

Northern California Chapter of the Appraisal Institute
Tax Appeal Issues for Appraisers
July 15, 2010

The Assessment Appeal Board's Function & Jurisdiction

- County boards of equalization are authorized by Article XIII, §16 of the California Constitution
- Consist of the county Board of Supervisors, or an assessment appeals board or county board of equalization created by them
- Except for assessments subject to review, equalization, & adjustment by the State Board of Equalization, the boards “shall equalize the values of all property on the local assessment roll by adjusting individual assessments.” (XIII, 16)

The Assessment Appeals Board's Function & Jurisdiction

- Under Property Tax Rule 302, the Board is empowered to:
 - a. Lower, sustain, or increase individual assessments upon application
 - b. Increase an individual assessment when no application has been made, upon due notice
 - c. Hear & decide penalty assessments
 - d. Review, equalize, and adjust escaped assessments
 - e. Determine the classification of property, which may result in the property being exempt from taxation
 - f. Determine the allocation of value to the property that is the subject of the hearing

The Assessment Appeals Board's Function & Jurisdiction

- The Board has the right to pass on its own jurisdiction in the first instance
- Statute of limitations (PTR 309b)

Hearing must be held and final determination made within 2 years of the timely filing of an application, or the applicant's opinion is enrolled (PTR 309c)

Waiver – no continuance without; request not usually denied

Discovery / Exchange of Information

1. §408 Assessor's records
2. §441(a) Property statement
3. §441(d) Assessee's information or records
4. §470 Assessee's business records
5. §480 Change in ownership statement
6. §1606 Exchange of information
7. Subpoenas (RTC §1609.4; PTR 322)

Discovery / Exchange of Information

3. §441(d) Assessee's information or records

“At any time, as required by the assessor for assessment purposes, every person shall make available for examination information or records regarding his or her property or any other personal property located on premises he or she owns or controls.”

- Property acquisition transactions
- Construction and development costs
- Rental income
- “...other data relevant to the determination of an estimate of value....”

Discovery / Exchange of Information

6. §1606 Exchange of information

Either the applicant or the assessor may initiate an exchange of information by submitting to the other party and the clerk, in writing:

- Information stating the basis of the party's opinion of value
 - Sales comparison
 - Assessor's parcel number or street address or legal description; approximate date of sale; zoning; price paid; and terms of the sale
 - Income capitalization
 - Income, expenses, and the capitalization method
 - Replacement cost
 - Date of construction; type of construction; replacement cost of construction; obsolescence; allowance for extraordinary use of machinery and equipment; and depreciation allowances

The initiating party has to submit the information at least 30 days before commencement of the hearing.

The responding party has to submit the information at least 15 days prior to the hearing.

At the hearing, the parties may not introduce evidence not so exchanged without the consent of the other party.

New material relating to the evidence exchanged may be introduced, but the other party is entitled to a continuance.

Board Hearing Procedure

- Call to order
- Clerk calls the roll of the Board
- Opening statement
- Call the roll of the agenda
- Administration of the oath
- Continuances & withdrawals
- Non-value hearings
 - Reinstatement
 - Penalty abatement
 - Notice
 - Pre-hearing conference (PTR 305.2)
 - Clarifying and defining issues
 - Determining the status of exchange of information requests
 - Consolidating applications
 - Bifurcating applications or selecting a test case
 - Verbal stipulations
 - Scheduling a special setting
 - Non-compliance to 441(d)
- Value hearings
 - Single-family residential
 - Other real property
 - Personal property
- Denials for lack of appearance
- Review of stipulations
- Board decisions entered on the record

Board Decisions

A board is a constitutional agency exercising quasi-judicial powers delegated to it by the Constitution and its determination as to a factual issue is entitled to all the deference and respect due a judicial decision.

- Article XIII, §16, and cited court cases

A decision of a county board is final, and subject to review only for excess of jurisdiction, errors of law, abuse of discretion, or insufficiency of the evidence.

- Notes to Article XIII, §16, and cited court cases

Board Hearing Procedure

Hearings are public (RTC §1605.4 & PTR 313.g)

A portion of a hearing can be closed for a trade secret privilege

- Declaration under penalty of perjury
- Trade secret – defined by Civil Code §3426.1(d)

“Trade secret” means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

(1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and

(2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Right to counsel

Appeal Hearing Procedure

- Opening statement
- Direct testimony
- Cross-examination
- Re-direct/re-cross
- Board examination
- Rebuttal
- Closing statement
- Board deliberation – private
- Board decision (PTR 324)
 - Transcript
 - Findings

The final determinations of the board are to be supported by the weight of the evidence.

