



State Tax Department
of West Virginia

Charleston 25305

ARCH A. MOORE, JR.
GOVERNOR

1985 SEP 27 AM 9 59
FILED
MICHAEL E. CARYL
COMMISSIONER

NOTICE OF PUBLIC HEARING OR COMMENT PERIOD
ON PROPOSED RULE

COMMENT PERIOD

AGENCY: Tax Department

RULE TYPE: Legislative

RULE TITLE: Review Of Appraisal By The County Commission Sitting
As An Administrative Appraisal Review Board

A COMMENT PERIOD ON THE ABOVE PROPOSED RULE HAS BEEN
SCHEDULED AND WILL END ON November 15, 1985 At 5:00 P.M.

WRITTEN COMMENTS ARE TO BE MAILED TO THE FOLLOWING

ADDRESS: State Tax Commissioner

Capitol Building, WW-300

Charleston, WV 25305

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THE PROPOSED
RULE.


Michael E. Caryl
State Tax Commissioner

EMERGENCY
REVIEW OF APPRAISAL BY THE COUNTY COMMISSION
SITTING AS AN ADMINISTRATIVE APPRAISAL
REVIEW BOARD REGULATIONS

Section 17: Review Of Appraisal By The County Commission Sitting
As An Administrative Appraisal Review Board.

17.1. General.

17.1.1 Type of Regulations. -- These are emergency legislative regulations as defined in W. Va. Code §§ 29A-1-2(d) and 29A-3-15.

17.1.2 Scope. -- These emergency legislative regulations provide the procedures whereby property reappraisals resulting from the statewide reappraisal may be appealed to the county commission sitting as an Administrative Appraisal Review Board.

17.1.3 Authority. -- These emergency legislative regulations are issued under the authority of W. Va. Code §§ 11-1A-1(f) and 29A-3-15.

17.1.4 Filing Date. -- These emergency legislative regulations were promulgated and filed in the State Register on September 27, 1985.

17.1.5 Effective Date. -- These emergency legislative regulations take effect immediately upon filing in the State Register and are effective for a period of fifteen (15) months thereafter.

17.1.6 Citation. -- These emergency legislative regulations may be cited as: W. Va. Emerg. Leg. Reg. 11-1A, Ser. 1A, § 17. __, page __ (1985).

17.2. Definitions.

As used in this article, unless the context clearly requires a different meaning.

17.2.1 "Assessed value" of any item of property is its assessed value after the certification of the first statewide reappraisal and shall be sixty percent of the market value of such item of property regardless of its class or species, except as hereinafter specifically provided in this article;

17.2.2 "Good cause." The term "good cause" shall mean a sufficiently reasonable relationship between the protestor or intervenor and the appraisal of the property whereby the protestor's or the intervenor's financial interests are or may be adversely affected. "Good cause" must be determined by the circumstances of the individual case and the determination of its existence must largely be left to the discretion of the officer or court making such determination.

17.2.3 "Intervenor." The term "intervenor" shall mean any taxpayer of ad valorem property tax in any West Virginia county who was not involved in the initial petition for a hearing before the county commission but requests permission to participate in the proceedings.

17.2.4 "Protestor." The term "protestor" shall mean any taxpayer of ad valorem property tax in any West Virginia county who petitions the county commission to hold a hearing to hear challenges to the appraisal of property other than property the taxes for which he is liable.

17.2.5 "Tax Commissioner." The term "Tax Commissioner" shall mean the State Tax Commissioner of West Virginia or his delegate and the mailing address for the Tax Commissioner's office is: P. O. Box 2389, Charleston, WV 25328.

17.2.6 "Value," "market value" and "true and actual value" shall have the same meaning and shall mean the price at or for which a particular parcel or species of property would sell if it were sold to a willing buyer by a willing seller in an arms length transaction without either the buyer or the seller being under any compulsion to buy or sell: Provided, that in determining value, primary consideration shall be given to the trends of price paid for like or similar property in the area or locality wherein such property is situate over a period of not less than three nor more than eight years next preceding the base year and in the case of a farm or farms shall be determined assuming such land is being used for farming purposes. In addition, the commissioner may, for purposes of appraisal of any tract or parcel of real property, or chattels, real or other species of property, real or personal, take into account one or more of the following

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factors: (1) The location of such property; (2) its site characteristics; (3) the ease of alienation thereof, considering the state of its title, the number of owners thereof, and the extent to which the same may be the subject of either dominant or servient easements; (4) the quantity of size of the property and the impact which its sale may have upon surrounding properties; (5) if purchased within the previous eight years, the purchase price thereof and the date of each such purchase; (6) recent sale of, or other transactions involving, comparable property within the next preceding eight years; (7) the value of such property to its owner; (8) the condition of such property; (9) the income, if any, which the property actually produces and has produced within the next preceding eight years; and (10) any commonly accepted method of ascertaining the market value of any such property, including techniques and methods peculiar to any particular species of property if such technique or method is used uniformly and applied to all property of like species.

