MCCREARY, VESELKA, BRAGG & ALLEN, P.C.
ATTORNEYS AT LAW
700 Jeffrey Way, Suite 100
Round Rock, Texas 78665

2022 PROPERTY TAX CASES
And Attorney General's Opinions

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Cases

Oncor Electric Delivery Company NTU LLP v. Mills Central Appraisal District
2022 WL 17419577 (Tex. App. – Austin, December 6, 2022, no pet. hist.) (to be published)

Issues: Appealability of ARB action; agreement resolving protest

In 2019, an electric utility called Sharyland owned property including two types of electrical lines, one type more valuable than the other. Sharyland reported quantities of the two types of lines to the appraisal district. It protested the district's appraisal but then entered an agreement with the district concerning the total value of its lines. Sharyland sold the lines to Oncor. Oncor filed a motion to correct the 2019 appraisal roll claiming that Sharland had reported the wrong quantities of the two types of lines. Sharyland had allegedly reported too much of the more valuable line and too little of the less valuable line, so the total value was less than the value to which Sharyland had agreed. The ARB determined that it could not hear the motion because the matter had already been resolved by agreement. Oncor then sued the district and the ARB. Both responded with pleas to the trial court's jurisdiction. After a hearing, the trial court dismissed the case. Oncor appealed.

The court of appeals first addressed the question of just what the trial court had decided. Although the trial court's order purported to dismiss the "the case," the court of appeals concluded that the trial court had actually ruled on only the district's plea to the jurisdiction. The ARB's plea to the jurisdiction was still undetermined and could not be considered in the higher court. Only the trial court's ruling on the district's plea to the jurisdiction was subject to appeal.

With respect to its own plea to the jurisdiction, the district argued that the ARB's order dismissing Oncor's motion could not be appealed because the ARB had dismissed the motion without considering its merits. The court of appeals disagreed and ruled that an ARB's order of dismissal was a "determination" that could be challenged in court.

The court of appeals next discussed the agreement between Sharyland and the district. The Tax Code says that an agreement between a property owner and an appraisal district

is final and that it may not be reviewed by an ARB. Other appellate courts have ruled that the Code allows no exception, even if both parties to an agreement were mistaken about relevant facts. The Austin Court of Appeals disagreed. It ruled that a property owner could dispute an agreed value before an ARB and in court by claiming that the agreement was the result of a "mutual mistake." The Austin Court attempted to distinguish some of the precedent cases but admitted that it was disagreeing with at least one of them. The court sent the case back to the trial court for further consideration.

Martin v. Hopkins County
2022 WL 16952888 (Tex. App. – Texarkana, November 16, 2022, no pet. hist.) (to be published)

Issues: Tax abatements

In an effort to promote economic development, the county entered a contract with a solar-energy company. The company would build a solar power plant in the county, and each year the county would give the company an amount of money equal to what the company paid in property taxes. Martin sued the county claiming that it had not satisfied the requirements for a tax abatement under Chapter 312 of the Tax Code. The county argued that it was not required to satisfy those requirements. The trial court entered a summary judgement in favor of the county, and Martin appealed.

The court of appeals affirmed the judgment for the county. The higher court examined Chapter 381 of the Local Government, which addresses economic development efforts on the part of a county. One provision allowed a county to abate taxes pursuant to the requirements of Chapter 312 of the Tax Code. Another provision allowed a county to make grants and loans to private businesses in support of economic development. That second provision did not refer to the Tax Code. The court noted that the contract required the company to pay its taxes. The tax payment requirement was not reduced or nullified. The contract referred to Chapter 381 of the Local Government Code, not to the Tax Code. Therefore, it did not create a tax abatement, and it was not subject to the Tax Code's requirements.

Wilbarger County Appraisal District v. Oncor Electric Delivery Co. NTU, LLC
2022 WL 14504688 (Tex. App. – Amarillo, October 25, 2022, no pet. hist.) (to be published)

Issues: Agreements resolving protests; motions to correct appraisal rolls

In 2019, Sharyland entered a settlement and waiver agreement with the appraisal district concerning Sharyland's electrical transmission lines. The property was soon sold to Oncor. In 2020, Oncor filed a motion to correct the 2019 appraisal roll claiming that the account included a clerical error and property that did not exist in the form or at the location described in the roll. The district responded that its agreement with Sharyland prevented any change to the roll. The ARB denied Oncor's motion. Oncor then sued the district and the ARB asserting claims under the Tax Code and the Declaratory

Judgements Act. The district filed a plea to the jurisdiction asking the trial court to dismiss the case. When the trial court refused, the defendant's filed an interlocutory appeal.

The court of appeals reversed the trial court's order and dismissed the case. The higher court based its decision on §1.111(c) of the Tax Code, which says that an agreement between a property owner and an appraisal district is final. The Agreement is not subject to review by an ARB or by a court. In this case, the agreement clearly expressed a "harmony of opinion" concerning the value of the transmission lines. The agreement was binding on Sharyland and its successors even though the parties might have had incomplete or mistaken information when the agreement was signed. The agreement could not be challenged under the Tax Code, and Oncor's declaratory judgment claim was moot.

Desert NDT, LLC v. Ector County Appraisal District
654 S.W.3d 302 (Tex. App. – Eastland, October 13, 2022, no pet.)

Issues: Payment of taxes on appeal; delivery of notice

Desert had sued the appraisal district over the appraisals of its trucks in 2015 and 2016. It claimed that some of the trucks were taxable in another county. While the case was pending, Desert filed a protest in 2017. Desert did not appear for the ARB hearing and the ARB dismissed the protest. Desert did nothing more concerning the 2017 protest and didn't pay any 2017 taxes until April of 2019. In the meantime, Desert and the district settled their lawsuit. In early 2021, Desert sued the district over the 2017 appraisal. It claimed that the district had not properly delivered a 2017 notice of appraised value. Allegedly, the district had addressed the notice to "DESERT NDT DBA DESERT NDT" instead of "DESERT NDT LLC." It further alleged that the ARB had not sent a notice of its hearing. Desert's due process rights were allegedly violated. In response to a request from the district, the trial court dismissed the case. Desert appealed.

