INTERNATIONAL ASSOCIATION OF ASSESSING OFFICERS ANNUAL LEGAL SEMINAR
"Property Taxation and the Law: Challenges and Solutions"
"Cases of Note in Your Jurisdictions": Discussion Outline
(Phoenix, Arizona—December 11, 2025)
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PROCEDURAL

Alabama

Scott v. Alabama Department of Revenue, Docket No. SC02025-0013 (Justice Sellers, June 13, 2025), https://law.justia.com/cases/alabama/supreme-court/2025/sc-2025-0339.html.

Facts: Agent for the owners of 176 parcels of real property filed a notice of appeal to the circuit court challenging decisions of the county board of equalization. The Department of Revenue, County, and Board was granted dismissal by the circuit court on the grounds that the taxpayer "was improperly attempting to aggregate 176 separate and distinct parcels of property into one lawsuit" instead of each one proceeding in a "separately filed lawsuit accompanied by the appropriate filing fee."

Issue: The jurisdictional statute provides that if "such objections have been overruled by the Board such taxpayer, his agent or attorney may take an appeal from the action of the board in overruling his objection to such valuation to the circuit court of the county in which the taxpayer's property is located." The government parties argued that the phrases " 'any taxpayer and 'any property' means that an individual taxpayer may appeal the valuation of only a single property at a time".

Decision: The Court unanimously reversed. The statute does not require separate filings.

- In statutory construction, words must be given their natural, ordinary, and commonly understood meaning and every word is meaningful.
  - ✓ The word "any" means "one, some, or all indiscriminately of whatever quantity". It covers "multiple parcels of property which is reflected in the use of the plural 'objections' ".
  - ✓ "By using 'any property' and 'objections' which connote multiple properties and objections, and then using the singular appeal, the Legislature intended an appeal to the circuit court to be capable of encapsulating multiple challenges to assessments made by the Board."
- The "consolidating challenges" is consistent with Alabama civil procedure encouraging "liberal joinder" and "facilitating judicial economy".
  - ✓ Multiple disputes may be brought in a single action in circuit court.

- ✓ "Judicial efficiency in legal proceedings should be utilized to reach finality in an expeditious manner."
- ✓ "However, the complexity of the issues, by itself, does not mean that the issues should be severed and dealt with in multiple trials."
- ✓ "Absent a showing of inconvenience or prejudice, multiple issues between the same parties should be tried together".
- ✓ The court "can rule on the formula for the means and method of determining legal valuation, and that formula can be used to assess all the contested parcels, creating a uniform system of appraisal".

Arizona

Sheely v. Maricopa County, Docket No. TX 2021-00409 (Arizona Tax Court, April 21, 2025), https://superiorcourt.maricipa.gov/media/wvref1/tx2021-000409-2.pdf.

Facts: The undisputed facts established for over 10 years two parcels of 49 acres have been used for "recreational purposes such as a sports field, a corn maze, and a haunted house" as well as for the "agricultural purposes of growing hay during the off season."

Issues: While both sides agreed that Arizona law requires valuation based upon the current use, the Taxpayer alleged the current use was "recreation purposes" and County "contends that the current use of the property is an interim use unto it is developed." Cross motions for summary judgment were filed.

Further, the Taxpayer moved to exclude the County's appraisal because it valued the parcels "according to its highest and best use for mixed use development and not based on its current use" as the "current use. . . was to hold for investment. The County moved to exclude Taxpayer's because the "sales approach was not competent and unreliable", based on "data obtained from agricultural properties on the assumption that [it] would receive agricultural classification" and the income approach was a "business valuation".

Decision: Summary judgment for Taxpayer: "the current use is fields for recreation." Motion to exclude the County appraisal granted: failed to appraise the property "based on its current use as fields for recreation purposes." Motion to exclude Taxpayer's report denied: "Alleged flaws in the application of a reliable methodology should not result in exclusion unless they so infect the procedure as to make the results unreliable." "Moreover, cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional appropriate means of attacking shaky but admissible [expert] evidence."

Florida

Monroe County v. Sunset Gardens Estate Land Trust 2/10/2014, 2025 Fla. App. LEXIS 2039, 2025 LX 87017, 50 Fla. L. Weekly D 606, 2025 WL 779222 (Fla. Court of Appeals, Third District, March 12, 2025), https://law.justia.com/cases/florida/third-district-court-of-appeal/2025/3d23-1368.html

Facts: In 2014, Taxpayer acquired the property, designated as environmentally sensitive land and then classified as vacant residential, for conversion to agricultural uses, for which it was not zoned. The new intended uses included beekeeping, growing pineapples and nursery plants, raising chickens and goats for egg, milk and goat soap production, and operating a farm market and winery, and hosting tours, weddings, and events. Taxpayer alleged that various state statutes preempted the County "Comprehensive Plan and Land Development Code" and some 35 local regulations. Ultimately, the parties agreed to a comprehensive "Restoration and Replanting Plan" prepared and overseen by the county biologist and stipulation. Nonetheless, upon completion, the County refused to undertake a final compliance inspection and imposed a $200/day fine for failure to obtain a permit.

The parties filed complaints and counterclaims for declaratory and injunctive relief. While the trial court ruled in favor of preemption it failed to identify which regulations were so impacted. Yet, it still granted summary judgment to the Taxpayer finding that it had complied with the plan and the County had breached the stipulation, negating the fine.

Issue: Of the various issues raised, the only one we discuss relates to the enforceability of the plan and stipulation.

Decision: Taxpayer complied with the Plan and the County violated the Stipulation.

- The County had the authority to prohibit clearing and developing environmentally sensitive land when it was classified as residential and not zoned agricultural.
- The taxpayer did not contest the violation notice and entered into the stipulation.
- The parties agreed to the Comprehensive Plan.
- The requirement of an after-the-fact permit was "illogical" when the Stipulation already provided that Taxpayer "follow a written, detailed Restoration Plan prepared by the [County] Biologist."
- "Because Sunset complied with the Stipulation, we affirm the trial court's determination that the County is not entitled to collect the $200 per day fine.

Rogers v. Zingale, Docket No. ID2022-3549, 2024 Fla. App LEXIS 9908 (Florida Court of Appeals, First District, December 23, 2024), https://caselaw.findlaw.com/court/fl-district-court-of-appeal116806418.html

Facts: In 1996, Taxpayers filed for, and received, a homestead property tax exemption on their residential property which remained continuously in effect for 20 years. On June 30, 2017, the County Property Appraiser sent notice disapproving the exemption, alleging that the home was no longer their "permanent residence", having "abandoned" it upon rental. Claiming the notice was invalid, the County responded by letter dated July 13 that the adverse action had resulted from an "anonymous tip" and subsequent "investigation.

Issue: There are two exemption notice statutes. The first provides "as soon as practical after March 1 of each current year and on or before July 1" when it is determined that a taxpayer is not entitled to the exemption, the property appraiser "shall immediately make out a notice of such disapproval, giving his or her reasons therefor" to be served "either by personal delivery or by registered mail". The second adds further requirements: If the property is not entitled "wholly or partially" or "to an extent other than that requested" notice in writing must be provided "on or before July 1". The "notification must state in clear and unambiguous language the specific requirements of the statute. . . relied upon to deny the application". It must include "specific facts" justifying the denial. Failure to comply renders "an attempted denial . . . invalid.

Decision: Summary judgment granted to the taxpayers. The denial was legally invalid.

- The notice provisions apply to "any property" and "broadly apply".
- There is nothing "carving out homestead exemptions" from the notice rules.
  - ✓ Mere checking boxes and citing statutes was insufficient.
  - ✓ The June 30 denial "failed to provide specific investigative facts".
  - ✓ The July 13 letter "missed the July 1 deadline".
  - ✓ The Trial court failed to explain its finding that the notice was compliant.

Kansas

Freestyle Electric Cooperative, Inc, et al. v. Kansas Department of Revision, Division of Property Valuation, 319 Kan. 377, 555 P.3d 220 (Kansas Supreme Court 2024), https://law.justia.com/cases/kansas/supreme-court/2024/126642.html: The scope of judicial review and improper district court extension of jurisdiction over statutory claims.

Facts: Eight state-assessed non-profit rural electric cooperative corporations that distribute electricity within their respective service areas to retail consumers (their member-owners), within their respective service areas sought judicial review after the Board of Tax Appeals administratively denied their constitutional and statutory property tax valuation challenges for 2019 and 2020, even though it found the state methodology was "flawed and incomplete", resulting "in unit valuations that were unsupported by evidence and were otherwise unreasonable." Taxpayers elected to go to district court for

a trial *de novo* under a statute that permits "an evidentiary hearing at which issues of law and fact shall be determined anew". The court agreed with the cooperatives, concluding the valuation methodology used by the Department of Revenue's Property Valuation violated a law requiring "generally accepted appraisal procedures" when valuing public utilities". The state (PVD) appealed, arguing the district court exceeded its scope of review because the statutory compliance question was not litigated first with BOTA. Another statute limits judicial review to issues arising from administrative agency action.

Issue: Did the District Court exceed its authority in its scope of review? Held: Yes.

Supreme Court decision: Reversed. The District Court improperly extended its judicial review authority and jurisdiction over statutory claims not litigated before the BOTA.

