

Office of the Assessor

County of Santa Clara

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Lawrence E. Stone, Assessor



STATE BOARD OF EQUALIZATION

Lawrence E. Stone Item # M1

Item Name: Impact of Covid-19 on PT Admin

Meeting Date: 5/13/20 Minutes Exhibit # 5.2
PUBLIC COMMENT

May 12, 2020

Sent via Email

Honorable Antonio Vazquez, Chair
Honorable Ted Gaines
Honorable Malia Cohen
Honorable Mike Schaefer
Yvette Stowers, Deputy Controller

RE: Item M.1 - Meeting of May 13, 2020

Dear Chairman Vazquez and Members of the Board:

During the past two weeks my staff, Santa Clara County attorneys, and I have diverted precious resources away from closing the assessment roll to participating extensively at each of the five subcommittee meetings created by the Chair and Vice Chair on April 28. In private conversations with you directly, in testimony and extensive correspondence, California Assessors and I have advised the committee of the catastrophic impacts should the BOE adopt the more than 20 recommendations on your May 13 agenda. The working groups subcommittee has ignored admonitions about the law, warnings about the impacts on the property tax system, and dismissed concerns about the financial consequences.

Chair Vazquez and members of the Board, we have a health crisis which has triggered an equally serious financial crisis. The overwhelming majority of the proposals recommended by this committee will create a political crisis of equal proportions. Consideration of proposals, such as mandating through rules and LTA's that assessors immediately provide property tax refunds for major corporations, is the apex of irresponsibility, in direct violation of the State Constitution.

I cannot underscore enough, the impact these recommendations will have on schools and local government. If assessors adhere to these directives, the BOE would contribute to California's exploding budget deficit. For every dollar of property tax revenue the BOE diverts away from normal channels, the state, schools, counties and cities will have to cut an equal amount in order to balance local budgets.

Unlike an evidence-based economic crisis and the commensurate national and state response, there is no information to suggest that the property tax system is the appropriate venue to provide fast, financial relief to those in need. Implementing the proposals would be neither quick nor easy, and would likely invite lengthy litigation, further hampering the desired objective.

Simply, the property tax system cannot provide the urgent, short-term financial relief proposed by these recommendations. Instead, the property tax system can and will provide the appropriate property tax relief, as assessors did during the Great Recession. Where possible, the BOE should support successful efforts by assessors to waive penalties, or permit assessors to accept documents without a “wet” signature.

I urge the BOE to focus on the “legal” and “doable”, by partnering with assessors in managing through the greatest crisis facing property tax administration in 40 years. Below, I have provided feedback to each of the five subcommittees.

Working Group Team 1: 571 Property Statement May 7 Filing Deadline Relief.

Issue: Should the Form 571 Property Statement May 7 Filing Deadline be Extended Due to the Covid-19 Impacts?

BOE Subcommittee Option 1. Implement the Governor’s May 5 Executive Order N-61-20 extending the May 7 filing deadline until May 31 through an LTA.

BOE Subcommittee Option 2. Issue an LTA providing guidance for future time extensions due to Covid-19 under RTC Section 155.

Santa Clara County Assessor Response

As the Governor’s executive order is consistent with the request from assessors to waive penalties for filings between May 8 and May 31, option one is no longer germane. As with all LTA’s our office is happy to work with the BOE professional staff and the full board of the BOE in the furtherance of added clarity in the property tax system.

Working Group Team 2: Assessment Appeals Relief: RTC 1604(c) for AABs 2-year statute of limitations deadline to hear appeals; and RTC 1603 & 1605 for Taxpayers 60-day deadline to file an appeal on notice of supplemental or escape assessment.

Issue I: Should the 2-year deadline for AABs to hear/determine appeals be extended?

BOE Subcommittee Option 1: Issue an LTA extending 2-year deadline for AABs by 40 days under Section 155.

BOE Subcommittee Option 2: Issue an LTA encouraging AABs to request taxpayers to submit waivers due to Covid-19 with a time certain beyond 40 days for a hearing.

BOE Subcommittee Option 3: Request an Executive Order for AABs to selectively postpone taxpayer appeals beyond 2 years.

Santa Clara County Assessor Response

Counsel to, and Clerks of the AAB testified that AAB hearings in March, April and May have been postponed throughout California out of abundance of caution to protect AAB members, taxpayers and county staff alike and due to the shelter in place order. Assessors and taxpayers have agreed to numerous

hearing postponements. As shelter in place orders continue to hamper AAB operations and postpones due process hearings for taxpayers, we support efforts by the CACEO that provide relief in a manner that limits a backlog of appeals. It is anticipated that appeals in 2021 will skyrocket and accumulated backlog heading into that difficult situation will only further jeopardize timely resolution of appeals. We share John McKibben's, Committee Chair for the California Association of Clerks and Election Officials, comment that the proposal to make two-year deadline waivers time-limited "would be disastrous".