The court of appeals affirmed the dismissal of the case. The higher court's opinion is confusing, but the court did hit on a couple of relevant points. The court noted that Desert had *received* the notice of appraised value. Under §25.19 of the Tax Code, a property owner's failure to receive a notice of appraised value does not affect the validity of the appraisal or of the taxes. Under §25.02, a mistake in the name of a property owner does not affect the validity of an appraisal. The Tax Code protects a property owner's due process rights. The failure of an appraisal district to deliver a notice can be raised in a protest under §41.411 filed before the delinquency date, but the property owner must timely pay at least the taxes on the value that is not in dispute.

The court of appeals further noted that a property owner must protest an alleged appraisal error every year that it occurs. Desert's lawsuit over the 2015 and 2016 appraisals did not excuse its failure to exhaust available administrative remedies in 2017. The agreed judgement said nothing about the 2017 appraisal and had no effect on that appraisal. Concerning the payment issue, the court noted that Desert had admitted that at least some of its trucks were taxable in Wilbarger County, so it was obligated to pay at least

the taxes on the value of those trucks before delinquency. Paying taxes on some trucks in another county did not constitute substantial compliance with the payment requirement of §25.08.

Mundy v. ENE, Inc.
2022 WL 7182103 (Tex. App. – Houston [14th Dist.], October 13, 2022, no pet hist.) (not reported)

Issues: Redemption following tax sale

Mundy was attempting to acquire land by adverse possession. She claimed to have openly possessed and used the land for ten years. ENE had purchased the property in a tax sale and recorded its deed on December 9, 2003. ENE sent Mundy a "cease-and-desist" letter in late 2012 but did not file any claims against her in court until early 2015. The question was whether Mundy had already adversely possessed the land for ten years before ENE sued her. The trial court entered a summary judgment for ENE, and Mundy appealed.

The court of appeals reversed the summary judgment for ENE. The court of appeals explained that Mundy's adverse possession could not legally begin until the redemption period had expired following the tax sale. Under §34.21 of the Tax Code, the redemption period lasted for two years if the land was the former owner's homestead or if it was agricultural land. That would mean that Mundy's adverse possession began in December of 2005, and ENE had filed its suit within ten years after that. If the land was not a homestead or agricultural land, the redemption period lasted only 180 days. That would mean that Mundy's adverse possession began in mid-2004 and that she had successfully possessed the land for ten years before ENE sued her. ENE had alleged that the two-year redemption applied, but it had not provided any summary judgment evidence to show that the land was a homestead or agricultural land. Without that evidence, the trial court should not have entered a summary judgment for ENE. The higher court further explained that ENE's cease-and-deist letter did not interfere with Mundy's adverse possession of the land.

Amelang v. Harris County Appraisal District
2022 WL 4371518 (Tex. App. – Houston [1st Dist.], September 22, 2022, no pet hist.) (to be published)

Issues: Evidence of value; burden of proof

Amelang protested the appraisals of two old warehouses. Following an unfavorable ruling from the ARB, Amelang sued the appraisal district. Each side hired its own fee appraiser and presented his testimony at trial. The evidence showed that the warehouses were subject to a lease with options to extend, a lease that might last through 2038. The rent under the lease was low. Amelang's appraiser relied on the income approach. He used market rents rather than the actual lease rents, but he assumed that the property would be locked into its present use. He concluded that the warehouses had a total market

value of about $10.5 million. The district's appraiser relied on the market approach. He thought that the buildings didn't contribute any value, but the land had a total market value of about $17 million. The land could be developed for other purposes. The trial judge believed the district's appraiser and ordered that the appraised value be left unchanged. Amelang appealed the judgement.

The court of appeals affirmed the judgement in favor of the district. Amelang argued that the district's appraiser had used the wrong methodology. The court explained that it would not consider Amelang's argument because it had not been asserted in the trial court. An argument that an expert's testimony is unreliable as a result of its methodology, technique, or foundational data behind it cannot be made for the first time on appeal.

The court of appeals next explained that Amelang had born the burden of proof. Section 23.01 of the Tax Code says that when a value is lowered as the result of a protest or appeal in one year and the appraisal district determines a higher value for the property in the next year, the district must have clear and convincing evidence to support that higher value. But that rule does not apply in an appeal to a court under Chapter 42. The property owner bears the burden of proof.

Section 23.01 also states that an appraisal must account for the individual characteristic that affect a property's value. But the question of whether a lease is such an individual characteristic is something that courts must determine in each case. A property does not have to be appraised based on its current use. Where two experts give different opinions, it is up to the trial court to resolve the conflict and decide which side has presented the more persuasive evidence. In this case, the trial court's judgement a reasonable and supported by the evidence.

Sibley v. City of Freeport
2022 WL 3720137 (Tex. App. – Houston [1st Dist.], August 30, 2022, no pet. hist.) (not reported)

Issues: Challenging a delinquent tax judgment; restricted appeals

In 2017, taxing units sued Lewis and other defendants for delinquent taxes. A process server made numerous attempts to serve Lewis personally but was unsuccessful. Evidence indicated that Lewis was deliberately avoiding service. She didn't file an answer. The taxing units had to resort to citing her and some other defendants by publication. On the motion of the taxing units, the court appointed an attorney as litem named Gordon to represent Lewis and the other defendants served by publication. Before the trial, Gordon prepared a "diligence report" describing her search for the missing defendants and concluding that they could not be located. These steps are required by Rule 244 of the Texas Rules of Civil Procedure. Gordon also approved the form of the judgement and the statement of evidence that the taxing units had prepared. She did not personally attend the trial. After the trial, the court entered the proposed judgment and signed the statement of evidence. Almost six months later, Sibley filed a notice of restricted appeal. Sibley claimed to be Lewis's heir.

The court of appeals explained that under Rule 30 of the Texas Rules of Appellate Procedure, a restricted appeal may be available to a party that did not participate in a trial. The appealing party must show that: (1) she filed the notice of restricted appeal within six months of the date of the judgment; (2) she was a party to the suit; (3) she did not participate in the trial and did not file any post-trial motions or requests; and (4) error is apparent on the face of the record. In this case, the third requirement was not satisfied. Gordon did participate in the trial through Gordon, the attorney ad litem.

