

IAAO PRESENTS



# PREP&TRIAL

**JULY 10 - 11, 2025  
COLUMBUS, OH**



**Three Views of  
Property Tax  
Litigation: The  
Assessor, The  
Expert Witness and  
The Attorney**



# *Three Views of Property Tax Litigation*

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# FROM THE ASSESSOR'S VIEW



*“If you’ve never been sued, you are probably not doing your job correctly!”*



Property Litigation is an important and necessary process in the fair & equitable administration of the local property tax.

- As with any level of government, there must be checks and balances & the courts exist to provide an avenue for the taxpayer to obtain relief.
- Appraisal is, after all, an opinion of value
- The reality is that while the it is generally assumed the Town’s value is correct, Assessors do not always get it right.
- However, Assessors do not ALWAYS get it wrong either.
- Is every property tax appeal with merit?
- Is every property tax appeal meritless?



## Burden of Proof

- In most states and localities, it is presumed that the Town's valuation is correct.
- The burden of proof is then on the taxpayer to prove their valuation is excessive or improper.
- Why?
- Municipalities have set budgets. They can only spend what is authorized by their taxpayers so having stability and predictability in the revenue they expect to collect is paramount.
- Additionally, this is meant to avoid burdening the taxing authority with investigating every single assessment *unless* a taxpayer demonstrates a credible challenge.
- Is there anyone here that comes from a state or jurisdiction where the burden of proof is on the Town?
- Do the courts accept a value margin? If assessment offices are tasked with mass appraisal and their valuations are certified by the state with an accepted range of value, is that same value range accepted by the legal system for appeals? Why or why not?



***“When it is claimed that a tax has been laid on a property that was computed on an assessment which was manifestly excessive and could not have been arrived at except by disregarding the provisions of law.”***

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# Has the assessor violated state law?

- Typically, in property tax appeals where the predominant issue is not the valuation of the property, they surround the following issues:
  1. Filing deadlines & penalties
  2. Eligibility criteria for various programs (i.e agricultural programs)
    - Is the criteria for assessment programs codified in law or per the determination of the assessor?
  3. Exemptions
    - There seem to be a rise in exemption cases across the country that revolve around properties that are considered charitable or nonprofit.
    - Are the exemptions in your state or jurisdiction based on ownership or use?
    - Is 'charitable' defined in statute?
    - Who has the authority to determine exemptions?



# The Responsibility of Preserving & Protecting the Taxable Base



Every reduction in the taxable base is absorbed by all other taxpayers in the jurisdiction. The assessor, in their duty to provide a fair and equitable administration of the local property tax, must be diligent in trying to prevent unnecessary or unwarranted reductions.

What are factors to be considered by the assessor in choosing to move forward with a trial?

- **Cost Benefit Analysis** – what is the delta between the Town and Taxpayer value? Does the cost of going to trial outweigh the difference in value and subsequent revenue to be collected?
- **Decision Making Authority** – does the assessor have the sole decision making authority in property tax appeals or do they need permission by governing body of municipality?
- **Political Pressure** – while assessment offices are meant to be apolitical, political pressure can still affect them.
- **Credibility & Communication** – can the assessor successfully present and communicate their value and the process they undertook to arrive at that value to non-appraisal experts?



***Establishing Case Law  
The Good, The Bad & The Ugly***

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## Establishing Case Law



- An assessor never wants to be responsible for creating negative case law that sets a precedent.
- In those situations where that may be a possibility:
  1. Do you work for a municipality that would support fighting a decision that could set a precedent?
  2. Can the municipality afford the fight, especially if it involves appeals to the Appellate or Supreme Court?
  3. Does the assessor have a strong case?
  4. Does the municipality have an attorney experienced in trial litigation?



# Hartford HealthCare v. Town of Stonington



- The case surrounded three central issues:
  1. Definition of a hospital
  2. Does ownership of a property by a hospital entity result in the property being exempt regardless of the use of the property?
  3. Definition of charitable use
- Hartford HealthCare, one of the primary medical providers in the State of Connecticut, built a flagship facility in Stonington, Connecticut to service the southeastern area of the state. The services provided were primary care, imaging, physical therapy & rehabilitation, neuroscience and movement disorders. There were no surgical operations or procedures at this location nor were there any overnight rooming available.
- *“the plaintiff’s use of the personal property to deliver Rehabilitative Services at the Premises is consistent with the plaintiff’s charitable purpose as defined in its organizational documents. Further, the provision by the plaintiff of the Rehabilitative Services lessens the obligation of the State to provide or pay for such services for indigent people.” – this was the initial decision by the Superior Court Judge.*
- Had the Town chosen not to appeal the decision, it would have set a precedent that any property owned by a hospital entity would be exempt per their charitable purpose to provide quality medical care.
- On appeal, the Supreme Court chose to side step the issue of whether the property was exclusively used for a charitable purpose under 12-81(7) or exempt as a hospital per 12-81(16). Instead, it held that Hartford Healthcare was taxable per 12-66a as their net patient revenue exceeded \$1.5 billion.



