

COMAL APPRAISAL REVIEW BOARD



2021 Hearing Procedures

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I. Helpful Hints

1. The State Comptroller's web site contains useful information to aid you in preparing for your Appraisal Review Board (ARB) hearing.
See: (<https://comptroller.texas.gov/taxes/property-tax/protests/faq.php>)
2. Be on time for your hearing. Check in at the main entrance.
3. Bring 5 copies of your evidence for the ARB.
4. Tell the ARB what outcome you are seeking. If you are protesting the value, you are required to present an Opinion of Value of your property to the ARB.
5. If you cannot make your scheduled hearing, call the appraisal office prior to the date of the hearing and request a postponement.
6. You may meet informally with an appraiser prior to your hearing to attempt to resolve your concerns. If you do not accept an offer made by an appraiser, the ARB is not required to honor that offer if you should choose to have a formal hearing.
7. You may request a copy of the appraisal district's evidence up to 14 days prior to your hearing.
8. Be prepared with evidence.
Your evidence should support the reason for protest checked on the notice of protest form or letter. The two most common protests are:
 - a) Incorrect Appraised (Market) Value - Examples of evidence for a "market value protest" include sales information for similar properties sold during the appropriate time frame, adjusted for differences.
 - b) Value is Unequal Compared With Other Properties - Examples of evidence for an "equity protest" include the appraisal district's appraised value for similar properties in your neighborhood or area, adjusted for differences.

Bring all evidence you think will help explain your position.

- a) For example photographs, closing statements, cost estimates from a reputable company to fix major defaults (e.g. cracked slab, failing roof, etc.), a fee appraisal of your property.
 - b) If you bring in comparable sales, they should be from the required time frame. 2021 appraised values are as of January 1, 2021 and determined primarily by sales during calendar year 2020.
 - c) An argument based solely on cost per square foot may not be considered the best evidence because it does not account for differences in the properties.
 - d) You will not be allowed to present to the ARB any photos or documents stored on your phone, and you are not allowed to email documentary evidence to the ARB during the hearing. See Exchange and Presentation of Evidence on page 11.
9. If possible, attend an ARB hearing prior to your scheduled hearing. All hearings are open to the public, and you may observe as many as you wish.
 10. Turn off your cell phone during the hearing.

II. Scheduling and Postponing Hearings *[Tax Code Section 5.103(b)]*

1. Scheduling Hearings Generally

The ARB must schedule a hearing when a timely notice of protest is filed and, in doing so, may be provided with clerical assistance by the appraisal district.

Pursuant to Tax Code Section 41.66(i), hearing requests filed by property owners or their designated agents under Tax Code Section 1.111 must be scheduled for a specific time and date. More than one protest hearing can be scheduled at the same time and date; however, the property owner or agent can request to postpone a hearing if it is not started by an ARB panel or the full ARB within two hours of the scheduled hearing time. The postponement request must contain the mailing address and email address of the person requesting the postponement. The ARB must respond in writing or by email to the postponement request not later than the seventh day after the date of receipt of the request.

2. Scheduling Hearings for Multiple Accounts

If requested by a property owner or the designated agent, hearings on protests concerning up to 20 designated properties must be scheduled to be held consecutively on the same day by the ARB. The request must meet all requirements of Tax Code Section 41.66(j), including the required statement in boldfaced type: "request for same-day protest hearings." More than one such request may be filed in the same tax year by a property owner or the designated agent. Also pursuant to Tax Code Section 41.66(j), the ARB may schedule protest hearings concerning more than 20 properties filed by the same property owner or their designated agent and may use different panels to conduct the hearings based on the ARB's customary scheduling. The ARB may follow the practices customarily used in the scheduling of hearings under Section 41.66(j).

3. ARB Panel Assignments

The Comal County ARB sits in panels as authorized by Tax Code Section 41.45(d) and (d-1). Protests are assigned randomly, except that the ARB, with or without clerical assistance from the appraisal district staff, may consider the property type or the protest grounds in order to assign the protest to a panel with members who have particular expertise.