The taxing units' motion for the appointment of an attorney as litem was adequate because it stated that the "identity or whereabouts" of some defendants, "after reasonable and diligent search," was still unknown. In any event the trial court had a duty under Rule 244 to appoint Gordon because some defendants had been served by publication. It didn't matter whether Gordon had filed an answer on behalf of Lewis or whether Gordon personally attended the trial. Gordon participated in the trial by filing her diligence report and by approving the judgment and the statement of evidence. Thus, Sibley could not bring a restricted appeal. The court of appeals dismissed the attempted appeal.

Gill v. Hill
2022 WL 3755048 (Tex. App. – El Paso, August 30, 2022, no pet hist.) (to be published)

Issues: Challenging a tax sale

In 1999, pursuant to a court's default judgment, mineral interests were sold to Hill in a tax sale. The sheriff's deed was promptly recorded. Twenty years later, Gill sued to challenge the tax sale. Gill claimed that the defendant in the delinquent-tax sale suit had not been properly served with the suit papers. Hill responded that the suit had been filed too late in violation of §33.54(a) of the Tax Code. That statute requires that a suit challenging a tax sale be filed within one year after the sheriff's deed is recorded. Gill argued that constitutional due-process requirements trumped the statute of limitations. Hill filed a motion for summary accompanied by a copy of the sheriff's deed showing when it was recorded. Gill offered no evidence at all. The trial court entered a summary judgment for Hill, and Gill appealed.

The court of appeals affirmed the summary judgment in favor of Hill. The higher court acknowledged that the failure to serve a defendant in a delinquent-tax suit can result in a void judgment and a void tax sale. If Gill has responded to Hill's motion with evidence that the defendant had not been served, he could have avoided the summary judgment. When Hill presented evidence that Gill's suit was filed more than one year after the sheriff's deed was recorded, the burden fell on Gill to present some evidence of a due-process violation, some reason that the statute of limitations did not apply. In the absence of any such evidence from Gill, the trial court was correct when it entered the summary judgement.

One judge dissented. She argued that Hill bore the burden of proving that the service of process in the delinquent-tax suit was proper. Because Hill failed to offer any evidence that the service was proper, he was not entitled to the summary judgement.

Iraan-Sheffield Independent School District v. Kinder Morgan Production Co. LLC 2022 WL 3755046 (Tex. App. – El Paso, August 30, 2022, no pet. hist.) (to be published)

Issues: Exhaustion of remedies

This is still another chapter in the saga of Brent Lemon, a lawyer who convinced several taxing units to hire him to try to raise more taxes from minerals. The taxing units filed challenges with the ARB alleging that Kinder Morgan's mineral interests had been under-appraised by the appraisal district and T.Y. Pickett over the course of several years. The ARB denied the challenge, and the taxing units filed suit. Their initial pleadings did not specifically allege fraudulent acts by Kinder Morgan. An amended pleading filed months later added that allegation. Kinder Morgan asked the trial court to dismiss the case on the grounds that the taxing units were raising issues that had not been presented to or considered by the ARB. Specifically, they were alleging fraud on the part of Kinder Morgan. Kinder Morgan also pointed out that the fraud claims against were not filed with the court before the sixty-day limitations period expired. The trial court sided with Kinder Morgan and dismissed the case. The taxing units appealed.

The court of appeals reversed the trial court's order and reinstated the case. The higher court discussed the ARB hearing in great detail. In the hearing, the taxing units argued that Picket's appraisals were void. They presented the report of an appraiser who had attempted to appraise Kinder Morgan's minerals based on information in reports that Kinder Morgan had filed with other governmental agencies. They argued that there was more than a twenty-five percent difference between the values determined by Pickett and by their own appraiser and that the substantial difference indicated fraud. They cited a case in which a court had voided an appraisal because the property owner had intentionally given false information to an appraisal district. They argued that the minerals should be treated as omitted property and reappraised at higher values. The ARB members said that they had not found any fraud. The court of appeals concluded that the taxing units had raised the issue of "constructive fraud" before the ARB and that the ARB had decided the issue.

The higher court further determined that the taxing units' original, timely pleadings were sufficient to give the trial court jurisdiction over the claim of fraud. The original pleadings had alleged that the minerals had been omitted and cited the precedent case about taxpayer fraud. So, there was no basis for dismissing the case.

One judge dissented on both issues. She stated that the claims that the taxing units raised before the trial court were different that the claims that they had raised before the ARB. The taxing units didn't claim fraud by Kinder Morgan until they filed their amended pleadings in the trial court, and those pleadings were filed too late. Instead, they had

presented the ARB with the inapplicable "twenty-five percent rule." The dissenting judge included her own discussion of the ARB hearing and pointed out that Lemmon had said, "we're not trying to hold anybody responsible for any type of purposeful wrongdoing."

J-W Power Co. v. Irion County Appraisal District
2022 WL 2836812 (Tex. App. – Ausin, July 21, 2022, no pet. hist.) (not reported)

Issues: Correcting appraisal rolls

This is a lingering remnant of the compressor cases. The Tax Code directs appraisal districts to appraise leased heavy equipment (including pipeline compressors) at values far below actual market value. When that provision was enacted, appraisal districts resisted, arguing that the Texas Constitution required them to appraise property at market value. The dispute resulted in hundreds of lawsuits. In 2018, the Texas Supreme Court shocked everyone by ruling that the Constitution did not require appraisals based on market value. The Court upheld the Tax Code's provision (§§23.1241 and 23.1242). The Court further interpreted the Code to make compressors taxable at the owner's location, not where the compressors were actually located. Some property owners, including J-W Power began trying to claim the benefit retroactively for past years.

J-W Power filed protests concerning its compressors located in Irion County for several years prior to 2018. The ARB ruled against it, but J-W Power did not appeal. Then after the Supreme Court's ruling, J-W Power tried to contest the 2013-2016 appraisals retroactively by filing motions with the ARB under §25.25(c). It claimed that its compressors were subjected to multiple appraisals and that they had not existed in Irion County. The ARB denied the motions, and J-W Power sued the district. The district asserted the defense of *res judicata*; it argued that the question of whether the property should be appraised as heavy-equipment inventory had already been finally decided by the ARB in the earlier protests and could not be raised again. The trial court entered summary judgment for the district, and J-W Power appealed.

