Adopted: March 13, 1997
Effective: May 1, 1997

BOARD OF ASSESSMENT APPEALS PROCEDURES OF PRACTICE AND PROCEDURES OF REVIEW

Basis, Specific Statutory Authority and Purpose.

These rules serve to update existing rules which are intended to foster the intent of the general assembly as reflected in articles 1 through 13, title 39, C.R.S. and to achieve administrative efficiency and fairness in the proceedings conducted by the Board of Assessment Appeals.

The rules are authorized by ' 39-2-125(1)(a), C.R.S. (1994), ' 24-4-105, C.R.S. (1988 and 1995 Supp.) and ' 24-4-103(1), C.R.S. (1995 Supp.).

Rule 1: Definitions.

Throughout these rules, the following have the following meaning unless the context indicates otherwise:

(a) "Business day" means a day other than a Saturday, Sunday or state legal holiday.

(b) "Exchange" means actual receipt.

Rule 2: (REPEALED AND RESERVED.)

Rule 3: Conduct of Hearing.

All hearings shall be conducted by the Board, unless the Chairman of the Board, in his discretion and with the agreement of all parties, assigns a member of the Board to conduct the hearing, but all final decisions shall be rendered by at least two members of the Board.

Rule 4: Priority Cases.

The following types of cases shall be given priority:

(a) Complaints filed by the property tax administrator; and

(b) Those cases of particular significance OR which the Board determines should be advanced on the docket.

(c) Otherwise, to the extent practicable, matters will be heard in the order they are presented to the Board.

Rule 5: Hearing Location and Schedule.

(a) A schedule of forthcoming hearing dates will be posted regularly in the Board's offices of the Department of Local Affairs, Centennial Building, 1313 Sherman Street, Denver, Colorado 80203. All hearings will be conducted at 1313 Sherman Street, Room 315, Denver, Colorado unless the Board orders otherwise.

(b) A schedule of hearing dates is also accessible on the Internet:

http://www.dola.state.co.us/baa/baasched.htm

Rule 6: Form of Petition, Filing, Service and Proof of Service.

(a) All petitions to the Board shall be on the form prescribed by the Board.

(b) Petitions shall be either typewritten or legibly printed and submitted in four copies to the Board.

(c) Petitioner must file an original and three copies of the petition with the Board. To each petition must be attached a copy of the decision being appealed (that is the decision of the county board of equalization, county board of commissioners, property tax administrator or assessor, as appropriate.)

(d) One copy of the petition and any attachments must be mailed or hand delivered to each of the parties whose decision is being appealed, including the assessor, the county, and the property tax administrator, as appropriate. Proof of service of a petition must be certified by the petitioner on the Petition to the State Board of Assessment Appeals. Proof of service of a petition must be shown before the petition may be docketed and set for hearing.

Rule 7: Procedure upon Receipt of Petitions.

Upon receipt of a petition by the Board, the Administrator of the Board shall assign a docket number to the petition. A place and time for the hearing of the case will be assigned and the parties and intervenors will be notified.

Rule 8: Service and Proof of Service of Other Documents.

(a) Every document filed by a party or intervenor in an action before the Board subsequent to the filing of the petition shall be served by such party or intervenor on every other party or intervenor to the action. Where service is required, mailing a copy to the party's or intervenor's last known address, or to their attorney or other representative at such person's last known address, shall constitute such service.

(b) All other filings with the Board must be filed with proof of service.

(c) Proof of service shall create a rebuttable presumption of receipt of the matter served.

Rule 9: (REPEALED AND RESERVED.)

Rule 10: Subpoenas for Production of Records and to Appear.

(a) Direct Case. Upon request by any party or intervenor to a proceeding before the Board made at least 10 business days prior to hearing, any member of the Board may issue subpoenas involving the party's or intervenor's direct case, including subpoenas for the production of records, under the seal of the Board. Such subpoenas may command the designated witness to appear with or without records and to testify at the specified time and place of the Board hearing. Witness fees and mileage shall be tendered by the party or intervenor procuring the subpoena, as in civil actions in district court. The subpoena shall be served no later than 7 business days prior to hearing.

