

**IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA**

MARTINSBURG IRS OC, LLC

Petitioner,

v.

BERKELEY COUNTY COUNCIL  
SITTING AS THE BOARD OF  
ASSESSMENT APPEAL

and

DOUG COPENHAVEN, DAN DULYEA,  
JAMES BARNHART, ELAINE MAUCK,  
and JIM WHITACRE, in their capacity as  
members of the Berkeley County Council  
sitting as the Board of Assessment Appeal,  
and

LARRY A. HESS, in his capacity  
as Berkeley County Assessor,

Respondents.

Berkeley County Circuit Court

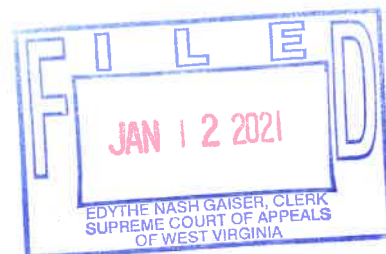
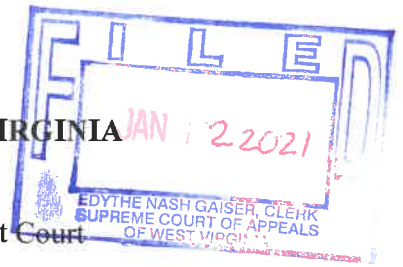
Case No: 20-P-406

**RESPONSE IN OPPOSITION TO  
MOTION TO REFER CASE TO THE  
BUSINESS COURT DIVISION**

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**IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA**

MARTINSBURG IRS OC, LLC

Petitioner,

v.

DOUG COPENHAVEN, DAN DULYEA,  
JAMES BARNHART, ELAINE MAUCK,  
and JIM WHITACRE, in their capacity as  
members of the Berkeley County Council  
sitting as the Board of Assessment Appeal, and

LARRY A. HESS, in his capacity  
as Berkeley County Assessor,

Respondents

**RESPONSE IN OPPOSITION TO MOTION  
TO REFER CASE TO THE BUSINESS COURT DIVISION**

Pursuant to Rule 29.06 of the West Virginia Trial Court Rules, Petitioner Martinsburg IRS OC, LLC (“Property Owner”), by counsel Eric J. Hulett, Esq., and Edward F. Hirshberg, Esq., respectfully request that this court deny the Respondents’ request to refer this tax assessment appeal to the Business Court Division.

**Referral to the Business Court is inappropriate and unnecessary, particularly where the Berkeley County Circuit Court ruled upon the exact same tax assessment issues and property in the prior tax year.**

West Virginia Code § 51-2-15, establishes a specialized docket and “process for efficiently managing and resolving litigation involving commercial issues and disputes between businesses [.]” W. Va. Trial Ct. R., 29.01. While complex tax appeals are certainly eligible to be referred to the Business Court Division, W. Va. Trial Ct. R., 29.04, the subject appeal does not offer “commercial and/or technology issues in which specialized treatment is likely to improve the expectation of a fair and reasonable resolution of the controversy because of the need for specialized knowledge or expertise in the subject matter or familiarity with some specific law or legal principles that may be applicable [.]” W. Va. Trial Ct. R., 29.04.

Here, the underlying administrative hearing involved one expert appraiser offering an opinion of value utilizing the cost approach, consistent with the generally recognized methods of valuation utilized under West Virginia law. *See e.g.* W. Va. Code R. § 110-1P-2. 2.4 (“‘Cost approach’” means the appraisal process in which replacement cost of improvements, less all types of depreciation, is added to a land value in determining an estimate of the fair market value for improved real property”).

A representative of the Assessor’s office offered a different opinion.

Taking the Berkeley County Council and Berkeley Counter Assessor’s *Motion to Refer Case to the Business Court Division* (“Motion to Refer”) at face value, the sole issue upon which this Business Court’s distinct expertise is required is the utilization of depreciation.

This finite issue alone is not sufficient to merit transfer from the Circuit Court, **particularly where the learned Circuit Court Judge (the Hon. Laura V. Faircloth) recently heard and ruled on an appeal on this very property in prior tax years.** *See Martinsburg IRS OC, LLC v. Berkeley County Council Sitting as the Board of Assessment Appeal Sitting as the 2019 Board of Assessment Appeals*, Berkeley Circuit Court, 19-AA-8. Indeed, Judge Faircloth’s familiarity with the subject property and issues involved will only expedite justice in the Circuit Court.

Further, the record in the subject appeal is fixed pursuant to W. Va. Code Ann. § 11-3-25(b); W. Va. Code Ann. § 56-6-36; W. Va. Code Ann. § 58-3-3; and W. Va. Code Ann. § 58-3-4. There can be no discovery disputes, depositions, subpoenas, additional experts, substantive motions practice or the like which may benefit from this Court’s specialization. In short, the universe of this appeal is closed.

WHEREFORE, the undersigned hereby moves, pursuant to W. Va. Trial Court Rule 29, that the Chief Justice of the West Virginia Supreme Court of Appeals DENY any request to refer this tax assessment appeal to the Business Court Division.

Respectfully submitted this 12<sup>th</sup> day of January, 2021.



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-s- Eric J. Hulett

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Attorney for Petitioner

VERIFICATION

I, EDWARD F. HIRSHBERG, hereby affirm, under penalty of perjury that the facts set forth in the foregoing RESPONSE IN OPPOSITION TO MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION are true and correct to the best of my knowledge, information and belief.

Date: January 12, 2021



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Edward F. Hirshberg, Esq.  
*Attorney for Petitioner*

**IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA**

MARTINSBURG IRS OC, LLC

Petitioner,

v.

DOUG COPENHAVEN, DAN DULYEA,  
JAMES BARNHART, ELAINE MAUCK,  
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sitting as the Board of Assessment Appeal, and

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as Berkeley County Assessor,

Respondents

**ORDER OF COURT**

WHEREUPON, the Court ORDERS that the MOTION TO REFER CASE TO THE  
BUSINESS COURT DIVISION is DENIED.

It is SO ORDERED.

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J.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing **RESPONSE IN OPPOSITION TO MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION** has been served upon the following by United State Post, 1<sup>st</sup> class mail, postage paid, this 12<sup>th</sup> day of January 2021.

Berkeley County Council sitting as the Board of Assessment Appeal  
c/o Penny Shewell, County Administrator  
400 West Stephen Street, Suite 201  
Martinsburg, WV 25401

Anthony J. Delligatti, Esq.  
Legal Director, Berkeley County Council  
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Martinsburg, WV 25401

Berkeley County Assessor's Office c/o  
Larry A. Hess  
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Martinsburg, WV, 25401

Berkeley County School District  
1453 Winchester Ave.  
Martinsburg, WV 25405

City of Martinsburg  
232 North Queen Street  
Martinsburg, WV 25401

  
Edward F. Hirshberg, Esquire

-s- Eric J. Hulett -  
Eric J. Hulett, Esq.