The court of appeals affirmed the summary judgment for the district. The court explained that *res judicata* can apply to the ruling of an administrative body like the ARB. J-W Power's motion under §25.25(c) was of the same "basic nature" as the earlier protests. J-W Power cited §25.25(l), which states that a property owner may file a §25.25(c) motion even if the owner previously filed a protest relating to the value of the property. The court explained that the protests had not been protests about market value. They had specifically raised J-W- Power's claim about heavy-equipment inventory. Section 25.25(l) did not allow J-W Power to raise the same claim again in a motion. When the ARB determined the protests, J-W Power had a ripe claim that it should have appealed.

The court of appeals further explained that it did not matter that the ARB had *denied* the §25.25(c) motion instead if *dismissing* the claim. The ARB's order was not inconsistent with a determination that the motion was precluded by the earlier protests.

J-W Power Co. v. Sterling County Appraisal District

2022 WL 2836807 (Tex. App. – Austin, July 21, 2022, no pet. hist.) (not reported)

Issues: Correcting appraisal rolls

This case concerning pipeline compressors is identical to the case of *J-W Power Co. v. Irion County Appraisal District,* which is summarized above.

Travis Central Appraisal District v. Texas Disposal Systems Landfill, Inc.
2022 WL 2236109 (Tex. App. – Austin, June 22, 2022, no pet. hist) (not reported)

Issues: Appeal by appraisal district

Landfill filed a protest alleging the incorrect and unequal appraisal of its property. Right before the ARB hearing, Landfill withdrew its incorrect-value claim. It relied solely on its unequal-appraisal claim. The ARB reduced the appraised value substantially. The appraisal district then filed suit to appeal the ARB's order. The district alleged that the value set by the ARB was incorrect and unequal compared to other values. Landfill filed a plea to the jurisdiction claiming that the chief appraiser did not have the Directors' approval for the suit as required by §42.02 of the Tax Code. Landfill also argued that the district could not allege an incorrect appraisal in the appeal because Landfill had withdrawn its incorrect-value claim before the ARB. The trial court granted the plea to the jurisdiction and dismissed the case. The district appealed.

The court of appeals reversed the trial court's order and reinstated the case. The higher court explained that although §42.02 requires an appraisal district's appeal to have the approval of the board of directors, that requirement is not jurisdictional. A case filed without the directors' approval does not have to be dismissed. The district can have an opportunity to correct a problem with the directors' approval. In this instance, the district was relying on a blanket approval granted by the directors before Landfill ever filed its protest. The court of appeals left it for the trial court to determine what more, if anything, the district might need to do to satisfy §42.02.

The court of appeals next addressed the district's allegation of an incorrect value. The court ruled that the district could appeal on that grounds. The district had nothing to complain about with respect to the appraised value until the ARB lowered that value. Then, the district's only option was to take the matter to court. In the trial court could raise any alleged violation of law resulting from the ARB's order. The court of appeals sent the case back to the trial court for further consideration.

In a revised opinion, the court of appeals explained that it had only determined that the trial court had jurisdiction to hear the district's claims. The higher court did not decide the merits of those claims. If the claims proved to be baseless, the trial court could deal with them summarily.

Editor's Comment: The property owner has asked the Texas Supreme Court to take this case. The case is receiving a lot of attention, and many amicus briefs have been filed with the Court.

Jubilee Academic Center, Inc. v. Cameron Appraisal District
2022 WL 2163856 (Tex. App. – Corpus Christi-Edinburg, June 16, 2022, no pet. hist.) (not reported)

Issues: Public property exemption

Jubilee was a non-profit corporation running an open-enrollment public charter school. Jubilee leased a property. The lease required the lessee, Jubilee, to pay taxes on the property. The lease also included an option for Jubilee to purchase the property. Jubilee claimed that the property qualified for exemption as a school (§11.21 of the Tax Code) and as public property (§11.11). The appraisal district denied the exemption because Jubilee did not own the property. Jubilee claimed that it had equitable title to the property. Jubilee protested unsuccessfully and then sued the district. The trial court entered a summary judgement for the district, and Jubilee appealed.

The court of appeals reversed the trial court and entered judgement for Jubilee. The higher court explained that a person is considered the owner of a property for tax purposes if the person holds legal or equitable title to the property. Equitable title includes the present right to compel legal title. By exercising its option and paying the option price, Jubilee could have compelled the owner to deliver legal title to the property. That led the court of appeals to conclude that Jubilee was the equitable owner and that the property qualified for exemption.

Izen v. Pasadena Independent School District
2022 WL 1669389 (Tex. App. – Houston [1st Dist.], May 26, 2022, no pet.) (not reported)

Issues: Delinquent tax judgment

In 2014 the trial court entered a judgement for delinquent taxes against Joe and Afton Izen. Joe could not be served and was represented by an attorney ad litem. In 2019, the taxing units moved for a judgement nunc pro tunc. They alleged that the 2014 judgement contained a clerical error concerning the tax years involved. They served their motion on Joe by serving the attorney ad litem. They mailed a copy of the notice to Afton but misspelled the name of her street. Neither Joe nor Afton appeared to oppose the motion for judgement nunc pro tunc, which was entered in early 2020. The Izens soon found out about the judgement nunc pro tunc. Joe appealed, but Afton failed to file a timely notice of appeal.

The court of appeals ruled that the judgement nunc pro tunc was void because the Izens had not been properly notified. Rule 316 of the Texas Rules of Civil Procedure allows a trial court to enter a judgement nunc pro tunc but only if the party requesting the judgement notifies every other interested party. "The failure to give all interested parties notice of an application to correct a judgment nunc pro tunc after the expiration of the trial court's plenary jurisdiction renders any correction a nullity." The notice to Afton was ineffective because of the misspelling of the street name. The notice to Joe was ineffective because the attorney ad litem was no longer representing him. The attorney ad litem was expressly relieved of his duties by the 2014 judgement.

