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May 8, 2020

The Honorable Mayes Middleton
Co-Chair, Joint Interim Committee to Study a Coastal Barrier System
Texas House of Representatives
Post Office Box 2910
Austin, Texas 78768-2910

Opinion No. KP-0307

Re: Procedures for conducting appraisal review board hearings during the COVID-19 disaster (RQ-0351-KP)

Dear Representative Middleton:

You ask multiple questions about the appraisal review procedures available for property owners to protest changes in an appraisal record that adversely impact the property owner.¹ You question whether under the current public health emergency, property owners will “be afforded true due process and not be dissuaded from availing themselves of their statutory and Constitutional right to protest an action that increases their tax liability.” Request Letter at 1. You therefore seek advice about potential modifications to the appraisal review procedures during the COVID-19 disaster. *See id.* at 1–4.

You first ask whether subsection 41.45(o) of the Tax Code and subsection 9.805(d) in title 34 of the Administrative Code authorize appraisal review boards to conduct protest hearings by videoconference in lieu of in-person hearings when a property owner requests an in-person hearing.² *Id.* at 3. Subsection 41.45(b) of the Tax Code entitles “[a] property owner initiating a protest . . . to appear [before the appraisal review board] to offer evidence or argument.” TEX. TAX CODE § 41.45(b). When the property owner files a notice of protest, the appraisal review board “shall schedule” the hearing. *Id.* § 41.45(a). If the property owner does not wish to personally appear, the property owner “may offer evidence or argument by affidavit,” and he may also offer

¹*See* Letter from Honorable Mayes Middleton, Co-Chair, House Joint Interim Comm. to Study a Coastal Barrier Sys., to Honorable Ken Paxton, Tex. Att’y Gen. at 3–4 (Apr. 7, 2020), <https://www2.texasattorneygeneral.gov/opinions/opinions/51paxton/rq/2020/pdf/RQ0351KP.pdf> (“Request Letter”).

²You explain that most appraisal districts provide an opportunity for an informal process where a property owner and appraiser resolve disputes by agreement before reaching the protest hearing stage. *See id.* at 2; *see also* TEX. TAX CODE § 41.47(f). We do not read your question to ask about specific technology that appraisers may or may not use during this initial process, prior to a formal protest hearing under section 41.45 of the Tax Code.

argument through an appearance “by telephone call.” *Id.* § 41.45(b). Appraisal review boards must hold a hearing by telephone if the property owner either requests to appear by telephone or agrees to the board’s proposal to hold the hearing in that manner. *Id.* § 41.45(b-1)(1)–(2). But even if the property owner submits an affidavit to the board or chooses to appear by telephone conference call, “[a] property owner does not waive the right to appear in person at a protest hearing.” *Id.* § 41.45(n). The statute provides no other alternative methods for conducting a hearing if a property owner insists on an in-person hearing.³

Your question implies that the “in person” requirement might be met by holding a hearing by videoconference, which allows the property owner to view the appraisal review board and be viewed by its members. However, the common understanding of the phrase “in person” is “involving someone’s physical presence rather than communication by phone or email.”⁴ *See Jaster v. Comet II Const., Inc.*, 438 S.W.3d 556, 563 (Tex. 2014) (explaining that courts give undefined terms their common, ordinary meaning, as determined by dictionary definitions and other sources). Thus, a court is unlikely to conclude that an appearance by videoconference satisfies a requirement that a property owner appear “in person” when the property owner requests to do so.

Subsection 41.45(o), which you suggest may allow for videoconferencing, manifests the intent to ensure fairness at a protest hearing but does not reference any ability to teleconference or videoconference, nor does it waive the right to an in-person appearance by the property owner. *See id.* § 41.45(o); *see also* Request Letter at 3. It provides:

If the chief appraiser uses audiovisual equipment at a hearing on a protest, the appraisal office shall provide audiovisual equipment of the same general type, kind, and character, as prescribed by comptroller rule, for use during the hearing by the property owner or the property owner’s agent.

TEX. TAX CODE § 41.45(o). When this provision was added in 2015, the bill analysis explained that “chief appraisers often use audiovisual presentations to display evidence during a protest hearing” and that the bill required “an appraisal office to provide taxpayers with audiovisual

³Subsection 5.103(a) of the Tax Code requires the Comptroller to “prepare model hearing procedures for appraisal review boards,” which subsection 5.103(d) requires appraisal review boards to follow when they establish their hearing procedures. TEX. TAX CODE § 5.103(a), (d). The Comptroller’s model hearing procedures must address, among other things, the process for conducting a hearing, the notices required, a party’s right to offer evidence and argument, and “any other matter related to fair and efficient appraisal review board hearings.” *Id.* § 5.103(b). The Comptroller issues this information for appraisal review boards through an appraisal review board manual, available here: <https://comptroller.texas.gov/taxes/property-tax/docs/96-308.pdf>. *See also id.* § 5.06 (requiring the Comptroller to prepare and electronically publish a pamphlet for taxpayers explaining protest procedures).

