

# **BRAZORIA COUNTY ARB**

## **HEARING PROCEDURES**

**March 2022**

**Brazoria County ARB**

**Hearing Procedures**

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## **BRAZORIA COUNTY APPRAISAL REVIEW BOARD HEARING PROCEDURES**

### **INTRODUCTION AND ELIGIBILITY TO SERVE ON THE BRAZORIA COUNTY ARB**

The Brazoria County Appraisal Review Board is a group of seven citizens authorized to resolve disputes involving Appraisal District decisions which affect taxpayers and taxing units. Members are appointed by the local administrative judge. To serve on the ARB, you must have lived in the appraisal district for at least two years before taking office. You do not need any special qualifications, but you may not serve on the board if you are:

- A. A current appraisal district director.
- B. A current employee or chief appraiser of the appraisal district.
- C. A current board member, employee, or officer of a taxing unit served by the appraisal district, or
- D. A current employee or officer of the Comptroller of Public Accounts.

**Or if:**

- E. You were a former appraisal district director;
- F. You were a former employee or former officer of the appraisal district;
- G. You ever appeared before the ARB for compensation during the two year period preceding the date of the appointment; or
- H. You served as a member of the governing body or officer of a taxing unit for which the appraisal district appraises property until the fourth anniversary of the date you ceased to serve as a member or officer.
- I. In addition, if you served for all or part of three previous terms as a board member or an auxiliary board member on the ARB, you are ineligible to serve on the ARB during a term that begins on the next January 1 following the third of those consecutive terms.

#### **I. ARB Membership**

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

##### **A. 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 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.

**B. Officers**

1. The local administrative judge shall by resolution select a chairman and secretary from among the members of the ARB. The ARB will select a vice chairman.
2. The chairperson will preside over the meetings of the board and perform such other responsibilities as these rules require.
3. The vice-chairperson will perform the duties and responsibilities of the chairperson in his absence.
4. The secretary of the ARB is responsible for ensuring proper record keeping, maintenance, and retention. The secretary shall be responsible for the safekeeping of all minutes and other records for the board and each member, as required, for determining that all notices by the board are sent, and for receiving and recording all notices of appeal filed by property owners who appeal decisions of the board. The secretary of the board shall be responsible for compliance with the notice provisions of the Open Meetings Act. The secretary may delegate any of the above responsibilities to members of the appraisal district staff provided by the chief appraiser for that purpose. 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 secretary will perform such other responsibilities as these rules and law require.

**C. Conflicts of Interest**

1. 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 chairman in addition to any other individual or entity as may be provided by law. The chairman shall ensure prompt notification of reported conflicts of interest to the appropriate individuals.
2. 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 local provisions of the Local Government
3. Pursuant to Local Government Code Chapter 171, an affidavit must be filed with the secretary of the ARB as soon as a conflict of interest 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 chairman or secretary of the ARB.

4. 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 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 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 other involvement, the member shall immediately contact the ARB chairman to address the matter.
5. 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.

#### **D. 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.

## **II. ARB Duties**

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

### **A. 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.

### **B. 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 chairman. The ARB chairman shall investigate each such report and take appropriate action to correct all verified problems.

### **C. 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. The ARB has defined good cause as (but not limited to) the following items: death in the family, family emergency, or accident. Good cause is some act or event that is beyond the party's control. (see also Appendix B regarding "good cause").

### **III. ARB Hearings (formal hearings, not informal meetings between property owners and appraisal district staff)**

[Tax Code Section 5.103(b)(3), (4), (7), and (14)]