Propel Financial Services v. Woodruff
2022 WL 1556418 (S.D. Tex., May 17, 2022)

Issues: Bankruptcy

Woodruff borrowed money to pay 2007 and 2008 taxes, and the tax liens were transferred to Propel. Woodruff signed a note and deed of trust related to the loan. A few years later, he filed for a Chapter 13 bankruptcy. The plan approved by the bankruptcy court made it clear that the property was worth considerably more than the amount owed to Propel; Propel was oversecured. Propel filed an application seeking post-petition fees and expenses. The bankruptcy court denied the application because Propel had not filed the application timely. Rule 3002.1 of the Federal Rules of Bankruptcy Procedure states that the holder of a security interest must apply for reimbursement of fees and expenses within 180 days after incurring the fees and expenses. Propel's application came long after that. Propel appealed to the federal district court.

The district court reversed the bankruptcy court's order. The district court's opinion explained that "security interests" and "statutory liens" are treated differently in bankruptcy. The deadline set out in Rule 3002.1 applies to the holder of a security interest but not to the holder of a statutory lien. Propel held transferred tax liens which are statutory liens even when held by private parties. Propel was not required to file its application within 180 days of incurring the fees and expenses. The bankruptcy court should have granted the application.

Mitchell v. Map Resources, Inc.
649 S.W.3d 180 (Tex. May 13, 2022)

Issues: Service of process; collateral attacks on judgments

In 1998, taxing units filed a huge delinquent tax suit involving more than 1,600 mineral interests and about 500 defendants. The lawyer filed an affidavit with the court and sought permission to serve defendants by posting a notice at the courthouse pursuant to Rule 117a of the Texas Rules of Civil Procedure. The affidavit did not discuss the particulars

related to each property. Instead, it generally stated that the owners of the properties were unknown or that they could not be located or that efforts to serve them personally had failed. The court allowed the citation by posting and appointed an attorney ad litem. In a 1999 trial (with a new attorney ad litem), the judge signed a statement of evidence, which summarized testimony from the taxing units' lawyer. The statement of evidence did not recite particulars. It generally said that the lawyer had made a diligent search for the defendants cited by posting, including a search of public records. If a defendant's address was found, personal service was attempted, but it had failed. The lawyer had also attempted to contact anybody in possession of a property and anybody in the community who might know how to find an owner. The trial court entered judgment for the taxing units and ordered that the properties be sold.

One owner whose mineral interest was sold was Elizabeth Mitchell. She had been served by posting and did not appear for the trial. Her property was sold to a company that later resold it to Map Resources. She died in 2009. In 2015, her heirs sued to claim the property. They argued that the sale was void because Mitchell had not been properly served in the delinquent-tax suit. The heirs argued that the county deed records included 1983 deeds to Mitchell with her P.O. box address on them. If the taxing unit's lawyer had really made a diligent search of public records, he would have found her address and served her personally. Serving her by posting had violated her constitutional right to due process of law. The trial court entered summary judgment for MAP, and the heirs appealed.

The court of appeals affirmed the summary judgment. The intermediate court rejected the heirs' argument about the deed records. The court believed that it could consider only the official record from the earlier trial. Extrinsic evidence, including the 1983 deeds could not be considered. The heirs then asked the Supreme Court to take the case, and the high Court agreed.

The Supreme Court reversed the lower courts. In a unanimous opinion, the justices explained that constitutional due process requires notice reasonably calculated under the circumstances to apprise someone that he/she is being sued. Plaintiffs must act as though they really wanted to find and serve the defendants. Plaintiffs conducting a diligent search for a defendant would search public property records. If the taxing units had done that, they would have found the 1983 deeds. The Court ruled that evidence of the deeds should have been considered by the lower courts. Upon finding the deeds, the taxing units should have tried to reach Mitchell through her P.O. box. The trial court's record did not show whether anybody ever attempted personal service on Mitchell or the results of any such efforts. A citation and a return of service should have been included.

The high Court further ruled that the one-year statute of limitations for a challenge to a tax sale did not apply because "state statutory requirements must give way to constitutional protections." Where a complete failure of service deprives a defendant of due process, the resulting judgement is void and can be challenged at any time.

The court identified two questions that would require further proceedings in the trial court. The first was the requirement that someone challenging a tax sale post a deposit to cover the taxes and related amounts (§34.08). The trial court should determine whether the heirs had notice of the amount of the required deposit and an opportunity to make the deposit. The trial court should also consider the question of laches. (But the Supreme Court hinted that it did not look favorably on Map's claim of laches.)

Haynes v. DOH Oil Co.
647 S.W.3d 793 (Tex. App. – Eastland, May 12, 2022, no pet.)

Issues: Tax sales

Haynes owned several tracts of land that were the subjects of a tax sale. Some tracts were purchased by DOH, and one was purchased by Milton. The sheriff's deeds were recorded in early 2009. The descriptions in the deeds included the phrase, "royalty interest." More than a decade later, Haynes sued DOH and Milton trying to contest the tax sale. She asserted a trespass-to-try-title claim and a suit to quiet title. She claimed that the sheriff's deeds were void because of inadequate property descriptions. Alternatively, she claimed that the deeds conveyed only royalty interests not whole properties. The defendants responded that the suit was filed too late. Milton also pointed out that Haynes had not deposited money with the court to cover the taxes. In response to the defendants' motions, the trial court entered summary judgment in their favor, and Haynes appealed.

The Court of appeals affirmed the summary judgement. The higher court explained that §34.08 of the Tax Code requires a party challenging a tax sale to deposit with the court funds sufficient to cover the amount of the delinquent-tax judgment plus all costs of the tax sale. Alternatively, the person can file an oath of inability to pay. But Haynes hadn't done either of those.

The court of appeals also relied on §33.54, which requires that a suit to challenge a tax sale be filed within one year after the deed is recorded. That deadline applies even when someone complains that a deed is void because of an inadequate property description.

Haynes argued that her claim about royalty interests was not an attempt to invalidate the sheriff's deeds, only to determine their scope. The court, however, explained that the one-year statute of limitations applies to any suit "relating to the title," including Haynes's suit. Haynes filed her suit too late, and the defendants held full title to the properties.

Wilmington Savings Fund Society, FSB v. Hunters Glen Municipal Utility District
2022 WL 1498220 (Tex. App. – Houston [14th Dist.], May 12, 2022, no pet.) (not reported)

Issues: Appeals; tax sales

CitiFinancial Servicing held a deed of trust on a property that was sold in a tax sale. Wilmington, a successor to CitiFinancial, later sued to challenge the tax sale. Wilmington claimed that the deed of trust survived the tax sale because CitiFinancial had not been properly served in the delinquent-tax suit. Wilmington sued the taxing units and the tax-sale buyer. The trial court granted summary judgment for the taxing units and denied Wilmington's motion for summary judgment. Wilmington appealed.