- A judicial review proceeding traditionally "confined the court's ability to consider new issues not asserted first with the agency" under the principle of exhaustion of administrative remedies.
- Amendments to the statute in 2014 and 2016 now provide that "the trial *de novo* shall include an evidentiary hearing at which issues of law and fact shall be determined anew."
- "It is the duty of BOTA . . . to exercise its judgment anew based on the evidence presented to it . . . without giving deference to the PVD's valuation."
- On judicial review, "The district court reviews issues decided by BOTA or issues raised but not decided by BOTA. In either case, [the statute] requires a party to first raise an issue with BOTA, so it can either act or fail to act. Otherwise, nothing exists for a district court to review."
    - ✓ "This view is supported by the core notion that an "appeal" seeks a higher authority to reconsider the issue. . . [i.e.] as a 'proceeding undertaken to have a decision reconsidered by a higher authority . . . reinforced by [the statute's] reference to the district court's role as determining issues of law and fact 'anew,' which has a common understanding of "once more." . . . ("over again; once more; afresh")
    - ✓ "We hold the trial *de novo* provision does not authorize a district court to expand its scope of judicial review barring an exception specified by law."
    - ✓ "But there is more said in BOTA's decision that the district court did not account for."
        - ➢ The obvious question is why would BOTA so precisely describe the [taxpayers'] allegation only as constitutional, if statutory compliance . . . was also in play?" "This conspicuous clash with the district court's stated justification for taking up the statutory methodology argument is too glaring to be ignored."
        - ➢ "Similarly, the district court overlooks that the whole BOTA decision describes and applies [the constitutional issue] while

supposedly taking just a single sentence to dismiss a statutory issue involving PVD's complex methodology for arriving at fair market value."

- "This dearth of fact-finding from BOTA would be odd, at best, since fair market value disputes typically generate substantial factual and legal battles."
- "The district court also avoids the [taxpayers'] own description of their administrative appeal to BOTA that did not mention [the statute] or even generally claim a statutory compliance problem. Instead, they stated the 'basis' of their agency appeal in terms of a violation of 'the uniform and equal standard,' which is decidedly a constitutional framing. Again, such statements cry out for reconciliation before embarking on the district court's desired analytical path."
- "Even worse, the district court gives no indication it considered the entire agency record before extending its judicial authority over the statutory claim."
- The BOTA hearing transcript "shows the witnesses discussed a single question—Did PVD's treatment of MSA credits violate the state Constitution?"
- "Based on the record, BOTA's isolated statement that the district court found so decisive—'the Taxpayers presented no evidence persuading the Board that the instant RECs were not appraised at their respective fair market value'—merely says neither party contested the income approach's validity. Accordingly, we conclude [taxpayers] advanced a single constitutional claim of 'uniform and equal' treatment".

Missouri

Northern Lights Properties LLC v. Zimmerman, Appeal Nos. 21-17015, 21-17016, 21-17017, and 21-17018 (Missouri State Tax Commission, Senior Hearing Officer Wilson), https://stc.mo.gov. (recent legal decisions, right side). The companion case follows.

Facts: Complainants brought four residential property appeals alleging overvaluation and discrimination (or "ratio discrimination"), originally withdrawing the latter claim, only to then move to reinstate it. Since Commission had yet to rule on the motion, the Hearing Officer granted it. Complainants argued the local Assessor had, in fact, properly valued the properly. The Board of Equalization (BOE) initially agreed but then raised the values by 14-18%, "without evidence and without setting forth a written finding of fact".

Decision: The taxpayers failed meet their burden of proof to establish that the properties were overvalued by "substantial and persuasive evidence" or so "grossly excessive" as to be discriminatory. BOE was not required to produce evidence in support of its decision.

- "All the members of the BOE are real estate professionals, either brokers or appraisers; and all have access to the MLS and other resources commonly used by real estate professionals to value property."
- The Commission has "wide discretion".
  - ✓ Its Hearing Officer "is the finder of fact and determines the credibility and weight of the evidence".
  - ✓ "It is within the purview of the hearing officer to determine the method of valuation to be adopted in a given case" and "may inquire of the property owner or of any other party to the appeal regarding any matter or issues relevant to the valuation".
- BOE value is "presumptively correct" and the taxpayer must rebut it by proving "what value should have been placed on the property" with evidence that is both
  - ✓ "substantial" --- "has probative force upon the issues, and from which the trier of fact can reasonably decide the case on the fact issues" and
  - ✓ "persuasive" --- "has sufficient weight and probative value to convince the trier of fact".
  - ✓ The taxpayer has the "burden or persuasion" --- the "duty to convince the factfinder to view the facts in a way that favors that party". "A taxpayer does not meet his burden if evidence on any essential element of his case leaves the STC 'in the nebulous twilight of speculation, conjecture and surmise'."
- On the overvaluation claim, Taxpayers' 79 exhibits "consisted of sales data, research, recordings of BOE hearings and property record cards." They offered no
  - ✓ analysis of the data
  - ✓ opinion of value based on any of the three recognized approaches to value
  - ✓ testimony of an expert.
- Discrimination may be "intentional or unintentional". It must be proven by
  - ✓ establishing the fair market value of the subject, and
  - ✓ "that their property was assessed at a greater percentage of FMV than the common assessment level generally applicable to similar properties" to such an extent as to make it "grossly excessive".
- Taxpayer's "discrimination claim was an allegation the BOE increased values of these properties only because their values were appealed."
  - ✓ "There was no testimony or other evidence that these were the only residential properties in St. Louis County for the BOE raised" in 2021.
  - ✓ "Complainant did not prove discrimination by substantial and persuasive evidence."

MBR Cross Keys, LLC et al. Zimmerman, Appeal Nos. 21-16970 et al. (Missouri State Tax Commission, Senior Hearing Officer Wilson), https://stc.mo.gov. (recent legal decisions, right side) The 253 dockets are listed at the end of the opinion at pp. 10-15.

Facts: Complainants brought 253 commercial property appeals alleging overvaluation and discrimination (or "ratio discrimination"). In 193 cases, the BOE entered no change in the Assessor's valuation. However, in 59 cases it lowered 25 assessments—about 2 to 5 %; in 12, 5-8%; in 8, 8-12%; in another 8, 12-15%; in 2, 16-17% and in 1 case each about 31%, 33%, 40%, and 46%. But it raised one assessment. The Complainant argued the local Assessor had, in fact, properly valued the properly. BOR initially agreed but then increased the value 36.4% "without evidence and without setting forth a written finding of fact".

Decision: On the overvaluation claim, Taxpayers' 69 exhibits "consisted of sales data, research, recordings of BOE hearings and property record cards." The Commission affirmed the BOE results in each case employing the identical language and analysis as in the companion case above.

New York

1186 Broadway Tenant LLC. V. Tax Commission of the City of New York and Commissioner of Finance of the City of New York, Index No. 250911/2020 (Judge Sattler, Supreme Court of New York, March 15, 2024), https://law.justia.com/cases/new-york/other-courts/2024/2024-ny-slip-op-30903-u.html

Facts: Taxpayer is the net lessee of two Manhattan properties consisting of a five-story apartment building and the twelve-story Ace Hotel, subject to a 2015 mortgage which was modified in 2020 and 2021 reflecting a loan of $95.2 million. The tax years in question 2020/21. The taxing authorities moved for disclosure of "third-party appraisals and supporting documentation or, in the alternative, for leave to issue a subpoena for these documents."

Position of the parties:

- New York Commission and Finance Commissioner
  - ✓ The appraisals are "material and necessary" with "unbiased information".
  - ✓ Given the mortgage loan, the alleged NOI of $700,000 is "inaccurate".
  - ✓ Disclosure of reports "not prepared in anticipation of litigation" may be "useful in accomplishing the objective of finding . . . true value."
  - ✓ The lender appraisals "will help determine whether [they] should be valued separately or as one unit" and may provide pre-pandemic photos.
- The taxpayer objected.

- ✓ The reports are "not material and necessary".
- ✓ They represent "unrelated party's inadmissible opinion of value".
- ✓ Both sides have the right to submit their own expert appraisal reports.

Decision: Motion to Compel Production is denied.

- Under the controlling rules, the trial court has "broad discretion on granting or denying" discovery and disclosure requests.
- Whether potential evidence is "material and necessary" is determined by whether such information "will assist preparation for trial by sharpening the issues and reducing delay and prolixity. The test is one of usefulness and reason."
- Property valuation is decided "by its state as of the taxable date" and courts should deny disclosure that is "at best marginally relevant to valuation".
- Here, the lender appraisals were prepared in connection to mortgage financing, a different purpose that the appraisals which will be prepared in this proceeding" and rest upon "speculation that it may lead to the discovery of otherwise inaccessible evidence, such as pre-pandemic photographs".

Oregon

5 SE. MLK Blvd. LLC v. Multnomah Cnty. Assessor, Docket No. TC-MD-240415N, 2024 Ore. Tax LEXIS 72, 2024 WL 4891637 (Oregon Tax Court, Magistrate Div, November 26, 2024), https://www.courts.oregon,gov/publications/tax/pages/taxmagistrate.aspx.

