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ANTONIO VAZQUEZ
BOARD CHAIRMAN
CALIFORNIA STATE BOARD OF EQUALIZATION

MEMORANDUM

Date: August 18, 2023

To: Sally Lieber, Vice Chair
Ted Gaines, Board Member, First District
Mike Schaefer, Board Member, Fourth District
Malia M. Cohen, State Controller

From: Antonio Vazquez, Chairman

Re: **August 29, 2023, Board Meeting Item 9. – Update and Review of Proposed Assessment Appeals Board Training Course through the County Counsels Association of California.**

Issue.

Honorable Members, on June 29, 2023, Mr. Thomas Parker, Senior Deputy County Counsel for Los Angeles County, submitted the *State Board of Equalization Assessment Appeals Board Counsel Training on State Board Rules 301-326* (attached to the Public Agenda for this Board Meeting) to BOE Chief Counsel Henry Nanjo for review. The curriculum includes and explains all current BOE regulations ("rules") governing the conduct of local county assessment appeals boards for legal counsels assigned to advise and represent such boards.

After thorough review by Mr. Nanjo and the Property Tax Department Deputy Director, Mr. David Yeung, it is my understanding that neither the Legal Department nor the Property Tax Department have any suggestions or modifications for the course curriculum. Therefore, it is timely and appropriate for this Board to conduct our own review and to distribute it to the County Assessors, taxpayer representatives and all interested parties for consideration and input.

Proposal.

I am proposing that we tentatively schedule a full hearing to allow public input and discussion with all County Assessors and stakeholders at our next regularly scheduled Board meeting on September 26-27, 2023, and that in preparation for that hearing, each of our offices review the course and propose any suggestions at that time. The Board may determine appropriate action relevant to any suggestions or input made after the close of the hearing.

Upon final approval and publication by the Board, the course will be made available to county tax counsels through the *County Counsels' Association of California* for their use and reference.

Conclusion.

I am grateful to the Los Angeles County Counsel for allowing Mr. Parker to produce this work and to the *County Counsels' Association* for confirming their willingness to make it available. Although the Board and the counties are not mandated to conduct a course for county counsels or AAB attorneys, we have a long history of providing education and training among the counties, their staff, and stakeholders on property tax and assessment appeals matters. Our goal is to ensure that this training advances equity for all, so that every party may "receive an adequate, impartial hearing of any appeal regarding that property."[1]

ANTONIO VAZQUEZ, Member
Board of Equalization, 3rd District

cc: Ms. Deborah Bautista-Zavala, Chief Deputy, Office of Chairman Antonio Vazquez
Mr. Gary Gartner, Chief Deputy, Office of Vice Chair Sally Lieber
Mr. Matt Cox, Chief Deputy, Office of Member Ted Gaines
Mr. Cody Petterson, Chief Deputy, Office of Member Mike Schaefer
Mr. Hasib Emran, Deputy State Controller
Ms. Yvette Stowers, Executive Director
Mr. Henry Nanjo, Chief Counsel
Ms. Dawyn R. Harrison, County Counsel, County of Los Angeles
Mr. Thomas Parker, Senior Deputy County Counsel, County of Los Angeles

[1] Forward to Assessment Appeals Manual (2003), "In the administration of the property tax in California, achieving equity in the equalization process requires two elements. First, the taxpayer and the appeals board should have as much relevant information as possible … Second, all parties must receive an adequate, impartial hearing of any appeal regarding that property ... This manual is provided by the State Board of Equalization as an informational resource for members of local boards of equalization and assessment appeals boards throughout the state and is intended to advance standardization of assessment appeals practices within California."

STATE BOARD OF EQUALIZATION ASSESSMENT APPEALS BOARD COUNSEL TRAINING ON STATE BOARD RULES 301-326

INTRODUCTION

This training is a basic introduction to State Board of Equalization Rules 301-326, the formally adopted State Board regulations ("rules" or "Rule") governing the conduct of local county assessment appeals board (hereinafter "board" or "boards") for legal counsels assigned to advise and represent boards at the county level. The formal administrative rules addressing the conduct of the property tax appeal process were first adopted by the State Board of Equalization in 1967 and, thereafter, amended or added to from time to time. The State Board of Equalization also acknowledges that county boards of supervisors may enact "local board rules" to govern property tax appeal hearings under the California State Constitution. This training will not address or cite any local board rules that may exist within any particular county beyond noting that an attorney assigned to serve as board counsel and individuals appointed to serve as Assessment Appeals Board ("AAB") members or hearing officers should be aware of any local rules in their jurisdiction as well as the State Board Rules 301-326 discussed in this training.

Local boards are the functional equivalent of county superior courts for the purposes of hearing and resolving legal challenges made by taxpayers (hereinafter "assessees" or "applicants") to the property tax assessment values and related determinations made by county assessors. They are independent review bodies not a part of the assessor's office and not subject to valuation views held by the county board of supervisors. Counties in which the board of supervisors also act as the local board of equalization have the same separation of powers i.e., the five county supervisors acting in their role as county supervisors may not set property tax valuation assessments. They may only do so in their roles as the local board of equalization. (*Plaza Hollister Ltd. Partnership v. County of San Benito* (Dist. 6 1999) 72 Cal.App.4th. 1.)

AAB members are appointed for a three-year term and may be reappointed by the county board of supervisors. Boards are judicially defined by the California Supreme Court as recently as 2010 as "a constitutional agency exercising quasi-judicial powers." (*Steinhart v. County of Los Angeles* (2010) 47 Cal.4th. 1298, at 1307.) The California Supreme Court went on to say, in the same legal opinion, that filing an appeal with the board is the first step of a "three-step process for handling challenges to property tax assessments and refund requests." (Id., at 1307.) County boards of supervisors are empowered, by local ordinance, to create independent boards to hear property tax appeals as an alternative to the supervisors themselves serving as the local board of equalization. (See California Constitution Article XIII, section 16.) Boards are empowered to make factual determinations and apply the applicable property tax law (as well as interpret property tax law) in resolving the property tax appeals before them.

Thus, the job of assigned board counsel is to objectively advise the board(s) of that county on legal questions and otherwise assist the board(s) as needed in carrying out their constitutional task. The constitutional task of the board is, at its core, to find the correct property tax value or property tax result, applying the law, State Board Rules, local rules (where they exist), and the evidence presented to it by the parties at hearings. The role of the board counsel is

an important position to occupy and carry out in this context. It is the goal and purpose of the State Board of Equalization to assist through this introductory training material.

Rule 301

Definitions of Terms Used in Regulations

Rule 301 provides the important definitions of terms used in Rules 301-326. Among the comparatively important terms are the following:

"Person affected or "party affected" (see subsection (g));
"Full cash value" or "fair market value" (see subsection (h);
"Equalization" (see subsection (k).)

These terms, and others found in Rule 301, are used throughout the State Board Rules relating to board appeal hearings and determinations. The Revenue and Taxation Code is another important source of property tax term definitions.