I welcome LTA's, such as option two, that encourage existing best practices and accurate application of the law. While I do not support the recommended LTA language in option two, I encourage the Board to work closely with administrators of the property tax system, such as AAB Clerks in the expeditious development of LTA's that advance timely and fair resolution of assessment appeals. I support collaborative efforts by the Association of California's Assessment Appeal Board Clerks requesting an executive order from the governor as necessary to ensure taxpayers are not denied due process.

Issue II: Should the 60-day deadline for taxpayers to appeal supplemental and escape assessments be extended?

BOE Subcommittee Option 1: Issue an LTA extending 60-day deadline for AABs to accept appeals by 40 days per Section 155.

BOE Subcommittee Option 2: Issue an LTA encouraging AABs to notify taxpayers unable to file in 60 days that they may file late with an affidavit declaring the notice of assessment was not timely received.

BOE Subcommittee Option 3: Issue an LTA encouraging AABs to allow a "safe harbor" period (e.g., February 1, 2020–July 1, 2020) per Rule 305(d)(4) for taxpayers to late file appeals and provide an affidavit for them to attach.

Santa Clara County Assessor Response

I do not support option one. The BOE does not have the authority to extend the 60 day deadline for taxpayers to appeal supplemental and escape assessments by 40 days. Revenue and Taxation Code Section 155 only permits the BOE to extend time for an act by an Assessor or AAB. It does not give the BOE carte-blanche power to extend the deadline for an applicant to file an Application for Changed Assessment.

More importantly, there is no evidence to indicate that taxpayers are not receiving supplemental notices, or that dramatic change is needed. The vast majority of supplemental and escape assessments notices are issued to homeowners who receive their mail at their residence. Businesses are not legally prohibited from entering their premises to gather mail and other documents, including utility bills, bank and mortgage statements, etc. They always have the option to request mail be automatically forwarded to an alternate address.

In Santa Clara County, the Public Health Department FAQ specifically addresses the issue of the "Shelter-in-Place" order as it relates to non-essential businesses. Specifically, it states:

"What if my business is not considered an essential business? Does this Order require that I shut down my business facility? Yes, it does, except for the following "Minimum Basic Operations," which are defined in the following excerpt from the Order:

1. The minimum necessary activities to maintain and protect the value of the business's inventory and facilities; ensure security, safety, and sanitation; process payroll and employee benefits; provide for the delivery of existing inventory directly to residences or businesses; and related functions.
2. The minimum necessary activities to facilitate owners, employees, and contractors of the business being able to continue to work remotely from their residences, and to ensure that the business can deliver its service remotely."

The Revenue and Taxation Code (RTC) provides a sufficient mechanism for relief in limited circumstances. For assessments made outside of the regular roll time period, RTC Section 1605(b)(1) provides that if the taxpayer does not receive the notice of the supplemental assessment or notice of escape assessment at least 15 calendar days before the 60-day deadline to file an assessment appeal application, then the applicant may file an assessment appeal application within 60 days of the date of mailing printed on the tax bill or the postmark on the tax bill, whichever is later, along with an affidavit declaring under penalty of perjury that the notice of assessment was not timely received.

With regard to options two and three, I welcome LTA's that encourage existing best practices and accurate application of the law. While I have concerns about the specific LTA language in these options, I support the underlying intent, and encourage full Board to provide BOE staff with general policy direction so that they may work closely with administrators of the property tax system in the expeditious development of LTA's that advance timely and fair resolution of assessment appeals.

Working Group Team 3: Section 170 Disaster Relief for Covid-19 Calamity.

Issue I: What constitutes "property physically damaged or destroyed" as outlined in the California Constitution Article XIII, Section 15 and implemented in Revenue and Taxation Code Section 170, Disaster Relief, in which the Legislature defined damage to include a diminution in value "as a result of restricted access to the property"?

Issue II: Can/should the Legislature amend RTC 170 to allow for mid-year disaster reassessment resulting from Covid-19 restricted access?

BOE Subcommittee Option 1: Issuing a Letter to Assessors encouraging acceptance of claims for mid-year declines in value due to Covid-19 pandemic; if denied, taxpayers may go to court.

