

ATTACHMENT A

TO BOARD OF SUPERVISORS AGENDA LETTER ON BOARD OF SUPERVISORS RESOLUTION FOR APPEAL BOARD'S PROCEDURAL RULES FOR COMPLEX CASES

Part I

SUMMARY OF PROPOSED RULES FOR COMPLEX CASES

The California Constitution provides authority to enact these rules for the conduct, management and control of the proceedings of the two Santa Barbara County Appeals Boards, (hereinafter referred to in the singular as "Appeals Board"), in Complex cases. Article 13, § 16, of the Constitution states that the Board of Supervisors shall adopt rules of notice and procedure for the Appeals Board as may be necessary to facilitate its work and to ensure uniformity in the processing of and the decisions on Applications for Changed Assessment (hereinafter "Applications").

The proposed rules are rules of procedure that permit and enable the Appeals Board to control the conduct of its proceedings. The rules apply to "Complex cases." A "Complex case" means a case where the taxable value on the local roll for the year at issue is \$30 million dollars or more.

Procedural rules govern the conduct, management and control of the Appeals Board's proceedings on Applications. Substantive rules determine the value of property. State law, i.e. the Rev. & Tax Code and SBE regulations, prescribe the substantive rules to be applied to determine the value of property. Both the Assessor and the Appeals Board are required to follow and apply the substantive rules for valuing property.

The objective of the rules is to permit the Appeals Board to control its proceedings by ensuring that parties initiate and complete prehearing discovery and preparation at a meaningful time before the commencement of the equalization hearing on the merits of the Application (hereinafter "Hearing"). Prehearing discovery and preparation controlled by the Appeals Board is in contradistinction to allowing the parties to initiate and complete preparation and discovery immediately before or at the Hearing itself.

The current procedural framework permits parties to delay preparation of their respective cases up to the Hearing or during the Hearing itself and places the Appeals Board in the position of reacting to parties' delayed Hearing preparation so as to afford the parties due process of law. Under the current framework that primarily leads to a trial by ambush and surprise during the Hearing, parties determine the manner in which the Appeals Board manages and controls its proceedings because the Appeals Board has to make adjustments and accommodations during the Hearing in order to:

- provide a fair Hearing;
- ensure due process of law; and
- fulfill its Constitutional duty to determine the actual value of the property

The following discussion describes the general context in which the Appeals Board operates and highlights the features of the proposed rules that permit the Appeals Board to control and manage its proceedings.

The Appeals Board distributed drafts of the proposed rules to interested parties, including the Santa Barbara County Assessor, the State Board of Equalization, the State Controller, taxpayer attorneys and a representative Assessor's attorney, for public comment. Some of the interested parties responded, and the Appeals Board took their responses into consideration in drafting the rules as presented to the Board of

Supervisors. The Appeals Board substantially incorporated most of the changes proposed by the parties who responded. Most of the comments were largely in agreement with the proposed rules. The Santa Barbara County Assessor, the Santa Barbara County Assessor's counsel and the Kern County Assessor's counsel questioned the legal authority for the proposed rules. In contrast, the State Board of Equalization's legal staff supported the proposed rules and agreed that the Board of Supervisors had the authority to enact them. The Appeals Board carefully reviewed those comments and concluded that the Board of Supervisors had the authority to enact these proposed rules.

Part II EQUALIZATION FUNCTION

Assessment, equalization, computation of the tax rate and collection are four separate functions for taxation of property that range from imposition of the tax to collection of the tax.

Regarding assessment, the Assessor assesses property subject to taxation by identifying the property to be listed on the local assessment roll and estimating the value for the local roll.

Concerning equalization, Art. 13, § 16, of the California Constitution provides that the Board of Supervisors is the "county board of equalization" for purposes of equalizing the values of all property on the local assessment roll by adjusting individual assessments. Pursuant to the Constitution, the Board of Supervisors created two assessment appeals boards to act in its place as the "county board of equalization." As the "county board of equalization," the Appeals Board equalizes values for individual properties listed on the local roll by raising or lowering values so that the values on the local roll conform to the actual value of the property.

The proposed procedures for Complex cases relate to the equalization function of the Appeals Board.

Generally, the Appeals Board equalizes property tax values at Hearings where sworn testimony and/or written documentary evidence is presented to the Appeals Board for purposes of making a final decision on Applications.

The Constitution vests the Appeals Board with the duty to determine the actual value of property. Though the Appeals Board's function is essentially investigatory, it acts in a quasi-judicial capacity in determining the actual value of property. When acting in its quasi-judicial capacity, constitutional law requires the Appeals Board to provide the parties with due process of law in determining the actual value of property.

Part III PROCEDURAL FRAMEWORK FOR THE APPEALS BOARD

The statutory provisions enacted by the state legislature for the rules of procedure for the conduct of Appeals Board Hearings are set forth at Division 1, Part 3, Chapter 1, § 1601 et seq. of the Rev. & Tax. Code. Additionally, the State Board of Equalization (SBE) adopted regulations on rules of procedure for appeals boards.

The state statutory and state SBE regulatory framework of procedural rules that pertains directly to Appeals Boards is essentially a minimal model of procedural rules for the conduct of Hearings.

The intent of the state model of rules for appeals boards is to keep proceedings simple and non-technical. This intent for informal equalization Hearings is reflected in the following aspects of the equalization of taxes process:

- Applications are single page blank forms adopted by the SBE that applicants complete by checking coded boxes and entering amounts. A minimum amount of information is usually set forth in the Applications.
- There are statutory and regulatory deadlines for filing Applications. Despite these deadlines, SBE legal staff recently interpreted SBE rules to vests appeals boards with the discretion to permit amendments to Applications to state new relief additional to and different in nature from that relief originally requested in the Applications.
- Though there are some statutory and regulatory rules for prehearing exchange of information that are discussed below, the initiation and completion of such prehearing exchanges is essentially left to the discretion of the parties.
- The statutory and regulatory provisions for prehearing exchange of information are limited in the nature and extent of information provided to the adverse party.
- The Rev. & Tax. Code authorizes the Appeals Board to subpoena witnesses and to subpoena books, records, maps and documents for the Hearing. However, though the Appeals Board may issue a subpoena before the Hearing, actual production of subpoenaed books, records, maps and documents may only occur at the Hearing.
- The parties under the state model may simply elect to show up at the Hearing without any prehearing exchange of information and present their respective cases, including issues, fact, law and opinions on the actual value of the property at the equalization Hearing by surprise and ambush.
- Under other provisions discussed below of the Rev. & Tax. Code that are not part of the laws and rules applicable to appeals boards, the parties have independent and collateral prehearing discovery rights at their disposal by which they may obtain information and records from each other concerning the assessment that is the subject of the Application. The parties also have the option under these independent provisions for prehearing discovery to seek and obtain superior court orders for the disclosure by the Assessor to the applicant of confidential information provided to the Assessor by other nonparty taxpayers and maintained in confidence under state law by the Assessor. These provisions run independently of the authority of the Appeals Board and run independently of the laws and rules that govern the Appeals Board's proceedings. The procedures for prehearing discovery set forth in the Rev. & Tax Code that are separate and apart from the procedures established for appeals boards may be initiated by the parties at any time before or after the filing of the Application.
- The statutory rules for the Appeals Board bars depositions or the use of depositions in equalization proceedings and Hearings.
- If a party fails to provide information requested by the adverse party under statutory and regulatory rules for prehearing exchanges in the context of equalization Hearings, the statutes and the SBE regulations in certain specified situations, for example, exchanges of information under Rev. & Tax. Code § 1606, provide that the Appeals Board may exclude the evidence that should have been exchanged or postpone the Hearing.
- In the other situations where parties exercise their rights to prehearing discovery under the other provisions of the Rev. & Tax. Code, the Appeals board is limited to continuing Hearings where parties fail to comply with a prehearing request for information and records.

Part IV

PREHEARING DISCOVERY IS AVAILABLE TO THE PARTIES UNDER STATUTORY PROCEDURES THAT ARE SEPARATE AND APART FROM THE STATUTORY PROCEDURES FOR APPEALS BOARDS

Irrespective of whether or not an Application is filed with the Appeals Board, both the Assessor and the taxpayer have very broad discovery rights to obtain information and records relating to property subject to assessment. These discovery rights are independent of and set apart from the statutory and

regulatory procedures for appeals boards. Said discovery rights exist and are operative before and after an Application is filed with the Appeals Board. The filing of an Application does not cut off or stop these discovery rights. In effect, the parties are able to obtain, either before or after an Application is filed, all information and records that relate to the subject property that are in existence at the time the request for information and records is made **without** the Appeals Board's involvement or subpoenas. In some instances, the Assessor may directly give the requested information to the taxpayer. In other instances, the taxpayer must first apply to court for an order for production of the information, as is the case for third party confidential information. The major shortcoming of these discovery rights that are collateral and parallel to the statutory provisions and rules for the Appeals Board is that the request for information and records only includes records and information existing at the time the request is made and **does not** extend to documents produced and created after the request is made. For example, if a party makes a request for records before a Hearing and if the responding party fully complies with the request by producing documents in existence at the time the request is made, the responding party may at the Hearing use documents that come into existence after the making of the request. Consequently, obtaining appraisal reports under the collateral procedures available to the parties is of limited use and value since the parties are free to submit to the Appeals Board at the Hearing new or revised appraisal reports that are completed after compliance with the previous request for records.

