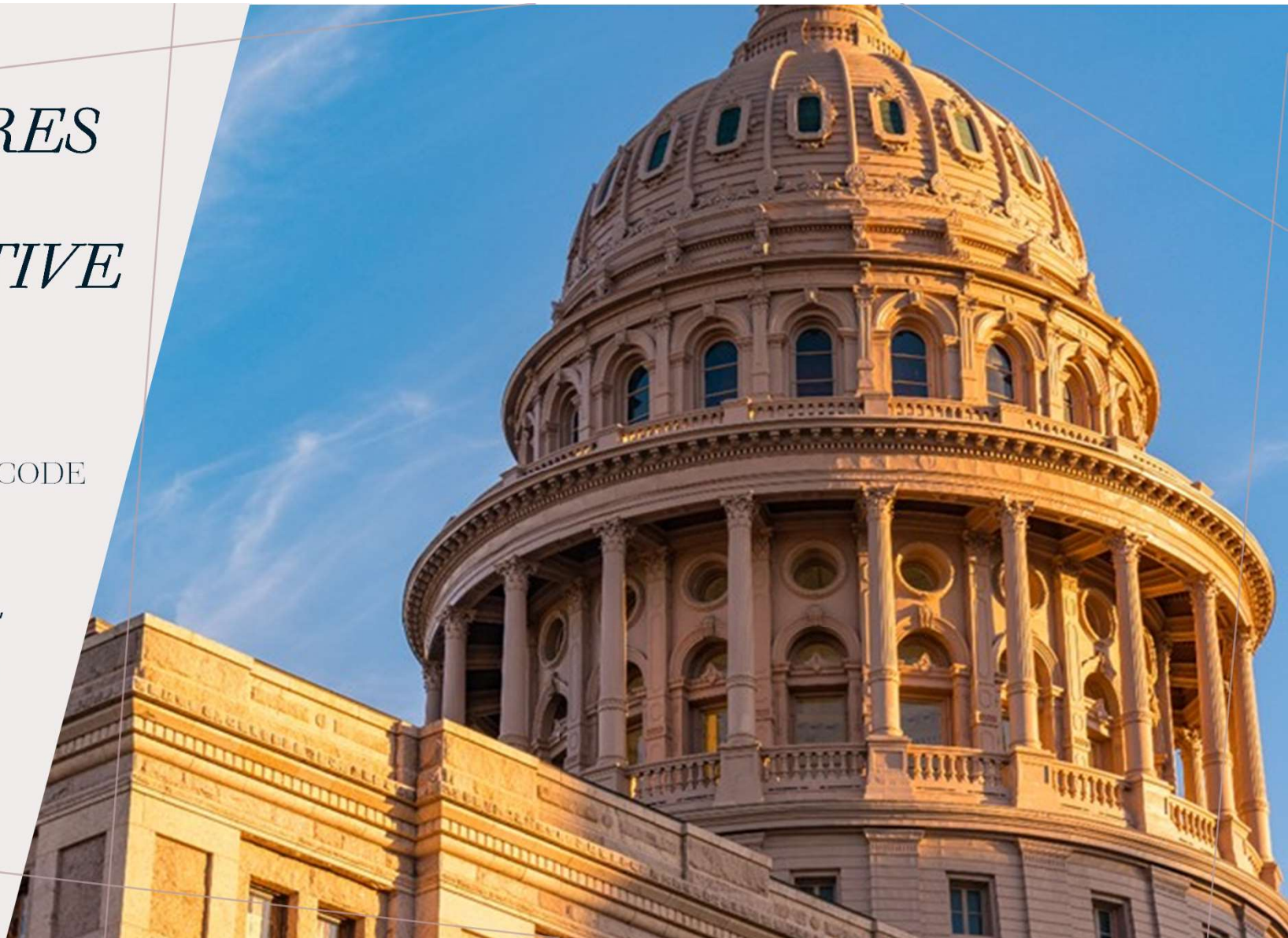


WHO CARES ABOUT LEGISLATIVE INTENT?

A DISCUSSION OF
TEXAS PROP. TAX CODE
§ 23.01(e)

COLE HUTCHISON,
MIRANDA
GRUMMONS, AND
WILLIAM IKARD
IKARD YOUNG LLP



SEC. 23.01. APPRAISALS GENERALLY.

...

(e) Notwithstanding any provision of this subchapter to the contrary, if the appraised value of property in a tax year is lowered under Subtitle F, the appraised value of the property as finally determined under that subtitle is **considered to be the appraised value of the property for that tax year.**

In the next tax year in which the property is appraised, the **chief appraiser may not increase the appraised value of the property unless the increase by the chief appraiser is reasonably supported by clear and convincing evidence** when all of the reliable and probative evidence in the record is considered as a whole.

