

**West Virginia Board of Public Works
Wednesday, September 30, 2020 – 10:00 a.m.
Governor’s Cabinet and Conference Room
Minutes**

Attendees:

Members

Governor Jim Justice
Secretary of State Mac Warner
State Auditor John B. McCuskey
Commissioner of Agriculture Kent Leonhardt
Attorney General Patrick Morrisey
State Treasurer John D. Perdue by teleconference line
Michele Blatt for State Superintendent of Schools W. Clayton Burch

Guests

Dale W. Steager, WV Tax Commissioner
Leroy Barker, Director, Property Tax Div., Tax Department
BG William Crane, Adjutant General’s Dept.
COL Thomas Cook, WV National Guard
Arlie Hubbard, Real Estate Division
Ward Lefler, DOH Right of Way Division
Chad Toney, DOH Right of Way Division
Brian Abraham, Governor’s Office
Russ Rollyson, Auditor’s Office
John Gray, Attorney General’s Office
Jennifer Greenlief, Comm. Of Agriculture’s Office
Donald Kersey, Secretary of State’s Office
Maureen Lewis, Secretary of State’s Office
Phil Kabler, WV Gazette by teleconference line
Gary Furbee, WVU by teleconference line
Linda Rodriguez, Greeneville Iron and Metals Inc. by teleconference line
Luisa Fonseca, Equinor Natural Gas LLC by teleconference line
Charles O’Brien, Equinor Natural Gas LLC by teleconference line
Beverly Keadle, Mayor, Town of Romney by teleconference line

The West Virginia Board of Public Works met on Wednesday, September 30, 2020 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 December 2, 2019 West Virginia Board of Public Works meeting. Commissioner Leonhardt made a motion to approve the minutes. Attorney General Morrisey seconded. The motion carried.

The second item on the agenda was consideration and vote on the formal receipt of the tentative assessments for public utilities for tax year 2021 for review, as required by W. Va. Code §11-6-11, that were distributed by the State Tax Department on September 15, 2020. Commissioner Steager addressed the Board. He stated that the aggregate tentative assessed values for 2021 are approximately 12.64 billion dollars. The aggregate final assessed values for 2020 were approximately 12.55 billion dollars. This represents an approximate 7% increase over the final assessed values for 2020. He asked if there were any questions. Auditor McCuskey stated that upon review, he noticed changes to the rail car values that increased in a way that he thought was a little strange based on the markets. Leroy Barker responded that the rail car assessments did go up this year. He explained that each capitalization rate was adjusted to fit each industry. He continued that the rail cars and railroads were notified of the increase of values. The Tax Department held informal teleconferences with the companies and provided explanation.

Secretary Warner made a motion to formally receive the tentative assessments for public utilities for tax year 2021. Attorney General Morrissey seconded. The motion carried.

The third item on the agenda was consideration and vote on requests for exoneration from 2020 public utility tax assessment pursuant to W. Va. Code §11-6-12a from Greeneville Iron and Metals Inc., Equinor Natural Gas LLC, and Lakewood Utilities Inc.

Linda Rodriguez addressed the Board regarding the request from Greeneville Iron and Metals Inc. She explained that they are requesting exoneration due to the fact that they don't customarily send their rail cars through West Virginia. They have a letter from the railroad stating that the railroad did it for their convenience not at the request of the company. Attorney General Morrissey asked how many miles the rail cars traveled in the State. Ms. Rodriguez replied, 1300 for that year. AG Morrissey asked how long this has been going on. Ms. Rodriguez replied it was just the one year. Leroy Barker added that they were assessed because they were here during the reporting period. He continued that although they were here for the convenience of the railroad, there is not an allowance for them to not be taxed for that reason. Auditor McCuskey asked what if they were moved here as part of a longer train. Mr. Barker replied that if they are here and running the mileage through the State, they are required to report and be assessed. He verified that Norfolk Southern had sent a letter stating that the cars were here on their behalf. Auditor McCuskey asked if it is based on them being here or not and there is nothing in Code allowing a company to avoid taxation simply because of the purpose for their location. Mr. Barker replied that was correct. Commissioner Leonhardt asked who the responsible party is – the owner of the cars or the company that uses the cars? Mr. Barker replied it is the owner of the cars. AG Morrissey asked what the dollar value of the exoneration is. Mr. Barker responded that it is approximately \$6,200 in assessment which results in about \$155 in taxes. Governor Justice stated he was going to call to question for approval or denial, but is now calling for denial of the request for exoneration. He called for a vote. The request was denied by a unanimous vote.

