

**West Virginia Board of Public Works
Wednesday, May 24, 2023 – 10:00 a.m.
Governor’s Cabinet and Conference Room
Minutes**

Attendees:

Members

Jim Justice, Governor
Mac Warner, Secretary of State
Patrick Morrissey, Attorney General
Kent Leonhardt, Commissioner of Agriculture
Riley Moore, State Treasurer
David Roach, State Superintendent of Schools

Guests

Chad Toney, Division of Highways
Ryan Ivey, Kroll LLC
Craig Griffith, Frost Brown Todd LLP
Brandon Gardner, R.J. Corman Railroad Group
Russ Crane, WV Dept. of Health and Human Resources
Leslie Dillon, WV Military Authority
Brian Abraham, Governor’s Office
Berkeley Bentley, Governor’s Office
Sean Whelan, Attorney General’s Office
Steven Travis, Attorney General’s Office
Dave Hardy, Secretary, Dept. of Revenue
Matthew Irby, Commissioner, State Tax Division
Deanna Sheets, State Tax Division
Sarah Canterbury, Treasurer’s Office
Steve Adams, Ogden Newspapers
Grace Holstein, Secretary of State’s Office
Jordan Kennett, Secretary of State’s Office
Donald Kersey, Secretary of State’s Office
Maureen Lewis, Secretary of State’s Office

The West Virginia Board of Public Works met on Wednesday, May 24, 2023 at 10:00 a.m. in the Governor’s Cabinet and Conference Room of the State Capitol Complex. The meeting was called to order and chaired by Governor Justice. A quorum of members was established.

The first item on the agenda was the approval of minutes from the January 9, 2023 West Virginia Board of Public Works meeting. Treasurer Moore made a motion to approve the minutes. Attorney General Morrissey seconded. The motion carried.

The second item on the agenda was the consideration and vote on 3 utility requests for relief from erroneous assessment pursuant to W. Va. Code §11-6-12a from:

1. R.J. Corman Railroad Company/Pennsylvania Line, Inc.
2. Frontier Communications Online and Long Distance Inc.
3. Frontier West Virginia Inc.

The first company addressed was R.J. Corman Railroad Company/Pennsylvania Line Inc. Matthew Irby addressed the Board. He stated that the primary issue relates to apportionment. The Tax Division discovered that they had counted the company's leased trackway twice, both in their everywhere and in their West Virginia. It resulted in an apportionment percentage that was slightly higher than it should have been. Counting the leased trackway only once results in an apportionment that is approximately 21.84%. He continued that the company had provided a letter to the Board that summarizes the adjustment appropriately. The Tax Division agrees that is the appropriate way to calculate that apportionment. Governor Justice asked what the dollar amount of the adjustment is. Commissioner Irby replied that it is about one and half million dollars in assessment, and around \$35,000 in tax. Commissioner Leonhardt asked if the Tax Division agrees with the adjustment. Commissioner Irby replied yes, they agree with the adjustment as presented by the railroad in their letter.

Commissioner Leonhardt made a motion to approve the request. Secretary Warner seconded. The motion carried.

The next company addressed was Frontier Communications Online and Long Distance Inc. Matthew Irby addressed the Board. He stated the final approved value by the Board was approximately 8.4 million dollars. In a previous occurrence and through conversations with Frontier, the Tax Division discovered that they had included franchise fees in their income. The franchise fees relate to intangible property which is not subject to property tax. Those fees should not have been included. The result for this company is an adjustment down to \$1,945,600. The Tax Division agrees with that adjustment. He continued that they agreed with the adjustment back in November but, due to a miscommunication with staff, the incorrect amount ended up in the final valuations. Treasurer Moore asked how the tangible property was included in the initial valuation. Commissioner Irby replied that the way they primarily value property is to use an income approach to value. They use the net income attributable to property and divide it by a capitalization rate to come up with an income value. In this case, if you run through their financial statements and use their net income, it still includes net income from items that are intangible property. Those items should have been removed from income prior to capitalizing it because they relate to a property interest that is not taxable. Treasurer Moore asked if the Board or the company caught it. Commissioner Irby responded that the company caught it after receiving their tentative assessment. Commissioner Leonhardt asked how that compares to the previous year. Commissioner Irby replied that in the previous year, the same adjustment was made for them and was presented in the final valuations. Commissioner Leonhardt stated that this is just a repeat of what was done the previous year. Commissioner Irby replied yes.

Commissioner Leonhardt made a motion to approve the request. Governor Justice asked why, since it's the same thing, it was missed this year. Commissioner Irby replied that the Property Tax Division has had a lot of turnover. As a result, some things were missed. He continued that they have since developed a better process and procedure as well as hiring additional staff. Governor Justice asked if he was confident that the oversight issue is now being handled. Commissioner Irby replied yes. Attorney General Morrissey stated that if the Board is to fix the error, it will have to choose between the remedies. He continued that releasing the taxpayer from the payment appears to be the preferred method under the statute. He stated that he wanted to address this because frequently this is done via credit. There are a few different methods for the remedy including: 1. The taxpayer can be released from the payment; 2. Excess taxes already paid can be refunded; and 3. A credit can be granted against future years taxes. Based on a reading of the statute, it appears that this situation would warrant a release. Governor Justice asked what the dollar amount would be. Commissioner Irby replied that it is approximately \$25,000.

