

September 10, 2020

The Yoakum County Appraisal Review Board met at 9:00 AM, Thursday, September 10, 2020 at the Yoakum County Appraisal District. Appraisal Review Board members present: Josh Bell, Joey Rodgers, and Jim Warren. The appraisal district was represented by Chief Appraiser, Brooks Barret, Ann Saxon 1st Deputy.

At 9:00 the meeting was called to order by Josh Bell. Joey Rodgers made a motion to approve the minutes from July 16, 2020. Jim Warren seconded the motion. The motion passed FOR-3, AGAINST-0.

Brooks Barret presented the supplemental changes for the year to date. Jim Warren made a motion to approve the supplements. Joey Rodgers seconded the motion. The motion passed FOR-3, AGAINST-0.

There were no late protests to be heard on this day.

At 9:10 the first Protest hearing began for the protest by Crown Inn and Best Western, together - Represented by Niral R. Gandhi, Estes & Gandhi, P.C. Property Tax Solutions

Brooks Barrett read the protest for Case #'s 2020-1089 and 2020-1090 together. Mr. Gandhi mailed in an Affidavit of Evidence to be used for the hearing in the event that he or a representative of Estes Y Gandhi, P.C. are not able to attend the hearing in person. The Affidavit of Evidence states:

It is the property owner's opinion that the Appraisal District incorrectly denied the temporary exemption for qualified property damage by disaster as defined by Section 11.35 of the Texas Tax Code. In the owners opinion the property meets the two qualifications for the exemption being that it is 1) Located in a territory that the governor first declared to be in a disaster: and 2) The property must be 15 percent damaged by the disaster, and if that is true, then the chief appraiser must assign to each such item of qualified property a damage assessment rating of Level I, Level II, Level III, or Level IV. The first requirement was met when Governor Greg Abbott declared a state of disaster for the entire State of Texas on March 13, 2020. The second requirement is what the owner is understanding to be confused by conflicting opinions. On April 13, 2020 Texas Attorney General Ken Paxton issued a non-binding letter stating his opinion that a court is unlikely to grant an exemption request seeking relief for COVID-10 damage under 11.35 He claimed that since the statue does not define the term "damage", the common dictionary definition should be used. Mr. Paxton consulted and relied upon Webster's Third New Int'l Dictionary from 2002 to define the term "damage" to require "physical harm". It is important to note that neither Level I, nor Level II require physical damage, and that is confirmed by the fact that both Level III, and Level IV explicitly require physical damage.

However, even if the board disagrees with this reasoning, the definition used by Mr. Paxton is an uncommon definition of the term “damage”. The common definition of “damage” does not require “physical” damage, and several definitions follow:

- **MERRIAM-WEBSTER’S ONLINE**
 - *“loss or harm resulting from injury to person, property, or reputation.”*
- **MERRIAM-WEBSTER’S COLLEGIATE THESAURUS, 2ND edition (2019)**
 - *“something that causes loss or pain”*
- **THE AMERICAN HERITAGE DESK DICTIONARY AND THESAURUS (2014)**
 - *“impairment of the usefulness or value of person or property: harm”*
- **DICTIONARY.COM**
 - *“injury or harm that reduces value or usefulness”*
- **CAMBRIDGE DICTIONARY ONLINE**
 - *“harm or injury”*
- **MERRIAM-WEBSTER’S DICTIONARY OF LAW, (2016)**
 - *“loss or harm resulting from injury to person property, or reputation.”*
- **BLACK’S LAW DICTIONARY, 8th edition (1999)**
 - *“loss or injury to person or property”*

As you can see, the most current and most common definition of the term “damage” does not require “physical harm”. In fact, the more recent versions of the dictionary used by the Attorney General have removed “physical” as part of the definition of the term “damage”. Therefore, since the property has suffered damage under the common definition of the word “damage”, the property owner requests that this board grant the exemption and determine whether or not this property has been affected as a Level I or a Level II. The owner requests that the ARB approve this exemption and classify it as a Level II (30%) damage. At the very least, “the property suffered minimal damage and may continue to be used as intended”, which qualifies it as Level I classification.

The Attorney General Ken Paxton’s Opinion reads as follows:

The Eighty-Sixth Legislature adopted section 11.35 of the Tax Code in response to the physical damage Hurricane Harvey caused to property in the coastal region in 2017. Section 11.35 creates a temporary tax exemption for qualified property damaged by a disaster, as declared by the Governor. See TEX> TAX CODE 11.35. “Qualified Property” includes “tangible personal property used for the production of income,” “an improvement to real property,” and manufactured homes meeting certain requirements”. If qualified property has been “at least 15 percent damaged by the disaster.” Section 11.35 entitles a person “to an exemption from taxation by a taxing unit of a portion of the appraised value” of that property.

One common usage of the term “damage” is “physical harm caused to something in such a way as to impair its value.” WEBSTER’S THIRD NEW INT’L DICTIONARY 436 (2002). Consistent with this definition and the context of section 11.35, the damage assessment categories the

Legislature established in subsection (g) describe various levels of physical damage requiring repairs to return the property to its pre-disaster status. TEX>TAXCODE 11.35(g). Level I involves "minimal damage" such that the property can continue to be used as intended. Level II involves "nonstructural damage to the roof, walls, foundation, or mechanical components..." Level III involves "significant structural damage requiring extensive repair..." and Level IV involves damage rendering repair of the property not feasible. In contrast to these descriptions a purely economic loss involves no physical damage to the property. Nothing in the language of section 11.35 evidences an intent on the part of the Legislature to address non-physical damage to property by allowing an exemption in such circumstances. Summary: Section 11.35 of the Tax Code creates a temporary tax exemption for qualified property damaged by a disaster, as declared by the Governor. A court would likely conclude that the Legislature intended to limit the temporary tax exemption to apply to property physically harmed as a result of a declared disaster. Thus, purely economic, non-physical damage to property cause by the COVID-19 disaster is not eligible for the temporary tax exemption provided by section 11.35 of the Tax Code.

Jim Warren made a motion that the request for temporary exemption be denied. Joey Rodgers seconded the motion. The motion passed. FOR –3, AGAINST – 0

There were not other protests scheduled for this day and there were not any motions to be presented by the chief appraiser at this time.

At 9:30 AM Joey Rodgers made the motion to recess until further notice. This was seconded by Jim Warren. The motion passed. FOR –3, AGAINST – 0



ARB CHARIMAN