BOE Subcommittee Option 2: Propose/Support legislation to amend RTC 170 to further define economic/ physical damage, and/or seek an Executive Order from the Governor.

BOE Subcommittee Option 3: Issuing a Letter to Assessors providing guidance on the Board's current interpretation of Section 170 relief.

Santa Clara County Assessor Response

I strongly oppose any legislative proposals, such as SB 1431, or board actions that attempt to irresponsibly manipulate the plain and unambiguous language of the Constitution to provide Section 170 relief. The property tax system is built upon the general public's confidence that the law will be fairly and accurately administered without bias or prejudice, in good times and in bad times. Article XIII Section 15 of the State Constitution states:

“The Legislature may authorize local government to provide for the assessment or reassessment of taxable property *physically* damaged or destroyed after the lien date to which the assessment or reassessment relates.” [Emphasis added.]

The Constitution is not a malleable piece of clay that can be molded at will to fit whatever is most politically expedient in the moment to curry favor with a handful of business owners at the expense of all 40 million citizens in the State of California. The legislature can no more define “property physically damaged” than it can define Proposition 13's annual 2% limit on assessed value to mean 10% should the state's budget face a crisis. These changes require a change to the Constitution.

Time and again taxpayers have locally attempted to misappropriate and expand beyond the plain language of the Constitution “physical damage” in Section 170 to include damage from economic harm. There is significant historical precedent denying this incorrect interpretation, which has stood the test of time, nearly 50 years. The most significant was in 2002 when I served as President of the CAA after 9/11. The airlines claimed property tax relief as a result of economic harm suffered by 9/11 terrorist attacks.

BOE staff prepared a report concluding that Section 170 was not applicable to the events of 9/11 because the statute required physical damage. Nevertheless, BOE adopted Rule 139, ignored legal counsel, allowing relief from a diminution of value resulting from a period of restricted access to the property (aircraft).

CAA filed a Section 538 action against the BOE. Marcy Berkman, Deputy County Counsel in Santa Clara County, litigated the CAA lawsuit.

Assessors argued that State Constitution and related statutes, RTC 170 require that property must be physically damaged in order to qualify for relief. Assessors argued that Article XIII Section 15 of the California Constitution, which provides for legislative implementation of calamity relief via Section 170, plainly requires physical damage, not economic damage.

In the pivotal case *Slocum v. State Board of Equalization* the court of appeal held that a property owner must show that the property was physically damaged or destroyed. The court held physical damage is distinct from economic damage, and that Rule 139 improperly expanded the definition of damage beyond Section 170.

The court in *Slocum* reiterated this very point:

“The plain language of this constitutional provision permits reassessment where taxable property is ‘physically damaged or destroyed’. Statutes inconsistent with our Constitution are void.”

As further noted by the court:

“we conclude that inclusion of the term expressed the literal understanding and intent of the task force as it interpreted former Section 2.8. In other words, physicality has *always* been a constitutional requirement, even when not explicitly stated. As explained by the legislative analyst in the very ballot argument to which Airlines refer us, one of the purposes of the proposition was to clarify wording. Insertion of the word ‘physical’ did just that.”

Should the BOE proceed to pass a rule, counties will file a Section 538 action, which is likely to take 8 years should it proceed to the Supreme Court. Should the BOE attempt the same result through an LTA I will very publicly ignore it. Not a single taxpayer has filed a claim, been rejected and subsequently filed a court challenge. If it is not important for a taxpayer, the BOE should not expend their limited resources prosecuting a failed case on their behalf. The Board should not expend limited resources during this crisis encouraging requests for reductions that have no merit.

Again, the primary purpose of this radical change is to provide property tax relief faster than allowed by the California Constitution. The option pushed by this sub-committee will not provide rapid relief, nor is it lawful. Moreover, it is not consistent with sound appraisal theory.

Working Group Team 4: Proposition 8 – Decline in Value Relief for January 1, 2020 Lien Date.

Issue:

Is any immediate relief for a decline in property value under Proposition 8 from Covid-19 available in 2020?

BOE Subcommittee Option 1: Propose/Support legislation to change the lien date from January 1, 2020 to a later date in this year only.

BOE Subcommittee Option 2: Propose/Support amendments to RTC 402.5 and Rule 324(a) to allow Assessors/AABs to consider comparable all will sales occurring up to 90 days after January 1, 2020 lien date for this year only.

BOE Subcommittee Option 3: Issue an LTA in coordination with Assessors, taxpayers and AABs to develop 2020/21 uniform capitalization rates/rate of return for valuing business properties impacted by Covid-19.

