

Tuesday, June 9, 2020

The Board met at 10:02 a.m., via teleconference (Governor's Exec. Order No. N-29-20 (March 17, 2020)), with Mr. Vazquez, Chairman, Mr. Schaefer, Vice Chair, Mr. Gaines and Ms. Cohen present, Ms. Stowers present on behalf of Ms. Yee in accordance with Government Code section 7.9.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Mr. Vazquez.

Members expressed their sentiments regarding recent events in response to the killing of George Floyd by a police officer.

ANNOUNCEMENTS

Mr. Vazquez provided guidelines for teleconference Member participation. Henry D. Nanjo, Chief Counsel and Acting Chief of Board Proceedings, provided guidelines for teleconference invited speakers and public participation.

PUBLIC POLICY HEARINGS

Impact of COVID-19 on Property Tax Administration – Working Group Report (Mr. Vazquez)

Mr. Vazquez made introductory remarks for further discussion on Working Group Reports and follow up items from the May 13, 2020 Board Meeting and Working Group meetings and possible additional actions on the potential impact of COVID-19 on property assessment deadlines, specifically matters identified at the April 21, 2020 Board Meeting, concerning the impact of the COVID-19 "Shelter-in-Place" Executive Orders on property tax administration, so that the Board may take steps to maintain the fair and efficient administration of their Constitutional and statutory mandates related to property assessment ([Exhibit 6.1](#)).

Exhibits to these minutes are incorporated by reference.

Working Group 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

Mr. Vazquez made introductory remarks regarding possible action to extend the 2-year statute of limitations deadline for Assessment Appeals Boards (AABs) to hear taxpayer appeals (Rev. & Tax. Code (RTC) section 1604) due to their inability to hold hearings during the shelter in place orders resulting from COVID-19. The Issue as defined by the Working Group: *Should the 2-year deadline for AABs to hear/determine appeals be extended?* Mr. Vazquez presented the following options for the Board's consideration, noting that the Board is not limited to these options:

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- Option 1. Issue an LTA extending the 2-year deadline for AABs by 40 days under RTC section 155. (BOE has issued a County Assessors Only Letter (CAO) 2020/009 on March 16, 2020 addressing this issue.)
- 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.
- Option 3. Request an Executive Order for AABs to selectively postpone taxpayer appeals beyond 2 years.
- Option 4. Do nothing; maintain status quo.

Mr. Gaines provided an overview of Assembly Bill (AB) 3373.

Action: Ms. Stowers moved to direct the Executive Director to draft a letter of support for AB 3373. The motion was seconded by Mr. Gaines, but no vote was taken.

Speakers: John McKibben, Committee Chairman, BOE Rules Work Group, California Association of Clerks and Election Officials (CACEO) ([Exhibit 6.2](#))
Honorable Don H. Gaekle, President, California Assessors' Association and Stanislaus County Assessor ([Exhibit 6.3](#))
Paul A. Waldman, President, California Alliance of Taxpayer Advocates (CATA), and Director, Ryan
Thomas R. Parker, Deputy County Counsel, Los Angeles County Counsel Office, on behalf of the Los Angeles County Assessment Appeals Board

Action: Upon motion of Ms. Stowers, seconded by Mr. Gaines and unanimously carried, Mr. Vazquez, Mr. Schaefer, Mr. Gaines, Ms. Cohen and Ms. Stowers voting yes, the Board directed the Executive Director to draft a letter of support for AB 3373.

