



ANTONIO VAZQUEZ
CHAIRMAN
CALIFORNIA STATE BOARD OF EQUALIZATION

MEMORANDUM

Date: December 11, 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. 12/17/20 Board Meeting: Options for Consensus Discussion with the COVID-19 County Boards of Equalization / Assessment Appeals Boards Workgroup on Additional Items.**

As a result of the Board's on-going commitment to the COVID-19 County Boards of Equalization / Assessment Appeals Boards Workgroup to provide input on guidance for remote hearings, several options generally reflecting the discussion at the November 18, 2020 meeting are set forth below. Utilizing the same procedure as last month, these options will serve as a starting point for discussion intended to lead to a consensus, together with the Workgroup's input and input from the Executive Director (ED) and staff, this month. When a consensus is reached on an item, the Board may adopt either specific language or the basic concept agreed upon and direct the ED to further develop and/or publish it in a Letter to Assessors on remote hearings. On issues where no consensus is reached, further Workgroup discussion will be scheduled at the January meeting together with recommendations submitted from the ED. Alternatively, the Board may decide that the BOE begin an Interested Parties process to provide further long-term guidance on unresolved issues.

OPTIONS FOR CONSENSUS DISCUSSION & RESOLUTION OF NON-CONSENSUS ITEMS.

On December 17, 2020, the Workgroup will address the type of guidance needed on the following three Issues: 1) developing efficiencies around scheduling and scheduling mechanisms, 2) consider establishing basic procedures for a meet and confer process, and 3) encouraging the use of pre-hearing conferences. These are being proposed as possible long-term solutions that may help to address the current backlog of appeals and the potential increase in Proposition 8 assessment appeals for the 2020/21 tax year.

ISSUE 1. Developing Efficiencies around Scheduling and Scheduling Mechanisms.

The current *Assessment Appeals Manual (AAB Manual)* and LTA No. 2013/039, *Effective Administrative Practices – Assessment Appeals Process*, do not provide guidance regarding the scheduling of remote hearings. (See <https://www.boe.ca.gov/proptaxes/pdf/aam2003final.pdf> and <https://www.boe.ca.gov/proptaxes/pdf/lta13039.pdf>.) Three options for possible guidance relative to “Scheduling Efficiencies and Mechanisms for Remote Hearings” are suggested below.

Option 1. Consider allowing local flexibility as suggested in the following statements and encourage clerks to contact BOE with concerns regarding the scheduling of remote hearings, based on its clearinghouse role.

The Board recognizes the balance between the need for statewide uniformity and county flexibility to meet local needs in conducting remote hearings, subject to the application of existing Rules to remote hearing procedures and to the practice of mirroring in-person hearings to the extent possible when conducting remote hearings. Accordingly, if a remote hearing is scheduled, the clerk must provide notices to all parties informing them of remote hearing access instructions, coaching or training videos, staff consultation, and special needs accommodations. To assist counties administering remote hearings, the BOE is serving as a clearing house for purposes of addressing questions and providing specific guidance and may be contacted at BOE Property Tax Department (916) 274-3350.

Option 2. Consider advising clerks to inform applicants that they may withdraw an application as early as possible if they do not intend proceed, consistent with *Assessment Appeals Manual*, p. 35, “Withdrawal of an Application” and LTA No. 2013/039.

Generally, an applicant can withdraw an application at any time prior to a hearing, including a remote hearing. In some counties, however, if the assessor has indicated that evidence to support a higher value will be introduced at the hearing, the applicant will not be allowed to withdraw the application without the concurrence of the assessor. Counties that use this process must have a local rule allowing such a procedure. If an applicant withdraws an application that has also been designated as a claim for refund, the applicant should be advised that withdrawal of the application will also constitute withdrawal of the claim for refund. Clerks should inform applicants to withdraw their application at the earliest possible date if they do not intend to proceed with the hearing, so that their scheduled time can be given to others as available dates and county resources are limited.

