

# Assessment Appeals Board and Hearing Officer



*Revised  
June 2002*

## Hearing Guidelines

**Orange County**  
Assessment Appeals Board  
and  
Hearing Officer

**Hearing  
Guidelines**

**Revised  
June 2002**

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## **I. BEFORE THE HEARING**

### **A. *Material Furnished Immediately Prior To Hearing***

Immediately prior to the hearing, the Clerk will provide the Board with a copy of the Action Agenda showing all appeal activity (stipulations, withdrawals, etc.), which have occurred since the hearing notice was mailed to the applicant. Copies of all agendaized appeal applications, correspondence between the applicant and the Clerk, and a worksheet on each appeal will also be provided.

### **B. *Board Member Conduct***

The following guidelines for Board Member Conduct are excerpts from The State Board of Equalization Assessment Appeals Training Manual.

#### **Conduct of Board Members**

Although the appeals hearing is intended to be an informal administrative proceeding, appeals board members should conduct themselves in a professional and courteous manner to promote respect for the integrity of the assessment appeals process and to ensure that applicants receive a fair and impartial hearing. The following are some recommended practices/procedures:

1. Members should always be punctual to their respective hearings and make sure that they are able to fulfill their time commitments for the day.
2. Members should promptly advise the Clerk of the Board of vacation plans or other time conflicts, which would impact the hearing schedule.
3. Members and Clerks of the Board should maintain a professional relationship with the County Assessor's staff and county counsel's staff at all times.
4. Members and Clerks of the Board should address all participants of the hearing as Mr. or Ms. and not refer to them on a first name basis during the hearing.

5. Members should base their decisions on the evidence presented at the hearing and not on personal knowledge; they should not express personal comments during the hearing.
6. Members may ask questions for clarification, but should not ask questions which may tend to direct or lead the testimony of the witnesses or parties.
7. Members should allow the parties to present their cases and not attempt to assist them with their presentations.
8. Members should not unnecessarily interrupt participants of the hearing while they are presenting their cases; rather, they should refer to their notes and ask questions at an appropriate time.
9. Members should not unduly question participants of the hearing about their qualifications.
10. Members and Clerks of the Board should work to ensure that all applicants are afforded ample time to present their evidence without unreasonable time constraints.
11. Members should not accept or solicit further comments or questions by any participants of the hearing after all evidence and testimony has been received prior to a decision or upon taking the application under submission.
12. Members should advise the Clerk of the Board of any potential conflict of interest on a particular application to ensure that members do not hear an application where a conflict might exist.

*C. Board Chairperson Conduct*

The following guidelines for Board Chairperson Conduct are also excerpts from The State Board of Equalization Assessment Appeals Training Manual.

**Selection of Board Chairperson**

The board shall select one of its members to act as Chairperson and preside over a hearing. No member shall be selected as Chairperson unless he/she has served as a Board Member for at least six months and completed either State Board of Equalization or Orange County Board Member Training. The Chairperson shall exercise such control over the hearings as is

reasonable and necessary. He shall make all rulings regarding procedural matters and regarding the admission or exclusion of evidence.

The following are examples of duties of a chairperson:

1. Conduct meetings in an orderly fashion, recognizing members who wish to speak to an agenda item or issue; ensure that agendas for the meetings are adhered to and completed.
2. Ensure that hearings run smoothly and that repetitive remarks/testimony are discouraged or minimized.
3. Recess hearings if disagreements between members occur, and resolve the issues out of the presence of the parties to the hearing.
4. Ensure that objections are noted in the record and procedural matters are resolved.
5. Request that all persons, including other members, act respectfully and courteously to one another.
6. Ensure that the hearing record reflects all issues on the application so as to preserve them for appeal.

The role of Chairperson should not be considered an automatic rotating obligation. Any board member who does not feel comfortable with the above responsibilities as Chairperson is under no obligation to serve as Chairperson and should decline if nominated.

## **II. OPENING HEARING ANNOUNCEMENTS**

### **A. Clerk's Announcements:**

The Clerk opens the hearing by announcing Findings of Fact requirements, evidence copy requirements, and any other "procedural" requirement; the Clerk then introduces the Board Members.

### **B. Chairperson's Announcements:**

- The board Chairperson provides a brief overview of the hearing process and explains the role of the Board.
- He/she then should call the calendar in its entirety, excluding those items, which have been previously withdrawn, rescheduled, stipulated, or which would not require the applicant's attendance.
- After the entire calendar has been called, the Chairperson should ask, "Is there anyone in the room whose name I have not called?" If a response is received the Chairperson and Clerk should make any necessary corrections to the calendar.

## **III. APPLICANT'S FAILURE TO APPEAR**

If neither the applicant nor the applicant's agent is present, the Board should question the Clerk to ensure that the applicant and/or agent were properly notified.