Speakers: Thomas R. Parker, Deputy County Counsel, Los Angeles County Counsel Office, on behalf of the Los Angeles County Assessment Appeals Board
John McKibben, Committee Chairman, BOE Rules Work Group, California Association of Clerks and Election Officials (CACEO) (see [Exhibit 6.2](#))
Paul A. Waldman, President, CATA, and Director, Ryan
Honorable Don H. Gaekle, President, California Assessors' Association and Stanislaus County Assessor (see [Exhibit 6.3](#))
Honorable Charles W. Leonhardt, Plumas County Assessor ([Exhibit 6.4](#))
Marcy L. Berkman, Deputy County Counsel, Santa Clara County, Office of County Counsel, on behalf of the Santa Clara County Assessment Appeals Board

Henry D. Nanjo, Chief Counsel and Acting Chief of Board Proceedings, read into the record written comments from the following individuals:

Pat Martinez ([Exhibit 6.5](#))

Michael T. Lebeau, Bewley, Lassleben & Miller, LLP ([Exhibit 6.6](#))

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Mr. Vazquez made introductory remarks regarding possible action to extend the 60-day deadline for AABs to accept appeals on supplemental or escape assessments due to taxpayers' inability to retrieve mail at the address used during the shelter in place orders resulting from COVID-19. The issue as defined by the Working Group: *Should the 60-day deadline for taxpayers to appeal supplemental and escape assessments be extended?* Mr. Vazquez presented the following options for the Board's consideration:

- Option 1. Issue an LTA extending 60-day deadline for AABs to accept appeals by 40 days per RTC section 155.
- 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 filed.
- 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.
- Option 4. Do nothing; maintain the status quo.

Action: Upon motion of Ms. Cohen, seconded by Ms. Stowers and duly carried, Mr. Vazquez, Mr. Gaines, Ms. Cohen and Ms. Stowers voting yes, Mr. Schaefer voting no, the Board ordered the Executive Director to send a letter to the Governor recommending that he issue an Executive Order extending the tolling of taxpayer assessment appeals 2-year hearing deadline in RTC section 1604(c) for the duration of the COVID-19 emergency, plus 120 days, as recommended by the California Association of Clerks and Election Officials (CACEO); and, the CACEO recommendation and the Board's letter would be posted on the BOE website. Note, the Board rescinded this action later in the day.

Mr. Gaines moved to issue an LTA providing a 40-day extension for all 58 county AABs per RTC section 155. The motion was seconded by Mr. Schaefer. Mr. Gaines offered an amendment that would extend by 40 days per RTC section 155 the 2-year deadline for AABs, as needed, on a county basis. The amended motion was seconded by Mr. Schaefer and duly carried, Mr. Vazquez, Mr. Schaefer and Mr. Gaines voting yes, Ms. Cohen and Ms. Stowers voting no.

Upon motion of Ms. Cohen, seconded by Ms. Stowers and unanimously carried, Mr. Vazquez, Mr. Schaefer, Mr. Gaines, Ms. Cohen and Ms. Stowers voting yes, the Board rescinded its prior vote to order the Executive Director to send a letter to the Governor recommending that he issue an Executive Order extending the tolling of taxpayer assessment appeals 2-year hearing deadline in RTC section 1604(c) for the duration of the COVID-19 emergency, plus 120 days, as recommended by the CACEO; and, the CACEO recommendation and the Board's letter would be posted on the BOE website.

Upon motion of Ms. Cohen, seconded by Ms. Stowers and unanimously carried, Mr. Vazquez, Mr. Schaefer, Mr. Gaines, Ms. Cohen and Ms. Stowers voting yes, the Board ordered the Executive Director to send a letter to the Governor recommending that he issue an Executive Order extending the tolling taxpayer assessment appeals 2-year hearing deadline in relation to RTC section 1604(c) for the duration of the COVID-19 emergency, plus 120 days, as

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recommended by the CACEO; and, consistent with the CACEO recommendation, post guidance to the BOE website for taxpayers in relation to late assessment appeal applications.

The Board recessed at 11:27 a.m. and reconvened at 11:35 a.m. with Mr. Vazquez, Mr. Schaefer, Mr. Gaines, Ms. Cohen and Ms. Stowers present.

