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January 18, 2018

The Honorable Diane Harkey, Chair
California State Board of Equalization
450 N Street
Sacramento, CA 95814

Re: Assessment Appeals Practice/R&T Code 441(d)--Interested Parties

Dear Chair Harkey,

On behalf of the California Assessors' Association (CAA) and in our capacity as Assessors from Plumas and Santa Clara County we write to follow up on the meetings organized by the Board of Equalization's Property Tax Division on December 18, 2017 with the California Assessors Association (CAA), California Association of Clerks and Election Officials (CACEO) and the California Alliance of Taxpayer Advocates (CATA). The purpose of the meeting was to review allegations expressed by CATA concerning Information Exchanges, Assessment Appeal Applications and the scheduling of Assessment Appeal Hearings.

I am pleased to report that significant progress has been achieved since CATA publicly complained to the Board of Equalization (BOE) on September 26, 2016; many of the issues reiterated at the December 18 meeting have now been resolved by changes in practices by local assessors. Marc Aprea, on behalf of CATA agreed with this sentiment and noted in a recent correspondence to the Chair of the Board of Equalization:

"We are encouraged that the CAA's October 12 letter reported that several counties have modified their correspondence in response to the feedback received from both assessors and taxpayers. We are further encouraged that CAA welcomes the opportunity to participate in the upcoming interested parties process intended to improve best practices, and increase cooperation and compliance by taxpayers.... most assessors have fairly applied—and continue to fairly apply—Section 441(d)."

Now that multi-lateral communication has been established by the interested parties regarding the concerns tendered by CATA, we are optimistic that the cooperation will continue as county assessor's tender concerns about the practices of some in the tax advocacy profession. CAA looks forward to working with CATA, BOE, County Counsels and CACEO to find additional changes in practices that will further advance professionalism and ethical standards in the assessment appeals process.

R&T Code 441(d) Letters

During the past year the CAA focused primarily on allegations about some Assessors' letters requesting information. Since then, a number of counties have changed their 441(d) correspondence. We have created specific guidelines that have been adapted by the CAA, covering the process. As a result, the letters that most concerned CATA have now been eliminated. We have provided these guidelines to assessors, CATA and the BOE.

The guidelines make clear that there is a progression in tone between the first R&T Code 441(d) letter, and the letters that follow when the taxpayer fails to respond. For example, the guidelines suggest the initial R&T Code 441(d) letter state:

"It may be possible to agree to reduce the values without a formal hearing if you comply with this letter." or "The majority of appeals can be resolved without a hearing if the necessary information is made available to our office."

If a taxpayer does not respond, the guidelines go on to suggest additional language:

"In order for the Assessor to properly review the assessed value of the property under appeal, you are required to provide the following information: ..."

When we do not receive a response from two written requests, assessors increase the pressure and the CAA guidelines recommend the following language:

"The Assessor is entitled to receive from you, and is hereby requesting, the following information pursuant to Section 441 (d) of the California Revenue and Taxation Code." or "This request is made in accordance with Section 441(d) of the California Revenue & Taxation Code."

When the taxpayer chooses to be hostile toward the assessor's office (and a few are hostile), assessors have no choice but to inform the taxpayer of one of the consequences for failure to cooperate by citing language in R&T Code 441(h), which states:

"If a taxpayer fails to provide information to the assessor pursuant to subdivision (d) and introduces any requested materials or information at any assessment appeals board hearing, the assessor may request and shall be granted a continuance for a reasonable period of time."

The guidelines also suggest citing R&T Code Section 501 which reads:

"Failure to furnish information. If after written request by the assessor, any person fails to comply with any provision of law for furnishing information required by Sections 441 and 470, the assessor, based upon information in his (or her) possession, shall estimate the value of the property and, based upon this estimate, promptly assess the property."

Finally the CAA has urged assessors to limit language stating that the taxpayer will be "subject to possible enforcement actions, subpoena or penalties, as provided under California Law and Regulations."

Clearly, there is a progression. Recognizing that some of the letters could be misinterpreted, assessors have now changed some of the letters that were cited in CATA's original package of examples.

Yet assessors like any taxing authority, including the BOE, must be able to impose an increasing level of demand on taxpayers, including a subpoena as a last resort, to obtain information from taxpayers.