Part V

CURRENTLY THE APPEALS BOARD OPERATES UNDER RULES ADOPTED BY THE BOARD OF SUPERVISORS FOR COMPLEX CASES

The Board of Supervisors adopted current Resolution No. 97-264 that establishes prehearing status conferences for the Appeals Board for Complex cases. In summary, the resolution provides that:

- The clerk shall promptly set a status conference for a date soon after the filing of the Application.
- The parties shall file written status conference reports that cover specified topics, such as the facts and law of the case, appraisal issues, setting Hearing dates, requests for subpoenas and protective orders, discussing the plan of the parties for prehearing discovery, the status of pending or anticipated request for information made by the parties and consolidation of Applications.

Resolution No. 97-264 essentially sets up a meet-and-confer process between the parties and the Appeals Board whereby the Appeals Board and the parties become informed about the case and whereby the Appeals Board tries to lead and guide the parties to effectively prepare for the Hearing. However, Resolution 97-264 does not control or otherwise restrict prehearing preparation by the parties. Under Resolution 97-264, the parties are free to operate under the state and regulatory minimal model described above.

Part VI

GUIDELINES ADOPTED BY THE APPEALS BOARD FOR COMPLEX CASES

Pursuant to the County Code that enables the Appeals Board to adopt guidelines for the conduct of equalization Hearings, the Appeals Board adopted Resolution No. 96-1 for Hearings on Complex cases.

Resolution No. 96-1 is primarily a Hearing management tool relating to the following:

- Marking exhibits and the exchange of exhibits between the parties at the commencement of the Hearing.
- Prehearing and post-hearing briefs dealing with the issues, facts, law and evidence of the case.
- Amendments to Applications at the commencement of the Hearing.
- Admissions and stipulated facts at the commencement of the Hearing.

- Opening statements.
- Proposed findings of fact.

Sanctions for violations of the requirements of current Resolution No. 96-1 are limited to the exclusion of evidence or the limitation of issues to be decided by the Appeals Board, which sanctions the Appeals Board has not imposed to date so that the Appeals Board could receive evidence to find the actual and correct value of the property under appeal, even though compliance with Resolution No. 96-1 has been haphazard.

Part VII THE NEED FOR THE PROPOSED RULES

(a) Appeals Board experience

- The members of both Santa Barbara County Assessment Appeals Boards approved of the proposed rules and voted unanimously to recommend that the Board of Supervisors adopt the rules. Based on extensive experience in processing numerous Complex cases, the Appeals Board members felt that the rules were absolutely necessary to give the Appeals Board the ability to better manage Complex cases more expeditiously and efficiently, to obtain a more fair result, and to find the actual and correct value of the property.
- Under the current model of trial by ambush and surprise, the Appeals Board during Hearings balances the need to:
 1. conduct fair Hearings;
 2. ensure the parties receive due process of law;
 3. obtain relevant evidence it needs to arrive at the correct value;
 4. respond to and deal fairly with surprises that occur at Hearings.

(b) Dynamics of Complex cases

- Complex cases invariably involve:
 1. experienced attorneys who specialize in property tax law and valuation;
 2. experienced property tax expert witnesses who prepare appraisal reports specifically intended for taxation valuation purposes, such as appraisers and business valuation experts;
 3. complex factual, appraisal and legal issues; and
 4. many weeks of Hearings, lengthy witness testimony and thousands of pages of exhibits and written transcripts.

(c) Delay and unduly extended Hearings

- Experienced and sophisticated attorneys participate in the equalization process in Complex cases. Although technical rules of evidence do not apply, equalization Hearings are conducted in a formal manner. The attorneys and the Appeals Board greatly emphasize the need to make proper and adequate records in event of superior court tax refund actions.
- Complex cases can take a long time to get to Hearing in the first place, and a take long time to hear.
- Delays associated with Complex cases are concerns to many parties affected by assessment appeals proceedings. 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.

- Lengthy and protracted Hearings are a concern because they are expensive for the parties and expensive for the Appeals Board to conduct due to all of the Appeals Board-related costs. Also, lengthy Hearings make it difficult to find Appeals Board members to serve on the Appeals Board due to the extensive time commitment involved in Complex cases.
- One of the largest reasons for the delay in getting cases to Hearing is the fact that the Appeals Board currently has limited tools by which to force the parties to prepare their cases and move them towards a Hearing.
- Sorting out documentary evidence and disputes on evidence during the Hearing causes delay and continuances.

(d) Insufficient Hearing preparation

- Some of the largest reasons for the delay during the course of a Hearing are due to 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 the other party 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 the cases to be continued, and to take more time than planned for Hearing, further delaying resolution of the case.
- The lack of timely preparation before the Hearing tends to delay the commencement of 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 preparation would also tend to undermine the parties' ability to settle cases, since it is impossible to make intelligent decisions to settle one's case before one knows what the evidence at the Hearing is going to look like or what one's own expert witness is going to say.
- In addition, it is impossible for the Appeals Board to realistically schedule 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, without a good understanding of the facts and issues that will be presented. In one case, each of the parties estimated a week or so, about 10 days, of Hearing time. That one case resulted in 50 Hearing days extending over a year.
- Experts are not retained in some cases until a few weeks or months before Hearing.
- Appraisal reports are not prepared and completed until right before the Hearing date, in some cases at the eve of the Hearing or during the Hearing itself.
- Hundreds of exhibits are presented at the Hearings and thousands of pages of written transcripts record the Hearing.

(e) Ineffective prehearing preparation and prehearing discovery leads to inefficient Hearings

- 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 Hearing, and are disclosing to the other party the evidence to be presented at Hearing to help ensure that the other party will be prepared to respond to all evidence at Hearing, without any delays or unexpected needs for continuances.
- More attention is given during the Hearing to technical issues and arguments on those issues, such as discovery, surprise and the need for protective orders, other than to the facts of the case. Valuation issues are primarily factual issues, though the selection of the appropriate valuation method(s) is a legal issue. The Application of the correct valuation method is a factual process and time spent on the facts of the case is more beneficial to arriving at the actual value of the property as opposed to

spending protracted time during the Hearing on technical arguments of the parties on technical points that could have been dealt with and resolved before the Hearing.

- Discovery of documents occurs during the Hearing itself. Subpoenas are issued during the Hearing for production of documents. Hearings are continued to permit parties to seek and obtain court orders, and related protective orders, for production of third party confidential records.
- The current procedures lead to uncertainty of factual and legal issues before the Hearing, at the commencement of the Hearing and during the Hearing itself.
- Trial by ambush causes delay in the Hearings or inadequate responses to the other party's case.
- There are due process concerns on giving the parties ample opportunity to present evidence and deal with surprise as it arises during the Hearing. There are also due process concerns about excluding evidence.
- Parties are not prepared for exchange of information and records.
- Appraisal reports are being prepared while the evidence of the other party is being presented.
- Development of the case occurs during the Hearing itself.
- The nature of the testimony and reports of experts are not known to the adverse party or to the Appeals Board before the commencement of the Hearing.
- Parties crudely leverage the adverse parties' ineffective attempts to obtain information and records before the Hearing or at the Hearing.
- The failure of the parties to effectively make, or take steps necessary to enforce, prehearing discovery requests for records and information that are available under §§ 408 and 441 et seq. of the Rev. & Tax. Code.
- The use of tactical maneuvers and dubious tactics to prevent the adverse party from effectively preparing and presenting a case, particularly in those areas where there has been ineffective use or enforcement of broad prehearing discovery rights under §§ 408 and 441 et seq. of the Rev. & Tax. Code.

(f) Compliance with & enforcement of rules and orders

- 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.
- The draconian method of simply striking evidence, including appraisal reports, for misconduct or noncompliance, without substantial justification, with the Appeals Board's rules could and would have dire financial effects on the parties. By way of illustration, assume that the Appeals Board orders an exchange of appraisal reports to occur on a date certain before the commencement of the Hearing. If one of the parties fails to exchange its appraisal report, the Appeals Board is faced with the hard and difficult decision of how to fashion an appropriate remedy to cure noncompliance with the order. If the Appeals Board strikes the report, the other party might win the case by default since there is no evidence to counter the complying party's appraisal report that the Appeals Board receives in evidence.
- Appeals Board decisions based on such defaults in multimillion-dollar cases would have severe and significant financial impacts on the noncomplying party. If the board receives the noncomplying party's appraisal report, the board is put in the position of adjusting its proceedings to accommodate the needs of the complying party, e.g., granting continuances to permit the complying party to deal

with the information presented in the noncomplying report. Also, by receiving the noncomplying report, the message is given to the parties that they need not comply with the Appeals Board's orders, particularly those orders regarding prehearing preparation. In effect, there is not downside to disobeying the Appeals Board's orders and not taking said orders seriously.

- Absent monetary sanctions, there is to effective way to deal with noncompliance, without substantial justification, with rules other that striking evidence, particularly appraisal reports, and continuing Hearings.

(g) Adverse impact on Appeals Board members

- Extended service time on board member on Hearing panel and adverse impact on private businesses of the members.

