Legislation: Varying Interpretations and Unintended Consequences

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Justin Kirvan

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Mr. Kirvan began his legal career at the Cook County Treasurer's Office, where eventually he became Chief Legal Counsel. Mr. Kirvan left the Treasurer's Office to work at the Cook County Assessor's Office, where as Director of Legal he supervised attorneys and staff of the Legal Department, and reviewed the office's assessed valuation principles and procedures. He also worked in private practice for Worsek & Vihon LLP before returning to government as the Director of Policy for the Cook County Treasurer. He has drafted revisions to sections of the Illinois Property Tax Code and the Cook County Code of Ordinances that were adopted by the General Assembly and the Cook County Board of Commissioners. Mr. Kirvan holds a B.A. in Philosophy from Rutgers University, an M.A. in Philosophy from UCLA, and a J.D. from Northwestern University School of Law. He was admitted to the Illinois bar in 2009.

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Nick Jordan

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Joined Worsek & Vihon in 2018 after almost twenty years of government service. Mr. Jordan started his career in the office of Senator Richard J. Durbin of Illinois. He continued assisting individuals as a Director of District Operations, and later as District Director, for Congresswoman Melissa Bean, a member of the U.S. House of Representatives in the northwest suburbs of Chicago. Mr. Jordan most recently served as the First Assistant Commissioner to Commissioner Michael Cabonargi at the Cook County Board of Review, where he supervised a team of analysts that reviewed the assessment appeals of approximately 400,000 parcels annually. Mr. Jordan graduated from The John Marshall Law School and obtained his undergraduate degree from Northwestern University. Mr. Jordan sits on the Board of his condominium association and is a member of the Illinois State Bar Association, International Association of Assessing Officers, Institute for Professionals in Taxation, Illinois Property Tax Lawyers Association, Civic Federation, & Illinois Housing Council.

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Learning Objectives

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- Identify potential issues interpreting statutes and ordinances.
- Understand how to draft clear and concise legislation.
- Develop effective strategies for defending your interpretation on appeal.

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A & P Ranch LTD v. Cochise County (TX 2022-00423, June 17, 2024)

- Large agricultural farm with nut orchards and vineyards (approx. 1700 acres)
- 2023 assessment increased value of nut orchards by 2,000% and vineyards 8,000%
- Taxpayer appealed to the Arizona Tax Court

The Statute ARS § 42-13101

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- A.R.S. § 42-13101(A) sets forth the valuation method for agricultural property: "Land that is used for agricultural purposes shall be valued using only the income approach to value without any allowance for urban or market influences."
- Assessor used leases of irrigated lands and applied a capitalization rate.
- Assessor admits he then used a sales comparison approach to add $12,000 per acre "tree value" and $8,000 per acre "vine value" added to the land.
- Taxpayer says this is impermissible "market influences". Assessor says that these are separate improvements to the land.

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The Decision

- "Here, the plain language of the statute does not provide for different treatment of agricultural land based on different crops nor does it indicate that agricultural land must be valued separately from "permanent crops." The Court's conclusion is consistent with the doctrine that tax statutes are to be interpreted liberally in favor of the taxpayer and strictly against the government."

- "Plaintiffs contend that its position that the value of the trees and vines should not be added as improvements does not violate Ariz. Const. Art. IX, § 2. The Court agrees. Agricultural land is to be valued pursuant to A.R.S. § 42-13101. The plain language of the statute does not countenance valuation of "permanent crops" separate from the land. Like *Westward Look*, this conclusion may result in undervaluation of the property, but the property is not escaping taxation in violation of Ariz. Const. Art. IX, § 2. *See Westward Look*, 138 Ariz. at 90."

Ogston v. Arizona Department of Revenue (TX 2023-00342) July 22, 2024

- Hospital District 1 of Yuma County owns the hospital. “District”
- Yuma Regional Medical Center “YRMC” leases the hospital from the District and is supposed to pay rent and maintain the hospital.
- Ongoing dispute led to YRMC to stop paying the District, leading to litigation.
- 2023 County levied a tax to cover legal fees and operating expenses of District.
- Taxpayer appealed saying the tax was unlawful.

The Statutes ARS § 48-1907 & 48-1914

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- A.R.S. § 42-1907 – allows for a tax "for the purpose of funding the operation and maintenance of a hospital, urgent care center, combined hospital and ambulance service or combined urgent care center and ambulance service that is owned or operated by the district . . . Prior to the initial imposition of such a tax a majority of the qualified electors must approve such initial imposition. . . ."