Rule 302

Jurisdiction of Local Appeals Boards

Rule 302 is a useful regulation because it sets out the summarized "Function and Jurisdiction" of boards. The fundamental function regarding its hearing function is to provide due process to all applicants through "timely and meaningful" hearings (see subsection (a)(1)). Boards act in a "quasi-judicial" capacity according to subsection (c) of this rule, a characterization consistent with the California Supreme Court description cited in the Introduction. The jurisdictional part of this rule is found at subsections (a)(2-7) and (b). Boards have the administrative jurisdiction to:

(a) Lower, sustain, or increase (with proper advance notice to applicants from the assessor, commonly called "raise letters") individual assessee assessments;

(b) Determine the full value of property and, when timely appealed, the base year value of the subject property;

(c) Hear and decide penalty assessments levied on assessees;

(d) Review and equalize escape assessments enrolled by the assessor;

(e) Determine the classification of the subject property of the appeal, possible classification determinations making the assessed property exempt from assessment (the "inventory" exception to assessment, for instance);

(f) Determine the allocation of total assessed property value to multiple within the appraisal unit of properties or types of subject property subject to appeal;

(g) Exercise the jurisdiction found at Revenue and Taxation Code section 1605.5 regarding change in ownership determinations and new construction determinations as well as assessment penalties arising out of Sections 463, 482, and 504 of the Revenue and Taxation Code.

Subsection (b) of Rule 302 bars boards from granting or denying property tax exemptions or hearing claims that an exemption from property taxes was improperly denied by the assessor except where the issue is the appropriate classification of the subject property, as noted above.

Rule 302 also states the important rule that board decisions must be based only on the proper evidence presented by the parties at the hearing. This is reiterated in a similar fashion in Rule 324(b). This is a fundamental procedural rule which is related to the due process requirement found in subsection (a)(1) of this rule.

Rule 305

The Filing of Applications and Application-Related Procedures

Rule 305 is a long and complex regulation with multiple subjects within its terms. It addresses the following: who may file an appeal application, what must be in the appeal application, what evidence is required if the person filing is an agent or representative of the actual property owner and assessee, when the application may be timely filed, when or how the application may be amended by the applicant, and authorizes "validity" hearings to determine if the application is procedurally valid or not. So, to start off, who may file an appeal application besides the subject property owner themselves?

Who May File an Application?

(a) A person affected (the owner of the property or another party paying all or a share of the resulting property tax created by the assessment);

(b) A person's agent/representative;

(c) A person's relative (see Rule 317 for the relatives eligible to represent an assessee).

Agent/Representative Requirements

If application is filed by a person's agent:

(a) The agent/representative may be an attorney-at-law, licensed to practice law in California; or

(b) An authorized agent (other than attorney as mentioned above), commonly known as a "Tax Agent," with written authorization for the representation of the applicant in the appeal attached to the application or on the application;

(c) The authorization must have the date of execution of the authorization, a statement saying that the agent may file on behalf of the property owner in the particular calendar year, specific parcels or assessments covered by the authorization, the applicant's signature and title, and stating that the agent will provide the applicant with a copy of the application;

(d) Business entity applicants must include an authorization signed by an officer or authorized employee of the entity;

(e) The agent/representative must have authority to file the application on behalf of the assessee at the time application is filed, not afterwards;

(f) The current requirements for evidence of valid agent representation were included in Rule 305 amendments in 2000 due to substantiated concerns and complaints from assessors and boards of applications being filed by alleged agents who failed to complete the appeal process, and the assessees were left with a denial of their appeals for lack of appearance.

Online Application Filing

Several counties (but not all) have an online application system allowing for electronic filing of applications. Beginning on January 1, 2022, any county using an online application system should include a feature allowing for agency authorization documents to be submitted electronically with the application. Online application system implementation is not a mandated feature of county board processes under any State law or State Board Rule.

Required Contents of an Application

Applications are to be made available for free to taxpayers by counties. The application form is a document approved by the State Board for use at the county level and must contain the following information:

(a) Name and address of the applicant;

(b) Name and address of the applicant's agent when an agent represents the applicant;

(c) The written authorization of the applicant to use the particular agent;

(d) A description of the property subject to appeal sufficient to identify it on the assessment roll;

(e) The applicant's opinion of value of the subject property;

(f) The enrolled assessment value of the property set by the assessor;

(g) A summary of the facts relied upon by the applicant supporting the claim that the board should change the assessed value, base year value, or classification of the property;

(h) Certain notices to assessees;

(i) One or more reasons (appeal basis) for filing the appeal such as base year valuation, challenge to a change in ownership determination, regular lien date value, escape, challenge to new construction determination, etc.;

(j) Where the county has hearing officers pursuant to Section 1636 and following of the Revenue and Taxation Code, the application should have a box for the applicant choosing to use a hearing officer rather than the board (provided that the property type and monetary amount at issue allows for the use of a hearing officer);

(k) Applicants appealing property subject to an escape resulting from a business property audit by the assessor (see Section 469 of the Revenue and Taxation Code) may (see Rule 305.3) file an appeal on any previously "unequalized" (property not previously the subject of a board appeal and decision for the tax year in question) real property within the audit period as well as appeal the personal business property valuation.

An application not containing all the information above is a facially "invalid" appeal and cannot be accepted by the board. The board must give prompt notice of the missing information to the applicant and allow for a "reasonable time" to the applicant to provide the missing information. There is no set time for "reasonable," and local boards may set the time period applicable to that particular county. Conversely, an application containing all necessary and correct information is valid (assuming that it is also timely filed).

When Must Applications be Filed to be Timely?

(a) Regular lien year assessments (valuations as of January 1 of each calendar year), also sometimes called "lien date appeals," must be filed between either July 2 and September 15 when the assessor elects to send out assessment notices as defined at Section 619 of the Revenue and Taxation Code by August 1, or between July 2 and November 30, when the assessor does not elect to mail assessment notices by August 1. A majority of counties and assessors use the latter time period;

(b) Escape assessments (see Sections 531 and following of the Revenue and Taxation Code) must be filed within 60 days after the date of mailing on the assessment notice or the postmark date, whichever is later. The appeal time period in Los Angeles County and any other county using tax bills as the escape assessment notice is 60 days from the mailing date or postmark date on the tax bill, whichever is later;

(c) Supplemental assessments (see Sections 75.10 and following of the Revenue and Taxation Code) must be filed within 60 days after the mailing date of the assessment notice or postmark date, whichever is later; or in Los Angeles County and other counties within 60 days after date of mailing printed on tax bills or postmark date, whichever is later;

(d) Misfortune and calamity ("M&C") appeals of the reduced value assigned to property physically damaged by such events (floods, earthquakes, etc.) under Section 170 of the Revenue and Taxation Code must be filed within six months after the mailing date of the proposed M&C valuation of the assessor.

What Constitutes "Timely"?

Besides the time frames recited above, applications are timely filed where they are sent through the United States Postal Service ("USPS"), properly addressed and postmarked no later than the last day of the filing period or delivered in person to the board within the appeal time by 5:00 p.m. on the last day. If there is a question about the timeliness that is resolved by the above provisions, applicants may provide "proof satisfactory to the board" showing that the mailing occurred on the last day of the filing period or within the filing period. Any written statements or affidavits presented to the board as proof must have been made within one year of the last day of the filing period. Boards make discretionary decisions based on the evidence presented regarding the question of satisfactory proof when such issues are before the board. When the last day of the filing period falls on a Saturday, Sunday, or public holiday, any application postmarked on the next business day is considered timely. Very importantly, Rule 305(d)(7) makes it clear that boards have no jurisdiction to hear any application "unless filed within the time periods above." Boards may only hear timely appeals of applications and issues timely placed before them and within their jurisdiction as found in statutes and formal regulations.