Part VIII

PROPOSED RULES FOR COMPLEX CASES

a. Goals and objectives of the rules

The rules efficaciously lead the parties to complete their prehearing discovery and to complete their case preparation before clearly specified deadlines so that they will be prepared to meaningfully participate at the Hearing. The present statutory and SBE regulatory model for prehearing preparation and prehearing discovery leads the parties to complete discovery and preparation of their cases the day before the Hearing or at the Hearing itself. The proposed rules end this trend by requiring the parties to act diligently and complete preparation of their cases for Hearing within a reasonable time before the Hearing.

b. Outline of rules

The Board of Supervisors' resolution establishes revised procedural rules for the Appeals Board for status conferences, prehearing conferences and Hearings for Complex cases. Complex cases in the context of the resolution means cases where the amount of the taxable value on the current assessment roll for the property that is the subject of the Application for any one year is \$30 million dollars or more. The Appeals Board is given discretion to make cases subject to or exclude cases from the operation of the procedures if circumstances so require.

The resolution establishes revised procedural rules for status conferences and prehearing conferences for Complex cases. The Appeals Board has been utilizing status conferences for Complex cases and has found them useful, however, their usefulness is severely limited by the absence of more effective prehearing preparation procedures which ensure that cases are being properly prepared. The purposes of the revised procedures for the conferences are to:

- avoid delay in setting cases for Hearing;
- make timely final determinations on Applications within the two-year time limit set by § 1604 of the Rev. & Tax. Code;
- reduce the time that the auditor-controller impounds disputed tax revenues pursuant to § 26906.1 of the Rev. & Tax. Code, and, thereby timely make available tax revenues for governmental and educational services, equipment and facilities; and

- avoid unnecessary delay and continuances after the commencement of a Hearing on an Application by dealing efficiently with and resolving procedural matters before the commencement of the Hearing on the Application.

The goals of the status conferences are to:

- expedite the disposition of Applications;
- establish early and continued control of the case;
- encourage or facilitate more efficient prehearing preparation;
- improve the quality of the Hearing through more thorough preparation; and
- facilitate the settlement of the case.

In order to ensure informed and uniform tracking of the case by the Appeals Board, the same three member panel conducts and controls the proceedings on each case from its commencement to conclusion.

The resolution sets up a fast track system for scheduling cases.

The Appeals Board shall, after holding status conferences and after consulting with the parties, enter scheduling orders that:

- set deadlines to initiate and complete prehearing discovery pursuant to the provisions of the Rev. & Tax. Code and its implementing regulations, particularly Division 1, Part 2, Chapter 3, Article 2, §§ 441 *et seq.* and Article 1, § 408, of the Rev. & Tax. Code; and
- set further status conferences, prehearing conferences and Hearing dates.

Scheduling orders are not modified except upon a showing of good cause and by leave of the Appeals Board.

Parties are required to file and serve status conference reports before status conferences.

At status conferences, the Appeals Board may act on:

- the identification of issues;
- amendments to Applications;
- the status of prehearing discovery;
- stipulations to matters on which agreement has been reached;
- consolidating or bifurcating Hearings on Applications;
- scheduling Hearing dates to consider the evidence on the merits of the Application;
- admissions of fact and of documents, stipulations regarding the authenticity of documents, and advance rulings on the admissibility of evidence;
- the control and scheduling of prehearing discovery, including the setting of deadlines for filing applications for subpoenas issued by the Appeals Board under § 1609.4 of the Rev. & Tax. Code;
- the setting of deadlines for the Assessor's initiation and completion of prehearing discovery under Rev. & Tax. Code § 441 *et seq.*;
- the setting of deadlines for the applicant's initiation and completion of prehearing discovery under Rev. & Tax. Code § 408;
- the setting of deadlines for the Assessor to obtain a court order in accord with Rev. & Tax. Code § 408 for the disclosure of information and records that relate to the property or business affairs of another and that will be used by the Assessor in support of a higher assessed value than was placed on the roll pursuant to Rev. & Tax. Code § 1609.4;

- the identification of witnesses and documents, the scheduling of the exchange of prehearing briefs, and the scheduling of further status conferences and of Hearing dates;
- the form and substance of the final prehearing order;
- the disposition of pending motions;
- the adoption of special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, third parties, difficult legal questions, or unusual proof problems;
- the setting of separate Hearings with respect to a claim or with respect to any particular issue in the case;
- ordering a party or parties to present evidence early in the Hearing with respect to a manageable issue that could, on the evidence, be the basis for a final determination as a matter of law or a finding on partial findings;
- establishing a reasonable limit on the time allowed for presenting evidence; and
- such other matters as may facilitate the just, speedy, and inexpensive disposition of the Application.

The resolution also establishes prehearing conferences. Status conferences are designed to assist the parties and the Appeals Board to prepare for the Hearing on the merits of the Application. Prehearing conferences are designed to be the final stage before Hearing where the efforts by the parties and the Appeals Board for prehearing preparation come together for a final order issued by the Appeals Board that will control the Hearing on the Application.

In connection with prehearing conferences, the Appeals Board enters final prehearing conference orders that control the subsequent course of the Hearing unless modified by a subsequent order of the Appeals Board after a showing of good cause. The Appeals Board may consider sanctions as set forth in Rule 29 as a condition of modifying the final prehearing conference order.

The prehearing conference order specifies the actions the parties are to take, including the following:

- exchange of exhibits, including appraisal reports, to be used at the Hearing, other than exhibits contemplated to be used only for impeachment or rebuttal purposes;
- identification of witnesses, including expert witnesses, expected to be called at the Hearing other than those to be used for impeachment or rebuttal purposes only;
- specified disclosures concerning expert witnesses.

The prehearing conference order also sets deadlines no earlier than 10 days before the date set for the Hearing for:

- exchange of appraisal reports;
- exchange of exhibits;
- exchange of witness lists; and
- designation of experts and disclosure regarding experts.

The parties are also required to meet no later than 10 days before the prehearing conference to discuss and exhaust all possibilities of settlement.

The resolution authorizes the Appeals Board to impose sanctions, including the preclusion of evidence at the Hearing, or to make such orders in regard to noncompliance with the procedural rules for Complex cases as the Appeals Board deems appropriate and just. In addition, if the County Code authorizes the Appeals Board to award monetary sanctions, the Appeals Board may assess monetary

sanctions for noncompliance, without substantial justification, with the procedural rules established by the resolution or noncompliance, without substantial justification, with orders of the Appeals Board.

The documents submitted in connection with this letter include a proposed ordinance that authorizes the Appeals Board to assess sanctions for noncompliance, without substantial justification, with the proposed rules for Complex cases. Rule 29 follows the language in the ordinance for sanctions. Consequently, these comments on sanctions apply to both Rule 29 and to the ordinance.

If authorized by County ordinance, the Appeals Board may impose monetary sanctions and award costs to a party to compensate said party for the other party's noncompliance, without substantial justification, with the rules for Complex cases. The award of costs to a party is intended to compensate the party for reasonable costs incurred by the party as a result of the other party's noncompliance, including, but not limited to, costs incurred by the party, the party's attorney, the party's expert or other witnesses, and reporter's costs. Costs may be assessed against the party, attorneys, agents or expert witnesses for the party. The Appeals Board may award costs if:

- the Appeals Board grants a party leave to file a motion for costs or the Appeals Board directs the party to file a motion for costs; and
- a party fails to obey rules or orders relating to Complex cases; or
- no appearance is made on behalf of a party at a status conference or prehearing conference; or
- a party is unprepared to participate in a status conference or a prehearing conference, or if a party fails to participate in good faith in any conferences; and
- the Appeals Board finds that the noncompliance was not substantially justified.

The procedures for an award of costs under Rule 29 and the ordinance require that sanctions may only be issued after notice and an opportunity to respond. An application for sanctions must be accompanied by a declaration under penalty of perjury filed with the motion for the award of costs that sets forth a detailed itemization of the costs incurred and the reasons for incurring the costs.

Rule 29 and the ordinance also provide that the Appeals Board may, in addition to the award of costs to a party, assess a monetary sanction in the amount not to exceed \$500.00 for each instance of noncompliance, without substantial justification, with the rules and orders for Complex cases. Said assessment may be made against the party, attorney, agent or expert witness who failed to comply with the procedural rules and orders for Complex cases and shall be payable to the Appeals Board. The payment of the assessment to the Appeals Board is meant to compensate it for its expenses incurred as a result of noncompliance with said procedural rules or orders of the Appeals Board.

For purposes of the award of monetary sanctions, costs and monetary sanctions shall not exceed a total award of \$5,000.00 for each Application. If more than one Application, whether consolidated or not, is the subject of the conferences or Hearings, the Applications shall be considered as one application for purposes of awarding costs.

Part IX
THE UNDERLYING LEGAL PRINCIPLES FOR THE RULES

The following is a general discussion on the legal underpinnings of major provisions of the rules for Complex cases.

1. The rules are authorized by the Constitution, case law and Property Tax Rule 305.2

Art. 13, § 16, of the California Constitution clearly and expressly authorizes the Board of Supervisors to adopt the proposed prehearing and Hearing procedural rules for Complex cases. Art. 13, § 16, of the California Constitution states that the Board of Supervisors shall adopt procedural rules for Appeals Boards "... as may be required to facilitate their work and to insure uniformity in the processing and decision on equalization petitions," The Constitution characterizes the duty to adopt procedural rules as a mandatory duty.

