

**THREE VIEWS OF PROPERTY TAX LITIGATION:
THE ASSESSOR, THE EXPERT WITNESS, AND THE ATTORNEY
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I. THE ASSESSOR

A. Property Litigation From the Assessor's Perspective

1. Necessary & Important Process in the Fair & Equitable Administration of the Local Property Tax
 - a. The taxpayer must always have an avenue for relief
 - b. Checks and Balances
 - c. Appraisal is after all an opinion of value
 - d. Assessors don't always get it right [Expert Perspective 1]
 - e. Assessors don't always get it wrong [Expert Perspective 2]
 - f. "If you've never been sued, you are probably not doing your job correctly!"
2. Burden of Proof
 - a. The burden of proof is always on the taxpayer.
 - b. Why? (Discussion Point)
 - c. Municipalities need stability and predictability in their budgets
 - d. Do the courts in your jurisdiction uphold the burden of proof requirement? (Discussion Point)
3. What proof must the taxpayer present to prove they have been aggrieved?
 - a. Do the courts require the taxpayer to obtain an appraisal?
 - b. Does the state accept a value margin?
 - (i) Example: New Jersey – value within 15% of municipal appraisal is not aggrieved.
4. Illegality – not all tax appeals are related to value.
 - a. Has the assessor violated state law?
 - b. Exemptions [Expert Perspective 3]
 - c. Agricultural programs
 - d. Filing deadlines and penalties

B. The Responsibility of Preserving and Protecting the Taxable Base

1. Every reduction in the taxable base is absorbed by all other taxpayers in Town preventing unnecessary or unwarranted reductions
2. Pressure from local government
 - a. Who is the decision making authority?
 - (i) The assessor

- (ii) Governing body of municipality
- 3. Credibility & Communication – can the Assessor successfully present and communicate their value to those who are not appraisers (i.e. the judge) or appraisal experts? [[Expert Perspective 4](#)]
- C. Establishing Case Law- the Good, the Bad & the Ugly [[Expert Perspective 5](#)]**
 - 1. *Hartford HealthCare vs. Town of Stonington*
 - 2. *St. Joseph's vs. Town of Windham*
 - a. Became the benchmark in Connecticut for determining charitable use
 - 3. *Nutmeg Housing vs. Town of Colchester*: the ability to value LIHTC
 - 4. Do you work for a municipality that would support fighting a decision that could create negative case law?
 - 5. Can the municipality afford the fight? (i.e *Pfizer vs. Town of Groton*)
 - 6. Does the municipality have a strong case?
- D. The Lucrative Industry of Property Tax Appeals- Connecticut a Case Study**
 - 1. What happens when courts do not uphold the burden of proof? [[Expert Perspective 6](#)]
 - 2. Town's valuation is an appraisal
 - 3. Courts requiring Town's to obtain an additional outside appraisal
 - 4. No requirement for the taxpayer to prove value until 2022 (legislation finally passed to require the taxpayer obtain an appraisal)
 - 5. Can attorneys work on a contingency fee basis for property tax appeals in your jurisdiction?
 - 6. Companies making public records requests for a jurisdiction's values
 - 7. Mass Mailing that promises a guaranteed reduction at no cost to the taxpayer
 - 8. What happens when property tax appeals flood a judicial system that can't support it? [[Expert Perspective 7](#)]
 - 9. What happens when property tax appeals flood a city to the point they can't afford to litigate? (i.e Hartford Revaluation Example) [[Expert Perspective 8](#)]
 - 10. How do you handle a judge trying to force a settlement?

II. THE EXPERT WITNESS

- A. Municipalities desire fair and equitable assessments.**
 - 1. Hiring experts does not typically occur unless:
 - a. Assessors believe the assessments are not excessive or
 - b. Municipalities understand that the assessment may be excessive and wish to establish a value prior to negotiation or settlement. An expert must provide a credible value opinion, even if that

amount is closer to, equal to or even less than the taxpayer's opinion of value. Yes, this can occur.