(b) Rebuttal Case. Upon request by any party or intervenor to a proceeding before the Board made at least 3 business days prior to hearing, any member of the Board may issue subpoenas involving the party's or intervenor's rebuttal case, including subpoenas for the production of records, under the seal of the Board. Such subpoenas may command the designated witness to appear with or without records and to testify at the specified time and place of the Board hearing. Witness fees and mileage shall be tendered by the party or intervenor procuring the subpoena, as in civil actions in district court. The subpoena shall be served no later than 2 business days prior to hearing.

Rule 11: Notice of Hearing, Exchange of Documentary Evidence

and Other Discovery.

(a) The Board shall mail a notice of hearing to all parties at least 30 calendar days prior to the hearing.

(b) All parties shall exchange all documentation (supply exhibits, including any audio, video or photographic evidence and a list of witnesses) at least 10 business days prior to the hearing. Three business days prior to the hearing all reply documentation pertaining to the evidence submitted in the 10-business-day exchange of documentation must be exchanged with all parties. Four copies are to be filed with the Board and one copy is to be served on each party and intervenor. All documentary evidence exchanged or filed with the Board shall be paginated.

(c) The Board will not accept any information submitted within the 10 business days prior to the hearing except as otherwise required by these rules or as the interests of justice and fairness dictate in the Board's discretion.

(d) Any party or intervenor may move for an order permitting discovery under the Colorado Rules of Civil Procedure Rules 26 through 37. Permission to conduct discovery under the Colorado Rules of Civil Procedure shall not excuse compliance with paragraph (b) of this rule. Discovery materials under the Colorado Rules of Civil Procedure shall not be filed with the Board. Discovery materials shall be filed in connection with discovery motions when pertinent and material to the proceedings and when used in a hearing.

Rule 12: Testimony Under Oath.

All testimony in Board proceedings shall be given under oath, administered by the person conducting the hearing.

Rule 13: Order of Proceedings in Hearing and Rebuttal and Surrebuttal.

(a) The order of proceedings in Board hearings shall be as follows:

(1) Opening statements, if desired by the Board. The party or intervenor with the burden of going forward with the evidence (typically the one filing the petition) shall proceed first;

(2) Presentation of evidence by the petitioner followed by cross-examination;

(3) Presentation of evidence by the respondent followed by cross-examination;

(4) Presentation by any other party or intervenor followed by cross-examination; and

(5) Closing statements, if desired by the Board, or direction to submit briefs, if the Board desires briefs.

(b) Rebuttal and surrebuttal may be conducted as the Board, in its discretion, may order.

Rule 14: Burden of proof, Rules of Evidence and Audio and Video Evidence.

(a) The petitioner shall have the burden of proof.

(b) Every party to the proceeding shall have the right to present his case or defense by oral and documentary evidence. The rules of evidence shall, to the extent practicable, conform with those in civil non-jury cases in the district courts and the provisions of the State Administrative Procedure Act, article 4, title 24, C.R.S.

(c) Audio, video and other similar evidentiary displays are permitted unless the Board rules otherwise. It is the sole responsibility of the sponsor of video evidence to indicate whether the audio portion of the video, if any, is intended to be recorded by the court reporter.

Rule 15: Continuances and Recesses.

Hearings shall ordinarily be conducted during normal working hours. Whenever, due to illness or emergency, or for other good reason, the Board considers that it would be in the best interest of justice and fairness to order a recess or continuance, the hearing shall be recessed or continued to a specified date, time and place.

Rule 16: Copies and Size of Evidence.

(a) Carbon copies, xerox copies, photographic copies, or copies made by other types of similar procedures may be admitted in evidence or substituted in place of the original documents.

(b) When oversized or voluminous exhibits or materials are offered into evidence or made a part of the record, the Board may require that the size thereof be reduced or summarized.

Rule 17: Submission on Written Agreement.

(a) Parties are encouraged to avoid disputes by, for example, agreeing to the facts or the law when the facts or the law are not in dispute. Such agreements may be reduced to writing and filed with the Board as soon as practicable.

