

IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA

**LEE TRACE LLC,
Petitioner,**

v.

**BERKELEY COUNTY COUNCIL AS
BOARD OF REVIEW AND EQUALIZATION,**

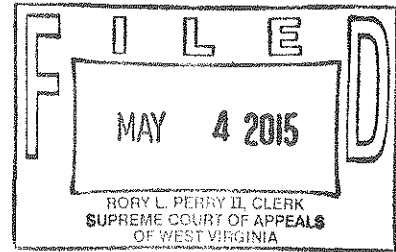
and

CIVIL ACTION NO. 15-AA-5

BERKELEY COUNTY COUNCIL,

and

**LARRY HESS, AS ASSESSOR FOR
BERKELEY COUNTY, WEST VIRGINIA,
Respondents.**



MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION

COME NOW, the Respondents, by counsel, Norwood Bentley III, and move this Honorable Court to refer the above styled case to the Business Court Division.

This case is a complex tax appeal and is expressly included in those cases eligible to be referred to the Business Court Division pursuant to West Virginia Trial Court Rule 29.04 (a) (3). The issues are complex and have been the subject of previously filed litigation in the Circuit Court of Berkeley County, the Business Court Division, and appeals to the Supreme Court of Appeals of West Virginia.

The Respondents note that the following cases have been previously transferred through referral to the Business Court Division:

Lee Trace LLC v. Berkeley County Council, et al., Civil Action No. 14-AA-1;

Lee Trace LLC v. Berkeley County Council, Civil Action No. 14-AA-2;

Lee Trace LLC v. Berkeley County Council as Board of Review and Equalization and Board of Assessment Appeals and Berkeley County Council, Civil Action No. 13-AA-4;

Lee Trace LLC v. Berkeley County Council as Board of Review and Equalization and Berkeley County Council, Civil Action No. 12-AA-4;

Lee Trace LLC v. Patricia Kilmer, as Assessor for Berkeley County, West Virginia, Berkeley County Council as Board of Review and Equalization, and Berkeley County Council, Civil Action No. 11-AA-2.

As Petitioner points out in Paragraph 3 of its Petition, attached herein as Exhibit 1, "This is the sixth consecutive appeal of the Assessor's real property tax assessments on the Property. The appeal of the 2010 Assessment is pending before the West Virginia Supreme Court of Appeals (Docket No. 14-0962, appeal from Civil Action Nos. 11-AA-2 and 14-AA-1), and the appeals of the assessments for 2011, 2012, 2013, and 2014 (Civil Action Nos. 11-AA-2 insofar as it concerns the 2011 Assessment, 12-AA-4, 13-AA-4, and 13-AA-2, respectively) remain in the Business Court Division pending the decision of the Supreme Court of Appeals."

The Honorable Christopher C. Wilkes has heard each of the cases, all but, the first of the cases as Presiding Judge of the Business Court Division. The instant case has been assigned to The Honorable Michael D. Lorensen, Circuit Court of Berkeley County.

The facts and issues present in the instant case are the same or similar to those which were heard previously by Judge Wilkes so that the Business Court Division is familiar with the facts, the law and with the pertinent issues.

As noted above, there are cases involving the same real property and the same issues currently pending in the Supreme Court of Appeals and in the Business Court Division.

Copies of the Respondents' response to the Petition and the docket sheet are attached as Exhibits 2 and 3, respectively.

The time for responses to the Petition has passed, service of the Petition having been accomplished with respect to all Respondents on or before March 25, 2015.

WHEREFORE, Respondents request the Clerk of the Supreme Court of Appeals to present this motion to the Honorable Chief Justice for his consideration; they further pray that the Chief Justice will Grant the motion and transfer this case to the Business Court Division; and, for such other and additional relief as the Court deems appropriate.

**BERKELEY COUNTY COUNCIL AS BOARD
OF REVIEW AND EQUALIZATION and
BERKELEY COUNTY COUNCIL and
LARRY HESS, ASSESSOR OF BERKELEY
COUNTY, WEST VIRGINIA**

By Counsel



Norwood Bentley III, Esquire

State Bar No. 4234

Berkeley County Council

400 West Stephen Street, Suite 201

Martinsburg, West Virginia 25401

304-267-5009

CERTIFICATE OF SERVICE

I, Norwood Bentley III, do hereby certify that I have served a true and actual copy of the foregoing MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION upon the following, by placing the same in the United States Mail, postage pre-paid and directed as hereinbelow indicated, on this the 30th day of April, 2015.

Thomas Moore Lawson, Esquire
Lawson and Silek, P.L.C.
Post Office Box 2740
Winchester, Virginia 22604

The Honorable Michael D. Lorensen, Judge
23rd Judicial Circuit
Berkeley County Judicial Center
380 West South Street
Suite 4402
Martinsburg, West Virginia 25401

The Honorable Christopher C. Wilkes, Judge
23rd Judicial Circuit
Berkeley County Judicial Center
380 West South Street
Suite 4400
Martinsburg, West Virginia 25401

Business Court Division
Berkeley County Circuit Court
Berkeley County Judicial Center
380 West South Street
Suite 2100
Martinsburg, West Virginia 25401


Norwood Bentley III