



## Definition of the Appraisal Review Board

The Appraisal Review Board is made up of a group of Property Owners who reside and pay taxes in Upshur County. They are independent of the Upshur Appraisal District and all Taxing Entities within the County.

## ARB Membership

### Administration of ARB Appointments

ARB members are not provided any statutory role in the process for the administration of applications or requests for appointment for membership on the ARB. If an ARB member is contacted by an individual regarding requesting an appointment to the ARB, the member shall direct the individual to the person designated to receive applications or requests for appointment for the ARB.

### Conflicts of Interest

Each ARB member is responsible for ensuring that he or she does not have any conflict of interest that results in ineligibility to serve on the ARB or restricts or prohibits the ARB member's participation in ARB activities, such as participation in the determination of a taxpayer protest. An ARB member must promptly report any conflict of interest to the ARB chair in addition to any other individual or entity as may be provided by law. The chair shall ensure prompt notification of reported conflicts of interest to the appropriate individuals.

If an ARB member discovers before or during a protest hearing that a conflict of interest exists, the member may not participate in a protest hearing. If the conflict exists due to the provisions of the Local Government Code Chapter 171, an affidavit must be filed with the secretary of the ARB. The affidavit must be filed as soon as the conflict is identified, even if it requires a delay in the conduct of the hearing. If the conflict arises from Tax Code Section 41.69, no affidavit must be filed; however, the ARB member must recuse him or herself immediately from the hearing and report the conflict to the chair or secretary of the ARB.

ARB members must remember that while Local Government Code Chapter 171 addresses matters of "substantial interest," Tax Code Section 41.69 applies to any protest in which an ARB member is interested (i.e. there is no requirement under Tax Code Section 41.69 that the interest be substantial). Therefore, while a conflict of interest under Local Government Code Chapter 171 may not prohibit an ARB member from participation in a protest, Tax Code Section 41.69 may still prohibit participation. If an ARB member has a question as to whether or not he or she has a conflict of interest that might prohibit his or her involvement, the member shall immediately contact the ARB chair to address the matter.

In the recusal process, the ARB member not only may not vote on the matter that is the subject of the protest, but also may not hear or deliberate on the protest.

### Ex Parte and Other Prohibited Communications

ARB members shall not engage in prohibited ex parte or other communications. If an ARB member is approached by one or more individuals that appear to be engaging or attempting to engage in a prohibited communication, the ARB member shall immediately remove himself or herself from the conversation.

## ARB Duties

### Statutory Duties of an ARB

Each ARB member is responsible for ensuring that he or she understands the statutory duties of the ARB and shall comply with all statutory requirements in performing statutory duties as a member of the ARB.

### Notices Required under the Property Tax Code

Each ARB member is responsible for obtaining and maintaining familiarity with notices required under the Property Tax Code. If an ARB member has reason to believe that any notice that is required by law to be provided by the ARB is not being provided or does not meet the requirements of applicable law, the ARB member shall promptly notify the ARB chair. The ARB chair shall investigate each such report and take appropriate action to correct all verified problems.

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### Determination of Good Cause under Tax Code Section 41.44(b)

"Good cause" for filing late protests is not defined in Tax Code Section 41.44(b). Claims of good cause for late-filed protests should be carefully considered and standards in making determinations of good cause under Tax Code Section 41.44(b) should be uniformly applied. The ARB should give due consideration to good cause claims in such a manner that property respects the rights of property owners while not undermining or contravening laws related to filing deadlines or the orderly and expeditious fulfillment of ARB hearings.

## ARB Hearings

The ARB shall schedule a hearing when a timely notice of protest is filed and, in doing so, may be provided with clerical assistance by the appraisal district.

### Scheduling Hearings for Property Owners not Represented by Agents

Pursuant to Tax Code Section 41.66(i), hearings filed by property owners not represented by agents designated under Tax Code Section 1.111 shall be scheduled for a specific time and date. More than one protest may be scheduled for hearings at the same time and date; however, if a hearing for a property owner is not started by an ARB panel or the full ARB within two hours of the scheduled hearing time, the ARB is required to postpone the hearing, if a postponement is requested by the property owner. The request for postponement must contain the mailing address and email address of the person requesting the postponement. The ARB shall respond in writing or by email to the request for postponement not later than the seventh day after the date of receipt of the request.