## St. Joseph's vs. Town of Windham

The case involved a skilled nursing facility owned by St. Joseph's Living Center, Inc. The taxpayer filed for exempt status on the basis that its purpose was a charitable use. The assessor denied the exemption claiming the facility did not provide free care to any of its patients and therefore was not used *exclusively* for a charitable purpose.

- In its decision the Court set forth the qualifying criteria to define “charitable” purpose and the decision has been relied on ever since for determining exempt status.
  1. Is the property owned by an organization that is tax exempt as a 501(c)(3) corporation by the IRS?
  2. Is the corporation organized exclusively for charitable purposes?
  3. Is the organization self supporting?
  4. Does the organization's activities relieve the state of a burden?
  5. Is the property used solely and exclusively for the charitable purpose it claims?



## Deerfield 95 Investor Associates v. Town of East Lyme



The case centered around whether certain intangibles may be used in determining the fair market value of real estate, specifically Low Income Housing Tax Credits. The property consisted of forty units operating under the provisions of the Federal Low Income Housing Tax Credit Program with financing provided by the Connecticut Housing Finance Authority. 75% of the units were income restricted.

- “We view the use of governmental subsidies to be a benefit to the owners of multi-family real estate developments rather than a ‘governmental restriction as to use’ which reduces the valuation of the property. Not all government restrictions are a burden on the property.”
- The court concluded that LIHTCs, while intangible, do have an effect on the valuation of real estate for assessment purposes and should be a factor in determining fair market value.



# The Lucrative Industry of Property Tax Appeals- Connecticut, a Case Study

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## Connecticut- A Case Study

- In Connecticut, the burden of proof is on the taxpayer to prove they have been aggrieved by the Assessor.

*What happens when the courts do not uphold the burden of proof?*

- Over the years, a specific ‘property tax appeal’ court was developed that was largely presided over by two judges for the entire state. It became common practice for the pre-trial judge to push immediately for settlements and try to clear the docket regardless of whether the taxpayer provided proof the valuation was excessive. “Splitting the baby” became the common mantra.

*If the Town is presumed to be correct, why would the court require the Town to obtain an outside appraisal?*

- It became common practice for the court to try to force Towns to spend money on outside appraisals before the taxpayer had provided any proof they were overvalued.
- Connecticut does not prohibit attorneys working on a contingency fee basis for property tax appeals.



## Connecticut- A Case Study



*What happens when property tax appeals flood a judicial system that can't support it?*

- Attorneys quickly took advantage of the current climate and began making formal public records request via Freedom of Information for a Town's complete values.
- Their firms would then conduct a mass mailing at the time of revaluation, promising a guaranteed reduction at no cost to the taxpayer.

*What happens when property tax appeals flood a city to the point they can't afford to litigate?*

- Jurisdictions began receiving so many court cases they had to immediately decide which to settle, regardless of whether the case had merit.
- In Hartford, the Capitol City, they received over a thousand court cases following the 2016 revaluation. The City could not afford the litigation expense to defend all the appeals and were forced to settle almost all of them.



## Connecticut – A Case Study

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In 2022, after years of pushing for legislation that would either prohibit attorneys from working on a contingency fee basis in property tax appeals, the Connecticut Association of Assessors (CAAO) and the Connecticut Conference of Municipalities (CCM) was finally successfully in adding a provision that required any property owner with an assessed value over a million dollars to submit an appraisal to the court within 120 days of filing suit, to prove their value is excessive.

*Has it fixed the problem?*

- The appraisal requirement has been very helpful in *lowering* the volume of frivolous tax appeals but Courts continue to try to push for settlements in favor of the taxpayer.