The court of appeals raised the question of whether the trial court's orders were a complete and final disposition of the case. Those orders did not appear to dispose of Wilmington's claims against the buyer. The court of appeals abated the appeal and gave the trial court the opportunity to clarify its orders. The trial court entered another order making it clear that Wilmington's claims against the buyer has not been decided. The court of appeals then dismissed the appeal noting that an appeal is possible only when a trial court has disposed of all claims and all parties.

Yvondia Johnson v. Bexar Appraisal District
2022 WL 1395332 (Tex. App. – San Antonio, May 4, 2022, no pet. hist.) (not reported)

Issues: Disabled veteran's homestead exemption

Two spouses, Yvondia and Gregory Johnson were both seriously disabled veterans eligible for the 100% homestead exemption set out in §11.131 of the Tax Code. In 2012, Gregory applied for and received the exemption for the house where they both lived. In 2019, they bought a second house. At the beginning of 2020, they separated, Gregory living in their first house and Yvondia living in the second. She applied for a disabled veteran's homestead exemption on the second house. The district denied her application on the grounds that the Johnsons could not receive the same exemption on two properties in the same year. After the ARB denied her protest, she sued the district. The trial court entered a summary judgment for the district and denied Yvondia the exemption. She appealed.

The court of appeals reversed the trial court and granted the exemption. The court of appeals noted that under §11.13(h), joint or community owners may not each receive a disabled veteran's homestead exemption on the same property in the same year. But the Johnsons weren't claiming two exemptions on the same property. It wasn't necessary to prorate an exemption based on a property having multiple owners because §11.41(b) does not require proration when the owners are married and they own the property as a community. Gregory could claim his exemption on the property that was his principal residence, and Yvondia could claim the exemption on the property that was her principal residence. Neither spouse (and neither house) received more than one exemption in the same year.

Aspenwood Apartments Partners, LP v. Harris County Appraisal District
2022 WL 1249956 (Tex. App. – Houston [1st Dist.], April 28, 2022, no pet.) (not reported)

Issues: Value testimony

A lawyer named Yetiv was an officer in the corporation that served as the general partner in the Aspenwood partnership. Aspenwood protested the appraisal of its apartment complex, and Yetiv protested the appraisal of a house that he owned personally. Neither protest was successful, and Yetiv represented both Aspenwood and himself in one lawsuit against the appraisal district. Yetiv also wanted to be a witness and testify to his opinions about the values of both properties. He wanted to testify about market values and equal-and-uniform values. In a pre-trial hearing, the trial court refused to let him testify about the apartment complex, but he did testify at trial about his own property. An appraiser for the district also testified. The question of the apartment complex's value never went to the jury because Aspenwood had no evidence. The jury did decide the value of the house, and their verdict was only slightly lower than the district's value. Aspenwood and Yetiv appealed.

The court of appeals affirmed the trial court's judgement based on the jury's verdict. The higher court explained that Yetiv could not testify as an expert. At the pre-trial hearing, he had not even tried to show that he had expert qualifications. He was an experienced investor, but he had no expertise in appraisal methodology. A property owner may testify and give his opinion about the value of his own property, even if he is not an expert. If a property is owned by a business entity, value testimony can come from an officer or employee in a management position with duties that relate to the property in question. But Yetiv was not in a management position at Aspenwood, nor did he have duties related to the apartment complex. So, the trial correctly refused to let him testify about the complex.

The court of appeals also ruled that the evidence was legally and factually sufficient to support the jury's verdict concerning the value of Yetiv's house. Yetiv did not object at trial to the testimony of the district's appraiser. The court was critical of his theory that the property should be appraised as two separate tracts with one tract appraised as almost worthless agricultural land. The court explained that under §23.01 of the Tax Code, a homestead must be appraised as residential property, even if that is not actually its highest and best use. His testimony about water flowing from a neighbor's land did not impress the court because he could have easily diverted the water. Further, he cited many of the same comparable properties as the district's appraiser. Yetiv's own testimony showed that the house was compared equally with other properties.

I-10 R.V., L.L.C. v. Jefferson County Appraisal District
2022 WL 1177610 (Tex. App. – Beaumont, April 21, 2022, no pet.) (not reported)

Issues: Taxable leasehold in exempt property

Jefferson County developed an "entertainment complex" on park land that it owned. The county decided that about 15 acres should be used as an R.V. park. It entered a contract with I-10 that allowed the private company to develop and operate the R.V. park. I-10 paid the county a portion of its gross income from the R.V. park. A subsequent amendment to

the contract made the company responsible for maintenance and repairs. The park (including the R.V. park) received a tax exemption as public property used for public purposes (§11.11 of the Tax Code). But the appraisal district decided that I-10 had a taxable leasehold interest in the R.V. park as a result of its contract with the county. After an unsuccessful protest, I-10 sued the appraisal district. I-10 argued that the contract was a management contract, not a lease. It did not have any leasehold interest at all. At trial, several witnesses gave their assessments of the deal between I-10 and the county. The trial court ruled for the district and upheld the appraisal of a leasehold in I-10's name. I-10 appealed.

The court of appeals explained §23.13 and §25.07 of the Tax Code which sometimes allow the taxation of a "leasehold or other possessory interest in real property that is exempt from taxation to the owner." The leasehold interest is appraised and taxed in the name of the lessee. The higher court reviewed the record and decided that the evidence supported a finding that the R.V. park was used separately from the larger public park. The R.V. park was used for private, commercial purposes and it did not qualify for exemption as public property. The court affirmed the trial court's judgement.

Editor's Comment: The rule of taxable leaseholds has confused many people, even those who understand string theory and the infield fly rule. But a taxable leasehold can exist only in a property that is exempt in the hands of the owner. The court of appeals reasoned that the R.V. park was not used for public purposes. That would mean that the property did not qualify for exemption. If the property was not exempt in the hands of the county, I-10 could not have had a taxable leasehold. If the property did not qualify for exemption, it should have been taxed in the name of the county, and the leasehold should not have been separately appraised or taxed.