#### **A. Scheduling Hearings Generally**

1. 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.
2. Robert's Rules of Order [ARB should select which version] will govern the conduct of all meetings of the board other than hearings. Hearings shall be informal as practicable. Where Robert's Rules are in conflict with the rules of this board, the rules of the board will govern, except when applicable law prohibits the application of the ARB rules.
3. A copy of these procedures must be available in a prominent place in the room in which a hearing is held.
4. The board may meet at any time at the call of the chairman or as provided by rule of the board. The board shall meet to examine the appraisal records within 10 days after the date the chief appraiser submits the records to the board. [Tex. Prop. Tax Code Sec. 6.42(b)].
5. Hearing schedule: Protest hearings will be scheduled on 15-minute intervals and every effort will be made to stay on schedule. Additional time will be allowed for unique or complicated issues as the chairperson determines.
6. The board shall provide for hearings on protests on a Saturday or after 5 p.m. on a weekday. The board may not schedule the first hearing on a protest held on a weekday evening to begin after 7 p.m. In addition, the board may not schedule a hearing on a protest on a Sunday. [Tax Code Sec. 41.71].

## **B. 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.

## **C. 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 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 41.66(j).

## **D. ARB Panel Assignments**

1. If an ARB sits in panels as authorized by Tax Code Section 41.45(d), protests shall be assigned randomly, except that the ARB, with or without clerical assistance from the staff of the appraisal district, may consider the type of property or the protest grounds in order to assign the protest to a panel with members who have particular expertise.
2. Once a protest is scheduled to be heard by a specific panel, it shall not be reassigned to another panel without the consent of the property owner or a designated agent. If the ARB has cause to reassign a protest to another panel, the owner or designated agent may agree to the reassignment or request a postponement of the hearing. The ARB is required to postpone the hearing if requested in this situation. Pursuant to Tax Code Section 41.66(k), "[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."

3. The board sitting as a whole will determine any protest heard by a panel. The chairperson of the panel or another member of the panel so designated by the panel chairperson will present the recommendations of the panel to the board.
4. An appraisal review board consisting of more than three members may sit in panels of not fewer than three members to conduct protest hearings. However, the determination of a protest heard by a panel must be made by the board. If the recommendation of a panel is not accepted by the board, the board may refer the matter for rehearing to a panel composed of members who did not hear the original hearing or, if there are not at least three members who did not hear the original protest, the board may determine the protest. Before determining a protest or conducting a rehearing before a new panel or the board, the board shall deliver notice of the hearing or meeting to determine the protest in accordance with the provisions of this subchapter. [Tax Code Sec 41.45(d)].

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

1. 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 chairman. If the hearing for which the postponement is requested is scheduled to occur before the next regular meeting of the ARB, the chairman or the chairman'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 chairman or the chairman'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.
2. 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 chairman. If the hearing for which the postponement is requested is scheduled to occur before the next regular meeting of the ARB, the chairman or the chairman'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 chairman or the chairman'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.

3. 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 chairman. If the hearing for which the postponement is requested is scheduled to occur before the next regular meeting of the ARB, the chairman or the chairman'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 chairman or the chairman'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.

**F. 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.

**G. 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.

**H. 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.

**I. 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.

**J. 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.

**IV. Conducting ARB Hearings (formal hearings, not informal meetings between property owners and appraisal district staff)**

[Tax Code Section 5.103(b)(2), (9), and (10)]

**A. Conducting Hearings Open to the Public**

This introductory statement should be read at the beginning of each hearing:

We are the appraisal review [board or panel] 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 [provide instructions on how to fill out the survey]. The survey is voluntary. You also have the right to appeal our decision. Appeal information will be provided to you with our determination.

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

1. Commence the hearing and announce the assigned protest number, property location and owner, account number(s) and legal description and other identifying information.
2. Announce that, in accordance with Tax Code Section 41.45(h), all written material that has not been provided must be provided.
3. 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.
4. Welcome the parties and remind them of the content of the hearing procedures, time limits for the hearing, and other relevant matters.
5. 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.
6. Inform witnesses that all testimony must be given under oath and swear-in all witnesses who plan to testify.
7. Unless both parties otherwise agree, the property owner (or agent, as applicable) shall present his/her case first.
8. 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.
9. Next, the appraisal district representative may cross-examine the property owner, the agent, or the representative and/or witnesses.
10. 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.
11. Then, the property owner or agent may cross-examine the appraisal district representative and/or witnesses.
12. Members of the ARB shall not be examined or cross-examined by parties.
13. The party presenting its case first may offer rebuttal evidence (additional evidence to refute evidence presented by the other party).