Findings of fact “shall fairly disclose the board’s findings on all material points raised in the application and at the hearing. The findings shall also include a statement of the method or methods of valuation used in determining the full value of the property or its components.” (PTR 324e)

The Nature of the Hearing

What does the Board want to know?

- Date of value
- Opinions of value
- Methodologies used
- Data relied upon
- What are the issues

Write a report?

The Nature of the Hearing

Burden of proof

The party with the burden of proof proceeds with their case first and has to make a *prima facie* case.

“In law, adequate to establish a fact or raise a presumption of fact unless refuted.”

- Presumption of law in favor of the assessor (PTR 321)

However, the assessor has the burden of proof for:

- Owner-occupied single-family residence
 - Escaped assessments
 - 10-day raise letter
- Presumption of law that the sale price is market value

The Nature of the Hearing

Standard of proof

Preponderance of the evidence

The hearing is evidentiary

Evidence is defined as:

Something (including testimony, documents, and tangible objects) that tends to prove or disprove the existence of an alleged fact.

– Black’s Law Dictionary

Rules of evidence

Any relevant evidence may be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.
(RTC §1609; PTR 313e)

Defining the Appraisal Problem

- Use the proper definition of value

“Full cash value” as defined in RTC §110 and PTR 2

- Appraise the appropriate property interest

Fee simple interest

- Identify the appraisal unit
- Select the applicable methodologies
- Identify the market data to be researched
- Identify the most significant property characteristics affecting value
- Research and analyze the secondary characteristics

Valuation Methodologies

The board, the applicant, and appraisal witnesses shall be bound by the same principles of valuation that are legally applicable to the assessor. (PTR 324c)

PTR 3 identifies the following as appropriate methodologies:

- (a) The comparative sales approach
- (b) The stock and debt approach
- (c) The replacement or reproduction cost approach
- (d) The historical cost approach
- (e) The income approach

Sales Comparison
RTC §402.5; PTR 4 & 324(d)

When reliable market data are available with respect to a given real property, the preferred method of valuation is by reference to sales prices. (PTR 4)

PTR 4 also requires:

- Adjustment to cash equivalency when appropriate
- Adjustment of a leased fee sale to its unencumbered-fee price equivalent
- Adjustment for market conditions
- Adjustments for market conditions, physical attributes of the properties, location, legally enforceable restrictions on the properties use, and the income and amenities which the properties are expected to produce
- Any sale more than 90 days after the lien date is excluded by statute from consideration

Income Capitalization PTR 8

The income approach is applicable when the property is typically purchased in anticipation of an income and either has an established income stream or can be attributed a real or hypothetical income stream by comparison with other properties.

The preferred approach for the appraisal of land when reliable sales data are not available, and for the appraisal of improved properties and personal property when reliable sales data are not available and the cost approaches are not reliable.

- The amount to be capitalized is the net return which a reasonably well informed owner and buyer may anticipate the property will yield under prudent management and subject to such legally enforceable restrictions as people may foresee as of the value date.
- If a property is encumbered by a lease, the net income to be capitalized is the amount the property would yield if it were not so encumbered
- Capitalization rates may be derived by:
 - Extraction from sales
 - Band of investment (debt and equity)

Reproduction & Replacement Cost PTR 6

A cost approach is preferred when neither reliable sales data nor reliable income data are available and is particularly appropriate for construction work in progress and for other property that has experienced relatively little physical depreciation.

- Cost new can be estimated by applying an appropriate index factor to original cost
- Cost new may be estimated by applying current prices to the property's labor and material components using unit costs, unit-in-place, or quantity survey, or any combination of these methods
- Cost new is to be reduced by depreciation or obsolescence
- If the depreciation allowance exceeds the amount in depreciation tables used by the assessor, the reasons therefore shall be noted in the appraisal record
- Under RTC §401.6, entrepreneurial profit is excluded from the appraisal of special purpose properties unless there is market-derived evidence that it exists and has not been fully offset by physical deterioration or economic obsolescence

From the Board's Perspective

- The hearing is adversarial
- Use all applicable approaches
- Be internally consistent among your approaches to value
- Employ each methodology in full
- Employ each methodology correctly

Reference Materials

California State Board of Equalization

<http://www.boe.ca.gov>

<http://www.boe.ca.gov/proptaxes/forms.htm>

Property Tax Publications

Assessment Appeals Manual

Assessors' Handbook

<http://www.boe.ca.gov/proptaxes/proptax.htm>

Revenue and Taxation Code

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