### **A. Failure to Appear With Notice.** If notice was given, the Board may:

- Deny the application for lack of appearance if the applicant or applicant's agent failed to appear. A written "Notification of Denial Due To Lack Of Appearance," including the required procedure for reconsideration of the denial will be mailed to the applicant by the Clerk; or
- Elect to delay hearing the appeal upon a showing of good cause of which the Board was informed prior to the end of the day's hearing session. In these circumstances, the Board may place the application at the end of the day's hearing calendar (if the applicant is only running late). The Board may also request the Clerk to reschedule/postpone the hearing to a later

date in the case of an **unforeseen** absence. An example might be if the applicant was involved in an automobile accident on the way to the hearing.

An appeal is rescheduled/postponed to a later date *for any reason*; the record must reflect that the reschedule/postponement is conditioned upon receipt of the applicant's written Section 1604(c) waiver of the two-year statutory time deadline *within thirty (30) days of the hearing*. If the applicant is present when the reschedule/postponement is granted, a waiver must be completed immediately. If the applicant is not present and does not provide the required waiver within thirty (30) days of the granting of the reschedule/postponement, the application must be denied for lack of appearance.

Reschedules/postponements and continuances shall be to a **date certain whenever possible**, and the Board should ensure that any continuance or reschedule/postpone date is more than one hundred twenty (120) days *before* the applicable two-year statutory deadline.

- B. Failure to Appear Without Notice* If notice was not given, the hearing should be rescheduled to a later date to allow the Clerk to give proper notice to the applicant.

#### **IV. HEARING PROCEDURES**

- A. Starting the Hearing and Clarification of Application:*
1. The Chairperson, prior to commencement of the first hearing matter, should ask the Assessor's Representative if he/she has any recommendations which have been accepted by the applicant or applicant's agent. These matters can be quickly disposed of and should be handled first if possible.



2. The Chairperson shall announce the first item on the calendar to be heard.

3 The Chairperson asks the Clerk to “swear-in” all persons present who will be providing testimony including the Assessor’s Representative(s).

- Each party should state his or her name clearly for the record
- The members and Clerk should verify that the person testifying is the applicant or is otherwise authorized to present testimony in the appeal.

4. The Chairperson should ask the Assessor’s Representative to state the nature of the application and a brief description of the property.

Board members should insure that the Assessor’s presentation coincides with the application and worksheets provided to them by the Clerk, insuring that all areas have been addressed, i.e.

- Type of Application...*All Types listed on Application*
- Roll year and event/effective date
- Situs Location
- If single family owner occupied
- The enrolled value of the property

5. Chairperson should ask the applicant or his/her agent if the description of the property is “generally” accurate and if the nature of the appeal described by the Assessor’s Representative is correct.

- The exact nature of the appeal should be clarified to a single issue if filed in 1998 and 1999. If filed prior to 1998 or 2000 and forward, multiple types of appeals should be clarified and handled separately,

e.g. base year and decline in value. The Chairman should insure that all parties are clear and agree on the type of appeal being filed and should get such clarity on the record.

- Personal Property and prior year Audit (under R&T Code section 469) appeals should be clarified to ascertain if the appeal includes the entire assessment, including all items, categories, classes of property, or any portions thereafter. If appeal DOES include the entire assessment, the hearing shall proceed. If appeal DOES NOT include the entire assessment, the Chair shall request, in writing, all items, categories, classes of property, or any portions thereafter that are a part of or not a part of the assessment under consideration by the Board. The matter shall be rescheduled/postponed to allow for preparation of the document listing exclusions/inclusions and for the distribution of copies to the Board and the Assessor. If any adjustments to the worksheet are required, the Board and/or Clerk should so note and correct the information where required.
- If the discrepancy is such that the valuation hearing cannot proceed, the matter should be rescheduled to a date certain if possible, *and an executed waiver agreement extending the two-year statutory deadline should be obtained.*

6. After all application items are verified, the Chairperson should ask the parties if they are prepared to proceed with the presentation of evidence. If either party cannot proceed, the matter may be rescheduled to a date certain if possible, *and an executed waiver agreement extending the two-year statutory deadline should be obtained.* Granting a request to reschedule is discretionary and should not be automatic. The parties should provide cause/justification for their lack of preparedness, prior to granting a rescheduling of the hearing.

*B. Application Validity, Standing*

The Board should first hear any issues or testimony regarding application

validity, standing to appeal, etc., and after hearing the evidence, rule accordingly. These instances should be infrequent, since issues of this nature are generally resolved administratively before the appeal is scheduled for hearing. It is possible, however, that objections may be raised by the Assessor's Representative for the first time at the hearing, especially the issue of whether the applicant is a "person affected" with a right to appeal the assessment.

