



ANTONIO VAZQUEZ
CHAIRMAN
CALIFORNIA STATE BOARD OF EQUALIZATION

MEMORANDUM

Date: November 3, 2020

To: Mike Schaefer, Board Vice Chair
Ted Gaines, Board Member
Malia M. Cohen, Board Member
Betty T. Yee, State Controller

From: Antonio Vazquez, Board Chairman

Re: **Agenda Item AA, 11/18/20 Board Meeting: Suggestions to Facilitate Discussion on Non-Consensus and Added Items from COVID-19 County Boards of Equalization / Assessment Appeals Boards Workgroup Meetings.**

As part of the Board's on-going commitment to the COVID-19 County Boards of Equalization / Assessment Appeals Boards Workgroup to address the challenges of remote hearings, including the non-consensus and newly added items scheduled for November 18, several suggestions generally reflecting the September 24, 2020 discussions on each sub-issue are provided below. As stated herein, they are intended to serve as a starting point for discussion that will lead to a consensus based on the Workgroup's further input (both in writing and testimony). Once an actual consensus is reached on each item, the Board may adopt the specific consensus language and direct the Executive Director to publish it as guidance in a second Letter to Assessors on remote hearings. Sub-issues where no consensus is reached will be taken up for further discussion at our December Board meeting.

SUGGESTIONS FOR NON-CONSENSUS ITEMS BY ISSUE AND SUB-ISSUE.

Issue b. Appropriate Methods for Dealing with Document Submission.

Sub-issue 1. Requirements and protocols for entering all evidence electronically at or before a hearing.

- Counties may require the electronic submission of evidence up to 72 hours before the commencement of a remote hearing but are encouraged to require only 48 hours. Counties may require evidence submitted by hard copy (U.S. mail) to be submitted up to 7 days before the commencement of a remote hearing but are encouraged to allow exceptions as appropriate.

- In compliance with Rule 313 and as required for in-person hearings, evidence submitted by a party prior to the commencement of a remote hearing must not be made accessible to the other party until the hearing commences and the party introducing its case in chief enters it into the record.

Sub-issue 2. Timing for electronic submissions – day-of-the-hearing submissions; protocols on presenting documents for witness impeachment.

- In compliance with Rule 313, counties shall allow day-of-the-hearing electronic submissions in remote hearings for all rebuttal evidence and documents for witness impeachment, and for correcting errors as appropriate. At the hearing, either party may introduce new evidence relating to information received from the other party; but the other party, upon request, shall be granted a continuance for a reasonable time.

Sub-issue 3. Required platform for document submission and required format for documents. (Word, PDF, Excel, etc.)

- PDF documents are preferred in order to protect document integrity, but other forms may be accepted by the AAB Clerks as appropriate.

Sub-issue 4. Ensuring parties and AAB members can view all documents during hearings; necessity for simultaneous viewing.

- All parties must be able to present evidence (written and oral) as well as direct cross examination of witnesses and documents in real time at remote hearings, per Rules 302(a)(1) and 313(e) and RTC Sections 1609 and 1610.2. The board must also be able to view all documents and hear all parties in real time in order to render its decision only on the basis of proper evidence presented at the hearing, in compliance with Rule 302. Additionally, the public must be able to hear and observe the remote hearing as required by RTC Section 1605.4.
- Technological platforms for remote hearings should have the ability for evidence to be viewed in real-time; and the ability to prevent confidential documents from being viewed by the public. In the event of a connectivity problem, the absence of an available IT resource, or other challenge, the AAB has legal authority to grant a continuance as it deems it appropriate.

Issue c. Technology Options.

Sub-issue 4. Investment in remote hearing capability – efficiencies realized long term.

- Counties already conducting remote AAB hearings are encouraged to continue to protect their investment, perfect their system, troubleshoot issues, and train staff. Counties not yet conducting remote AAB hearings have flexibility to continue to conduct in-person hearings, subject to their respective health and safety protocols,

and may develop future long-term contingency plans for efficiently utilizing technology to conduct remote hearings as appropriate.

- Contingency plans suggested for enhancing efficiencies in counties utilizing remote hearings may include, but are not limited to:
 - Establish recessing procedures to troubleshoot issues.
 - Provide IT assistance prior to and during the hearings.
 - Provide contact information (phone numbers) to contact parties and AAB members in the event of technical difficulties.
 - Establish continuance procedures in the event that a technological problem cannot be resolved.
- Additionally, AABs should be sensitive to failures to appear at a scheduled hearing due to a party's technical difficulties.
- The greatest efficiencies of long-term utilization may be realized for procedural matters (postponement requests, reading in stipulations/recommendations, pre-hearing conferences, etc.) and for low-value property hearings with few documents.

