

How to Appeal Your Jefferson County Property Tax Assessment

First release
February 9, 2009

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Much of this document is applicable to any county in the State of West Virginia; however, the document itself is based on the author's experience with the Jefferson County assessments for the 2008 tax year. Other counties or other years may bring new procedures; the author or others may update this document to reflect those differences, but no commitment to such updates is made.

I. Before the hearing

So you just got an assessment increase notice (or you checked the assessment figures yourself – a good practice, since you only get a notice for a 10% or more increase in assessed value) and you're pretty sure the valuation on your property is too high. You're thinking you want to appeal it, but you're not sure how, or if you need a lawyer, or even if you can afford a lawyer. In short you're in the same place a lot of your friends and neighbors probably are. The first thing you need to understand is the law in West Virginia related to property tax assessments.

First, an assessment is figured based on 60% of the "true and actual value" of the

property. The gold standard of "true and actual value" in West Virginia is either the rental income of a residential property, or what any kind of property would sell for on the open market in an "arms-length" sale – basically one in which the buyer and seller are not related and the seller is not forced to sell quickly. Most of the time, even though the rental income is legally the primary standard, you and the assessor will both be talking only about sale prices. (There are special rules for certain types of business property that involve an appraisal by the State Tax Commissioner's office, but I'll assume you don't fall into that category.)

Second, the state law of West Virginia doesn't prescribe any particular measure of "true and actual value". Even if you just bought your house in an arms-length transaction, that's not *absolute* evidence of its value for tax purposes. It is, however, a *very* strong piece of evidence – more on that later. Other evidence can include:

- a written real-estate appraisal (the more recent the better)
- testimony of an actual appraiser about your property (ditto)
- sale prices of properties approximately like yours (same goes here too)
- if some of your lots aren't buildable, evidence as to why (Health Department permit denial letters, a statement showing it's too small or steeply-sloped to build on at all, etc.)
- possibly even other things not specified here – if you have a photograph of an alien from the planet Zarxon holding up a sign that says how much your house is worth (assuming you can find a translator who reads Zarxonian), keep it on file at least.

Realistically, the better and more exhaustive your evidence, the more likely you are to win.

Third, assessments are done with the assistance of the statewide Computer-Assisted Mass Appraisal system, or CAMA. CAMA is *not* the final word on the value of your house – the responsibility of making that judgement lies with the county assessor and they cannot pass it off to a piece of software.

The way CAMA works is the assessor divides the county up into "tax neighborhoods" in each tax district that are supposed to consist of approximately equal properties. This is purely for computer purposes and does not necessarily have anything to do with county history, geography, or the lines an average person would draw to divide up neighborhoods. Along with the neighborhood lines, information about all the properties in each neighborhood and the sales over the past year is input into CAMA,

which then crunches the numbers and eventually comes up with a number for how much every specific property is worth, broken down in various ways.

I want to stress again, *CAMA is not the assessor nor does what CAMA says override the law's idea of "true and actual value"* – that's the whole point of the appeal process, to give you an avenue to convince the county that your property is not correctly valued by the assessor regardless of what CAMA or anything else says.

The appeal order is: Assessor -> Board of Equalization and Review (made up of the County Commission) -> Circuit Court -> West Virginia Supreme Court. In theory if you believe a real US Constitutional issue exists, you could appeal to the US Supreme Court as well, but almost nobody's case is ever going to have a reason to go that far.

In theory if you think your assessment is incorrect, the first step is for you and the county assessor to sit down and talk it over and try to come to an agreement of a fair value. In practice this may mean when you walk in the door or call saying your assessment is too high, they immediately offer to put you on the schedule for the Board.

Now, in practical terms, you have to decide, is it *worth* appealing your assessment before the Board? That all depends on you and what you can afford as far as time off work. If you're a large developer with hundreds of lots and one small one is overvalued by 10%, it might not be worth your time. If you only own one lot and you can't afford the extra tax, you might go the other way and want to have your say no matter how small the amount. Bear in mind that if you don't appeal before the Board, you lose the legal right to any further appeals for that property that year.

So let's assume you're going to a Board hearing. First, stop and think a second: what documents do you have that have anything to do with your ownership or the value of your property? Deeds, receipts for work done, any written appraisal you can get a copy of, any loan documentation, even your settlement statement for the original purchase may be important, because you're fighting one County office in front of another County office, both of them want your tax money, and the only thing that will convince them is the weight of the evidence you bring. Whatever you do, don't walk in empty-handed, because the West Virginia Supreme Court ruled years ago that an assessor's valuation is presumed correct. That doesn't mean you can't beat the Assessor, just that it takes more than your opinion to do it.