Once a protest is scheduled to be heard by a specific panel, it cannot be reassigned to another panel without the consent of the property owner or a designated agent. If the ARB reassigns a protest to another panel, the owner or designated agent may agree to the reassignment or request a postponement of the hearing. The ARB is required to postpone the hearing if requested in this situation. Pursuant to Tax Code Section 41.66(k), "[a] change of members of a panel because of a conflict of interest, illness, or inability to continue participating in hearings for the remainder of the day does not constitute reassignment of a protest to another panel."

4. Postponements

All requests for postponement must be made to the ARB, an ARB panel, or to the ARB Chair and not to an Appraisal District representative.

- a. First Request for Postponement. A property owner who is not represented by an agent under Tax Code Section 1.111 is entitled to one postponement of a hearing without showing cause. The request must be made before the hearing date (1) in writing, including by facsimile transmission or electronic mail, (2) by telephone, or (3) in person to the ARB, an ARB panel or the ARB chair. If the requested hearing postponement is scheduled to occur before the next regular meeting of the ARB, the chair or the chair's representative may act on the request for postponement without the necessity of action by the full ARB. Unless the postponed hearing date and time are agreed to by the ARB chair or the chair's representative, the property owner and the chief appraiser, the hearing cannot be postponed to a date less than five or more than 30 days after the date scheduled for the hearing when the postponement is sought. *Tax Code Section 41.45(e)*
- b. Good Cause to Postpone. Without limit, the ARB must postpone a hearing if the property owner or the designated agent shows good cause, as defined in Tax Code Section 41.45(e-2). The request must be made (1) in writing, including by facsimile transmission or electronic mail, (2) by telephone or (3) in person to the ARB, an ARB panel or the ARB chair. If the postponed hearing is rescheduled to occur before the next regular meeting of the ARB, the chair or the chair's representative can act on the postponement request without the necessity of action by the full ARB. Unless the postponed hearing date and time are agreed to by the ARB chair or the chair's representative, the property owner and the chief appraiser, the hearing cannot be postponed to a date less than five or more than 30 days after the date scheduled for the hearing when the postponement is sought.
- c. Consent by Chief Appraiser. Without limit, the ARB must postpone a hearing if the chief appraiser consents to the postponement. The request must be made (1) in writing, including by facsimile transmission or electronic mail, (2) by telephone or (3) in person to the ARB, an ARB panel or the ARB chair. If the postponed hearing is rescheduled to occur before the next regular meeting of the ARB, the chair or the chair's representative can act on the postponement request without the necessity of action by the full ARB. Unless the postponed hearing date and time are agreed to by the ARB chair or the chair's representative, the property owner and the chief appraiser, the hearing cannot be postponed to a date less than five or more than 30 days after the date scheduled for the hearing when the postponement is sought.
- d. Good Cause For Failing to Appear. A property owner or owner's agent who fails to appear at the hearing is entitled to a new hearing if the property owner or owner's agent file, not later than the fourth day after the date the hearing occurred, a written statement with the ARB showing good cause, as defined

in Tax Code Section 41.45(e-2), for the failure to appear and requesting a new hearing.

- e. **Previously Scheduled Hearing in Front of Another ARB.** The ARB must postpone a hearing to a later date if the owner of the property or the owner's agent is also scheduled to appear at an ARB protest hearing in another appraisal district on the same date. The property owner must show proof that the hearing notice delivered to the property owner or the owner's agent by the other ARB bears an earlier postmark than the hearing notice delivered by this ARB or, if the postmark date is identical, the property owner or agent has not requested a postponement of the other hearing; and or the owner's agent includes with the postponement request a copy of the hearing notice delivered to the property owner or the owner's agent by the other ARB. The hearing notice delivered to the property owner or the owner's agent by the other ARB bears an earlier postmark than the hearing notice delivered by this ARB or, if the postmark date is identical, the property owner or agent has not requested a postponement of the other hearing; and the property owner or the owner's agent includes with the postponement request a copy of the hearing notice delivered to the property owner or the owner's agent by the other ARB.
- f. **Failure by Chief Appraiser to Provide Requested Evidence.** The ARB must postpone a hearing (one time only) if the property owner or the designated agent requests additional time to prepare for the hearing and establishes that the chief appraiser failed to comply with Tax Code Section 41.461. The postponement request must contain the mailing address and email address of the person requesting the postponement. The ARB must respond in writing or by email to the postponement request not later than the seventh day after the date of receipt of the request.
- g. **Hearing Not Started Within Two Hours of Scheduled Time.** Protest hearings filed by property owners or their designated agents under Tax Code Section 1.111 must be scheduled for a specific time and date. More than one protest hearing can be scheduled at the same time and date; however, a property owner or their agent can request to postpone a hearing if it is not started by an ARB panel or the full ARB within two hours of the scheduled hearing time. The postponement request must contain the mailing address and email address of the person requesting the postponement. The ARB must respond in writing or by email to the postponement request not later than the seventh day after the date of receipt of the request.

