

**WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION**

Form #3

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Tax Department TITLE NUMBER: 110

CITE AUTHORITY W. Va. Code § 11-3-1b(b)

AMENDMENT TO AN EXISTING RULE: YES _____ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

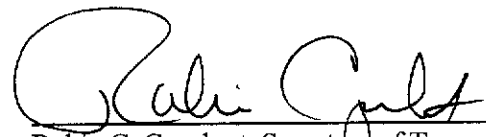
TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 4

TITLE OF RULE BEING PROPOSED: Valuation of Percentage of Completion of

Improvements and Infrastructure Development in a Recorded Plan or Plat

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.


Robin C. Capehart, Secretary of Tax and Revenue

54.80

110 C.S.R.4
VALUATION OF PERCENTAGE OF COMPLETION OF IMPROVEMENTS AND
INFRASTRUCTURE DEVELOPMENT IN A RECORDED PLAN OR PLAT

RULE SUMMARY

West Virginia Code § 11-3-1b(b) requires the Tax Commissioner to propose a legislative rule that describes in detail the methodology and use of certain factors when determining the valuation of the percentage of completion of improvements and infrastructure development. The proposed rule defines the following terms: "actual use," "commercial land," "Tax Commissioner," "cost of development of recorded plan or plat," "county assessor," "improvements and infrastructure development," "industrial land," "percentage of completion," "proposed land use," "raw land," "recorded plan or plat," and "residential land." Additionally, the rule discusses the following: recordation of a plan or plat not to be used as a basis of assessments; valuation of remaining lots when some lots in a recorded plan have been developed; and administrative remedies that are available.

110 C.S.R. 4

**VALUATION OF PERCENTAGE OF COMPLETION OF IMPROVEMENTS AND
INFRASTRUCTURE DEVELOPMENT IN A RECORDED PLAN OR PLAT**

STATEMENT OF CIRCUMSTANCE

The Legislature on March 11, 2000, enacted Senate Bill 79 established new requirements for the methodology to utilized when valuing and assessing recorded plans and plats for purposes of ad valorem taxation. West Virginia Code § 11-3-1b(b) requires the Tax Commissioner to propose a legislative rule that describes in detail the methodology and use factors for valuation of percentage of completion of improvements and infrastructure development. This rule satisfies that requirement.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Valuation of Percentage of Completion of Improvements and Infrastructure Development in a Recorded Plan or Plat

Type of Rule: Legislative Interpretive Procedural

Agency: State Tax Department
 Address: P.O. Box 1005
Charleston, WV 25324-1005

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$ Minimal	\$ Minimal	\$ Minimal	\$ Minimal	\$ Minimal
PERSONAL SERVICES	0	0	0	0	0
CURRENT EXPENSE	0	0	0	0	0
REPAIRS & ALTERNATIONS	0	0	0	0	0
EQUIPMENT	0	0	0	0	0
OTHER	0	0	0	0	0

2. Explanation of above estimates:

There will be minimal cost incurred for printing of a relatively small quantity of forms (supplements to the business property tax return) and some potential travel costs associated with seminars held to explain the new valuation supplemental form. We anticipate these costs will be minimal.

Rule Title: Valuation of Percentage of Completion of Improvements and Infrastructure
Development in a Recorded Plan or Plat

3. Objectives of these rules:

The rule establishes the methodology for the appraisal of sold and unsold lots contained in a plan or plat in an area of proposed land use established by a municipal or county planning authority.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

The Tax Department does not have data on the number of properties that will be sold as a lot in a recorded plan or plat. There is a potential revenue loss to the State and to local governments of the remaining unsold properties are not adjusted to market value.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

See A above.

C. Economic Impact on Citizens/Public at Large.

See A above.

Date: 7-19-00

Signature of Agency Head or Authorized Representative



Joseph M. Palmer
State Tax Commissioner

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period;
Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 28, 2000

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) State Tax Department, Room W-301, Capital Bldg.,

Charleston, WV 25324

LEGISLATIVE RULE TITLE: Valuation of Percentage of Completion of Improvements and Infrastructure Development in a Recorded Plan or Plat

1. Authorizing statute(s) citation W. Va. Code § 11-3-1b(b)

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

June 16, 2000

b. What other notice, including advertising, did you give of the hearing?

Filed in State Register and on Department's web site

c. Date of Public Hearing(s) or Public Comment Period ended:

July 17, 2000

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received _____

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 28, 2000

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all written correspondence regarding this rule: (Please type)

John Montgomery, Attorney Supervisor, Legal Division

State Tax Department, P.O. Box 1005, Charleston, WV 25324-1005

Phone: 558-5330, FAX 558-8728, e-mail JMontgomery@tax.state.wv.us

- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

- b. Date of hearing or comment period:

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

d. Attach findings and determinations and reasons:

Attached _____

110 C.S.R.4

**VALUATION OF PERCENTAGE OF COMPLETION OF IMPROVEMENTS AND
INFRASTRUCTURE DEVELOPMENT IN A RECORDED PLAN OR PLAT**

The following comment was received.