Additionally, Rule 305(c)(4) grants boards the authority to hold "validity" hearings dedicated to determining if the application, as filed, is valid. Such validity issues may include the presence or absence of necessary information as well as issues surrounding the timeliness of the application or the ability of the board to hear the application at all. Applicants have a right to request a validity hearing before a board if they disagree with the initial validity determination of the board.

Amending Applications After Filing

Applicants or their agents may amend previously timely filed applications as follows:

(a) Up until 5:00 p.m. on the last day of the filing period;

(b) After the filing period has expired where the previously determined invalid application is corrected to satisfy Rule 305(c)(4);

(c) The board, as a discretionary matter, chooses to amend the application to a basis that is not initially chosen on the application, but which could have been timely selected as an appeal basis during the filing period for the original application (see Rule 305(e)(2)(C));

(d) Rule 305 was amended in 2001 to allow the third category of discretionary amendments after a 1999 Second District Court of Appeals ruling held that an applicant could not (under the then-existing rule language) seek to amend its application grounds after the filing period had run.

Is the Application a "Claim for Refund"?

Dissatisfied taxpayers must make an administrative claim for a refund with the county before going to court to challenge the board's decision. Taxpayers can do this by either checking the claim for refund box on the application or, after the board renders its decision which the assessee does not agree with, file a separate written claim for refund. (See Rule 305(f).)

How Long Must Board Records Be Maintained?

Rule 305(g) allows for the destruction of board appeal records after five years since the final board action on the appeal or three years after final action if the records have been "microfilmed, microfiched, imaged, or otherwise preserved on a medium" providing access to the records.

May the Board Consolidate Applications?

The board may consolidate applications with the same or substantially similar related issues of valuation, law, or fact. The initiative for the consolidation may come from the board itself or from the parties by motion.

Rule 305.1

Limited Discovery By the Appeal Hearing Parties

Rule 305.1 implements the provisions of Section 1606 of the Revenue and Taxation Code. It is one of the "discovery" mechanisms for parties to an appeal hearing before the board. Put simply, either the assessor or the applicant may invoke Section 1606 and request a written exchange of information between the parties. The assessed value of the property must exceed $100,000 according to the statute before this statute may be used by a party. The rule, at subsection (a), expands the right to use this discovery tool to appeals where the property is $100,000 or less while also stating the over $100,000 valuation threshold as well. When invoked, the following applies:

(a) The request may be filed with the board clerk at the time of application filing or at any time up to 30 days before the start of the appeal hearing;

(b) The board clerk forwards the request to the other party;

(c) The exchange request includes the information listed at Rule 305.1(a)(1-3);

(d) Details of the parties' evidence or witness testimony is not required to be exchanged;

(e) When there is an exchange of information done, the parties may thereafter exchange evidence only on matters relating to the exchanged information unless the non-

introducing party agrees to allow the new evidence to come in (Rule 305.1(c).) The non-introducing party "shall" also be granted a continuance for a reasonable time period (if needed and requested) to review the new information not previously exchanged and introduced at the hearing;

(f) When a party is non-responsive to the other party's request for an exchange of information within the regulatory time frame, the board may grant a postponement of the hearing for a reasonable time. If the board finds as a factual matter that the non-compliance is "willful," the hearing will start as scheduled, with the non-complying party only commenting on the other party's evidence. The non-complying party "shall not be permitted [by the board] to introduce other evidence unless the other party consents to such introduction." There is no guidance provided in the rule on what constitutes "willful" behavior, making the facts of the situation extremely important to the board and its counsel in making such a finding.

This rule does not include a discussion of other discovery procedures authorized by the Revenue and Taxation Code.

Rule 305.2

Authorization for Prehearing Conferences

This is a short and simple regulation which allows county boards of supervisors to establish a prehearing conference system (and rules of procedure for them) within the board of that county. The stated purpose is "to resolve issues such as, but not limited to," clarifying and stipulating to matters of agreement in the appeal, determine the status of exchanges of information discussed above, and other requests for information (such as Sections 408, 441(d), 454, and 468 of the Revenue and Taxation Code) between the parties, scheduling and how issues within the appeal will be dealt with procedurally.

The rule specifically states that a board shall not deny an appeal based "solely" on the ground that a Section 441(d) request of the assessor was not responded to by the applicant.

Not all counties use this procedural tool in its board operations, and this rule does not make prehearing conference use mandatory. There are county circumstances where such conferences are very useful because of the number of appeals or complexity of appeals within that county. In other counties with very different circumstances, this type of conference may not add procedural value to those counties' circumstances. The board of supervisors for each county is the body authorized to determine the degree of usefulness of prehearing conferences for their property tax appeal system.

Rule 305.3

Appeals of Assessor Audit Determinations

This rule was briefly mentioned in the discussion of Rule 305 above, noting that an appeal of a personal business audit escape assessment levied by the county assessor allows the taxpayer to also appeal real property assessments of the audit period if the real property was not previously equalized in the audit period. (See Rule 305(d)(2) and Section 469 of the Revenue and Taxation Code.) It is important to note that the right to appeal the audit results leaving the assessee "subject to escape" assessment is not triggered only by the assessor formally issuing and enrolling an escape assessment. The "subject to escape" language has been legally interpreted to mean that the assessor found previously non-assessed value in personal business property through the audit process. It does not required that the assessor levy an escape assessment on the property subject to escape. (See Rule 305.3(b)(2); *Heavenly Valley v. County of El Dorado* ((2000) 84 Cal.App.4th. 1323.) Additionally, the "material value" of the escaped value found by the assessor must be at least one percent of the audited value of the assessee's trade fixtures and tangible personal property in order for an appeal of the audit results to be filed.

A Rule 305.3 appeal must be filed within 60 days after the date of mailing of the audit results showing property subject to escape assessments. The audit notice must indicate that the assessee can file an appeal of the audit result. (See Rule 305.3(d)(2).)

Rule 305.5

Setting Base Year Values

Rule 305.5 concerns the setting of the base year value in California property tax law. The issue of the appropriate base year value arises after a change in ownership of real property has occurred. Any base year value determined by the board is conclusively presumed to be the base year value of the real property. (See Rule 305.5(b).) When an applicant challenges the value of their real property, and the board finds that the full cash value for the tax year on appeal is less than the adjusted base year value for that tax year, the value found by the board is not setting the base year value "unless the base year value is the subject of the appeal."

In other words, this rule says that the normal Proposition 13 (see California Constitution, Art. XIIIA) valuation process for regular lien year value appeals of real property compares the full cash value (the market value) of that year against the adjusted base year value (the purchase price typically plus annual inflation increases up to 2% over time). Proposition 13 requires the enrollment of the lower value of the two figures for that year. If the lower value is the current year full cash value, that will only apply to that year's assessment (commonly called the "Prop. 8" or Proposition 8 value). The established base year value for overall Proposition 13 purposes remains the adjusted base year value for the real property. It is only when the issue in the appeal is a timely base year value challenge that the board's valuation decision sets the base year value going forward as adjusted by inflation. (See Rule 305.5(a).)

