

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

MARTINSBURG INVESTORS II, LLC,

Plaintiff,

Berkeley County Circuit Court

vs.

Case No. 20-P-407

BERKELEY COUNTY COUNCIL, and

DOUG COPENHAVER, DAN DULYEA,
JAMES BARNHART, ELAINE MAUCK,
and JIM WHITACRE, in their official capacity
as members of the Berkeley County Council, and

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

Defendants.

TO: THE HONORABLE CHIEF JUSTICE

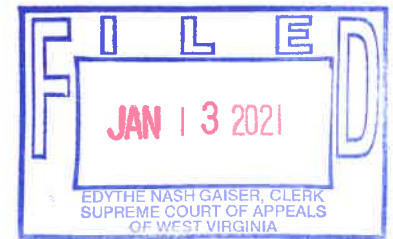
MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION

Pursuant to Rule 29.06 of the West Virginia Trial Court Rules, the Defendants, by counsel, Anthony J. Delligatti, Esq. and Jeffery T. Mauzy, respectfully requests the above-styled case be referred to the Business Court Division.

This action involves: (Please check all that apply)

Breach of Contract;
Sale or Purchase of Commercial
Entity;
Sale or Purchase of Commercial
Real Estate;
Sale or Purchase of Commercial
Products Covered by the Uniform
Commercial Code;
Terms of a Commercial Lease;
Commercial Non-consumer debts;

Internal Affairs of a Commercial
Entity;
Trade Secrets and Trademark
Infringement;
Non-compete Agreements;
Intellectual Property, Securities,
Technology Disputes;
Commercial Torts;
Insurance Coverage Disputes in
Commercial Insurance Policies;



Professional Liability Claims in Connection with the Rendering of Professional Services to a Commercial Entity;

Anti-trust Actions between Commercial Entities;

Injunctive and Declaratory Relief Between Commercial Entities;

Liability of Shareholders, Directors, Officers, Partners, etc.;

Mergers, Consolidations, Sale of Assets, Issuance of Debt, Equity and Like Interest;

Shareholders Derivative Claims;

Commercial Bank Transactions;

Franchisees/Franchisors;

Internet, Electronic Commerce and Biotechnology

Disputes involving Commercial Entities; or

Other (Describe) Ad Valorem taxation of large commercial buildings

In support of this motion, this matter contains issues significant to businesses, and presents novel and/or complex commercial or technological issues for which specialized treatment will be helpful, as more fully described here:

This is an appeal of an assessment by the Berkeley County Assessor of a large commercial warehouse sold by Martinsburg Investors II LLC to an affiliated company Horizon 261 Development Drive Owner, LLC in December 2018 for \$29,010,000. The Honorable Larry Hess, the Assessor of Berkeley County, appraised the property as of July 1, 2019 at \$22,818,600 and assessed the property at \$13,691,160 (60% of its true actual value).

The taxpayer offered no witnesses or any in person sworn testimony of any kind. Rather, counsel for the taxpayer, Mr. Hirshberg presented evidence of the actual construction costs and argued that the records in the Petition demonstrate that the actual cost of construction of the property is \$4,422,214 less than the Assessor's appraised value. Mr. Hirshberg presented evidence that Martinsburg Investors II, LLC paid \$17,420,644 to build the building and that after factoring in the land value, the fair

market value on July 1, 2019 was \$18,396,386 and the assessment should have been \$11,037,832.

The Berkeley County Board of Assessment Appeals found that the taxpayer did not prove by clear and convincing evidence that the assessment was erroneous. This wide discrepancy in the value of this real estate comes down to how an assessor should value the replacement cost of a commercial building. Matters involving determining the replacement costs of large commercial warehouses are best suited for the Business Court Division, as the Court can apply its specialized knowledge of business to the facts of this case.

In further support of this Motion, please find attached hereto an accurate copy of the Petition and related documents filed by the taxpayer excluding the record from the Board of Assessment Appeals.