*THIS IS THE FINAL POINT AT WHICH AN APPLICATION MAY BE RESCHEDULED/POSTPONED BECAUSE NO VALUATION TESTIMONY HAS BEEN RECEIVED. BEYOND THIS POINT, MATTERS MUST BE CONTINUED FOR HEARING BY THE SAME BOARD PANEL.*

*C. Hearing Evidence and Testimony Presentation:*

1. Typically the applicant or his/her agent has the burden of proof and presents evidence first. There are four exceptions where the Assessor has the burden of proof and is required to present the first evidence, these are:
  - The assessment is an owner occupied single family dwelling
  - The imposition of a penalty
  - The assessment of an escaped property except when the assessment results from a taxpayer's failure to file with the Assessor any documents required by law.
  - When the Assessor does not enroll the sales price
2. Although the hearing need not be conducted according to technical rules relating to evidence and witnesses, an orderly approach to the presentation of evidence and testimony is preferred. For example a hearing may proceed as follows:

- The Assessor is required to give evidence first makes a presentation
- At the conclusion of the presentation, the Board Members and/or other party asks questions of the party making the presentation
- The second party makes a presentation
- At the conclusion of the second party's presentation, the Board Members and/or other party asks questions
- Either or both parties present evidence to rebut the other party's evidence

The Chairperson should not close the evidentiary portion of the hearing until there has been a reasonable opportunity for the presentation of evidence, for the cross-examination of all witnesses, for argument, and for rebuttal, including questions and comments of Board Members. As documentary evidence is presented, the Clerk shall verbally identify for the record and appropriately mark and receive all exhibits into evidence.

3. If the burden of proof is with the applicant, he/she must present evidence of value of the property. The evidence must be *relevant* and *timely*. Failing to present evidence of value activates the *presumption that the Assessor has properly performed his duty and has assessed the property fairly*. In this situation, the Assessor may choose to rely on his presumption and is not required to present evidence.
4. If the burden of proof is with the Assessor, he/she must present evidence of value of the property. The evidence must be *relevant* and *timely*. Failing to present evidence of value activates the *presumption that the applicant's opinion of value is correct*. In this situation, the applicant is not required to present evidence.

*D. Valuation Types:*

In estimating value, the Board should consider one or more of the following as may be appropriate for the property being appraised:

- The Comparative Sales Approach. When reliable market data are available with respect to a given property, the preferred method of valuation is by reference to sales prices.
- The Income Approach. The income approach to value is used in conjunction with other approaches when the property is typically purchased in anticipation of a money income and either has an established income stream or can be attributed a real or hypothetical income stream by comparison with other properties. It is the preferred approach for the appraisal of improved real property and personal property when reliable sales data are not available and the cost approaches are unreliable because the reproducible property has suffered considerable physical depreciation, functional obsolescence or economic obsolescence, is a substantial over- or under-improvement, is misplaced, or is subject to legal restrictions on income that are unrelated to cost.
- The Reproduction and Replacement Cost Approaches. The reproduction or replacement cost approach is used in conjunction with other value approaches and is preferred when neither reliable sales data nor reliable income data are available and when the income from the property is not so regulated as to make such cost irrelevant. It is particularly appropriate for construction work in progress and for other property that has experienced relatively little physical deterioration, is not misplaced, is neither over- nor under-improved, and is not affected by other forms of depreciation or obsolescence.

**The Board should base its decision on the evidence presented at the hearing, not on personal knowledge. Even if a Board member is extremely familiar with the area or the property in question, his or her decision on the appeal must be based on *evidence presented*, not on any Board member's personal observations or opinions about the property. In other words, unless the applicant or Assessor's Representative testifies about the city dump across from the property, the Board should not consider the dump site in making its decision, even if a Board member knows it's there.**

This prohibition against using personal knowledge may not seem appropriate, but it is a requirement of Property Tax Rule No. 302, which governs Assessment Appeals Boards and Hearing Officers, and sets forth their functions and jurisdiction. The rule provides: “The board acts in a judicial capacity and may act only on the basis of evidence.” Please remember that any decision, which is not based on evidence, exceeds a Board's or Hearing Officer's jurisdiction, is considered arbitrary, and can be overturned in court. Neither should the Board ask questions to specifically solicit the “hidden” information in an attempt to assist either party in making his case. However, questions about evidence submitted are entirely appropriate.

Board members should not “testify” themselves or express their personal knowledge or personal feelings during the hearing.

It is not appropriate for a Board to make “compromise” decisions, i.e., finding that the market value falls between the Assessor's opinion and the applicant's opinion, unless credible evidence is presented to support that market value.