Letner Survivors Trust, LLC v. Berry Group, LP
2022 WL 1151160 (Tex. App. – Houstin [14th Dist.], April 19, 2022, no pet.) (not reported)

Issues: Tax sales

The Letner trust claimed an interest in a property and filed a lawsuit to challenge a foreclosure sale of the property. While that case was pending, taxing units sued to collect delinquent taxes on the property and foreclose their tax liens. The court entered judgement for the taxing units, and Sahara bought the property at the tax sale. More than a year later, the trust added Sahra as a defendant in its ongoing litigation and sought to invalidate the tax sale. The trial court ruled that Sahara was the owner of the property. The trust appealed.

The court of appeals affirmed the judgement of the trial court in favor of Sahara. The higher court based its decision on §33.54 of the Tax Code, which says that, following a tax sale, any suit relating to the title to the property must be filed within one year after the sheriff's deed is recorded. Because the trust filed its suit too late, the trial court could not hear its challenges to the tax sale, including its claims of fraud.

Iraan-Sheffield Independent School District v. Pecos County Appraisal District
645 S.W.3d 827 (Tex. App. – El Paso, April 8, 2022, no pet. hist.) (pending in Texas Supreme Court)

Issues: Tax ferrets

This is the latest chapter in the saga of Brent Lemon, a lawyer who convinced several taxing units to hire him to try to raise more taxes from minerals. The contract between them provided that Lemon would receive a fee equal to twenty percent of what he raised. After an unsuccessful challenge, the taxing units sued the appraisal district and Kinder Morgan on the theory that Kinder Morgan had fraudulently persuaded the district to under-appraise its minerals. The defendants responded with a motion to show authority and a plea to the jurisdiction arguing that the Lemon contract and the pleadings that he filed were void. The trial court agreed and ruled that the Lemon contract was an illegal tax-ferret contract. The trial court dismissed the case, and the Taxing units appealed.

The court of appeals reversed the trial court's order and reinstated the case. The higher court acknowledged that the Lemon contract was a tax-ferret contract, at least in part, because it authorized him to investigate and identify property omitted from the tax rolls. The court reasoned, however, that the contract was legal under §6.30 of the Tax Code. That section allows a taxing unit to enter a contingent-fee contract with a lawyer for the collection of delinquent taxes. The court created its own definition of *delinquent*. It was enough that the taxing units claimed that Kinder Morgan owed some taxes that had not been paid even though those taxes had never been assessed or billed. The Lemon contract was authorized by the Code, at least insofar as it authorized Lemon to file the lawsuit. The taxing units could contract to pay a lawyer a contingent fee for his legal services.

The court of appeals also noted that in some instances, §2254.1038 of the Government Code requires the attorney general to review a local government's contingent-fee contract for legal services. But that requirement was not in effect when the Lemon contract was signed.

J-W Power Co. v. Duval County Appraisal District
2022 WL 789345 (Tex. App. – San Antonio, March 16, 2022, no pet.) (not reported)

Issues: Appraisal roll corrections

In its 2018 opinion in *EXLP Leasing LLC v. Galveston Central Appraisal District*, the Texas Supreme Court upended more than a hundred years of established law when it ruled that the Texas Constitution does *not* require that appraisals be based on market values. The Court approved the statutory method of appraising heavy-equipment inventories far below their actual market values. (see, Sunstein, Cass - *Radicals in Robes*, Basic Books, 2005) The *EXLP Leasing* decision served as a precedent for many other pending lawsuits

around Texas. But some property owners who had not filed lawsuits nevertheless sought to take advantage of the radical change in the law.

In this case, J-W Power leased compressors to pipelines in Duvall County. In the years 2013-2016, the appraisal district appraised the compressors as ordinary bpp at their market values. J-W Power protested, claiming the benefits of §23.1241 of the Tax Code. J-R Power also claimed that the compressors were really taxable in Jim Wells County, where it had an office and a storage yard. But J-W Power lost before the ARB and never appealed the ARB's orders. In response to the *EXLP Leasing* decision, J-W Power filed a motion under §25.25(c) seeking corrections of the appraisal rolls for 2013-2016. It alleged that the appraisal rolls included multiple appraisals of the compressors and property that did not exist at the location described in the appraisal rolls. When J-W Power lost before the ARB, it sued the district. When the trial court entered a summary judgment for the district, J-W Power appealed.

The court of appeals affirmed the summary judgment for the district. The higher court noted that the compressors in Duvall County had not been appraised as part of J-W Power's inventory in Jim Wells County. J-W Power had not included them in its reports to the appraisal district and TAC in Jim Wells County. It was not enough for J-W Power to show that it had *some* inventory appraised there. Even if §25.25(c) could be used to address property appraised by two appraisal districts, it would not apply to these compressors. There was no multiple appraisal. Further, the evidence established that the compressors did exist in Duvall County. According to *EXLP Leasing*, the Tax Code made the compressors taxable in Jim Wells County, but they nevertheless did exist in Duvall County. They could not be treated as property that did not exist at the location described in the appraisal rolls.

Getosa, Inc. v. City of El Paso
642 S.W.3d 941 (Tex. App. – El Paso, March 4, 2022, pet. denied)

Issues: Liability for taxes

A corporation called Saucedo Brothers, Inc. operated a locksmithing business until it dissolved in 2009. The owners of the corporation then formed Getosa, Inc. and operated a locksmithing business a block away. Getosa did business from 2010 through 2018 under the name Saucedo Brothers. There was no record of what happened to Saucedo Brothers' bpp, but one of the owners claimed that some of it had been seized by the IRS. Nobody told the appraisal district, which continued to appraise bpp in the name of Saucedo Brothers. Nobody paid taxes on the bpp. Taxing units sued Getosa and identified it by that name as well as Saucedo Brothers. Getosa argued that it was not liable for the taxes because the district had appraised it in the name of Saucedo Brothers. At trial, the taxing units introduced their delinquent tax records as well as records from the district. They also presented testimony from one of Getosa's owners. The trial court entered judgment for the taxing units, and Getosa appealed.