Facts: Subject property is a mixed-use building containing 220 apartments, 118,334 sq. ft. of office space, and 14,434 sq. ft. of ground floor retail space constructed in 2020. The County filed a Motion to Compel Production of an October 2021 appraisal "to provide [it] with useful information of an independent opinion of value, including relevant and helpful metrics that [it] can compare, and in some instances, potentially incorporate into its own valuation should it be appropriate."

Positions of the parties:

- Taxpayer—The report is irrelevant.
  - ✓ Its intended purpose was "loan underwriting".
  - ✓ It was a "leased fee" analysis.
  - ✓ The appraisal date was August 25, 2021 and the assessment date was January 1, 2023.
  - ✓ The report "relied on several assumption about market conditions that have not borne out."
- County countered that it "meets the general standard for civil discovery".
  - ✓ It is "reasonably calculated to lead to discovery of admissible evidence."
  - ✓ Some data "could be helpful in the fee simple" analysis.

- ✓ The "leases are both arms-length and short term, so they are more likely to reflect the market."
- ✓ Even given change in market conditions, "some data could still be usefulm

Decision: Motion to Compel Production is granted.

- Issues relating to potential probative value cannot bar submission.
- The taxpayer's objection go to weight and not relevance or admissibility.
- Possible USPAP violation of confidentiality between appraiser and lender is not binding on the Court. Any concerns can later be addressed by a protective order.

Texas

WPG Rockaway Commons, LLC v. Rockaway Township Tax Collector (In re Washington Prime Group, Inc., Case No. 21-31948, Chapter 11, Adversary No. 22-3317, 2024 Bankruptcy LEXIS 2632, 2024 WL 4615552 (U.S. Bankruptcy Court, S.D. Texas, Houston Division, October 29, 2024), https://case.law.vlex.com/vid/wpg-rockaway-commons-llc-1056106082: providing a roadmap and guidance for addressing litigation issues.

Facts: National retail real estate development and management company with a portfolio of shopping centers across the United States produced some 804 documents, consisting of 9,640 pages, during discovery. Ultimately, allegedly 2,549 pages (26%) should have been protected from discovery, being privileged and confidential under various attorney-client, work product, and inadvertent or mistaken release arguments. Counter-arguments included: attorney or subject matter waiver or voluntary disclosure, failure to timely object to, demand "claw back", modify or amend jointly filed pre-trial statements, not seeking protective orders.

The Court issued a detailed nineteen-page opinion analyzing the questions in this dispute which we do not specifically consider here.

Particular key issues: Whether certain restricted appraisal reports and draft restricted reports were privileged. Whether an expert witness should be excluded.

Significance of the Decision: The Court, *inter alia*, discussed these principles:

- The difference between a testifying expert (valuation) and a consulting expert (guidance, litigation strategy, and settlement posture).
- Five-factor test for attorney-client, work product, and inadvertent disclosure:
  - ✓ Reasonableness of precautions
  - ✓ Time taken to remedy alleged errors
  - ✓ Scope of discovery
  - ✓ Extent of disclosures
  - ✓ Fundamental fairness

- Scope and application of Federal Rule of Civil Procedure 702 and *Daubert v. Merrill Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), to expert testimony.
  - ✓ "Gatekeeping" role—*Daubert* and progeny indicate the Court may to into account various factors.
    - ➢ Testing of the theory
    - ➢ Peer review and publication
    - ➢ Error rate
    - ➢ Standards and control
    - ➢ Level of general acceptance in the scientific community
  - ✓ "Reliable and relevant" standards
  - ✓ "Whether the reasoning and methodology underlying the testimony is scientifically valid".
  - ✓ "Whether the reasoning and methodology can be property applied to the facts in issue, *i.e*. whether it is relevant."
  - ✓ **Note**: U.S. jurisdictions are divided on the applicability of *Daubert*. Be sure to check locally for nuances, hybrids, unique formulations, and the like. [This is not discussed in the decision but added here for consideration.]
    - ➢ All federal courts and most states appear to have generally adopted it: AL, AR, AZ, CT, DE, DC, FL, GA, KS, KY, LA, MA, MD, MT, MS, MO, NE, NH, NC, OH, OK, RI, SD, TN, TX, VT, WI, WY.
    - ➢ Other states appear to have adopted a modified version: AK, CO, HA, IN, IA, MT, NM, VT, WV.
    - ➢ NJ has used *Daubert* in civil cases and *Frye* in criminal cases.
    - ➢ A few still adhere to the older standard of *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923) ("generally accepted in significant portion of the scientific community"): CA, IL, MN, NY, PA, WA.
- The expertise of the witness goes to weight and credibility and not admissibility.
- Impact of USPAP and Advisory Opinions on reliability of expert testimony.

Utah

Taxpayer v. Board of Equalization of County-1, State of Utah, Appeal No. 20-823 (Utah State Tax Commission, Apr. 2, 2025),http://tax.utah.gov/commission_office/decisions (Redacted decision. Search name, docket, date)

Facts: Taxpayers' representative rather clumsily requested the transfer of all of its remaining pending 2014-2025 cases from the Tax Commission to "such Court that is in constitutional compliance" with the recent decision of the U.S. Supreme Court that "interagency panels, boards, appointed parties or individuals are not proper for administering or enforcing their own interpretation of specific laws to that agency or

departments". Presumably, he was referring to *Loper Bight Enterprises v. Raimondo*, 603 U.S. 369 (2024), which overturned the administrative agency deference rule of *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984).

Features of the Utah Administrative Procedures Act:

- Judicial review of final administrative actions
- Exhaustion of administrative remedies, except that a court may excuse if
  - ✓ such remedies are "inadequate"; or
  - ✓ exhaustion causes "irreparable harm disproportionate to public benefit".
  - ✓ A party has not exhausted remedies unless
    - ➢ It timely requests a formal hearing and
    - ➢ The commission has issued a final unappealable order.
- 30-day filing period after final agency action
- County countered that it "meets the general standard for civil discovery".
- Appeal from a Commission decision:
  - ✓ Access to the various levels or courts must meet special criteria.
  - ✓ District Court review is *de novo*.
  - ✓ Appellate and Supreme Court review shall grant the Commission
    - ➢ "deference concerning its written findings of fact, applying a substantial evidence standard of review"; and
    - ➢ "no deference concerning its conclusions of law, applying a correction of error standard, unless there is an explicit grant of discretion contained in a statute".

Decision: Motion is denied. A formal hearing will proceed on the scheduled date.

- *Loper Bright* "held that courts are no longer required to defer to [federal] agency interpretations, and would exercise their independent judgment in determining whether an agency acted within its statutory authority."
- The impact that decision may have on state court review of state agency decisions is "unclear".
- The Utah Code already forecloses Appellate and Supreme court deference on conclusions of law and district court trials are *de novo*.
- *Loper Bright* "addresses judicial deference to agency interpretations, and does not support the argument that matters under administrative review should be transferred to a court for judicial review prior to exhaustion of administrative review."

Walmart Real Estate Business Trust et al. v. Tax Commission, et al., 566 P.3d 796, 2025 UT App. 28, 2025 Utah App. LEXIS 32, 2025 LX 53295 (Utah Court of Appeals, March 6, 2025).

Facts: The West Valley City Walmart Supercenter, South Jordan Walmart Supercenter, and South Jordan Sam's Club, all located within Salt Lake City, appealed their assessments for tax year 2016, for which the County set their fair market valuations at $18,183,100, $20,296,400, and $13,183,100 respectively.

- Taxpayer appraiser: $ 12,100,000, $15,300,000, and $11,400,000.
- County appraiser: $23,260,000, $26,000,000, and $15,000,00.
- Tax Commission: $18,555,000, $19,545,000, and $13,373,000.

Both parties filed for district de novo judicial review before a specialized tax judge. Both expert witnesses testified in the district court to values very substantially similar, but exactly the same to those advanced before the Tax Commission, explaining their reasons.

- Taxpayer appraiser: $12,400,000, $15,100,000, and $11,300,000.
- County appraiser: $22,200,000, $24,600,000, and $16,000,00.

District Court decision:

- The role of the court on judicial review and understanding of *de novo*:
  - ✓ It was "to consider the competing appraisals" and "weigh those appraisals against other valuations that have been made in the case, including the Tax Commission's valuation and the . . . property assessor's valuations".
  - ✓ It must undertake "an independent analysis".
  - ✓ The Court may issue a decision "affirming, modifying or remanding the Tax Commissions conclusions".
  - ✓ It took "judicial notice" that the Tax Commissions documents "were part of the record before the Tax Commission, and make them part of this record, and only for the limited purposes that this court may review them in the context of making a final decision in this matter" and "not intending to give anything in that record any greater weight than anything else."
    - ➢ The Court "must make a new and independent assessment of property value without relying on or deferring to previous Commission assessments,"
    - ➢ The Court had the obligation of "considering the evidence as a whole" and not by "giving deference to" the Tax Commission's decision.
  - ✓ The parties "each bore a burden to show by a preponderance of the evidence that its proposed valuation is more accurate than any other value"; Commission's valuation was "another value that the court must consider when determining whether either party has met its burden."