If the appraised value is finally determined in a protest under Section 41.41(a)(2) or an appeal under Section 42.26, the chief appraiser may satisfy the requirement to reasonably support by clear and convincing evidence an **increase** in the appraised value of the property in the next tax year in which the property is appraised by presenting evidence showing that the inequality in the appraisal of property has been corrected with regard to the properties that were considered in determining the value of the subject property.

The **burden of proof is on the chief appraiser to support an increase in the appraised value of property** under the circumstances described by this subsection.

- *Karl J. Amelang, et al v. Harris County Appraisal District*
 - No. 01-20-00623-CV
 - Opinion issued on September 22, 2022
 - First Court of Appeals, Houston
- *Providence Town Square Housing, Ltd. v. Harris County Appraisal District*
 - No. 01-20-00835-CV
 - Opinion issued December 29, 2022
 - First Court of Appeals, Houston
 - Pending Motion for Rehearing and Motion for En Banc Reconsideration
- *Cricket Hollow Partners, LP v. Montgomery County Appraisal District*
 - No. 09-22-00056-CV
 - Ninth Court of Appeals, Beaumont
 - Briefs filed but no opinion





S.B. 771—BILL ANALYSIS FOR ENACTMENT OF § 23.01(e)

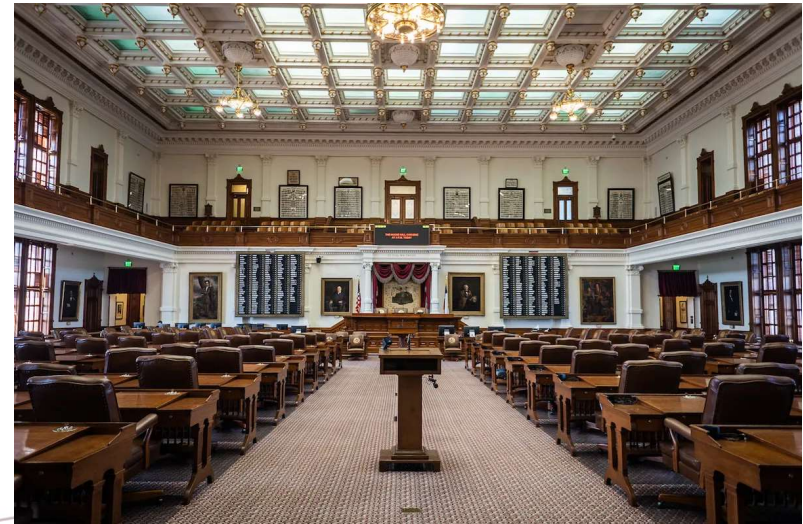
AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, appraisal districts do not have a standard for setting values on properties following a year in which the property's market value was determined to be lower than the initial value through the protest process. Even though a lower value was achieved through protest, in the subsequent year, a property owner often receives an initial value that is the same or higher than the initial valuation that was the subject of the preceding year's protest, even if there has been little or no change to the property since the previous year's value had been finally established. As a result, property owners are forced to protest the value, often resulting in litigation, and each year having to present the same issues as presented the previous year with substantially the same outcome.

H.B. No. 1313

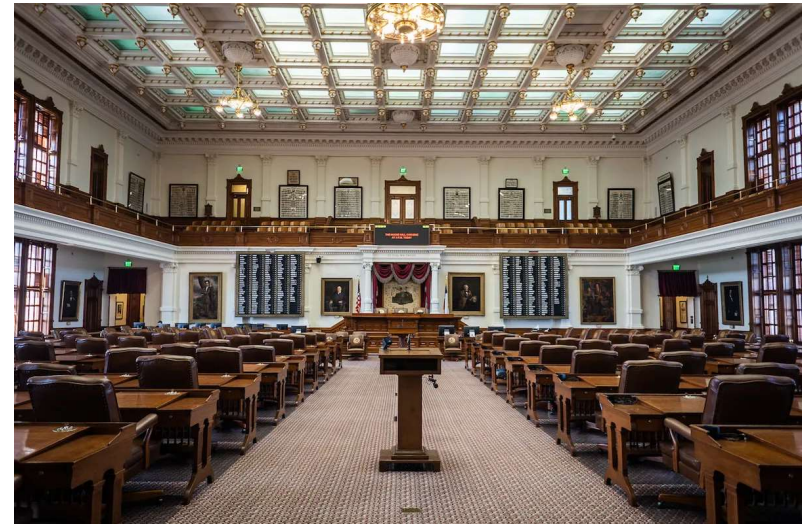
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2 contrary, if the appraised value of property in a tax year is
3 lowered under Subtitle F, the appraised value of the property as
4 finally determined under that subtitle is considered to be the
5 appraised value of the property for that tax year. In the next
6 ~~[following]~~ tax year in which the property is appraised, the chief
7 appraiser may not increase the appraised value of the property
8 unless the increase by the chief appraiser is reasonably supported
9 by clear and convincing ~~[substantial]~~ evidence when all of the
10 reliable and probative evidence in the record is considered as a
11 whole. If the appraised value is finally determined in a protest
12 under Section 41.41(a)(2) or an appeal under Section 42.26, the
13 chief appraiser may satisfy the requirement to reasonably support
14 by clear and convincing ~~[substantial]~~ evidence an increase in the
15 appraised value of the property in the next ~~[following]~~ tax year in
16 which the property is appraised by presenting evidence showing that
17 the inequality in the appraisal of property has been corrected with
18 regard to the properties that were considered in determining the
19 value of the subject property. The burden of proof is on the chief
20 appraiser to support an increase in the appraised value of property
21 under the circumstances described by this subsection.