- A.R.S. § 42-1914 – "board of directors shall furnish to the board of supervisors of the county in which the district or any part thereof is located a report of the operation of the district for the past year together with an estimate in writing of the amount of money needed to be raised by taxation for all purposes… The board of supervisors of each county where a district or part thereof is located shall thereupon levy upon the taxable property of the district a tax which will, together with other funds on hand or which will accrue during the ensuing fiscal year, exclusive of reserves, provide sufficient funds to meet the financial needs of the district."

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The Issues

- Does the District tax " fund the operation and maintenance of a hospital"?
  - If so the tax needed to get voter approval.
  - Undisputed that voter approval was not obtained
  - Does the act of leasing the hospital qualify as operating it?
- If not, then the tax would be authorized under §48-1914.
  - Taxes authorized to "sue and be sued in all courts" §48-1907(A)(2)
  - Also District can tax to, "purchase receive have take hold lease use and enjoy property… encumber and create leasehold interests" §48-1907(A)(3)

The Decision

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- **"THE COURT FINDS that** the District is not operating and maintaining a hospital for purposes of A.R.S. § 48-1907(A)(6) by leasing the Hospital to YRMC."
- "In *Atchison*, the Arizona Court of Appeals found that the hospital district did not operate the hospital that it owned when a third-party operated the hospital pursuant to a management agreement."
- "While voter approval is required to impose a tax to fund the operation and maintenance of a hospital under A.R.S. § 48-1907(A)(6), **THE COURT FINDS that** voter approval is not required for a tax levied under A.R.S. § 48-1914. Therefore, the Tax was properly authorized under A.R.S. § 48-1914."

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Salwani v. Lake County Assessor (21T-YA-00044) July 24, 2024

- Indiana Constitution has tax caps of 1%-3% of value.
- 1% cap applied to all, “tangible property, including curtilage, used as a principal place of residence by an …owner of the property.”
- Separate statute that implements the cap also limits its application to “homestead” property, which as defined limits the land to one acre.
- Taxpayer owns 3.981 acres. Only one acre received the 1% cap, the rest subject to 3% cap.
- Taxpayers appealed seeking 1% on entire property saying statute was unconstitutionally limiting the cap to only one acre.

The Issue

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- "The question presented to the Court is whether the one-acre limitation restricting the one percent cap to the Sawlanis' house and the one acre of land surrounding it can be applied consistent with the constitutional mandate."
- "If it cannot, the one-acre limitation in the statutory one percent cap must yield to the Constitution to the extent that the additional 2.981 acres of land otherwise satisfies the statutory requirements."
- "The challenger seeking to overturn a statute on constitutional grounds carries a high burden to show the law is unconstitutional."

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The Court's Analysis

- Court spends 10 pages reciting the history of the tax caps in Indiana.
- Covered events from 1993 - 2010.
- There were two competing constitutional tax cap proposals.
  - House resolution – specifically tied the 1% cap to homestead property.
  - Senate resolution – had no language regarding homestead property.
- Eventually the Senate version was approved by both houses and the voters, and made it into the Indiana Constitution.

The Court's Analysis

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- Court considers three terms in the Constitution's language to see if it allows for a one-acre limitation: "tangible property", "principal place of residence" & "curtilage.
- Of the three only curtilage is contested by the parties.
  - Court looks to various definitions:
  - land surrounding a house or dwelling and enclosed within a fence
  - a yard, courtyard, or other piece of ground included within a fence surrounding a dwelling house
  - "[t]he land or yard adjoining a house, usu[ally] within an enclosure
  - the area around a house that includes grounds, outbuildings, and fencing intimately associated with domestic life in the house

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The Court's Analysis

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- The court says that none of the definitions have a fixed size requirement at all.
- Size may be a factor if the land has to be connected to the use of the property.
- Therefore, the land entitled to the cap may be less, equal to, or more than one acre.

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The Court's Decision

- Fixed size or acreage limits on the tax cap is incompatible with the constitution.
- But the statute may be unconstitutional as applied to the taxpayer here.
- It can be constitutionally applied in some cases (property under 1 acre).
- Case by case basis to determine what amount of land over 1 acre is used as part of the principal place of residence.
- Case remanded back to Indiana Board for further analysis of the 2.981 acres.