Rule 306

Application Filing Notice to the Assessor and Hearing Scheduling Consideration

This rule states that the board clerk must send a copy of each application filed to the assessor. The rule is the same for each written request for amendment or correction (see Rule 305(e) previously discussed). The board must also consider a "reasonable time" for hearing scheduling to allow the assessor to review the challenged assessment value.

Rule 307

Noticing Procedures

Rule 307 provides the basic notice procedures for board hearings. After the application is timely filed by the applicant and a hearing date is set by the board clerk, she or he takes the following steps:

(a) Notifies the applicant or agent in writing either by personal delivery (rarely if ever done as a practical matter) or through the USPS of the hearing date, time, and place. The current version of the rule does not address electronic means of notification in any manner. Notwithstanding this lack of formal guidance, there are counties that will use electronic means to notify parties of hearings when the board has email addresses, and the parties have no objection to electronic noticing;

(b) States in the notice that the board is required to find "the full value" of the subject property from evidence presented at the hearing;

(c) Notifies the applicant or agent that the board may raise, under certain circumstances, lower, or affirm the challenged enrolled assessment value being appealed;

(d) Tells the applicant that a reappraisal of all property of the applicant at the subject property site may result from a reduction of the value of a portion of the improved real property or portions of installations which are partly real property and partly personal property;

(e) The notice of hearing must be transmitted at least 45 days prior to the scheduled hearing date, and it could be sent more than 45 days if the board wishes to do so. Some counties send these notices 60 days in advance. This notice time period is different from the minimum 10-day notice period required for a new hearing date after a continuance was granted (see Rule 323);

(f) The assessor also receives notice of the time and place of the hearing from the board clerk.

Boards possess the unilateral authority to propose raising the assessed value of the property without any assessee filing an application per Rule 307(d) and Rule 324(b). When the board decides to consider raising assessed values without any application triggering its review, it

must provide at least a 20-day advance written notice unless the assessee or agent waives that notice. The contents of the notice basically follow the same rules as required for hearing notices triggered by an application of an assessee.

Rule 308

Requests for Findings of Fact

Both the applicant and the assessor have the right to request findings of fact from the board regarding the board's decision in the appeal. Counties have the authority to enact and charge applicants a findings of fact fee, which must be "reasonable" in amount. (See Section 1611.5 of the Revenue and Taxation Code; Rule 308(a).) Findings fees are not charged by all counties and, where fees are charged, the range of fee amounts adopted will vary from county to county.

When Must the Findings of Fact be Requested and Paid?

Findings may be requested of the board either by marking the appropriate box on the application indicating that findings are sought or in writing to the board clerk before the start of the board hearing. Additionally, the applicant requesting findings must pay any applicable findings fee to the board clerk in whole or in part by the conclusion of the hearing.

Withdrawal of Findings of Fact Requests Allowed

Requesting parties may withdraw their request for findings (orally or in writing) at the conclusion of the hearing. If this occurs, the other party may make their own request and pay the applicable fee at that time. Assessors are usually not required to pay the findings fee. Applicants are the party most often requesting findings.

Scope of Findings Discussion

Rule 308(b) echoes the statutory language of Section 1611.5 of the Revenue and Taxation Code when it states that all "material points raised in the application" must be "fairly disclosed." The findings must also include "a statement of the methods of valuation used in determining the full value of the property." Boards and their counsels preparing findings of fact, as a practical matter, are best served by addressing all issues and arguments presented at the hearing, explaining what the board concluded and why it concluded as it did. This approach will best insulate the boards' findings from being found legally insufficient by a court if the findings are challenged in court proceedings.

What Happens if Findings are Found to be Legally Insufficient by a Court?

Rule 308(c) and Section 1611.6 of the Revenue and Taxation Code both provide for an applicant filing a motion for reasonable attorney fees related to the costs incurred to show the legal insufficiency of the findings. Counties are liable to applicants if findings are requested (and paid for where a fee applies) and not produced at all or where findings are produced and found to

be legally insufficient by a court of law. It is important to note that this attorney fees recovery statute is not a general cost recovery statute for all litigation costs incurred by the applicant. The applicant cannot recover their costs for all phases of the property tax refund litigation. The statute limits the fees' recovery to costs related to establishing the legal insufficiency of the findings. (*Chinese Theatres, LLC v. County of Los Angeles* ((Dist. 2 2020) 59 Cal.App.5th. 484.)

Hearing Transcript Requests and Providing Findings to Parties

Rule 308(b) requires that requests for hearing transcripts of board hearings be made within 60 days of the final determination being issued. Counties are required by the same rule subsection to issue findings within 45 days of the final determination issuing. Please see the discussion of Rule 325 for when a board decision is "final."

Rule 308.5

Challenges to Impartiality of Board Members and Hearing Officers

Just as with court litigation in front of judicial officers, the assessor and/or the applicant may challenge board members and hearing officers' impartiality to hear an appeal. The procedure for making and resolving such a challenge is provided in this rule. See also Section 1624.4 of the Revenue and Taxation Code regarding challenges to the impartiality of a board member or hearing officer.

Provide a Written Challenge Statement

The challenging party must submit a written statement to the board clerk at the "earliest practicable opportunity after discovery of the facts constituting the ground of the disqualification." The challenge must be filed not later than before the board hearing starts. Once the hearing starts the presentation of evidence, no disqualification challenge is timely. Facts must be presented in the statement and signed by the applicant or agent or the assessor, whomever is challenging the decisionmaker. (See Rule 308.5(a).)

Service of the Written Challenge Statement and Written Response of the Challenged Decisionmaker

The board clerk serves the written challenge statement on each party in the hearing as well as the challenged board member or hearing officer. The challenged board member or hearing officer has up to 10 days to respond in writing. She or he may consent to not hearing the appeal with appointment of a replacement by the clerk or deny the challenge and offer her or his facts in defense of her or his impartiality. All written documents must be verified by oath governed by Section 446 of the Code of Civil Procedure. (See Rule 308.5(a).)

Determining the Disqualification Challenge

A board member other than the challenged one decides if the challenge is appropriate. The board member making the decision is either agreed upon by the parties (assessor and

applicant) or the clerk appoints the board member where the parties do not agree. (See Rule 308.5(b).)

Alternate Procedure

Rule 308.5(c) states that, where a county board of supervisors adopted Sections 1640.1 and 1641.1 of the Revenue and Taxation Code, the local board may elect to schedule the application appeal in front of it rather than have the board use the procedures outlined above.

What is a Legitimate Challenge Basis for Lack of Impartiality?

Neither the statute nor Rule 308.5 states with any specificity what constitutes a legitimate impartiality challenge basis as a factual or practical matter. Economic conflicts of interest between a board member and the party before that member likely and logically constitutes one basis for disqualifying the member. The Fair Political Practices Act and its commission regulations on economic conflicts could be one source of guidance for AABs and their counsels. Past associations (personal or professional) between the member and a party could also arguably constitutes a factual basis for disqualification. It should, of course, be kept in mind that the statutory qualification criteria for appointment to board member and hearing officer positions affirmatively requires professional experience that shows or suggests board members have had past contact with one of the parties, the agents, or the attorneys involved in the appeal hearing. It is not clear if such past contact and interaction automatically disqualifies the board member or hearing officer or what degree of past contact supports disqualification. It would be useful and important to examine the length of the past contact or interaction, the precise factual nature of the past contact, and similar elements in determining when illegal bias is present on the board member or hearing officer's part. The number of contacts, the tenor of the contacts, and a general sense of the ability of the board member or hearing officer to render an impartial decision notwithstanding some degree of prior contact and interaction could be key to the analysis of a disqualification effort.