H.B. 1313 – 2019 AMENDMENT OF § 23.01(e)



“Increasing the standard of evidence from substantial to clear and convincing on increases in the appraised value of a property if the appraised value was lowered in the preceding year would increase the burden of proof and limit increases in appraised values resulting in a cost to local taxing units, and to the state through the school funding formulas. Current law specifying the evidence required by the chief appraiser to meet the burden of proof in an appraisal review board protest or district court appeal would not be changed under the bill. Consequently, although the value of properties that would be affected is unknown, the cost is not expected to be significant.”

H.B. 1313 – FISCAL NOTE



TEXAS TAX CODE § 41.43(a-3)

(ENACTED 2013)

In a protest authorized by Section 41.41(a)(1) or (2), the appraisal district has the burden of establishing the value of the property by clear and convincing evidence presented at the hearing if:

- (1) the appraised value of the property was lowered under this subtitle in the preceding tax year;
- (2) the appraised value of the property in the preceding tax year was not established as a result of a written agreement between the property owner or the owner's agent and the appraisal district under Section 1.111(e); and
- (3) not later than the 14th day before the date of the first day of the hearing, the property owner files with the appraisal review board and delivers to the chief appraiser:
 - (A) information, such as income and expense statements or information regarding comparable sales, that is sufficient to allow for a determination of the appraised or market value of the property if the protest is authorized by Section 41.41(a)(1); or
 - (B) information that is sufficient to allow for a determination of whether the property was appraised unequally if the protest is authorized by Section 41.41(a)(2).

AMELANG v. HCAD

Section 23.01(e) governs the obligations of the chief appraiser in making the initial appraisal. See *id.* But this proceeding is not based on the chief appraiser's initial appraisal, nor is the chief appraiser a proper party to this appeal. See TEX. TAX CODE § 42.21(b) (designating parties to petition for review of ARB's determination). Amelang challenged the appraisals before the ARB, pursuant to Tax Code chapter 41, and the ARB found in favor of HCAD. Amelang then pursued a de novo review of the ARB's determination pursuant to Tax Code chapter 42. Nothing in the language of section 23.01(e) purports to address the burden of proof in de novo proceedings pursuant to chapter 42.

To the contrary, section 42.23(a) provides, "Review [of the ARB's order] is by trial de novo. The district court shall try all issues of fact and law raised by the pleadings in the manner applicable to civil suits generally." TEX. TAX CODE § 42.23(a). Generally, in civil suits, the party seeking relief bears the burden of proof. See [*TRO-X, L.P. v. Anadarko Petroleum Corp.*, 548 S.W.3d 458, 464-65 \(Tex. 2018\)](#) (noting "well accepted postulate of the common law" that civil litigant asserting affirmative claim for relief has burden of proof). And, as discussed above, this Court has held that the taxpayer has the burden to prove that the market value of its property differed from the taxing district's appraisal. See, e.g., [*Briggs Equip. Tr.*, 294 S.W.3d at 670](#).

We overrule Amelang's second issue.

We hold that Section 23.01(e) of the Tax Code does not apply to Chapter 42 *de novo* judicial proceedings before district court. Thus, the trial court did not err by holding that Section 23.01(e) was inapplicable and not applying Section 23.01(e) to cap the appraised value of the Property at \$5,000,000.

We overrule Providence's sole issue.

Conclusion

We affirm the trial court's judgment.

