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BRANDI L. ORTH, PRESIDENT
Fresno County Clerk/Registrar of Voters
2221 Kern Street, Fresno, California 93721
(559) 600 - 3011 - Fax(559) 488-3279
E-Mail: Borth@fresnocountyca.gov
CACEO website: www.caceo58.org

December 11, 2020

The Honorable Antonio Vazquez
Chairman, Board of Equalization
450 N Street, MIC: 72
Sacramento, CA 95814

VIA EMAIL

Dear Chairman Vazquez:

RE: December 2020 BOE Meeting: CACEO Response to CATA-Recommended Agenda Items for the COVID-19 County Boards of Equalization/Assessment Appeals Boards Collaborative Workgroup: Consensus Guidance/Letters to Assessor

In preparation for your Board's upcoming December 2020 meeting, the California Association of Clerk Elections Officials (CACEO) submits its response to the November 24, 2020 letter submitted by California Alliance of Taxpayer Advocates (CATA).

Issue b. Appropriate Methods for Dealing with Document Submission

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

Documentary Evidence:

The CACEO (including Los Angeles County) agrees that the parties and AAB members should be able to simultaneously view all documents during appeal hearings.

Hearings on the Merits - Viewing of Witnesses and Board Members:

Los Angeles County continues to advocate that video appearance by hearing participants should not be required either at remote evidentiary hearings or in appeals from hearing officer decisions to the AAB.

The remaining CACEO-member agencies concur with CATA's position that for evidentiary hearings on the merits of an appeal, all participants should have the ability to view each other absent free agreement otherwise by the parties and board members.

For example, there may be a circumstance where internet or wi-fi instability would require one or more remote hearing participants to switch to audio-only to ensure a better audio connection. In such a situation, the board and the parties should be free to decide whether to allow that participant to switch to audio-only for the remainder of the hearing, or whether to continue the hearing given the technological issue.

In some counties, hearing officer decisions may be appealed to the AAB. The position of Los Angeles is that video appearances are not required for such remote appeals from hearing officer decisions. The remaining CACEO agencies do not oppose the idea of allowing participants to agree to forego video for such remote appeals to the AAB from hearing officer decisions.

Routine Non-Evidentiary Matters - Viewing of Witnesses and Board Members:

Routine administrative hearings such as granting postponements and withdrawals, validity hearings, prehearing conferences, approval of stipulations and jointly recommended values, and other routine matters should not require that parties be able to see each other via video. By analogy, for many years, California's superior courts have permitted parties to appear telephonically for such case management activities. Each County should be free to determine whether remote hearings on such routine matters will be conducted telephonically or include a video component.

Issue c. Technology Options

Sub-issue 4. Notice Requirements to parties-access instructions, coaching/training videos and accommodations for special needs

The CACEO agreed with the BOE language in LTA 2020/57 (November 18, 2020) recited by CATA on this sub-issue. Further guidance on this subject is unnecessary.

RESPONSE TO CATA'S SUGGESTIONS RE PREHEARING CONFERENCES AND CATA'S SUGGESTED NEW MEET AND CONFER/CASE MANAGEMENT PROCEDURE

CATA's letter encourages use of the existing prehearing conference process authorized by Property Tax Rule 305.2 and additionally suggests implementing a new "meet and confer" process.

CACEO emphasizes that different counties have different appeal workloads, staffing resources, and resolution dynamics within their jurisdiction. Any actions taken by the BOE should continue to respect the need for each County to maintain local administrative discretion over its local assessment appeal board procedures.

Prehearing Conferences

The CACEO supports BOE issuance of an LTA that reminds stakeholders that Property Tax Rule 305.2 permits counties to adopt local rules governing the use of prehearing conferences; encourages counties to adopt such local rules and utilize such prehearing conferences where appropriate for that County; and encourages Applicants and Assessors to utilize prehearing conferences in those counties that offer prehearing conferences. As already stated in the Assessment Appeals Manual, prehearing conferences can be a useful case management tool for determining when Applicants will finish providing information responsive to the Assessor's 441d requests so that hearing dates can be scheduled, for discussing potential bifurcation and consolidation of cases, for determining the anticipated duration of evidentiary hearings, and for scheduling mutually convenient hearing dates.