Option 3. Consider advising clerks to remind applicants of the requirement to comply with RTC Section 441(d) requests before a hearing, consistent with guidance in *AAB Manual* p. 39 on “Section 441, Information from Taxpayer's Records,” and LTA No. 2020/033, “Amendment to the Appeals Manual – Postponements and Continuances.” <https://www.boe.ca.gov/proptaxes/pdf/lta20033.pdf>

Clerks should remind applicants that Section 441(d) requires a taxpayer to make available to the assessor, for assessment purposes, information or records regarding the taxpayer's property or any other personal property located on premises the taxpayer owns or controls. The assessor may obtain details of property acquisition transactions, construction and development costs, rental income, and other data relevant to an estimate of value, and it may be introduced at an appeals board hearing.

Taxpayers are expected to comply with an assessor's reasonable requests, as both the assessor and the taxpayer must be able to use and present the same information at hearings. If a taxpayer fails to provide information to the assessor under Section 441 (d) and introduces any of it at a hearing, the assessor may request and will be granted a continuance for a reasonable time. Section 441 (d), applies regardless of whether or not an appeal has been filed.

ISSUE 2. Consider Establishing a Meet and Confer process.

The current *AAB Manual* does not provide guidance on a “meet and confer” process.

Option 1 – for LTA guidance. Consider providing the following statement to encourage informal discussion between the parties before a hearing, if a county does not have a formal Meet and Confer Process:

For an appeals’ hearing, whether remote or in-person, to be most effective and the process to be most efficient, taxpayers and assessors should provide each other and the AAB 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 and opportunities for informal discussion between the taxpayer and the assessor to obtain pertinent information for the hearing, which can help them to narrow and resolve issues before a hearing and thereby reduce the time commitment involved. As a result of such discussions, many appeals are resolved by a stipulation as to value between the parties, per RTC Section 1607. If a county has a formal meet and confer process, the parties may consider using this method for an early resolution of the issues.

ISSUE 3. Offering pre-hearing conferences.

Property Tax Rule 305.2 states that a county board of supervisors may establish prehearing conferences, and if established, shall adopt the rules of procedure for prehearing conference – and that the purpose of a prehearing conference is to resolve issues such as: clarifying and defining the issues, determining the status of exchange of information requests and requests for information, stipulating to matters on which agreement has been reached, combining applications into a single hearing, bifurcating the hearing issues, and scheduling a date for a hearing officer or the board to consider evidence on the merits of the application.

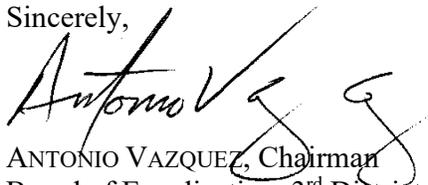
Option 1. Encourage use of Pre-Hearing Conferences where appropriate; the following option is consistent with Rule 305.2, *AAB Manual*, p. 38, “Pre-Hearing Conferences,” and references LTA No. 2013/039, *Effective Administrative Practices – Assessment Appeals Process*, regarding “Stipulation Documents.”

The Board encourages county boards of supervisors to use their authority under Property Tax Rule 305.2 to establish prehearing conferences as appropriate to meet their needs, and if established, to adopt procedures for holding prehearing conferences, either in-person or remotely, as these conferences can be a valuable tool in the orderly scheduling and conduct of AAB and county board 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 be conducted remotely and 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 of 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 are an option for all counties and 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. In addition or as an alternative, if the assessor and the applicant resolve the disputed issues, RTC Section 1607 provides that a written stipulation may be submitted to the board as provided in LTA No. 2013/039.

Sincerely,

A handwritten signature in black ink, appearing to read "Antonio Vazquez". The signature is stylized and written over a faint, larger version of the same signature.

ANTONIO VAZQUEZ, Chairman
Board of Equalization, 3rd District

cc: Ms. Kari Hammond, Chief Deputy, Office of Chairman Antonio Vazquez
Mr. Gary Gartner, Chief Deputy, Office of Vice Chair Mike Schaefer
Mr. Matt Cox, Chief Deputy, Office of Member Ted Gaines
Ms. Regina Evans, Chief Deputy, Office of Member Malia M. Cohen
Ms. Yvette Stowers, Deputy State Controller
Ms. Brenda Fleming, Executive Director
Mr. Henry Nanjo, Chief Counsel