### Scheduling Hearings for Multiple Accounts

If requested by a property owner or a designated agent, hearings on protests concerning up to 20 designated properties shall be scheduled on the same day by the ARB. The request must meet all requirements of Tax Code Section 41.66(j), including the required statement in boldfaced type: "request for same-day protest hearings." No more than one such request may be filed in the same tax year by a property owner or a designated agent. Also pursuant to Tax Code Section 41.66(j), the ARB may schedule hearings on protests concerning more than 20 properties filed by the same property owner or designated agent. The ARB may follow the practices customarily used in the scheduling of hearings under Section 41.66(j).

### Late Filed Protests and "No Shows"

Protests that are filed after the deadline, and do not have a good cause explanation, will not be heard. Protests that are filed after the deadline, with a good cause explanation, will be reviewed and a determination made regarding the 'good cause' before a hearing is granted. If a hearing is scheduled and the property owner or agent is not present for the hearing, and have not sent a sworn affidavit of evidence, the protest will not be heard by the ARB and the value will not be changed.

**Postponements Under Tax Code Section 41.45(e)**

A property owner who is not represented by an agent under Tax Code Section 1.111 is entitled to one postponement of a hearing without showing cause, if the request is made before the date of the hearing. The request may be made in writing, including by facsimile transmission or electronic mail, by telephone, or in person to the ARB, or the ARB chair. If the hearing for which the postponement is requested is scheduled to occur before the next regular meeting of the ARB, the chair or the chair's representative may take action on the request for postponement without the necessity of action by the full ARB. Unless the date and time of the hearing as postponed are agreed to by the ARB chair or the chair's representative, the property owner, and the chief appraiser, the hearing may not be postponed to a date less than five or more than 30 days after the date scheduled for the hearing when the postponement is sought.

In addition and without limit as to the number of postponements, the ARB shall postpone a hearing if the property owner or his/her designated agent at any time shows good cause, as defined in Tax Code Section 41.45(e-2). The request may be made in writing, including by facsimile transmission or electronic mail, by telephone, or in person to the ARB, or the ARB chair. If the hearing for which the postponement is requested is scheduled to occur before the next regular meeting of the ARB, the chair or the chair's representative may take action on the request for postponement without the necessity of action by the full ARB. Unless the date and time of the hearing as postponed are agreed to by the ARB chair or the chair's representative, the property owner, and the chief appraiser, the hearing may not be postponed to a date less than five or more than 30 days after the date scheduled for the hearing when the postponement is sought.

In addition and without limit, the ARB shall postpone a hearing if the chief appraiser consents to the postponement. The request may be made in writing, including by facsimile transmission or electronic mail, by telephone, or in person to the ARB, or the ARB chair. If the hearing for which the postponement is requested is scheduled to occur before the next regular meeting of the ARB, the chair or the chair's representative may take action on the request for postponement without the necessity of action by the full ARB. Unless the date and time of the hearing as postponed are agreed to by the ARB chair or the chair's representative, the property owner, and the chief appraiser, the hearing may not be postponed to a date less than five or more than 30 days after the date scheduled for the hearing when the postponement is sought.

**Postponements Under Tax Code Section 41.45(e-1)**

A property owner or a person designated by the property owner as the owner's agent to represent the owner at the hearing who fails to appear at the hearing is entitled to a new hearing if the property owner or the owner's agent files, not later than the fourth day after the date the hearing occurred, a written statement with the ARB showing good cause, as defined in Tax Code Section 41.45(e-2), for the failure to appear and requesting a new hearing.