Rule 308.6

Appeals Filed by Board Members, Hearing Officers, and Other Related Persons

The appointment of a person to serve as a board member or hearing officer does not mean that that person cannot file an appeal application for their own property if they perceive they are over assessed or otherwise incorrectly assessed. Rule 308.6 is designed to address such situations.

Who is Subject to This Rule?

Current or alternate members of the board, current hearing officers, current employees of the board clerk office, and current employees of the County Counsel Office advising and representing either the board or the assessor in board hearings as well as appeals in which those categories of persons appear to represent their spouse, registered domestic partner, parent, or child in their county of employment are subject to this rule. (See Rule 308.6(a).)

Referral to Alternate Board in Another County

The board clerk in the situations described above may refer the application to a special three-person alternate board in another California county to hear the appeal. Alternatively, and less likely as a practical matter, the board clerk could ask the county superior court to appoint a special alternate board within the county of employment to hear the appeal. (See Rule 308.6(b).)

Alternate Board Appointment Qualifications

Appointees to the special alternate board hearing the appeal must meet the qualifications of Section 1624 of the Revenue and Taxation Code, the same qualifications governing the appointment of most counties' board members and hearing officers. There is special legislation governing the board member appointment criteria for Los Angeles County, which is found in Section 1624.05 of the Revenue and Taxation Code. Additionally, Sections 1624.1 and 1624.2 of the Revenue and Taxation Code apply to the appointment and removal of alternate board members per Rule 308.6(e).

Rule 309

Time Period(s) to Resolve Appeal Applications

Rule 309 is the first of several rules (see Rules 309 through 321 and 324) addressing aspects of the actual board hearing.

Subsection (a)

Counties with a population over 4 million start a new year of appeal hearings on the fourth Monday of each September and runs through the next 12 months to the following September, when a new year of hearing commences, i.e., September to September. All other counties with populations of less than 4 million start their year of hearings on the third Monday of each July and run for 12 months, i.e., July to July. Nothing in California property tax law or regulation requires a board to hold hearings on an appeal filed during a regular lien filing period (July 2 through November 30 generally) in the same calendar year before the filing period expires. As a practical matter, such a quick hearing scheduling is unlikely to occur for several reasons. The assessor will need time to prepare for any hearing, and the board is not likely to schedule a regular lien date appeal hearing in the same calendar year it was filed in because the board needs to know how many appeals will need to be scheduled. (See Rule 306.)

Subsection (b)

This subsection is the regulatory incorporation of Section 1604(c) of the Revenue and Taxation Code's general rule of two years to hear and resolve appeals unless one or more of the exceptions apply. (See also Rule 323 regarding time waivers in this regard.) The first exception to the two-year determination requirement is where "the applicant or the applicant's agent and the board mutually agree in writing or on the record to an extension of time." This is known as a "time waiver."

Subsection (c)

Should a board not hear and determine an appeal within two years from the date of filing (in the absence of a time waiver), the applicant's opinion of value is conclusively the value of the subject property for the tax year under appeal unless the value at issue is the base year value of the property. When base year values are at issue, the applicant's opinion of value shall be the value of the property until the board hears and determines what it finds to be the correct base year value. Failure to act within the two-year time period does not cause the applicant's opinion of value to be enrolled under the following circumstances:

(a) The applicant has not filed a timely and complete application (this is a reiteration of Rule 305);

(b) The applicant did not submit a full and complete property statement to the assessor as required by law regarding the subject property of the appeal;

(c) The applicant has not complied fully with a Rule 305.1 exchange of information request or a Section 441(d) of the Revenue and Taxation Code information request from the county assessor;

(d) "Controlling litigation" in a court of law is pending in State or federal court whose jurisdiction includes the county hearing the application, hearing issues directly related to an issue in the application, and whose court ruling will control board resolution of the issue at its level;

(e) The applicant-initiated disqualification proceedings against a board member or hearing officer, pursuant to Section 1624.4 of the Revenue and Taxation Code, were filed within 90 days of the expiration of the two-year determination period;

(f) The applicant requests that a hearing officer's recommended value be heard by the board, pursuant to Section 1641.1 of the Revenue and Taxation Code within 90 days of the expiration of the two-year determination time period;

(g) Where the applicant-initiated proceedings or made a request as described in (e) and (f) above, the two-year determination time period is extended for 90 days beyond the two-year determination time period;

(h) An applicant cannot be denied a timely hearing and determination, pursuant to subsection (b) of Rule 309, unless the board clerk provides written notice of the application denial within two years of the application filing date. Applicants may request a validity hearing of the board.

(i) When controlling litigation is tolling the time available to the board to determine an appeal, the board clerk should provide written notice to the applicant with the name of the case, the court or docket number of the case, and the court where the litigation is pending. Once the controlling litigation is over and a final decision rendered in the court, a hearing must

be held within the two-year determination period, excluding the time between the notice of pending litigation and the date the litigation became final. Applicants are not precluded, however, from agreeing to a time waiver as needed to allow for a hearing with both parties prepared to present their valuation cases.

Rule 310

Selection of Board Chair and Chairperson Hearing Authority

Rule 310 states the following:

(a) The board must select one of its three members to act as the Chair and preside over the hearings;

(b) The board chair "shall exercise control over the hearings as is reasonable and necessary;"

(c) The board chair makes all rulings "regarding procedural matters and regarding the admission or exclusion of evidence."

This is a simple rule on its face, yet it is an important rule from the AAB's vantage point because it provides the necessary authority for the board chair to run an efficient and orderly meeting while ensuring that due process is provided to both parties. The selection of a chair should reflect, among other criteria, the individual's ability to manage a public meeting that allows both parties to present their evidence and their views of the valuation determination without losing control of the hearing or allowing the introduction of incivility into the hearing.

Rule 311

Actions Taken When Board Quorum Present

Like local government governing bodies such as boards of supervisors, city councils, or commissions, the board can only hold a hearing and act as the board when a quorum of members is present. A quorum of the board is a minimum of two members present, and a full board has three members present.

(a) All board decisions require a majority of the board, that is, at least two votes in favor of the proposed decision whether the board is made up of two or three members;

(b) Both parties have a right to a hearing with a full board of three members, but may jointly stipulate to a two-person board for their hearing;

(c) Where a party demands a full three-person board and three members are not available at the time, the board may request the applicant to extend the two-year determination time period when the demand precludes the matter from being heard and decided timely.

Applicants not agreeing to the time extension may be denied their request for a full three-member board;

(d) Hearings before a two-person board where the two members do not agree on a decision shall be reheard before a full board;

(e) Where a hearing is set for a full board, but one of the members is absent from a hearing, the parties may stipulate to the absent member reading or otherwise reviewing the hearing evidence record and participate in the vote on the decision.

Rule 312

Recording of Board Hearings

All board hearings must be recorded or reported (typically through a court reporter transcript if reported). Videotaping hearings may be done as set forth in Section 2025.340 of the Code of Civil Procedure.

