

**West Virginia Board of Public Works  
Tuesday, October 1, 2024 – 11:00 a.m.  
Governor’s Cabinet and Conference Room  
Minutes**

**Attendees:**

Members

Jim Justice, Governor  
Patrick Morrissey, Attorney General  
Mac Warner, Secretary of State  
Michele Blatt, State Superintendent of Schools  
Kent Leonhardt, Commissioner of Agriculture  
J. B. McCuskey, State Auditor  
Lindsay Marchio for Treasurer Riley Moore

Guests

Chad Toney, Division of Highways  
Matthew Irby, Commissioner, State Tax Department  
Frank Capehart, State Tax Department  
Ting Zhu, State Tax Department  
Bill Longwell, State Tax Department  
David Lord, Southern WV Community and Technical College  
Jim Rector, West Virginia University  
Kimberly Cox, Williams Transport  
Leslie Dillon, WV Military Authority  
Arie Spitz, Dinsmore Shohl  
Jeremy Jester, UGI Appalachia, by teleconference line  
Justin Mikol, UGI Appalachia, by teleconference line  
Leanne Faust, UGI Appalachia, by teleconference line  
Ryan Ivey, King Street Wireless, LP, by teleconference line  
Christine Zabrocki, The Andersons Inc., by teleconference line  
Brian Abraham, Governor’s Office  
Berkeley Bentley, Governor’s Office  
Sean Whelan, Attorney General’s Office  
Steve Adams, Ogden Newspapers  
Donald Kersey, Secretary of State’s Office  
Maureen Lewis, Secretary of State’s Office

The West Virginia Board of Public Works met on Tuesday, October 1, 2024 at 11:00 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 Jim Justice. A quorum of members was established.

The first item on the agenda was the approval of minutes from the February 22, 2024 West Virginia Board of Public Works meeting. Commissioner Leonhardt made a motion to approve the minutes. Attorney General Morrissey seconded. The motion carried.

The second item on the agenda was the formal receipt of the tentative assessments for public utility companies for tax year 2025 for review, as required by W. Va. Code §11-6-11. Commissioner Irby addressed the Board. He explained that the Property Tax Division prepared the tentative assessed values for 2025 and delivered them to Board members. They represent an approximate 6.25% increase from last year. This is the start of the formalized process for establishing values.

Attorney General Morrissey made a motion to formally receive the tentative 2025 public utility assessments. Superintendent Blatt seconded. The motion carried.

The third item on the agenda was the consideration of applications for relief from erroneous assessment pursuant to W. Va. Code §11-6-12a from:

1. UGI Appalachia
2. King Street Wireless, LP
3. The Andersons Inc.

Justin Mikol addressed the Board regarding UGI Appalachia. He explained that they are applying for a refund due to a clerical error which resulted in over payment of taxes to West Virginia. UGI Appalachia was acquired by UGI Energy Services in 2019. The initial amounts that were reported on the WV property tax reports were overstated. They are not contesting the actual assessments or valuation, rather they are asking for a refund of overpayment on assets which were not located in West Virginia during the period. Jeremy Jester added that they are not necessarily requesting a refund, just a reconsideration and either a refund or credit toward future tax payments. Commissioner Irby replied that the Tax Department looked at the information that UGI provided. It is more in line with their recent filings. It changes the return information they provided for tax year 2021 and tax year 2022. It appears to relate to the purchase of those assets. They purchased the assets in 2019, they continued to report the value of those assets at the previous book value from the prior owner. It is not clear to the Tax Department how that occurred. They started reporting the corrected value in May of 2022. Commissioner Irby stated that the questions before the Board are whether a clerical error occurred and whether or not it has been within one year of when they should have discovered it. He continued that they have fixed the filing error for future years, starting in tax year 2023 with the May 2022 filing. He questioned why the company didn't discover that they had previously misreported the assets at that point. It has been more than the one year time frame that statute requires. Auditor McCuskey asked Mr. Jester why it took more than a year for UGI to discover the error. He replied that it wasn't reviewed until they started to look at their books for filing the following year due to numerous transactions that had occurred. They came to the Board as soon as it was discovered to request reconsideration. Mr. Mikol added that the filings for UGI Appalachia weren't reviewed by the legacy accounting team. They were reviewed by the new team that had just taken over. Commissioner Leonhardt asked if it involves more than one tax year. Mr. Mikol replied that it is for the returns reported for the 2019 and 2020 periods. Commissioner Irby stated that it is tax year 2021 and tax year 2022. They were reported in May of 2020 and May of 2021. Auditor McCuskey asked what the total amount being considered is. Commissioner Irby replied that it is approximately \$325,000 in tax for tax year 2021 and \$225,000 in tax for tax year 2022. Attorney General Morrissey asked Commissioner Irby what his recommendation is for the Board. Commissioner Irby responded that the statute provides that the clerical error needs to be identified within one year of when it could have been discovered. That is the primary question for the Board. The numbers do align with their current filings. This request is looking several years back. The Tax Department does not know why the company did not identify this issue before. The company has a responsibility to review their filings and identify this. Attorney General Morrissey asked Mr. Mikol what systems the company had in place to identify how to get the tax numbers