**Postponements Under Tax Code Section 41.45(g)**

The ARB must postpone a hearing to a later date if:

- (1) the owner of the property or the owner's agent is also scheduled to appear at a hearing on a protest filed with the ARB of another appraisal district;
- (2) the hearing before the other ARB is scheduled to occur on the same date as the hearing set by this ARB;
- (3) the notice of hearing delivered to the property owner or the owner's agent by the other ARB bears an earlier postmark than the notice of hearing delivered by this ARB or, if the date of the postmark is identical, the property owner or agent has not requested a postponement of the other hearing; and
- (4) the property owner or the owner's agent includes with the request for a postponement a copy of the notice of hearing delivered to the property owner or the owner's agent by the other ARB.

**Postponements Under Tax Code Section 41.66(h)**

The ARB shall postpone a hearing (one time only) if the property owner requests additional time to prepare for the hearing and establishes that the chief appraiser failed to comply with Tax Code Section 41.461. Only the property owner may request a postponement for this reason. The request for postponement must contain the mailing address and email address of the person requesting the postponement. The ARB shall respond in writing or by email to the request for postponement not later than the seventh day after the date of receipt of the request.

**Postponements Under Tax Code Section 41.66(i)**

Hearings on protests filed by property owners not represented by agents designated under Tax Code Section 1.111 shall be scheduled for a specific time and date. More than one protest may be scheduled for hearings at the same time and date; however, if a hearing for a property owner is not started by the ARB within two hours of the scheduled hearing time, the ARB is required to postpone the hearing, if a postponement is requested by the property owner. The request for postponement must contain the mailing address and email address of the person requesting the postponement. The ARB shall respond in writing or by email to the request for postponement not later than the seventh day after the date of receipt of the request.

## Conduct of ARB Hearings

**Conducting Hearings Open to the Public**

For most protest hearings, the hearing should be conducted in the following order:

- a. Commence the hearing and announce the assigned protest number, property location and owner, and other identifying information.
- b. Announce that, in accordance with Tax Code Section 41.45(h), all written and electronic material that has not been provided must be provided.
- c. State that the ARB members who are considering the protest have not communicated with anyone about the protest and have signed affidavits to that effect.
- d. Welcome the parties and remind them of the content of the hearing procedures, time limits for the hearing, and other relevant matters.
- e. Ask if any testifying witness holds a license or certificate from the Texas Appraiser Licensing and Certification Board and if the witness is appearing in that capacity.
- f. Inform witnesses that all testimony must be given under oath and swear-in all witnesses who plan to testify.
- g. Ask the property owner to decide if he/she wishes to present his/her evidence and argument before or after the appraisal district.
- h. If the property owner or agent presents his/her case first, he/she shall present evidence (documents and/or testimony). If witnesses are present, the property owner or agent may examine the witnesses as part of the presentation of evidence. At the end of the presentation, an opinion of value (if applicable) for the property must be stated.
- i. Next, the appraisal district representative may cross-examine the property owner, the agent, or the representative and/or witnesses.
- j. If the property owner or agent presented his/her case first, the appraisal district representative shall present evidence (documents and/or testimony) next. If witnesses are present, the appraisal district representative may examine the witnesses as part of the presentation of evidence. **At the end of the presentation, an opinion of value (if applicable) for the property must be stated.**
- k. Then, the property owner or agent may cross-examine the appraisal district representative and/or witnesses.
- l. Members of the ARB shall not be examined or cross-examined by parties.
- m. The party presenting its case first may offer rebuttal evidence (additional evidence to refute evidence presented by the other party).
- n. The other party may then offer rebuttal evidence.
- o. The party presenting its case first shall make its closing argument and state the ARB determination being sought.
- p. The party presenting its case second shall make its closing argument and state the ARB determination being sought.
- q. The ARB chair shall state that the hearing is closed.
- r. The ARB shall deliberate orally. No notes, text messages, or other form of communication are permitted.
- s. The ARB chair shall ask for a separate motion for each matter that was the subject of the protest hearing. The motion should include the exact value or issue to be determined. A vote shall be taken and recorded by the designated appraisal district staff person or member of the ARB assigned for this purpose. Separate motions and determinations must be made for each protested issue (i.e., excessive appraisal and unequal appraisal must have separate ARB motions and determinations).
- t. Thank the parties for their participation and announce the determination(s) of the ARB and that an order determining protest will be sent by certified mail.