(a) Any person may purchase a written transcript of the portions of the public hearing session(s) after the hearing(s) are completed within 60 days of the final determination. (See Rule 325 for what constitutes the final determination);

(b) Requests for a written transcript in counties providing a stenographer or court reporter at county expense must be made to the board clerk a minimum of 10 days before the hearing starts;

(c) Most counties record their in-person hearings through a voice recording system. Counties offering virtual hearings "record" the hearings electronically as a part of the overall virtual hearing technology, capturing both pictures and voices;

(d) Counties using a stenographic or court reporter may designate the reporter's transcript as its official record upon its being filed with the board.

Rule 313

Order of Proceedings in Hearings.

Rule 313 sets out the chronological fashion in which board hearings should be held:

(a) The chair or board clerk announces the application number and applicant name at the start of the hearing for the record. Additionally, some boards ask each party to identify themselves for the record by name and which party they represent;

(b) Applicants or their agents who are absent at the start of the hearing results in the application being denied for failure to appear or "FTA" at the end of the hearing after AAB staff has attempted to contact and/or otherwise locate the missing applicant or agent;

(c) When applicants or their agents are not present, the chair asks the clerk about proper notice being given to that party, and an FTA denial is appropriate under Rule 326 if proper notice of the hearing was given to the applicant or their agent;

(d) Where proper notice was not given, the hearing may be postponed;

(e) County boards of supervisors may adopt local rules regarding reinstatement of applications denied on an FTA ground with proper notice being provided (see Cal. Const. Art. XIII, section 16);

(f) Motions from applicants to reinstate their applications must be made not later than 60 days after the FTA denial, and they must show good cause for their failure to attend the earlier noticed hearing to the board to obtain reinstatement;

(g) When the applicant or their agent appears at the hearing, the appeal grounds of the appeal, the assessed value on the roll, and the applicant's opinion of value are announced for the record by the chair or the clerk;

(f) The chair may ask either party to describe the subject property, what are the issues in the appeal, and if there are any stipulations between the parties relevant to the appeal. It is often the assessor's representative who is asked to describe the subject property. Applicants believing the subject property to be different in any way from the assessor's description may provide their view after the assessor.

Burden of Proof

The issue of which party proceeds first with the presentation of their valuation "case" is called the burden of proof. Applicants generally proceed first because assessors possess the statutory "presumption of correctness." This presumption arises from Section 664 of the Code of Evidence, which states that public officials are presumed to have correctly carried out their official duties. Parties (applicants here) challenging the correctness of the assessor carrying out her or his official duties must go first most often. Assessors do not always enjoy the presumption of correctness, however, and the circumstances listed below are circumstances where the assessor goes first because there is no presumption of correctness (see also Rule 321):

(a) The statutory penalty portion of an assessment;

(b) Appeals of an owner-occupied single-family dwelling (see Section 167 of the Revenue and Taxation Code);

(c) Appeals of "escape" assessments;

(d) When the assessor, following a real property change in ownership event, does not enroll the property's purchase price as the base year value of the property (see Rule 2);

(e) When the assessor gives notice of an opinion of value higher than the enrolled value at the hearing through a "raise letter" (see Rule 313(f));

Rule 313(d) states that all testimony of witnesses "shall be taken under oath or affirmation."

According to Rule 313(e), board hearings do not have to be conducted according to technical rules of court relating to evidence and witnesses. Relevant evidence can be admitted if it is the "sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs." Objections to the proposed admission of evidence must be timely made, or the party not timely objecting has waived the objection. Boards may act only based on the proper evidence admitted into the hearing record. This means, for instance, that a board decision cannot be based on prior knowledge of the subject property, information presented outside of the hearing, or personal research. Board members should be diligent about asking questions that will elicit information in the hearing that is not only relevant and admissible, but which will also aid them in reaching the correct property value. (See the SBE Assessment Appeals Manual, pg.103.)

Raise Letters

Assessors sometimes request consideration of a value higher than the previously enrolled value through the use of the "raise letter" procedure. Rule 313(f) provides the procedure by which written notice of the assessor's raise letter is given to the applicant at least 10 days before the start of the hearing. This allows the assessor to present evidence of her or his higher opinion of value at the hearing. There is no presumption of correctness attached to a raise letter opinion of value. (See Rule 313(f).)

Due Process Hearings

Rule 313(e) restates the language of Rule 302, requiring due process in board hearings for applicants. This paragraph requires that a "full and fair" hearing be given to applicants and assessors (the "application"), with reasonable opportunity for the presentation of evidence, cross-examination of witnesses and materials offered as evidence, for argument and rebuttal. The party bearing the burden of proof (the applicant most of the time, but not always) has the right to open and close the argument phase of the hearing.

Public Board Hearings

Lastly, board hearings are public, i.e., they are open to the public (whether in-person or virtual) as a general rule to observe, pursuant to Rule 313 and LTA 22-07. The Brown Act does not apply to AAB hearings. (79 Ops.Cal.Atty.Gen. 124 (1996), Op. No. 95-1207.) The California Attorney General opinion means that AABs need not issue agendas a minimum of 72 hours in advance of the scheduled appeal hearings as is the case for city councils, boards of supervisors or other local government governing bodies. Additionally, there is no public attendee right to address the AAB panel on the pending appeal. Only the parties, their representatives, and witnesses or experts may address the AAB on the appeal being heard. The public generally and any public agency receiving a share of the property tax revenue resulting from the AAB

assessment decisions have no legal standing to participate in AAB hearings or to challenge the results of an AAB hearing in court. (*Sacramento County Fire Protection District v. Sacramento County Assessment Appeals Board* (Dist. 3 1999) 75 Cal.App.4th 327.)

Trade Secrets Exception to the Public Hearing Rule

The hearings or portions thereof where "trade secrets" are discussed are not open to the public. Trade secrets are defined at Section 3426.1 of the Civil Code (see Rule 313(g).) Parties requesting that the board consider information or testimony to be a trade secret must file a declaration with the board clerk under penalty of perjury that the evidence to be presented relates to trade secrets. Disclosure of the trade secrets "will be detrimental to the business interests of the owner of the trade secrets." The declaration must state the estimated time it will take to present the evidence. The resulting trade secret evidence remains confidential unless the owner of the trade secret agrees to make the evidence public. Board clerks often maintain one file for non-confidential documents introduced at a hearing and another file for confidential documents introduced and discussed in the same hearing. This is one practical way of better avoiding the accidental disclosure of confidential documents if the AAB receives a California Public Records Act request for AAB hearing documents from a third-party records requester.

Rule 314

Right of Legal Representation and County Ethical Wall Legal Representation

Both the applicant and the assessor may be represented in board hearings by legal counsel. When appeals are heard by a hearing officer, the assessor may be represented by legal counsel only if the applicant is represented by legal counsel. Section 31000.7 of the Government Code authorizes a county counsel office to assign one attorney to represent the assessor and another attorney within its office to represent the board. The federal Ninth Circuit Court of Appeals upheld this statute as not denying due process to the applicant because the county maintained an internal ethical wall regarding pending board appeal matters between the two county attorneys. (*William Jefferson Co. Inc. v. Board of Assessment and Appeals No. 3 for Orange County and State of California*, 695 F.3d 960 (Ninth Cir. 2012) and cases cited therein.)