We disagree with any efforts to create a standard "one size fits all" for 441(d) letters; it is not realistic, nor in the best interest of the appellant or the assessor. The new Apple "Spaceship" headquarters in Santa Clara County is different than a strip shopping center or a small office building in another county and properly assessing each requires different information. At the December 18 meeting there also appeared agreement by CATA and assessors that discovery correspondence to a Fortune 500 company should be different from letters to residential property owners and small businesses.

CAA Response to CATA's List of Concerns

BOE staff presented the CAA, CACEO and CATA with 3 major categories of issues, which were:

1. Information exchanges
2. Improper rejection of assessment appeal applications
3. Continuous hearing dates

A substantial portion of the December 18 meeting concerned the first of the three groups of issues. In summary, assessors believe they have addressed most of CATA's concerns. Where existing law/legal opinions exist, assessors do not support creation of unnecessary property tax regulations to restate existing law. Below are the specific sub items from the "list of CATA's concerns ..." and the CAA's feedback.

1. Information Exchanges

- *Requests for information should be in writing—no verbal or oral Section 441(d) requests should be allowed or considered by the AAB.*

CAA: Assessors generally agree; requests for information should be in writing. As there is agreement, we recommend dropping this item from consideration during the interested parties' process.

- *Overly broad requests that are not limited to information regarding the property in question.*

CAA: This complaint is overly broad and subjective. Assessors strive to comply with Attorney General opinion 84-1104, and do not intentionally make overly broad requests. There is general agreement that assessors should follow the Attorney General's opinion. Consequently, we recommend dropping this item from consideration during the interested parties' process.

- *Assessors must not threaten to resort to the AABs to coerce taxpayer compliance.*

CAA: As noted above assessors have removed from their R&T Code 441(d) letters any language CATA perceived as threatening or coercive. In the interest of informing taxpayers, many who have never filed an appeal, assessors will continue to advise taxpayers of the legal consequences for failure to cooperate with reasonable requests for information. Assessors have addressed CATA's concerns and we recommend dropping this item from consideration during the interested parties' process.

- *Failure by the Assessors to comply with providing taxpayers or their representatives information requested under Revenue & Taxation Code Section 408(e) ("relating to the appraisal and the assessment of the assessee's property").*

CAA: The law is clear, R&T Code 408(e) specifies what information assessors must provide to taxpayers. The examples provided by CATA of failure to adhere to R&T Code 408(e) have been addressed, and the letters have been modified to reflect changes in practices. It is unnecessary to create

a rule that merely restates the law. Therefore, we recommend dropping this item from consideration during the interested parties' process.

- *Assessors cannot demand a statement under penalty of perjury as to whether the taxpayer has or does not have the information, or whether the taxpayer has adequately responded to the information request.*
CAA: Agreed. R&T Code 441(d) does not state that the assessor can require the taxpayer to provide a compliance statement under penalty of perjury. However, if the assessor determines that information is incomplete or not forthcoming, the assessor can bring the R&T Code 441(d) non-compliance to the attention of the Assessment Appeals Board at a prehearing conference. In some counties, the Assessment Appeals Board holds a non-compliance hearing to discuss the assessor's request for information, the status of the applicant's response, discuss any compliance issues with the parties in an effort to resolve them, obtain agreement about when compliance will take place, and schedule a hearing on the merits of the application for a mutually agreeable date thereafter. In appropriate circumstances, the AAB may discuss with the parties resolving the dispute regarding R&T Code 441(d) compliance by allowing the applicant to submit a sworn statement under penalty of perjury that the applicant does not have responsive documents.
- *Assessors must make Section 441(d) requests at least two weeks prior to hearing.*
CAA: Disagree. R&T Code 441(d)(1) begins with "At any time, as required by the assessor for assessment purposes..." Nevertheless, we agree with CACEO "some county boards have so many appeals to handle that they simply can't afford to vacate hearing days due to the parties' failure to comply with a rigid time requirement." In the interest of an efficient assessment appeals process, assessors oppose an inflexible and arbitrary deadline. Any rule would disproportionately harm the majority of applicants who are principally homeowners and small business owners.
- *The information provided by the taxpayer or the taxpayer's agent should be held confidential as provided in Section 451.*
CAA: This item was deferred and not discussed. Nevertheless assessors agree information provided by the taxpayer or the taxpayer's agent should be held confidential as provided in Sections 408 and 451. Assessors will continue to use information that is public, disclosed during a hearing and widely available. Therefore, we recommend dropping this item from consideration during the interested parties' process.
- *Assessors cannot use information obtained from one taxpayer under 441(d) and use the same information against a second or any other taxpayer in an assessment appeals board hearing without written authorization from the first taxpayer.*
CAA: This item was deferred and not discussed. Nevertheless assessors agree information provided by the taxpayer or the taxpayer's agent should be held confidential as provided in Sections 408 and 451. Assessors will continue to use information that is public, disclosed during a hearing and widely available. Therefore, we recommend dropping this item from consideration during the interested parties' process.
- *AABs should not be able to dismiss an assessment appeal application at a pre-hearing conference, or otherwise, because the taxpayer has not responded to a Section 441(d) request. AABs cannot legally limit taxpayers' administrative rights and remedies and cannot dismiss applications for any perceived 441(d) violation.*
CAA: The attached letter from Deputy County Counsel Marcy L. Berkman, who represents the Santa Clara County Assessment Appeals Board, discusses the legal authority of the Assessment Appeals