COMMENT: The rule as filed on June 16, 2000 meets the intended purpose of Senate Bill 79.

RESPONSE: The Department agrees.



HOME BUILDERS ASSOCIATION OF WEST VIRGINIA

A MEMBER OF THE NATIONAL ASSOCIATION OF HOME BUILDERS

700 Virginia Street, W. • P.O. Box 6250 • Charleston, WV 25362-0250 • Phone: (304) 342-5176 • FAX: (304) 342-5177
Web Site: www.hbawv.org E-Mail: bthomasson@hbawv.org

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July 11, 2000

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Chris A. Ilardi
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- National Director
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- Alternate National Director
Alan Baker
- Associate Member Director
Joseph Jones
- Alternate Associate
Member Director
Carl York
- General Counsel
William F. Richmond, Jr.

Joseph M. Palmer, Commissioner
State Tax Department
P.O. Box 1005
Charleston, WV 25324-1005

Re: Rules Proposed for SB 79
110 C.S.R. 4

Dear Commissioner Palmer:

We have reviewed the recently proposed rules which have been filed with the office of the Secretary of State to establish new requirements for the methodology to be utilized when valuing and assessing recorded plans and plats for purposes of ad valorem taxation.

The time we spent in reviewing these Rules and Regulations was focused in determining if the purposes of the enacting legislation (SB 79) were met with consideration to definition, assessment of parcels sold .. with particular attention to the valuation of the remaining acreage once the initial lot has been sold and use of that recorded parcel has changed.

We believe these rules (as filed June 16, 2000) have met the intended purpose of the statute. For purpose of incidental comment we also wish you to know that we will be happy to work with you in the development of a supplement to the property tax return which will supply to assessors the necessary information on estimated cost of improvements and the amount of the estimated costs expended and in-place. We, likewise, will be glad to assist the Tax Department and Assessors in providing opportunities for seminars for developer education to this new methodology.

Sincerely,

Chris A. Ilardi
President

cc: Jerry Knight



A Building Force.

FILED

AGENCY APPROVED

JUL 24 2 35 PM '00

TITLE 110
LEGISLATIVE RULE
STATE TAX DEPARTMENT
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 4

**VALUATION OF PERCENTAGE OF COMPLETION OF IMPROVEMENTS AND
INFRASTRUCTURE DEVELOPMENT IN A RECORDED PLAN OR PLAT**

§ 110-4-1. General.

1.1. **Scope.** -- This rule establishes the valuation methodology for unsold lots contained in a recorded plan or plat or in an area designated for proposed land use by a county or municipal planning authority.

1.2. **Authority.** -- W. Va. Code § 11-3-1b(b)

1.3. **Filing Date.** --

1.4. **Effective Date.** --

§ 110-4-2. Definitions. When used in this rule and unless the context clearly requires a different meaning, the following terms shall have the meaning ascribed herein.

2.1. **"Actual use"** means the land use of a recorded plan or plat as of the assessment date, and which will be the basis of valuation for the ensuing tax year.

2.2. **"Commercial land"** means recorded lots used primarily for commercial or business purposes.

2.3. **"Commissioner" or "Tax Commissioner"** means the West Virginia State Tax Commissioner, or his or her delegate.

2.4. **"Cost of development of recorded plan or plat"** means the costs of developing a tract or tracts of land to its highest and best use. These costs include but are not limited to (1) raw land; and (2) site development, which include streets, sewers, water service, site preparation, and planning.

2.5. **"County assessor"** means the Assessor, or his or her delegate who determines the valuation of lots after the recordation of a plan or plat.

2.6. **"Improvements and infrastructure development"** means improvements made to the lots in a recorded plan or plat and includes but is not limited to (1) roads; (2) sewage disposal and water supplies; (3) and electric, telephone and other utilities.

2.7. **"Industrial land"** means recorded lots used primarily for industrial or manufacturing purposes.

2.8. **"Percentage of completion"** is the amount of completed or in-place improvements or infrastructure development made to lots in a recorded plan or plat and expressed in terms of a percentage of the total estimated costs of improvements and infrastructure development, as determined annually by the county assessor.

2.9. **"Plan or Plat"** means the recorded instrument indicating the proposed land use of a certain defined tract of land.

2.10. **"Proposed land use"** means the land use as designated by a county or municipal planning authority for a recorded plan or plat.

2.11. **"Raw land"** means the land recorded in a plan or plat that has not been improved or developed with any improvements or infrastructures; but does not include land certified as being eligible for managed timberland valuation treatment or land used as a Class II active farm receiving farm use valuation treatment under provisions of 110 C.S.R. 1A.