⁴“In person” is commonly defined as “meeting with someone rather than talking on the phone, e-mailing, or writing the person.” CAMBRIDGE DICTIONARY ONLINE, <https://dictionary.cambridge.org/us/dictionary/english/in-person>; *see also* MACMILLAN DICTIONARY ONLINE, <https://www.macmillandictionary.com/us/dictionary/american/do-something-in-person> (defining the phrase “do something in person” as “to do something by going to a place or person rather than by writing, telephoning, or sending someone else”).

equipment comparable to the equipment used by the chief appraiser at the protest hearing.”⁵ The related administrative provision in title 34, subsection 9.805(d) of the Administrative Code details certain standards for the equipment. It must be “capable of reading and accepting” file formats, which include PDFs, Word, PowerPoint, Excel, and JPEG documents, and devices, such as USB flash drives and compact discs. 34 TEX. ADMIN. CODE § 9.805(c)–(d). The rule also provides that if the equipment requires an internet connection, the parties must supply their own. *Id.* § 9.805(d). Subsection 41.45(o) of the Tax Code and title 34, subsection 9.805(d) of the Texas Administrative Code do not address conducting a hearing by videoconference and therefore do not provide appraisal review boards with authority to require protest hearings be conducted by videoconference when a property owner requests an in-person hearing.⁶

Your third question asks whether limiting protests to certain methods affects due process. *See* Request Letter at 3. “The rule of due process requires notice of an increase in property value to the taxpayer with an opportunity to be heard before its property may be encumbered by an additional tax lien.” *Harris Cty. Appraisal Review Bd. v. Gen. Elec. Corp.*, 819 S.W.2d 915, 920 (Tex. App.—Houston [14th Dist.] 1991, writ denied). If a property owner is denied a hearing to which the property owner is entitled, the property owner has a statutory right to “bring suit against the appraisal review board by filing a petition or application in district court to compel the board to provide the hearing.” TEX. TAX CODE § 41.45(f). Thus, to the extent an appraisal review board limits protest procedures to some method that eliminates the right to appear in person, such action could be grounds for a lawsuit pursuant to subsection 41.45(f).⁷

You also ask whether an appraisal district meets the notice requirements of the Tax Code “if the protest procedure is listed on the [appraisal district] website, but not mailed to each property owner, or e-mailed to property owners who have personally opted into e-mail notices.” Request Letter at 4.

The Tax Code requires a chief appraiser to publish information concerning protest procedures in different ways. For example, a chief appraiser must annually publish information about a property owner’s right to protest, including the method to protest. TEX. TAX CODE § 41.41(b). Publishing this information on an appraisal district’s website could satisfy the notice requirement under section 41.41, if the notice is “publicize[d] in a manner reasonably designed to notify all residents” of their rights. *See id.* A chief appraiser must also annually publish notice of the appraisal district’s protest and appeal procedures. *Id.* § 41.70(a). This notice must be published between May 1 and May 15 in a newspaper of general circulation within the county in which the appraisal district is established. *Id.* § 41.70(a), (b). Thus, publishing the notice required by section

⁵*See* Senate Research Comm., Bill Analysis, Tex. S.B. 1394, 84th Leg., R.S. (2015), <https://capitol.texas.gov/tlodocs/84R/analysis/pdf/SB01394F.pdf#navpanes=0>.

⁶Because your second question is premised on the assumption that subsection 41.45(o) authorizes appraisal review boards to limit their hearings to videoconferencing, we do not address it. *See* Request Letter at 3.

⁷Your next two questions assume that an appraisal review board may require appraisal review hearings to be conducted by videoconference in lieu of in person hearings. *See* Request Letter at 3. Given our conclusion that appraisal review boards may not limit those hearings to videoconference appearances by the property owner, we do not address these questions.

41.70 only on an appraisal district's website would not be sufficient notice under the Tax Code, which requires publication in an appropriate newspaper.