Additionally, the courts have long recognized that boards of supervisors may pursuant to the Constitution adopt rules and regulations that govern the proceedings of appeals boards. (See *Williamson v. Payne* (1938) 25 Cal.App.2nd 497 [77 P.2nd 900]; *Stevens v. Fox* (1972) 23 Cal.App.3rd 199 [100 Cal.Rptr. 63]; *State Board of Equalization v. Cenicerros* (1998) 63 Cal.App.4th 122 [73 Cal.Rptr.2nd 539].)

The proposed rules require the parties to complete preparation of their respective cases before the Hearing. Hearing preparation is accomplished by setting deadlines on the timing of the acquisition of evidence by the parties to insure that the parties initiate and complete any discovery available to them under the Rev. & Tax. Code before the commencement of the Hearing.

In *Stevens v. Fox, supra*, the appeals board established, pursuant to locally adopted rules, a procedure to receive evidence in a proceeding to determine its own jurisdiction, which jurisdictional hearing was held before the Hearing on the merits of the Application. In approving the procedure for the presentation of evidence, *Stevens v. Fox, supra*, p. 206, states that "It was within the board's discretion to prescribe the procedure by which evidence was to be presented." This holding supports the authority of the Board of Supervisors to adopt procedural rules that relate to the introduction of evidence, meaning that the Board of Supervisors may adopt rules relating to the timing of the acquisition, exchange and use of evidence by the parties at or before the equalization Hearing.

State Board of Equalization v. Cenicerros, supra, squarely and directly dealt with the authority of the Board of Supervisors to adopt local rules for appeals boards that govern prehearing discovery and that prescribe that the timing for the exchange of evidence (information and records) occur before the Hearing.

Furthermore, the State Board of Equalization recently adopted Property Tax Rule 305.2, subd. (a), that states that:

A county board of supervisors may establish prehearing conferences. If prehearing conferences are established, the county board of supervisors shall adopt rules of procedure for prehearing conferences. The purpose of a prehearing conference is to resolve issues such as, but not limited to, clarifying and defining the issues, determining the status of exchange of information requests, stipulating to matters on which agreement has been reached, combining applications into a single hearing, bifurcating the hearing issues, and scheduling a date for a hearing officer or the board to consider evidence on the merits of the application. (Underlines added.)

The Board of Supervisors had previously established prehearing conferences (status conferences) for Complex cases before the enactment of Property Tax Rule 305.2. The Appeals Board has extensively

used prehearing conferences in major cases to prepare for equalization Hearings. Said prehearing conferences have greatly benefited the Appeals Board and the parties. However, even in those Complex cases where extensive prehearing conferences were utilized by the Appeals Board, the following inefficiencies resulted due to the very limited authority vested in the Appeals Board to control its proceedings:

- parties were in some cases unprepared for the Hearing;
- expert witnesses had been retained shortly before the Hearing;
- expert witnesses had not obtained needed information and records from the other party to prepare and complete their appraisal reports;
- appraisal reports were completed shortly before the Hearing or the day before the commencement of the Hearing or during the Hearing itself;
- the parties had not exchanged evidence, particularly appraisal reports, before the Hearing;
- the parties were surprised at the Hearing by the other party's case and evidence, which in some instances resulted in continuances of Hearings;
- the parties contended at the Hearing that the opposition had not fully complied with requests for information and records pursuant to §§ 441 (Assessor's request) and 408 (applicant's request). Such contentions required the Appeals Board to interrupt the presentation of evidence on the facts of case and to hear the parties contentiously argue about compliance v. noncompliance with requests to produce records and information;
- the need for the parties to obtain protective orders and court orders for the disclosure of 3rd party confidential information held by the Assessor arose during Hearings.

The apparent purpose of Property Tax Rule 305.2 on prehearing conferences is to facilitate the work of Appeals Boards and to give Appeals Boards the necessary tools to manage and control their proceedings to ensure efficient Hearings that provide the Appeals Board with the information necessary to arrive at correct value, as opposed to overvaluation or undervaluation. The Appeals Board submits that the proposed rules for Complex cases are consistent with and in furtherance of Property Tax Rule 305.2. To hold otherwise and maintain that the Board of Supervisors has no authority to adopt procedural rules that govern the timing of the initiation and completion of the parties' prehearing discovery that is available to the parties under the Rev. & Tax. Code undermines the entire point of status conferences and leads to trial by ambush and surprise with its resulting continuances, and contentious, protracted and delayed Hearings.

2. The parties have broad discovery rights under other provisions of the Rev. & Tax. Code that are not included in the Rev. & Tax. Code provisions relating to and dealing with Appeals Boards

The parties have broad prehearing discovery rights under the Rev. & Tax. Code.

Regarding the Assessor, Rev. & Tax. Code §§ 441 – 470 grant the Assessor broad authority to obtain information and records for assessment purposes, including appraisal reports. (See *Roberts v. Gulf Oil Corp.* (1983) 147 Cal.App.3rd 770 [195 Cal.Rptr. 393].) § 441, subd. (d), enables the Assessor to require a taxpayer to provide records and information regarding an assessment. § 442 requires persons who furnish property statements to the Assessor to furnish any required information or records to the Assessor for examination at any time. § 470 requires taxpayers at the request of the Assessor to furnish the Assessor with business records regarding property subject to assessment. The above-described authority of the Assessor to acquire records or information is self-executing and independent of the assessment appeals process. Even after an Application is filed with the Appeals Board, the Assessor may invoke § 441, subd. (d), to require the applicant to provide records and information to enable the Assessor to prepare for Hearing.

The Assessor has means to enforce his request for records and information. The Assessor may subpoena persons for examination (§ 454). If the person fails to comply with the Assessor's request for information or records, the Assessor may apply to superior court for a subpoena ordering the person to appear and answer in superior court concerning the property. The above-mentioned authority of the Assessor to obtain information and records is not subject to authorization, approval or enforcement by the Appeals Board. The only remedy available to the Appeals Board for a person's failure to comply with the Assessor's request for records or information is to continue the Hearing. (Rev. & Tax. Code § 441, subd. (h).) However, the Appeals Board submits that the Board of Supervisors may adopt procedural rules that require the Assessor to initiate and complete his prehearing discovery under the Rev. & Tax. Code, including enforcement of those requests through appropriate superior court action, by a specified deadline set in advance of the scheduled Hearing date.

Likewise, the applicant has broad prehearing discovery rights under Rev. & Tax. Code 408. § 408, subd. (d), authorizes the applicant to obtain, except for business records relating to the affairs of another, market data (comparable sales data) from the Assessor.

§ 408, subd. (e), authorizes the applicant to inspect and copy the Assessor's records and information relating to applicant's assessment. § 408, subds. (e) (1)&(2), states that:

(e)(1) With respect to information, documents, and records, , the assessor shall, upon request of an assessee of property, or his or her designated representative, permit the assessee or representative to inspect or copy all information, documents, and records, including auditors' narrations and workpapers, , relating to the appraisal and the assessment of the assessee's property,

(2) After enrolling an assessment, the assessor shall respond to a written request for information supporting the assessment, including, but not limited to, any appraisal and other data requested by the assessee.

In the event the applicant seeks 3rd party confidential information, § 408, subd. (e)(3), requires the applicant to seek and obtain a court order for the production of said 3rd party confidential information.

The applicant also has a right to enforce his request for records and information by filing a writ of mandate in superior court for a court order to compel the Assessor to produce the requested information and records. (See *Henderson v. Bettis* (1975) 53 C.A.3rd 486 [126 Cal.Rptr. 199].)

The key documents in Hearings on Complex cases are the appraisal reports. The Appeals Board submits that under prehearing discovery rights available to the Assessor and applicant under §§ 441 – 470 and § 408 of the Rev. & Tax. Code, the parties may obtain before the Hearing the opponents' appraisal reports that exist at the time of the request is made. The major limitation on the discovery rights of the parties under said sections of the Rev. & Tax. Code is that parties may after an exchange of appraisal reports made pursuant to a request for such reports prepare new appraisal reports and use those new appraisal reports at the Hearing.

If the parties are going to utilize §§ 441 – 470 and § 408 of the Rev. & Tax. Code, the proposed rules enable the Appeals Board to require the parties to initiate and complete prehearing discovery under §§ 441 – 470 and § 408 of the Rev. & Tax. Code by deadlines set by the Appeals Board at least 60 days before the Hearing.

3. The Rev. & Tax. Code and SBE Property Tax Rules for Appeals Boards give parties and the Appeals Board limited and insufficient prehearing discovery

Rev. & Tax. Code § 1606 provides for an exchange of information between the parties. An applicant in any case or the Assessor in cases exceeding \$100,000.00 may initiate an exchange of information by giving the other party data and information regarding the party's opinion of value and relating to the party's valuation methodology.

To initiate a § 1606 exchange, a party shall submit the data identified in § 1606 at least 30 days before the commencement of the Hearing and the other party shall respond at least 15 days prior to the Hearing.