The court of appeals explained that the actual January-1 owner of property is liable for the taxes on the property even if the appraisal district appraises it under the wrong name. When taxing units introduce their delinquent tax records into evidence, that ordinarily creates a presumption that the person named as the owner is liable for the taxes. But if the owner sued is not the same owner named in the records, that presumption does not arise. Under those circumstances, the taxing units must prove that the person sued was the actual owner of the property. The taxing units can use records of the appraisal district or other evidence to provide that proof.

In this case, the owner of Getosa admitted that Getosa did business at the second location and that it used the name Saucedo Brothers. One year, Getosa had actually rendered the bpp at that location. The district's records showed that its appraisers had inspected the premises every year and seen the bpp. That was enough to meet the taxing units' burden of proof. The evidence was legally and factually sufficient to support the trial court's judgment for the taxing units. Getosa's claim that the IRS had seized some of the bpp of Saucedo Brothers, Inc. had little evidence to support it. The court of appeals affirmed the trial court's judgment.

Zeon Chemicals, L.P. v. Harris County Appraisal District
2022 WL 619681 (Tex. App. – Houston [14th Dist.], March 3, 2022, no pet.) (not reported)

Issues: Appraisal roll corrections

Zeon applied for a freeport exemption for 2018. On its application, it said that the total cost of goods sold in 2017 was $47M. The appraisal district granted the application and, based upon the information from Zeon, determined that 56% of Zeon's inventory would be exempt in 2018. Zeon filed a protest, but it challenged only the appraised value of the property. Zeon and the district reached a settlement, and their agreement established the 2018 appraised value for the property. Later that year, Zeon filed a motion with the ARB seeking the correction of the 2018 appraisal roll. Zeon alleged that it had made a clerical error on its freeport exemption application. After the ARB denied that motion, Zeon appealed. The district filed a plea to the jurisdiction alleging that its settlement agreement with Zeon barred the clerical-error claim. The trial court dismissed the case, and Zeon appealed to the court of appeals.

The higher court first considered whether Zeon had filed its notice of appeal on time. Normally, an appellant must file a notice of appeal within thirty days after the judgement, but some post-judgement filings can extend the deadline. Zeon did not file its notice of appeal within thirty days because it believed that its request for findings of fact and conclusions of law extended the deadline. The district disagreed, but the court of appeals sided with Zeon. The fact that evidence could have been (and was) presented at the trial court's dismissal hearing meant that Zeon's request for findings and conclusions extended the deadline for its notice of appeal.

Next, the court of appeals considered whether the settlement agreement precluded Zeon's motion under §25.25(c). The court explained that a property owner cannot use that law to raise an issue that has already been resolved by agreement. In this case, however, the settlement agreement addressed only the 2018 appraised value of Zeon's property, not the amount of the freeport exemption. Exemptions are considered in the calculation of a property's *taxable* value but not its *appraised* value. So, Zeon could use §25.25(c) to complain about a clerical error in the calculation of the freeport exemption.

The district argued that the error alleged by Zeon could not possibly be a clerical error. The court responded by describing an affidavit filed by Zeon in which its agent described taking the wrong figure from a spreadsheet and entering it into the freeport exemption application. He took the "total sales" figure from the spreadsheet ($47M), not the cost of goods sold ($28M). If that was true, the agent's error might be a clerical error that could be corrected under §25.25(c). The district failed to establish as a matter of law that no clerical error had occurred. The court refused to consider the district's objections to the affidavit because they had not been raised in the trial court. The court of appeals sent the case back to the trial court for further consideration.

Mission Partners, Ltd. V Harris County Appraisal District
2022 WL 175357 (Tex. App. – Houston [1st Dist.], January 20, 2022, no pet.) (not reported)

Issues: Timeliness of appeal

Mission filed an unsuccessful protest in 2018, followed by a lawsuit to appeal the ARB's order. While that suit was pending, Mission filed a 2019 protest. The ARB issued its order in August, and the ARB sent notice of the order to Mission's agent electronically. Mission amended its existing suit to include 2019, but it didn't do that until January of 2020, more than sixty days after the electronic delivery of the 2019 ARB order. The appraisal district filed a plea to the jurisdiction seeking the dismissal of Mission's 2019 claims. The district provided evidence of the electronic delivery of the 2019 order. The trial court dismissed Mission's 2019 claims, and Mission appealed.

The court of appeals reversed the trial court's order of dismissal. The higher court reasoned that the district had failed to prove that the ARB order had been delivered properly. The court explained that under §1.085 of the Tax Code, notices may be delivered electronically if the district and the property owner have an agreement providing for electronic delivery. Otherwise, notices must be delivered by mail. In this case, the district had not provided any evidence that it and Mission had agreed to the electronic delivery of notices. Without that evidence, the courts could not determine whether the 2019 order had been delivered properly or whether the statute of limitations had expired on Mission's 2019 claims. The court of appeals sent the case back to the trial court for further consideration.

Kinder Morgan Sacroc, LP v Scurry County
2022 WL 120803 (Tex. App. – Eastland, January 13, 2022, no pet.) (not reported)

Issues: Texas Citizens Participation Act

This is yet another chapter in the ongoing saga of a lawyer who convinced several taxing units to hire him to try to get more tax money from Kinder Morgan. After an unsuccessful challenge in Scurry County, he sued Kinder Morgan and the appraisal district on behalf of several taxing units. Kinder Morgan responded that the suit was barred by the Texas Citizens Participation Act (TCPA), an anti-SLAPP statute intended to prevent vexatious litigation to harass people and organizations for exercising their right of free speech or their right to petition government. The trial court determined that the TCPA did not apply, and Kinder Morgan appealed.

The court of appeals reversed the trial court's ruling. The court of appeals explained that the TCPA applies to a lawsuit based on, related to, or in response to the defendant's exercise of the right of free speech, right to petition, or right of association. It applies even to a type of lawsuit allowed by the Tax Code. This suit dealt with Kinder Morgan's communications with the appraisal district, and those communications were made in connection with the appraisal of Kinder Morgan's property. The suit related to Kinder Morgan's petitioning government. The TCPA applied to the suit. The court of appeals sent the case back to the trial court in order for the lower court to consider whether the statute required the dismissal of the suit.

Attorney General's Opinions

So far, the Attorney General's office has not issued any notable opinions this year.