Rule 316

Board Examination of Applicants/Applicant's Agent

Rule 316(a) provides the general rule that there can be no reduction of an assessment or change in ownership or new construction by a board unless the applicant or applicant's agent is examined under oath by the board. The board examination concerns the value of the subject property and the facts upon which the applicant or her/his agent relies in seeking relief. As a practical matter, both parties present their "cases" in support of their contentions as discussed regarding Rule 313 and the burden of proof. Boards question both the applicant, the assessor, and their witnesses during the hearing as a routine matter.

Stipulations Presented to Boards

Rule 316(b) discusses stipulations agreed to by the parties before the hearing starts or during the hearing process (but before the board renders a decision). The stipulation is presented to the board as the agreed upon resolution of the parties. The board is asked to approve the stipulation, i.e., equalizing the settlement. The board may ask questions of the parties presenting the stipulation as it perceives the need to satisfy itself that the stipulated value or result has a factual basis. The board is not bound to accept a stipulation presented to it by the parties merely because the parties present it for approval. Should the board not accept the stipulation, it may order that the application be reset for further hearings on the merits of the application. The board may also waive the normally required presence of the applicant or her/his agent at a hearing under Rule 316 (see Rule 317).

Rule 317

Waiver of Applicant/Applicant's Agent Appearing and Persons Representing Others

Rule 317, as noted at the end of the discussion of the preceding rule, first provides the general rule that the applicant "must appear personally at the hearing or be represented by an agent" unless the board waives the appearance requirement per Rule 316. Further, this general rule of appearing is discussed in Rule 313 regarding denials of applications for failure to appear. Rule 326 discusses how a non-appearing applicant or applicant's agent can seek to reinstate the application. Pursuant to this rule, the following applies:

(a) An applicant's agent must present written authorization from the applicant to the board if they are not the original agent on the application;

(b) Jointly-held subject property in the application may be represented by only one of the joint owners of the subject property;

(c) Corporate or other business entities filing applications may be represented by an officer or authorized employee of the entity (as well as legal counsel or an authorized agent);

(d) One spouse may appear for the other spouse, and grown children may represent their parents or vice versa;

(e) The authorization allowing an agent to file an application for the assessee also allows the agent to appear at hearings and represent the assessee.

Rule 321

General Presumption of Correctness of Assessor's Actions

Rule 321 reiterates some of the provisions of Rule 313 previously presented. This rule discusses the burden of proof and additional guidance on how boards are to review evidence. This rule states the general legal requirement that "subject to exceptions set by law, it is

presumed that the assessor has properly performed his or her duties." (See Rule 321(a).) The presumption of correctness does not decide how the board will ultimately rule on the application. Nor is it evidence to be considered by the board. (See Rule 321(b).) Where both parties have presented evidence for their positions and conclusions, the board must consider and "weigh" the evidence presented. The board's decision is based on the "preponderance of the evidence" standard.

Rule 321(c) places the burden of establishing the basis for imposing a penalty assessment on the assessor.

Rule 321(d) repeats the non-applicability of the presumption of correctness for the assessor when the application involves owner-occupied single-family homes or escape assessment levied by the assessor.

Purchase Price Presumption

Rule 321(e) states that hearings involving real property change in ownership events include the Rule 2 "purchase price" presumption, i.e., the sales price is presumed to reflect full cash value of the market for that property at the time of purchase. Any party seeking to rebut that presumption has the burden of proof in doing so by a preponderance of the evidence. This shifting of the burden of proof more often occurs when the assessor rejects the purchase price paid by the applicant and enrolls a different value, typically a higher assessed value. It can also occur on rarer occasions when the assessor accepts the purchase price as full cash value and enrolls that value, causing the applicant to appeal and argue that the purchase price did not, in fact, reflect the full cash value at the time of purchase, but rather, a lower full cash value. (*Maples v. Kern County Assessment Appeals Board* (Dist. 5 2002) 103 Cal.App.4th 172 as one example of such an argument by the applicant challenging the assessor's enrolling of purchase price.)

Evidentiary Standard Applicable to Both Parties

Rule 321(f) requires that the board apply the same evidentiary standard to the testimony and documentary evidence of both the applicant and the assessor. Any relief granted by the board must be justified by the evidence presented during the hearing.

Rule 322

Board Issuance of Subpoenas

The applicant or the assessor may request that the board issue a subpoena for the attendance of witnesses or the production of documents at a board hearing by a party. The board may also issue a subpoena on its own motion if it wishes to do so. The subpoena request may be made in advance of a board hearing or at the time of a hearing. (See Rule 322(a).)

Applicants requesting subpoenas from the board are responsible for having it served as well as for the payment of witness fees and mileage. (See Rule 322(b).)

Applications for subpoenas seeking the production of books, records, maps, and documents must include an affidavit as prescribed at Section 1985 of the Code of Civil Procedure. (See Rule 322(c).)

Subpoenas on State Board Employees

State Board employees may be subject to subpoenas issued by boards for hearing attendance based on Section 1609.5 of the Revenue and Taxation Code. When the State Board's employees are the subject of a subpoena and the board grants a reduction in the challenged assessment, the county may (but is not required to) reimburse the applicant in whole or in part for the actual witness fees paid pursuant to that code section. (See Rule 322(d).)

Timing of Subpoena Requests by Parties and Limitations on Use of Subpoenas

Parties seeking a board-issued subpoena must make a written request "sufficiently in advance" of the hearing date, allowing the subpoenaed party to comply before the hearing. Subpoenas are restricted to compelling the appearance of a person or the production of documents at the hearing. They shall not be used for purposes of prehearing discovery by a party. A subpoena issued near in time to or after the commencement of the hearing should be as limited as possible. A hearing continuance may be granted by the board for a reasonable period of time. (See Rule 322(e).)

Rule 322(f) prohibits the use of a board subpoena with the intent of taking a deposition of the subpoena subject, and depositions shall not be considered for any purpose by the board.

Rule 323

Continuance and Postponement Requests

Rule 323 provides guidance on postponements and continuances in board proceedings, time waivers (see also Rule 309), and the hearing scheduling time frame when time waivers previously granted by taxpayers are unilaterally withdrawn.

Postponements

Postponements are requests for postponing the commencement of a hearing on the merits of the application. Once a hearing on the merits commences, no party may request a postponement. Postponements are governed by subsections (a) and (b) of Rule 323.

(a) Each party has one postponement "of right," that is, the board must grant the request for postponement, provided that the request is timely made. The request must be made to the board not later than 21 days before the initial hearing on the appeal's merits is set to start. The request is usually made in writing;

(b) An applicant's postponement of right request made within 120 days of the expiration of the statutory two-year period requires a "tolling indefinitely" i.e., a time waiver as

mentioned in Rule 309, which is subject to a unilateral revocation by the applicant and a 120-day period for board hearing scheduling;

(c) The assessor also has one postponement of right although if the request comes within 120 days of the expiration of the two-year period, the board has the discretionary authority to grant or deny the request;

(d) Subsequent postponement requests by either party are subject to the board's discretionary authority to grant or deny. If the request is to be granted, there must be good cause shown to the board for the additional postponement;

(e) Local board rules may delegate the postponement decision authority to the board clerk. (See Rule 323(b).)

Continuances

Continuances are determinations of boards to continue pending application matters from one date to another after commencement of the first hearing on the merits. Subsections (c) and (d) of Rule 323 discuss continuances.