If computer screens are used by ARB members during ARB hearings for reviewing evidence and other information, computer screens also must be available to property owners and agents at the hearings to view the same information that is presented to the ARB members by the appraisal district staff. This requirement is met if the property owner or agent can see all information displayed on at least one computer screen in the hearing location (there is no requirement that the property owner or agent be provided a separate screen).

If a chief appraiser uses audiovisual equipment at a protest hearing, the appraisal office must provide equipment of the same general type, kind and character for the use of the property owner or agent during the hearing.

The property owner or agent and the appraisal district representative are prohibited from debating each other. All communications must be directed to the ARB members, except for examination or cross-examination during testimony of witnesses or parties testifying at the hearing.

For taxing unit challenges, motions to correct appraisal records, protests regarding exemptions, or other matters that may be the subject of ARB hearings, the ARB should follow the order of conducting hearings above, but may make exceptions for the type of hearing.

Records for each ARB proceeding must be kept according to Tax Code Section 41.68 and Comptroller Rule 9.803. The secretary of the ARB is responsible for ensuring proper record keeping, maintenance, and retention.

#### **Conducting Hearings by Telephone Conference Call**

A property owner initiating a protest is entitled to offer evidence or argument by affidavit without personally appearing. To appear at a hearing by telephone conference call, a property owner must notify the ARB by written request not later than the 10<sup>th</sup> day before the date of the hearing. To offer evidence or argument at a hearing conducted by telephone conference call, a property owner must submit a written affidavit of any evidence before the hearing begins. A property owner is responsible for providing access to a hearing conducted by telephone conference call to another person the owner invites to participate in the hearing.

#### **Conducting Hearings Closed to the Public**

A joint motion by the chief appraiser and the property owner is required to request that the hearing be closed due to intent to disclose proprietary or confidential information that will assist the ARB in determining the protest.

The ARB chair shall convene the hearing as an open meeting and then announce that the meeting will be closed to the public as permitted by Tax Code Sections 41.66(d) and (d-1). Only the parties to the protest, their witnesses, and the ARB members are permitted to stay in the hearing room. The same order of proceedings as for hearings open to the public should be followed.

The secretary of the ARB is responsible for ensuring that a separate tape recording or written summary of testimony is kept for the closed meeting in accordance with the provisions of Comptroller Rule 9.803 generally. The proprietary or confidential evidence presented at the hearing giving rise to the closed hearing is confidential according to Tax Code Section 22.27 and shall be marked as "confidential" and maintained as confidential in the ARB records for proper handling. At the conclusion of the hearing, the ARB shall confirm with the parties that all proprietary and confidential information has been appropriately identified by the ARB. The confidentiality of the information must be maintained by the ARB members and disclosed only as provided by law. After deliberation, the ARB shall reconvene in open meeting and vote or take final action on the protest deliberated in the closed meeting. There must be no mention of the proprietary or confidential information during the open meeting.

#### **Right to Examine and Cross-Examine Witnesses or Other Parties**

Tax Code Section 41.66(b) states that "each party to a hearing is entitled to offer evidence, examine or cross-examine witnesses or other parties, and present argument on the matters subject to the hearing." The ARB may not prohibit this entitlement in any way; however, it may enforce time limits and dictate the order of ARB hearings for witness examination and cross-examination. To the extent possible, the parties should be advised in advance of any time limitations the ARB has determined to impose regarding the presentation of evidence.

#### **Party's Right to Appear by an Agent**

The ARB shall accept and consider a motion or protest filed by an agent if an agency authorization is filed at or before the hearing on the motion or protest. The ARB may not require that an agency authorization be filed at an earlier time. The ARB may not require a person to designate an agent to represent the person in a property tax matter other than as provided by Tax Code Section 1.111.