BOE Subcommittee Option 4: Issue an LTA providing guidance on proactive processing of declines in value and suggestions for discovering reduced market values.

Santa Clara County Assessor Response

I strongly object to options 1, 2 and 3. The administrators of the property tax system along with County Counsels have repeatedly stated our opposition both in writing and during the subcommittee hearing. I am deeply disappointed that the subcommittee, upon reflection, has decided to recommend all of these options. They are in part inconsistent with the Constitution and could not be implemented in practice. The subcommittee’s decision to completely ignore assessors and legal counsel is reckless and disheartening.

Changing the lien date, as recommended in option one, would toss the administration of California's property tax system into chaos and confusion for taxpayers, as well as assessors, as the lien date is referenced in scores of RTC code sections and official forms. The last time the lien date was changed from March 1st to January 1st, the legislature allowed assessors more than a year to implement the change.

Assessors throughout the state have been preparing their local rolls for nearly 11 months based on the statutory lien date of January 1, 2020. On June 1, the Santa Clara County assessor's office begins the process of closing our assessment roll for timely delivery on July 1 to the County controller.

The radical proposal to change the lien date ignores that millions of assessments throughout the state have already been calculated and prepared assuming a January 1, 2020 lien date. It would be impossible to amend these assessments in such a short time period and deliver 2020 assessment rolls by the end of the June deadline. There are simply insufficient personnel resources available, nor are assessment computer systems, many legacy based, flexible enough to quickly adapt to such a radical change.

This idea risks the timely delivery of assessment rolls throughout California, and would further disrupt operations downstream for Tax Collectors, County Controllers, and Clerks of the Board, forcing changes to multiple noticing requirements, and changes to filing periods for assessment appeals.

In addition, changing the lien date would undermine confidence in the property tax system itself, long valued for its stability and predictability. Undermining that confidence, in a time of crisis, and imperiling the ability for local government to perform constitutional responsibilities, would exacerbate the crisis that we are already enduring. This is the worst time possible to entertain such a destabilizing notion when statewide property tax rolls are set to be delivered by the July 1 deadline.

Option two, extending the window of time for consideration of comparable sales or option three, the development of proposed statewide capitalization rates, are seriously flawed and does not provide significant, timely relief for the vast majority of taxpayers. Consistent with nationally accepted appraisal practice, the best data available is actual transactions occurring before the date of valuation. Data from transactions after the date of valuation have rapidly diminished merit.

Moreover, a time adjustment would apply to any data not occurring on the date of valuation. A time adjustment of value would likely be greatest the further from the date of valuation. The best, and most plentiful and accessible information and data, would be close to the existing lien date, January 1, 2020. Allowing sales data further past that valuation date would likely not provide reliable relief to taxpayers. In addition, the BOE does not have the legal authority to contrive Rule 324(a). The BOE cannot radically manufacture an interpretation of statute to fit a particular political outcome but rather must faithfully interpret state law. Any intemperate change in rule would immediately invite a Section 538 lawsuit by assessors delaying for years any potential relief.

The proposed LTA mandating politically derived capitalization rates strikes at the fundamental fairness and equity in the property tax system, assessors would vigorously oppose and uniformly not implement.

The property tax system is not designed to provide rapid and significant relief, particularly when annual assessment rolls are nearly complete.

With regard to option four, I would be happy to work with the BOE to issue an LTA encouraging best practices and timely discovery of market values for the January 1, 2021 lien date. In response to the economic disruption, assessors statewide will proactively reduce assessments for the next lien date, January 1, 2021, as they did in 2009. At the height of the Great Recession, assessors proactively provided relief to over three million property owners, a clear demonstration of assessors' commitment to protect taxpayers and render accurate assessments. In Los Angeles County, at the peak of the great recession in the 90s and prior to changes in assessment practices, Los Angeles County reduced assessed values on just 36,000 properties. By comparison at the peak of the Great Recession in 2010 they had reduced over 400,000 properties.

Today, assessors are better prepared technologically to make proactive reductions, and possess more bandwidth in the appeals system. Market data will be more plentiful, allowing for well documented, auditable assessments. Efforts by the BOE, through an LTA, to reaffirm successful existing practices are welcome.

Again, the system should be allowed to work as designed by Howard Jarvis and Paul Gann, the architects of Proposition 13. As assessors prepare for the largest single year increase in Prop 8 requests, combined with the potential for a negative 2020 CCPI, assessors in 2021 are likely to enroll the steepest one year decline in assessed value in the State's history. This will have catastrophic consequences on property tax revenue and the bonding capacity of public agencies.