III. ARB Hearings (*formal hearings, not informal meetings between property owners and appraisal district staff*) [Tax Code Section 5.103(b)(2), (9), and (10)]

1. In Person Hearings Open to the Public

- a. Introductory Statement. This introductory statement should be read at the beginning of each hearing:

“We are the appraisal review [board or panel] that will be hearing your protest today. We do not work for the appraisal district. We are appointed to perform an independent review of your protest. You may complete a survey regarding your experience today [provide instructions on how to fill out the survey]. The survey is voluntary. You also have the right to appeal our decision. Appeal information will be provided to you with our determination.”

The ARB or ARB panel does not have to read the statement above if the owner or agent has previously appeared before the ARB or any ARB panel for the ARB for that county that same day.

b. Order of Hearing

For most protest hearings, the hearing should be conducted in the following order:

- a) Commence the hearing and announce the assigned protest number, property location and owner and other identifying information.
- b) Announce that, in accordance with Tax Code Section 41.45(h), all written and electronic material that has not been provided must be provided.
- c) State that the ARB members who are considering the protest have not communicated with anyone about the protest and have signed affidavits to that effect.
- d) Welcome the parties and remind them of the content of the hearing procedures, time limits for the hearing, and other relevant matters.
- e) Ask if any testifying witness holds a license or certificate from the Texas Appraiser Licensing and Certification Board and if the witness is appearing in that capacity.
- f) Inform witnesses that all testimony must be given under oath and swear in all witnesses who plan to testify.
- g) Ask the property owner to decide if he/she wishes to present his/her evidence and argument before or after the appraisal district.
- h) If the property owner or agent presents his/her case first, he/she shall present evidence (documents and/or testimony). If witnesses are present, the property owner or agent may examine the witnesses as part of the presentation of evidence. At the end of the presentation, an opinion of value (if applicable) for the property must be stated.
- i) Next, the appraisal district representative may cross-examine the property owner, the agent or the representative and/or witnesses.

- j) If the property owner or agent presented his/her case first, the appraisal district representative shall present evidence (documents and/or testimony) next. If witnesses are present, the appraisal district representative may examine the witnesses as part of the presentation of evidence. At the end of the presentation, an opinion of value (if applicable) for the property must be stated.
- k) Then, the property owner or agent may cross-examine the appraisal district representative and/or witnesses.
- l) Members of the ARB shall not be examined or cross-examined by parties.
- m) The party presenting its case first may offer rebuttal evidence (additional evidence to refute evidence presented by the other party).
- n) The other party may then offer rebuttal evidence.
- o) The party presenting its case first shall make its closing argument and state the ARB determination being sought.
- p) The party presenting its case second shall make its closing argument and state the ARB determination being sought.
- q) The ARB or panel chair shall state that the hearing is closed.
- r) The ARB or panel shall deliberate orally. No notes, text messages, or other forms of written communication are permitted.
- s) The ARB or panel chairman shall ask for a separate motion for each matter that was the subject of the protest hearing. The motion should include the exact value or issue to be determined. A vote shall be taken and recorded by a designated appraisal district staff person or member of the ARB assigned for this purpose. Separate motions and determinations must be made for each protested issue (i.e., excessive appraisal and unequal appraisal must have separate ARB motions and determinations).
- t) Thank the parties for their participation and announce the determination(s) of the ARB and that an order determining protest will be sent by certified mail. Provide the property owner or their agent documents indicating that the members of the board hearing their protest signed the required affidavit.