14. The other party may then offer rebuttal evidence.
15. The party presenting its case first shall make its closing argument and state the ARB determination being sought.
16. The party presenting its case second shall make its closing argument and state the ARB determination being sought.
17. The ARB or panel chairman shall state that the hearing is closed.
18. The ARB or panel shall deliberate orally. No notes, text messages, or other form of communication are permitted.
19. 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).
20. 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.

**B. Documentary evidence may be admitted in the form of a copy if the appraisal review board conducting the proceeding determines that the original document is not readily available. A party is entitled to an opportunity to compare a copy with the original document on request. [Tex. Prop. Tax Code Sec. 41.67(b)].**

**C. Official notice may be taken of any fact judicially cognizable. A party is entitled to an opportunity to contest facts officially noticed. [Tex. Prop. Tax Code Sec. 41.67(c)].**

**D. Electronic Equipment**

1. 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).
2. 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. See section VI, Other Issues, for more information regarding audiovisual equipment requirements.

**E. Receiving Testimony**

1. The board may exclude irrelevant testimony and may instruct a witness to confine his testimony to matters relevant to the issues before the board.
2. Any board member hearing the case may examine any witness testifying before the board and may question any of the parties appearing before the board.
3. Testimony by any witness before the board may be in narrative form. The board may permit presentation of evidence by examination of witnesses if requested to do so by either party.
4. 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.

**F. 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.**

**G. 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.**

**H. 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 10th 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. See also Brazoria County ARB's Rules for Telephone Conferences attached to these Rules as Appendix A, as modified by Appendix C.

**I. Special Provisions Governing Hearings of and Determination of a Property Owner Protests and Motions**

1. Property owners may offer their evidence or argument by affidavit without personally appearing if they attest to the affidavit before an officer authorized to

administer oaths and submit the affidavit to the panel hearing the protest before it begins the hearing on the protest. On receipt of an affidavit, the board shall notify the chief appraiser. The chief appraiser may inspect the affidavit and is entitled to a copy on request. [Tax Code Sec. 41.45(b)].

2. Pursuant to Tax Code Sec. 25.25(d)(1), a property owner or the chief appraiser may file a motion with the appraisal review board to change the appraisal roll to correct an error that resulted in an incorrect appraised value that exceeds more than one-fourth the correct appraised value, in the case of property that qualifies as the owner's residence homestead under Tax Code Section 11.13
3. At any time prior to the date the taxes become delinquent, a property owner or the chief appraiser may file a motion with the appraisal review board to change the appraisal roll to correct an error that resulted in an incorrect appraised value for the owner's property. However, the error may not be corrected unless it resulted in an appraised value that exceeds by more than one-third (on non-homesteaded property) the correct appraised value. If the appraisal roll is changed under this subsection, the property owner must pay to each affected taxing unit a late-correction penalty equal to 10 percent of the amount of taxes as calculated on the basis of the corrected appraised value. Payment of the late-correction penalty is secured by the lien that attaches to the property under Section 32.01 and is subject to enforced collection under Chapter 33. The roll may not be changed under this subsection if:
  - a. the property was the subject of a protest brought by the property owner under Chapter 41, a hearing on the protest was conducted in which the property owner offered evidence or argument, and the appraisal review board made a determination of the protest on the merits; or
  - b. the appraised value of the property was established as a result of a written agreement between the property owner or the owner's agent and the appraisal district. [Tex. Prop. Tax Code Sec. 25.25(d)].

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

- A. 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.
- B. The ARB or panel chairman 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.

- C. 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.
- D. 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.

## **VI. Evidence Considerations**

[Tax Code Section 5.103(8), (11), and (13)]

### **A. 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. However, the board may exclude irrelevant testimony and may instruct a witness to confine his testimony to matters relevant to the issues before the board.