Board to hold a pre-hearing conference, sometimes referred to as a “441(d) non-compliance hearing.” The purpose of these hearings is to discuss and address the status of outstanding R&T Code 441(d) requests and the anticipated compliance schedule. The appeals board can then set the hearing on the merits of the appeal for a mutually agreeable date following R&T Code 441(d) compliance.

If an applicant or their agent fails to appear at the prehearing conference/R&T Code 441(d) non-compliance hearing, the Assessment Appeals Board can dismiss the application for lack of appearance at the hearing. Such dismissal results from the failure to appear at the hearing, not from the R&T Code 441(d) non-compliance itself. In Santa Clara County, for example, if an applicant or their agent fails to appear at the R&T Code 441(d) non-compliance hearing, the application is dismissed for lack of appearance. However if the applicant/agent inadvertently missed the hearing for example, they can then file a request for reinstatement of the appeal.

- *Assessors should not issue Section 441(d) requests that also threaten the taxpayer with criminal or administrative penalties for non-compliance within a particular time or if the response is deemed insufficient by the assessor.*

CAA: Agreed. The CAA, as noted above, supports the use of multiple letters that progress in tone and enumeration of consequences. Correspondence should educate taxpayers as to the administrative and criminal penalties for noncompliance long before seeking these remedies. Therefore, we recommend dropping this item from consideration during the interested parties’ process.

2. Improper Rejection of Assessment Appeal Applications

- *County clerks cannot reject applications because of the false belief that agency authorizations must be signed by taxpayers in the same calendar year as the application was filed. While it is true that the agency authorizations must be signed and dated before the appeal applications are filed, California law does not require that they be signed in the same calendar year in which the applications are filed. Agency authorizations can be signed in earlier years as long as they state that the agent is authorized to sign and file applications for the relevant roll years.*

CAA: We concur with CACEO and support additional clarification in Rule 305.

- *The agency authorization rules must be clarified for processing on-line filings. For in-person filings, current rules require applicants to attach agency authorizations to their appeal applications. But these rules don’t work for on-line filings, since there is no way to attach agency authorizations. The attempted application of this obsolete rule has been mixed, at best, and the results have hurt taxpayers.*

CAA: We concur with CACEO and support additional clarification in Rule 305.

- *Standardized state-wide assessment appeal applications should be considered. Currently, each county develops their own forms based on state-wide guidelines; however, these forms vary county to county and result in accepted or rejected statuses depending upon the specific county.*

CAA: We agree with CACEO that this is not an issue as “the BOE standardized the Application for Assessment Appeal in 2015. Although a few appropriate variations are permitted by the BOE (counties with a hearing officer program, for example), BOE staff is very strict in making sure a county’s form complies with BOE requirements for standardization.”