A person leasing property who is contractually obligated to reimburse the property owner for taxes imposed on the property is entitled to file a protest if the property owner does not and to designate, under Tax Code Section 41.413, another person to act as his/her agent with the same authority and limitations as an agent designated under Tax Code Section 1.111.

## Evidence Considerations

#### **A Party's Right to Offer Evidence and Argument**

The ARB may not prohibit a party's right to offer evidence and argument. However, the ARB may enforce time limits and dictate the order of ARB hearings. To the extent possible, the parties should be advised in advance of any time limitations the ARB has determined to impose regarding the presentation of evidence and argument. The ARB should, schedule permitting, provide as much time as possible to each party to a hearing to fully present evidence and offer argument. **Any and all evidence presented must be left with the board for the hearing record. Any digital evidence presented must have printed copies for the file.**

#### **Prohibition of Consideration of Information Not Provided at the ARB Hearing**

In a protest hearing, the ARB will not consider any appraisal district information on a protest that was not presented to the ARB during the protest hearing. In order for any appraisal district record (i.e., appraisal roll history, appraisal cards) to be considered by the ARB, it must be presented as evidence by or on behalf of a party (e.g. chief appraiser, appraisal district representative, property owner, agent, or witness) at the protest hearing.

#### **Exclusion of Evidence Required by Tax Code Section 41.67(d)**

If it is established during a protest hearing that information was previously requested under Tax Code Section 41.461 by the protesting party and that the information was not made available to the protesting party at least 14 days before the scheduled or postponed hearing, the requested information not made available may not be used as evidence in the hearing. The ARB shall make a determination to exclude evidence under Tax Code Section 41.67(d) only if evidence presented at the hearing establishes that: (1) the information sought to be excluded as evidence was not made available at least 14 days before the hearing; and (2) the information sought to be excluded as evidence was previously requested by the protesting party.

## Other Issues

#### **Compliance with the Law, Integrity, and Impartiality**

Members of the ARB must comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the ARB.

#### **Patience and Courtesy / Bias or Prejudice**

ARB members must be patient, dignified, and courteous to parties appearing before the ARB.

Members of the ARB shall perform their ARB duties without bias or prejudice.

#### **Confidential Information**

Members of the ARB shall not disclose or use for any purpose unrelated to ARB duties confidential information acquired in the performance of ARB duties.

#### **Audiovisual Equipment and Evidence Retention**

Upshur CAD does use and provide access to audiovisual equipment but property owners are allowed to bring their own. Owners must provide their own internet access and may not access the District's network or internet connection. We are able to accept the following types of electronic devices: USB flash drives (thumb or jump drives, USB or memory sticks), and compact discs (i.e. CDs, DVDs).

Acceptable file formats include Adobe portable document format (PDF); Microsoft Word, used for text documents; Microsoft Excel, used for spreadsheets and tables; and JPEG (.jpg or .jpeg) for photographs.

**Evidence that cannot be retained by the ARB for its hearing record may not be presented.**

## What to expect the day of my hearing?

### When I arrive...

Please sign in at the front counter. Hearings are conducted on a first come first heard basis. If you fail to sign in, you will not be on the list.

### Affidavits Required

All oral testimony given at the protest hearing will be made under oath. Prior to the hearing, property owners and appraisal district staff must sign an affidavit of sworn testimony stating that the testimony being offered to the ARB will be true and correct to the best of their knowledge and ability, included in the affidavit for the property owner is a description of the property that is the subject of protest and their reason for protest for their confirmation and an acknowledgement that all evidence presented will become a part of the protest record.

### The Hearing Oversight and Time Allowed for Hearing

Hearings of the ARB shall be conducted in compliance with the Open Meetings Act, Section 552.001 of the Texas Government Code. All hearings are open to the public unless: 1) the property owner or the Appraisal District intends to disclose proprietary or confidential information; and 2) the parties agree and jointly request a closed hearing. All hearings are digitally recorded.