SUGGESTION REGARDING NEW SUB-ISSUES TO ADDRESS.

The AAB Remote Hearings Workgroup or a component of it should separately work on the new Sub-issues: 1) developing efficiencies around scheduling and scheduling mechanisms; 2) establishing a meet and confer process and 3) offering pre-hearing conferences. These are important long-term solutions that may help to address the current backlog of appeals as well as the increased volume resulting from the passage of Proposition 15.

1) Develop efficiencies around scheduling and scheduling mechanisms.

Current Board guidance on “Scheduling Hearings” in Assessment Appeals Board Manual, p. 36; and Rule 323 states:

“All applications will be filed with the clerk of the board who, in accordance with specific guidelines established by the board of supervisors and/or the BOE, is responsible for validating the timeliness and completeness of all applications. If the clerk determines that an application is incomplete, the applicant must be promptly notified, and the applicant should be allowed a reasonable period of time in which to submit the required information. If an application is denied as untimely, or the board denies jurisdiction for any other reason, the applicant should be sent notice stating the reasons for the denial and informing the applicant of the right to request that the board schedule a hearing to review the denial.

When a timely valid application has been formally filed, the clerk must set the application for hearing. Coordination with the assessor's staff is essential because they can usually facilitate scheduling by categorizing and grouping applications by those that involve relatively straightforward assessments requiring little preparation time; those that are more complicated and require more preparation time; and those that will require an audit of the taxpayer's records prior to the hearing. In addition, staffing and workload levels within the assessor's office will also impact preparation times and may be a scheduling consideration. Although it may be administratively infeasible to coordinate with all applicants prior to scheduling hearings, the clerk should try to coordinate with applicants when scheduling the more complex appeals.

Occasionally, the applicant or the assessor will request that a hearing be rescheduled within a few weeks, or even days, of the hearing date. Usually this will occur when an unforeseen occurrence arises, such as illness affecting the assessor or applicant, the agent, or a material witness. The board should allow either the applicant or the assessor to make such requests in writing, explaining the need for rescheduling the hearing.

Rule 323 contains the provisions for hearing postponements. Rule 323, subsection (a), states in part:

The applicant and/or the assessor shall be allowed one postponement as a matter of right, the request for which must be made not later than 21 days before the hearing is scheduled to commence. If the applicant requests a postponement as a matter of right within 120 days of the expiration of the two-year limitation period provided in section 1604 of the Revenue and Taxation Code, the postponement shall be contingent upon the applicant's written agreement to extend and toll indefinitely the two-year period subject to termination of the agreement by 120 days written notice by the applicant. The assessor is not entitled to a postponement as a matter of right if the request is made within 120 days of the expiration of the two-year period, but the board, in its discretion, may grant such a request. Any subsequent requests for a postponement must be made in writing, and good cause must be shown for the proposed postponement. A stipulation by an applicant and the assessor shall be deemed to constitute good cause, but shall result in extending and tolling indefinitely the two-year limitation period subject to termination of the agreement by 120 days written notice by the applicant....

While a clerk may, for the sake of administrative convenience and efficiency, consider the scheduling preferences of the assessor's office, it remains the clerk's responsibility to confirm validity of applications and to make final scheduling decisions.”

2) Establish a meet and confer process.

“For an appeals’ hearing to be most effective, taxpayers and assessors should provide the board members with comprehensive information regarding the subject property and the


taxpayer's and the assessor's opinions of value for the subject property. There are various means for both the taxpayer and the assessor to obtain pertinent information for the hearing, and various methods,..." including pre-hearing conferences in some counties.

3) Offer pre-hearing conferences.

Current Board guidance on Current Pre-Hearing Conferences in Assessment Appeals Board Manual, p. 38 and Rule 305.2 states:

"A county board of supervisors may establish procedures for holding prehearing conferences which can be a valuable tool in the orderly scheduling and conduct of hearings. Such conferences are usually appropriate for hearings that will consume more than one day of appeals board time and may be set by the clerk at a time convenient to the taxpayer and assessor. The conference may deal with a variety of subjects, including but not limited to, application validity, bifurcation of hearings, time estimates, resolution on noncontroversial factual or valuation issues, outline basic legal and/or valuation issues to the appeals board, stipulations, status of requests for information, and calendaring of the full hearing on the issues.

Pre-hearing conferences have been shown to save considerable time and expense for the appeals board as well as the parties. They are most helpful in minimizing the need for the parties to request continuances of hearings that are unilaterally set by the clerk."



ANTONIO VAZQUEZ, Chairman
Board of Equalization, 3rd District

cc: Ms. Kari Hammond, Chief Deputy, Office of Chairman Antonio Vazquez
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