In regard to expedited review, the Movant **DOES NOT** request an expedited review under W.Va. Trial Court Rule 29.06(a)(4), and gives notice that all affected parties may file a memorandum stating their position, in accordance with W.Va. Trial Court Rule 29.

WHEREFORE, the undersigned hereby MOVES, pursuant to W.Va. Trial Court Rule 29, the Chief Justice of the West Virginia Supreme Court of Appeals to refer this case to the Business Court Division.

Respectfully submitted, this 30th day of December, 2020,

**Berkeley County Council, and
Doug Copenhaver, Dan Dulyea,
James Barnhart, Elaine Mauck,
and Jim Whitacre, in their official capacity**

**as members of the Berkeley County Council, and
Larry A. Hess, in his official capacity as
Berkeley County Assessor**

By Counsel:

/s/ Anthony J. Delligatti
Anthony J. Delligatti, Esq.
West Virginia Bar ID #: 12345
adelligatti@berkeleywv.org
Jeffery T. Mauzy, Esq.
West Virginia Bar ID #: 11178
400 W. Stephens Street, Suite 201
Martinsburg, West Virginia 25401
Phone: (304) 264-1900 Ext. 8

CERTIFICATE OF SERVICE

I Anthony J. Delligatti, do hereby certify that on this 30th day of December 2020, I have served the foregoing “Motion to Refer Case to Business Court Division,” with attachments by E-Filing the Motion in the Circuit Court case to opposing counsel:

Eric J. Hulett, Esq.
Jackson Kelly, PLLC
310 West Burke Street N
Martinsburg, WV 25402
eric.hulett@jacksonkelly.com

Edward F. Hirshberg, Esq.
Ryan Law Firm, PLLC
301 Grant Street, Suite 270
Pittsburgh, PA 15219
edward.hirshberg@ryanlawyers.com

I Anthony J. Delligatti, do hereby certify that on this 29th day of December 2020, I have served the foregoing “Motion to Refer Case to Business Court Division,” with attachments on the Business Court Division Central Office, Berkeley County Judicial Center, 380 West South Street, Suite 2100, Martinsburg, WV 25401 by hand delivery.

/s/ Anthony J. Delligatti

Anthony J. Delligatti

COVER SHEET

GENERAL INFORMATION

IN THE CIRCUIT COURT OF BERKELEY COUNTY WEST VIRGINIA

Martinsburg Investors II, LLC v. Berkeley County Council sitting as the 2020 Board of Assessment Appeals

First Plaintiff: ☒ Business ☐ Individual ☐ Government ☐ Other

First Defendant:

☐ Business ☐ Individual ☐ Government ☒ Other

Judge: Laura Faircloth

COMPLAINT INFORMATION

Case Type: Miscellaneous Proceedings

Complaint Type: Other

Origin: ☒ Initial Filing ☐ Appeal from Municipal Court ☐ Appeal from Magistrate Court

Jury Trial Requested: ☐ Yes ☒ No **Case will be ready for trial by:** _____

Mediation Requested: ☐ Yes ☒ No

Substantial Hardship Requested: ☐ Yes ☒ No

☐ Do you or any of your clients or witnesses in this case require special accommodations due to a disability?

- ☐ Wheelchair accessible hearing room and other facilities
- ☐ Interpreter or other auxiliary aid for the hearing impaired
- ☐ Reader or other auxiliary aid for the visually impaired
- ☐ Spokesperson or other auxiliary aid for the speech impaired
- ☐ Other: _____

