

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

SENECA TECHNOLOGIES, INC.,

Plaintiff,

v.

STATE TAX DEPARTMENT OF THE
WEST VIRGINIA DEPARTMENT OF TAX
AND REVENUE and VIRGIL HELTON, as
WEST VIRGINIA STATE TAX COMMISSIONER,

Defendants,

and

PHYLLIS GATSON, KANAWHA COUNTY ASSESSOR,
and WEST VIRGINIA COURTHOUSE FACILITIES
IMPROVEMENT AUTHORITY,

Intervenors.

FINAL ORDER

The Court has reviewed the Intervenors' memoranda, the Petitioner's responses, the Intervenor Assessor's reply, the memoranda submitted by the West Virginia Department of Tax and Revenue, the oral arguments of counsel and the applicable statutes. After careful review of the same, and given the undisputed statement that the term "map sheet" is a term of art in the mapping community, the Court finds that its prior ruling was in error and that West Virginia Code §11-1C-7 applies to paper copies as well as electronic copies. Further, the Court finds that there is conflict between West Virginia Code §11-1C-7 and West

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SEP 16 2009

Attorney General's Office
Tax Division

Civil Action No. 07-C-837

Honorable Irene Berger, Judge

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CATIN S. GATSON, CLERK
KANAWHA COUNTY CIRCUIT COURT

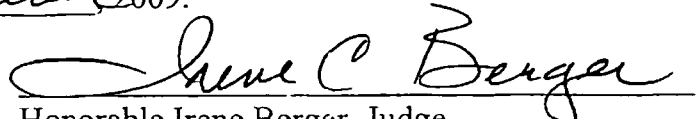
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Virginia Code §29B-1-1, *et seq.* However, both statutes should be interpreted so that they are meaningful, and we must assume that the Legislature was aware of West Virginia Code §29B-1-1, *et seq.* when it passed West Virginia Code §11-1C-7.

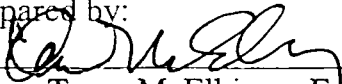
Specifically, West Virginia Code §11-1C-7 requires specific payment for the production of the tax map sheet, while West Virginia Code §29B-1-3(5) requires disclosure of public information generally at the actual cost of producing the same. There seems to be no dispute that the tax map sheets are public records as that term is defined by West Virginia Code §29B-1-2(4). The purpose of the Freedom of Information Act is to ensure that citizens are able to access full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. Further, we know that the term “public record” shall be given a liberal interpretation to achieve the purpose of the Act. In this instance, the Legislature has provided a specific means via West Virginia Code §11-1C-7 to obtain the requested tax map sheets. This specific statute should apply over the more general Freedom of Information statute. Given the purpose of the latter statute, a further conflict is presented when a citizen seeking the public records of map sheets cannot financially afford the requirements of West Virginia Code §11-1C-7(e). However, this Court is not called upon to resolve that issue under the facts presented here. Lastly, since the Petitioner was not denied access to the records, the Court reaffirms its prior ruling regarding attorney’s fees.

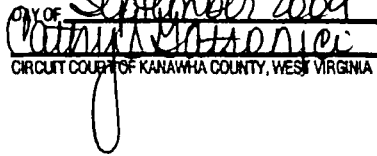
The Clerk of the Court is directed to forward a certified copy of this order to all counsel of record.

Enter this th 11 day of September, 2009.

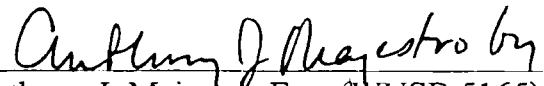

Honorable Irene Berger, Judge


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STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT.
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 17
DAY OF September, 2009.

CATHY S. GATSON, CLERK
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

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