

Comments and Response—SBOE Contested Case Rule Amendments

The proposed amendments address three areas of the Board’s existing contested case rules, but by far most comments have addressed the amendment requiring a property tax appeal filed with the Board to contain a statement of rationale for the appellant’s contended value. Below are the comments on this amendment and staff response. Comments have been received to date from Will Denami of the Tennessee Association of Assessing Officers (‘TNAAO’), Board registered agent Taylor Caruthers (Caruthers), Board registered agent J.O Catignani (‘Catignani’), Board registered agent Stephen Nelson of Criterion Property Resources, Inc. (‘Nelson’), Board registered agent Larry Burks (‘Burks’) and Board registered agent Davis Gravely. (‘Gravely’).

The statement of rationale amendment would require a statement of rationale in support of a contended value, and if the contended value exceeds \$250,000 and the subject property is classified ‘commercial’ or ‘public utility’, the statement of rationale must cite one or more of the cost, market or income approaches to value specifying components of the approach and supporting documentation.

Below are the comments and response to this amendment.

TNAAO: appellant should supply estimated instead of actual cost.

Response: Final draft will permit either.

TNAAO: appellant should supply ‘capitalization rate’ instead of ‘rate of return’.

Response: Final draft will permit either.

TNAAO: add a new amendment requiring the statement of rationale at the county board of equalization as well as with the State Board appeal.

Response: beyond the scope of these amendments.

TNAAO: add a new amendment allowing the assessor to request remand to the county board of equalization when an appeal is amended to include a subsequent year.

Response: beyond scope of these amendments.

CARUTHERS: the proposed amendments are an effort by the Executive Secretary to control the appeal process.

Response: SBOE staff may screen appeal forms for obvious non-compliance, such as plain omission of a contention of value or rationale, otherwise when an opposing party requests an order directing compliance, it will be decided by the administrative judge and not the Executive Secretary or other Board staff.

CARUTHERS: The amendment will have a chilling effect on appeals by unrepresented taxpayers.

Response: The amendment does not apply to residential taxpayers, nor to small (<\$250,000) business taxpayers. The amendment will primarily affect appeal practitioners.

NELSON, CATIGNANI, GRAVELY, BURKS: Who will determine compliance? To whom does 'opposing party' refer?

Response: 'Opposing party' permitted to challenge compliance will typically be the assessor. SBOE staff may screen for obvious non-compliance, otherwise when an opposing party requests an order directing compliance, it will be decided by the administrative judge.

NELSON, CATIGNANI, GRAVELY, BURKS: Defeats the purpose of e-filing if supporting information must be mailed. Who will copy the assessor? What if the information has already been presented to the county board of equalization? Increase in documentation filed at SBOE will create filing, storage or other administrative issues for SBOE staff.

Response: (a) If the property owner or agent believes the required information has already been provided to the assessor or county board of equalization they may cite that fact and request they be considered to have sufficiently complied with the rule. If the assessor disagrees the assessor may request the administrative judge to order compliance and the judge will decide. (b) Uploaded information will be accessible to the assessor. Further, the proposed rule does not require filing of an appraisal report or detailed narrative in support of the contended value. It assumes the property owner or agent possesses at least preliminary data supporting a contended value (via one of the three recognized approaches to value) before filing an appeal to SBOE. By the time an appeal must be filed at SBOE, the property owner will have had at least three months' opportunity to examine the assessor's records for the subject and comparable properties, to have informal discussions with the assessor, and to pursue an appeal before the county board of equalization. In addition to this time, the rule allows up to 60 days from the date the appeal is filed at SBOE to file the required information.

NELSON, CATIGNANI, GRAVELY, BURKS: Unfair that property owner/agent should have to disclose detail of contended value before the assessor does.

Response: It is the view of assessors who requested this rule that the present dynamic of resolving appeals is unfairly weighted in favor of appeal practitioners. The assessor is required to perform a mass appraisal of all property, under state supervision, to make records supporting the appraisal public, and to provide opportunity for informal hearings and hearings before the county board of equalization. Property owners, and especially an agent soliciting the property owner to authorize an appeal, are required only to have a good faith basis for contending a subject property is valued in excess of its actual value. It is not unfair to expect the property owner or agent to share with the assessor the basis of their good faith contention before the assessor is put to the additional task of marshalling specific evidence to defend the mass appraisal value. Other contested case statutes and rules give both parties full opportunity to participate in informal discovery pertaining to details of their opponent's case, before an appeal goes to hearing.

Comment and Response—Other Amendments

NELSON: Increase e-filing threshold from 3 to 10 appeals.

Response: Possible alternative would be to except from e-filing requirement for demonstrated hardship.

GRAVELY: Appeal fee should be one-time assessment up-front instead of recalculated based on results. Fee may exceed cost of processing if multiple parcels are in fact only one property.

Response: Beyond scope of this rulemaking, although it should be noted, the Board rules require only one hearing fee in cases where a single property is made up of several parcels.

CATIGNANI: Can statement of rationale be amended after filing?

Response: Yes.

CATIGNANI: Why no experience requirement for members of the county board of equalization?

Response: Beyond scope of this rulemaking, and county board qualifications are set by statute.