ARB POLICY MANUAL

Appraisal Review Board of Milam County

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Introduction

Effective Jan. 1, 2014, Tax Code Section 5.103(a) requires that the Comptroller of Public Accounts prepare model hearing procedures for appraisal review boards (ARB). The ARB is required to follow the model procedures in subsection (d), when establishing their own procedures as required by Tax Code Section 41.66(a).

The ARB may include additional procedures in its local hearing procedures regarding legal and administrative matters that are not addressed by the model procedures. The local procedures may not contradict, negate, or otherwise substantively change the model procedures. If a conflict exists between the model procedures and local procedures, the model procedures prevail.

The local ARB procedures and any procedure changes made in the future will be approved by the local ARB's legal counsel.

ARB Membership

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

Selection

Tax Code Section 6.41(a) establishes an appraisal review board (ARB) for each appraisal district. Subsection (b) requires that the ARB have at least three members. The ARB is appointed by the Milam Appraisal District Board of Directors. Policy for ARB member selection is addressed in the Board of Directors Policy. An ARB member may be removed by a majority vote of the Board of Directors if the member fails to meet any of the qualifications for membership.

Qualification

The qualifications for membership are:

- An ARB member must be a resident of the district and have lived in the district for the last two years.
- An ARB member may not be a member of the Board of Directors.
- An ARB member may not be an employee of the appraisal district.
- An ARB member may not be a Board member, employee, or officer of a taxing unit serviced by the appraisal district.
- An ARB member may not be an employee of the Comptroller of Public Accounts.

- A member of a governing body or officer of a taxing unit serviced by the appraisal district may not serve until the fourth anniversary after they have stopped serving in that capacity.
- An individual related within the second degree to a paid tax agent or a person working as an appraiser within the appraisal district may not serve. *See Kinship Chart, appendix.*
- An individual who owns or has a substantial interest in a business that contracts with the appraisal district or a taxing unit may not serve. A person has substantial interest if they and/or their spouse's combined ownership is at least 10% of the voting stock or shares of a business entity; or if an individual or their spouse is a director, limited partner, or officer of the business entity.
- An individual holding any paid public office may not serve.
- An individual with delinquent taxes owed for more than 60 days after the person knew or should have known of the delinquency may not serve unless:
    - The person is paying the delinquent taxes under an installment agreement, or
    - The person has deferred or abated a suit to collect the delinquent taxes.

Administration of ARB Appointments

ARB members are not provided any statutory role in the process for the administration of applications or requests for appointment on the ARB. If an ARB member is contacted by an individual regarding an appointment to the ARB, the member shall direct the individual to the Milam Appraisal District Board of Directors.

ARB Officers

The ARB Officers shall be the Chairperson, the Vice-Chairperson, and the Secretary. The officers shall be appointed by the Board of Directors upon completion of the Comptroller's ARB training.

The Chairperson will preside over the meetings of the ARB, and contact legal counsel when needed. The Vice-Chairperson will perform the duties of the Chairperson in the absence of the Chairperson, and will assist the Chairperson as requested.

The Secretary shall be responsible for the oversight of keeping of the minutes and records of the ARB, and for determining that all required ARB notices are sent.

The Board of Directors must also appoint a temporary member to serve when a regular member cannot sign the ex parte affidavit. See Ex Parte Communications, this document.

ARB Assistant

The appraisal district shall provide staff to assist in the clerical and administrative duties of the ARB. The staff provided by the appraisal district will be referred to as ARB Assistants. The ARB Assistant will have no authority to make decisions for the ARB. The ARB Assistant shall keep all records of the ARB in separate files, clearly marked as such.

Oath of Office

Newly appointed and reappointed members shall sign the "Statement of Elected/Appointed Officer" then take the "Oath of Office." The ARB Assistant will keep all Statements and Oaths in the ARB files. ARB members cannot sign the Statement or the Oath until they have completed the Comptroller's ARB training.

Training

ARB members will complete all mandatory training supervised by the Comptroller as provided in Tax Code Section 5.041.

Tax Code Section 5.041(e-2) requires each ARB member who is in the second year of his/her first term or has been reappointed to a subsequent term to complete the required training offered by the Comptroller of Public Accounts annually. An ARB member may not participate in a hearing, vote on a protest determination, or be reappointed to an additional term until the person completes the training and receives a certificate of course completion.