State Board of Equalization v. Cenicerros, supra, held that the § 1606 exchange of information provisions are not the exclusive means under the Rev. & Tax. Code by which the parties may obtain prehearing discovery.

Though § 1606 does provide some measure of prehearing discovery, it is of limited use and value because the exchange of information only provides for reasonable notice to the opposing party on the subject matter that will be presented by means of evidence at the Hearing.

Under § 1606, parties are not required to exchange details of evidence to be presented at the Hearing. (See *Bank of America v. County of Fresno* (1981) 127 Cal.App.3rd 295 [179 Cal.Rptr. 497]; SBE Property Tax Rule 305.1, subd. (a).) Additionally, the Appeals Board does not currently construe § 1606 as requiring the parties to exchange appraisal reports.

The proposed rules do not affect or control the right of the parties to initiate a § 1606 exchange of information.

§ 1609.4 authorizes the Assessor to request the Appeals Board at the Hearing to increase the roll value for the property that is the subject of the Application. If the Assessor proposes to present evidence at the Hearing to support a higher value than the roll value, he must, at least 10 days before the Hearing, inform the applicant of the higher assessed value and the evidence that the Assessor proposes to introduce at the Hearing in support of the higher value.

Similarly, § 1609.4 does not require the Assessor to give the details of the evidence to be presented in support of the higher value nor does it require, as currently interpreted by the Appeals Board, that the Assessor give the applicant the appraisal report in support of the higher value.

The proposed rules do not affect the right of the Assessor to give a 10-day notice under § 1609.4 for an increase in roll value.

Other restrictions on the ability of the Appeals Board to guide the parties to complete preparation before the Hearing are the limitations on the Appeals Board's discretionary subpoena authority under § 1609.4. SBE Property Tax Rule 322, subd. (e), prescribes that when an Appeals Board issues, either before or after the commencement of the Hearing, a subpoena under § 1609.4 for the attendance witnesses or production of records at the Hearing, that the subpoenas are restricted to compelling the attendance of witnesses or the production of documents at the Hearing and that said subpoenas "...shall not be utilized for purposes of prehearing discovery." Consequently, the Appeals Board cannot use its subpoena power to require that the production of documents occur before a Hearing.

Since the proposed rules contemplate that the parties are able to obtain complete prehearing discovery of records and information before the Hearing by regulating the timing under §§ 441– 470 and § 408 of the Rev. & Tax. Code and since the use of Appeals Board subpoenas is of no use for prehearing discovery, the parties are required to explain to the Appeals Board, if they ask the Appeals Board to exercise its discretion to issue a subpoena for production of documents at the Hearing, why they did not obtain the requested documents under of §§ 441– 470 and § 408 of the Rev. & Tax. Code.

The rules do not directly control or mandate the parties to invoke and use their prehearing discovery rights under §§ 441– 470 and § 408 of the Rev. & Tax. Code. However, if they do not exercise prehearing discovery rights under these sections by the deadlines set by the Appeals Board, they run of risk of having any evidence acquired under these sections after the deadline excluded from evidence at the Hearing.

Commenting on the proposed rules, the SBE agreed that local appeals boards could adopt rules regulating the timing and completion of discovery under these Rev. & Tax. Code sections.

4. The Board of Supervisors may authorize the Appeals Board to impose attorneys fees on a noncomplying party for failure to comply with its rules in order to provide monetary restitution to the opponent caused by the noncomplying party

The authority of the Board of Supervisors to authorize the Appeals Board to impose monetary sanctions on noncomplying parties who fail, without substantial justification, to follow the rules and the Appeals Board’s orders to carryout the rules is based first on the Constitution, and is also supported by the court decision in *McHugh v. Santa Monica Rent Control Bd.* (1989) 49 Cal.3rd 348 [261 Cal.Rptr. 318].)

First, the Constitution mandates that the Board of Supervisors adopt procedural rules to govern the conduct of Appeals Boards proceedings on Applications.

Art 13, § 16, of the Constitution provides:

County boards of supervisors shall ... adopt rules of ... procedures for [assessment appeals] boards as may be required to facilitate their work

By implication, the Board of Supervisors has the power under the Constitution to adopt reasonable and necessary means to enforce its procedural rules. Rules without an enforcement mechanism to insure compliance results in noncompliance with the rules. An inequitable situation results undermining the fairness of the Hearing because the complying party is penalized by the opponent’s noncompliance with the rules to the detriment of the complying party. An award of monetary sanctions is a reasonable enforcement feature of the rules, which will in all likelihood result in compliance with the rules. The cap of \$5,000 per case is a minimal amount given the amount of money expended by the parties in a Complex case. This sanctions feature is designed more to impress on the parties the importance of complying with the rules rather than to provide full restitution to the parties for the opponent’s noncompliance with the rules. The private parties who commented on the proposed rules did not object to the attorney’s fees.

The second basis for the award of monetary sanctions, including attorney’s fees, for noncompliance with rules is the California Supreme Court decision in *McHugh v. Santa Monica Rent Control Bd.*, *supra*.

McHugh v. Santa Monica Rent Control Bd., *supra*, involved a city rent control board and the authority of an administrative agency (the rent control board) other than an agency created by the Constitution to exercise judicial powers to award monetary restitution. The city charter in part authorized the rent control board to determine and make awards of excess rent as monetary restitution to aggrieved

tenants. The city charter in the case also authorized attorney fees in court actions. The case upheld the authority of the rent control board to make a monetary award of excess rent and did not directly decide the attorneys fee issue because this issue was not before the court for decision.

Concerning the authority of an administrative agency to award monetary relief, *McHugh v. Santa Monica Rent Control Bd.*, *supra*, p. 372, states that:

An administrative agency may constitutionally hold Hearings, determine facts, apply the law to those facts, and order relief – including certain types of monetary relief – so long as (i) such activities are authorized by statute or legislation and are *reasonably necessary* to effectuate the administrative agency’s *primary, legitimate regulatory purposes*, and (ii) *the ‘essential’ judicial power* (i.e., the power to make enforceable, binding judgments) *remains ultimately in the courts, through review of agency determinations*. (Underlining added and italics in text.)

The Supreme Court in *McHugh* cites with approval a sister state case that affirms an award of attorney fees by an administrative agency. As to the ordinance before the Board of Supervisors, the proposed monetary sanctions, including attorney’s fees, are reasonably necessary to effectuate the legitimate rules of procedure of the Appeals Boards, and judicial review remains available for all determinations of the Appeals Boards. Accordingly, the *McHugh* decision also supports the authority of the Board of Supervisors to empower the Appeals Board to impose monetary sanctions, including attorney fees, as a means to provide monetary restitution to a party injured by the opponent’s noncompliance, without substantial justification, with the rules and orders of the Appeals Board.

ATTACHMENT A

PROCEDURAL RULES FOR THE ASSESSMENT APPEALS BOARDS
ADOPTED BY THE BOARD OF SUPERVISORS FOR STATUS CONFERENCES,
PRE-HEARING CONFERENCES AND HEARINGS FOR CASES OF \$30 MILLION
OR MORE IN TAXABLE VALUE ON THE CURRENT ROLL

PART I

Table of Rules

A. INTRODUCTION	Rules 1 to 5
B. STATUS CONFERENCES	Rules 6 to 10
C. PRE-HEARING CONFERENCES	Rules 11 to 16
{ TA \l "PART IV" \s "PART IV" \c 16 }	
D. HEARING RULES FOR COMPLEX CASES	Rules 17 to 31

A. INTRODUCTION

Rule 1. Status Conferences and Pre-Hearing Conferences { TA \l "Rule 36. Pre-hearing Status Conference" \s "Rule 36. Pre-hearing Status Conference" \c 16 }

Part I prescribes rules for status conferences, pre-hearing conferences and hearings for the Santa Barbara County Assessment Appeals Boards (hereafter “Appeals Board”) for Complex Cases. Complex Cases as used in Part I means cases where the amount of the taxable value on the current assessment roll, for the property that is the subject of the Application for Changed Assessment (hereafter “Application”), for any one year is \$30 million dollars or more.

Rule 2. Three Member Panel{ TA \l "Rule 37. 3 Member Panel" \s "Rule 37. 3 Member Panel" \c 16 }

The chair of the Appeals Board shall designate a three member panel for each Complex Case. The panel shall conduct status conferences and pre-hearing conferences required by Part I and hear the Application for said cases. The chair may appoint, in the absence of a designated panel member, an alternate member of the Appeals Board to the

panel to conduct status conferences and pre-hearing conferences. The Clerk shall timely place the subject matter of the designation of panels pursuant to this Rule on the agenda of the Appeals Board for action by the chair. The chair may at any other time appoint alternates, as required, by this Rule.

Rule 3. Applicability to Complex Cases{ TA \l "Rule 38. Applicability To Complex Cases" \s "Rule 38. Applicability To Complex Cases" \c 16 }

These procedural rules for status conferences, pre-hearing conferences and hearings shall apply to all Complex Cases unless the Appeals Board, on its own motion or on the application of a party, enters an order that the case is not subject to Part I.

Rule 4. Application to Consolidated Cases { TA \l "Rule 39. Application To Consolidated Cases" \s "Rule 39. Application To Consolidated Cases" \c 16 }

Part I shall apply to Applications that are consolidated for hearing with an Application for a Complex Case.