- **Findings:**
  - ✓ The Court was "not convinced that either party's valuation was particularly persuasive,"

- Taxpayer: "significantly undervalued the properties" by reliance on sales of vacant properties to second-generation users" and an unwillingness "to consider that the highest and best use of these properties might actually be as supercenters . . . and a warehouse club".
- County: "significantly overvalued" due to a 'stubborn insistence on understating the depreciation/obsolescence factor", thus "lending credence to the criticism that he appeared to be valuing the properties in connection with their value to Walmart alone."
- Both parties had successfully demonstrated the weaknesses in the opposing side's evidence but had not shown that their values were "more correct" than that of the Tax Commission.

✓ The preponderance of the evidence established that the method employed by the Tax Commission led to the "most accurate valuation".

- Making a minor upward adjustment for square footage to the South Jordan Walmart Supercenter, the Court used the Tax Commission's methodology and concluded values of $18,555,000, $19,932,000, and $13,373,000 respectively.

The Taxpayers appealed arguing that the District Court had failed to properly conduct a *de novo* review and had applied an incorrect definition of "fair market value". We confine our inquiry here solely to the first.

Issue: By "ultimately largely agreeing with the Tax Commission's values" did the District Court fail to conduct a de novo review? Held: No. The District Court "correctly understood and applied the statutory standard." Further, "in our view, the District Court got the procedural aspects of this case exactly right."

Appellate Court Decision:

- The statute mandates that the Tax Commission certify a record of its proceedings.
- Taxpayer's counsel admitted that the Court was "at liberty to look at the [Tax Commission] documents and do with them as it please[d]."
- That statute empowers the District Court to "affirm, modify or remand any order
- The Court trial *de novo*. As to its procedure: "All of this was entirely proper."
  - ✓ The parties called witnesses that did not appeal before the Commission.
  - ✓ Both expert appraisers "offered testimony that differed in some respects from the conclusions they had provided to the Tax Commission."
  - ✓ The parties were not limited to the administrative record and were "afforded every opportunity to present an entirely new case, supported by new evidence and testimony."

- ✓ Both parties cross-examined to opposing expert by drawing questions based upon the Commission's decision, making it "very much part of the parties' evidentiary presentations".
- ✓ The Tax Commission took no formal part before the District Court, called no witnesses, and offered no opinion that its values were the best values.
- ✓ "The Court engaged in no appellate-style examination of the evidence presented at the Tax Commission hearing."
- ✓ "The Court trained its evaluation on the evidence that had been presented to it during the eight-day trial and it pointedly refused to afford any deference".

SUBSTANTIVE

Arizona

Bank of America v. Maricopa County, Case No. TX2020-001031 (Superior Court of Arizona, Presiding Judge Thorson, decided July 20, 2025, and filed July 22, 2025), https://superiorcourt.maricopa.gov/departments/superior-court/tax/tax-court-decisons (select "Property Tax Cases 2025)

Facts: The subject is an owner-occupied 523,565 sq. ft. corporate campus with some 3,800 on site employees comprised of four buildings with 501,463 NRA and 22,102 sq. ft of common area, including a cafeteria and health club, alongside a large parking structure which can accommodate some 2,800 cars, located on a 33.5-acre site' By stipulation, the parties agreed that the same valuation would apply for tax years 2018 and 2020. Both appraisers employed sales comparison and income approaches to value.

Appraisal evidence:

Expert evidence	**Taxpayer**	**County**
	$32,500,000	$82,750,000
Sales comparison		
Market	National	Regional or national but used Local, Maricopa County
Significant factors	Size, age, parking, Access	"Substantially similar", "of similar utility", "attract same set of potential buyers"
Reasons for sale	Relocation, down- or up-sizing	
"Dark store theory"	No	Not discussed
Valuation as "vacant"	No	Unknown
Potential buyers	Limited	No discussion
Transfers	Limited	

Parameters	Single tenant, U.S., 200,000-750,000, 10+ effective age, Average/good 60 months sale	106,000 – 110,000 sq. ft. (20% of the size of subject)
Potential buyer	Single user	Might buy several buildings
Data sources	CoStar, internal national database, property inspection, blueprints, Assessor records, broker and owner interviews	Lease summaries; did not review leases or interview tenants
Rejected sales	2 CA were R & D PA and VA, inferior	
Adjustments: property rights	No, all fee simple	None fee simple; 20% adjustment
Financing	No, all cash	
Condition	No, all arm's length	
Market conditions	Yes	No, assumed sale-leasebacks
Location	Yes	No
Phoenix Market area	Yes, 2012-2020	
Age/physical condition	Yes	No
Comparable sales	6, only one was a single tenant, also Bank of America	"indirect substitutes at best" 4 or 5 subject to long term leases None owner-occupied Did not know lease specifics Maybe 1 sale had amenities None could accommodate needs of 500,000 sq. ft. and huge workforce
Value determination	$62.00/sq. ft $32,500,000	Not separately stated in decision
Income		
Market	Local and national	Local
Significant factors	Location, market, age, size, quality	Location, market
Parameters	Single tenant	4 of 6 in multi-tenant buildings; 107,000-113,000 to 215,000 sq. ft. No lease comparison chart
Potential buyer	Investor	
Leases	Single tenant office	Multi-tenant; 3 average 87,000 sq. ft
Value determination	$13.00/ sq. ft, triple net	

	15-year term	Assumed short lease term
	36-month search, Exp: maintenance, management,	
	lease-up costs, TI	Acknowledged these, did not use
	lost rent and exp. recovery	Did not estimate
	$32,700,000	Not separately stated in decision
Predominate approach	Sales comparison	Not discussed

Trial Court decision: $32,500,000 FMV

- If a taxpayer and taxing authority use the same appraisal method, submission of the taxpayer's evidence is sufficient to overcome the presumption of correctness.
- Arizona law prohibits using encumbrances, like leases and mortgages, in valuation.
- Taxpayer's appraisal employed standard appraisal methods in both approaches.
- County appraisal was deficient
  - ✓ Comparable sales were not substitutes for subject property.
  - ✓ Comparable lease data were not substitutes for subject property.
    - ➢ If relying on leased fee sales, "standard appraisal techniques require market supported adjustments to be made to comparable property rights and contract rent."
    - ➢ Income approach was "incomplete because he did not make numerical adjustments for size, market conditions, location, age, and building quality."

Illinois

Burton Young & Woodfield Corporate Center SPE, LLC v. Illinois Property Tax appeal Board, Cook County Board of Review, Palatine Township High School District #211, and Schaumburg Consolidated School District #54, 2025 IL App (lst) 221698-U.

Facts: The subject property consisting of two office buildings of 13 and 14 stories, with 547,137 sq. ft. GBA and 521,362 NRA, and a four-story parking garage and surface area parking for 2,092 cars, appealed its real estate tax assessment for 2016. The Assessor had valued it at slightly over $42,000,000 which the Board of Review reduced to $39,707,520. It had been purchased in August 2016 for $32,000,000.

PTAB trial evidence:

Expert evidence	**School districts**	**Taxpayer**
Cost Approach	5 land sales $7.68-17.50/sq. ft = $13.50	None discussed
Observations	Marketed as Class	Purchase was "leased fee interest"

Special characteristics	"A" opportunity w/ below market 73% occ., short term remaining on tenant.	a tenant occupied 35% w/42 mos. remaining on lease at an above market rent of $20.50 (cf. 9.50 to $12.00 or $13.00/sq. ft.)
	$4.9 million 2013-2015 renovations/ capital expenditures	Buyer paid excessive price because saved the $4 million in LC, TI and build-outs seller paid in 2015
Income Approach	Using effective rents	Typically, rent abatements = one accounts for TI, LC, & month per every 12 to 15 months, rent abatements = 8.3% downward adjustment
	Rent comps: 5,	11 (but 4 identified "confidential")
	$11.80-$17.46	Cf. comment above on market rents
	Rental: $10.50	$24.00
	Stab.	82%
	EGI =$9,313,630	$8,869,011
	Exp = 65.7% (?)	37% (?)
	None, "Below line"	Less LC, TI, and RR = $1,511,950
	NOI = $3,197,005	$3,944,541
	Cap = 8.50 (PWC, BOI)	8.00 (w/b higher if no LC and TI)
	Load =none	7.50
	Full = 8.5	15.50
	FMV = $37,500,000	$25,450,000
Sales Approach	6, $47.13-150.91	5 (several lower occ./3 foreclosures)
	$70.00	$52.00*
	FMV= $36,500,000	$26,000,000
Greatest weight	Income and Sales	Income
Value	$37,000,000	$26,000,000

*There was a dispute about NRA. The school district used 521,362. The taxpayer claims 497,182 but appears to use 450,661 in the income 500,000 in the sales approach and approach. Taxpayer argued the below-grade and lobby space, common areas, storage, and amenities, such as the fitness center, conference room, and cafe were not rentable as office space. Some of the percentages are unclear after working the math backwards from the data presented in the appellate decision.

Taxpayer's rebuttal appraiser criticized the School Districts' appraiser.

- No adjustments were made for property rights conveyed, as evidenced by the fact that the cap rates for the sales ranged from 6.8% to 9.0%.