Shapiro v. Hamilton County Assessor (22T-TA-00006) March 27, 2024

- Deals with multiple homestead benefits.
- 1991 – Husband & Wife buy home in Indiana
  - Titled in both names.
  - Received homestead deduction for 2017-2020.
- 1996 – Wife buys home in Michigan.
  - Titled in her name.
  - Received principal residence exemption (PRE) from 2017-2020.
- 2020 – Indiana county auditor discovers both exemptions.
  - Removes Indiana deduction and issues bill for $12,319.57 for 2017-2019.
- Shapiro's appealed.

The Issue

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- Shapiro's claim they are entitled to both exemptions.
  - Husband resides in Indiana for work.
  - Wife has lived in Michigan since 2016, where she works, votes, and pays taxes.
  - Michigan PRE is not "equivalent" to Indiana deduction.

- County Assessor
  - Shapiro's are not entitled to deduction because the two benefits are "substantially similar"

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Indiana Code §6-1.1-12-37(f)

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- Cannot receive deduction if already receiving "a deduction under the law of another state that is equivalent to the deduction provided by this section"
- I.C. §6-1.1-12-37(n) contains language about the benefits having to be "substantially similar" in order to be granted.
- Before 2018 there was no equivalency test in the statute– so Shapiro's lose 2017.
- For 2018-2020 "The parties agree that Subsection F, which uses the word "equivalent" as the standard for comparison in 2018 through 2020, controls the resolution of this case."

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The Court's Analysis

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- Does equivalent mean "virtually identical", which is the Shapiro's claim.
  - If so Shapiro's think the two benefits are not equivalent, so they can get both.
- Does it mean "substantially similar" as the county claims?
  - If so the benefits are equivalent, so they cannot get both.
- Court looks to the dictionary:
  - "corresponding or virtually identical esp[ecially] in effect or function"
  - "Corresponding in effect or function; nearly equal; virtually identical"

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The Court's Analysis

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- The court found that the legislature intended to use equivalent and substantially similar in different sections, so they must have intended them to have different meanings.

- Court says that equivalent means virtually identical.

- So the Shapiros win?

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The Court's Decision

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- NOPE! They owe the money!
- The Shapiro's showed that the benefits are not identical.
- They did not show that the are not virtually identical.
- "the Shapiros' arguments demonstrate merely that the Michigan PRE and Indiana's homestead deduction are not identical, failing to provide a factual basis that shows they are not equivalent, i.e., not virtually identical."
- "how one obtains, retains, or becomes ineligible for either the Michigan PRE or Indiana's homestead deduction10 indicates that they are virtually identical because all of these actions function to lower property taxes of owners with a principal place of residence in each respective state and have the effect of limiting the benefit solely to that population."

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Common Area Assessments - Illinois

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- 765 ILCS 605/10(a) - For purposes of property taxes, real property owned and used for ***residential purposes*** by a condominium association, including a master association, but subject to the exclusive right by easement, covenant, deed or other interest of the owners of one or more condominium properties and used exclusively by the unit owners for ***recreational or other residential purposes*** shall be assessed at $1.00 per year.
- 35 ILCS 200/10-35 - The ***common area*** or areas which are used for ***recreational or similar residential purposes*** and which are assessed to a separate owner and are located on separately identified parcels, shall be listed for assessment purposes at $1 per year.