Rule 5. Discretionary Application to Other Cases{ TA \l "Rule 40. Discretionary Application To Other Cases" \s "Rule 40. Discretionary Application To Other Cases" \c 16 }

In the event that the assessment roll value of the property that is the subject of the Application is less than \$30 million dollars or in the event the cumulative amount of the assessment roll value of the property that is the subject of two or more Applications is \$30 million dollars or more, the Appeals Board may, on its own motion or on the motion of the assessor or the applicant, order that the Application be subject to Part I.

B. STATUS CONFERENCES

Rule 6. Clerk's Notice of Pre-Hearing Status Conference{ TA \l "Rule 41. Clerk's Notice Of Pre-Hearing Status Conference" \s "Rule 41. Clerk's Notice Of Pre-Hearing Status Conference" \c 16 }

Within three months of the filing of the Application for a Complex Case that is subject to Part I, the Clerk shall serve each party with at least 30 days written notice of the time, date --which date may be a date after said 3-month period--, and place of the status conference, unless the parties stipulate to a shorter notice period. The clerk shall also serve a copy of Part 1 on each party. If the status conference is vacated for any reason, the Clerk shall provide the parties with written notice of the new date, time, and location of the status conference. Said notice shall be given at least 10 days prior to the new status conference date, unless the parties stipulate to a shorter notice period. The Appeals Board may order additional status conferences as it deems appropriate.

Rule 7. Notice to Parties{ TA \l "Rule 42. Notice To Parties" \s "Rule 42. Notice To Parties" \c 16 }

The persons to be notified by the Clerk pursuant to Part I are:

- (a) the assessor;
- (b) the deputy counsel or other counsel representing the assessor, where said counsel has filed for a specific Application a written request for notice with the Clerk;
- (c) the applicant or to the applicant's attorney-at-law of record who has filed a written notice of appearance as counsel for the applicant; and
- (d) the legal advisor to the Appeals Board.

Rule 8. Status Conferences; Scheduling; Management

(a) Status Conferences; Objectives

The purpose of status conferences is to:

- (1) expedite the disposition of Applications;
- (2) establish early and continued control of the case;
- (3) encourage or facilitate more efficient pre-hearing preparation;
- (4) improve the quality of the hearing through more thorough preparation, and;
- (5) facilitate the settlement of the case.

(b) Scheduling and Planning

The Appeals Board shall, after holding status conferences and after consulting with the parties, or their respective attorneys, enter a scheduling order that limits the time by setting deadlines:

- (1) to file motions; and
- (2) to initiate and complete the obtaining of information and records pursuant to the provisions of the Rev. & Tax. Code and its implementing regulations, particularly Division 1, Part 2, Chapter 3, Article 2, sections 441 *et seq.* and Article 1, section 408, of the Rev. & Tax. Code.

The scheduling order may also include:

- (3) the setting of final dates, at least 60 days before the hearing date, for the initiation and completion of disclosures under Rev. & Tax. Code sections 441 *et seq.* and 408;
- (4) the setting of further status conferences, a pre-hearing conference, and hearing date; and
- (5) any other matters appropriate under the circumstances of the case.

The Appeals Board may issue scheduling orders at the status conferences. A scheduling order shall not be modified except upon a showing of good cause and by leave of the Appeals Board.

Rule 9. Written Status Conference Report{ TA \l "Rule 43. Written Status Conference Report" \s "Rule 43. Written Status Conference Report" \c 16 }

The parties shall each file and serve a status conference report on all parties 10 days before the status conference. The status conference report shall address the following topics:

- (a) the factual background;
- (b) the legal issues;
- (c) the appraisal issues;
- (d) appropriate hearing dates on the Application(s), including an estimate of the length of the hearing;
- (e) the setting of subsequent status conferences;
- (f) the plan of the parties for obtaining information for the hearing on the Application, including the status and response to requests for information by the parties and the scheduling of further responses;
- (g) the need for filing of petitions or applications for protective orders with the superior court or the Appeals Board;
- (h) the application for and the issuance of subpoenas and subpoenas *duces tecum*;
- (i) any pending or anticipated requests for information or exchange of information under the Revenue and Taxation Code; and

(j) any other matter that may provide for the efficient and orderly administration of the hearing on the Application.

Rule 10. Subjects for Consideration at Status Conferences.

At any status conference under this Part I, consideration may be given, and the Appeals Board may take appropriate action, including but not limited to:

(a) the formulation and simplification of the issues, including the elimination of frivolous claims or defenses;

(b) amendments to the Applications;

(c) clarifying and defining the issues, determining the status of exchange of information requests, stipulating to matters on which agreement has been reached, combining Applications into a single hearing, bifurcating the hearing issues;

(d) At the first status conference, the Appeals Board shall consider and discuss with the assessor and the applicant the scheduling of a date for a hearing to consider the evidence on the merits of the Application. In scheduling a hearing date to consider the evidence on the merits of the Application, the Appeals Board may consider and act on either option set forth below:

(1) Scheduling hearing on the merits in consultation with the parties.

If the parties stipulate in writing to waive their respective rights to continuance or postponement of the hearing as a matter of right under Property Tax Rule 323(a), and to waive their respective rights under Property Tax Rule 323(a) that a stipulation between the assessor and the applicant constitutes good cause for continuance of a hearing, to the extent the parties have such rights, and file said stipulations with the Appeals Board, the Appeals Board may, in order to

implement the objectives of this Part I, consult with the parties at the first status conference and subsequent status conferences to schedule a hearing date to consider the merits of the Application. The purpose for the Appeals Board's consultation with the parties in scheduling a hearing date is to the implement pre-hearing preparation procedures set forth in this Part I, in the Rev. & Tax. Code and in implementing regulations promulgated by the State Board of Equalization. The Appeals Board may thereafter continue the hearing upon the joint request of the parties or upon the request of a party on a showing of good cause or on its own motion. Where the Appeals Board continues a hearing pursuant to this subsection (d)(1) of Rule 10, it may order that the original hearing date be the effective date for exchanges of information or notices to increase the roll value.

(2) Scheduling hearing without consultation with the parties

If at the first status conference the parties do not stipulate in writing to waive their respective rights to a continuance or postponement of the hearing as a matter of right under Property Tax Rule 323(a) and to waive their respective rights under Property Tax Rule 323(a) that a stipulation between the assessor and the applicant constitutes good cause for continuance of a hearing, the Appeals Board shall give the parties a reasonable time to prepare for the hearing and schedule a date for the hearing to consider the evidence on the merits of the application. All procedural requirements of this Part I shall apply, including the postponement and continuance requirements of Property Tax Rule 323.

- (e) obtaining of admissions of fact and of documents, stipulations regarding the authenticity of documents, and advance rulings from the Appeals Board on the admissibility of evidence;
- (f) the elimination of unnecessary proof and of cumulative evidence;
- (g) the appropriateness and timing of motions;
- (h) the control and scheduling of discovery, including orders affecting disclosures and discovery, pursuant to sections 441 *et seq.* and 408 of the Rev. & Tax. Code and orders for subpoenas pursuant to Rev. & Tax. Code section 1609.4, and implementing regulations;
- (i) the setting of a deadline for a party's application of a subpoena under section 1609.4 of the Rev. & Tax. Code. A party who requests the issuance of a subpoena pursuant to section 1609.4 of the Rev. & Tax. Code for the production of books, records, maps and documents shall show good cause as to why said books, records, maps and documents were not obtained pursuant to section 441 *et seq.* in regard to the assessor and pursuant to section 408 in regard to the applicant;
- (j) the setting of a deadline for the assessor to obtain information and records from the taxpayer pursuant to Rev. & Tax. Code section 441 *et seq.* for use at the hearing on the Application for Changed Assessment;
- (k) the setting of a deadline for the applicant to obtain a court order in accord with Rev. & Tax. Code section 408, subd. (e), for information and records that relate to the property or business affairs of another and that will be used by the assessor in support of the roll value that is the subject of the application for changed assessment. Before a date certain set by the Appeals Board, the assessor may notify the applicant if the assessor intends to

support the roll value by using information and records relating to the property or business affairs of a third party that are confidential under Rev. & Tax. Code section 408. If the assessor notifies the applicant of its intent to use third party confidential information protected by Rev. & Tax. Code section 408 and the applicant does not obtain a court order for the production of that information and records, the assessor may use, without disclosure at the hearing on the application for changed assessment, the third party confidential information and records in support of the roll value. If the assessor does not so notify the applicant of its intent to use the third party confidential information and records protected by Rev. & Code section 408 and the assessor proposes to use the third party confidential information and records at the hearing in support of the local roll, the Appeals Board may at the hearing grant the applicant a continuance in order to seek a court order for the production by the assessor of said third party confidential information.