(a) Boards and hearing officers may continue hearings, once commenced, to a future date. This is tempered by the Rule 323(c) language requiring that "every reasonable effort to maintain continuous hearings" be made;

(b) Continuances, if granted, "should not" exceed 90 days according to the rule, unless the parties stipulate a longer continuance period. The basis for the continuance being granted or denied should be stated on the record. It is important to note here that factors such as the number of pending applications in a county's appeal system and scheduling complications may have the effect of a continuance resulting in the next hearing occurring more than 90 days later out of practical administrative necessity, especially in counties with voluminous numbers of appeals pending. The workload of applications awaiting hearings and determinations may or may not fit within the 90-day standard issued by the State Board;

(c) Continuances are based on reasonable cause being shown by the requesting party or parties;

(d) Assessors may receive a continuance under Section 441(h) of the Revenue and Taxation Code where the applicant presents evidence previously requested by the assessor (and not produced before the hearing starts) for reasonable cause shown. Classically, the reasonable cause is the need for the assessor to review the documents and information just presented by the applicant. (See Rule 323(c));

(e) Similarly, the applicant may receive a continuance for reasonable cause shown when the assessor introduces information previously requested by the applicant under Section 408 of the Revenue and Taxation Code. (See Rule 323(c));

(f) An applicant's request for a continuance within 90 days of the expiration of the two-year period allows the board to condition granting the continuance request with the applicant granting the board a time waiver;

(g) Hearing notices for new hearing dates following a continuance are sent in writing and contain a minimum 10-day advance notice unless the parties agree in writing or on the record to waive the written notice. (See Rule 323(d).)

Rule 324

Principles Guiding Board Determinations

Subsection (a) of this rule states the general principle that boards must find the "full cash value" of the subject property based on proper evidence presented to it at the hearing by a preponderance of the evidence standard. This standard is also mentioned elsewhere in the rules, as previously cited.

Subsection (b) grants boards jurisdiction to hear not only the particular appeal and its named subject property listed, but also the appraisal unit. Boards may determine that the full appropriate valuation of the subject property requires an appraisal unit that is larger in size, i.e., additional properties not listed in the application. Such property can be real or personal, or both. The board is also not bound to accept only the applicant's opinion of value or the assessor's opinion of value. Boards are free to determine what they believe is the appropriate value so long as the value is based on the evidence presented at the hearing by the parties.

The term "appraisal unit" is defined in subsection (b) as a collection of assets that function together and that persons in the marketplace commonly buy and sell as a single unit or which the marketplace normally values separately from other property "or that is specifically designated as such by law."

Subsection (c) simply provides that the boards, applicants, and appraisal witnesses are bound by the same principles of taxation that apply to assessors.

Subsection (d) addresses the use of comparable sales in the appraisal process. "Comparable" sales are sales of properties "similar in size, quality, age, condition, utility, amenities, site location, legally permitted use, or other physical attributes to the property being valued." Sales occurring more than 90 days after the valuation date do not apply to the sale of the subject property. The provisions for exclusion of any sale occurring more than 90 days after the valuation date do not apply to the sale of the subject property. Boards must also presume that zoning and other legal restrictions (see Section 402.1 of the Revenue and Taxation Code) on the use of the subject property or the comparable property will not be removed or substantially modified in the predictable future. The presence of evidence overcoming that presumption must be presented to the board to find otherwise.

Subsection (e) of the rule reiterates what Rule 308 previously stated about what findings of fact must cover to be legally sufficient.

Rule 325

Defining When Board Determinations are "Final"

This is the first of two rules discussing the finality of board rulings (this rule and Rule 326). When the hearing or hearings and the presentation of evidence is complete, the board must either take the appeal hearing under submission or announce its decision from the dais with the parties present. Board counsels are encouraged to advise their boards to take matters under submission. This practice allows the boards to confer among themselves after the hearing is over, further review the evidence of the hearing, and be sure of what their decisions are going to be (as well as the grounds and persuasive evidence for those decisions). This is a common practice in Superior Court, where argued matters are given a final review by the judge in private after hearing an oral argument.

A decision becomes "final" under one of the circumstances listed in subsection (a)(1-3) of Rule 325. Subsections (a)(1-2) apply where no findings of fact are requested by either party. Subsection (a)(3) applies where findings of fact are requested of and produced by the board.

Written Notice of Board Decision

Boards issue a written notice of their decisions not later than 120 days after the hearing concludes. The written notice (where no findings are produced) does not provide an explanation of how the decision was made, i.e., the underlying reasons for the decision. Where findings are timely requested and paid for, the issuance of the findings of fact is also the written notice of decision and shall issue no later than 180 days after the decision is final. Should the conclusion of the hearing or hearings occur within 180 days of the expiration of the two-year period, the applicant "shall" agree in writing to extend the two-year period for a period of 180 days from the date of the hearing conclusion. (See Rule 325(a)(3).) Rule 325 does not require that an assessee request findings of fact in order to challenge the Boards' decision in Superior Court. A request for findings of fact is not a legal requirement to proceed with a legal challenge to the board's decision by either the assessor or the taxpayer.

Requests to Parties to Provide Draft Findings of Fact

Subsection (b) of the rule provides that boards may either ask both parties to provide draft findings of fact to the boards for review and consideration or only one party (presumably the party likely to prevail). Where only one party is requested to provide draft findings, the other party has the right to review and comment on the findings. Where both parties submit draft findings, there is no right to review and comment on the opposing party's draft findings. Boards are not required to request draft findings from the parties and may choose to prepare their own findings (or have their board counsel prepare the findings) without the assistance of draft findings from the parties. There is no uniform practice for requesting or not requesting draft findings from the parties among the counties. Similarly, there is no uniform practice regarding boards having their counsel prepare the findings or board members preparing the findings. Each county is free to determine what findings of fact approach works best for it.

Requests for Clarification

Lastly, when the findings have been prepared, either party or the clerk may request in writing a request for "clarification" of the board decision details. Clarification cannot alter the final board determination, however.

Rule 326

Exceptions to the Finality Rule

Subsection (a) of this rule states that the board's decision is final except for the two limited exceptions of the decision reflecting a ministerial clerical error, or as previously noted in Rule 313, the application was denied because the applicant or agent failed to appear at a properly noticed board hearing (the "FTA" basis for denial). Ministerial clerical errors are minor errors or omissions that do not affect the ultimate judgment of the board. Petitions or motions made to the board to reinstate an application which was denied on an FTA basis must be made within the period established by Rule 313, i.e., within 60 days after notice of the denial is sent out.

Court Remand Orders to Boards

While not mentioned in Rule 326, board decisions may be the subject of court "remand" orders, directing that the board hold further hearings as directed by the court on an application previously heard. Remand orders result from court rulings that the board incorrectly decided an application or produced legally insufficient findings of fact, or both, a conclusion the court could reach after the applicant has filed a tax refund action or the assessor has filed a writ of mandate action in court seeking to overturn the board decision. The remand order restores the board's jurisdiction to hear the application as necessary to carry out the directions of the court.

CONCLUSION

Boards are assigned an important function in the world of property tax dispute resolution, and the counsels assigned to advise these boards have a correspondingly important function. Board members and assigned counsels should always be aware of not only the State Board rules discussed above, but also of any local rules established by the county board of supervisors for these hearings. Litigation concerning board decisions are sometimes resolved in courts of law because of the presence or absence of a relevant local rule as well as because of the provisions of the State Board rules addressing the issue argued in court.