ARB members shall complete the training for public officials on the Texas Open Meeting Act within 90 days of taking office. The training is found on the Texas Attorney General's website www.texasattorneygeneral.gov.

A Board of Directors can forego Open Records Training if it appoints a Public Information Coordinator. The ARB Assistant will perform the duties of Public Information Coordinator, and take the Open Records Training as provided by the Texas Attorney General's website www.texasattorneygeneral.gov. The ARB Assistant will keep all certificates of course completion in the ARB files.

Conflicts of Interest

The term "conflict of interest" is used generally with regard to public officials and fiduciaries and their relationships to matters of private interest or gain to them.

As the term relates to ARB members, statutory provisions in the Tax Code and Local Government Code outline restrictions.

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 members' 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.

Conflict of interest can prohibit a person from serving on the ARB as outlined in Tax Code Section 6.412(c), and 6.413.

Tax Code Section 6.412(c) states that a person may not serve on an ARB if that person is a member of the board of directors, an officer or employee of the appraisal district, an employee of the comptroller, or a member of the governing body, officer or employee of a taxing unit. This eligibility requirement must be investigated carefully by the Board of Directors so that appointments are not made to the ARB if such a conflict exists. If a conflict arises due to employment or appointment to one of the prohibited positions after appointment to the ARB, the member must resign from the ARB immediately.

Tax Code Section 6.413 is also a restriction on eligibility of ARB members and deals with interests in certain contracts. A person cannot serve on an ARB if the member or a business in which the member has a substantial interest is a party to a contract with the appraisal district or with a taxing unit. Likewise, the appraisal district or a taxing unit may not enter into a contract with an ARB member or with a business in which the ARB member has a substantial interest. A person has substantial interest if they and/or their spouse's combined ownership is at least 10% of the voting stock or shares of a business entity; or the if an individual or their spouse is a director, limited partner, or officer of the business entity. If an ARB member discovers a conflict after his or her appointment, the member must resign from the ARB immediately or disengage from the contract immediately.

Local Government Code Chapter 171 also addresses conflict of interest and applies to ARB members. It states that if a local public official has a substantial interest in a business entity or in real property, the official shall file, before a vote or decision on any matter involving the business entity or the real property, an affidavit stating the nature and extent of the interest and shall abstain from further participation in the matter if (1) the matter will have a special economic effect on the business entity that is distinguishable from the effect on the public, or (2) it is reasonably foreseeable that an action on the matter will have a special economic effect on the value of real property, distinguishable from its effect on the public. The affidavit must be filed with the official record keeper of the governmental entity.

A violation of these provisions is a Class A misdemeanor.

Conflict of interest can also arise during the ARB hearing process and is addressed in Tax Code Section 41.69.

Tax Code Section 41.69 states that a member of the ARB may not participate in the determination of a taxpayer protest in which he is interested or in which he is related to a party by affinity within the second degree or by consanguinity within the third degree. *See Kinship Chart, appendix.*

If an ARB member discovers before or during a protest hearing that a conflict of interest exists under Tax Code Section 41.69, the member must not participate in the hearing. The ARB member must recuse themselves immediately from the hearing and report the conflict of interest to the ARB chairman or secretary. In the recusal process, the ARB member may not hear, deliberate, or vote on the protest. The ARB member will leave the room.

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. Specifically, 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 they may have a conflict of interest that might prohibit their involvement, the member shall immediately contact the ARB chairman to address the matter.

Ex Parte Communications

Tax Code 41.66(g) requires each member of the ARB to sign an affidavit stating that the board member has not engaged in any communication in violation of Subsection (f).

Tax Code Section 41.66(f) mandates that ARB members may not communicate with any other person about:

- the evidence, argument, facts, merits, or any other matters related to an owner's protest, except during the hearing on the protest; or
- a property that is subject of the protest, except during a hearing on another protest or other proceeding before the board at which the property is compared to other property or used in a sample of properties.

Such communications would be Ex Parte Communications. If an ARB member is approached by anyone that appears to be engaging or attempting to engage in a prohibited communication, the ARB member shall immediately remove themselves from the conversation.

If an ARB member has communicated in this manner, the member may not participate in a protest hearing. The ARB member must recuse themselves immediately. The ARB member may not hear, deliberate, or vote on the matter that is the subject of the protest.

