

# MITCHELL COUNTY APPRAISAL REVIEW BOARD HEARING PROCEDURES

## ARB Membership [Tax Code Section 5.103(b) (16), (15), and (12)]

**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 himself 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 [Tax Code Section 5.103(b) (1), (5), and (6)]

**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.

**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 properly respects the rights of property owners while not undermining or contravening laws related to filing deadlines or the orderly and expeditious fulfillment of ARB duties.

## Formal ARB Hearings [Tax Code Section 5.103(b) (3), (4), (7), and (14)]

**Scheduling Hearings Generally:** 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 and may use different panels to conduct the hearings based on the ARB’s customary scheduling. The ARB may follow the practices customarily used in the scheduling of hearings under Section 41.66(j).

**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, an ARB panel, 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, an ARB panel, 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, an ARB panel, 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 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.

**Postponements under Tax Code Section 41.66(k):** If a protest is scheduled to be heard by a particular panel, the protest may not be reassigned to another panel without the consent of the property owner or designated agent. If the ARB has cause to reassign a protest to another panel, a property owner or designated agent may agree to reassignment of the protest or may request that the hearing on the protest be postponed. The ARB shall postpone the hearing on that request. A change of members of a panel because of a conflict of interest, illness, or inability to continue participating in hearings for the remainder of the day does not constitute reassignment of a

protest to another panel. 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.

### **Formal ARB Hearing Conduct** [Tax Code Section 5.103(b) (2), (9), and (10)]

**Conducting Hearings Open to the Public:** This introductory statement should be read at the beginning of each hearing: *“We are the Mitchell County Appraisal Review Board that will be hearing your protest today. We do not work for the appraisal district. We are appointed to perform an independent review of your protest. You may complete a survey regarding your experience today (instructions are posted). The survey is voluntary. You also have the right to appeal our decision. Appeal information will be provided to you with our determination.”*

The ARB does not have to read the statement above if the owner or agent has previously appeared before the ARB for that county that same day.

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

- Commence the hearing and announce the assigned protest number, property location and owner, and other identifying information.
- Announce that, in accordance with Tax Code Section 41.45(h), all written and electronic material that has not been provided must be provided.
- 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.
- Welcome the parties and remind them of the content of the hearing procedures, the 15 to 20 minute time limit for the hearing, and other relevant matters.
- 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.
- Inform witnesses that all testimony must be given under oath and swear-in all witnesses who plan to testify.
- Ask the property owner to decide if he/she wishes to present his/her evidence and argument before or after the appraisal district.
- 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.
- Next, the appraisal district representative may cross-examine the property owner, the agent, or the representative and/or witnesses.
- 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.
- Then, the property owner or agent may cross-examine the appraisal district representative and/or witnesses.
- Members of the ARB shall not be examined or cross-examined by parties.
- The party presenting its case first may offer rebuttal evidence (additional evidence to refute evidence presented by the other party).
- The other party may then offer rebuttal evidence.
- The party presenting its case first shall make its closing argument and state the ARB determination being sought.
- The party presenting its case second shall make its closing argument and state the ARB determination being sought.
- The ARB or panel chair shall state that the hearing is closed.
- The ARB or panel shall deliberate orally. No notes, text messages, or other forms of written communication are permitted.
- The ARB or panel chairman 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 a 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).
- 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 needed the projector can be used by the appraisal district or the taxpayer and can be seen by anyone in the meeting room. The District will use a projector for previously submitted taxpayer evidence and map data. Taxpayer/agents may use projector using their own equipment. Connections include VGA, micro-usb and HDMI.

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. This includes the ARB retaining evidence offered or submitted by the parties as required by Tax Code Section 41.45 and Comptroller Rules 9.803 and 9.805. The secretary of the ARB is responsible for ensuring proper record keeping, maintenance, and retention.