A chief appraiser must also provide notice of the protest hearing procedures to property owners initiating a protest. *Id.* § 41.461(a)(3) (“At least 14 days before a hearing on a protest, the chief appraiser shall . . . deliver a copy of the hearing procedures established by the appraisal review board under Section 41.66 to the property owner.”). Unless a specific notice provision provides otherwise or the parties have agreed to a specified alternative form of notice, an official or agency required by the Property Tax Code “to deliver a notice to a property owner may deliver the notice by regular first-class mail, with postage prepaid.” *Id.* § 1.07(a). The Tax Code provides no alternative method to deliver a copy of the hearing procedures established by the appraisal review board.⁸ Furthermore, merely listing the protest procedures on the appraisal district website is insufficient to satisfy the requirement that the chief appraiser “deliver a copy” to the protesting property owner. *Id.* § 41.461(a)(3). The term “deliver” is commonly understood to mean “to send (something aimed or guided) to an intended target or destination.” WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 597 (2002). Posting procedures on a website does not identify a specific recipient or attempt to ensure that the recipient will receive the necessary information. Thus, posting the notice requirements only on the appraisal district website does not satisfy the notice requirements in subsection 41.461(a)(3).

Your final question refers us to section 41.11(c) of the Tax Code and asks whether all appraisal increases would be nullified by the failure to satisfy any one of the statutory notice requirements. *See* Request Letter at 4. Section 41.12 of the Tax Code requires an appraisal review board, by July 20, to: “(1) hear and determine all or substantially all timely filed protests; (2) determine all timely filed challenges; (3) submit a list of its approved changes in the records to the chief appraiser; and (4) approve the records.” TEX. TAX CODE § 41.12(a). Under subsection 41.11(a), “[n]ot later than the date the appraisal board approves the appraisal records as provided by subsection 41.12,” the board must “deliver written notice to a property owner of any change in the records that is ordered by the board . . . and that will result in an increase in the tax liability of the property owner.” *Id.* § 41.11(a). Subsection 41.11(c) provides that the board’s failure “to deliver notice to a property owner as required by [section 41.11] nullifies the change in the records to the extent the change is applicable to that property owner.” *Id.* § 41.11(c).

The Tax Code requires chief appraisers and appraisal review boards to provide notice to property owners at various stages of the appraisal, review, and protest processes. *See, e.g., id.* §§ 25.19(a) (requiring the chief appraiser to deliver “written notice to a property owner of the appraised value of the property owner’s property if . . . the appraised value of the property is greater than it was in the preceding year,” or other specified circumstances); 41.461(a)(c) (requiring the

⁸A separate subsection of 41.461 requires chief appraisers to notify property owners that they are “entitled on request to a copy of the data, schedules, formulas, and all other information the chief appraiser will introduce at the hearing to establish any matter at issue.” TEX. TAX CODE § 41.461(a)(2). If a property owner requests such information, the chief appraiser may, among other options, refer the property owners to “a secure Internet website . . . maintained by the appraisal district on which the requested information is identifiable and readily available,” if the chief appraiser meets certain requirements. *Id.* § 41.461(c)(3), (d). However, this authorization to refer property owners to a website is limited to the information required by subsection (a)(2) and does not include “the hearing procedures established by the appraisal review board” required separately under subsection (a)(3). *Id.* § 41.461(a)(3), (c).

chief appraiser to send a property owner a copy of the hearing procedures established by the appraisal review board at least fourteen days before a protest hearing). However, by its express terms, the nullification of changes in the record provided by subsection 41.11(c) occurs only when an appraisal review board fails to provide the notice specifically required by that section. *Id.* § 41.11(c) (referring to “[f]ailure to deliver notice to a property owner *as required by this section . . .*” (emphasis added)). Property owners possess alternative remedies if an appraisal review board fails to provide the other notices required by the Tax Code. *See, e.g., id.* § 41.411 (“A property owner is entitled to protest before the appraisal review board the failure of the chief appraiser or the appraisal review board to provide or deliver *any* notice to which the property owner is entitled.” (emphasis added)).

S U M M A R Y

Subsection 41.41(a) of the Tax Code entitles a property owner to protest the determination of the appraised value of the owner's property, in addition to other adverse determinations made by a chief appraiser. Subsection 45.45(n) of the Tax Code gives property owners a right to appear in person at a protest hearing. Subsection 41.45(o) of the Tax Code and title 34, subsection 9.805(d) of the Texas Administrative Code do not allow appraisal review boards to require protest hearings be conducted by videoconference in lieu of in-person hearings when requested by a property owner.

Subsection 41.461(a)(3) of the Tax Code requires a chief appraiser to deliver a copy of the protest hearing procedures to property owners initiating a protest. The appraisal district does not satisfy this requirement by only posting the protest procedures on the appraisal district website.

Subsection 41.12(a) of the Tax Code requires an appraisal review board, among other things, to approve the appraisal records by July 20. No later than the date it does so, the board must also deliver written notice to a property owner of any change in the records ordered by the board pursuant to subsection 41.11(a) that will result in an increase in the tax liability of the property owner. The board's failure to deliver notice to a property owner required by section 41.11 nullifies the change in the records to the extent the change is applicable to that property owner. However, the nullification is limited to that subsection and does not apply to all failures to give notice required by the Property Tax Code.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, flowing style.

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