### **B. 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.

### **C. Exclusion of Evidence Required by Tax Code Section 4 I.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) per Section 41.461 (a) (2): At least 14 days before a hearing on a protest, the Chief Appraiser shall: inform the property owner that the owner or the agent of the owner is entitled on request to a copy of the data, schedules, formulas, and all other information the chief appraiser will introduce at the hearing to establish any matter at issue and (2) the information sought to be excluded as evidence was previously requested by the protesting party.

#### **D. 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.

#### **E. 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.

#### **F. Party Leasing Property**

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.

### **VII. Other Issues**

[Tax Code Section 5.103(17)]

#### **A. 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.

#### **B. Patience and Courtesy**

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



**C. Bias or Prejudice**

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

**D. 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.

**E. Issuance of Subpoenas**

1. If reasonably necessary in the course of a protest provided by this chapter, the appraisal review board on its own motion or at the written request of a party to the protest, may subpoena witnesses or books, records, or other documents of the property owner or appraisal district that relate to the protest. [Tex. Prop. Tax Code Sec. 41.61(a)]
2. On the written request of a party to a protest provided by this chapter, the appraisal review board shall issue a subpoena if the requesting party:
  - a. shows good cause for issuing the subpoena; and
  - b. deposits with the board a sum the board determines is reasonably sufficient to insure payment of the costs estimated to accrue for issuance and service of the subpoena and for compensation of the individual to whom it is directed. [Tex. Prop. Tax Code Sec. 41.61(b)].
3. An appraisal review board may not issue a subpoena under this section unless the board holds a hearing at which the board determines that good cause exists for the issuance of the subpoena. The appraisal review board before which a good cause hearing is scheduled shall deliver written notice to the party being subpoenaed and parties to the protest of the date, time, and place of the hearing. The board shall deliver the notice not later than the 5th day before the date of the good cause hearing. The party being subpoenaed must have an opportunity to be heard at the good cause hearing. [Tex. Prop. Tax Code Sec. 41.61(c)].
4. The board shall approve the amount of compensation for each person to whom a subpoena is directed. Each person to whom a subpoena is directed must present a written claim to the board for the amount of compensation to which he is entitled.
5. Persons to whom a subpoena is directed are entitled to the following compensation [Tex. Prop. Tax Code 41.63(a)]
  - a. The reasonable costs of producing the documents.
  - b. Mileage of 15 cents a mile going to and returning from the place of proceedings.

- c. A fee of \$10 a day for each whole or partial day that the individual is necessarily present at the proceedings.

**F. Chief Appraiser Changes to be Reported to the ARB**

The chief appraiser may change the appraisal roll at any time to correct a name or address, a determination of ownership, a description of property, multiple appraisals of a property, or a clerical error or other inaccuracy as prescribed by board rule that does not increase the amount of tax liability. Before the 10th day after the end of each calendar quarter, the chief appraiser shall submit to the appraisal review board and to the board of directors of the appraisal district a written report of each change made under this subsection that decreases the tax liability of the owner of the property. The report must include:

- (1) a description of each property; and
- (2) the name of the owner of that property. [Tex. Prop. Tax Code Sec. 25.25(b)].

If you would like to complete a survey regarding your ARB experience, please go to:

[www.surveymonkey.com/r/Appraisal\\_Review\\_Board\\_Survey](http://www.surveymonkey.com/r/Appraisal_Review_Board_Survey)

REVISED ON THIS 22<sup>nd</sup> DAY OF MARCH 2022



Chairperson, Appraisal Review Board



Vice Chairperson, Appraisal Review Board

# APPENDIX A

## **Brazoria County ARB Teleconference Guidelines**

1. Send affidavit of evidence prior to hearing either by email at: [arb@brazoriacad.org](mailto:arb@brazoriacad.org) or by regular mail: Brazoria County Appraisal District

ATTN: ARB Telephone Hearing

500 N Chenango

Angleton, TX 77515

2. Please call in 5 minutes prior to the time identified on your NOTICE OF HEARING. If you do not call in before the ARB convenes the hearing, the ARB will start and conduct the hearing as an appearance by Affidavit. You will not be entitled to a rescheduled hearing.

