(916) 323-7714

July 25, 1985

Mr.

County Government Center Room 386
San Luis Obispo, CA 93408

Attention:

Use of Other Assessments at AAB Hearings

Dear Tom:

In your letter of April 29, 1985, you asked us to review our previous materials concerning the attempted use by taxpayers of other assessments as evidence at AAB hearings. You noted that your practice is not to allow such evidence and asked whether there are particular circumstances where other assessments should be considered by the AAB.

Verne Walton's letter of March 16, 1984 to Assessor Dick Frank deals with California Constitution Article XIIIA vis-a-vis Article XIII, Section 8 comparisons and reaches the correct conclusion that similar properties that have the same base years be assessed at similar values. This letter does not comment on the admissibility of evidence before the AAB.

letter of December 23, 1977 responds to the question of what information the AAB can and cannot consider in determining the full value of an applicant's property:

> The type of evidence that cannot be considered indicative of the full value of an applicant's property is the full value of comparable property as appraised by the assessor. This evidence has no bearing upon the full value of the applicant's property, but may merely indicate that the comparable property is over or under assessed.

In support of this conclusion, the letter goes on to review the legislative history of this issue but unfortunately does not cite a statutory reference. It states that prior to 1968 other appraisals were considered relevant but were excluded subsequent to AB 80 of 1967. The letter then refers to a 1973 statutory change that allowed such evidence but only for one year because it was repealed in 1974. Here I have been able to make a correlation to Revenue and Taxation Code Section 1609 entitled rules of evidence. The first two sentences were initially added to the Code as Section 1609.2 in effect November 13, 1968. Chapter 1070 of Stats. 1972, effective March 7, 1973 added a second paragraph:

> At such hearing, the county board of equalization or assessment appeals board shall consider, among other factors, the market value of comparable properties that lie in the vicinity of the property under consideration, as established by the assessor, and, at the request of the party affected or his agent, such evidence shall be admitted.

This paragraph was deleted by Chapter 1009 of Stats. 1973, effective January 1, 1974. The section was renumbered in 1976 and the third sentence was added in 1977.

I have some difficulty reaching the conclusion that this legislative history of Section 1609.2-1609 indicates a clear intent on the part of the Legislature that the assessor's appraisals of comparable properties may not be used as evidence. The stricken paragraph mandates consideration by the AAB and was enacted in the absence of any direction or limitation. At best a reasonable conclusion would indicate a neutral position on the part of the Legislature and that the AAB should evaluate this type of evidence for whatever it is worth.

The legislative purpose is further confounded by reference to Section 1610.8, entitled individual assessments. In the second paragraph therein the burden of proof is clearly allocated to the taxpayer but the second sentence explicitly permits the "records of the assessor" to be used to meet the burden. It seems clear to me that the full value, assessed value and assessor's appraisal of comparable properties are all assessor's records and are therefore permitted to be used by the applicant. This sentence was part of the 1967 change to Section 1605 (before renumbering to 1610.8) and

it has remained intact throughout the time Section 1609.2-1609 was being amended. We have no information as to any inter-relationship of these sections during the above periods of enactment and amendment.

The letter also relies on the case of Best v. Los Angeles Co., 228 Cal.App.2d 655, in support of the conclusion. Here again, I have difficulty agreeing that this case is directly on point. In my view the decision does not rule on the admissibility of specific properties but instead deals with an equalization problem comparing assessment ratios in rather large subdivisions that were subject to cyclic appraisals.

Mr. letter also points out the holding in Wild Goose Country Club v. County of Butte, 60 Cal.App. 339, which I think is much closer to the mark because the taxpayer introduced the assessed per acre values of specific adjoining properties at trial subsequent to the AAB hearing. But even here it is clear that the trial court received the assessed values and the appellate court did not rule on their admissibility. In my view this case stands for the substantive proposition that standing alone the use of the assessed values of comparable, adjacent parcels will not sustain the applicant's burden of proof as to the market value of the appealed parcel.

Although it may tend to prolong what otherwise could be brief hearings, I would suggest that county counsels take a rather liberal position in regard to the admissibility of an applicant's evidence. Georgia-Pacific Corp. v. Butte County, 37 Cal.App.3d 461, teaches that the refusal to hear expert testimony at the AAB hearing may be held to sustain an applicant's claim that the parcel has been appraised by an illegal method. This in turn sets up a trial de novo for the superior court, where, in the instant case, the expert was permitted to testify for the first time. It would have been better to deal with this expert before the AAB. Similarly it would be better to have the board accept the comparable assessments and then advise that standing alone they will not sustain the applicant's burden.

In response to your second question as to when the AAB should be advised to consider such evidence, the circumstances that provoked Revenue and Taxation Code Section 167 immediately come to mind. That statute was a reaction to the assessor standing on the presumption of correctness and making no explanation of his appraisal when a self-represente single family residence taxpayer had failed to meet his burden

of proof. Under Section 167 the burden in those instances has been shifted to the assessor. If such an applicant now appears and testifies as to his personal opinion of value and couples that with the fact that his tract, neighbor's house at the same base year is assessed at a lower full value, then not only should the board receive this evidence in its entirety but it should also require the assessor to respond thereto.

Furthermore, it now would be possible for the applicant to discover under Sections 408 and 408.1 the comparable sales upon which his appraisal was based and also possible to discover the comparables of his neighbors. If the same comparables or even a few of the same were used in the appraisals of the adjoining parcels, which would be likely in a tract situation, and if as above the applicant offered unequal assessments before the board, it definitely should be received.

Under Revenue and Taxation Code Section 167 and Section 401 the rationale of Wild Goose does not hold up if the adjoining parcels are in fact comparable. Assessments should now reflect market value directly and each should be made to the best of the assessor's ability within the reasonable limitations of his resources. To say that the applicant's evidence of unequal treatment does not tend to show that his assessment is incorrect because it could tend to show that instead the comparable is incorrect is to define a classic "catch 22". The AAB would be much better advised to accept the evidence and require the assessor to demonstrate why the unequal values are both correct or else ascertain if a mistake has been made.

We have no information on the Shared Legal Services Computer. Could you please put us in contact with the program coordinator so we can explore a connection. Will definitely see you at the tax-historic Madonna Inn next April.

Very truly yours,

James M. Williams
Tax Counsel

JMW:fr

cc: Mr. John J. Doherty, Deputy City Attorney

bc: Mr. Gordon P. Adelman
Mr. Robert H. Gustafson
Mr. Verne Walton
Legal Section