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Executive Director

April 1, 2005

***Subject: Assessment Appeals Board Procedures – Proper Admission of Evidence***

Dear Mr. \_\_\_\_\_,

This is in reply to your letter of November 24, 2004 addressed to Assistant Chief Counsel Kristine Cazadd in which you take issue with certain practices of the \_\_\_\_\_ County Assessment Appeals Board and with information provided in the Residential Property Assessment Appeals Pamphlet (Publication 30). Based on the documents provided with your letter and in telephone conversations with you, I understand that you believe that the appeals board violated the law by denying your request to submit an appraisal as evidence of value of your manufactured home because the appraiser who prepared the appraisal was not present at the hearing. You have requested a written opinion concerning whether the appeals board complied with legal requirements for the admission of evidence at an appeals board hearing. I have also spoken with Deputy Assessor \_\_\_\_\_ S \_\_\_\_\_ who was assigned to this matter and who represented the Assessor at the hearing. Ms. S \_\_\_\_\_ also provided copies of documents, which are incorporated by reference into the facts presented for our consideration.

As set forth below, any relevant evidence as defined by the Revenue and Taxation Code is admissible at an appeals board hearing. Generally, the appraiser who prepared the appraisal need not be present at the hearing if, in the opinion of the board, the appraisal itself includes information that adequately supports the value determination. However, the board has discretion to exclude any evidence that is unreliable and, therefore, not probative of the matters in issue. In our view, the appraisal that you submitted as evidence at the hearing did not constitute a reliable basis upon which the appeal board could make a decision. Thus, the board did not violate the law by declining your request to admit the appraisal as evidence at the hearing.

**Facts Presented**

On January 23, 2004, the \_\_\_\_\_ County Assessment Appeals Board held a hearing on your application appealing the value of your manufactured home property. The scope of the hearing was to determine whether there had been a decline in value of the property. You informed the appeals board that a well and concrete work on the property that are currently classified as land should be reclassified as improvements which would be subject to depreciation. In support of your position, you cited Property Tax Rules 121, 122 and 124 and Title 8 of the Health and Safety Code. You also presented an appraisal, which you describe as a” computer service company generated Blue Book Manufactured Housing Guide and NADA Manufactured Housing Appraisal Guide”. The deputy assessor, \_\_\_\_\_ S \_\_\_\_\_, objected to the introduction of your appraisal because the appraiser who prepared it was not present at the hearing.

Ms. S provided me with a copy of the appraisal that you sought to introduce at the hearing. It is a single-page letter from G of & Associates; Real Estate Appraisers dated December 9, 2002 addressed to you concerning an appraisal of your property completed on November 18, 2002. Mr. G states in the letter that he is writing in response to your request for him to provide the value of the mobile home separately from the entire property. Without any analysis or supporting data, the letter states that the value of the mobile home is \$17,875, makes a deduction of 5% for rural location and of 7% for depreciation and states that the total value is \$15,735. Ms. S was not provided with a copy of the full appraisal and was not allowed to inspect the property prior to the hearing. Ms. S stated that the board members reviewed the appraisal and indicated that they would not give it much weight. The appeals board sustained the objection and the appraisal was not admitted as evidence although you were allowed to orally present the value determination. In support of the Assessor's value, the appeals board received into evidence a dealer report of sale and a property description and comparable sales information.

At the conclusion of the hearing, the appeals board denied your application. In the decision, the board found that you did not overcome the presumption of correctness to which the Assessor's value was entitled and that the Assessor presented compelling and overwhelming evidence to support his value. Subsequent to the hearing, the Assessor notified you, in a letter dated May 21, 2004, that he had reviewed the value of your manufactured home as of the January 1, 2004 lien date and determined that value should be reduced from \$31,064 to \$21,000 to reflect both its age and repairs necessary due to its use as a rental unit.

### **Law and Analysis**

Generally, the conduct of assessment appeals board proceedings are governed by the Revenue and Taxation Code sections 1601 through 1615 and Property Tax Rules 301 through 326 (Title 18, California Code of Regulations, sections 301 through 326). With respect to the introduction of evidence at an appeals board hearing, section 1609 provides that:

The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence may be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. The applicant shall have the right to introduce evidence concerning the terms of sales of comparable property that has been sold.

Property Tax Rule 313, subsection (e) interprets and implements section 1609 in substantially the same language. In the Assessment Appeals Manual (AAM) on page 80, the Board has interpreted relevant evidence to mean:

Evidence tending to prove or disprove an alleged fact. Evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

In addition to relevance, section 1609 specifies as a criterion of admissibility that the evidence must be a type of evidence on which “responsible persons are accustomed to rely in the conduct of serious affairs.” Thus, an appeals board may deny admission of evidence that is relevant in that it tends to prove or disprove facts but that is unreliable as a basis for decision because, for example, it lacks any foundational support for its conclusions. The AAM on page 79 cites unreliability as a basis for the exclusion of evidence by an appeals board.

Although the December 9, 2002 letter may tend to prove or disprove an alleged fact, it is inherently unreliable as evidence of value because it lacks any foundational factual or analytic support for its value conclusions. There is no information in the letter upon which the appeals board could ascertain the correctness of the appraiser’s depreciation determination or total value determination. For example, the letter does not include a description of the manufactured home accessories, such as skirting, decking and air conditioning, which would be included in the value determination. Finally, there is no evidence of an adjustment from the wholesale price to the retail price as required for an appraisal done for property tax assessment purposes. In addition, the deputy assessor had not seen the complete appraisal report and had not been allowed onto the property to make a site inspection. Because the appraiser was not present at the hearing, the appeals board had no opportunity to obtain the information necessary to make an informed evaluation. In our view, therefore, the appeals board properly excluded the letter as unreliable evidence upon which to make a value determination because it lacked foundational support and the appraiser was not present to provide such support.

The opinions expressed in this letter are only advisory and represent the analysis of the legal staff of the Board based on current law and the facts set forth herein. These opinions are not binding on any person or public entity.

Very truly yours,

*/s/ Lou Ambrose*

Lou Ambrose  
Acting Assistant Chief Counsel

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cc: Honorable

County Assessor

Mr. David Gau, MIC:63

Mr. Dean Kinnee, MIC:64

Ms. Mickie Stuckey, MIC:62

Mr. Todd Gilman, MIC:70