(l) the setting of a deadline for the assessor to obtain a court order in accord with Rev. & Tax. Code section 408 for the disclosure of information and records that relate to the property or business affairs of another and that will be used by the assessor in support of a higher assessed value than was placed on the roll pursuant to Rev. & Tax. Code section 1609.4. In the event the assessor does not obtain a court order for disclosure of said information and records, the assessor may not use said third party confidential information and records in support of a higher assessed value pursuant to Rev. & Tax. Code section 1609.4 than was placed on the roll;

(m) the identification of witnesses and documents, the scheduling of the exchange of pre-hearing briefs, and the scheduling of further status conferences and the hearing date;

(n) the use of special procedures to assist in resolving the dispute when authorized by

local rule;

- (o) the form and substance of the final pre-hearing order;
- (p) the disposition of pending motions;
- (q) the adoption of special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, third parties, difficult legal questions, or unusual proof problems;
- (r) the setting of separate hearings with respect to a claim or with respect to any particular issue in the case;
- (s) ordering a party or parties to present evidence early in the hearing with respect to a manageable issue that could, on the evidence, be the basis for a final determination as a matter of law or a finding on partial findings;
- (t) the establishing of a reasonable limit on the time allowed for presenting evidence; and
- (u) such other matters as may facilitate the just, speedy, and inexpensive disposition of the Application.

Each party, or attorneys or agents, participating in any status conference shall have authority to enter into stipulations and to make admissions regarding all matters discussed in the status conference reports.

C. PRE-HEARING CONFERENCE

Rule 11. Pre-Hearing Conference

Any pre-hearing conference shall be held at least 45 days before the date set for the hearing. Except where the Appeals Board set the date for the pre-hearing conference at a prior status conference where the parties were in attendance, the Clerk shall give at least 30 days written notice of the pre-hearing conference. The participants at any such

conference shall formulate a plan for the hearing, including a program for facilitating the admission of evidence.

The Appeals Board may schedule, as circumstances require or at the request of the parties, a supplemental pre-hearing conference to be held after the pre-hearing conference and before the hearing in order to facilitate the resolution of pre-hearing and hearing matters.

The conference shall be attended by each unrepresented party or by at least one of the agents or attorneys who will represent the party at the hearing who shall have authority to enter into stipulations and to make admissions on behalf of the party.

Rule 12. Final Identification of Contentions of Fact and Law

No later than 10 days before the pre-hearing conference, each party shall serve and file an original and 4 copies of a Memorandum of Contentions of Fact and Law setting forth a summary of the party's material factual contentions supported by legal authority and shall include the following:

- A. Factual Contentions –a brief but full exposition of the party's theory of the case and a statement in narrative form of what the party expects to prove.
- B. Legal Contentions–a brief discussion of the legal issues necessary to the determination of the case.
- C. Bifurcation of Issues –any request for bifurcation of issues and the basis for the request.
- D. Abandonment of Issues –any issues set forth in the Application that are abandoned.

Rule 13. Pre-hearing Orders - Binding Effect

(a) The Appeals Board shall enter a final pre-hearing conference order at the pre-hearing conference held pursuant to Rule 11. This order shall control the subsequent course of the action unless modified by a subsequent order of the Appeals Board after a showing of good cause to prevent manifest injustice. The Appeals Board may consider sanctions as set forth in Rule 29 as a condition of modifying the order.

(b) In accord with the deadlines set forth in subsection (b)(4), the pre-hearing conference order shall set forth the actions the parties are to take, including but not limited to the following:

(1) the parties are to exchange all exhibits, including appraisal reports, to be used at the hearing, other than exhibits contemplated to be used only for impeachment or rebuttal purposes. Exhibits shall be marked in accordance with the procedures set forth in Rule 19. Exhibits not exchanged pursuant to the pre-hearing conference order shall not be allowed to be used at the hearing unless the pre-hearing conference order is modified pursuant to this Rule. Nonetheless, the Appeals Board, on a showing of good cause, may permit nonmaterial and material corrections and revisions to be made to appraisal reports so as to conform to the testimony and evidence presented at the hearing. The Appeals Board may condition the granting of leave to make material corrections to the appraisal reports by appropriate remedies, including, but not limited to, continuance and/or sanctions.

(2) the parties are to exchange a list of names and addresses of witnesses, including expert witnesses, expected to be called at the hearing other than those to be used for impeachment or rebuttal purposes only. Witnesses not exchanged pursuant to

the final pre-hearing conference order shall not be allowed to testify at the hearing unless the pre-hearing conference order is modified pursuant to subsection (a) of this Rule.

(3) If a party designates an expert witness as required by subsection (b)(2) of this Rule, the party shall make the following disclosures regarding said experts:

(A) Except as otherwise stipulated or directed by the Appeals Board, this disclosure shall, with respect to a witness who is retained or specially employed to provide expert testimony in the case or whose duties as an employee of the party regularly involve giving expert testimony, be accompanied by a written report prepared and signed by the witness. The report shall contain a complete statement of all opinions to be expressed and the basis and reasons therefor; the data or other information considered by the witness in forming the opinions; in the event third party confidential data, information or records, trade secrets or other confidential information are considered by the expert in forming the opinion, a statement on the use and disclosure of said data and information or records in the context of Rules 9(g)&(h) and 10(h)(i)(j)(k)&(l); any exhibits to be used as summary of or support for the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; the compensation to be paid for the study or testimony; and a listing of any other cases in which the witness has testified as an expert at trial or administrative hearing, except for depositions, within the preceding four years.

(B) Expert testimony intended solely for impeachment or rebuttal shall be disclosed as directed by the Appeals Board or by stipulation of the parties.

(4) The Appeals Board shall set deadlines no earlier than 10 days before the date set for the hearing for:

- Exchange of appraisal reports -- Appraisals reports shall not be revised, modified, amended or superseded without leave of the Appeals Board
- Exchange of exhibits, except rebuttal and impeachment exhibits
- Exchange of witness lists
- Designation of experts and disclosure regarding experts
- Exchange of graphic or illustrative material and, if not already exchanged as part of the exhibits, the parties shall exchange copies of all graphic or illustrative material to be presented to the Appeals Board to support the testimony of an expert or other witness

Exhibits or items not exchanged may not be presented at the hearing except by order of the Appeals Board upon a finding of good cause for failure to exchange.

(5) The parties shall meet no later than 10 days before the pre-hearing conference to discuss and exhaust all possibilities of settlement.

Rule 14. Appeals Board Orders

The Appeals Board may make such orders at the status conferences and pre-hearing conferences as it deems necessary to implement the provisions of Part I.

Rule 15. Appeals Board Guidelines{ TA \l "Rule 45. Appeals Board Guidelines" \s "Rule 45. Appeals Board Guidelines" \c 16 }

The Appeals Board may adopt such guidelines for the conduct of status conferences as it deems appropriate and it may develop forms and informational materials for the general public's use for status conferences.

Rule 16. Continuances

(a) The Appeals Board may, for good cause, continue a status conference or a pre-hearing conference.

(b) A request for a continuance of a status conference or a pre-hearing conference shall be in writing and shall be served on the parties and filed with and be received by the Clerk of the Appeals Board (Clerk) no later than 4:00 p.m. on the tenth excluding the date of the status conference, before the date set for the status conference or pre-hearing conference. A written request for continuance may be filed with the Clerk by facsimile. The parties shall not use telephonic or other similar methods to inform the Clerk of a request for continuance nor shall the Clerk give any advice to the parties on the necessity to appear at a status conference or pre-hearing conference to request a continuance.

(c) The provisions for the automatic continuance and postponement of hearings as a matter of right as set forth in State Board of Equalization Property Tax Rule 323 apply only to hearings as defined in Part I. Property Tax Rule 323 does not apply to status conferences or pre-hearing conferences established by this Part I. Therefore, the Appeals Board shall apply and follow the provisions set forth in this Rule for the continuance of status conferences and pre-hearing conferences.

(d) If an Appeals Board panel has been designated to hear a case, any request for a continuance shall be assigned for hearing to said panel. In the event one of the members

of said panel is not available for the hearing, the Clerk may assign another member of the Appeals Board to temporarily sit on the panel to rule on the request for a continuance.

(e) Unless otherwise ordered by the chair of the Appeals Board hearing panel, the attendance of the parties is required at the status conference and pre-hearing conference to request a continuance of said conferences in order to show good cause for the continuance. If a party does not meet the time periods set forth in Rule 16(b) and requests a continuance at a status conference or the pre-hearing conference, the party shall be required to show good cause for not meeting said time periods for requesting a continuance. If the chair of the Appeals Board panel did not excuse a party's attendance at a conference and if a party fails to attend a status conference or pre-hearing conference to make a request for a continuance, the Appeals Board may, in its discretion, enter any appropriate order, including a continuance of the matter.

(f) The Clerk, at a hearing for a request for a continuance, shall, based on the file, inform the Appeals Board of the date of the filing of the application and the number of prior continuances granted by the Appeals Board in the case and the party or parties requesting the prior continuances.

(g) When granting a continuance, the Appeals Board shall continue the conference to a specific date, time and location, and determine if further written notice of the continued conference shall be given by the Clerk to the parties.

D. HEARING RULES FOR COMPLEX CASES

Rule 17. Hearing Rules for Complex Cases

The parties must comply with these hearing rules for Complex Cases.

Rule 18. Hearing Defined

The term "hearing" as used in Part I shall mean a proceeding to be held before the Appeals Board on the application(s) for changed assessment where sworn testimony and/or written documentary evidence will be presented to the Appeals Board for purposes of making a final decision under State Board of Equalization Property Tax Rule 325 on an application for changed assessment. The term does not include other preliminary proceedings, such status conferences and the pre-hearing conference.