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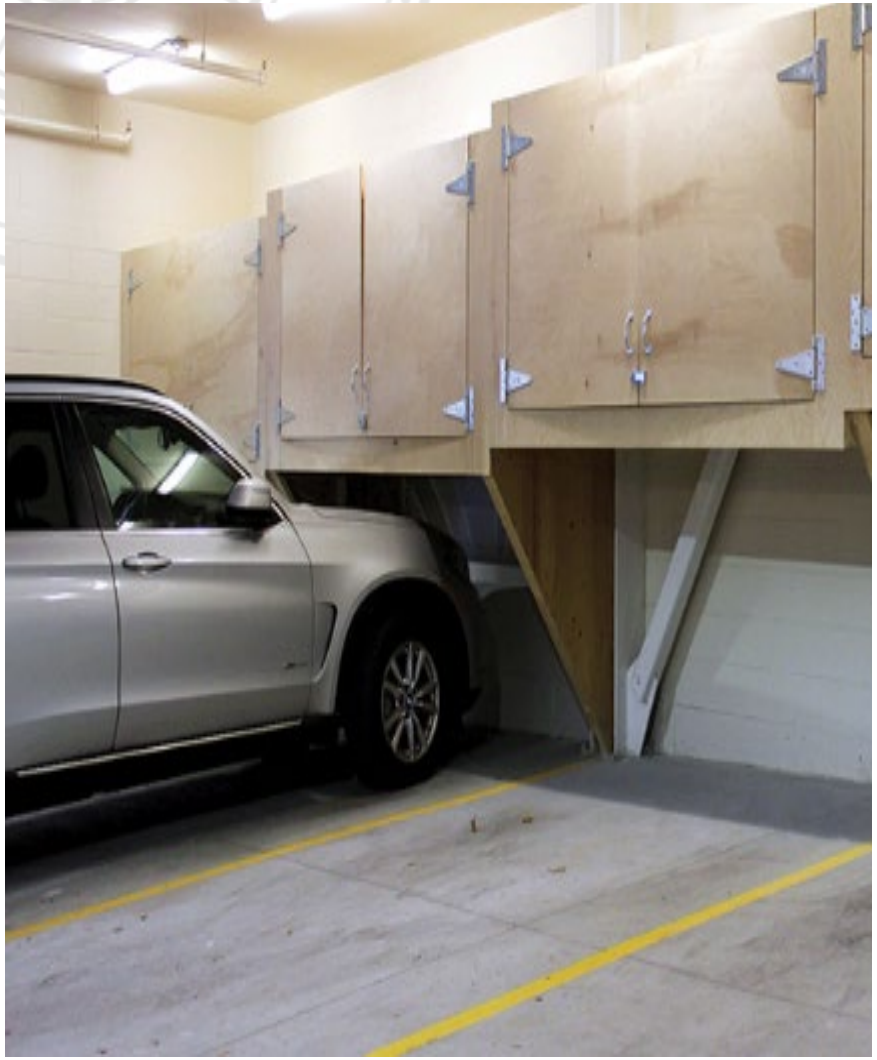
PTAB Docket 18-33833 – May 17, 2022

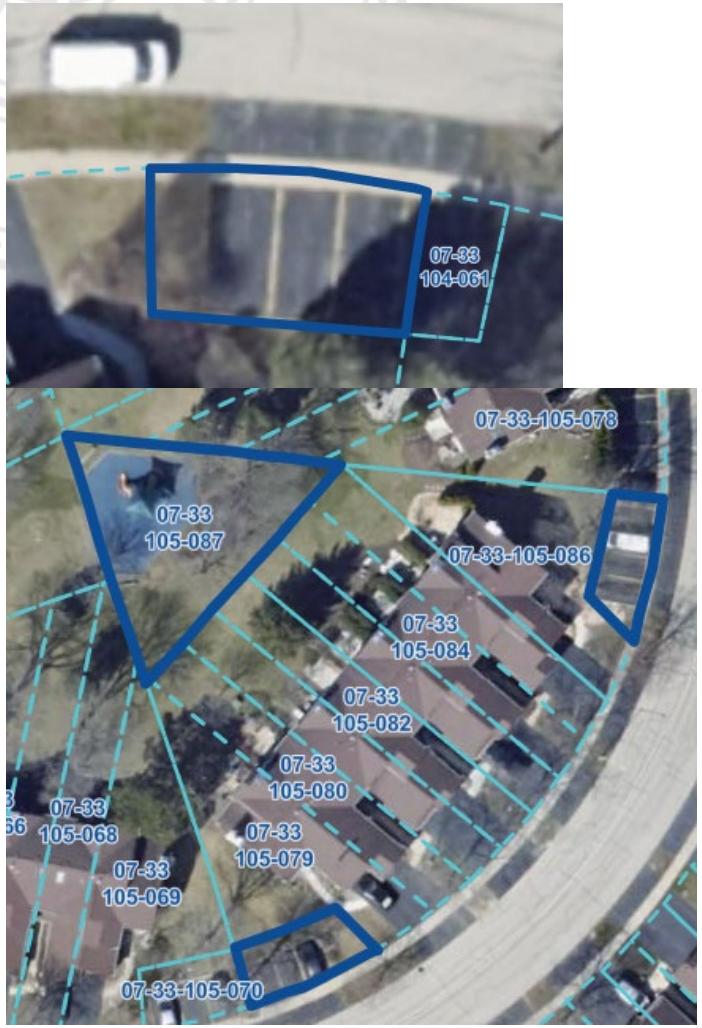
- Association purchased unit in 2015.
- Intent to make it a fitness center.
- 2018 – was used as a storage area.
- Declaration or bylaws not changed – area still considered a unit.
- $1 assessment denied, property was not a “common area” per the declaration. Also subject was a commercial unit and not used for residential purposes.
- As of 2021 property has a $4 assessment.