The property owner or agent and the appraisal district are prohibited from debating each other. All communications must be directed to the ARB members, except for examination or cross-examination during testimony of witnesses or parties testifying at the hearing.

For taxing unit challenges, motions to correct appraisal records, protests regarding exemptions, or other matters that may be the subject of ARB hearings, the ARB should follow the order of conducting hearings above but may make exceptions for the type of hearing.

2. Remote Hearings. *Tax Code Section 41.45(d)*

A property owner initiating a protest is entitled to appear to offer evidence or argument. A property owner may offer evidence or argument by affidavit without personally appearing and may appear by telephone conference to offer argument. To appear at a hearing remotely, a property owner must notify the ARB by written request not later than the 10th day before the date of the hearing. To offer evidence or argument at a hearing conducted remotely, a property owner must submit a written affidavit of any evidence before the hearing begins. A property owner is responsible for providing access to a hearing conducted remotely to another person the owner invites to participate in the hearing.

3. In Person Hearings Closed to the Public

A joint motion by the chief appraiser and the property owner is required to request that the hearing be closed due to intent to disclose proprietary or confidential information that will assist the ARB in determining the protest.

The ARB or panel chair must convene the hearing as an open meeting and then announce that the meeting will be closed to the public as permitted by Tax Code Sections 41.66(d) and (d-1). Only the parties to the protest, their witnesses and the ARB members are permitted to stay in the hearing room. The same order of proceedings as for hearings open to the public should be followed.

The ARB secretary must keep a separate tape recording or written summary of testimony for the closed meeting in accordance with Comptroller Rule 9.803 generally. The proprietary or confidential evidence presented at the hearing giving rise to the closed hearing is confidential according to Tax Code Section 22.27 and must be marked as "confidential" and maintained as confidential in the ARB records for proper handling. At the conclusion of the hearing, the ARB panel must confirm with the parties that all proprietary and confidential information has been appropriately identified by the ARB. The confidentiality of the information must be maintained by the ARB members and disclosed only as provided by law.

After deliberation, the ARB must reconvene in open meeting and vote or take final action on the protest deliberated in the closed meeting. There must be no mention of the proprietary or confidential information during the open meeting.

4. Party's Right to Appear by an Agent

The ARB must accept and consider a motion or protest filed by an agent if an agency authorization is filed at or before the hearing on the motion or protest. The ARB may not require that an agency authorization be filed at an earlier time. The ARB cannot require a person to designate an agent to represent the person in a property tax matter other than as provided by Tax Code Section 1.111.

A person leasing property who is contractually obligated to reimburse the property owner for taxes imposed on the property is entitled to file a protest if the property owner does not and to designate, under Tax Code Section 41.413,

another person to act as his/her agent with the same authority and limitations as an agent designated under Tax Code Section 1.111.

IV. Evidence Considerations *[Tax Code Section 5.103(8), (11), and (13)]*

1. Right to Examine and Cross-Examine Witnesses

Tax Code Section 41.66(b) states that “each party to a hearing is entitled to offer evidence, examine or cross-examine witnesses or other parties, and present argument on the matters subject to the hearing.” The ARB cannot prohibit this entitlement in any way; however, it may enforce time limits and dictate the order of ARB hearings for witness examination and cross-examination. The Comal County ARB sets aside about 15 minutes for each hearing.

2. Prohibition of Consideration of Evidence Not Presented at Hearing

In a protest hearing, the ARB cannot consider any information on a protest that was not presented to the ARB during the protest hearing. In order for any appraisal district record (i.e., appraisal roll history, appraisal cards) to be considered by the ARB, it must be presented as evidence by or on behalf of a party (e.g. chief appraiser, appraisal district representative, property owner, agent or witness) at the protest hearing.

3. Exclusion of Certain Evidence

If it is established during a protest hearing that information was previously requested under Tax Code Section 41.461 by the protesting party and that the information was not delivered to the protesting party at least 14 days before the scheduled or postponed hearing, the requested information not made available cannot be used or offered in any form as evidence in the hearing. The ARB must exclude evidence under Tax Code Section 41.67(d) only if evidence presented at the hearing establishes that: (1) the information sought to be excluded as evidence was not delivered at least 14 days before the hearing; and (2) the information sought to be excluded as evidence was previously requested by the protesting party.