☐ I am proceeding without an attorney

☒ I have an attorney: Eric Hulett, P.O. Box 1068, Martinsburg, WV 25401

SERVED PARTIES

Name: Berkeley County Council sitting as the 2020 Board of Assessment Appeals

Address: 400 W Stephen St, Martinsburg WV 25401

Days to Answer: 20 **Type of Service:** Plaintiff - Certified Mail

Name: Doug Copenhagen

Address: 400 W Stephen St, Martinsburg WV 25401

Days to Answer: 20 **Type of Service:** Plaintiff - Certified Mail

Name: Dan Dulyea

Address: 400 W Stephen St, Martinsburg WV 25401

Days to Answer: 20 **Type of Service:** Plaintiff - Certified Mail

Name: James Barnhart

Address: 400 W Stephen St, Martinsburg WV 25401

Days to Answer: 20 **Type of Service:** Plaintiff - Certified Mail

Name: Elaine Mauck

Address: 400 W Stephen St, Martinsburg WV 25401

Days to Answer: 20 **Type of Service:** Plaintiff - Certified Mail

Name: Jim Whitacre

Address: 400 W Stephen St, Martinsburg WV 25401

Days to Answer: 20 **Type of Service:** Plaintiff - Certified Mail

Name: Larry A. Hess

Address: 400 W Stephens St #208, Martinsburg WV 25401

Days to Answer: 20 **Type of Service:** Plaintiff - Certified Mail

IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA

MARTINSBURG INVESTORS II, 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.

TAX MAP NUMBER: 01 14 0015 0002 0000

CIVIL DIVISION

No:

**PETITION FOR APPEAL FROM ORDER
OF BERKELEY COUNTY COUNCIL
SITTING AS THE 2020 BOARD OF
ASSESSMENT APPEALS**

Counsel of Record for this Party:

Eric J. Hulett, Esq.
WV ID Bar No. 6332
Jackson Kelly, PLLC
310 West Burke Street
Martinsburg, WV 25402
Phone: (304) 260-4942
Fax: (304) 263-7110
eric.hulett@jacksonkelly.com

Edward F. Hirshberg, Esquire
PA ID No. 314650
RYAN LAW FIRM, PLLC
301 Grant Street, Suite 270
Pittsburgh, PA 15219
Phone: (412) 577-2489
Fax: (412) 255-3701
Edward.Hirshberg@ryanlawyers.com

IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA

MARTINSBURG INVESTORS II, 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

**PETITION FOR APPEAL FROM ORDER OF BERKELEY
COUNTY COUNCIL SITTING AS THE 2020 BOARD OF
ASSESSMENT APPEALS**

TO THE HONORABLE JUDGES OF SAID COURT:

1. Petitioner, Martinsburg Investors II, LLC, is the owner of a parcel of commercial real estate known as 261 Development Dr., Inwood, Berkeley County, WV 25428 ("Property"), which Property has been assigned tax map number 01 14 0015 0002 0000.

2. The Respondents are the Berkeley County Council sitting as the 2020 Board of Assessment Appeals; Doug Copenhagen, 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,

3. Interested Parties are the County of Berkeley, the city of Martinsburg, and the Berkeley County School District.

Jurisdiction and Venue

4. This Court has jurisdiction to hear this appeal pursuant to the provisions of West Virginia Code § 11-3-24 and §11-3-25. Venue is proper because this appeal involves an assessment of the Property owned by Petitioner and located and taxable in Berkeley County, West Virginia.

Facts and Procedural History

5. The Berkeley County Council sitting as the 2020 Board of Assessment Appeals (the "Board") is authorized to hear appeals from assessments by aggrieved parties.

6. The Berkeley County Assessor's Office made an assessment of the subject Property for the year 2020 in the amount of \$22,818,600.

7. The Petitioner timely filed a "Petition for Review of Property Appraisal" with the Berkeley County Assessor, thereby appealing from this assessment to the Board seeking redress from and a decrease of said assessment.

8. On October 22, 2020, pursuant to notice given the Assessor and Petitioner, the Board conducted a hearing on Petitioner's appeals to the Board (the "Hearing").

9. At the outset of the Hearing, Petitioner co-counsel, Eric Hulett, Esq. – a duly licensed attorney admitted to practice before the West Virginia bar – presented a motion to allow Petitioner Counsel, Edward F. Hirshberg, Esq., to be admitted *pro hac vice* before the Board. The motion was granted without objection.