- An adjustment was made to the sale of the subject resulting in a value $5,000,000 more which was inconsistent with how the comparable sales were analyzed.
- The income approach was flawed.
    - ✓ The rental rates of 4 of 5 of the comparable properties chosen commenced after the January 1, 2016 lien date.
    - ✓ Using virtually the entire building square footage was incorrect.
    - ✓ Determine a property tax expense from the sale comparison approach did not compensate for the failure to "load" the cap rate.
    - ✓ The tenant with 35% of the space at the time of sale had 42 months remaining on its lease term and paid net (not gross) rent of $20.00/sq.ft.

PTAB Decision: Considering all of the evidence and testimony, FMV = $37,000,000.

- Taxing body report sales were similar to the subject in size, age, LBR.
- "Leasing commissions and tenant improvements should not be included".
- Agreed with the taxing body appraiser that "the value of the leased fee interest can be greater than or less than the leased fee interest depending on the relationship between and contract and market rent". (??)

Appellate Court: Affirmed. PTAB decision not against manifest weight of the evidence.

- Standard of review
    - ✓ Findings and conclusions on questions of fact are deemed prima facie true and correct and will be reversed only if they are against the manifest weight of the evidence, meaning that an opposite conclusion is clearly evident from the record."
    - ✓ "Weighing evidence and determining the credibility of witnesses are jobs or the PTAB and uniquely within its province."
    - ✓ The court "does not reweigh the evidence, reassess the credibility of witnesses, substitute its judgment for that of PTAB or make an independent determination of the facts."
    - ✓ A finding of FMV will not be reversed "unless it is against the manifest weight of the evidence, which occurs only where all reasonable and unbiased persons would agree that the decision is erroneous and that the opposite conclusion is clearly evident."
    - ✓ The court will not disturb the PTAB's findings where there exists simply a difference of opinion regarding the actual value of the property."
- The 2016 sale price did not set a ceiling on fair market value.
    - ✓ Expert testimony supported a higher FMV under both sales and income.
    - ✓ "While we acknowledge the principle that an arm's length transaction is the best evidence of market value, we find no support for the petitioner's suggestion that the 2016 sale price necessarily set a 'ceiling" that

constrained PTAB from assessing a higher value, regardless of any other evidence." That evidence established that the sale reflected

- "a leased fee interest, not q fee simple interest";
- "Class A value add opportunity due to its below market occupancy of 73%"; and
- 36,500,000 to 37,500,000 FMV was "based on stabilized market occupancy as well as market rents and expenses and cap rates as of the date of value."

- Failure to adopt the criticisms of the reviewing appraiser does not establish that the decision was against the manifest weight of the evidence.
  - ✓ This is not a case of "an improper method of valuation." It is one of a difference of opinion among experts.
  - ✓ Resolving conflicting expert testimony is "within the province of PTAB".
  - ✓ "A party does not invoke *de novo* review merely by asserting attacks on an expert's methodology". Only when a preferred methodology of sales comparison has been ignored will a court intervene.
    - "We need only review the record to determine whether there was evidence of reliable comparable sales. We are not required to delve in the minutiae of expert testimony or make credibility determinations appropriately left to the trier of fact."
    - "[T]here are choices appraisers must make . . . and we will not subject every choice an expert makes to *de novo* review, simply because [a party] refers to each of those choice as 'methodology'".
    - "[A] party's objection to the testimony of an opposing expert on the basis that [his] . . . testimony includes improper elements or adopts a different theory of valuation goes to the weight, rather than the admissibility, of that testimony."
  - ✓ On the question of tenant improvements and leasing commissions, "there was a battle of the experts" and "it was the role of PTAB to evaluate the evidence". Taxpayer's arguments concerning the "flaws" raised by its review appraiser merely boils down to this: the taxing bodies' appraiser should have been "discredited" and the taxpayer's report "afforded proper weight". Such disagreements among experts and differences of opinion are judged by the manifest weight of the evidence standard.

Jack Carroll & Woodfield Corporate Center SPE, LLC v. Illinois Property Tax appeal Board, Cook County Board of Review, Palatine Township High School District #211, and Schaumburg Consolidated School District #54, 2025 IL App (lst) 221922-U.

Facts: This is the 2017 appeal for the same property. All the same issues were raised as well as two others. First, without objection, the taxing body appraiser's 2016 report was admitted into evidence for 2017 and he was examined and cross-examined. However,

the review appraiser was not permitted to testify with respect to 2017 since his report was limited to, and USPAP compliant with, 2016. Further, the report was not even offered into evidence in rebuttal. The valuations at issue for the 2017tax year were:

- Assessor: $44,919,616
- Board of Review: No change. $44,919,616
- Taxpayer appraiser: $27,150,000 [EGI = $9,247,624; Exp. = 36.2%; LC, TI, & RR = $1,850,591; NOI = $4,051,397; cap rate = 14.9%)
- Taxing body appraiser: $37,000,000
- PTAB decision: $37,000,000

Appellate Court: Affirmed. PTAB decision not against manifest weight of the evidence. Further, PTAB did not abuse its discretion on admissibility of appraisals and testimony.

- The summary of the hearing and the expert testimony, application of the facts to the law, and review of the PTAB decision was identical to the 2016 case.
- PTAB was not precluded from using the 2016 taxing bodies' report as FMV evidence for 2017. In fact, was submitted into the record for both 2016 and 2017.
    - ✓ When no objection is raised in the administrative proceeding it cannot be raised for the first time on administrative review. It has been forfeited.
    - ✓ Forfeiture aside, by the statute, administrative code, and its own rules, PTAB hearings are more informal and liberal regarding admission of evidence. PTAB rules "shall eliminate formal rules of pleading, practice, and evidence" and it "may consider any evidence that it deems relevant", *i.e*. it "will receive evidence that is material and relevant and that would be commonly relied upon by reasonably prudent persons in the conduct of their affairs".
        - ➢ By use of the word "may" is permissive in the administrative rule which states that evidence "may consist an appraisal of the subject property as of the assessment date at issue".
        - ➢ A previous case approved PTAB's use of 1995 appraisal for 1997.
        - ➢ The taxpayer confuses "admissibility" with "weight". It never claimed that the report was not "material and relevant".
        - ➢ Agency decisions concerning the hearing conduct and admissibility of evidence are governed by an "abuse of discretion" standard =
            - "demonstrable prejudice to the complaining party";
            - "no reasonable person would take the position adopted by the PTAB."
- Taxpayer had the opportunity to present rebuttal evidence.
    - ✓ It could have offered the 2016 reviewing appraiser's report. In fact, "it is somewhat surprising that [it] did not". Thus, it "cannot be prejudiced by its decision not to submit rebuttal evidence."

- ✓ It "could have, but did not, offer any report for tax year 2017.
- ✓ "[T]he ALJ first agreed with petitioner [taxpayer] that the [taxing body appraiser] could not testify about the 2017 value of the property because his written appraisal was directed to 2016. It then held that [reviewing appraiser] should not be able to testify in rebuttal as to the 2017 tax year that is, the ALJ limited both [appraisers] to testimony concerning tax year 2016. Those rulings were entirely reasonable and consistent with the circumstances that: (1) the [taxing body appraisal] (while offered for both 2016 and 2017) only discussed the property value as of 2016, and (2) petitioner [taxpayer] only elected to submit [taxing bodies' report] as rebuttal evidence only with respect to the 2016 tax year appeal."

Michigan

HSS Holland Hotel, LLC v. City of Holland, MTT Docket No. 20-003752 (Michigan Tax Tribunal, Pres. Judge Halm, April 11, 2025), https://www.michigan.gov/taxtrib/entire-tribunal/decision/accordian/2025/second-quarter-decisions (Search the 2nd Quarter Decisions 2025 by docket number/case name).

Facts: This four-story 168 room (97 single king, 63 double queen rooms, 8 junior suites) is full-service upscale former Holiday Inn, renovated and converted during 2012-2013 into a Double Tree Hilton Worldwide franchise hotel. Located on an 8.76-acre parcel, originally built in 1987, its effective age is 29 (useful life 40). Attached is a one-story recreational area with a large atrium, indoor pool, and whirlpool. The property also has a bar, business and fitness centers, 9,730 sq. ft. conference area, 8 meeting rooms, restaurant, and 350 space parking lot. The Assessor's market value was $10,010,000 for tax year 2020.