3. Continuous Hearing Dates

- *In some counties, the Assessor asks for indefinite postponement after the taxpayer presents its case-in-chief. This is obviously done to buy time to prepare for cross-examination, thus compromising taxpayers’ due process rights. AABs should be required to make every reasonable effort to maintain*

continuous hearing dates. Delays longer than a week should require a showing of undue hardship on the part of the assessor.

CAA: We concur with CACEO and “are willing to work with the BOE and the parties to develop a sentence for inclusion in the Assessment Appeals Manual urging the county board to make every reasonable effort to maintain continuous hearing dates, given the reasonable needs of the county board and of the parties to the proceeding.”

As noted above, significant progress has occurred during the past 12 months with tangible changes in practices by assessors. The CAA is happy to continue working with tax agents and CATA to continue modifications in practices that improve communications with taxpayers and efficient processing of appeals for all taxpayers. For example the CAA would support incorporation into a “Letter to Assessor” of the attached guidelines developed last year by the CAA.

Except where noted above, the CAA opposes any unnecessary and burdensome regulations that are redundant of existing laws, legal opinions, annotations, handbooks etc. In keeping with current practices when a taxpayer believes the assessor’s staff have conducted themselves in a manner inconsistent with the law, the taxpayer should contact the assessor directly. In those instances where disagreement remains, the taxpayer should contact both the CAA and the BOE property tax division stating their specific concerns.

The current system works well for the vast majority of assessment appeal applicants as evidenced by the number of appeals filed that do not result in a hearing, or the Assessment Appeals Board agrees with the applicant. In the most recent (2015-16) BOE Budget Workload and Assessment Appeals Activities report, the data indicates that 80% of all appeals do not go to a hearing and among the 20% that do go to a hearing the taxpayer receives a reduction in 70% of the cases. The current system works well, and the BOE should not create new regulations that impede the efficient processing of appeals and adversely impact the vast majority of applicants.

Sincerely,



Charles W. Leonhardt
CAA President
Assessor, Plumas County



Lawrence E. Stone,
Assessor, Santa Clara County

Enc: CATA Guidelines
Letter, Santa Clara County

cc: John McKibben, CACEO
Mark Aprea, CATA

Rob Grossglauser, CAA Advocate
Edward Yen, General Counsel, Los Angeles Assessor's Office
BOE Members
David Yeung, BOE
Marcy Berkman, Santa Clara County Appeals Board Counsel