2. An assessor's value may "be correct or reasonable" but the methodology to support the value opinion may not be.
 - a. Example #1: a property valued at \$10,000,000 based on 100,000 SF @ \$100 PSF. The property actually contains 125,000 SF.
 - b. Example #2: an assessor's value may have been established based on "mass appraisal" techniques, with a reasonable and credible result using a single valuation approach such as Cost or Income. The expert's single-appraisal's primary approach is Sales Comparison. Both the assessor and expert opinions can be reasonable and credible.
3. While the taxpayer may assert a value of 50% of the assessment (rounded for simplicity) an exemption case implies an assessment of 0% of the assessor's opinion. The financial delta (loss or gain) to the municipality in this example is double. This is a significant variable.
4. Building on the assessor perspective, it is appropriate for the attorney (advocate) to weigh the potential testimony of all people that may testify at trial (assessor, municipal expert(s), taxpayer expert(s), taxpayer, etc.) as well as foundational evidence (ex. building costs, building permits, acquisition documents, leasing documents, financing appraisals, etc.).
 - a. Can the presentation of foundational documents survive taxpayer objections?
 - b. What are the anticipated key issues likely to be presented at trial? Should more than one expert be engaged (ex. appraisal, review, rebuttal)?
5. Assessors should understand their state statutes. In Wisconsin, for example:
 - a. Assessments must be based on the best information that can be practicably obtained.
 - b. Boards of Review can issue subpoenas.
 - c. Tier 3 factors: "Finally, when both tier 1 and tier 2 are unavailable, an assessor moves to tier 3, under which the assessor may consider all the factors collectively that have a bearing on the value of the property. Id., ¶26. These factors include cost, depreciation, replacement value, income, industrial conditions, location and occupancy, sales of like property, book value, amount of insurance carried, value asserted in a prospectus, and appraisals produced by the owner." *Lowe's Home Centers, LLC v. City of Delavan*, 2023 WI 8 ¶30

A trier of fact can only decide based on the evidence presented. If a municipality does not subpoena and present evidence, the trier of fact will not hear it.

6. Ad hoc discussion is anticipated based on dovetailing expert experience regarding the issues cited in the assessor's presentation.
7. Be prepared. Always. Anticipate appeals. Expert testimony is only presented once (rare exceptions such as remand, excluded).
8. This is actually just an observational perspective: It seems that delay, by appealing multiple years and consolidating (or not), can increase the risk to municipalities as:
 - a. the monetary risk of losing in court escalates,
 - b. interest costs increase over time and (c) any reserve mechanisms funding appeals and potential loss may become materially insufficient if a loss occurs. An audience question is if there are statutory examples of best practices?
9. Things go wrong. Life proceeds. Early in my career I ran a mass appraisal job for a "re-revaluation" of 10,400 parcels where my employer at the time was under threat of litigation. The negotiated solution was to bring in new management and staff to complete the contract per the agreed terms (i.e., correctly), thus avoiding the risk of escalating damages to taxpayers, the municipality, and the revaluation contractor.

III. THE ATTORNEY

A. What standard of value is at issue?

1. *Ad valorem* taxation (fair cash/market value)
In Illinois, for example, the Illinois Supreme Court announced that "Fair cash value is synonymous with fair market value and, as such, an arm's-length sales transaction is the best evidence thereof." *Walsh v. Property Tax Appeal Board*, 692 N.E.2d 260, 181 Ill.2d 228 (1998).
2. Determining fair market value
 - a. Cost approach – "...the reproduction or replacement cost method which focuses on what it would cost to recreate real property with the same value[.]" *Willow Hill Grain, Inc. v. Property Tax Appeal Board*, 549 N.E.2d 591, 596, 187 Ill. App. 3d 9, 14 (5th Dist. 1989)
 - b. Sales comparison approach – "...the comparison or market approach ... focuses on sales of comparable property[.]" *Id.*
 - c. Income capitalization approach – "...the income approach ...is used when the property is most valuable as rental property[.]" *Id.*

3. Methods of valuation
 - a. 3 approaches vs. uniformity
Uniformity – “[C]ounties ... may classify ... real property for purposes of taxation ... [A]ssessments shall be uniform within each class.” ILLINOIS CONSTITUTION, ART. IX, §4(b)
 - b. Mass appraisal
 - c. Classifications of property
 - d. Valuations by class (e.g., farm, residential, industrial, commercial, etc.)