3. Please call using the following phone number: 979-849-5780.

4. Be prepared to identify yourself and your case by reference to the PID # and/or GEO# listed in the upper right hand corner of your NOTICE OF PROTEST.

5. Although the ARB will make every effort to convene your hearing as close to the scheduled time as possible, sometimes prior hearings run over. Until the ARB is available, you will need to wait on the phone line. DO NOT HANG UP. If you have to wait any longer than 2 hours, you are entitled to a reschedule of the hearing.

6. When the ARB receptionist gets on the phone line to confirm that you are going to be transferred to the ARB, you must respond. If you do not respond, you will be placed on a short hold. After the short hold, the staff person will again check to see if you are on the line. If you do not respond on the 2nd attempt, it will be recorded on the ARB record that you did not respond to appear at the ARB teleconference hearing and the call will be disconnected. The hearing will proceed as if it is an appearance by Affidavit.

7. The ARB will conduct its hearings in accordance with its ARB Rules and Procedures, a copy of which was provided with your NOTICE OF HEARING.

8. If you are waiting for your hearing to start or already participating in an ARB teleconference hearing and your call is disconnected, it is your responsibility to call the phone number listed above and request to be reconnected to the hearing in progress by identifying the PID #and/or GEO#.

9. The hearing time will not be extended if the call is disconnected.

10. If you choose, you may include a 3rd party to participate in the teleconference hearing but only for the purpose of listening or offering argument. No new evidence or new information may be offered via the telephone. It is the Owner's responsibility to coordinate adding the 3rd party participant to the ARB teleconference hearing. Please do so before calling in to the

teleconference hearing as the hearing time will not be extended. The ARB will not coordinate 3-party conference calls.

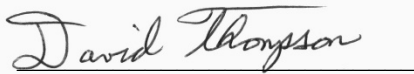
11. The evidence you intend to discuss must have been provided to the Appraisal District in advance of your hearing. It is **STRONGLY RECOMMENDED** that the Owner's evidence be clearly numbered or labeled so that the ARB members are able to quickly identify what document an

Owner is referencing. The hearing time will not be extended if the ARB is unable to match the evidence with the material referenced during the Owner's arguments.

12. You are not allowed to present additional evidence during the hearing (for example, no sworn testimony offered over the phone). You are only allowed to make arguments related to the evidence that has already been provided.

If you would like to complete a survey regarding your ARB experience today, please go to: [www.surveymonkey.com/r/Appraisal\\_Review\\_Board\\_Survey](http://www.surveymonkey.com/r/Appraisal_Review_Board_Survey)

Revised March 22, 2022



Chairperson



Vice Chairperson

# APPENDIX B

**DEFINITION OF "GOOD CAUSE"  
FOR EXTENSION OF TIME OR LATE FILING**

(if adopted, should be inserted in ARB procedures manual and made available to property owners).

Each ARB should include a definition of "good cause" in its Procedures Manual. Unfortunately, the Property Tax Code is generally silent regarding the definition of what constitutes "good cause" to hear a late protest, and Texas law is not well developed on the subject. Like art, "good cause" may very well depend on the good judgment and personal observations of the reviewer. I propose the following definition, which is certainly not exhaustive -- and certainly may be amended or edited by the ARB -- but does, in my opinion, fairly summarize relevant principles.

**DEFINITION OF "GOOD CAUSE" FOR EXTENSION OF TIME OR LATE FILING**

(if adopted, should be inserted in ARB procedures manual and made available to property owners).

If a property owner fails to take a required action within the time limits expressed in the Texas Property Tax Code, the Brazoria County Appraisal Review Board will find that "good cause" for an extension of time to take that action exists only if the property owner demonstrates that all of the following conditions apply:

1. the failure to act was (a) not done deliberately, or because of conscious indifference on the part of the property owner, but occurred because of accident or honest mistake; or (b) was caused by unforeseen events beyond the control of the property owner;
  
2. upon learning of the failure to act, the property owner diligently attempted to remedy the failure as soon as was reasonably possible;
  
3. the relief sought by the property owner will not affect appraised values which have already been approved by the ARB and certified to the affected taxing units; and

4. the Tax Code specifically authorizes a hearing on the late protest if a finding of "good cause" is made, and the protest is filed within the time period authorized by the Tax Code.