Working Group 3. Section 170 Disaster Relief for COVID-19 Calamity

Mr. Vazquez made introductory remarks regarding possible action on the meaning of RTC section 170 relative to COVID-19 restricted access to property and reduced value. The issues as defined by the Working Group: 1) *What constitutes “Property Physically Damaged or Destroyed” as outlined in the California Constitution Article XIII, section 15, implemented in the Revenue and Taxation Code (RTC) section 170, Disaster Relief, in which the Legislature defined damage to include a diminution in value “as a result of restricted access to property”?* (emphasis added); and, 2) *Can/should the Legislature amend RTC section 170 to allow for mid-year disaster reassessment resulting from COVID-19 restricted cases?*

Mr. Vazquez presented the following options for the Board’s consideration:

- Option 1. Issue a Letter to Assessors (LTA) encouraging acceptance of claims for mid-year declines in value due to COVID-19 pandemic; if denied, taxpayers may go to court.
- Option 2. Propose/support legislation to amend RTC section 170 to further define economic/physical damage, and/or seek an Executive Order from the Governor.
- Option 3. Issue an LTA providing guidance on the Board’s current interpretation of RTC section 170 relief.
- Option 4. Do nothing; maintain status quo.

Henry D. Nanjo, Chief Counsel introduced Richard Moon, Tax Counsel, Legal Department, who provided an overview of prior Attorney General Opinion.

Speakers: Michael T. Lebeau, Bewley, Lassleben & Miller, LLP (see [Exhibit 6.6](#))
Lenny Goldberg, Schools and Communities First ([Exhibit 6.7](#))
Honorable Don H. Gaekle, President, California Assessors’ Association and Stanislaus County Assessor (see [Exhibit 6.3](#))

Mr. Schaefer read into the record written remarks related to “Business Input and Data” from Cindy Gompper-Graves, President & CEO, South County Economic Development Council (San Diego County) ([Exhibit 6.8](#)).

Speakers: Charles J. Moll III, Partner, Attorney, McDermott Will & Emery ([Exhibit 6.9](#))
Marcy L. Berkman, Deputy County Counsel, Santa Clara County, Office of County Counsel, on behalf of the Santa Clara County Assessment Appeals Board

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Henry D. Nanjo, Chief Counsel and Acting Chief of Board Proceedings, read into the record written comments from the following individuals:

Kitty Calavita ([Exhibit 6.10](#))
Rachita Rawal ([Exhibit 6.11](#))
Karen Roorda ([Exhibit 6.12](#))
Elizabeth Vitanza ([Exhibit 6.13](#))
Joshua Perlman ([Exhibit 6.14](#))
Chris Hoene ([Exhibit 6.15](#))
Sandra Madera ([Exhibit 6.16](#))
Vaughn Villaverde, Working Partnerships USA ([Exhibit 6.17](#))

Speaker: Honorable Lawrence E. Stone, Santa Clara County Assessor

Henry D. Nanjo, Chief Counsel and Acting Chief of Board Proceedings, read into the record written comments from the following individuals:

Dean Jacobson ([Exhibit 6.18](#))
Christina Karaba ([Exhibit 6.19](#))
Veronica Carrizales, Policy Director, California Calls ([Exhibit 6.20](#))
Michael Russo, Director, Equity in Community Investments, Advancement Project California ([Exhibit 6.21](#))
Andrea Moeller ([Exhibit 6.22](#))

Speaker: Peter Kotschedoff, Member, California Alliance of Taxpayer Advocates (CATA), and Principal, Versatax Consulting, Inc. ([Exhibit 6.23](#))

Henry D. Nanjo, Chief Counsel and Acting Chief of Board Proceedings, read into the record written comments from the following individuals:

Michele DiNardo ([Exhibit 6.24](#))
Michael T. Lebeau, Bewley, Lassleben & Miller, LLP (see [Exhibit 6.6](#))
Robert Nakamae, Deputy County Counsel, Santa Clara County, Office of County Counsel ([Exhibit 6.25](#))
Veronica Carrizales, Policy Director, California Calls (see [Exhibit 6.20](#))

Speakers: Vanessa Gonzalez, for Steve Cruz, on behalf of the City of San Jose
Douglas Mo, Counsel, Eversheds Sutherland (US) LLP
Nicholas Romo, Legislative Representative, League of California Cities
Wes Nichols, Board Member, CATA, and Managing Principal and Founder of Paramount Property Tax Appeal
Robert Nakamae, Deputy County Counsel, Santa Clara County, Office of County Counsel (see [Exhibit 6.25](#))

Mr. Gaines provided an overview of Senate Bill 1431.