PTAB Docket 19-50660 – June 18, 2024



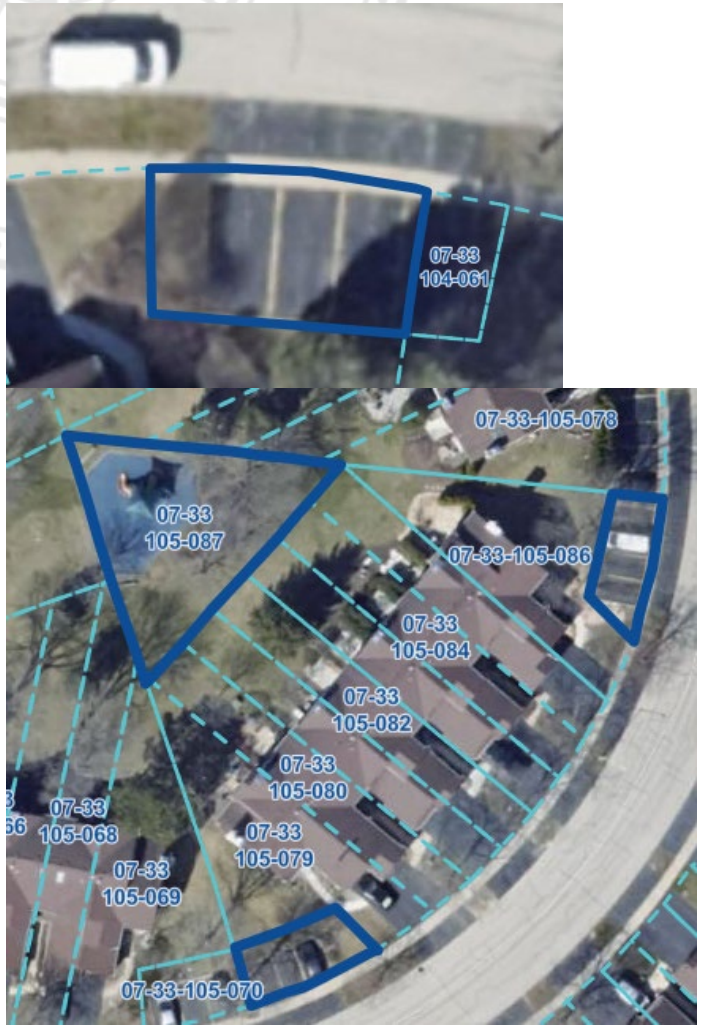
- 3 parcels in a condominium building, all owned by Association.
- 2 parcels used for parking for association employees.
- 1 parcel used as storage unit.
- Not granted common area.
- Not in declaration or by-laws as common area. Not used for the benefit of all unit owners.

PTAB Docket 20-34031 – June 18, 2024



- 13 parcels in a townhome development.
- Parcels contain greenspace and parking lots, or a mixture of both.
- There is no question that each parcel is a common area… only issue is whether the parcels "are used for recreational or similar residential purposes."
- The court defined "recreation" as "refreshment of the strength and spirits after toil"

PTAB Docket 20-34031 – June 18, 2024



- Board finds that the four parcels containing vacant land qualify for the assessment.
- "Vacant land can be used for walking and numerous other recreational activities such as playing catch with a ball or a frisbee, or merely relaxing and reading a book."

PTAB Docket 20-34031 – June 18, 2024

- Parcels containing parking spaces do not qualify. Parking is simply not a recreational use, nor is it a residential purpose that is similar to a recreational use.

Property Tax Reform Legislation in IL – Public Act 103-555

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- Public Act 103-555 involved multiple drafters and multiple stakeholders, making it difficult to knit together a cohesive legislative package
- To implement the changes in law, local taxing agencies needed to develop systems and procedures
- The difficulty of implementation should be accounted for in drafting legislation
- Care should be taken to specify which local taxing agencies are responsible for procedures created by new laws, so as to avoid disagreements or confusion among agencies, prolonging the implementation process

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