10. Present at the Hearing were representatives of the Berkeley County Assessor's office; Attorney Anthony Delligatti, counsel to Berkeley County Council ("Board Counsel"); Petitioner's Counsel; and Mr. Alan Albert. Both parties presented testimony and documentary evidence to the Board.

11. At the Hearing, Petitioner offered documentation of the true and correct costs

in constructing the property, thus establishing the actual fair market value of the Property as of July 1, 2020 at \$18,396,386; this opinion of value being less than the market value and assessment set by the Berkeley County Assessor's Office for the Property.

12. Mr. Colorito's documentation was entered into evidence without objection.

13. Also at the Hearing, Board Counsel offered the sworn testimony of the Assessor's representative, Mr. John Streett ("Streett"), and placed into evidence documents to support the value and assessment set by the Berkeley County Assessor's Office for the Property.

14. Petitioner's Counsel objected to the admission of Mr. Streett's testimony to the extent that Streett sought to offer documentation in support of the income approach of valuation.

15. The Board sustained such objections.

16. Subsequent to the Hearing, the Board by decision disposed of the appeal for the year 2020, denying Petitioner's appeal and affirming the Berkeley County Assessor's assessment of the property for tax year 2020.

17. While no official executed and signed order or decision from the Hearing has been provided to the Petitioner or Petitioner's Counsel, on November 23, 2020, Board Counsel provided to Petitioner the official transcript of the Hearing.

18. On December 11, 2020, an office administrator for the Board provided to Petitioner the Certified Record of the Hearing.

19. A true and correct copy of the Certified Record and Transcript, Executed by County Clerk John W. Small Jr. is attached hereto and incorporated herein.

20. The Tax Department's method of appraising the Petitioner for 2011 violates the specific statutory requirements of *W.Va. Code* §§ 11-1C-10 and 11-3-1 which require property to be valued at its fair market value. The Tax Department's primary method of valuation ignores both the law and applicable standards of appraisal practice.

21. Petitioner is aggrieved by the Board's adjudication and decisions. Petitioner believes and avers that the Board erred at the Hearing and in their decision, and Petitioner objects and takes exception to their decision. Accordingly, Petitioner assigns the following errors and tenders the following exceptions to the Board's decision:

a. The Assessor's assessment of the Property, as approved by the Board (the "Assessment"), does not represent the true and actual fair market value of the Property upon which the Assessment is based, and is in excess of the true and actual value of the Property.

b. The Assessment is improper, inequitable, unequal, unjust, unfair, unreasonable, excessive, unlawful, not in proportion to the Property's value, and contrary to the requirements of governing statutes and regulations, in violation of State and Federal Constitutional provisions, and confiscatory. As such, the Assessment violates Section 1, Article X of the Constitution of West Virginia; and other applicable provisions of the Constitutions of the United States and the State of West Virginia.

c. The Assessment is prejudicial in that it lacks uniformity with assessments of other real property in Berkeley County and the ratio of the Assessment's value to market value for the Property is in excess of the same ratio commonly for other properties in Berkeley County, which makes the Assessment, unjust, unreasonable and discriminatory.

d. The Assessment was derived by using improper methodologies, and the value of the Assessment is discriminatory to Petitioner being in violation of applicable provisions of West Virginia law and the Constitutions of the United States and the State of West Virginia.

e. The Board erred in accepting and relying upon the Assessor's documentary evidence and testimony related thereto, which disregarded applicable statutes, regulations and methodologies with respect to the valuation of the Property.

f. The Board erred in permitting the Assessment for the Property to be of a ratio in excess of its true and actual market value, while other similar real property in Berkeley County are generally and regularly assessed at a lower ratio of their true and actual market value.

g. The Board erred in not correcting and not reducing the Assessor's over-assessment of the Property.