Luisa Fonseca addressed the Board regarding the request from Equinor Natural Gas LLC. She explained that the company has filed property tax returns in the 5 counties where they have inventory and have paid property taxes to those counties. Leroy Barker verified that they did file and pay taxes to the 5 counties and they were also assessed as an underground gas storage

company. They were inadvertently taxed twice. The Tax Department does recommend exoneration. Governor Justice stated it was a reasonable request. He called for a motion of approval of the exoneration request for Equinor Natural Gas LLC. Commissioner Leonhardt made the motion. AG Morrissey seconded the motion. The motion carried with a unanimous vote.

Leroy Barker addressed the Board regarding the request from Lakewood Utilities Inc. He explained that the company was sold to the Frankfort Public Service District in February of that year. They have no more assets. They turned in a report, but the value should be non-taxable under the Public Service District. The Tax Department agrees with that and recommends exoneration of the approximately \$500 in taxes. Secretary Warner made a motion to approve the exoneration request for Lakewood Utilities Inc. Commissioner Leonhardt seconded the motion. The motion carried with a unanimous vote.

The fourth item on the agenda was consideration and vote on approval of a real property lease purchase agreement between the State of West Virginia, as Lessor, and the McDowell County Commission, WV, as Lessee, approved as to form by the Attorney General's Office on September 24, 2020. COL Cook addressed the Board. He stated that the Adjutant General's office would like to convey the Welch Armory to the McDowell County Commission. They no longer have use for the facility. The agreement is a 5 year payment plan of \$30,000. Secretary Warner made a motion to approve the lease purchase agreement. AG Morrissey seconded. The motion carried.

The next item on the agenda was consideration and vote on approval of the following deeds with the West Virginia University Board of Governors, on behalf of West Virginia University:

1. Between West Virginia University Board of Governors, on behalf of West Virginia University and the City of Montgomery.
*This deed has not been approved as to form by the Attorney General's Office. It does not contain a reversionary clause.
2. 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, approved as to form by the Attorney General's Office September 23, 2020.
3. Between the West Virginia University Board of Governors, on behalf of West Virginia University and the BridgeValley Community and Technical College Board of Governors, on behalf of BridgeValley Community and Technical College, approved as to form by the Attorney General's Office September 23, 2020.

Gary Furbee addressed the Board. He explained that each transfer relates to property of the former campus of West Virginia University Tech in Montgomery. They represent the University's continuing effort to find new owners and uses for the real property. COL Cook

stated that three of the buildings will be used to establish the Mountaineer Challenge Academy South which falls under the National Guard. AG Morrissey stated that there is a question about the first deed listed in the group. It has not been approved as to form because it doesn't contain a reversionary clause. He continued that, as public policy, it has always been the Board's position that unless there is an expressed public benefit, the property could revert back. It's designed so that the public always benefits and to eliminate a transaction where something is sold for less than fair market value and then the City could sell it to a large company. The clause can be waived. Mr. Furbee responded that was correct, but they are still requesting that the transfer be approved without the reversionary clause. Similar previous requests have been made involving the City of Montgomery. They feel that these transfers are in the best interest of the Upper Kanawha Valley and ask for the special consideration. Auditor McCuskey asked if there is any reversionary language that would be imputed on the contract through statute or code. AG Morrissey stated if there are no contingencies attached to it, then they would be free to sell it as they see fit. The Governor added that WVU doesn't want the property to come back to them and the City and the Guard could benefit from it. AG Morrissey responded that he just wanted to point out that the clause is usually included, but he doesn't see any public policy issue associated with this. Commissioner Leonhardt asked why two of the three deeds have a reversionary clause and one does not. Gary Furbee responded that none of the three deeds have a reversionary clause. John Gray addressed the Board. He explained that two out of the three are transfers between state agencies, so they remain in the possession of the State. The third one is going from WVU to the City of Montgomery without any restrictions tied to it. He continued that although the immediate purpose is for public benefit, the purpose of the reverter clause is so in the future, that is still guaranteed. It is waivable. He stated that any time they get a deed that does not have the clause and is for less than fair market value, it will be disapproved as to form routinely, but it's something the Board has to ability to waive. Auditor McCuskey stated that the City is part of the State and makes it similar to transferring property to the college. Governor Justice called for a motion to approve the deeds involving WVU as listed on the agenda with the specifics that have been discussed. Secretary Warner made the motion. AG Morrissey seconded. The motion carried.

The sixth item on the agenda was consideration and vote on the approval of a deed between the West Virginia Board of Education and the Town of Romney Building Commission, approved as to form by the Attorney General's Office June 3, 2020.

Beverly Keadle addressed the Board. She explained that it is the desire of the people of the Town of Romney and Hampshire County to restore the barn to its original grandeur. She said the barn is over 6600 feet on one floor. It was built in 1928-1929 to accommodate the State School for the Deaf and Blind. It was built primarily as a dairy barn, but had room for horses and livestock. It's framed with silo. They want to see it restored. AG Morrissey asked where this is in Romney. Mayor Keadle replied that it's on Depot Street, just east of the WV State Police. Governor Justice stated this seems like a great project. AG Morrissey made a motion to approve the deed. Commissioner Leonhardt seconded. The motion carried.