accurate at the time as opposed to later. Mr. Mikol replied that he can provide attestations from the tax team at the time. In addition, there was employee turnover during the purchase of the company. Mr. Jester added that it is within one year of identifying the error. Auditor McCuskey asked when the deal was being done, who did the transaction? He questioned why the Board is responsible for someone else's mistake. It appears that the deal side lawyers and accountants missed something prior to the sale. Mr. Mikol replied that they are trying to make sure that the right amount of taxes are paid to West Virginia. Attorney General Morrissey stated that when deals are done there are a lot of lawyers paid to engage in regulatory diligence. He agrees with getting the tax numbers correct going forward, but if there was a mistake made on the back side, not on the part of the Board or the State, that's important to know. He continued that he would be willing to learn more about whether those issues were covered and the responsibility of the company through the diligence process.

Secretary Warner stated that the standard for a request is, according to Code, within one year of the time such clerical error or mistake is discovered, or reasonably could have been discovered. He continued that the Board should allow the Tax Department and the company to work together to determine if it is reasonable or not. He made a motion to table the discussion until the Tax Department can come back and give a recommendation of whether or not it is reasonable. Commissioner Leonhardt seconded the motion. The motion carried.

Ryan Ivey addressed the Board regarding King Street Wireless, LP. He explained that the issues with King Street all pertain to tax year 2024. King Street operates a multi-state network of cellular towers and equipment. Tax year 2024 was the first year the company was assessed in West Virginia. He continued that there were some misinterpretations between the information that King Street provided and how the assessment was computed and issued. The first issue is the allocation calculation of the percentage of the company's value that is taxable in West Virginia. He referenced the Code of State Rules suggesting that the calculation be made using gross operating plant data. That information was reported for the West Virginia portion and the system as a whole as well as net plant data for the system as a whole, but not the West Virginia portion because that information was not available at the time. He stated that there was a push to convert the allocation calculation from the gross basis to a net basis. Through the information provided and the switch to a net allocation basis, there became a mismatch between the West Virginia data and the data for King Street as a whole. He continued that about 12.5% of the King Street network is taxable in West Virginia, but the net basis calculation resulted in a 93% allocation for West Virginia. Governor Justice asked for a response from the Tax Department. Commissioner Irby stated that they still needed some information from the company before they can finalize the numbers. He recommended that the Board table this discussion until that can be obtained and reviewed.

Attorney General made a motion to table the discussion. Secretary Warner seconded. The motion carried.

Christine Zabrocki addressed the Board regarding The Andersons Inc. on the railcar account. She explained that she became aware of the outstanding invoice liability a couple of weeks ago. The taxes due on the assessment were based on a non-filing by The Andersons for tax year 2023. The Andersons' fleet of railcars was sold in August of 2021 to American Industrial Transport (AIT). The return filed for AIT for tax year 2023 included The Andersons fleet of cars. She continued that she worked with the assessor that year to ensure that the assessment for AIT did include the Anderson cars in addition to their existing fleet. The taxes were paid on the Anderson cars through AIT. Commissioner Irby replied that the Tax Department agrees. Upon review, the AIT return does contain The Andersons cars. A non-filer assessment was issued in error.

Attorney General Morrissey made a motion to fix the clerical error and direct that the appropriate adjustments be made in terms of notifications. Commissioner Leonhardt seconded. The motion carried.

The fourth item on the agenda was consideration of the following deeds listed 1 through 8 seeking approval by the Board of Public Works.

