to create legal precedent?
- Is the taxpayer a repeat offender?

- While the assessor's office is apolitical, does the case have political implications or could it?
 1. Is it an election year?
 2. Is the taxpayer or property in any way associated with a political issue or entity?
- Reasonability
 1. Is it a credible argument in front of a judge?
 2. Can you defend your position? (i.e Kobyluck vs Montvile. Alito vs. Somers)
 3. Even following statutory guidelines and laws can sometimes result in judicial rebuke.