h. The Board erred in failing to equalize the Assessment of the Property with the assessments of other similar real property owned by others in

Berkeley County.

i. The Board erred in accepting and relying upon the Assessor's documentary evidence and testimony related thereto, which improperly classified and characterized the Property.

j. The Board erred in accepting and relying upon the Assessor's Cost Approach calculations and methodology as to both real property and personal property, inconsistent with W. Va. Code Ann. § 11-1A-1 et seq., and related caselaw.

k. The Board erred in accepting and relying upon the Assessor's economic obsolescence calculations and methodology, inconsistent with W. Va. Code Ann. § 11-1A-1 et seq., and related caselaw.

l. The Board erred in making a determination inconsistent with W. Va. Code St. R. § 110-1P-1 thorough 1P-3 as well as W. Va. Code § 11-10C-10 et seq., and related caselaw.

m. The Board erred in failing to indicate whether the Assessor considered the requisite factors in their appraisal of the subject property, inconsistent with W. Va. Code St. R. § 110-1P-1 thorough 1P-3 as well as W. Va. Code § 11-10C-10 et seq., and related caselaw.

n. The Board erred in making a determination inconsistent with W. Va. Code Ann. § 11-1A-1 et. seq.

o. The Board erred in making a determination inconsistent with W. Va. Code Ann. § 11-1A-2.

p. The Board erred in determining the Assessor selected and applied the most accurate approach to value the Property.

q. The Board erred in relying upon the Assessor's evidence and determining that Petitioner failed to rebut the Assessor's findings or to effectively undermine the Assessor's approach to value the property.

r. The Board erred in determining that the Petitioner did not provide clear and convincing evidence that the Assessor's valuation is erroneous, such that the Board must affirm the current assessment.

22. Furthermore, “[a] party to any such proceeding [before a county court or county commission], as to which an appeal will lie as aforesaid may avail himself of any error appearing

on the record by which he is prejudiced without obtaining a formal bill of exceptions, provided he objects or excepts on the record to the action of the court complained of, and provided it is such a matter as can be considered without a formal bill of exceptions.” W. Va. Code Ann. § 58-3-3.

WHEREFORE, Petitioner being aggrieved by the Assessment, appeals therefrom and respectfully requests this Honorable Court, pursuant to the authority vested in it by law, to:

- a. Review and modify the decision of the Board with respect to the Assessment for the Property for the 2020 tax year;
- b. Find that the Assessment for the Property for the 2020 tax year was erroneously determined and appraised in excess of its true and actual market value, and in a manner contrary to the provisions of controlling law, regulations, and methodologies;
- c. Find that the Board's decision affirming the Assessment for the Property for the 2020 tax year was erroneously determined and is contrary to the provisions of controlling law, regulations, and methodologies;
- d. Enter an Order, in accord with such findings, correcting the Assessment for the Property for the 2020 tax year and decreasing the same to such amount as may be right and proper.

[Signature page to follow]

Date: December 23, 2020

Respectfully submitted,



Edward F. Hirshberg, Esq.
RYAN LAW FIRM, PLLC
301 Grant Street, Suite 270
Pittsburgh, PA 15219
(724) 205-1188
Attorney for Petitioner

/s/ Eric J. Hulett

Eric J. Hulett, Esq.
WV ID Bar No. 6332
Jackson Kelly, PLLC
310 West Burke Street
Martinsburg, WV 25402
Phone: (304) 260-4942
Attorney for Petitioner

VERIFICATION

I, EDWARD F. HIRSHBERG, hereby affirm, under penalty of perjury that the facts set forth in the foregoing PETITION FOR APPEAL FROM ORDER OF BERKELEY COUNTY COUNCIL SITTING AS THE 2020 BOARD OF ASSESSMENT APPEALS are true and correct to the best of my knowledge, information and belief.