*E. Stipulations:*

Sometimes, between notice of the hearing to the applicant and the actual hearing date, the applicant and Assessor's representative are able to agree on the assessed value of the property. In this case, the Assessor's Representative may obtain the applicant's signature on a written stipulation

form as to the taxable and assessed value of the property. The applicant may not attend the hearing in this event, and the Assessor's Representative may present the stipulation to the Board. If the stipulation has been signed by an Assessor's Representative and County Counsel on behalf of the County, and by the applicant or his/her agent, including the facts upon which the stipulation to value was premised, the Board may, during open hearing:

- Find that the facts pertaining to the application fully support the stipulated value, accept the stipulated value and waive the appearance of the applicant or agent; or
- Reject the stipulated value and set or reset the application for hearing.

The Board is reviewing the stipulation to make sure it is proper, and may question the Assessor's Representative about the stipulation. Although the Board reviews all stipulations and verifies that a proper bases for reduction is evident, it is, the Board's policy to require a more detailed explanation for the reduction when the value is being reduced by \$3 million or more.

Absent a properly executed stipulation, no reduction in any assessment can be made unless the Board questions, under oath, the applicant or applicant's agent regarding the property's value, and the questions are answered adequately.

*F. Hearing Officer Matters/Agendas:*

When the Board is ratifying the prior decision of a Hearing Officer, the Board is *bound* by the Hearing Officer's recommendation. The Board has no authority to change or void a Hearing Officer's decision. The Board merely ratifies and establishes values for each item appearing on a Hearing Officer's agenda. No Board Member may vote to ratify a decision made by him or her when serving as a Hearing Officer.

G. *Documentary Evidence:*

Copies Required: Five copies of all documentary evidence (three for Board members, one for the Clerk, and one for the Assessor's Representative) must be available for distribution at the hearing. If the required number of copies cannot be provided, the hearing should be recessed until a sufficient number of copies are available.

H. *Raised Values:*

If the Assessor's Representative desires to introduce evidence to support a higher assessed value than that on the roll, he or she must:

- Demonstrate to the Board that written notice of the intention to increase the property's value was given to the applicant or to applicant's agent at least ten (10) days prior to the hearing; *and* offer evidence to support the higher value.
- This notice requirement does not prohibit the Board independently from finding that a higher assessed value is warranted when the increase was not requested by the Assessor, provided that the increase does not result in a value greater than the base year indexed value.
- The Assessor may object to a withdrawal submitted by a petitioner if the petitioner was properly notified of the Assessor's intention to seek a higher value.

V. **CONCLUSION OF HEARING AND DECISION**

- The Chairperson should insure that Board Members have had an opportunity to ask questions, and that they have received answers to all their questions.
- The Chairperson should then ask the parties, prior to closing of the hearing, if there is any additional evidence not yet presented to be entered and be considered by the board.



- When findings of fact have been requested and paid for at the commencement of the hearing, the Chairperson should advise the parties that the hearing is about to be closed, and ask if the request for findings still stands. If the requesting party abandons the request at this time, the other party may pay for and verbally renew the request for written findings prior to a final decision by the Board.
- The Chairperson upon ascertaining that there are no further questions from board members or testimony from parties should formally conclude the hearing prior to issuing the board's decision. Once the hearing has been concluded, no further discussion by the parties or board members relating to the appeal should take place. Any further discussion among Board Members should be conducted during deliberations out of the presence of the parties and prior to a final determination of value.
- The board may announce its decision to the parties immediately following the conclusion of the hearing, or may take the matter under submission and advise the applicant that the decision will be forwarded by mail.
- When a matter is taken under submission, the Chairperson must insure that adequate time remains to finalize deliberations and to render a final decision *within the two-year statutory deadline.*

*Conclusiveness:* A Board's valuation decision is reviewable by the courts only for fraud, exceeding jurisdiction, arbitrariness, abuse of discretion, or failure to follow the standards prescribed by the legislature (the Revenue and Taxation Code and State Board of Equalization Property Tax Rules). Judicial review of valuation issues is limited to a determination of whether substantial evidence exists to support the Board's findings. If, however, the Board decides a question of law, the taxpayer or the Assessor can resort to the courts for final determination of the question, as well as an appeal based on grounds of lack of procedural or substantive due process.

*Findings of Fact:* When findings of fact are requested, the Board in their deliberations should ensure that all necessary information leading to its decision is included in the "Worksheet" that is provided to County Counsel for preparation of the formal findings of fact. Appropriate references to exhibits (including numbers, page numbers, titles, etc.), method of valuation, any other pertinent evidence or testimony upon which the Board relied must be a part of the Worksheet information.

It is very important that the Board provide County Counsel with this detailed information as soon as possible bearing in mind that findings of fact must be provided to the requesting party within 45 days of the Board's decision. Once a decision is made by the Board, the Clerk will provide the applicant with a written notice of decision, by mail, within ten (10) days following the determination.