Tax Code Section 6.411, Subsection (b), prohibits ARB members from communicating with the chief appraiser or other appraisal district employee, a member of the board of directors, a property tax consultant, or an attorney representing a party to a proceeding before an ARB. This part of the code specifically addresses and prohibits communications made "with the intent to influence a decision" of the ARB. This prohibition does not apply to communications between the ARB and its legal counsel; or communications with the parties listed if the communication is (1) during a hearing, (2) social in nature, (3) limited to administrative, clerical, or logistical matters related to scheduling and operation of hearings, processing documents, issuance of order, notices or subpoenas, and the operation, appointment, composition, or attendance at ARB training; or (4) that are required for the board of directors to determine whether to appoint, reappoint, or remove a person from ARB service.

A violation of this provision is a Class A misdemeanor.

ARB Duties

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

By signing the statement at the conclusion of the training provided by the Comptroller of Public Accounts, members of the ARB acknowledge that they will comply with the duties prescribed by law for them [Tax Code Section 5.041(b-1)].

Statutory Duties of an ARB

Each 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.

Per Tax Code Section 41.01 the ARB shall:

- Determine protests initiated by property owners;
- Determine challenges initiated by taxing units;
- Correct clerical errors in the appraisal records and the appraisal rolls;
- Act on motions to correct appraisal rolls under Section 25.25;
- Determine whether an exemption or partial exemption is improperly granted and whether land is improperly granted agricultural or wildlife value;
- Take any other action or make any other determination that this title specifically authorizes or requires.

The board may not review or reject an agreement between a property owner or t the owner's agent and the chief appraiser under Section 1.11(e).

Adoption of Policy & Procedures

The Board shall develop and apply policy regarding the operation of the ARB. Current policy and any subsequent changes will be reviewed and approved by the ARB's attorney. If changes are made, the new policy must be adopted in open meeting. The adoption of the new policy must be a posted agenda item.

Per Tax Code Section 41.66(a), the board shall develop hearing procedures. To the greatest extent possible, the procedures should be informal. Changes to the procedures may be made as needed or required by change in law. If changes are made, the new procedures must be adopted in open meeting. The adoption of the new procedures must be a posted agenda item.

A copy of the procedures must be sent to a requesting protestor not later than the 10th day before a hearing. A copy of the procedures must be in a prominent place in the room in which the hearings are held.

Receipt of Records

Tax Code Section 25.22 mandates that the chief appraiser will submit the appraisal records to the ARB by May 15th or as soon thereafter as practicable. The submission of records cannot be done until notices have been mailed. The submission will be done in the form of a sworn affidavit as required. The submission may be done by mail. The ARB must have a meeting within 10 days of the submission of records.

Deadline for Completion

Per Tax Code 41.12, by July 20th, the ARB shall:

- Hear and determine all or substantially all timely filed protests and challenges;
- Submit a list of its approved changes in the records to the Chief Appraiser; and
- Approve the records.

Protests are considered substantially complete as long as no more than 5% of the total district's appraised value is still under protest. The ARB Assistant will provide a report to show the protests are substantially complete on or prior to July 20th. This report will become part of the official minutes.

Properties that are not approved will be placed on pending and withheld from certification. A list of pending properties will also become part of the minutes. The withheld properties will be heard and approved by the ARB at the earliest possible date.

Required Notices

The ARB must send Notices of Protest Hearing. The notice of hearing shall inform the property owner of the date, time, and place of the hearing. The notice shall also include information on how a property owner may request a reschedule or postponement, and request and inspect evidence that the district plans to introduce at the hearing. The notice must be delivered at least 15 days prior to the hearing. A copy of the ARB's hearing procedures shall be included.

Each ARB member must be aware of notices that the District is required to send. *See list of notices, appendix*. A property owner may file a protest claiming that the District failed to send a required notice. A hearing of failure to send notice

must be in two parts. First, the ARB must determine by hearing, whether the District sent the required notice. If the ARB rules that the District sent the required notice as prescribed by law, the hearing is over. If the ARB rules that the District failed to send the required notice, the ARB shall determine the protest on any other grounds authorized by law. A protest of failure to send required notice must be filed before the delinquency date of the year in question or 125 days after the date the property owner claims to have received the tax bill. The property owner must also pay their taxes according to 41.4115. Failure to do so will result in denial of protest.

Determination of Good Cause

[Tax Code Section 41.44(b) & 41.45(e)]

The ARB must determine good cause if a protest is filed late, when an owner requests more than one postponement, or if someone that failed to appear for their scheduled hearing requests another hearing within 4 days. The request for postponement, late filed protest, or reschedule must be received before the ARB approves records.