*How do you handle a judge trying to force a settlement?*

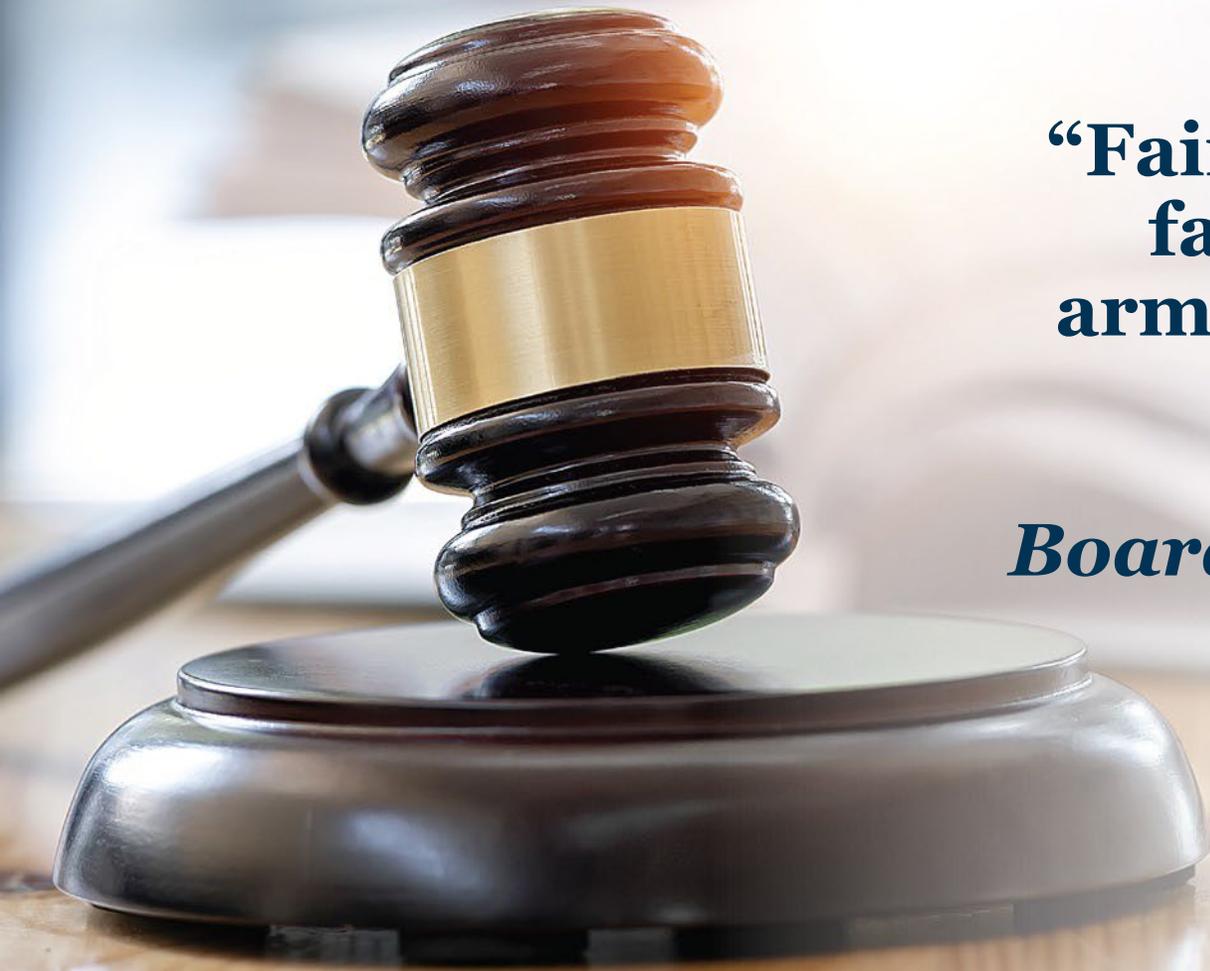


# *Three Views of Property Tax Litigation*

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# FROM THE ATTORNEY'S VIEW



# *Ad Valorem Taxation*

**“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 288***

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# SETTING VALUE

## *DETERMINING FAIR MARKET VALUE*

1. Cost approach
2. Sales comparison approach
3. Income capitalization approach

## *METHODS OF VALUATION*

1. 3 approaches vs. uniformity
2. Mass appraisal
3. Classifications of property
4. Valuations by Class