Examples of good cause would include incidents completely outside the control of the property owner, and would probably include the following (this is obviously nowhere near an exhaustive list, and other items may be added):

Accident

Illness

Emergency

Act of God

Reliance on mistaken appraisal district advice (if admitted by district)

Misunderstanding regarding appraisal district advice (if admitted by district)

Agent ceased representing property owner and did not communicate this fact to the owner

Owner tried to comply in good faith but mistake was made (clerical error, wrong postage, mail sent to tax collector instead of chief appraiser, etc.).

Examples of no good cause would probably include the following:

Forgot

Conflicting social engagement Too busy

Too difficult or too time-consuming

Was never told that action was necessary

Did not understand requirements of Tax Code (and no effort to inquire) Taxes are too high and ARB should provide remedy

Was on vacation for two months and mail was not forwarded

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Please note that this definition of "good cause" is different from, and addresses different issues than, the narrowly-applied definition located in Tax Code §41.45(e-2).

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End of good cause definition



# APPENDIX C

**Low Swinney Evans & James, PLLC**  
ATTORNEYS AT LAW

Peter Low  
(512) 379-5800, ext. 4

[peterwilliamlow@lsejlaw.com](mailto:peterwilliamlow@lsejlaw.com)  
3305 Northland Drive, Suite 500, Austin, TX 78731

March 11, 2021

Brazoria County Appraisal Review Board  
c/o Tosha Hatfield, ARB Coordinator  
500 N Chenango St  
Angleton TX 77515-4650  
thatfield@brazoriacad.org

RE: In-person ARB hearings conducted by the Brazoria County ARB

Dear ARB Members:

The following letter expresses my opinion regarding in-person ARB hearings (as contrasted with telephonic or video hearings) during our Covid-19 situation. Many, many ARBs around the state have elected to postpone in-person ARB hearings while the pandemic is still raging. My advice has consistently been this: If the ARB is uncomfortable conducting in-person hearings while the possibility of infection is very real, the ARB may postpone in-person hearings until local, state, and federal officials have concluded that such hearings are safe. The Texas Attorney General (AG) has determined that a property owner who wishes to have an in-person hearing is entitled to receive one, but there is no mandate for when such hearings must be scheduled. To my mind the ARB should first determine that there is no further danger to ARB members, to the general public, or to appraisal district staff before in-person hearings must be resumed. If the ARB wishes to schedule in-person hearings on its own motion, that would of course be permissible. I have heard that at least one ARB has scheduled hearings conducted in-person by some ARB members while other ARB members have appeared by video-conference. This is also permissible.

I have reviewed Brazoria County ARB's general rules for conducting telephone hearings; I find these rules to be well-reasoned, and they should work well. Another important issue, however, may be to recognize the difference between pre-pandemic telephone hearings and ARB telephone hearings scheduled during the pandemic. Pre-pandemic telephone hearings had a few rules which worked occasionally (exchange of evidence, affidavit, etc.), but the ARB should now bear in mind that pre-pandemic telephone hearings were optional with the taxpayer. Now, if an ARB is declining to conduct in-person hearings until the pandemic has passed, the ARB will in essence be requiring that telephonic hearings occur if property owners wish to have a prompt

hearing. These property owners may not be familiar with the pre-pandemic rules for telephonic hearings. I would therefore encourage ARBs to be flexible and to interpret the Tax Code broadly in the direction of allowing protesters to go forward with their protests (I am thinking particularly about affidavit requirements).

Again, the primary goal is to ensure, to the extent possible, that all personnel involved in the ARB hearings remain safe. I am not currently aware of any serious challenge to this goal.

Kindest Regards,



Peter Low