The Tax Code does not define good cause. Good cause shall be considered on a case by case basis, however, the following elements shall be considered:

- Was there an error or mistake;
- Is the reason unintentional and not caused by conscious indifference; and
- Will there be no undue delay or other injury to the ARB?

Good cause will usually be a situation that is outside of an owner's control; i.e. bad weather, car trouble, illness or injury.

Claims for good cause should be carefully considered and standards should be uniformly applied. The ARB should give consideration in a way that properly respects the rights of property owners while not undermining or contravening laws related to filing deadlines or the orderly and timely fulfillment of ARB duties.

Scheduling , Postponements, and Rescheduling

[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. Scheduling of hearings is considered a clerical function that may be performed

by the ARB assistant as provide by Tax Code 6.43(f) with direction and final decision-making by the ARB member designated by the Chairman.

A property owner or agent may file for a late protest. The owner or agent must state in writing why the deadline was missed. The ARB must rule whether or not the property owner or agent had good cause.

Protests filed timely by property owners not represented by agents 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 the hearing is not started 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 7th day after the date of receipt of the request. [Tax Code Section 41.66(i)]

The ARB shall provide for a hearing in the evening or on a Saturday or a Sunday if requested by the protesting party. [Tax Code Section 41.71]

Scheduling Hearings for Multiple Accounts

If more than one protest is filed related to the same property, a single hearing on all protests must be scheduled. The ARB will only consider protests as marked on the protest form.

A single hearing shall be scheduled for property owned by an undivided interest, including separate interests in minerals in place, to allow all owners who have filed timely protests to participate. [Tax Code Section 41.45(a)]

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. 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.

Postponements

[Tax Code Section 41.45(e)]

A property owner who is not represented by an agent 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, fax, email, telephone, or in person to the ARB, the ARB chairman, or the ARB assistant. Unless the date and time of postponement are agreed upon by the ARB, the property owner, and the Chief Appraiser, the hearing may not be postponed to a date less than 5 or more than 30 days from the original hearing date. In addition and without limit as to the number of postponements, the ARB shall postpone a hearing if the property owner or their agent shows good cause, or the chief appraiser consents to the postponement.

Reschedule After Failure to Appear
[Tax Code Section 41.45(e-1)]

A property owner or their agent who fails to appear at the hearing is entitled to a new hearing if the property owner or agent files, not later than the 4th day after the date the hearing occurred, a written statement with the ARB showing good cause for the failure to appear and requesting a new hearing.

Reschedule for Hearing in Another County
[Tax Code Section 41.45(g)]

The ARB must postpone to a later day if:

1. The owner of the property or their agent is also scheduled to appear at a hearing in another county;
2. The hearing is scheduled to occur on the same date as the local hearing;
3. The notice of hearing delivered to the property owner or their agent by the other ARB bears an earlier or identical postmark than the notice delivered by this ARB;
4. The property owner or agent has not requested a postponement of the other hearing; and
5. The property owner or agent includes with the request for a postponement a copy of the notice of hearing and postmark delivered to the property owner or agent by the other ARB.

Postponements for Failure to Provide Required Information
[Tax Code Section 41.66(h)]

The ARB must postpone a hearing once if the property owner requests additional time to prepare for the hearing and establishes that the chief appraiser failed to

Scheduling , Postponements, and Rescheduling (continued)

comply with Tax Code Section 41.461. Only the property owner may request a postponement for this reason.

To obtain a postponement, the property owner must request additional time to prepare for the hearing and establish that the chief appraiser (1) failed to deliver a copy of the Comptroller's publication *Property Taxpayer* Remedies; (2) failed to inform the property owner or agent that they may inspect and obtain a copy of information that the chief appraiser plans to introduce at the hearing; or (3) failed to deliver a copy of the local ARB hearing procedures, 14 days before the protest hearing. The information that might be used as evidence is not required to be delivered 14 days before the hearing. The property owner must only be informed that the information may be inspected and a copy obtained in order to establish compliance with this provision.

The property owner's request for postponement must be denied if failure to comply with this requirement is not established. The request must be in writing and contain the owner's name, address, and email address. The ARB shall respond in writing or by email not later than the 7th day after the date of receipt of the request.