If you spend money on this, make sure it's money well-spent. If you decide to go to the

expense of having a private appraisal done especially for your appeal, make sure it's a look-back tax appraisal with a look-back date of July 1, the same date the Assessor is using to base valuations on. Try to get the appraiser to agree to appear with you at your Board hearing.

The second thing is to understand what you're walking into. This is, legally speaking, a court appearance equivalent to appearing before a magistrate. Have your documents organized and have extra copies for the Board to examine. A record of this hearing, possibly including audio and video, will be attached to any subsequent appeals related to it, so have some care for your appearance and behavior. Don't address the Commissioners familiarly, even if you're on first-name terms with them in everyday life. They're not your friends in this venue, they're the judges hearing your case. Even though they might not take offense to being addressed as a friend, how you behave may have an impact on how a later judge sees you.

You may also find it useful to go to the Assessor's Office and get a copy of the property card printout for the property you're appealing the assessment for. What many people have found is that the buildings they own were valued properly, more or less, but the value of their land was overstated. Either way it's good to know how your property value is broken down so you can demonstrate why the overvalued pieces should be reduced and not waste time arguing about what's not at issue.

Another important item is to file your appeal in time. Usually a notice will be published setting out the date of the first meeting of the Board, and the last date and time to file an appeal. To be certain, file within a few days of receiving your assessment increase notice. Typically you'll be given an appeal form to fill out – make sure you fill out as much as possible, because an incomplete form may be used as grounds to refuse an appeal.

Finally, you may want a lawyer. Legal time is not cheap, but most lawyers will give you a free consultation and go over their fee structure, review your evidence, etc. If you can get a free half-hour or so chat, it certainly doesn't hurt to explore your options, but understand that you don't *need* a lawyer to win before the Board.

II. At the hearing

At the hearing you'll be asked if you want your case broadcast on the webcam. My

personal advice is to say yes (although at least one lawyer does the opposite – if you have a lawyer appearing with you, do what he suggests, but we're assuming here that you didn't hire a lawyer). If you get a bad decision and appeal to the circuit court, you'll probably need to prepare your own transcript, and that's easier to do with video to help you figure out who said what. Plus, you can download the video for free from the County Commission website, whereas you'll have to pay for a recording of the hearing on CD if you don't have the video.

Once the hearing starts, you'll be sworn just as you would to provide testimony in an ordinary court case. At that point the Board will have the Assessor speak on how they assessed your property and why it's valued as it is. The county attorney, who represents the Assessor, will probably ask to have an employee of the Assessor's Office admitted as an expert witness. You may wish to clarify what they're being admitted as an expert in: at the time I write this, no one in the Jefferson County Assessor's Office is licensed as a real estate appraiser in West Virginia – they receive training in the use of the CAMA system, but don't hold the same license a professional appraiser does. You can ask that they be admitted as an expert in the procedures of the Assessor's Office, or the use of CAMA, but you may want to object to their admission as an expert in the appraisal of residential property.

The Assessor's Office employee will speak on how and why they arrived at their value for your property. Then you will speak on why you feel your property is overvalued and present your evidence, including any rebuttals of the Assessor's reasoning. After you speak the Commission may question either you or the Assessor for more information, and the Assessor may try to convince them that some or all of your evidence is invalid. Some of their common objections (and your possible responses during your turn) are:

- **You aren't entitled to bring an appeal.** They may argue this if you recently bought your property and did not yet own it on the previous July 1. Show documentation that you own the property and are paying the taxes on it. Also you might want to bring up that in *Tug Valley Recovery Center v. Mingo County Commission* (1979), the West Virginia Supreme Court ruled that *any* taxpayer may appeal the assessment of *any* property in their county.
- **Comparable sales or appraisals that you present aren't recent enough, or are too recent.** The West Virginia Supreme Court has ruled in at least two cases, *West Virginia Division of Highways v. Jack Butler* (1999), and *Kline v. McCloud* (1984), that there is no arbitrary cutoff that makes evidence of value inadmissible. In the first

case they quoted a previous ruling in which they held the price paid for property four and a half years prior was relevant and ruled that a purchase price from nine years before was only irrelevant because of major changes in the local real estate market in that time; in the second case they ruled that a state tax appraisal as old as sixteen years was relevant to the valuation of property.