Date: December 23, 2020



Edward F. Hirshberg, Esq.
Attorney for Petitioner

IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA

MARTINSBURG INVESTORS II, 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

ORDER OF COURT

WHEREUPON, the Court ORDERS that the PETITION FOR APPEAL FROM ORDER OF BERKELEY COUNTY COUNCIL SITTING AS THE 2020 BOARD OF ASSESSMENT APPEALS is deemed filed and, upon assignment to a Division of this Circuit Court, shall be set for Hearing.

It is SO ORDERED.

The Circuit Clerk is directed to send a certified copy of this Order to all counsel.

J.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing PETITION FOR APPEAL FROM ORDER OF BERKELEY COUNTY COUNCIL SITTING AS THE 2020 BOARD OF ASSESSMENT APPEALS has been served upon the following by United State Post, 1st class mail, postage paid, this 23rd day of December 2020.


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
400 West Stephen Street, Suite 201
Martinsburg, WV 25401

Berkeley County Assessor's Office c/o
Larry A. Hess
400 West Stephens Street, Suite 208
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.

In the Circuit Court of Berkeley County

ADMINISTRATIVE APPEALS DOCKETING STATEMENT

Style of case (use from agency final order including case number): MARTINSBURG INVESTORS II, LLC
V. BERKELEY COUNTY COUNCIL SITTING AS THE BOARD OF ASSESSMENT APPEAL ET AL
Agency: BERKELEY COUNTY COUNCIL SITTING AS THE BOARD OF ASSESSMENT APPEAL

TIMELINESS OF APPEAL

Date of entry of order appealed from: Nov 23, 2020

Date of filing of petition for appeal: Dec 24, 2020

VENUE: If appeal is not filed in Kanawha County, do you reside in or do business in this County?

☐ Yes

☒ No

If so, provide the street address and telephone number for your residence or business in this County. 310 West Burke Street, P.O. Box 1068 | Martinsburg WV 25401

If not, explain your reason(s) for filing this appeal outside of Kanawha County. _____

Subject property is located in Berkeley County

FINALITY OF ADMINISTRATIVE ORDER

Is the order appealed from a final decision on the merits as to all issues and parties?

☒ Yes

☐ No

If not, what type of order are you appealing? _____

CASE INFORMATION

State briefly the nature of the case, the relief sought and the outcome at the agency. (Attach an additional sheet if necessary). See attached Petition. The market value is made in error.

Does the agency decision contain factual (evidentiary errors)?

☒ Yes

☐ No

If so, please list the evidentiary errors briefly. (Attach an additional sheet if necessary).
See attached Petition. Evidence was improperly entered upon the record.

Does the agency order contain legal errors (errors of law)?

☒ Yes

☐ No

If so, please list the errors of law briefly. (Attach an additional sheet if necessary).
See attached Petition. The market value established uses an improper methodology under law.

CASE MANAGEMENT INFORMATION

Name of Party filing this appeal (Petitioner): MARTINSBURG INVESTORS II, LLC

Do you wish to make an oral presentation to the court?

☒ Yes ☐ No

List counsel for each party to the case at the agency. If a party is not represented by counsel, provide the requested information for that party. Include name, firm name, address and telephone number. (Attach an additional sheet if necessary).

See Certificate of Service, Attached

Name of attorney or individual filing this Administrative Appeals Docketing Statement:

Eric Hulett/Edward Hirshberg

☒ Attorney ☐ Non-Attorney
(self represented)

Will you be handling the appeal?

☒ Yes ☐ No

If yes, provide name, firm name address and telephone number.

Jackson Kelly, PC.

310 West Burke Street, P.O. Box 1068 | Martinsburg WV 25401; Office: (304) 260-4942 | Cell: (304) 671-2671

If there are multiple Petitioners add their names on an additional sheet, accompanied by a certification that all Petitioners concur in this filing.

