

**SANTA BARBARA COUNTY  
BOARD AGENDA LETTER**



Clerk of the Board of Supervisors  
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**Agenda Number:**  
**Prepared on:** 5/22/02  
**Department Name:** Assessment Appeals Boards  
**Department No.:** 013  
**Agenda Date:** 6/4/02  
**Placement:** Administrative  
**Estimate Time:** 1 1/2 hr.  
**Continued Item:** NO  
**If Yes, date from:**

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**TO:** Board of Supervisors

**FROM:** Santa Barbara County Assessment Appeals Boards ## 1 & 2

**STAFF** James P. Ballantine & Wendy G. Tillman, Appeals Board Members  
**CONTACT:** Rick Sanchez, Sr. Deputy County Counsel, Appeals Board's Legal Advisor, Ex. 2964

**SUBJECT:** Procedural Rules for the Conduct of Assessment Appeals Board Proceedings on  
"Complex" Cases

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**Recommendation(s):**

That the Board of Supervisors set June 18, 2002, as the date to consider the following recommendations and take action thereon:

1. Adopt a resolution for establishing revised procedural rules for the Appeals Boards for "Complex" cases (cases over \$30 million in assessed valuation);
2. Consider the introduction (First Hearing) of an ordinance amending Article IV of Chapter 32 of the Santa Barbara County Code relating to assessment appeals boards.

That the Board of Supervisors set June 25, 2002, as the date for:

1. The adoption of the attached Notice of Exemption under the California Environmental Quality Act;
2. The second reading and the adoption of the ordinance.

**Alignment with Board Strategic Plan:**

The recommendations are consistent with Board Goal Number 1 – Reanalyze, reform, and respond to the changing nature of county resources and responsibilities

## **Executive Summary and Discussion**

The resolution before the Board of Supervisors establishes revised procedural rules for property tax appeals being heard by the Santa Barbara County Assessment Appeals Boards (collectively referred to as “Appeals Board”) in Complex cases in which large amounts of money (in excess of \$30 million in assessed valuation) are at issue. The rules are designed to give the Appeals Boards more control over the preparation and conduct of such cases and to expedite the hearings on such cases.

The companion ordinance before the Board of Supervisors authorizes the Appeals Board to enforce the procedural rules by imposing monetary sanctions against a party who, without substantial justification, fails to comply with the rules or an order by providing for a rule governing the circumstances by which sanctions may be imposed.

The Board of Supervisors is the sole authority with the power to adopt the resolution and ordinance. The Appeals Board cannot adopt these procedures on their own initiative.

The members of both Appeals Boards approved the proposed rules and voted unanimously to recommend that the Board of Supervisors adopt the rules. (See attached *Joint Resolution of the Santa Barbara County Assessment Appeals Boards*, Resolution No. 01-001, submitted with this letter.) The Appeals Board members believed that the rules are absolutely necessary to give the Appeals Board the ability to manage Complex cases more expeditiously and efficiently, and to obtain a more fair result. Complex cases invariably involve: attorneys and expert witnesses, such as appraisers and business valuation experts; complex factual, appraisal and legal issues; and potentially involve many weeks of hearings, lengthy witness testimony and thousands of pages of exhibits.

The following is a general identification and explanation of the nature, function and need for the rules for Complex cases. A more detailed account of the rules, including a discussion of the legal bases for various features of the rules, is set forth in Attachment A hereto, which is incorporated herein by reference.

### What the Proposed Rules Do

The resolution establishes procedural rules to provide a structured system to help the Appeals Boards exercise better control over and expedite the preparation and hearing of cases. The rules set up a fast track system for the scheduling and hearing of cases. The rules establish procedures for the Appeals Board to conduct a series of pre-hearing conferences, and make scheduling orders, to ensure that the cases are being prepared for hearing and that the parties are obtaining the necessary information for the hearing on the matter. The rules require that the parties complete pre-hearing preparation activities on a schedule set by the Appeals Board, and that the Appeals Board may order the parties to exchange information and exhibits before the start of the hearing, to improve the parties' preparedness at the hearing. The rules also have detailed requirements for the conduct of hearings. In addition, as provided through the proposed ordinance, the rules give the Appeals Board the power to enforce the rules by imposing monetary sanctions of up to \$5,000 against a party for their failure, without substantial justification, to comply with the rules or an order made by the Appeals Board pursuant to the rules. The rules apply only to "Complex" cases, defined as those cases in which the amount of valuation in dispute is in excess of \$30 million for any given tax year. The proposed rules would apply to all Complex cases filed after July 2, 2001, unless otherwise ordered by the

Appeals Board. There are significant cases that have been filed since that time which would benefit for management under the rules.