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

1. A property owner wishing to appear for a hearing by telephone conference call must:
  - a. Notify the Appraisal Review Board in writing not later than the tenth day before the date of the hearing; and provide any evidence in the form of an affidavit filed before the hearing begins.
2. The property owner should call **(325) 728-5028** approximately five minutes before the hearing is scheduled to start.
  - a. When the owner's call is answered, the owner should be prepared to give:
    - i. the owner's name;
    - ii. the protest/case number(s) identifying the protest(s); and
    - iii. the telephone number at which the owner can be reached.
  - b. If the ARB is not available to hold the hearing right away, the ARB member or staff member answering the call will advise the property owner that the owner may be placed on hold or explain that the ARB will call the owner back when it is available. The owner is responsible for keeping the line clear and answering promptly when the ARB calls. If the ARB's cannot reach the owner, the owner will forfeit the opportunity to participate in the hearing by telephone and the hearing will be conducted with the affidavit that has been submitted.
  - c. If a property owner, that is not represented by an agent, has had to wait more than two hours from the time scheduled for his/her hearing and the hearing has not begun, the owner may terminate the call if he/she is on hold. The owner should promptly call the ARB and state that he/she is exercising the right to request a postponement of the hearing.
3. The property owner is responsible for ensuring a clear connection from his/her end of the telephone connection;
  - a. The property owner should use a land-line telephone or, if the owner uses a cell phone, he/she should call from a place with a strong, reliable connection to a cellular network. A property using a VOIP telephone should ensure that the Internet connection is fast enough to provide clear transmission of sound without buffering.
  - b. The owner should separate himself/herself from background noises like televisions and barking dogs, noises that might interfere with the panel's ability to hear and understand the owner.
  - c. If a call is dropped or if the property owner's speech is garbled or unintelligible, the ARB may terminate the call and either try to call the property owner or wait for the property owner to call again. If the connection cannot be reestablished within five minutes, the ARB will proceed with the hearing and owner will have no further opportunity to participate in the hearing by telephone and the hearing will be continue using the affidavit provided.
4. If the property owner provides documents, photographs, tables or other items with his/her affidavit, the owner should label those items prominently with the first being labeled PO Ex. 1, the second being labeled PO Ex. 2, etc. If the owner wishes to emphasize certain portions of an item, the owner should highlight those portions or otherwise set them off with colored marking. When the Appraisal District provides items to the property owner before the hearing or at the beginning of the hearing, the District should label those items prominently with the first being labeled AD Ex. A, the second being labeled AD Ex. B, etc. During the hearing, the owner, the ARB members and the representatives of the Appraisal District should refer to the items by their exhibit numbers.
5. A property owner may not offer evidence by telephone. Evidence includes facts and opinions. The owner may comment on evidence that is presented through an affidavit or by the Appraisal District. ARB members will not ask a property owner to present evidence by telephone.
6. The property owner is responsible for providing access to another person that 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 or panel 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 panel 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** [Tax Code Section 5.103(8), (11), and (13)]

**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 in a hearing to fully present evidence and offer argument.

**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.

#### **Evidence Exchange** [ARB Administrative Rule 9.805]

##### **File format types allowed:**

Pdf (portable document format), Microsoft Excel, Word or Power Point, jpg, txt, tif, or photos/paper.

**Methods of submission:** USB flash drives, CD, DVD, physical photos/paper. All electronic file submissions will be checked with antivirus software on a non-network computer, and any files found to contain malicious code will not be allowed to be submitted into evidence. Files/photos located on smartphones, tablets, laptops or a cloud drive will not be accepted. A copy of that type of evidence must be submitted prior or during the hearing in the above formats.

**Audio/Visual Equipment:** Property owners/agents may use their own small, portable, electronic devices to display already submitted evidence. Such as projector for slides or power point slideshow to more clearly see printed copies for example. However the devices will not be connected to the Appraisal District’s network in any way nor to the Appraisal Districts internet connection. The property owner/agent must provide their own internet access if required.

#### **Other Issues** [Tax Code Section 5.103(17)]

**Compliance with the Law, Integrity, and Impartiality:** Members of the ARB shall 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:** ARB members must be patient, dignified, and courteous to parties appearing before the ARB.

**Bias or Prejudice:** 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.