Signature: /s/ Eric J. Hulett

WV Bar Number. 6332

Date: 12.23.2020

Remember to attach:

1. Additional pages, if any, containing extended answers to questions on this form.
2. A copy of the agency final order or decision from which the appeal is taken.
3. A certificate of service, verifying that you have served this Administrative Appeals Docketing Statement upon all of the parties to the agency proceeding, the agency itself and the Attorney General's Office.

IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA

MARTINSBURG INVESTORS II, 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.

CIVIL DIVISION

No: CV _____

**MOTION FOR ADMISSION PRO HAC
VICE**

Counsel of Record for this Party:

Eric J. Hulett, Esq.
WV ID Bar No. 6332

Jackson Kelly, PLLC
310 West Burke Street
Martinsburg, WV 25402
Phone: (304) 260-4942
Fax: (304) 263-7110
eric.hulett@jacksonkelly.com

Edward F. Hirshberg, Esquire
PA ID No. 314650

RYAN LAW FIRM, PLLC
301 Grant Street, Suite 270
Pittsburgh, PA 15219
Phone: (412) 577-2489
Fax: (412) 255-3701
Edward.Hirshberg@ryanlawyers.com

IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA

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

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

Respondents

MOTION FOR ADMISSION PRO HAC VICE

AND NOW, comes Martinsburg Investors II, LLC, by and through their Counsel, Eric J. Hulett, Esq. of Jackson Kelly, PLLC, and Edward F. Hirshberg, Esq. of Ryan Law, PLLC, and avers the following to be true:

1. Pursuant to W.V. R. Admis. Prac. Law. 8.0 (regarding admission *pro hac vice*) the undersigned, an active member in good standing of the West Virginia State Bar, shall act as local counsel in the above-captioned matter: a tax assessment appeal of an administrative determination made by the County Counsel of Monongalia County, West Virginia, sitting as the Board of Assessment Appeals for tax year 2020.
2. The undersigned maintains a physical office equipped to conduct the practice of law in the State of West Virginia, such office being the primary location from which the undersigned practices law on a daily basis.

3. The undersigned shall appear on all notices, orders, pleadings, and other documents filed in the case and shall personally appear and participate in pretrial conferences, hearings, trials, or other proceedings actually conducted before the Court.

4. The undersigned shall further attend the taking of depositions and other events that occur in proceedings that are not actually conducted before the judge, tribunal or other body of the State of West Virginia, unless the presiding judge or tribunal permits the undersigned to appear by telephone or other electronic means.

5. The out-of-state lawyer, Edward F. Hirshberg, has executed a verification, attached hereto and incorporated herein, warranting that he has complied with the requirements of W.V. R. Admis. Prac. Law. 8.0(c).

WHEREFORE, the undersigned respectfully requests that the Court grants this motion and allows Edward F. Hirshberg, Esq., to appeal *pro hac vice* before the before the Circuit Court of Monongalia County, West Virginia.

Date: December 23, 2020

Respectfully submitted,

Jackson Kelly, PLLC

/s/ Eric J. Hulett

Eric J. Hulett, Esquire

IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA

MARTINSBURG INVESTORS II, 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

VERIFICATION

I, Edward F. Hirshberg, Esquire, of Ryan Law, PLLC, verify and warrant the following to be true:

1. The above captioned matter is a real estate tax assessment appeal initiated on behalf of the referenced appellant/applicant, seeking to challenge the current assessment of certain real property owned by appellant/applicant and appealing an administrative decision made by the County Counsel of Monongalia County, West Virginia, sitting as the Board of Assessment Appeals for tax year 2020.

2. The name, address and telephone number of the registration or disciplinary agency of all state courts in which I am admitted are as follows:

The Disciplinary Board of the Supreme Court of Pennsylvania
Pennsylvania Judicial Center
601 Commonwealth Ave, Suite 5600

P.O. Box 62625
Harrisburg, PA 17106-2625
Phone: 717.231.3380
Pennsylvania Bar ID No. 314650

The Supreme Court of Ohio
Office of Attorney Services
Supreme Court of Ohio
65 South Front Street, 5th Floor
Columbus, Ohio 43215-3431
Phone: 614.387.9320
Ohio Bar ID No. 99321

3. Eric J. Hulett, Esq. of Jackson Kelly, PLLC is a member of The West Virginia State Bar and will be local counsel in the matter.