Expert valuations:	**Allen (Taxpayer)**	**Genzick (City)**
Expert qualifications	MAI since 1978 Certified since 1991	MAI since mid-1990s Certified since early 1990s Licensed real estate broker
Specialized experience	5-10 hotels, 5 in yrs.	Over 40, in 3 yrs.
Location	Declining Outperforming commercial mkt. & underperforming leisure mkt; better hotels 2 miles north; competition	"Holland Market": Grand Rapids to Holland to Muskegon—economic and cultural hub; considerable job growth and some population growth Primary economic hubs of West MI.
Condition	Needs renovation soon @ $25,000 to $30,000/room	

Cost Approach	Not developed Age/obsolescence	Not developed Age/depreciation
Income Approach		
Data sources	State/national 2017-2020 I& E Future pro forma Industry averages Publications	Competitive set Historic I & E CBRE Trends Smith Travel Research Integra national survey
Competitive set ADR	$126,76 (5)	2014-2019 (8) Demand = new construction Occupancy (-); ADR/RevPar (+)
Market occupancy	63.8%	
Stabilized ADR	$123.00	$120.84
RevPar	$76.26	$70.44
Stabilized occupancy	62%	58.3%
Food and beverage income	Yes	
Gross revenue	$5,544,985	$5,105,543 or $5,728,214 (?)
Expense ratio	78.4%	77.5%
NOI	$1,197,187	$1,288,381
Cap rate sources	Comparable sales Band Investment Surveys	5 properties: 6.78-8.38 PWC Investor Survey
Cap rate	9.00	9.75
Tax load	2.89	2.51
Total cap	11.89*	12.26
Management fee	3.0%	3.3%
Franchise, licensing, marketing fees (or administrative)	19.91%	13.0%
FMV	$10,070,000* $10,641, 000 due to millage rate error	$10,510,000
Sales Approach		
Adjusted value per room	West Bay: $130,111 Holiday Inn: $76,080 Double Tree: $64,413 Sheraton: $115,593	Holiday Inn: $80,113 Holiday Inn: $114,444 Holiday Inn: $69,629 Holiday Garden: $66,396 Courtyard: $76,144
FMV	$11,700.000	$11,760,000
Value per room	$70,000	$70,000

FF&E	$551,600I	$590,000
Greatest weight	Income Approach	Income Approach
Reconciled FMV	$10,400,000	$10,600,000

Intangible valuation dispute:

- Allen
  - ✓ 10-year franchise agreement began in 2012
    - monthly "program fee" = 4% of gross room revenue
    - monthly "royalty fee" = 5% of gross room revenue
    - advertising, training, brand (flag), Hilton worldwide "points", and reservation system which accounts for 48% of the hotel's business
  - ✓ Without the franchise agreement, all value indicators would fall:
    - Occupancy: 62% to 60%
    - ADR: $123 to $109
    - RevPar: $76.26 to $65.40
    - NOI: $1,197,187 to $957,907
    - As risk increased, cap rate rises from 11.89 to 13.09.
    - FMV from $10,177,018 to $7,432,445
- Genzink
  - ✓ Deducting program and royalty fees is consistent with Rushmore Method
  - ✓ Support for Rushmore Method
    - Korpacz Investment surveys
    - IAAO articles
    - Court decisions (Although the Taxpayer had argued that four Tribunal decisions from 1990 to 2012 expressed some criticism.)
    - Integra Realty Resources national hotel group study
    - National reviewers for lenders
    - This approach reflects "what are peers are doing".
  - ✓ Criticism of Allen
    - A franchise fee is a license. The taxpayer does not own it and cannot sell it. Further, no adjustment was made for the year of the franchise, *i.e*. the value remains the same throughout term.
    - Deduction separate amount for franchise is "double counting".
    - Not aware of anyone else using the Allen approach.
    - With reduction for management and franchise fees there is no need for additional deduction for intangible property.

Decision:

- The Tribunal provides a detailed review of the evidence and testimony, including evaluating the differences between the experts and making adjustments.

- Criticism of Allen Method: The Appraisal is "less reliable and less credible".
  - ✓ The cap rate adjustment for intangible property was "improper because the NOI does not include any value resulting from the franchise."
  - ✓ "Even though Allen didn't acknowledge that the franchise fee and management deductions were equivalent to the Rushmore Method deductions, the Tribunal finds that the value attributed to the franchise was accounted for 'above the line' through various expense and fixed charge deductions."
  - ✓ The $2,740,000 "intangible business asset deduction" is "improper because Petitioner does not own the intangible asset, *i.e.* the franchise".
  - ✓ 5% franchise fee, 3% management fee, and 4% of the 7.27% administrative and general expenses "accounted for the franchise's influence on the property's market value at least, if not more, than provided under the Rushmore Method.
  - ✓ He "performed an analysis to value the contribution of the brand name to the income-producing ability of the real property. [He] provided no support for his conclusion that this contribution equates to the value of a franchise."
  - ✓ There is no explanation for using a cap rate that is different for a flagged as opposed to an unflagged property.
- "Having considered the Rushmore Method and the applicable case law, the tribunal finds that in the case Respondent's application of the Rushmore Method provides the best evidence available of the going concerns intangible value."

Washington

Gerking One, LLC c. Wilson, Docket No. 100690 and 102819 (Washington Board of Tax Appeals, Tax Referee Turner, April 382025), http://bta.wa,gov/search.html (search by docket no. or date).

Facts: The subject is an 8-unit residential Seattle apartment building containing two one-bedroom and one-bath units, and six two bedroom and one bath units, built in 1908 with an effective age of 1993. The property is of good (Assessor) or average (Taxpayer) quality and condition. For the tax year 2021, the Assessor and County valued it at property at $2,806,000, or $350,750 per unit; for 2022, $2,946,000, or $368,250 per unit. Taxpayer sought $2,400,000 ($300,000) for both years. The property was purchased June 6, 2023 for $2,499,200 ($312,400/unit). The property is located in which it is at a critical or high risk without a seismic retrofit.

Decision: Evidence does not support a reduction based on sales comparison approach. However, it does support the Taxpayer's proposed FMV base on the income approach.
2021: $2,415,700; **2022: $2,650,000**

- **Taxpayer sales comparison evidence:**
  - ✓ **2021:** Four sales from January 2018 thru April 2021 of six to twenty- one-unit residential buildings, built between 1900 and 1927 with effective ages of 1987-1994, in fair, average or good condition, ranging from $233,186 to $317,714 per unit. After market condition trending and with adjustments for unit number, size, condition, and view, but without consideration of unit mix, Taxpayer concludes $230,854 to $301,676 per unit.
  - ✓ **2022:** Seven sales from January 2019 thru November 2021 of five to thirty-sex-unit residential buildings, built between 1907 and 1962 with effective ages of 1987-1992, in average (one in average-good) condition, ranging from $180,645 to $298,364 per unit. After market condition trending and with adjustments for unit number, size, condition, quality, view, and location, but without consideration for unit mix, Taxpayer concludes $216,380 to $291,964 per unit.
- **Assessor sales comparison evidence:**
  - ✓ **2021:** Four sales from June 2018 thru December 2019 of residential buildings, built between 1907 and 1962 with effective ages of 1987-1992, in good condition, ranging from $308,333 to $391,666 per unit. After market condition trending and with adjustments for unit size, quality, and condition and view, but without consideration of unit mix, Taxpayer concludes $303,459 to $432,327 per unit. Two of the sales are the same with the Assessor's adjusted prices being $331,060 and 303,459 while the Taxpayer's are $299,828 and $271,516.
  - ✓ **2022:** Four sales from June thru December 2019 of residential buildings, built between 1908 and 1930 with effective ages of 1994-1999, two in average and two in average-good condition, ranging from $319,825 to $466,666 per unit. After market condition trending and with adjustments for unit number, unit size, quality, and condition and view, Assessor concludes $336,453 to $471,014 per unit, supporting a higher value for the subject at $395,453 per unit.
    - ➢ Taxpayer alleged:
      - One sale was part of a portfolio purchase, is located in a prestigious Seattle neighborhood, added commercial space in 2012, and was remodeled to very good condition in 2018.
      - Another sale had been remodeled and was in superior condition and part of a 1031 exchange.

- Still another was in a superior zoned area and although four unites were built in 1908, five were added in 1984.

- **Decision (sales comparison):**
  - ✓ "The evidence. . . does not clearly show that the Owner's sales are enough like the subject property, or that the sale prices are adjusted for all the relevant differences in property characteristics, to provide a reliable indication of market value."
  - ✓ "The parties submit conflicting evidence related to the sale submitted for comparison and for the quality and condition of the subject property. The Board concludes that the evidence does not show that there are sufficient sales like the subject to use the sale comparison approach . . . and that the sales submitted for comparison do not clearly support a reduced value".

- **Income approaches to value evidence:**

[2021]	**Taxpayer**	**Assessor**
Monthly rental range	$1,295 and $1,895	$1,542 and $2,021
Considered rent roll	Yes	
Miscellaneous income	$1,529	$1,507
Vacancy rate	9.70%	9.70%
Expense ratio	40.47%	40.47%
NOI	$96,627	$98,928
Capitalization rate	4.00	3.75

Sources for cap rate	Assessor tables
	{
	See data {
	{
	Published Seattle and King County rates, 4.01-5.5
		Assessor sales, 1900-20 buildings of 1902-1946 vintage of which 9 before 1910 indicate 3.91-5.27 and 7 of 9, > 4.1;
		Kidder Mathews 9 Capitol Hill sales averaged 3.7;
		Central Seattle study six apartment sales of < 1930 of which 2 sold in 2019, 4.1 and 4.0