2.12. **"Residential land"** means recorded lots used for residential purposes.

§ 110-4-3. Recordation of a Plan or Plat Not To Be Used As A Basis of Assessments.

3.1. The recordation of a plan or plat, or the designation of proposed land use by a county or municipal planning authority, shall not be used by the assessor as a basis of assessment except in accordance with the following requirements.

3.1.1. When a lot or parcel within the recorded plan or plat is sold the assessor or the Tax Commissioner shall revalue the sold lot at market value.

3.1.2. When a lot or parcel contained within the recorded plan or plat is first developed and used for a residential, commercial, or industrial purpose, the assessor or Tax Commissioner shall revalue the lot or parcel based upon its actual use.

3.1.3. The remaining lots within the recorded plan or plat will not in any case be revalued by the assessor or Tax Commissioner based solely on sales of other lots in the recorded plan or plat.

§ 110-4-4. Valuation of Remaining Lots.

4.1. The assessor or Tax Commissioner will value the remaining lots in a recorded plan or plat using a cost method of valuation as described in this Section 4. The assessor or Tax Commissioner will use the value of the raw land and any costs associated with improvements or infrastructure development that is in place as of the assessment date each year. The assessor or Tax Commissioner will obtain the data necessary to value the remaining lots.

4.2. The raw land shall be valued at the same use as in the preceding year, unless the use has changed as of the assessment date. In the case of a sale of raw land, the assessor may use the purchase price of the raw land, if comparable to other similar raw land sales, for the valuation of the property. If the use, as of the assessment date, has changed to a use other than the use contemplated in the filed plan or plat or the designated proposed land use established by a county or municipal planning authority, the raw land shall be valued based upon its use as of the assessment date.

4.3. The total expended costs or a percentage of expended costs associated with the development of the potential use as designated in the recorded plan or plat will be added to the raw land value, yielding the value of the remaining lots.

4.4. The assessor will annually review the percentage of completion of the improvements and infrastructure development. The property owner shall report on a supplement to the property tax return, such supplement being considered as part of the property tax return, the total estimated cost of improvements and the amount of the estimated costs expended and in-place as of the assessment date. The assessor will determine, from information on the supplement to the property tax return and his or her physical review, the percentage of completion as of the assessment date. This percentage of completion will be applied to the cost of the improvements and infrastructure development. The value thus obtained shall be added to the value assigned the raw land and the sum is the appraised value of the remaining lots.

4.4.1. Example: a recorded plat consisting of a twenty acres where raw land is \$20,000(\$1,000 per acre), the total cost of development is \$100,000 with a percentage of completion of 50%, and as of the assessment date 2 one-acre lots have been sold for \$15,000 and similar lots have sold for similar prices. The appraised values for the sold lots are \$15,000 each (market value based on sales). The remaining lots would be valued as follows: \$18,000 (18 acres X \$1,000 per acres) plus \$50,000(\$100,000 X .50) for a total appraised value of \$68,000.

4.5. When the assessor does not have the cost of improvements and infrastructure development, the assessor may use comparable recorded plans or plats with property of similar potential use as a guide. The assessor shall determine the percentage of completion in the same manner as if costs were known.

4.6. The assessor shall in no instance value the remaining unsold lots as managed timberland. The classification of recorded lots shall not change from Class III or Class IV to Class II until a developed lot or parcel is used and occupied by the owner thereof exclusively for residential purposes.

§ 110-4-5. Proposed land use.

5.1. Proposed land use may not be used as a basis for valuation until the actual use has changed to correspond with the proposed use. When the actual use changes to the proposed use, the assessor or Tax commissioner may consider for valuation purposes the recorded plan or plat as completed as designated by the county or municipal planning authority.

5.2. Before the property has changed to its proposed land use, the assessor or Tax Commissioner, as the case may be, may consider the factors and valuation process contained in Section 4 of this rule when estimating the value of property designated for a proposed land use.

§ 110-4-6. Administrative Remedy

6.1. The owner or owners of property assessed under W. Va. Code § 11-3-1 et seq., who claims to be aggrieved by the value of real property as derived by this legislative rule may appeal the assessed value to the county commission under authority of W. Va. Code §11-3-24. If the taxpayer claims to be aggrieved by the tax classification of the property, an appeal may be taken under the authority of W Va. Code §11-3-24a.

§ 110-4-7. Effective date. The valuation methodologies contained in this rule shall become effective on all recorded plans or plats that are filed after June 30, 2000. Provisions of this rule will not apply to any plans or plats recorded before July 1, 2000, and in no event shall the appraised value of those lots, parcels or undeveloped land be less than their appraised value as of July 1, 2000.