B. What appeals processes are available in your jurisdiction?

1. Assessor appeals
2. Board of Review Appeals
3. Property Tax Appeals Board
4. Trial court
5. Know any applicable assessment policies utilized
6. Know the procedural and evidentiary filing rules at each level

C. Who needs to be prepared?

1. The Assessor
2. Assessor’s staff witnesses
 - a. As assessor’s witness
 - b. As property owner’s witness
3. The taxpayer or owner
4. The taxpayer’s appraiser
5. The taxing body: what standing do they have?

D. Preparing the Assessor

1. Having the talk.
 - a. “Will they depose me?!?”
 - (i) Apex official doctrine
 - (1) *Dept. of Agr. And Consumer Services v. Broward Cnty.*, 810 So. 2d 1056 (Fla. 1st DCA 2002)
 - (2) *Crown Central Petroleum Corp. v. Garcia*, 904 S.W. 2d 125 (Tx. 1995)
 - b. Should the case go to trial?
 - (i). If your case was as great as you think it is, the other side would have dropped it already.
 - (ii) Play the devil’s advocate – argue the other side of the case.
 - (iii) Try to anticipate every possible argument that could be made on the issues, evidence, etc.
 - (iv) Sometimes it’s a game of chicken.

- c. Is there an issue that is likely to arise continuously or an important theory that your client would like to test?
- d. Tilting at windmills.
 - (i) Exotic theories
 - (ii) Sympathetic facts
 - (iii) Politics
- e. Who are your witnesses?
- f. Who's the judge?

2. Managing expectations.

- a. Results
 - (i) What are the expectations?
 - (1) Can the appraisal be supported?
 - (2) How has trier of fact typically ruled in similar situations?
 - (3) Is there case law that applies to the facts?
- b. Costs
 - (i) Time prepping
 - (ii) Experts and Attorneys
 - (iii) Cost/benefit analysis
 - (iv) Is it worth it?
 - (v) Costs if you lose. (Banish the thought!)
 - (1) Budget
 - (2) Avoidance/delay – even if you do lose.
 - (a-1) Agreeing not to appeal
 - (b-1) Appeal
- 3. Authority to settle?
- 4. Time-frames
- 5. Strategies/positions
 - a. Legal strategies
 - b. Philosophical positions
 - (1) Fair and equitable

E. Witnesses

- 1. Staff member as witness for the Assessor
 - a. Choice of witness
 - (i) Choices
 - (1) Person most familiar
 - (2) Head of department
 - (3) You don't get to choose their witness!!
 - (ii) Familiarity with the facts
 - (1) Can valuation be supported?
 - (2) Is the file ready for review?
 - (3) Does it support the valuation?

- (iii) Appraisal knowledge
 - (1) Does the witness have sufficient knowledge and experience?
 - (2) Can witness clearly convey his or her knowledge and experience?
- (iv) Demeanor
 - (1) Does witness present self as professional?
 - (2) Is witness credible?
- (v) Motivation

2. Taxpayer's Appraiser

- a. Familiarity with the facts
 - (i) Can valuation be supported?
 - (ii) Is the file ready for review?
 - (iii) Does it support the valuation?
- b. Appraisal knowledge
 - (i) Does the appraiser have sufficient knowledge and experience?
 - (ii) Can the appraiser clearly convey his or her knowledge and experience?
 - (iv) Did the appraisal meet USPAP standards?
- c. Demeanor
 - (i) Does the appraiser present as professional?
 - (ii) Is the appraiser credible?
- d. Motivation

3. Witness Preparation timetable.

- a. Deposition.
 - (i) What to expect
 - (ii) How to present self
 - (iii) How to respond to questions
- b. Proximity to trial
- c. Balancing other duties