17.3 Petition For Hearing Of Record.

17.3.1 Who May Petition. - The owner(s) of the property, the person(s) in whose name the property is assessed or the person(s) liable for the taxes assessed against the property may petition for a hearing of record before the county commission of the county in which is situated the larger portion of the appraised property which is liable to assessment for ad valorem property taxation, and the county commission shall sit as an Administrative Appraisal Review Board. Such petition shall be on the form provided for that purpose by the State Tax Department to the county commission.

17.3.2 Timeliness Of Petition. - The petition requesting such hearing shall be submitted within thirty (30) days after the earlier of:

17.3.2.a the day the Tax Commissioner notifies the owner(s) or the person(s) liable for the taxes assessed of his determination as authorized and described in W. Va. Code § 11-1A-16.4, or

17.3.2.b the twenty-first (21) day after making the request for the Tax Commissioner to review the valuation, such review process being described in W. Va. Code § 11-1A-16(c).

17.3.3 Who To Receive A Copy Of Petition. - Contemporaneously with the filing of the petition with the county commission, the petitioner shall mail a copy of the petition to the Tax Commissioner, and shall mail or deliver a copy to the assessor, the prosecuting attorney, and the property owner (if the property owner is not the petitioner). Upon receipt of the petition, the Tax Commissioner shall take action appropriate to assure the interests of the State and local taxing bodies are protected. Such action shall include:

17.3.3.a making a determination as to appropriate legal counsel to defend the interests of the State and the local taxing bodies,

17.3.3.b notifying the selected counsel, and

17.3.3.c providing sufficient information and other assistance to assure the accomplishment of a proper defense.

17.3.4 Attachments To The Petition. - The petition filed with the county commission shall have endorsed or appended to it a certificate signed by the petitioner or his attorney that such copies were mailed or delivered. Also appended to the petition and to each copy of the petition shall be any attachments the petitioner feels may be relevant to deciding the issues involved in the hearing. The only other time relevant information may be submitted is at the hearing

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before the county commissioner. Additionally, each protester and/or intervenor must attach to the petition and each copy of the petition a statement which alleges and shows sufficient good cause to allow such protest or intervention.

17.3.4.a At the time the county commission provides to the petitioner the Petition For Hearing form, the county commission shall complete that portion of the form titled Office Use Only. The county commission must assign a docket number to the petition prior to when the petition is mailed to the Tax Commissioner.

17.3.5 Hearings Docket System. - The county commission shall establish a system, the purpose of which will be to docket hearings which result from the filing of petitions.

17.3.5.a The county commission whenever possible shall docket together for concurrent hearings which will occur on the same day and/or which will occur at the same time for two or more pieces of property, petitions filed upon properties which have common elements and for which the basis for the petition is the same; i.e., similar types of property in the same geographical area (residences in the same subdivision).

17.3.5.b The time allotted for each hearing should be dependent upon the complexity of the challenge. For example, the hearing time for a residence should be no more than one-half hour.

17.3.6 Hearings Date And Time Notification. - The State Tax Department shall provide the necessary assistance to expedite the hearing process.

17.3.6.a The State Tax Department, upon receiving petitions from petitioners, shall properly enter the petitions into the data processing system network. The network shall be designed so as to allow the State Tax Department to provide a suggested hearing list to the respective county commissions.

17.3.6.b Upon receipt of the suggested hearing list, the county commission shall determine its docket for hearing the petitions. A county commission may not determine its hearings docket until it has received the suggested hearings list from the State Tax Department. Each county commission shall notify the State Tax Department of its hearings docket, such notice being provided at least thirty (30) days prior to the date of the hearing.

17.3.6.c Upon receiving such notification, the State Tax Department shall generate the appropriate notice and insert the notice in a mailing envelope. Subsequent to being inserted in the envelope, envelopes for each county shall be batched together and on a weekly

basis returned to the appropriate county which in turn and at its own expense shall mail the envelopes to the parties. At that time, the State Tax Department shall also review its resource requirements and the requests for appraisers who will be witnesses at the hearings.

17.3.7 Commencement Of Hearings. - For each type of property, the county commission shall not commence to docket hearings until after the completion of 107 days after the date of the notice required by W. Va. Code § 11-1A-16(a).

17.3.7.a Hearings on each type of property should commence as soon as possible but in no instance later than 30 days after the completion of the 107 day period.

17.3.7.b The county commission should schedule the hearings so as to have completed all hearings and rendered all decisions on or before January 16, 1986; Provided, That in those instances where the final notice of value was not provided in a timely manner, due process requires the provision of the same 107 day time period.

17.3.7.c The county commission may schedule for hearing prior to the completion of the 107 day time period petitions on properties which have common elements of geography, type and use, and upon which exists the same basis for challenging the appraised value.