GUIDELINES FOR INITIAL 441(d) REQUESTS
DRAFT

#	Component	Description	Comments	Sample 1	Sample 2 (For subsequent notices if applicable)
1	Purpose	State the main purpose of the 441(d) letter. If you've not received a response to previous letters, the purpose should always remain the same.	The assessor can make a 441(d) request at anytime for assessment purposes; it does not have to be related to an appeal.	"The Office of the Assessor is in the process of reviewing your assessment appeal application and additional information is required to consider your request for a reduction." OR "We are in the process of reviewing the assessed value of the above-referenced property relative to the valuation date(s) under appeal, and we are requesting the following information. OR "The majority of appeals can be resolved rapidly and without a hearing if the necessary information is made available to our office"	"In an earlier letter, the Assessor requested specific information relating to the above-referenced property. To date, you have failed to comply with the Assessor's request." OR "We sent a request on xxxxx for information required for the above referenced assessment appeal. As of the date of this notice, our office has not received a response" - RECOMMEND AGAINST - "By providing the requested information, you will not be subject to possible enforcement actions or penalties as provided under California Laws and Regulations."
2	Benefit	Explain why a timely response will benefit the taxpayer.		"It may be possible to agree to reduce the values without a formal hearing if you comply with this letter." OR "The majority of appeals can be resolved without a hearing if the necessary information is made available to our office."	"In order for the Assessor to properly review the assessed value of the property under appeal, you are required to provide the following information:..."
3	Legal Authority	State the pertinent R&T code section(s).	Reference R&T Code 441(d) as the legal authority for the request. Reference R&T Code 451 as to the legal authority for keeping the information confidential.	This request is made in accordance with Section 441(d) of the California Revenue & Taxation Code. AND/OR "The information supplied will be held in accordance with Section 451 of the California Revenue & Taxation Code.	"The Assessor is entitled to receive from you, and is hereby requesting, the following information pursuant to Section 441 (d) of the California Revenue and Taxation Code." OR "This request is made in accordance with Section 441(d) of the California Revenue & Taxation Code."
4	Information Requested	Provide a specific list of items that the taxpayer is required to provide pursuant to 441(d).	In letter(s), it is important to be specific in requests for documentation. If there is no response to previous notices, perhaps state that you are "renewing" your earlier request for documentation for assessment purposes.	Examples include: Rent roll for the property as of valuation date or lien date; income and expense reports for specific years; lease agreements, purchase agreements (if the property sold); asking rents for vacant space, current listings, offers or marketing efforts for the subject property; description and actual cost of any new construction, and any other information relevant to the determination of the property's fair market value." OR "A copy of any appraisal and/or proforma performed on the property for any purpose other than this appeal, performed within two years of the valuation date(s) under appeal."	"I have renewing my request for the following information: rent roll for the property as of valuation date or lien date; income and expense reports for specific years; lease agreements, purchase agreements (if the property sold); asking rents for vacant space, current listings, offers or marketing efforts for the subject property; description and actual cost of any new construction, and any other information that would affect the property's fair market value." OR "A copy of any appraisal and/or proforma performed on the property for any purpose other than this appeal, performed within two years of the valuation date(s) under appeal."
5	Optional Information	This is additional information that is not required under 441(d) but the assessee may voluntarily provide.	You can cite the language in 441(d): "other data relevant to the determination of an estimate of value are to be considered as information essential to the proper discharge of the assessor's duties."	"To further assist us in the review and to help expedite the process, the Assessor is requesting the following information: your opinion of value and supporting data including an appraisal and/or analysis with appropriate independent documentation, such as comparable sales, comparable rents and cap rates." OR "An interior and exterior site inspection may be necessary. Please contact the undersigned to arrange an appointment as soon as possible." OR "We welcome any additional information which you believe is relevant to a proper determination of value." OR "We will review and consider any additional information which you believe is relevant to a proper determination of value."	"To further assist us in the review and to help expedite the process, the Assessor is renewing its request for the following information: An appraisal and/or analysis supporting your opinion of value with appropriate independent documentation, such as market sales for the date under appeal, performed within two years of the valuation date, and no later than 90 days after the lien date under appeal." OR "We welcome any additional information that you believe supports your opinion of value such as a formal appraisal, a proforma, or a less formal value estimate that might include comparable sales and/or comparable rental data." OR "It is essential that this information is supplied to our office by (insert date)."
6	Due Date	Provide a reasonable due date to respond to the request.	441(d) does not specify a deadline for a response, however, offices should inform the taxpayer of a deadline to return information to the office. Offices should use their judgement when setting deadlines, although most counties ask for compliance within two (2) weeks or thirty (30) days. Contact information for your office should be provided in the case where an extension is requested.	"The requested information must be provided by SPECIFIC DATE." OR "It is essential that this information is supplied to our office within 30 days from the date of this letter."	It is essential this information is supplied to our office by (insert date).
7	Consequence	Provide the assessee with the consequence of a non-response (invoke appropriate code section or local rule to compel the applicant to comply with the request) ¹	You can cite language in R&T 441(h): If a taxpayer fails to provide information to the assessor pursuant to subdivision (d) and introduces any requested materials or information at any assessment appeals board hearing, the assessor may request and shall be granted a continuance for a reasonable period of time. Additionally, you can cite R&T Code Section 501 which reads, "Failure to furnish information. If after written request by the assessor, any person fails to comply with any provision of law for furnishing information required by Sections 441 and 470, the assessor, based upon information in his (or her) possession, shall estimate the value of the property and, based upon this estimate, promptly assess the property."		Pursuant to Revenue & Taxation Code section 441(h), if you fail to provide information to the assessor and introduces any requested materials or information at the hearing, the assessor may request and shall be granted a continuance for a reasonable period of time. OR "Unless you provide the following requested information by [insert date], the Assessor will request a continuance or postponement of your hearing, and ask the Assessment Appeals Board to require you to provide the requested information in advance of the rescheduled hearing date" OR "This is your second notice. If you fail to respond by _____, Revenue and Taxation Code section 501 requires the Assessor to estimate the value of your property based upon the information in the Assessor's possession, and promptly assess the property based on this assessment." RECOMMEND AGAINST - "You will be subject to possible enforcement actions, subpoena or penalties, as provided under California Law and Regulations.