Postponements for Delay of Hearing

[Tax Code Section 41.66(j)]

If a hearing for a property owner is not started 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 must be in writing and contain the owner's name, address, and email address. The ARB shall respond in writing or by email not later than the 7th day after the date of receipt of the request.

Conduct of ARB Hearings

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

Meetings

The ARB will meet at any time at the call of the Chairperson. The ARB will also meet within 10 days after the Chief Appraiser submits records to the ARB. [Tax Code Section 6.42(b)] Meetings may also be called by the ARB assistant in order to conduct all hearings necessary.

There must be a quorum to hold a meeting. A majority of the members of the ARB constitutes a quorum. [Tax Code Section 6.42(a)] Meetings of the ARB shall be conducted in compliance with the Open Meetings Act.

Location

The meetings will be held at the Appraisal District board room at 120 N. Houston St, Cameron, TX, 76520.

Records

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.

Hearing records (minutes) will be kept for each meeting and for each protest. The ARB shall approve the minutes of each meeting. The meeting minutes will be written and will include:

- The name of the ARB members present,
- Date and time of meeting,
- Board action that is not part of individual protest hearings, and
- List of protests.

Protest minutes shall be recorded. In addition to the recorded minutes, the hearing records shall include copies of all evidence presented to the ARB.

Swearing In

All witnesses, including Appraisal District staff, shall take an oath swearing the accuracy of the party's testimony. Appraisal district staff may be sworn at the first hearing. Protestors and witnesses may be sworn by the district notary immediately prior to the hearing. The ARB shall be informed of individuals unable or unwilling to take an oath. Their testimony shall be noted as unsworn.

Conducting Hearings Open to the Public

The ARB shall create and post hearing procedures. The procedures will explain as informally as possible the order of the hearing, time limits, and evidence requirements.

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

Conduct of ARB Hearings (continued)

1. Commence the hearing and announce the assigned protest number, property location and owner, and other identifying information as needed.
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.

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).

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.

Conducting Hearings Closed to the Public

Prior to the scheduled hearing time, a joint motion by the chief appraiser and the property owner must be filed with the ARB in writing to request that the hearing be closed because of an intent to disclose proprietary or confidential information that will assist the ARB in determining the protest. The hearing shall be

conducted in the manner required by Government Code Subchapter E, Chapter 551, relating to closed meetings.

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, including witnesses, and the ARB members are permitted to stay in the hearing room. The same order 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 certified agenda is kept for the closed meeting according to the requirements of Government Code Section 551.103. 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 stamped as "confidential" and retained separately in the ARB records. The confidentiality of the documents and their content must be maintained by the ARB members.

After deliberation, the ARB shall reconvene in open meeting and vote or take final action on the protest deliberated in the closed meeting (see Government Code Section 551.102). 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

[Tax Code Section 1.111, 41.66(c) and Comptroller Rule 9.3044]

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.

Conduct of ARB Hearings (continued)

Party's Right to Appear by Affidavit

Property owners who file affidavits of appearance are required to state in the affidavits whether or not they intend to appear at the hearing and that they affidavit may be used only if they do not appear at the hearing. If the affidavit indicates that the property owner will not appear at the hearing or does not state that he or she will appear, "the appraisal review board is not required to consider the affidavit at the scheduled hearing and may consider the affidavit at a hearing designated for the specific purpose of processing affidavits." [Tax Code Section 41.45(n)]

Evidence Considerations

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

A Party's Right to Offer Evidence and Argument

Tax Code Section 41.45(b) states that "the property owner initiating the protest is entitled to an opportunity to appear to offer evidence or argument." Subsection (h) requires, before the hearing on the protest or immediately after the hearing begins, that the chief appraiser and the property owner or the property owner's agent exchange copies of written materials that they intend to offer or submit to the ARB. 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. [Tax Code Section 41.66(b)]

Tax Code Section 41.67(b) provides that copies of documentary evidence may be admitted, if original documents are not readily available. A party is entitled the opportunity to compare a copy with the original document on request. Evidence presented must be kept as part of the hearing records. Only hard copy evidence is accepted. The ARB will not accept electronic, digital, or computer records unless printed out.

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 party to a hearing may request that the Board take official notice of any facts judicially cognizable (easily able to be known, confirmed, or judged) by a court. The ARB will rule on any request for official notice. When the ARB has chosen to take official notice of any fact, that Board must allow any party the opportunity to contest the fact officially noticed.