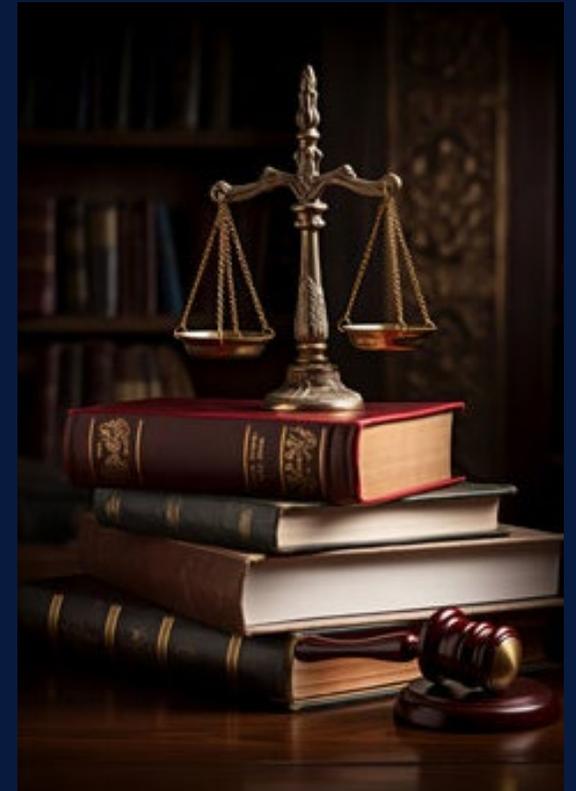
# CHALLENGING THE ASSESSMENT

## *LITIGATION – THE PROCESS OF TAKING LEGAL ACTION*

1. Assessor level
2. Board of Review
3. Property Tax Appeal Board
4. Trial Court and subsequent appeals

## *KNOW THE RULES*

1. Know any applicable assessment policies utilized
2. Know the procedural and evidentiary





# COOK COUNTY PROCESS

## COOK COUNTY ASSESSOR'S OFFICE

- First level of appeal
- Appeal at this level is optional



## COOK COUNTY BOARD OF REVIEW

- Proper forum for appeal of Assessor appeal decisions
- Appeal required for further levels of appeal



## PROPERTY TAX APPEAL BOARD

- Valuation Complaints

OR

## COOK COUNTY CIRCUIT COURT

- Tax Objection Complaints



## ADMINISTRATIVE REVIEW

- If you are still dissatisfied, you can file further appeal
- Properties with Assessed Values under \$300,000 go to Circuit Court
- Properties with Assessed Values over \$300,000 go to Appellate Court

## APPELLATE COURT

- Any court decision can be appealed to a higher court



# YOUR WITNESSES

## *WHO NEEDS TO BE PREPARED*

1. The Assessor
2. Assessor's Staff Witnesses
3. The Taxpayer/Owner
4. The Taxpayer's Appraiser
5. The Taxing Body
6. The Taxing Body's Witnesses
7. Board of Review and any Witnesses



## *HAVING THE TALK*

1. Will they depose me?
2. Should the case go to trial?
3. Is there an issue that is likely to arise continuously or an important theory that your client would like to test?
4. Tilting at windmills.
5. Who are your witnesses?
6. Who's the judge?



# MANAGING EXPECTATIONS

## *RESULTS*

1. What are the expectations?

## *COSTS*

1. Time prepping
2. Experts and attorneys
3. Cost/benefit analysis – is it worth it?
4. Costs if you lose



# WITNESSES

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## *ASSESSOR / BOARD OF REVIEW*

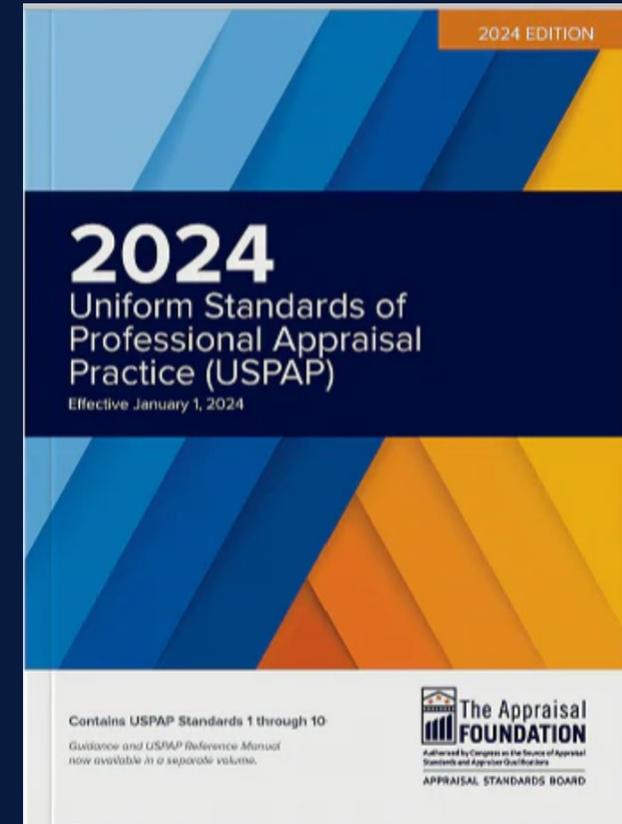
1. Choice of witnesses
2. Familiarity with the facts
3. Appraisal knowledge
4. Demeanor
5. Motivation



## WITNESSES (cont.)

### *APPRAISERS*

1. Familiarity with the facts
2. Can the valuation be supported?
3. Is the file ready for review?
4. Appraisal knowledge
5. Demeanor
6. Motivation





*WITNESS PREPARATION TIMETABLE*

1. Deposition
2. Proximity to trial
3. Balancing other duties



# GOING TO TRIAL / HEARING

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*PRELIMINARY MOTIONS*

*APPRAISER PRESENT*

*DEMONSTRATIVE EXHIBITS*

*PERSONAL KNOWLEDGE TESTIMONY – FACT WITNESSES*

*CROSS-EXAMINATION OF APPRAISER*

*CLOSING*

