

**West Virginia Board of Public Works
Monday, January 9, 2023 – 10:30 a.m.
Governor’s Cabinet and Conference Room
Minutes**

Attendees:

Members

Governor Jim Justice
Secretary of State Mac Warner
Attorney General Patrick Morrisey
Commissioner of Agriculture Kent Leonhardt
State Auditor John B. McCuskey
State Superintendent of Schools David Roach
State Treasurer Riley Moore

Guests:

Commissioner Matthew Irby, State Tax Department
Deanna Sheets, State Tax Department
Chris Hunter, Jackson Kelly PLLC for WV American Water
Brian Holbert, WV American Water
Chad Toney, Division of Highways
Berkeley Bentley, Governor’s Office
Russ Rollyson, Auditor’s Office
Sean Whelan, Attorney General’s Office
Sarah Canterbury, Treasurer’s Office
Lindsay Marchio, Treasurer’s Office
Donald Kersey, Secretary of State’s Office
Maureen Lewis, Secretary of State’s Office

The West Virginia Board of Public Works re-convened on Monday, January 9, 2023 at 10:30 a.m. in the Governor’s Cabinet and Conference Room, Building 1, Suite 10 of the State Capitol Complex. Attorney General Morrisey made a motion to re-convene. Commissioner Leonhardt seconded. The motion carried. 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 November 16, 2022 WV Board of Public Works meeting. Attorney General Morrisey made a motion to approve the minutes. Commissioner Leonhardt seconded the motion. The motion carried.

Attorney General Morrisey addressed the Board. Due to potential litigation that may result out of issues, he requested that the Board be called in to executive session. Treasurer Moore made a motion that the Board go in to executive session. Commissioner Leonhardt seconded the motion. The motion carried. The Board went in to executive session.

The Board came out of executive session. Governor Justice stated that no action had been taken. There was a briefing and discussion.

The second item on the agenda was the discussion, review and vote on the final tax assessments for public utility companies for tax year 2023. Commissioner Irby addressed the Board. He referred to a

document prepared by the Tax Department containing recommended final assessments and a listing of recommended adjustments to the tentative assessments. He continued that the Tax Department is recommending adjustments of an approximately 804-million-dollar reduction. Those are mostly due to clerical errors. There was turnover of staff during the compiling process. He stated that it still represents an approximately 790-million-dollar increase, or 6.4%, over the prior year.

Governor Justice invited representatives from WV American Water to address the Board. Chris Hunter introduced himself and Brian Holbert. He stated that they have an issue that they are raising with the Tax Department. They are requesting an opportunity to discuss their valuation. They think it is high and not consistent with prior years, possibly due to the way the income approach to the valuation was calculated. They would like to come to a resolution with the Tax Department and have them present a modified value to the Board.

Governor Justice asked if there was any discussion. Auditor McCuskey requested a response from the Tax Department. Commissioner Irby stated that they were only made aware of the issue recently, after the adjustments had been calculated and provided to the Board. They have not had the opportunity to review any information from the company to determine if a clerical error or anything had occurred with regard to the calculation of their income. If given additional time, they will review the information to see if they do have a recommended change. Attorney General Morrissey asked if all the appeals and filings were done on a timely basis. Commissioner Irby replied that the Board did provide an opportunity for protests, and they did not receive any from them. Auditor McCuskey asked Mr. Hunter if there was a reason why the protest period lapsed prior to him bringing this to the Board's attention. Mr. Hunter responded that there was turnover both in WV American Water and the Tax Department. The Company reached out after receiving the tentative assessment to get a copy of the worksheets but did not aggressively pursue the details. The details were received in December. The date on the notice of the increased assessment was September 15th. He feels there may have been some miscommunication. The company thinks that the operating expenses number that was used in coming up with the income approach was not the total expense number used in previous years. He apologized for not raising the issue sooner. Governor Justice asked what the protest date was. Mr. Irby replied it was mid-November.

Mr. Holbert addressed the Board. He stated that because of turnover in the corporate tax department at WV American Water and the State Tax Department, the company did not receive the working papers until December 20th. They did not have the details to file the appeal until after the period had passed. Attorney General Morrissey asked if they had requested the information before the appeal period lapsed. Mr. Holbert replied that they had. Secretary Warner stated that it is a one hundred-million-dollar increase. He asked if all of it is wrong or is some increase appropriate. Mr. Holbert responded that some increase is appropriate, but the income approach used was not consistent with previous years. That is what they would like to discuss. Auditor McCuskey asked what the difference is in their total payment. Mr. Holbert replied that it is approximately 1.2 million dollars. Treasurer Moore asked if it is accurate to say that the company missed the deadline. Mr. Holbert replied yes.

Superintendent Roach made a motion that the Board approve the final assessed values for Tax Year 2023 as presented. Commissioner Leonhardt asked the Tax Department if after today, if everything is approved, there is still an administrative appeal process. Commissioner Irby replied that he believes it would be appealed to the Intermediate Court. Donald Kersey addressed the Board. He referenced W. Va. Code §11-6-12a, an administrative appeal process for relief from erroneous assessments. If a company believes it's assessment is erroneous, there is a one-year appeal period from the final assessments. Mr. Hunter clarified that it applies to an erroneous assessment due to clerical errors. If there is a disagreement on valuation, in §11-6-12, it goes to the Intermediate Court

of Appeals within fifteen days. Auditor McCuskey asked if it was possible to come to an agreement prior to approving the total list, that the Tax Department could work with WV American Water outside of the statutorily suggested appeal process. Mr. Kersey asked if he meant to separate this particular entity from the package. Auditor McCuskey replied that was correct. Attorney General Morrissey stated that in the past the Board has negotiated after final assessments were made to the extent that there were protests as a way to avoid litigation or address common issues that might come up in litigation. That has happened in the past. Auditor McCuskey stated that there is a close deadline for sending this out to the counties and cities. Their budgets have been predicated on this money being sent by the Auditor's Office out to the local governments. It would be a large task to change all of their budgets if the numbers change in a significant way. That is why the deadlines exist as they are. He continued that if there was a possibility of separating the company out, doing so now would be beneficial. Attorney General Morrissey responded that he would not recommend doing that now. He stated, as the attorney for the Board, he needed to look at the factual circumstances arising. He does not want to pre-judge it based on any lack of information that he may hear and would want to recommend to the Board. Governor Justice seconded the motion made by Superintendent Roach. He explained that the Board wants the assessments to be right, but they also don't want to send the message to other companies that miss deadlines that the whole process will be held up. He continued that there are administrative ways to make things right without shipwrecking the whole thing. Governor Justice called for the vote. The motion carried.

The next item on the agenda was the certification of tax rates on each class of property according to the provisions of W. Va. Code §11-8-8. Governor Justice stated that the details and code cites are listed on the agenda. He called for any discussion. Commissioner Leonhardt made a motion to approve the tax rates on each class of property. Treasurer Moore seconded the motion. The motion carried.

The fourth item on the agenda was the consideration and approval of the following deed:

1. Between the Malden Public Service District and the WV Department of Transportation, Division of Highways dated November 16, 2022, approved as to form by the Attorney General's Office December 7, 2022.

Chad Toney addressed the Board regarding the deed. He explained that this is a roadway easement obtained from the Malden PSD. Attorney General Morrissey made a motion to approve the deed. Commissioner Leonhardt seconded the motion. The motion carried.

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



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