¹Recommended "best practice" is to progressively and iteratively cite consequences for non compliance starting with cooperation enabling accuracy in the initial assessment all the way to exercise of subpoena and misdemeanor penalty under Section 462 after all other consequences have been cited.

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December 14, 2017

Via E-Mail Only

Larry Stone
Assessor
Office of the Assessor
70 West Hedding Street, 5th Floor, East Wing
San Jose, CA 95110

Re: Santa Clara County Assessment Appeals Board Local Rule 305.2 -1(b)

Dear Mr. Stone:

I am the counsel for the Santa Clara County Assessment Appeal Board. I understand that on December 18, 2017, the State Board of Equalization will be meeting with the California Alliance of Taxpayer Advocates (CATA) and the California Assessor's Association regarding various concerns expressed by CATA, one of which pertains to Santa Clara County Assessment Appeal Board (Santa Clara County AAB) Local Rule 305.2-1(b). That Local Rule governs the portion of the Santa Clara County AAB agenda pertaining to appeals where the Applicant is non-compliant with the Assessor's 441(d) request.

Over the many years that I have served as counsel for the Santa Clara County AAB, it has been my experience that utilizing this prehearing conference procedure for cases that are non-compliant with the Assessor's 441(d) request ensures a smooth process for determining when the Applicant anticipates being able to comply with the Assessor's 441(d) request and scheduling a value hearing on the merits for a date thereafter that is mutually convenient for the parties.

If you wish to do so, please feel free to share this letter explaining the statutory framework and Santa Clara County AAB's Local Rule 305.2-1(b) with the interested parties at the upcoming State Board of Equalization meeting.

A. STATUTORY FRAMEWORK

1. California Constitution. Article XII Section 16 of the Constitution specifically directs county boards of supervisors to adopt rules of notice and procedure to facilitate the work of local assessment appeals boards and to ensure uniformity in the processing of applications before that local assessment appeal board.

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2. Property Tax Rule 305.2 Expressly Authorizes Prehearing Conferences. Property Tax Rule 305.2(a) provides that the county board of supervisors may establish prehearing conferences and rules of procedure for such prehearing conferences. *Inter alia*, pursuant to Rule 305.2(a), prehearing conferences can be used to determine the status of information requests and to schedule a date for the assessment appeals board to consider evidence on the merits of the Application.

3. Revenue and Taxation Code Section 441(d). Revenue and Taxation Code section 441(d) requires taxpayers to provide the Assessor with information and records regarding their property. Typically, the Assessor sends a 441(d) letter requesting certain information regarding the property that is the subject of the assessment appeal application.

4. Revenue and Taxation Code Section 1604/Property Tax Rule 309. Revenue and Taxation Code Section 1604(c)(2) and Property Tax Rule 309(c)(3) govern the scheduling of AAB hearings in situations where the Applicant has not fully complied with the Assessor's 441(d) request for information.

Section 1605 and Property Tax Rule 309(c)(3) anticipate that where an Applicant is not fully compliant in responding to the Assessor's 441(d) request, the Application likely will **not** be set for a value hearing. Section 1605 and Property Tax Rule 309(c)(3) expressly provide that where an Applicant is not fully compliant with Section 441(d), the two-year rule that would otherwise require the Applicant's opinion of value to be determined to be the basis for the property taxes does not apply. Section 1605(e) and Property Tax Rule 309(e) direct that if a hearing will not be held within two years because of the Applicant's 441(d) non-compliance, the Applicant shall be so notified.

5. Revenue and Taxation Code Section 462 – Criminal Misdemeanor.

Not only does the Revenue and Taxation Code anticipate that an assessment appeal application will not be set for hearing within two years if the Applicant has not fully complied with Section 441(d), but it also provides criminal penalties for Applicants who do not comply with the Assessor's 441(d) requests. Revenue and Taxation Code 462 provides that every person is guilty of a misdemeanor who, after written request by the Assessor, refuses to make available any information which is required by Section 441(d). Section 462 imposes, upon conviction of such an offense, up to six months in the County jail or a fine or both. It further imposes additional fines on non-compliant corporations.