1. Between the County Court of Webster County A/K/A The Webster County Commission and the West Virginia Department of Transportation, Division of Highways, dated July 31, 2023, approved as to form by the Attorney General's office April 22, 2024.
2. Between the County Court of Mercer County, WV and the West Virginia Department of Transportation, Division of Highways, 3 parcels (2-1, 2-2, and 2-3) each dated July 9, 2024, each approved as to form by the Attorney General's office August 21, 2024.
3. Between the West Virginia Department of Transportation, Division of Highways and the Braxton County Commission (Braxton County Animal Shelter), dated August 22, 2024, approved as to form by the Attorney General's office September 20, 2024.
4. Between the West Virginia Department of Transportation, Division of Highways and City of Hurricane, approved as to form by the Attorney General's office September 25, 2024.
5. Between Southern West Virginia Community and Technical College Board of Governors and the County Commission of Wyoming County, dated September 5, 2024, approved as to form by the Attorney General's office September 13, 2024.
6. Between West Virginia University Board of Governors, on behalf of West Virginia University and the Mineral County Development Authority, approved as to form prior to acknowledgment by the Attorney General's office September 13, 2024.
7. Between the State of West Virginia, for the use and benefit of the State Armory Board and the Mason County Development Authority, approved as to form prior to acknowledgment by the Attorney General's office September 20, 2024.
8. Between the West Virginia University Board of Governors, on behalf of West Virginia University and the State of West Virginia, for and on behalf of the State Armory Board, approved as to form prior to acknowledgment by the Attorney General's office September 20, 2024.

Chad Toney addressed the Board regarding deeds 1 through 4. He explained that deed number 1 is to complete a bridge job in Webster County. Deed number 2 involves 3 parcels to complete a project near 2<sup>nd</sup> Street in Princeton that the State did twenty years ago. Deed number 3 involves an excess

right-of-way with the Braxton County Commission for a sewer plant near the animal shelter. Deed number 4 involves compensation for excess land and an old maintenance salt shed site in Hurricane.

Attorney General Morrissey made a motion to approve deeds 1 through 4. Commissioner Leonhardt seconded. The motion carried.

David Lord addressed the Board regarding deed number 5. He explained that due to declining enrollment and declining population in Wyoming and McDowell Counties, the College does not need as large a footprint as they have with their current campus. Since the pandemic, they offer a lot more classes online. They are looking to downsize. They have gotten assessments and would like to sell the property to the Wyoming County Commission, which will use it as a 911 center for the area.

Secretary Warner made a motion to approve deed number 5. Attorney General Morrissey seconded. The motion carried.

Jim Rector addressed the Board regarding deeds number 6 and 8. He explained that deed number 6 involves the sale of a parcel of land from Potomac State College to the Mineral County Development Authority. The property and the building on it were previously used for student housing. Student housing has since been moved. The building hasn't been utilized since 2022. The Development Authority wants to convert it into apartments. Deed number 8 involves 40 acres of land in Preston County. The transaction occurred in 1987. At that time, the land was sold for the provision of in kind services by the National Guard, specifically the demolition and removal of several buildings. Although the transfer was approved by the Board of Public Works, WVU never officially deeded the property. By approval, it was subject to a reversionary clause. The National Guard contacted WVU and asked if they would be willing to waive the reversionary interest in the property. WVU has no objections to doing that, but recognizes that it's up to the Board.

Commissioner Leonhardt made a motion to approve deeds 6 and 8. Attorney General Morrissey seconded. The motion carried.

Leslie Dillon addressed the Board regarding deed number 7. He explained that this transaction relates to the Pt. Pleasant Armory. It had been leased to the Mason County Development Authority and then sub leased to Nucor Steel. The property is no longer needed and they would like to sell it to the Mason County Development Authority for value of 1.6 million dollars. Attorney General Morrissey asked how the fair market value was assessed. Mr. Dillon replied that they did an appraisal that factored in the limitations on the use of the property.

Secretary Warner made a motion to approve deed number 7. Superintendent Blatt seconded. The motion carried.

The fifth item on the agenda was an Executive Session for discussion which is protected by the attorney-client privilege regarding updates on litigation matters and review of settlement proposals.

Attorney General Morrissey made a motion that the Board go into Executive Session to discuss litigation matters and settlement proposals.. Auditor McCuskey seconded. The motion carried. The Board went into Executive Session.

The Board came out of Executive Session. Attorney General Morrissey stated that no decisions were made. He then made a motion to allow the Board's outside counsel, Arie Spitz, to negotiate an

appropriate amount reflecting accurate tax information with Blue Racer. Auditor McCuskey seconded. The motion carried.

Attorney General Morrisey made a motion to allow the Board's attorney to negotiate appropriate amounts and/or settlements with Hope Gas and with Williams Transport. Commissioner Leonhardt seconded. The motion carried.

With no further business, Commissioner Leonhardt made a motion to recess the meeting until the public hearing for the public utility tax assessments. Secretary Warner seconded. The motion carried. The meeting recessed.



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