Fair market value	$2,400,000	$2,638,000

[2022]	**Taxpayer**	**Assessor**
Monthly rental range	$1,200-$2,000, and Detailed discussion, analysis, comparison of apartment sizes, tenant mix, years built and eff, age	$1,542 and $2,021 Factors: size, age, effective age. *Simon/Anderson*: rent trends + 2% and 0.3% and -9.2% and 4.2%. Assessor trend study: + 21.5%, 19.1%, 18.1% and 5.7%
Adjustments to rentals	Yes, various $938-$1,418 $1,695-$2,095 $1,755-$2,092	Yes $1,755-$2,142 $1,955
Capitol Hill neighborhood	Yes, all 8 rentals	Yes, all 8 rentals
Rental trending approach	No	Yes
Considered rent roll	Yes	No
Miscellaneous income	$1,529	$1,507
Vacancy rate	8.31%	9.70%
Expense ratio	42%	39.66%
NOI	$98,400	$122,463
Capitalization rate	4.10	4.10
Source for cap rate	Assessor tables See data { { { { Published Seattle and King County rates, 4.01-5.5	Assessor sales, 1900-20 buildings of 1902-1946 vintage of which 9 before 1910 = 3.91-5.27 and 7 of 9, > 4.1; *Kidder Mathews* 9 Capitol Hill sales averaged 3.7; Central Seattle study six apartment sales of < 1930 of which 2 sold in 2019, 4.1 and 4.0
Fair market value	$2,400,000	$2,897,000

- **Decision (income approach):**
  - ✓ **"**The income approaches the parties submit for the **2021** market value . . . are less than the assessed value and do not differ significantly. The Board concludes that the evidence clearly shows that the subject property's 2021 assessed value overvalues the property."
  - ✓ "The evidence . . . clearly shows that the Assessor's rent comparison analyses do not provide a reliable indication of market rent. As a result, the Assessor's income **2022** income approach rental rates are not supported by market data. Consequently, the Assessor's 202 income approach does not provide a reliable indication of market value.
  - ✓ "The Owner's evidence provides cleat, cogent, and convincing evidence that the 4 percent capitalization rate in its **2021** income approach is supported by market evidence". FMV = $2,415,700
  - ✓ The Owner's evidence demonstrates that the Assessor erred by relying on trended rent rates in his **2022** income approach that are not supported by market rents. . . [and] the Assessor's 2022 income approach is flawed and does not provide a reliable indication" of market value. FMV = $2,650,000

Wisconsin

Mayfair Mall LLC v. City of Wauwatosa, Appeal No., 2023AP1585 (Wisconsin Court of Appeals, District 1, February 11, 2025), before White, Donald, and Geenen, *per curiam*, **https://law.justia.com/cases/wisconsin/court-of-appeals/2025/2023ap001585.html;** and **https://caselaw.findlaw.com/court/we/court-of-appeals/116921739.html**

Facts: In the fall of 2012 Mayfair announced Nordstrom would be opening a department store in the mall and investing some $70 million in improvements and renovations. Although construction did not begin until two years later, the situation was common knowledge to market participants as of January 1, 2013, the tax lien date.

The Mall owner contested its real property valuation as being excessive. During a twenty-nine-day hearing, the trial court considered the testimony of two Mayfair appraisers (Bakken and Marchitelli) and two City appraisers (Kenny and Miller), as well as one financing appraiser commissioned by the owner's lender. The circuit court upheld the assessments. However, because the Court of Appeals determined that the trial court findings were "insufficiently detailed", it reversed and remanded. *Mayfair Mall LLC v. City of Wauwatosa*, No. 2019AP1232, unpublished Slip. Op. (WI App. May 18, 2021). The remand court, under Wis. Stat. § 907.06 appointed an expert (Eppli) to assist it, and ultimately also ruled that the assessments were not excessive. Mayfair appealed.

Issues: Was the remand court's decision "clearly erroneous" because it:

- failed to consider Nordstrom's Development costs?

- relied on appraisals that actually provided leased fee and not fee simple values?
- accepted into evidence a financing appraisal?
- improperly accounted for property taxes and management fees?
- applied incorrect capitalization rates?
- gave weight to the testimony of a non-appraisal, non-USPAP compliant expert?
- allowed City appraisals opining values higher than the current FMV assessments into the record?

- **Decision:** No, on all points. Judgement affirmed.
  - ✓ Development Costs
    - ➢ "We reject Mayfair's argument because it cites no legal authority and instead relies solely on the principle of anticipation".
    - ➢ As that term is described in the Wisconsin Property Assessment Manual "nothing directs assessors to deduct all costs associated with anticipated future benefits under every valuation approach."
    - ➢ It is inappropriate to deduct such costs in direct capitalization.
      - Development costs are not deferred maintenance.
      - Mayfair expected an 8% return due to the expansion.
      - 2015-2016 saw a growth in inline tenant income.
      - "Reducing the property price by Nordstrom's improvement costs falls well outside of normal and customary as the property NOI will likely benefit from additional inline tenant sale and rent and have increased value attributable to a lower capitalization rate" (Eppli).
  - ✓ Leased fee and fee simple appraisal values
    - ➢ Under *Walgreen v. City of Madison*, 311 Wis.2d 158, 752 N.E. 2d 687 (2008), the issue is "whether a property tax assessment of retail property leased at above market values should be based on market rents. . . or if such assessments should be based on the above market rents". The Court concluded that "market lease rates, not actual contract rate" control. However, "if the contract rents are at market levels, the lease fee interest is the same as the fee simple interest."
    - ➢ The issue then is whether the rents here were above market.
      - "Mayfair is "cherry-picking" facts when it claims that all the appraisers and the consulting expert "agreed that the rents were above market and that Marchitelli's approach. . . calculated at 15% of a tenant's retail sales was credible."
      - Kenney's direct capitalization approach concluded that the rents in place were at market.

- Marchitelli's report was based on "a hypothetical rent".
- Eppli criticized Marchitelli's report as "biased and skewed" and that the "actual rents are reflective of market rents."

✓ The financing report
- ➢ The lender appraisal "calculated an average market rental rate of between $32.50 and $37.50 per square foot" and that the "overall attained rent was $50.28".
- ➢ However, "as several tenants pay on a gross, or modified rent structure" the net effective rent was $29.27.

✓ Property taxes and management fees
- ➢ The manual does not require that "loading the cap rate is the only way to property account for taxes". An assessor may treat taxes as an expense.
- ➢ The appraisers did consider management expenses.
  - Kenney's direct capitalization deducted the fees "because he relied on the Mall's historical reported expenses."
  - Bakken's report did not deduct them and since Eppli used this core NOI, he was relying on that. "Mayfair places too great an emphasis on the remand court's general reliance on Dr. Eppli. . . and ignores the remand court's conclusions were supported by other witnesses' testimony and evidence."

✓ Capitalization rate
- ➢ "Here, the remand court found the Mall to be a Class A mall, and this is well-supported in the record."
  - Mayfair's SEC filings: Class A Mall
  - City assessor: Blended rate, "by averaging the capitalization rates for Class A and B+".
  - Eppli: Being located in SE Wisconsin, it was " 'less than a Class A Mall' meaning 'being at the bottom of 'A' and [the] top of 'B+' mall markets."
- ➢ Remand court used a "blended" one "closely aligned with the City".

✓ Challenges to non-appraiser expert witness (Eppli)
- ➢ Grounds included:
  - "not qualified to provide opinions because he has never prepared an appraisal report and was not licensed";
  - unable to depose him due to impending retirement if judge;
  - failed to comply with USPAP; and
  - relied on information outside of the record.

- No challenge was made to his qualifications at the time of his court appointment and no request was made to depose him prior to the evidentiary hearing. So, the issues are "forfeited" on appeal.
- The Wisconsin Manual "does not require strict compliance with USPAP". Assessors "can refer" to it and it should be treated as "guidance". A previous requirement that USPAP be followed was rescinded retroactively back to 2013.
- The only time he considered outside information was in response to a question from the remand court concerning the reasonable-ness of the assessment increase between 2012 and 2013. In fact, the report contains the "data and information he relied upon".

✓ City appraisals concluded values higher than the current assessments.

- Mayfair failed to timely object to the reports at trial and this issue is also] forfeited on appeal.
- As the Supreme Court noted in another case: It would be "absurd" to say the "an assessor would be unable to defend an assessment if the value he or she derived in a single property appraisal exceeded the initial mass appraisal assessment" since "the ultimate question to be resolved. . . is not whether the initial assessment was incorrect, but whether it was excessive."
- Appraisals opining that "the value exceeds its assessed value tend to support the conclusion that the assessment is not excessive."

EXEMPTION

Florida

City of Gulf Breeze v. Brown, 397 So.3d 1009, 2024 Fla. LEXIS 1878, 49 Fla. L. Weekly S 284, 2024 WL 4899705 (Supreme Court of Florida 2024).

Facts: In 2012 the city purchased Tiger Point Golf and Country Club located next to the City's wastewater treatment facility, and began operating it as a public golf course with a restaurant. The primary purpose was to facilitate disposal of lightly treated sewage water; secondary was the golf course use. The Santa Clara County Property Appraiser approved an exemption as a "property owned by a municipality and used exclusively for municipal or public purposes" under Article VII, Section 3(a) of the Florida Constitution.

From 2012 to 2015, the city, using its own money and staff, operated at a loss. To save taxpayer dollars, it entered into a September 2015 agreement with a professional golf course management company. As a result, the Property Appraiser denied the exemption

for 2016 and 2017 because it was being "used" for a "governmental-proprietary function" and not for a "governmental-governmental function". The City appealed and obtained summary judgment in the circuit court. The Appellate Court reversed, finding the Agreement's compensation structure, which was "not by a fixed fee but based on a formula tied to the difference between revenue and expenses", was the equivalent of a lease and therefore the property was no longer being used "exclusively" by the City but as "a private commercial enterprise". When the City filed for an *en banc* hearing and certification of a question of great public importance, the entire First District agreed.