Rule 19. Exhibits

The parties shall mark the exhibits, including slides and photographs, that will be presented for admission into evidence at the hearing with the applicant's documents marked in alphabetical sequential order and the assessor's documents marked in Arabic numerical sequential order.

Except as otherwise required by Part I and except for purposes of impeachment and rebuttal, exhibits shall be presented to the Clerk of the Appeals Board. A copy of the exhibits shall be given to the parties to the proceedings prior to the commencement of the hearing as provided for in these rules. All marked exhibits shall be held by the Clerk until introduced for admission by a party. Exhibit(s) introduced at the hearing for admission into evidence shall be subject to objections by the parties which shall be ruled on by the Appeals Board.

Rule 20. Filing and Service of Documents

Except for slides and photographs, each party shall for those documents set forth in Rules 20, 21, 22, 24 and 25:

(a) file the original and 4 copies of each document with the Clerk with the copies to be delivered to the Appeals Board members assigned to hear the case and the legal adviser to the Appeals Board;

(b) if not previously marked and exchanged as provided in Rule 19, a copy shall be served on all of the parties to the case.

Rule 21. Hearing Briefs

The Memorandum of Contentions of Fact and Law served and filed pursuant to Rule 12 may be used at the hearing as the hearing brief. No provision in Part I providing for the raising of an issue by a party shall be construed to preclude the Appeals Board from, *sua sponte*, taking any action or making any determination on any issues necessary or appropriate to determine the full value of each parcel for which an application for equalization is made or reducing or increasing the assessment for each parcel for which an application for equalization is made.

Rule 22. Admissions and Stipulated Facts

At the commencement of the hearing, the parties present may jointly agree upon written admissions or stipulated facts.

Rule 23. Opening Statements

At the commencement of the hearing, the parties may make a brief opening statement, including a statement on the issues identified in Rule 21 above, and the relief requested. Said opening statement is not an opportunity for argument, but simply an opportunity for a party to explain to the Appeals Board the nature of the dispute, the oral testimony and documentary evidence that a party intends to present at the hearing, and a statement of the issues.

Rule 24. Post-Hearing Briefs

With leave of the Appeals Board at the conclusion of the hearing, the parties may serve and file a post-hearing brief with the Appeals Board. Post-hearing briefs shall not exceed 15 pages, excluding any attached exhibits, and shall not contain any new factual matter or evidence not presented at the hearing. The inclusion of any new evidence or factual matter may result in the entire post-hearing brief being stricken at the request of another party or by the Appeals Board on its own motion. Any objection to any new factual matter or evidence set forth in a post-hearing brief shall be set forth in a letter addressed to and filed with the Appeals Board and served on the other parties and the legal advisor to the Appeals Board.

Rule 25. Parties' Proposed Findings of Fact

In accord with State Board of Equalization Property Tax Rule 325, subd. (b), the Appeals Board may request the parties to submit proposed written findings of fact and conclusions of law at the commencement or the conclusion of the hearing. The proposed findings of fact and conclusions of law need not conform to any special format, but should list in numbered paragraphs the material factual findings and legal conclusions the party requests the Appeals Board to make in the case.

Rule 26. Appeals Board 's Proposed Findings of Fact

The Appeals Board may submit its proposed findings of factual and legal conclusions and its proposed decision to the parties for comment and/or objections. Any comments and/or objections shall be filed with the Appeals Board, and served on the other parties and the Appeals Board's legal advisor within such time limits as are prescribed by the Appeals Board. Any comments and/or objections shall be limited to

the record before the Appeals Board and shall not include any new matter not presented at the hearing.

Rule 27. Notice To Applicant(s)

The Clerk shall mail, along with the notice of hearing required by § 1605.6 of the *Rev. & Tax. Code* a copy of Part I to each applicant of a case subject to Part I.

Rule 28. Notice To Assessor

The adoption of a resolution by the Board of Supervisors implementing this Part I shall be deemed notice to the assessor of the requirements set forth in Part I for those cases to which Part I applies.

Rule 29. Sanctions

(a) The Appeals Board may impose sanctions as it deems appropriate for knowing and willful violations of the requirements of Part I or order of the Appeals Board, including restrictions or limitations on the introduction of evidence in support of points and issues required to be determined by the Appeals Board under *Rev. & Tax. Code* § 1611.5.

However, nothing in this subsection shall limit the authority and obligation of the Appeals Board to make a determination of the full value of each parcel for which an application for equalization is made or to reduce or increase an assessment as provided by § 1610.8 of the *Rev. & Tax. Code*.

(b) If a party or a party's attorney fails to obey a status conference order, a scheduling order, a final pre-hearing conference order, or the hearing procedures set forth in Part I or order of the Appeals Board, or if no appearance is made on behalf of a party at a status conference or pre-hearing conference, or if a party or a party's attorney is substantially unprepared to participate in a status conference or a pre-hearing conference, or if a party

or a party's attorney fails to participate in good faith in any conferences, the Appeals Board, upon the motion of a party or on the motion of the Appeals Board may make such orders with regard thereto as are just.

(c) If the Santa Barbara County Code authorizes an award of costs, the Appeals Board may, upon notice and motion, award costs pursuant to the county code to a party to compensate said party for the other party's noncompliance with the rules set forth in Part I or order of the Appeals Board. Also, the Appeals Board may direct a party to apply for an award of costs. The Appeals Board may award costs to a party to compensate the party for reasonable costs incurred by the party as a result of the other party's noncompliance, including, but not limited to, costs incurred by the party, the party's attorney, the party's expert or other witnesses, and reporter's costs. Costs may be assessed against the party, attorneys, agents or expert witnesses for the party. The Appeals Board may award costs if:

- (1) The Appeals Board grants a party leave to file a motion for costs or the Appeals Board directs the party to file a motion for costs; or
- (2) A party, a party's attorney or an expert witness fails to obey a status conference order, a scheduling order, a final pre-hearing conference order, or the hearing procedures set forth in Part I or order of the Appeals Board; or
- (3) No appearance is made on behalf of a party at a status conference or pre-hearing conference; or
- (4) A party, a party's attorney or a party's expert witness is substantially unprepared to participate in a status conference or a pre-hearing conference, or if a party, a party's attorney or expert witness fails to participate in good faith in any conferences; and

- (5) The Appeals Board finds that the noncompliance was not substantially justified.
- (d) The procedures for an award of costs under subsection (c) of this Rule 29 are:
- (1) At a status conference, pre-hearing conference or at a hearing, a party may orally or in writing ask the Appeals Board for leave to file a notice of motion to claim costs.
 - (2) The Appeals Board may grant a party permission to file a motion for costs or direct a party to file a motion for costs.
 - (3) If the Appeals Board grants a party permission to file a motion for costs or directs that a party file a motion for costs, the Appeals Board shall set a date for the service and filing of a motion for costs, and shall set a date, time and location for the hearing on the motion for costs. The Appeals Board shall also set a date for the filing of an opposition and a reply to the motion. A motion for costs shall be served and filed within the time period set by the Appeals Board for the filing of the motion.
 - (4) By declaration under penalty of perjury filed with the motion for the award of costs, the person claiming the costs shall set forth a detailed itemization of the costs incurred and the reasons for incurring the costs. The declaration shall set forth the basis for the claim and the costs incurred with a detailed statement of time spent or expense incurred, by date and a detailed description, and detailed reasons setting forth why such time or expenses were incurred as a result of the other party's or person's noncompliance with the rules set forth in Part I or order of the Appeals Board.
- (e) The Appeals Board may, in addition to the award of costs pursuant to subdivision (c) of this section, assess a monetary sanction in the amount not to exceed \$500.00 for each instance of noncompliance with the rules set forth in Part I or order of the Appeals Board. Said assessment may be made against the party, attorney, agent or expert witness who

failed to comply with said procedural rules and shall be payable to the Appeals Board to compensate it for its expenses incurred as a result of noncompliance with said procedural rules or order of the Appeals Board.

(f) For purposes of subsections (c) and (e) of this Rule, costs and monetary sanctions shall not exceed a total award of \$5,000.00 for each application for changed assessment. If more than one application for changed assessment, whether consolidated or not, is the subject of the conferences or hearings, the applications for changed assessment shall be considered as one application for purposes of awarding costs.

Rule 30. Record{ TA \l "Rule 46. Record" \s "Rule 46. Record" \c 16 }

The Clerk shall record the proceedings required by Part I.

Rule 31. Effective date of Part I { TA \l "Rule 47. Effective Date Of Part IV" \s "Rule 47. Effective Date Of Part IV" \c 16 }

Part I shall apply to Applications filed on or after July 2, 2001.

This resolution shall apply to Applications filed on and after July 2, 2001.

If an Application is filed on or after July 2, 2001, and if a proceeding, status conference or hearing has commenced or has been held on said Application, the Appeals Board may, on its own motion or on the petition of the assessor or the applicant, order that said Application be subject to County Board of Supervisors Resolution No. 97-264 and Santa Barbara County Assessment Appeals Board Resolution No. 96-1.

The Appeals Board, may on its own motion or on the motion of the assessor or the applicant, order that an Application filed before July 2, 2001, be subject to the provisions of Part I as the Appeals Board deems appropriate.

(Rules 32 through 70 reserved for future use.)
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