4. On October 22, 2020, I appeared *pro hac vice* before the County Counsel of Berkeley County, West Virginia, sitting as the Board of Assessment Appeals. On October 28, 2020, I appeared *pro hac vice* before the County Counsel of Monongalia County, West Virginia, sitting as the Board of Assessment Appeals. Otherwise, I have not appeared before any West Virginia tribunals or bodies in the preceding 24 months.

5. I am unaware of any matters before any West Virginia tribunals or bodies in which any member of my law firm is or has been involved in the preceding 24 months.

6. I am a member in good standing before the bar of both Ohio and Pennsylvania and I have not been disciplined in any such jurisdiction within the preceding 24 months.

7. I agree to comply with all laws, rules and regulations of West Virginia state and local governments, where applicable, including taxing authorities and any standards for pro bono civil and criminal indigent defense legal services.

8. Local counsel, Eric J. Hulett, has agreed to participate as local counsel in the above-captioned matter, as evidenced by the accompanying executed *Motion for Admission Pro Hac Vice*, incorporated herein by reference.

9. A non-refundable application fee of three hundred-fifty dollars (\$350) payable to the West Virginia State Bar has been paid.

Respectfully

Date: December 23, 2020

RYAN LAW, PLLC

A handwritten signature in black ink, appearing to read 'E. Hirshberg', written in a cursive style.

Edward F. Hirshberg, Esquire

IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA

MARTINSBURG INVESTORS II, 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

ORDER GRANTING MOTION FOR ADMISSION PRO HAC VICE

COME NOW the parties, by counsel, and represent to this Court that they are in agreement that the Motion for Admission *Pro Hac Vice* filed by Appellant's counsel, Eric J. Hulett, for the admission *pro hac vice* of attorney Edward Hirshberg, should be granted. This Court being of the opinion that said agreement is just and proper does hereby **GRANT** said Motion and admits Edward Hirshberg to appear before this Court in this proceeding, and that local counsel, Eric J. Hulett, is not required to appear at any hearing or other proceeding as local counsel. The Clerk is directed to provide an attested copy of this Order to all counsel of record.

Entered this _____ day of _____, 20 ____ .

Hon.

Respectfully submitted,



Edward F. Hirshberg, Esq.
PA ID BAR No. 314650
RYAN LAW FIRM, PLLC
301 Grant Street, Suite 270
Pittsburgh, PA 15219
(724) 205-1188
Attorney for Petitioner/Appellant
Pro Hac Vice Admission Pending

/s/ Eric J. Hulett

Eric J. Hulett, Esq.
WV ID Bar No. 6332
Jackson Kelly, PLLC
310 West Burke Street
Martinsburg, WV 25402
Phone: (304) 260-4942
Attorney for Petitioner/Appellant

Anthony J. Delligatti, Esq.
400 West Stephen Street, Suite 201
Martinsburg, WV 25401
Anthony J. Delligatti, Esq.
Phone: (304) 839-5888
Legal Director, Berkeley County
Council

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *Motion for Admission Pro Hac Vice* has been served upon the following by email this 23rd day of December 2020.

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
400 West Stephen Street, Suite 201
Martinsburg, WV 25401

Berkeley County Assessor's Office c/o Larry A. Hess
400 West Stephens Street, Suite 208
Martinsburg, WV, 25401

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

City of Martinsburg
232 North Queen Street
Martinsburg, WV 25401

Jackson Kelly, PLLC

/s/ Eric J. Hulett

Eric J. Hulett, Esquire

RYAN LAW, PLLC



Edward F. Hirshberg, Esquire