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No. 94/41

TO COUNTY ASSESSORS:

RECENT APPELLATE CASES

This is to inform you that two recent California appellate court cases were finalized. The cases and a short summary of them are as follows:

Main & Von Karman Associates v. County of Orange (1994) 23 Cal.App.4th 337.

Rule 4 of Title 18 of the California Code of Regulations provides that when the assessor uses the comparative sales approach to value, the assessor shall convert noncash sale prices of the comparables to their cash equivalents. In addition, the assessor shall make adjustments to the sale price of the comparable for differences in location, in physical attributes, in income, and in time for the difference between date of sale and date of appraisal.

The assessor in this case did not make any adjustments as required by Rule 4. Therefore, the court remanded the matter to the Assessment Appeals Board for further hearings, to be completed according to the standards prescribed by law.

This court restates the clear position that if the comparative sales approach is used pursuant to Rule 4, the rule must be strictly followed in order to provide an evidentiary foundation for the assessment of the property.

United Enterprises Ltd. v. County of San Diego Assessment Appeals Board (1994) 22 Cal.App.4th 152.

This case concerns application of the requirements of Section 1604 of the Revenue and Taxation Code, which requires that where an assessment appeal is filed and the

assessment appeals board (AAB) fails to make a decision within two years, the taxpayer's opinion of value shall prevail.

On September 15, 1987, the taxpayer filed an assessment appeal challenging the assessor's determination that there was a change in ownership of the property and the value resulting from the alleged change in ownership. The AAB decided the change in ownership issue timely but did not issue a decision on the valuation issue until August 22, 1990. Among other events that occurred, the taxpayer obtained a writ staying the AAB's proceedings from October 12, 1988 until January 3, 1989. The county argued that the stay and similar events extended the two-year time limit.

The court held that the stay did not extend the two-year period but only excused the AAB's action "...only during the period of the stay and for a reasonable period thereafter...The only potential for avoidance of the running of the two-year period in this case, therefore, is the utilization of rule 309..." (Page 162-163). Rule 309 provides the two-year limit may be stayed because "controlling litigation" is pending. However, the rule also requires the AAB to give the applicant written notice indicating the basis of the denial of a timely hearing and informing the applicant of his right to protest the denial. The notice must be given prior to the expiration of the two-year period, and the two-year period is stayed from the date the notice is given until the date the litigation becomes final. In this case, the AAB did not provide a Rule 309 notice, so the two-year limit was not stayed. The court stated at page 164:

> "...the provisions of rule 309 were designed to provide reasonable 'due process' protection for the taxpayer. The taxpayer's statutory entitlement to a decision within two years is subject to an ambiguous exception under section 1604; that there will be tacked to the two-year period a time during which 'controlling litigation' is pending. The taxpayer has no means, however, of knowing when and for how long this is occurring absent some formal notice from the AAB. Rule 309 provides the details of the notice requirement which accord due process to the taxpayer. If the AAB decides it is delaying action because of pending litigation, it must give the taxpayer formal notice By specifying the particular means by which the AAB may invoke the statutory exception to the running of the two-year period, the rule strongly implies that absent its invocation no added time will be permitted."

This case clarifies that requirements specified by Rule 309 must be followed strictly; if not, there will be no extension of the two-year time limit for deciding assessment appeals cases.

If you have any questions concerning these two cases, please contact the Real Property Technical Services Section at (916) 445-4982.

Sincerely,

Verne Walton

Verne Walton, Chief
Assessment Standards Division

VW:kmc