Standards for Burden of Proof

The term "preponderance of evidence" means the greater weight and degree of credible evidence admitted in this case. A preponderance of the evidence is not measured by the number of witnesses or by the number of documents admitted in evidence. For a fact to be proved by a preponderance of the evidence, you must find that a fact is more likely true than not true.

"Clear and convincing evidence" means the measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established.

"Substantial evidence" is defined as "such evidence that a reasonable mind might accept as adequate to support a conclusion."

Weighing Evidence and Burden of Proof

Tax Code Section 41.43(a) provides that the appraisal district has the burden of establishing the value of property by a preponderance of the evidence presented at the hearing in protests involving excessive value and unequal appraisal. Protests involving other matters that can be the subject of a protest, such as ownership and exemptions, require that the protesting party must establish its position by a preponderance of the evidence [see, e.g., Tax Code Section 41.43(d)]. If the party with the burden of proof does not meet its burden of proof, the protest shall be determined in favor of the other party. Several exceptions to the "preponderance of the evidence" standard exist including, but not limited to:

- Certified Appraisals

Section 41.43(a-1) provides that the appraisal district's burden shifts to "clear and convincing evidence" in protests concerning the market or appraised value of $1 million or less if a report prepared by a certified appraiser is filed with the ARB and delivered to the chief appraiser more than 14 days before the hearing. The appraisal must meet the following requirements of Subsection a-2 in order to be valid:

- The appraisal must be attested to before an officer authorized to administer oaths
- Must include the name and business address of the certified appraiser
- Must include a description of the property that was the subject of the appraisal
- Must include a statement that the appraised or market value of the property was the appraised or market value of the property as of January 1 of the current tax year and was determined using a method of appraisal authorized or required by Chapter 23, and
- Must include a statement that the appraisal was performed in accordance with USPAP.

- Certain Reductions in Prior Year

Section 41.43(a-3) requires that the appraisal district must establish by "clear and convincing" evidence the value of the property if: (1) the appraised value of the property was lowered by ARB, binding arbitration, or lawsuit; (2) the appraised value in the preceding year was not established as a result of a written waiver; and (3) not later than the 14th day before the date of the hearing, the property owner files with the ARB and delivers to the chief appraiser information (such as income and expense statements regarding comparable sales), that is sufficient to allow for a determination of the appraised or market value of the property if the protest concerns excessive value, or information that is sufficient to allow for a determination of whether the property was appraised unequally if the protest concerns unequal appraisal. If the appraisal district does not meet its burden of proof, the protest shall be determined in favor of the property owner.

- Failure to File a Rendition

Section 41.43(d) provides an exception that shifts the burden of proof to the property owner if, before the date of the hearing, a rendition statement or property report required by Tax Code Chapter 22 or a response to a chief appraiser's request for information under Section 22.07(c) is not delivered. The property owner then has the burden of establishing value of the property by a

preponderance of the evidence. If the property owner fails to meet the standard, the protest shall be determined in favor of the appraisal district.

- Restrictions on Appraisal District in Subsequent Years

Section 23.01(e) provides that if the appraised value of property is lowered by ARB, binding arbitration, or lawsuit in the preceding year, the appraised value may not be increased in a subsequent year by the chief appraiser "unless the increase by the chief appraiser is reasonably supported by substantial evidence when all of the reliable and probative evidence in the record is considered as a whole." If the appraised value is determined based on a protest of unequal appraisal, "the chief appraiser may satisfy the requirement to reasonably support by substantial evidence an increase in the appraised value of the property in the following year by presenting evidence showing that the inequality in the appraisal of property has been corrected with regard to the properties that were considered in determining the value of the subject property. The burden of proof is on the chief appraiser to support an increase in the appraised value of property under the circumstances described by this subsection."

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.

The ARB may not consider evidence that they believe to be pertinent unless presented by the protestor or the district. Personal knowledge of a situation or fact may not be considered unless the board takes official notice.

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

[Tax Code Section 5.103(17)]

Orders Determining Protest

The ARB must make its decision at the close of each hearing and by written order. For each protest or challenge, the board must deliver a Notice of Issuance of Order and an Order of Determination by certified mail. The Notice of Issuance of Order must contain information about the right to appeal to district court as outlined in Section 41.47(e), information about the right to arbitration, and an application for arbitration.

The ARB must make a separate determination on each issue that is the subject of the protest. The ARB will only make determination on the items as marked on the protest. The ARB order will follow the model order prepared by the Comptroller. No order of determination will be issued for failure to appear.