CACEO does not support the mandatory use of prehearing conferences. Such a requirement would ignore the needs and circumstances of the local appeal board. In some circumstances, mandatory use of prehearing conferences would, rather than providing a positive benefit, merely impose additional processing time and administrative burdens on already over-burdened appeals boards and their staff, thus increasing the backlog and decreasing the available time for AABs and their clerical staff to focus on completing their evidentiary caseload.

Applicant & Assessor Discussions/CATA's Meet and Confer Proposal

As previously noted, CACEO strongly supports encouraging applicants and assessors to meet privately together without the AAB to discuss case management issues relating to pending appeal applications such as potential bifurcation, potential case consolidation, and status of information exchanges being utilized by the parties, and also for the parties to identify and narrow the substantive issues in dispute and to reach agreement on the value of the subject property where possible. CACEO strongly supports applicants and assessors meeting to discuss such matters as far in advance of the hearing date as possible.

CATA and the CACEO agree that such meetings should be between assessors and applicants and should not involve the appeals board clerk or AAB members attending the meeting.

CACEO disagrees with CATA's proposal that, following their meeting, the applicant and assessor may submit a completed meet and confer/case management form to the Appeals Board Clerk/Staff to report the outcome of their meeting. First, this risks information being provided to the AAB that the AAB should not have prior to the evidentiary hearing on the merits of the appeal application. Second, the receipt and processing of such forms, even if one page long at most, would add to counties' administrative burdens and costs at a time when counties are experiencing budget cuts and an inability to increase staffing levels. Third, submission of such forms would inevitably result in posturing by the parties. Property Tax Rule 305.2 already permits each county to promulgate local rules governing their prehearing conference procedures. Those counties, if any, that desire the parties to submit some sort of written joint case management statement as part of the local rules governing prehearing conferences may do so.

CACEO would support the creation of an optional formal meet and confer process as follows:

- a. A formal meet and confer/case management process would be an option that each County could choose whether or not to adopt and implement via its own local rules. (Similarly, Property Tax Rule 305.2 permits counties to adopt rules governing their prehearing conferences and hold prehearing conferences under those rules).
- b. Any BOE-approved meet and confer/case management form for the Assessor and Applicant to use during their private meeting together would not be submitted to the appeals board or to the board's clerk or staff unless the County, through its own local rules, permits or requires submission of that form to the assessment appeals board.
- c. If the parties agree on a proposed hearing date or range of dates, they may submit a joint scheduling request to the AAB Clerk (or to the AAB during a prehearing conference); however, that scheduling request would not be binding on the AAB or its Clerk/staff.
- d. Where the parties are proposing hearing date(s) that will occur within 120 days of the expiration of the time to hear appeals under Revenue and Taxation Code section 1604, the applicant must execute a time waiver and submit that waiver together with the scheduling request, unless Applicant has already previously executed such a waiver that still remains in effect.

Chairman Vasquez
December 11, 2020
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The CACEO continues to appreciate the leadership and guidance provided by the BOE in this difficult time. Thank you for considering the viewpoints of the CACEO set forth in this letter.

Sincerely,

S/Thomas R. Parker

Thomas R. Parker
Deputy County Counsel
Los Angeles County



Jennifer Tran
Acting Chief, Assessment Appeals Division
Executive Office, Board of Supervisors
Los Angeles County



Marcy L. Berkman
Deputy County Counsel
Santa Clara County

JM:sg

c: The Honorable Ted Gaines
The Honorable Malia Cohen
The Honorable Mike Schaefer
The Honorable Betty T. Yee
Yvette Stowers, Deputy Controller
Henry Nanjo, Acting Chief Board Proceedings
Catherine Taylor, Chief, Board Proceedings
Brandi Orth, CACEO President
Don Gaekle, President, California Assessors' Association
Breann E. Robowski, CATA Ad Hoc Committee on Remote Hearings