Working Group Team 5: Waiver of Wet Signature Requirement on 571 and Other Forms.

Issue: Should the Board issue guidance encouraging Assessors to accept 571 and other forms without wet signatures?

BOE Subcommittee Option 1. Issue an LTA providing guidance on authenticating electronically filed 571's for quick approval under 441(k) – to identify for Assessors acceptable methods under the current emergency environment and expedite approval of modified authentication methods they propose.

BOE Subcommittee Option 2. Issue an LTA or Emergency Rule intended to ease authentication criteria for electronic submissions during this time, provided that the desirable ratio of risk-to-benefit is consistent with state law and Executive Orders.

BOE Subcommittee Option 3. Sponsor/Propose legislation establishing emergency authentication standards for the production/transmission of electronic scans of signed documents.

BOE Subcommittee Option 4. Issue a request to the BOE Executive Director to immediately develop a plan identifying ways to expand the approval of eSignature programs across the state.

Santa Clara County Assessor Response

I support options such as these to the extent that direction from the BOE and/or the state legislature is permissive, not mandated and developed in partnership with Assessors, and BOE professional staff, counsel and Board offices. More importantly it is critical that any direction be accompanied with substantial funds to implement and offset cost.

Santa Clara County Assessor Conclusion

Assessors are independently elected and understand the economic crisis caused by Covid-19. As an income property owner, I am sympathetic to the plight of business owners. However, the federal government is providing the near-term response with \$2.3 trillion in stimulus aid to business and local governments. The Federal Reserve extended \$600 billion in loans through its Main Street Lending Program to small and medium-sized businesses impacted by the coronavirus pandemic. The bank's corporate credit facilities and Term Asset-Backed Securities Loan Facility are now collectively offering up to \$850 billion to households, employers, and companies.

With such assistance, the federal government is facilitating its traditional role as the sole entity in the nation that can literally print money. The statewide property tax system is designed to provide longer term relief as it has done historically.

The actions recommended by the BOE subcommittee will have direct, immediate and dramatic adverse financial impact on property tax revenue in California. At risk is billions of dollars in property tax revenue with impacts as early as August 31, the deadline for payment of property taxes for business equipment and machinery. Moreover, they will trigger unnecessary downstream chaos throughout the property tax system.

In closing, I also want to call attention to members of Cohen and Gaines, and Deputy Controller Stowers, that despite the length of the report, 45 pages and over 100 pages of attachments, it does not accurately reflect statements made by Assessors, County Counsel and staff of the Assessment Appeals Board. So much so that Deputy County Counsel Marcy Berkman submitted a letter to the BOE detailing a few examples along with a refutation of the faulty legal arguments.

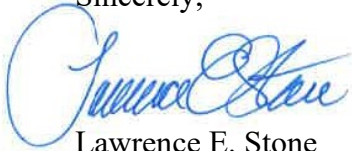
Moreover, I was outraged that the meetings of the sub-committees were not open to the public, nor were interested stakeholders like cities, counties and schools invited to participate. Unlike all other BOE deliberations, over far more inconsequential items, there is an interested parties process in which professional staff and board legal counsel is sought. In light of the magnitude of the proposals it is inconceivable that members of the BOE's professional and legal staff were not permitted to participate in these hearings.

I urge the Board to entirely reject these proposals. Do not allow this legitimate health and fiscal crisis to be used as an excuse to set aside basic transparency and rush into bad decisions that are unconstitutional and have not been subjected to public scrutiny, nor deliberative review by your professional staff and BOE legal counsel.

If the Board votes to proceed with these recommendations, you will be supporting grossly inaccurate and unsupported assessment. The only beneficiary of these proposals is those in position to litigate and hire tax agents. Assessors should not, and I will not, enroll assessments that cannot be supported by evidence.

As an Assessor, property owner and taxpayer, I am deeply troubled that the BOE would seriously entertain such radical changes which endanger the only predictable source of revenue for schools, county, and state government, which all residents are relying upon to safeguard the health and welfare of our community.

Sincerely,



Lawrence E. Stone
Assessor

LES:lcc

cc: Ms. Brenda Fleming, Executive Director
Mr. Henry Nanjo, Chief Counsel
Mr. David Yeung, Deputy Director, Property Tax Dept.
Mr. Dave Titus, First District
Mr. Regina Evans, Second District
Mr. Kari Hammond, Third District
Mr. Gary Gartner, Fourth District
Mr. John McKibben, CACEO
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Honorable Cindy Chavez, President, Santa Clara County Board of Supervisors