The Chairperson shall preside over all hearings of the board. The chairperson may vote or make motions in any matter before the board. A hearing is limited to fifteen (15) minutes (5 minutes each for the property owner/agent, Appraisal District and examination or cross examination), per parcel for residential property and personal property. Hearings involving multiple accounts will be limited to fifteen (15) minutes per parcel. The board or panel may waive the time limit at its discretion. Exception: if the board should determine that further evidence is required in order to make a decision, the board shall schedule a continuation of the hearing at a later date and inform the parties of the rescheduled hearing date (however, an additional 15 day notice shall not be required).

### Testimony and Evidence

Testimony at the protest hearing may be in a narrative form or by questioning of witnesses. The ARB may exclude irrelevant testimony and may instruct a witness to confine his or her testimony to matters relevant to the issues before the board. Relevant evidence is simply information that helps the ARB to decide what the facts are. The property owner will decide who presents their testimony and evidence first. After evidence is presented, parties may make brief closing statements. The ARB shall permit the cross-examination of witnesses or parties by the representative of the opposing party when requested to do so. The board shall limit such cross-examination to matters that are relevant to the subject of the hearing and shall not permit questions that are abusive or personal. All cross-examination must be completed within the time

limits for the hearing. Any ARB member hearing the case may question any witness or parties testifying or presenting evidence before the ARB.

A property owner may appear by affidavit instead of appearing personally or by agent.

### Rulings By the ARB

Any party to a protest hearing may request a ruling by the board. Such requests may include, but are not restricted to the following: Requests to examine witnesses, requests to cross-examine witnesses, requests to admit evidence in written form, requests to limit a witness' testimony to relevant matters, requests for official notice of certain facts and requests for continuance of a hearing. Any member of the ARB hearing the case may request rulings of the board. The ARB may delegate the responsibility of ruling on requests to the Chairperson conducting a hearing or by majority vote of those present and hearing the case.

### Issuance of Subpoenas

The board sitting as a whole, on its own motion or at the written request of a party, may subpoena witnesses or books, records, or other documents. The ARB must conduct a hearing to determine that good cause exists for the issuance of a subpoena.

### ARB Determination of Protest Hearing

At the conclusion of the protest hearing, the ARB will make a decision on the protest. If the ARB determines it needs further evidence in order to make a decision, a continuation of the hearing will be scheduled at a later date and the parties will be notified. After the decision is made, the ARB decision on the protest will be mailed to the property owner/agent by certified mail.

### Interpreter

Non-English speaking persons are encouraged to provide a personal interpreter. If a person cannot provide an interpreter, the District will attempt to arrange for interpreting assistance provided a written request is submitted to the Chief Appraiser at least three business days in advance of the meeting. *(No-ingles que habia a personas es favorecido a proporcionar un interprete personal. Si una persona no puede proporcionar a un interprete, el Distrito procurara arreglar para interpretar ayuda con tal que una peticion escrito es sometida al Valudor Principal por lo menos tres dias habiles en el avance de la reunion.)*

### Night and/or Weekend Hearings

**The Appraisal Review Board by rule shall hold hearings on a weekday evening. The board will select the day and time of the evening meeting. No Saturday or Sunday hearings shall be held.**

### Feedback of Upshur Appraisal Review Board

In compliance with Texas Property Tax Code Section 5.103e, the Texas Comptroller of Public Accounts is providing an online survey to gather public comments and suggestions concerning appraisal review boards (ARBs). The survey is intended to capture information concerning the performance of ARB panels and full ARBs, not the result of each protest hearing. One survey may be completed at the conclusion of a hearing concerning one account or several accounts, whether the accounts are related to the same property or not, conducted by a single ARB panel or the full ARB in one day. Persons participating in multiple protest hearings before different ARB panels are allowed to complete one survey for each panel in one day. Please see the staff at the front counter for assistance in accessing this online survey that may only be completed the day of your hearing before you leave the appraisal office.

In addition to the online survey, the Upshur Appraisal Review Board has a paper survey you may complete available at the front counter as well. The paper survey will be submitted to the comptroller's office in a spreadsheet format by the Upshur County Appraisal District.