

ARB Hearings in the Time of the Pandemic

A Legal View

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TAAD Conference

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Up Close and Personal

- ARB hearings are an ideal environment for transmitting a disease
- Lots of people passing through crowded hallways and packing into small rooms
 - Staying about 20 minutes



The Problem

- Exposure of property owners
- Exposure of Appraisal District employees
- Exposure of ARB members
 - Average age?
- PPE was almost impossible to find



The Scarcity of Law

- Things that happen commonly lead to clear and specific law.
- Things that happen rarely do not.



The Governor's Authority

- The Governor declared a statewide disaster on March 13
- That triggered his emergency power to suspend or modify statutory requirements



A year Without Appraisals?

- Some Appraisal Districts suggested that the Governor allow them to skip appraisals in 2020
 - Use 2019 values
 - Suspend MAP reviews
 - Suspend school value studies
 - Delay the protest process
- The Governor was not interested

Other Governmental Entities

- The Governor suspended or eased many requirements of the Open Meetings Act
- Governmental bodies could meet and conduct their business over the telephone or using webinars
- Federal and state courts cancelled in-person proceedings in favor of telephone and webinar hearings
- Surely, ARBs could do the same
 - Let's hope that nobody questions that

CAD Offices Closed

- Many Appraisal Districts closed their offices
- The public could not enter
- Or they could come into only a small part of the building
- Many employees working from home
 - Not available to assist with ARB hearings
- An ARB does not have its own office
 - It does not have money to rent space



Man the Lifeboats

- ARB members began to resign or say that they wouldn't show up
- "I didn't sign up risk my life and the lives of my family"
- They were good members



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What Do We Have to Work With?

- The Governor's modifications of open-meeting requirements
- The O'Connor Rule
 - If a property owner/agent gets a hearing and an appealable order, he cannot go to court to complain about the particulars of the hearing
 - The option is a trial de novo under Chapter 42
- Common sense on the part of judges

The Attorney General's Opinion

- Freshman Rep. Mayes Middleton (R – Galveston) requested an Attorney General's Opinion on videoconference hearings
 - Dated April 7, but filed with AG on April 24
- Rep. Shine send a letter to the AG in favor of remote hearings
- A.G. issued Opinion KP-307 on May 8

KP-307

- Property owner entitled to a hearing in the “physical presence” of the ARB
- ARB may not require a property owner to have a telephone or videoconference hearing
- “[T]o the extent an appraisal review board limits protest procedures to some method that eliminates the right to appear in person, such action could be grounds for a lawsuit [against the ARB] pursuant to subsection 41.45(f)”



Now What ?

- Timing
 - In person hearings could be conducted later in the year
 - New law allows a Chief Appraiser to certify an estimate in lieu of an appraisal roll
 - Flatten the curve
- The common sense of most property owners and tax consultants
 - They don't want to catch COVID-19

Encouraging Remote Hearings

- If possible, allow video hearings
- Accept unsworn declarations under Chapter 132 CPROC
 - “Under penalty of perjury”
 - Tax Code requires an affidavit “attested to before an officer authorized to administer oaths”
 - Allow filing by e-mail or fax
- Even allow remote testimony
- Allow items to be submitted without an affidavit
- ARB or panel discretion
- Remove the CAD appraiser from the member’s presence

The Emergency Resolutions

- The WHEREASes
- An emergency exists across the nation, in Texas, and in the county
- The virus is deadly and can be transmitted by people with no symptoms
- Normal, in-person ARB hearings involve high risk – many people in close proximity
- The Appraisal District's office is closed to the public
- Normal, in-person hearings are not possible at this time
- The ARB recognizes the right to protest and to a fair hearing

The Temporary Measures

- No in-person hearings during the term of the emergency resolution
 - Possible exception for extraordinary circumstances
- Some or all of the measures designed to make remote hearings more user friendly



The Details Varied

- Videoconference hearings were used in some counties
- Some ARB members were comfortable with the technology
- What could the CAD provide in terms of tech support?
- Usually, the ARB members were in the same room
- In counties where videoconference hearings were not available, the ARB usually emphasized telephone hearings



Preparing for Court Scrutiny

- Resolution would describe the emergency circumstances
- Make it very clear that these measures are temporary
 - They expire on a certain date unless renewed
 - The ARB has not changed its regular hearing procedures based on the Model Hearing Procedures.
- The ARB is not refusing to hold in-person hearings
 - Just delaying them

Notice to the Property Owner

- The AG said that a property owner who *insisted* on an in-person hearing was entitled to one
- Many hearings were set up as remote hearings, even if the property owner had not requested one
 - An owner could *insist*, and that choice would be honored
 - Maybe not right away
- Owners were sent notices of hearing with the usual paperwork and the Temporary Emergency Resolution
- Any safety precautions adopted by the District

Did It Work?

- Did not hear of anyone who caught COVID-19 as the result of an ARB hearing
- No ARB was sued as the result of safety measures
- There was some grumbling
- Some puzzling claims
- Insufficient training
- Lots of appeals



The
End