*PROVIDENCE
TOWN
SQUARE
HOUSING,
LTD. v. HCAD*



RAMIFICATIONS OF
THE *PROVIDENCE*
TOWN OPINION

TEXAS TAX CODE § 23.01—APPRAISALS GENERALLY

(a)

Except as otherwise provided by this chapter, all taxable property is appraised at its market value as of January 1;

(b)

The market value of property shall be determined by the application of generally accepted appraisal methods and techniques. If the appraisal district determines the appraised value of a property using mass appraisal standards, the mass appraisal standards must comply with the Uniform Standards of Professional Appraisal Practice. The same or similar appraisal methods and techniques shall be used in appraising the same or similar kinds of property. However, each property shall be appraised based upon the individual characteristics that affect the property's market value, and all available evidence that is specific to the value of the property shall be taken into account in determining the property's market value.

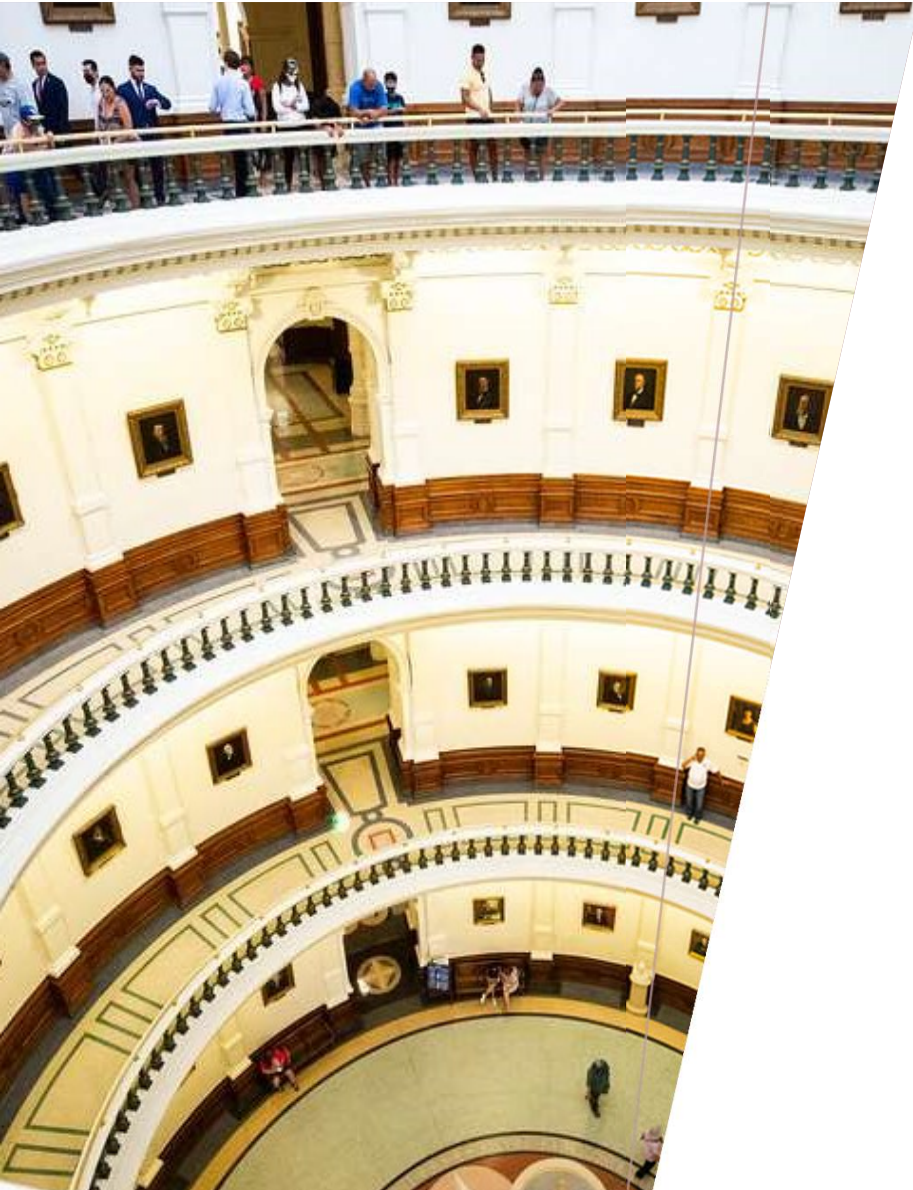
TEXAS TAX CODE § 23.01—APPRAISALS GENERALLY

(d)

The market value of a residence homestead shall be determined solely on the basis of the property's value as a residence homestead, regardless of whether the residential use of the property by the owner is considered to be the highest and best use of the property.

(f)

The selection of comparable properties and the application of appropriate adjustments for the determination of an appraised value of property by any person under Section 41.43(b)(3) or 42.26(a)(3) must be based on the application of generally accepted appraisal methods and techniques. Adjustments must be based on recognized methods and techniques that are necessary to produce a credible opinion.



WHAT'S NEXT FOR § 23.01(e)?

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