- **Comparable sales that you present are in the wrong tax neighborhood.** There is no basis in state law for the concept of a "tax neighborhood"; it's purely an artifact of the CAMA system as noted above. The value of any property similar to yours anywhere in the county is relevant. You may or may not be able to convince the Board of this, but it's an argument you can also raise in a Circuit Court appeal later if you lose here.
- **Your property is actually undervalued because your house is insured for more than the Assessor says it's worth.** Point out that homeowner's insurance is for the cost of replacing the house with a similar brand-new one built today with modern materials and methods. Your existing house, on the other hand, is (probably) not brand-new – it's not worth what a brand-new house just like it is, even if it's worth more now than it was when it was built.
- **Your evidence isn't equivalent to testimony of a qualified appraiser.** It's important to make sure that your evidence is given the weight it deserves – you're not required to actually have an appraiser testify in person or in writing (but bear in mind what I wrote earlier about spending money on an appraisal). There is other evidence that is considered equivalent, most powerfully, an actual arms-length sale price. West Virginia law holds that a bona-fide arms-length sale price is equivalent to testimony of a qualified appraiser as to the value of a property – the West Virginia Supreme Court stated so in *Kline*. Also make sure the Board understands that the Assessor's Office is not staffed by licensed appraisers.

After both sides have spoken, the Board will discuss amongst themselves and may ask you or the Assessor's representative more questions. One or more motions to grant or deny you relief will be made and eventually one will pass. At that point your hearing is over, and hopefully you got what you wanted. But if not...

III. After the hearing

If the Board ruled against you, or granted you relief but so little that you still find your case worth pursuing, you'll need to file a petition with the Circuit Court to appeal the decision. Traditionally the Circuit Clerk's Office is quite unhelpful with this process –

they will accept your filings and your payments of fees, but do not provide information on how to put your filings together. What follows is somewhat speculative and I will try to distinguish between what I believe is true and what is pure supposition on my part. In some parts I will write very generally; if you want an example of my own filings, go to the Jefferson County Circuit Clerk's Office and look up case number 08-C-125, filed March 27, 2008 and heard by Circuit Court Judge The Honorable Thomas W. Steptoe, Jr.

You have thirty days after the Board adjourns to file your appeal. Let me emphasize that: you have thirty days *after they adjourn* (the last day of hearings), not *after your hearing*. The first day of the thirty is the day after the board adjourns, not the day of. The upshot of this is, start working on things but don't rush unnecessarily: how well you argue in your petition may determine how your case comes out, because the court can only rule on the issues and evidence placed in the record.

At this point you're looking at a minimum of \$146 to file your petition in the first place, plus the cost of any copying you do at Staples or Kinko's (you may want to consider buying a cheap scanner and a used laser printer instead, so you can do this at home and quite possibly save money), postage or process service fees to serve copies to the Board, the Assessor and the County Prosecutor, and any other expenses you may incur. You can ask for reimbursement of court costs in your petition, but don't expect to get it. So again you're faced with a decision: whether it's worth approximately \$200-250, plus time off work, to pursue your claim further. Most likely it is, because if your assessment was raised so high as to prompt you to appeal in the first place, then you have to consider that you're paying that extra not just this year but next year, the year after, the year after that...

You may be thinking you want a lawyer at this point. Again, it never hurts to investigate your options. A typical lawyer's retainer is in the thousands, so unless you already have a lawyer on retainer the cost starts off pretty hefty. Then there's the fees for actual work – I estimate I spent about 30 hours on my appeal including my one court appearance. A lawyer could hopefully do it in less time, but it would still be something on the order of at least 10 hours. A free consultation may still be useful and informative even if you're leaning against hiring representation.

If you do decide to go forward from this point, you're required to submit the legal record of the Board hearing with your petition. In most court proceedings, this means a transcript, but the County doesn't make transcripts of Equalization and Review

hearings – the official record is the approved minutes of the Board hearing. You can have these sent to you by the Clerk of the County Commission. However, these minutes are very basic – just a few lines stating that you appealed, and how the Board voted on your case. It's not terribly useful to a judge, so it's worth using the video or audio of your case to prepare your own transcript to submit along with those minutes. Accuracy is important here – you want to make sure it's as word-for-word exact as you can. You can do it yourself or hire it done, but either way the accuracy is the important thing, because the judge may ask if the other side objects to your transcript, and if you have inaccuracies they may move that it be ruled inadmissible. (On the other hand, if they do object, you should immediately ask what they object to – the judge may allow you to amend the transcript rather than just throwing it out. This is one of those areas where the judge's discretion can make or break your case.)

