ARB Hearings in the Time of the Pandemic

A Legal View

Roy Armstrong  TAAD Conference  2021
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
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 CPRC
  • “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

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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