### Reason for the Importance of the Proposed Rules

Complex cases can take a long time to get to a hearing in the first place, and then take a long time to hear and resolve. Based upon their collective experiences, members of the Appeals Board believe that these rules will reduce unnecessary delay, encourage more thorough preparation for hearing, expedite and increase efficiency at hearings, and ensure a fair process to all parties.

Delays occasioned by the present process are of concern to many parties affected by an assessment appeals proceeding. For the County, it may lead to the impounding of large sums of property tax money, making the funds unavailable to public agencies and the public that they serve. For the taxpayer, the money that it has paid for the disputed property tax bill remains unavailable to it throughout the pendency of its appeal.

Without a good understanding of the facts and issues that will be presented, it is impossible for the Appeals Board to schedule realistically the hearings in Complex cases, since it is impossible for the Appeals Board and the parties to estimate how long the presentation of certain facts or issues will take at the hearing.

The proposed rules give the Appeals Board the power to make prehearing orders binding on the parties to help ensure that the parties are taking the appropriate steps to prepare their cases for trial, and are disclosing to the other party the evidence to be presented at trial to help ensure that the other party will be prepared to respond to all evidence at trial, without any delays or unexpected needs for continuances.

Some of the most common reasons for the delay during the course of a hearing are lack of preparation before the hearing and lack of disclosure between the parties sufficient to apprise the opposing party of the factual and legal issues that it will be propounding at the hearing. This lack of preparation and disclosure invariably leads to situations in which the Appeals Board and the parties find themselves at the hearing dealing with complex issues about which they had no notice, causing cases to be continued and to take more hearing time than anticipated, further delaying resolution of the case.

The lack of timely preparation before the hearing tends to delay the commencement of the hearings, since the parties do not wish to have the hearing scheduled before they are thoroughly prepared (many of these Complex cases involve tens or hundreds of millions of dollars in valuation in dispute). Conversely, the failure to have a set hearing date looming deprives the parties of one of the best incentives to prepare expeditiously a case for hearing.

Lack of such thorough preparation also tends to undermine the parties' ability to settle cases, since it is impossible to make intelligent decisions to settle a case before the party knows what the evidence at the hearing will be or what the party's own expert witness will testify.

Lengthy hearings are a concern to the members of the Appeals Board, as it should be to all parties. They are expensive for the parties to participate in hearings, expensive for the Appeals Board to conduct due to all of the Appeals Board-related costs, and make it difficult to find Appeals Board members to serve on the Appeals Board due to the extensive time commitment involved in the Complex cases.

### Importance of Monetary Sanctions

As important as the proposed rules themselves, is the companion ordinance which authorizes the Appeals Board to impose a monetary sanction against a party, including their attorneys and witnesses, who fail, without substantial justification, to comply with the rules or orders of the Appeals Board. For the rules to be effective, it is essential that the Appeals Board have the power to enforce the rules and its orders. The ability to impose monetary sanctions is an important means to enforce compliance. Otherwise, the Appeals Board is left with few other alternatives to enforce compliance with the rules, other than to disregard or strike some or all of the evidence offered by a party; doing so then means that the Appeals Board may not receive evidence that may be critical to determining the true taxable value of the subject property, as is the Appeals Board's constitutional duty. It should be noted, that lawyers routinely practice in the superior and federal courts where monetary sanctions have been part of the process for decades -- and the judicious use of monetary sanctions by the courts has successfully reduced the amount of gamesmanship engaged in by lawyers in all kinds of matters.

The Appeals Board members felt that the provisions allowing the Appeals Board to impose monetary sanctions against a party that fails, without sufficient justification, to follow the rules, or an Appeals Board's order, are a critical component to the successful implementation of the rules.