Commissioner Leonhardt amended the motion to include the release from payment method. Attorney General Morrissey seconded. The motion carried.

The final company addressed was Frontier West Virginia Inc. Matthew Irby addressed the Board. He explained that this involves the same issue as just discussed with a larger dollar amount. This adjustment would be down from approximately 435 million dollars to 329 million in assessment. The tax amount would be approximately \$240,000. Attorney General Morrissey asked what the nature of the mistake was. Commissioner Irby replied that it was also franchise fees and the inclusion of intangible property in valuation. Treasurer Moore asked if there was a way that Frontier could proactively notify the Board of this issue. Craig Griffith addressed the Board. He explained that the company reached out to the Tax Department after receiving their tentative assessment. In addition Ryan Ivey addressed the Board at a previous meeting and indicated that the company was continuing to work with the Tax Department. It was their understanding that the final value would be the 329 million. As soon as they caught the error, they brought it to the attention of the Board. Commissioner Leonhardt asked if there was a systemic process that could make this more timely. Mr. Griffith stated that he felt the right process was followed, it was just a mistake at the end of the process.

Commissioner Leonhardt made a motion to approve the request by the release from payment method. Superintendent Roach seconded. The motion carried.

The third item on the agenda was consideration for approval of the following document:

First Amendment to Land Lease and Operating Agreement between Eastern West Virginia Regional Airport Authority and the State of West Virginia, for the use and benefit of the State Armory Board, dated March 28, 2023, approved as to form by the Attorney General's office April 14, 2023.

Attorney General Morrissey made a motion to approve the document. Treasurer Moore seconded. The motion carried.

The next item on the agenda was consideration for approval of the following deed:

Between the West Virginia University Board of Governors, on behalf of West Virginia University and the Adjutant General of the State of West Virginia, for and on behalf of the State Armory Board, dated March 28, 2023, approved as to form by the Attorney General's office April 25, 2023.

Attorney General Morrissey stated that the deed does not contain a reverter clause. It's not problematic, but he wanted to note it for the Board. Governor Justice asked why it does not have a reverter clause. Leslie Dillon addressed the Board. He explained that WVU is divesting of lots adjacent to the Mountaineer Challenge Academy. To make it a cleaner transaction of real property and the fact that it is going from WVU to a State agency, they did not include a reverter clause.

Commissioner Leonhardt made a motion to approve the deed. Treasurer Moore seconded. The motion carried.

The fifth item on the agenda was consideration for approval of the following:

1. Deed between the West Virginia Department of Health and Human Resources and the State of West Virginia, for the use and benefit of the State Armory Board, dated March 20, 2023, approved as to form by the Attorney General's office March 27, 2023.
2. Deed between West Virginia University Board of Governors, on behalf of West Virginia University and the West Virginia Department of Transportation, Division of Highways, dated December 12, 2022, approved as to form by the Attorney General's office February 28, 2023.
3. Deed between the Board of Education of the County of Kanawha and the West Virginia Department of Transportation, Division of Highways, dated August 30, 2022, approved as to form by the Attorney General's office March 13, 2023.
4. Deed between the City of Princeton and the West Virginia Department of Transportation, Division of Highways, dated March 20, 2023, approved as to form by the Attorney General's office April 14, 2023.
5. Right-Of-Way between the West Virginia Economic Development Authority and the West Virginia Department of Transportation, Division of Highways, dated January 19, 2023, approved as to form by the Attorney General's office February 28, 2023.

Leslie Dillon addressed the Board concerning deed number 1. He explained that the property is on Smith Street and will be used by the Patriot Guardens Program at the WV Military Authority. He stated that this deed does not contain a reverter clause. It is going from DHHR to the State Armory Board. Russ Crane addressed the Board. He stated that the property has not been in use

in a while. DHHR did a public offer a couple of years ago, but the best bid they received was \$25,000. They knew that the WV National Guard was starting a new initiative called Patriot Gardens that promotes agricultural initiatives for veterans. This property is located directly across the street from the Capitol Market. The National Guard toured it and expressed an interest. Negotiations started to transfer the property to the WV National Guard to support the Patriot Gardens Program.

Treasurer Moore made a motion to approve the deed. Attorney General Morrissey seconded. The motion carried.

Chad Toney addressed the Board concerning deeds 2 - 5. He explained that deed number 2 is for an improvement project that will begin soon on Van Voorhis Road in Monongalia County. Deed number 3 involves a widening project on 622 near Cross Lanes Elementary School. Deed number 4 involves property on WV State Route 20 over the top of the railroad in Princeton. Deed number 5 involves a widening project for the Nucor plant.

Superintendent Roach made a motion to approve deeds 2-5. Treasurer Moore seconded. The motion carried.

With no further business, Attorney General Morrissey made a motion to adjourn the meeting. Superintendent Roach seconded. The motion carried. The meeting adjourned.



Mac Warner, Secretary of State and Ex-
Officio Secretary of the WV Board of Public
Works