While Section 462 provides a means for the Assessor to resort to criminal law and criminal penalties to enforce compliance with Section 441(d), I have observed that the Santa Clara County AAB has been reticent to urge the Assessor to resort to using criminal law as a cudgel to enforce Section 441(d) compliance. This is especially true since the use of Local Rule 305.2-1(b) has proven to provide a smooth, efficient and amicable means to schedule a timeline for the

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Applicant to provide the information requested by the Assessor and for the parties and Santa Clara AAB to schedule the value hearing for a mutually agreeable date thereafter.

Moreover, regular resort to the criminal court via Section 462 in every case of 441(d) non-compliance by an Applicant (rather than using Local Rule 305.2-1(b)) would not be in the interests of judicial efficiency and judicial economy, either for the Superior Court or the Assessment Appeals Board.

In contrast, use of the Local Rule 305.2-1(b) procedure has proven to be an effective and efficient method of amicably determining whether there are any difficulties preventing 441(d) compliance, ascertaining when compliance can be achieved, and promptly scheduling a value hearing on the merits for a date thereafter that is mutually convenient for the parties.

B. SANTA CLARA COUNTY AAB LOCAL RULE 305.2-1

The Santa Clara County Assessment Appeals Board has used its 441(d) noncompliance procedure for many years, and has found the procedure to be an effective, efficient and cooperative way to smoothly move the assessment appeal process along towards a value hearing on the merits. This process is expressly authorized by Santa Clara County Local Rule 305.2-1, which is part of the Santa Clara County AAB Local Rules that were established and adopted by the Santa Clara County Board of Supervisors.

Pursuant to Local Rule 305.2-1, where an assessment appeal application has been scheduled for hearing, but the Applicant has not been fully compliant in responding to a 441(d) request from the Assessor's office, the matter is placed on the 441(d) noncompliance portion of the Santa Clara County AAB's Agenda. [Local Rule 305.2-1(b)(1).] For items placed on this 441(d) noncompliance portion of the agenda, at the time of the hearing, the Assessor's office provides a copy of the 441(d) letter and explains the nature of the Applicant's noncompliance. [Local Rule 305.2-1(b)(2)(A).] The Applicant then advises when they anticipate compliance with the Assessor's 441(d) request will be completed and explains the reasons for any anticipated compliance issues. [Local Rule 305.2-1(b)(2)(B).] The parties then advise the board regarding what date they anticipate being ready to go to hearing. [Local Rule 305-1(b)(2)(C).] Typically, the Santa Clara County AAB then works with the parties to select a mutually agreeable date for the value hearing. In some cases, the parties and AAB decide that the next scheduled hearing date should be a broader pre-hearing conference pursuant to Local Rule 305.2-1(a).

It has been my experience that the Local Rule 305.2-1(b) procedure functions smoothly, efficiently and cooperatively – both where Applicants are represented by agents and where Applicants are self-represented. In the case of self-represented Applicants, I have observed the process frequently helps non-compliant Applicants better understand what information the Assessor is seeking and better understand whether they have information in their possession that is responsive to the Assessor's 441(d) requests. In cases where the Applicants are represented by agents, I have observed that most agents utilize the process smoothly and find it useful in setting

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a timeline for compliance and a mutually convenient value hearing date. In fact, I have observed a number of occasions wherein the Applicant (or perhaps the Applicant's prior agent) has not provided the Applicant's current agent with an outstanding 441(d) request that pre-dated the current agent, and thus the pre-hearing process has helped the current agent to facilitate moving their client's assessment appeal along. I have also observed that Applicants – whether self-represented or represented by agents – tend to appreciate the opportunity to work amicably in scheduling a 441(d) compliance timeline and in scheduling a value hearing for a mutually convenient date thereafter.

I appreciate the opportunity to provide input regarding Santa Clara County AAB's Local Rule 305.2-1. I can be reached at 408-299-5928 if you have any questions.

Very truly yours,

JAMES R. WILLIAMS
County Counsel

Marcy L. Berkman

MARCY L. BERKMAN
Deputy County Counsel

MLB:mlb