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Action: Mr. Schaefer moved to adopt Option 1, issue a Letter to Assessors (LTA) encouraging acceptance of claims for mid-year declines in value due to COVID-19 pandemic; if denied, taxpayers may go to court. The motion was seconded by Mr. Gaines. Mr. Vazquez offered an amendment to create an LTA, working with County Assessors to give guidance on the current interpretation and how it applies to COVID-19 for relief. Mr. Schaefer offered an amendment that would remove “if denied, taxpayers may go to court” from his original motion. Mr. Schaefer’s amended motion was seconded by Mr. Gaines but failed to carry, Mr. Schaefer and Mr. Gaines voting yes, Mr. Vazquez, Ms. Cohen and Ms. Stowers voting no.

The Board recessed at 1:22 p.m. and reconvened at 1:29 p.m. with Mr. Vazquez, Mr. Schaefer, Mr. Gaines, Ms. Cohen and Ms. Stowers present.

Working Group 4. Proposition 8 – Decline In Value Relief for January 1, 2020

Mr. Vazquez made introductory remarks regarding possible action on whether COVID-19 triggered decline in value relief under Proposition 8. The issue as defined by the Working Group: *Is any immediate relief for a decline in property value under Proposition 8 from COVID-19 available in 2020?* Mr. Vazquez presented the following options for the Board’s consideration:

- Option 1. Propose/support legislation to change the lien date from January 1, 2020 to a later date in this year only.
- Option 2. Propose/support amendments to RTC section 402.5 and Property Tax Rule 324(a) to allow Assessors/AABs to consider comparable sales occurring up to 9 months after January 1, 2020 lien date for this year only.
- 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.
- Option 4. Issue an LTA providing guidance on proactive processing of declines in value and suggestions for discovering reduced market values.
- Option 5. Do nothing; maintain the status quo.

Speakers: Honorable Don H. Gaekle, President, California Assessors’ Association and Stanislaus County Assessor (see [Exhibit 6.3](#))
 Honorable Charles W. Leonhardt, Plumas County Assessor (see [Exhibit 6.4](#))
 Marcy L. Berkman, Deputy County Counsel, Santa Clara County, Office of County Counsel, on behalf of the Santa Clara County Assessment Appeals Board

Henry D. Nanjo, Chief Counsel and Acting Chief of Board Proceedings, read into the record written comments from the following individual:

Lenny Goldberg, Schools and Communities First (see [Exhibit 6.7](#))

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Speakers: Lenny Goldberg, Schools and Communities First (see [Exhibit 6.7](#))
Cris K. O’Neill, Chair, California Alliance of Taxpayer Advocates (CATA), and
Shareholder, Greenberg Traurig, LLP

Henry D. Nanjo, Chief Counsel and Acting Chief of Board Proceedings, read into the record written comments from the following individuals. Technical difficulties occurred preventing those who participated in the meeting via webcast from hearing these comments; however, they were heard by those listening via telephone. These comments were also read into the record earlier in the day, where pertinent to prior agenda items.

Sandra Madera (see [Exhibit 6.16](#))
Karen Roorda (see [Exhibit 6.12](#))
Vaughn Villaverde, Working Partnerships USA (see [Exhibit 6.17](#))
Dean Jacobson (see [Exhibit 6.18](#))

The Board recessed at 2:04 p.m. and reconvened at 2:13 p.m. with Mr. Vazquez, Mr. Schaefer, Mr. Gaines, Ms. Cohen and Ms. Stowers present.