4. Burden of Proof *[Tax code Sections 41.43(a-1 thru a-4)]*

The burden of proof varies depending upon the type of protest.

a. “Incorrect Market Value” and “Value Unequal” Protests

In most “incorrect market value” and “value unequal” protests, the appraisal district has the burden of establishing the property’s value by a preponderance of evidence. In those instances addressed in Property Tax Code Section 41.43(a-1)-(a-4), the appraisal district has burden of proof by clear and convincing evidence.

b. Rendition.

In cases where the property owner fails to deliver a required rendition prior to the date of the ARB hearing, the property owner has the burden to prove the property's value.

c. Exemptions and Ownership.

The property owner has the burden of proof by a preponderance of the evidence concerning protests on other matters such as ownership and exemptions.

5. Exchange and Presentation of Evidence

a. Exchange of Evidence.

Before or immediately after a hearing begins, the appraisal district and the property owner or the owner's agent shall each provide the other party with a duplicated set of the evidentiary materials the person intends to offer or submit to the ARB for consideration at the hearing. One set of these materials is to be exchanged with and retained by the other party, and another set of these materials is to be provided to and retained by the ARB as evidence for its records. The duplicated material sets shall be produced in either paper or electronic form.

b. Providing Evidence to the ARB.

If the evidence is in a paper format the property owner should present five (5) copies of their evidence at the time of their hearing to the ARB. If photographs are submitted as evidence one (1) copy is adequate.

c. Presentation of Evidence.

The appraisal district presents digital evidence to the ARB through use of a computer and external projector viewed on a wall screen. A laptop computer is available for the property owner to present their digital evidence in the same way. Alternatively, the property owner may bring their own audiovisual equipment if so desired, but must provide their own Internet access, if needed, through their own service provider. Property owners may not access the appraisal district office's network or Internet connection or any of the district's office technology or equipment other than the laptop made available under this section.

If the evidence is in digital form it may be submitted on a USB flash drive or compact disc. For security purposes, the electronic files on these devices shall be capable of being scanned or reviewed for the presence of any malicious software or computer viruses before acceptance. File formats that are acceptable are PDF, .jpg or .jpeg and any of the Microsoft Office Suite file formats (Word, Excel, and PowerPoint). If the property owner does not wish to leave a digital copy of their evidence they may still present digitally but is required to provide one (1) paper copy of the evidence. All evidence submitted to the ARB will be kept as part of the record.

V. Missed Protest Filing Deadlines [Tax Code Section 41.411 and 41-44(b)]

A property owner who misses the original filing deadline for a property protest may still file a protest under two situations:

1. Failure to Deliver a Required Notice.

Under the provisions Section 41.411 of the Property Tax Code, the property owner may file a late protest (after the normal deadline but before the delinquency date or no later than 125th day after the date the property owner claims to have received the tax bill for the property) if the appraisal district failed to “deliver” a required notice.

“Delivery” in this context means the appraisal district mailed the notice, correctly addressed to the property owner at the last address furnished by the property owner. Delivery is presumed unless the property owner provides evidence that he or she did not receive notice.

2. Good Cause.

Under the provisions of Section 41.44(b), the property owner may file a late protest after the normal deadline but before July 20 of the protest year (ARB records approval) for good cause. Good cause is defined as something not within the property owner’s control that prevented the owner from filing a protest.

Examples of good cause may include:

- 1) Accident, Illness, or Emergency that prevented the property owner from filing the protest
- 2) Reliance on mistaken appraisal district advice or misunderstanding of appraisal district advice (if admitted by the district)
- 3) Agent ceased representing property owner and did not inform the property owner
- 4) Owner tried to comply in good faith, but a mistake was made (clerical error, wrong postage, mail sent to wrong place, etc.)

Examples of no good cause may include:

- 1) Forgot
- 2) Conflicting social engagement
- 3) Too busy
- 4) Too difficult or time consuming
- 5) Did not understand requirements of the Tax Code and made no effort to inquire
- 6) Was on vacation

VI. Policy and Procedure Manual

For more information about the general policy and procedures of the Comal County ARB, please see the Comal ARB Policy and Procedure Manual at the appraisal district website.