IV. Writing a Petition

The actual petition process is not terribly difficult even for a layman. There are rules of civil procedure that dictate the broad outlines of how a court filing is to be written; mostly they're just general style guidelines and enforcement of them seems to be casual at best. If you're filing *pro se* (meaning you're representing yourself without a lawyer), the court will generally cut you a fair bit of slack regarding the form of your petition and even some of the process to be followed later. What I describe below is a fairly detailed form of brief writing for a case like this; some of these rules are not as hard-and-fast as others. Things that may be optional are *italicized*.

- Use a readable font: Times, Palatino, Courier, Helvetica, something like that, in at least a 12-point size. Avoid fancy script or block-letter fonts that are a pain to read. It's not a graphic-design contest – the object is to make the substance of your case easily readable by the judge, not to make it look pretty. Courier New is always a good choice, as is Times New Roman or my favorite, Palatino.
- Double-space your text.
- Use 1-inch margins (a little more is OK if you want, but don't go overboard).
- If you can manage it in your word processor, put a page-number footer at the bottom of each page.
- Put *the names of the people submitting the petition, along with their contact information, then* the line "Circuit Court of Alphabet County, West Virginia" at the top (use the name of your actual county).
- Put the names of the parties (sometimes known as the *style* of the case, because it

forms the title by which the case is known) underneath that line. This should take a form somewhat like the following (yes, this is long):

"John Q. Doe and Jane Q. Doe, Petitioners

v.

John Doe, Assessor of Alphabet County, and Jane A. Doe, Commissioner and President of the County Commission of Alphabet County, and John B. Doe, Commissioner and Vice President of the County Commission of Alphabet County, and Jane C. Doe, Commissioner of the County Commission of Alphabet County, and John D. Doe, Commissioner of the County Commission of Alphabet County, and Jane E. Doe, Commissioner of the County Commission of Alphabet County,

in their capacities as County Commissioners and in their capacities as members of the Board of Equalization and Review, Respondents"

- After or alongside the style of the case, put the title, something like "Petition for Relief from Erroneous Assessment" and then a description of the property in question, such as "Lots A, B, and C, Delta District, Alphabet County, West Virginia"
- *Put the date somewhere on the title page.*
- Now that you've got the formatting out of the way, argue your case. *Be brief!* Don't spend a lot of time building fancy theories. You're not a brilliant lawyer, and the court doesn't expect you to be. Present the facts, show why the text of the law and previous court decisions supports your case, ask for an adjustment to your assessment, and you're done. Judges dread *pro se* cases, because amateurs often try to be Perry Mason or Matlock and make it hard for the judge to figure out what their actual argument is. Don't give the judge a reason to consider you another nutty amateur making his life hard.
- *Number your paragraphs.*
- An argument that runs 10 pages or more (not including title page and your evidence) probably needs editing down significantly.

Case law and statutes you should investigate while writing your petition:

WV Code 11-3 deals with standards and practices of the property tax assessment process. Available online at:

<http://www.legis.state.wv.us/WVCODE/Code.cfm>

Some of the relevant West Virginia Supreme Court cases:

Killen v. Logan County Commission (1982)
In re Tax Assessments Against Pocahontas Land Co. (1983)
Kline v. McCloud (1984)
Eastern American Energy Corp. v. Thorn (1993)
West Virginia Division of Highways v. Butler (1999)

The last two cases are currently available on the West Virginia Supreme Court's website:

<http://www.state.wv.us/wvsca/opinions.htm>

Cases earlier than 1991 can be found at Westlaw or Lexis online, or by taking a trip to a law library like the one at WVU:

Westlaw:

<http://www.westlaw.com/>

Lexis:

<http://www.lexis.com/>

WVU Law Library:

Law Center Drive, Morgantown, WV 26505-6135

<http://law.wvu.edu/library/>

V. Going to the circuit court

So you've decided to appeal to the court, you've written your petition, and assembled your evidence. Now you have to file it and deal with the circuit court. Fortunately the hard part is mostly over. To file, you have to pay a \$145 filing fee, plus a \$1 fee to buy a copy of the required civil case information statement (or you may be able to print it from <http://www.state.wv.us/wvsca/rules/SCA100.pdf> and bring it with you after filling it out). You'll fill out the case info sheet and submit it with your petition.