Henry D. Nanjo, Chief Counsel and Acting Chief of Board Proceedings, read into the record written comments from the following individuals:

Veronica Carrizales, Policy Director, California Calls (see [Exhibit 6.20](#))
Michael Russo, Director, Equity in Community Investments, Advancement
Project California (see [Exhibit 6.21](#))

Speakers: Honorable Lawrence E. Stone, Santa Clara County Assessor
Wes Nichols, Board Member, CATA, and Managing Principal and Founder of
Paramount Property Tax Appeal

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

Mr. Vazquez made introductory remarks regarding possible action pertaining to providing taxpayers who have been detrimentally impacted by COVID-19 relief related to the 571 personal property statement filing due on May 7. The issue as defined by the Working Group: *Should the Form 571 Property Statement May 7 filing deadline be extended due to the COVID-19 impacts?* Mr. Vazquez presented the following options for the Board’s consideration:

- Option 1. Implement the Governor’s May 5 Executive Order N-16-20 extending the May 7 filing deadline until May 31 through an LTA. (LTA 2020/024 issued on May 7, 2020) ([Exhibit 6.26](#)).
- Option 2. Issue an LTA providing guidance for future time extensions due to COVID-19 under RTC Section 155. (BOE has issued a CAO 2020/009 on March 16, 2020 addressing this issue.)
- Option 3. Do nothing; maintain status quo.

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Speakers: Honorable Ernest J. Dronenburg, Jr., San Diego County Assessor
Honorable Charles W. Leonhardt, Plumas County Assessor (see [Exhibit 6.4](#)) on behalf of Honorable Don H. Gaekle, President, California Assessors' Association and Stanislaus County Assessor (see [Exhibit 6.3](#))

Mr. Vazquez introduced Kristine Cazadd, Senior Tax Counsel, BOE District 3, and Sue Blake, Tax Counsel, BOE District 4, who presented an Issue Paper on the extent of BOE authority under RTC section 155 to extend filing deadlines, which provided alternatives for the Board's consideration ([Exhibit 6.27](#)).

Henry D. Nanjo, Chief Counsel introduced Richard Moon, Tax Counsel, Legal Department, who provided the BOE Legal Department's position on Revenue and Taxation Code section 155.

Action: Mr. Schaefer moved that the Board approve the Issue Paper's Alternative 1, the legislative purpose and historical documentation as well as the board's consistent application for 148 years, which establishes that RTC section 155 grants BOE the authority to extend deadlines for the performance of "any acts" by assessors and county assessment appeals boards (AABs), including acts to enforce taxpayer deadlines. The motion was seconded by Mr. Gaines, but no vote was taken.

Ms. Cohen moved that the Board direct the Executive Director to work with the Chair to determine the pathway forward for achieving the authority necessary for the agency to respond quickly and appropriately in future emergencies. The motion was seconded by Ms. Stowers, but no vote was taken.

The following individuals were recognized to provide public comment but there was no response possibly due to technical difficulties:

Honorable Lawrence E. Stone, Santa Clara County Assessor
Charles J. Moll III, Partner, Attorney, McDermott Will & Emery
(see [Exhibit 6.9](#))

Speakers: Marcy L. Berkman, Deputy County Counsel, Santa Clara County, Office of County Counsel, on behalf of the Santa Clara County Assessment Appeals Board
Cris K. O'Neill, Chair, California Alliance of Taxpayer Advocates (CATA), and Shareholder, Greenberg Traurig, LLP

Henry D. Nanjo, Chief Counsel and Acting Chief of Board Proceedings, read into the record written comments from the following individual:

Robert Nakamae, Deputy County Counsel, Santa Clara County, Office of County Counsel (see [Exhibit 6.25](#))

Speaker: John McKibben, Committee Chairman, BOE Rules Work Group, California Association of Clerks and Election Officials (CACEO) (see [Exhibit 6.2](#))

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Henry D. Nanjo, Chief Counsel and Acting Chief of Board Proceedings, read into the record written comments from the following individual:

Emiliana Dore ([Exhibit 6.28](#))

Action: Upon motion of Mr. Schaefer, seconded by Mr. Gaines and duly carried, Mr. Vazquez, Mr. Schaefer and Mr. Gaines voting yes, Ms. Cohen and Ms. Stowers voting no, based on the legislative intent from 1895 to the present, the Board approved Alternative 1, that RTC section 155 applies to deadlines Assessors must enforce for taxpayer compliance as well as their own deadlines.