The next item on the agenda was consideration and vote on the approval of the following Quitclaim deeds:

1. Between the United States of America, acting by and through the Director of Real Estate, Headquarters, U.S. Army Corps of Engineers and the State of West Virginia, acting by and through the Commissioner, WV Department of Agriculture, approved as to form by the Attorney General's Office August 31, 2020.
2. Between the City of Charleston and State of West Virginia, Department of Administration (Michigan Avenue), dated September 3, 2020, approved as to form by the Attorney General's Office September 21, 2020.
3. Between the City of Charleston and State of West Virginia, Department of Administration (Washington Street), dated September 3, 2020, approved as to form by the Attorney General's Office September 21, 2020.
4. Between the WV Department of Transportation, Division of Highways and the State of West Virginia, for the use and benefit of the Department of Administration, dated May 11, 2020, approved as to form by the Attorney General's Office May 27, 2020.

Jennifer Greenlief addressed the Board regarding deed number 1 in this group. She explained that this is the transfer of approximately 19 acres to the Department of Agriculture from the US Army Corp. of Engineers. The purpose of the transfer is to use property that was formerly part of a munitions factory for the use and benefit of the State Farm Museum that is located in Mason County. AG Morrissey made a motion to approve the deed. Commissioner Leonhardt seconded. The motion carried.

Arlie Hubbard addressed the Board regarding deeds number 2 and 3. He explained that the two deeds involve transfers of property on Michigan Avenue and Washington Street needed for expansion to add a mail facility and warehouse. Those sections will allow the property to be continuous and have room to build. Governor Justice made a motion to approve the deed. AG Morrissey seconded. The motion carried.

Chad Toney addressed the Board regarding deed number 4. He explained that this deed as well as the other 10 deeds listed on the agenda with the WV Department of Transportation, Division of Highways are all for various projects, but they are straight-forward standard transfers. He introduced Ward Lefler to answer specific questions.

The final item on the agenda was consideration and vote on approval of the following deeds with the WV Department of Transportation, Division of Highways:

1. Between the Wayne County Board of Education and the WV Department of Transportation, Division of Highways, dated March 24, 2020, approved as to form by the Attorney General's Office May 15, 2020.

2. Between the Housing Authority of Mingo County and the WV Department of Transportation, Division of Highways, dated September 30, 2019, approved as to form by the Attorney General's Office May 15, 2020.
3. Between the City of Charles Town and the WV Department of Transportation, Division of Highways, dated November 18, 2019, approved as to form by the Attorney General's Office March 18, 2020.
4. Between the Berkeley County Development Authority and the WV Department of Transportation, Division of Highways, dated September 11, 2019, approved as to form by the Attorney General's Office April 20, 2020.
5. Between the WV Economic Development Authority and the WV Department of Transportation, Division of Highways, dated February 28, 2020, approved as to form by the Attorney General's Office August 14, 2020.
6. Between the Greater Huntington Park & Recreation District and the WV Department of Transportation, Division of Highways (Parcel No. 2-1), dated October 23, 2019, approved as to form by the Attorney General's Office January 17, 2020.
7. Between the Greater Huntington Park & Recreation District and the WV Department of Transportation, Division of Highways (Parcel No. 2-2), dated October 23, 2019, approved as to form by the Attorney General's Office January 17, 2020.
8. Between the Greater Huntington Park & Recreation District and the WV Department of Transportation, Division of Highways (Parcel No. 4), dated October 23, 2019, approved as to form by the Attorney General's Office January 17, 2020.
9. Between the Board of Education of the County of Lewis and the WV Department of Transportation, Division of Highways (Parcel 1), dated March 11, 2020, approved as to form by the Attorney General's Office August 28, 2020.
10. Between the Board of Education of the County of Lewis and the WV Department of Transportation, Division of Highways (Parcel 2), dated March 11, 2020, approved as to form by the Attorney General's Office August 28, 2020.

Ward Lefler addressed the Board and explained that the first transfer that applies to them is number 4 in the quitclaim group. It is a property that the Department of Administration has been leasing for a number of years. The Division of Highways is now going to deed the property to them. He continued that the other 10 items on the agenda are all part of various projects including right-of-way acquisitions for different roads and bridges. They are typical Highways acquisition deeds. They require the Board's approval before they can be recorded. Governor

Justice called for a motion to approve the deeds collectively. AG Morrisey made the motion. Auditor McCuskey seconded. The motion carried.

With no further business, Attorney General Morrisey made a motion that the Board recess until the public hearing, date to be determined. Commissioner Leonhardt seconded. The motion carried. The meeting recessed.



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