17.4. Hearing Of Record.

17.4.1 County Commission Duties And Responsibilities. - The county commission when hearing the petition shall sit as an Administrative Appraisal Review Board.

17.4.1.a It shall hear such testimony, under oath, as the petitioner, the Tax Commissioner and other witnesses may offer, and the hearing shall not be subject to the West Virginia Rules of Evidence.

17.4.1.b It shall make a true record of the testimony presented, such record being by nonstenographic electronic recording suitable to assure that the recorded testimony is true and accurate.

17.4.1.c It shall assure that any and all other evidence presented is preserved.

17.4.1.d Subsequent to evaluating any and all evidence presented, the county commission shall make a factual determination as to whether the amount of value fixed by the appraisal of the property is correct under the circumstances. There is a rebuttable presumption the appraised value is correct.

17.4.1.d.1 If the appraisal is found to be correct, the county commission shall enter an order approving the appraised value and adopting by reference the determinations and reasons made by the Tax Commissioner in his review which was conducted under the authority of W. Va. Code § 11-1A-16(d).

17.4.1.d.2 If the appraised value is found to be incorrect and if sufficient evidence was presented to permit correction of the appraised value, the county commission shall correct the appraisal and fix the value of the appraised property.

17.4.1.d.3 If the county commission finds there is insufficient evidence to determine the correct value, it shall direct the parties to develop and present additional evidence, and for this purpose it may continue the hearing until there is sufficient evidence to fix the correct value. In this context, parties shall include the owner, the Tax Commissioner, a protestor or an intervenor.

17.4.1.d.4 The county commission upon making the determination as to the correct value of the property appraised, such determination being in accordance with the immediately preceding subsections 4.2 and 4.3, shall enter an order and shall inform all of the parties in writing of its determination. The decision, with the reasons deemed appropriate by the county commission, shall be on the pre-numbered form provided for that purpose by the State Tax Department

to the county commission.

17.4.2 Withdrawal By Petitioner. - If prior to the assigned hearing time the petitioner should withdraw his petition, the county commission shall consider as resolved, with the reappraised value prevailing, the issue of whether the reappraised value was the correct value. The county commission sitting as the Administrative Appraisal Review Board shall not reschedule the matter for hearing unless there remains any of the time limit provided in section 17.3.2 of this regulation; Provided, That if the petitioner does still desire a hearing, such hearing may be provided only upon submission of a properly completed Petition For Hearing and such Petition For Hearing is submitted within the remaining allotted time.

17.4.3 Petitioner Failing To Attend Hearings. - If the Petitioner does not attend, either in person or by appropriate representation, the hearing provided for the purpose of determining the correctness of the reappraised value, the county commission shall consider the reappraised value to be the correct value and it shall not reschedule the matter for a subsequent hearing.

17.5. Protest.

17.5.1 Who May Protest. - Any person who is a taxpayer of ad valorem property tax in any West Virginia county may for good cause alleged and shown protest an appraisal of property appraised under W. Va. Code § 11-1A-1 et seq.

17.5.2 Manner Of Protest. - When desiring to protest a reappraisal, such person shall petition for a hearing before the administrative appraisal review board in the same manner as an owner would petition under the authority of W. Va. Code § 11-1A-17(a), and such protestor shall utilize the form provided by the county commission for this purpose.

17.5.3 Timeliness Of Protest. - The petition for protest must be filed with the county commission within forty-five (45) days after publication as a Class I-O legal advertisement of the notice required in W. Va. Code § 11-1A-16(a).

17.5.4 New Protest Filing Period. - A new forty-five (45) day protest filing period shall commence on the date of a subsequent notice given in accordance with W. Va. Code § 11-1A-16(d), the purpose of such notice being to correct a clerical error or a mistake occasioned by an unintentional or inadvertant act. This new protest filing period shall apply only to that property the value of which was changed in such subsequent notice.

17.5.5 Protest Hearing Procedure. - The hearing of a protest shall be governed by the same procedures as described in W. Va. Code § 11-1A-17(b).

17.5.6 Who May Not Protest. - The property owner(s) or the person(s) in whose name(s) the property is assessed may not protest the reappraised value of his or their own property.

17.6. Intervening.

17.6.1 Who May Intervene. - Upon a showing of good cause, any person who is a taxpayer of ad valorem taxes in any West Virginia county and upon completion of the form provided by the county commission for this purpose may be permitted to intervene in the hearing provided in W. Va. Code § 11-1A-17.

17.6.2 Who Authorizes Intervention. - The issue of whether a person shall be allowed to intervene shall be determined by the county commission, and notification of its decision either allowing or denying intervention shall be provided to the person requesting permission to intervene and to all other parties.

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EMERGENCY
WEST VIRGINIA LEGISLATIVE REGULATIONS
STATE TAX DEPARTMENT

Chapter 11-1A
Series 1A
(1985)

Subject: Review Of Appraisal By The County Commission Sitting
As An Administrative Appraisal Review Board

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