### Experience and Input Leading to the Proposed Rules

The proposed rules are a product of one year of preparation and review by the Appeals Boards members and their counsel. The rules were drafted and revised by the rules committee of the Appeals Board, and revised again by the complete Appeals Boards. Input on draft rules was solicited from the assessor's office and their legal counsel and from a number of attorneys who appear before the Appeals Board and other appeals boards throughout the state on Complex cases on behalf of taxpayers, as well as from the State Board of Equalization. Both Appeals Boards incorporated all input which the members deemed to be advisable to include. Accordingly, the rules are a product of a collaborative effort comprising a significant amount of deliberation and experience by Appeals Board members, and of input from parties who appear before the Appeals Board on these types of cases.

### Conclusion

For all of these reasons, all nine members, with one existing vacancy, on the appeals board of both Appeals Boards have unanimously requested that the Board of Supervisors adopt the recommendations set forth above.

## **Mandates and Service Levels:**

The Appeals Board anticipates that the more efficient hearing processes provided for under the proposed rules will improve the service levels provided by the Appeals Board to the parties to complex property tax appeals. Complex cases will be resolved more quickly and more efficiently: cases will be prepared for hearing more expeditiously with oversight by the Appeals Board, cases will be set for hearing sooner, hearings will consume less time, hearings will be less likely to have to be continued, and the conduct of hearings will be more predictable.

In addition, parties will have more information regarding the factual and legal issues of a case, and regarding their opponent's cases, making settlement evaluations and discussions more meaningful, and more likely to occur earlier. To the extent that the proposed new procedures result in earlier and more realistic settlement evaluations, all parties to the appeal are served through an earlier settlement of the case, avoiding the expense and delays of the complete hearing and, potentially court review process.

These efficiencies in hearing procedures will facilitate participation in Complex cases by more Appeals Board members. Rev. & Tax. Code § 1624 recommends that the Board of Supervisors appoint persons with certain professional qualifications (such as licensed attorneys, accountants, or real estate brokers) or persons who have competent knowledge of property appraisal and taxation to serve on assessment appeals boards. Such professionals, with significant demands placed in their time by their professional practices, may be reluctant to serve on Appeals Board panels hearing lengthy and protracted Complex cases, particularly when the actual time commitment is unpredictable at the outset of the hearing. The proposed rules will make hearings in Complex cases more manageable by Appeals Board members, particularly to the extent that they result in shorter hearings. These improvements will help to provide more Appeals Board members to serve on panels for Complex cases, thereby improving the Appeals Board's service levels to the parties to the appeals.

## **Fiscal and Facilities Impacts:**

The Appeals Board anticipates that the net fiscal impact on the County will be favorable. As noted, Complex cases will be resolved more quickly and more efficiently, with less time spent with protracted and continued hearings. A more rapid resolution of Complex cases is expected to reduce the amount of time for which the County must impound funds for these cases, and reduce the expenses associated with such impounds and the loss of use of funds to County agencies. Less hearing time will reduce the County's costs associated with hearings, including less Appeals Board costs, less Appeals Board staff costs, and less costs from the use of County facilities for hearings and deliberations. In addition, more efficient hearings are expected to reduce costs to the parties of participating in the hearings, including the costs to the Assessor's office. Finally, to the extent that the proposed new procedures facilitate earlier settlement of cases, the costs to the parties and the Appeals Board will be substantially reduced.

More rigorous requirements by the Appeals Board for earlier and more thorough hearing preparation may increase the "up-front" costs on the parties to the proceeding, by forcing them to hire experts and conduct valuation analysis earlier rather than later. However, these expenses will ultimately have to be incurred by the parties to the appeal in any event, and shorter, more efficient hearings should result in the

parties' spending significantly less money at the hearing stage, more than compensating for any higher up-front costs caused by requiring the parties to begin preparing their cases early.

Although monetary sanctions are not anticipated to be frequent, the maximum dollar amount for an entire hearing of \$5,000 dollars is not considered to be excessive, particularly considered in the overall context of the cost of the hearing. Sanctions may be awarded to either party or the Appeals Board. Any sanctions awarded to the Appeals Board are for the benefit of the County and go to the general fund.

Shorter, more efficient hearings will place less of a demand on County facilities being used for appeals hearings and Appeals Board deliberations and conferences with Appeals Board counsel.

**Special Instructions:** None

**Concurrence:** Santa Barbara County Assessment Appeals Board Nos. 1 & 2

**CC:**

Michael F. Brown, County Administrator  
Stephen Shane Stark, County Counsel  
Kenneth A. Pettit, County Clerk-Recorder-Assessor  
Robert W. Geis, Auditor-Controller  
Michael Allen, Chief Deputy Clerk of the Board

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