Certified question: [As reformulated by the Supreme Court] Is a municipally owned golf course property over which the municipality exercises extensive control disqualified from exemption under Article VII, Section 3(a) because a management company used by the municipality in the operation of the property is compensated not by a fixed fee but based on a formula tied to the difference between revenue and expenses?

Supreme Court Decision: No. The exemption is maintained.

- Scope of Management Agreement
  - ✓ Detailed various duties to be performed and liabilities to be assumed.
  - ✓ Operate "an 18-hole championship golf course in a first-class manner."
  - ✓ Bear the risk of loss and retain the profits.
    - ➢ Compensation formula as described above.
    - ➢ Pay the City an annual fee of not less than $100,000.
  - ✓ Right of first refusal to purchase the property (which it exercised in 2021).
- City retained ownership and control
  - ✓ Agreement disavowed being a lease or granting a tenancy or proprietary interest in the golf course of its facilities.
  - ✓ Trial court: " 'Exclusive possession' and 'dominion' over the property."
  - ✓ Direct oversight by Director of Parks and Recreation and the City "which is exhaustively detailed in the Agreement".
    - ➢ Effectively acted as a "contract manager"
    - ➢ Weekly meetings
    - ➢ City approval of operating budget
    - ➢ Subject to City rules and regulations, including public records laws
    - ➢ Prohibited from subcontracting any of its duties
    - ➢ Exclusive use as a golf course.
    - ➢ Open to the public almost every day
    - ➢ A means to facilitate the City's use of the property.
  - ✓ Access to the property and use incident to that access is controlled by City.
- "The relevant constitutional test is exclusive municipal use. And the hallmark of such municipal use is municipal control.

New York

In the Matter of Harrison Orthodox Minyan, Inc. v. Town and Village of Harrison and Harrison Central School District, 2025 Slip Op. 01634 (New York Sup. Ct., Appellate Division, March 19, 2025), https://law.justia.com/cases/new-york/appellate-division-second-department/2025/2020-09770.html;https://caselaw.findlaw.com/court/ny-supreme-court/117069155.html.

Facts: Orthodox Jewish non-profit religious corporation sought an exemption for a residential property located within walking distance of its synagogue used to house its Torah reader and his family. Initially, the congregation utilized a rotating group of college students for Torah readings for synagogue services and on the Sabbath and religious holidays. In 1999, a professionally trained, musically gifted, full time Torah reader became available for Monday, Thursday, Saturday, and holy day services. He also eventually mentored congregants and acted as an assistant rabbi. Since Orthodox Jews are forbidden to use cars and other means of transportation on such days, it is not unusual that they generally live within walking distance of their synagogue.

For more than two decades the Torah reader traveled from outside the town, staying at the rabbi's home to officiate at services. In 2005, after the birth of his first child it became impractical. So, one of the congregation members purchased a home within two miles and donated it to the group to become his primary residence. The local assessor denied the exemption application and the Board of Assessment Review agreed.

Trial Court decision:

- Denied summary judgment to the congregation, granting it to the Town and intervening school district.
- The use of the property was "not intimately related to religious purposes".
- Suggested that "other persons" could do the readings.

Issue: Whether the residential property is used primarily in furtherance of the exempt religious purposes? Held: Yes.

Appellate Division reversed:

- The New York Constitution and statutes provide tax exemption to religious groups.
- Inasmuch as "the religious, moral, and intellectual culture afforded by" such organizations advance civilization and promote pubic welfare, public policy has determined that they are "more important than local taxes".

- Real property owned by organizations "organized and conducted exclusively [*i.e*. "principally or primarily"] for exempt purposes and used exclusively for carrying out such purposes" are relived of the burden of taxation.
- Two-part test
  - ✓ Whether owner is organized exclusively, or primarily, for exempt purpose;
  - ✓ Whether the particular property is itself used primary for exempt purpose.
- The property qualifies for the exemption.
  - ✓ Uses: residence, counseling and meeting, preparing lectures and services, hold religious events and activities, tutor congregants.
  - ✓ Various cases have held that housing may qualify for tax exemption:
    - ➢ personnel, immediate families, and staff, such as interns, residents, and nurses, of hospitals;
    - ➢ faculty, staff, students, families receiving religious and educational instruction;
    - ➢ year-round, full-time caretaker of a religious camp ground;
    - ➢ actors and staff for non-profit theater corporation;
    - ➢ rabbi housed on second and third floor above synagogue.

Oregon

100 Languages d/b/a StudioLingua v. Multnomah County Assessor, Docket No. TC-MD-240511N (Oregon Tax Court, Magistrate Division, Presiding Magistrate Boomer, August 1, 2025), https://www.courts.oregon.gov/publications/tax/pages/taxmagistrate.aspx.

Facts: An 875 sq. ft. facility, consisting of a classroom and bathrooms with common space, owned by St. Phillip Neri Catholic Church under the Archdiocese of Portland, was leased to a 501(c)(3) non-profit StudioLingua controlled by a volunteer governing board. Its mission is to provide "a safe and nurturing bilingual environment for children to explore, grow and learn" within "an immersive and inclusive Italian preschool experience". It accomplishes its goals through day care, pre-school, early drop off and after school care and free weekend enrichment classes on music, cooking and art and other activities such as magic shows. Thirteen students are enrolled in the pre-school. StudioLingua applied for a 2024-2025 property tax exemption which was denied by the local assessor and it appealed.

Issue: Does the facility qualify for an exemption? No. Summary Judgment denied.

Court decision:

- Preliminary findings
  - ✓ Operation began in October 2023.

- ✓ A temporary hiatus, occasioned by a staffing issue, from July to August 2024 will not defeat a potential exemption.
- ✓ Evidence of activity pre-dating 2024-2025, like the weekend enrichment classes in February to April, may be properly considered. ("This court frequently considers evidence predating the tax year".)
- ✓ The statutorily relevant date is July 1.
- ✓ A qualifying entity must be an "incorporated eleemosynary institution" (which has been interpreted by the Tax court as a "charitable institution") using the property "exclusively for or in immediate connection with educational purposes".
- ✓ "There is not statutory requirement that property that otherwise qualifies for exemption must be continuously used, so long as non-exempt uses do not become the primary use."
- ✓ Funding, revenue sources, and tuition:
  - ➢ $200 application fee and $1,000 deposit applied to the last month.
  - ➢ Regular preschool tuition ranges from $1,000 to $1,300 per month for three-to-five-day care and are "above market".
  - ➢ An extra charge for drop-off and after school care.
  - ➢ Ending monthly balance is around + $1,200.00.
  - ➢ Comites of San Francisco reimburses some costs.
  - ➢ The facility qualifies for Oregon's "Emergency Related Day Care (ERDC) Program, providing assistance to qualifying families below 80% of the area's medium income. No students currently receive this assistance.
  - ➢ One student does benefit from in-house financial aid, reducing ordinary costs from $1,850/month to $611/month. The Assessor complains that this is merely amount to 10% of its operating revenue. Oregon courts have rejected this quantitative approach.
- ✓ General exemption criteria
  - ➢ "Charity as its primary, if not sole, object".
  - ➢ Perform "in a manner that furthers its charitable object".
  - ➢ The organization must "involve a gift or giving". This issue here is whether StudioLingua fulfills criteria.

- Elements of "Gift or Giving"
  - ✓ Receipts applied to institution's upkeep, maintenance, and equipment.
    - ➢ Parties stipulated income used to operate the pre-school.
    - ➢ Financial statements confirm minor balance of $1,201/month.
    - ➢ "This factor weighs in Plaintiff's favor."
  - ✓ Treatment of persons not based on ability to pay.
    - ➢ Here, no evidence suggests that Plaintiff provided different or lesser services to a student receiving financial aid."

- However, all must pay $1,200, that "somewhat undermining that equal treatment."
- "This factor weighs slightly in Plaintiff's favor."

✓ Doors open to rich and poor alike without regard to race, color, or creed.
- There is no allegation of discrimination.
- Policies permit ERDC funding and "indicates its intention to make it services available to poor and indigent students as well as affluent students".
- In-house tuition assistance "presents a closer call".
  - Participation requires 8% of adjusted gross income.
  - "[A]ssistance relative to tuition is significant, particularly compared to Plaintiff's total resources".
  - The $1,200 up-front payment is "also significant".
  - One student out of the thirteen receives assistance.
- **"**Plaintiff's willingness to accept ERDC payments, alongside the significance of its own tuition assistance program, weighs in Plaintiff's favor and signals that Plaintiff intended to make services broadly available to rich and poor alike. However, this factor is undercut by the up-front payment requirements . . . and the limited number of students (one) receiving aid".

✓ Sliding scale charges to patrons
- There is no sliding scale adjustments or supplemental tuition assistance for those who cannot meet the 8% contribution.
- The weekend enrichment classes which were open to everyone are consistent with the organization's mission and contribute to its charitable purpose.
  - Being free, the classes constituted a "gift".
  - Staffed and organized by volunteers.
  - This "additional factor weighs in favor" of exemption.

- "Ultimately, the court finds insufficient evidence for the 2024-2025 tax year that the Plaintiff's services are accessible to poor and indigent families."