Upon motion of Ms. Cohen, seconded by Ms. Stowers and unanimously carried, Mr. Vazquez, Mr. Schaefer, Mr. Gaines, Ms. Cohen and Ms. Stowers voting yes, the Board directed the Executive Director to work with the Chairman, Vice Chair, and the County Assessors to determine the pathway forward for achieving the authority necessary for the agency to respond quickly and appropriately in all future emergencies.

PUBLIC COMMENT ON MATTERS NOT ON THE AGENDA

Mr. Vazquez invited persons who wish to address the Board regarding items not on the agenda to come forward:

Speaker: Marcy L. Berkman, Deputy County Counsel, Santa Clara County, Office of County Counsel, on behalf of the Santa Clara County Assessment Appeals Board

Henry D. Nanjo, Chief Counsel and Acting Chief of Board Proceedings, read into the record written comments from the following individual:

Robert Slavin, President Assessment Counselling Services ([Exhibit 6.29](#))

The following individual was recognized to provide public comment but there was no response possibly due to technical difficulties:

Kathryn Mathes

Members agreed to release to the public Chief Counsel Memoranda Opinions regarding Revenue and Taxation Code sections 155 ([Exhibit 6.30](#)) and 170 ([Exhibit 6.31](#)).

PUBLIC POLICY HEARINGS (CONTINUED)

Impact of COVID-19 on Property Tax Administration – Working Group Report (Mr. Vazquez) (Continued)

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

Mr. Vazquez made introductory remarks regarding possible action on whether the BOE should authorize Assessors to accept electronic signatures during the shelter in place orders resulting from the COVID-19 pandemic. The issue as defined by the Working Group:

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Should the Board issue guidance encouraging Assessors to accept 571 and other forms without wet signatures? Mr. Vazquez presented the following options for the Board's consideration:

- 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 issued LTA 2020/022 dated May 4, 2020, issuing guidance on accepting electronic signatures.)
- 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.
- Option 3. Sponsor/propose legislation establishing emergency authentication standards for the production/transmission of electronic scans of signed documents.
- Option 4. Issue a request to the BOE Executive Director to immediately develop a plan that identifies ways to expand the approval of eSignature programs across the state.
- Option 5. Do nothing; maintain the status quo.

Speaker: Honorable Don H. Gaekle, President, California Assessors' Association and Stanislaus County Assessor (see [Exhibit 6.3](#))

The following individuals were recognized to provide public comment but there was no response possibly due to technical difficulties:

Honorable Charles W. Leonhardt, Plumas County Assessor (see [Exhibit 6.4](#))
Peter Kotschedoff, Member, California Alliance of Taxpayer Advocates (CATA), and Principal, Versatax Consulting, Inc. (see [Exhibit 6.23](#))

Henry D. Nanjo, Chief Counsel and Acting Chief of Board Proceedings, read into the record written comments from the following individual:

Pat Martinez (see [Exhibit 6.5](#))

Speaker: Cris K. O'Neill, Chair, CATA, and Shareholder, Greenberg Traurig, LLP

Henry D. Nanjo, Chief Counsel and Acting Chief of Board Proceedings, read into the record written comments from the following individual:

Peter Kotschedoff, Member, CATA, and Principal, Versatax Consulting, Inc. (see [Exhibit 6.23](#))

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Action: Upon motion of Mr. Schaefer, seconded by Mr. Gaines and unanimously carried, Mr. Vazquez, Mr. Schaefer, Mr. Gaines, Ms. Cohen and Ms. Stowers voting yes, the Board adopted Option 4, issuing a request to the BOE Executive Director to immediately develop a plan that identifies ways to expand the approval of eSignature programs across the state.

CLOSING

The Board adjourned at 4:21 p.m. in memory of those whose lives were lost to the COVID-19 pandemic and to their families and loved ones; and, in memory of George Floyd, who was killed by a police officer.

The foregoing minutes are adopted by the Board on August 18, 2020.