The ARB will make decisions after the hearing is closed by calling for a motion, conducting any discussion, followed by a vote.

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. Refer to the Appraisal Review Board Do's and Don'ts, appendix.

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.

Video and Taping

ARB meetings and hearings may be videoed and/or taped. Parties are asked to notify the ARB assistant prior to the hearing so that arrangements can be made as needed.

Appendix

Chart of Kinship for Appraisal Personnel
Degrees of Consanguinity and Affinity Prohibitions

1st Degree	2nd Degree	3rd Degree
By Consanguinity • Parents • Children **By Affinity** • Spouses of relatives listed under consanguinity • Spouse • Spouse's parents • Spouse's children • Stepparents • Stepchildren	**By Consanguinity** • Grandparents • Grandchildren • Brothers & sisters **By Affinity** • Spouses of relatives listed under consanguinity • Spouse's grandparents • Spouse's grandchildren • Spouse's brothers & sisters	**By Consanguinity** • Great grandparents • Great grandchildren • Nieces & nephews • Aunts & uncles **By Affinity** NO PROHIBITIONS

Restrictions on Eligibility of Chief Appraisers, Directors, Appraisal Review Board Members and Others

• Appraisal review board members are ineligible to serve if they are related within the second degree by consanguinity or affinity to someone engaged in the business of appraising property for compensation for use in proceedings before the appraisal district or appraisal review board or of representing property owners for compensation in that district. Tax Code § 6.412(a)(1)

• Appraisal review members are ineligible to serve if they are related within the third degree by consanguinity or within the second degree by affinity to a member of the appraisal district's board of directors. Tax Code § 6.412(a)(3)

• Appraisal review board members are ineligible to serve if they or their spouses have substantial interests in contracts with the appraisal district or taxing units participating in the district. Tax Code § 6.413(a)

• Appraisal review board members may not participate in a taxpayer protest in which they are related to a party by affinity within the second degree or by consanguinity within the third degree. Tax Code § 41.69

• Chief appraisers are disqualified from employment if related within the second degree by consanguinity or affinity to someone engaged in the business of appraising property for compensation for use in proceedings before the appraisal district or appraisal review board or of representing property owners for compensation in that district. Tax Code § 6.035(a)

• Directors of appraisal districts are ineligible to serve if related within the second degree by consanguinity or affinity to someone engaged in the business of appraising property for compensation for use in proceedings before the appraisal district or appraisal review board or of representing property owners for compensation in that district. Tax Code § 6.035(a)

• Chief appraisers or individuals related to chief appraisers within the second degree by consanguinity or affinity may not prepare appraisals to be used as evidence in protests or challenges concerning property that is taxable in the appraisal district in which the chief appraiser is employed. Tax Code § 6.035(d)

• Directors of appraisal districts are ineligible to serve if they or their spouses have substantial interests in contracts with the appraisal district or taxing units participating in the district. Tax Code § 6.036(a)

• Persons may not be employed by the appraisal district if they are related to a member of the board of directors within the second degree by affinity or within the third degree by consanguinity. Tax Code § 6.05(f)

• Persons or their spouses may not be employed by or contract with the appraisal district if they are related to the chief appraiser within the first degree by consanguinity or affinity. Tax Code § 6.05(g)

List of Required Notices

The following is a list of notices that the district is required to send. Other notices may exist, and the fact that they are not included on this list is not an indication that they are not required. This non-exclusive list includes notices to:

- Re-apply for exemptions — Section 11.43(c)
- Cancel exemptions — Section 11.43(h)
- Apply for exemptions required annually — Section 11.44(a)
- Modify or deny exemptions — Section 11.45(d)
- Apply annually for agricultural land appraisal — Section 23.43(e)
- Deny agricultural land appraisal application — Section 23.44(c)
- Impose additional taxes for change of use of land designated as agricultural land — Section 23.46(e)
- Deny open-space land appraisal application — Section 23.57(d)
- Re-apply for open space land appraisal — Section 23.54(e)
- Penalty for delinquent rendition report — Section 22.28(a)
- Denial of rendition penalty waiver request — Section 22.30(a-1)
- Penalty for late application for agricultural designation — Section 23.431(c)
- Appraised values generally — Section 25.19
- Change in appraisal records ordered by the ARB resulting in increased tax liability — Section 41.11
- Protest hearing — Section 41.46