Make five or more copies of your petition and all your evidence. Attach a copy of your evidence at the back of each copy of your petition, preferably with some sort of labeled divider pages so the judge can easily distinguish things from each other. Once each packet is assembled, staple it in the top left in the margin. Take all your copies to the

Circuit Clerk's Office (not the Circuit Court). These copies will be used as follows:

- One is filed with the court
- One is served on the Assessor
- One is served on the County Commission (specify service as a body, not as five individuals)
- One is served on the County Prosecuting Attorney
- One you keep.

You can pay the circuit clerk's office for service by mail or service in person by the sheriff. (You may be able to take care of either of these yourself, or hire a professional process server to do it, but then you have to make and file a certificate of service.)

When you file, you'll be assigned a case number. Keep a note of it somewhere convenient, because each time you deal with this case later, you'll be asked for it.

VI. After you file

Once your petition is filed, you get to play the waiting game. What happened in my case was after a few weeks, I got a notice that a status conference had been scheduled for May 19. At that conference, the judge laid out a briefing schedule. Normally in such a case, each side has 30 days (or some other agreed-upon time period) to prepare its case, beginning with the petitioner who files an argument brief; the respondents then file a response, and the petitioner files a rebuttal, after which the judge will review the briefs and rule.

I argued my case in my petition, so I asked that the petition be accepted as my argument brief. The county requested 40 days to prepare its response (filed June 30) because of a prior commitment, which I didn't object to; the judge gave me 40 days after that to write my rebuttal (due August 11 and filed August 8).

Make sure you read the County's response carefully. Anything they claim that you don't dispute, you're assumed to agree is correct. Look up the court cases and laws they cite, and read them carefully too – you may find, as I did, that portions were taken out of context and that the case overall actually supports *your* argument.

Make sure your rebuttal brief is organized in such a way that the judge can easily

compare your rebuttals to the claims in the County's response. It doesn't have to be organized exactly the same way, but it should be easy for the judge to refer from one to the other – one option is to include outline points interspersed and set off in the text.

You probably don't have to write the rebuttal quite as strictly as the petition, but most of the non-italicized rules for writing the petition apply here as well. You have a little more latitude to be brief – for example, you can just list the opposing parties as "John Doe, Assessor of Alphabet County, *et al.*" (et al. is an abbreviation of "et alii", which is Latin for "and others"). As long as you have the header for the Circuit Court, the names of the parties, and the case number, your title page should be fine.

One thing you'll probably have to do that you didn't have to before is the certificate of service, because you'll want to send all of the originally-served parties a copy of your rebuttal brief and this time the Circuit Clerk probably won't do it for you. Most likely there will be a certificate of service attached to the response brief filed by the County – you can write one just like it and change the dates and signature lines. But be sure if you write the date on it in advance, that you actually send it on that date – otherwise you're filing a false statement with the court.

After your rebuttal is filed, you get to wait again for your ruling. This will most likely be in written form, sent through the mail. (After a few weeks with no notice of a ruling either way on my case, I contacted the Circuit Clerk, who referred me to the judge's clerk, who told me he was on vacation and would return September 15. Nine days after he returned, he ruled in my favor and sent an order reducing my assessment to exactly what was requested.)

VII. After the ruling

Hopefully at this point you have the ruling you want. If so, the government may choose to appeal to the West Virginia Supreme Court – or if the ruling went against you, you might choose to. This guide doesn't extend that far, because my own case hasn't gone that far as of this writing. The statistics are that only a quarter or so of all civil appeals made to the WV Supreme Court actually get heard, so no matter who appeals, it's a roll of the dice whether the Court will actually grant a hearing. If the County decides not to appeal, you may become an agenda item on the next County Commission meeting for what's termed an "exoneration", in which the County formally notifies the assessor that they've received an order reducing your assessment. (You

don't have to appear to be exonerated, it's purely administrative.)

VIII. Final thoughts

So, one way or another, you've reached the end of the process I outlined here. Did you get what you wanted? Did you learn anything about how "the system" works?

Ultimately each case is different, so there are no guarantees – interpretations may differ from one county to the next, or from one level of the appeals process to the next. If you lost, you can take some solace in the fact that you get to try again next year – and if you won, be vigilant, because they get the same opportunity.