(b) When no factual disputes exist, the Board may determine the matter after hearing oral argument from the parties.

Rule 18: Board Decisions.

All decisions of the Board shall be in writing and shall include the description and location of the property when applicable and the findings, conclusions and order of the Board. A decision of the Board must be agreed to by two members of the Board. Notice of the written decision of the Board shall be mailed to all parties of the proceedings.

Rule 19: Declaratory Orders.

(a) The Board may issue a declaratory order to terminate a controversy or to remove an uncertainty as to the applicability to any legal entity of any statutory provision or any rule or order of the Board.

(b) The order may be sought by written motion, if the controversy or uncertainty arises in a pending Board matter, or by written petition if the controversy or uncertainty did not arise in any pending Board matter. The motion or petition shall identify the controversy or uncertainty and state what order the movant or petitioner seeks and why.

(c) The application or petition shall be subject to Rule 57 of the Colorado Rules of Civil Procedure except the words "the Board" shall be substituted for the words "district court" and "superior court" and the word "order" shall be substituted for the words "judgment" or "decree."

(d) The Board may decline to enter a declaratory order where it concludes that the subject matter should be determined by a court or another tribunal or in another proceeding.

Rule 20: Record of Proceedings and Access.

(a) All Board hearings shall be recorded in a manner permitted by law.

(b) Copies of documents or materials maintained by the Board or the Board's administrator which are required by law to be accessible by or disclosed to the public may be obtained upon written request for a reasonable fee during reasonable times.

Rule 21: Dismissal for Lack of Jurisdiction.

Whenever it appears that a matter pending before the Board involves questions over which the Board does not have jurisdiction, the matter may be dismissed on motion of any party or intervenor to the action or on the Board's own motion.

Rule 22: Intervention.

The Board may permit, in its discretion and upon prior written application, the intervention of another party in a matter pending before the Board if the intervention would foster the interests of
justice and fairness. The Board may limit or restrict the participation of an intervenor in such a way as the Board, in its discretion, orders.

Rule 23: (REPEALED AND RESERVED.)

Rule 24: Consolidation.

The Board, on its own motion or on a motion of any party or intervenor, may consider consolidating appeals for hearing on a case-by-case basis.

Rule 25: (REPEALED AND RESERVED.)

Rule 26: Suspension of Rules.

The Board may suspend any of its rules upon motion of a party or intervenor or by the Board upon its own motion when the interests of justice or fairness so require.

Rule 27: Facsimile.

The Board accepts filings transmitted by facsimile. Service on parties and intervenors, by contrast, is governed by Rules 6, 8 and 11 herein.

Rule 28: Motions.

(a) Generally. After a matter has been initiated for Board determination, an application for an order or relief shall be made by filing a written motion. The motion shall state the relief sought and the grounds on which it is believed the relief should be granted.

(b) Non-Procedural Motions. Motions (other than one for a procedural order) may not be filed less than 10 calendar days before the hearing. Any party or intervenor may file a response in opposition to a motion (other than one for a procedural order) within 7 calendar days after service of the motion. Replies are encouraged.

(c) Procedural Motions. Motions for a procedural order may be filed any time and may be acted upon at any time, without awaiting a response thereto. Any party or intervenor adversely affected by such action may request reconsideration, vacation, or modification of such action. Any party or intervenor may file a response in opposition to a motion for a procedural order within 7 calendar days after service of the motion. Replies are discouraged.

(d) Motions Concerning Stipulations. Motions which, if granted, tend to reduce the number of issues, whether factual or legal in nature, are encouraged.

(e) Post-Order Motions. Motions for post-order relief of any kind may be made within 10 calendar days of the date of the order. However, the filing of such a motion does not toll the period for seeking judicial review.

(f) Motions Concerning Clerical Mistakes and Oversights. Clerical mistakes in orders, or other parts of the record and errors therein arising from oversight or omission may be corrected by the Board at any time on its own motion or on the motion of any party or intervenor. During the pendency of judicial review, such mistakes may be so corrected before the case is docketed in the appellate court, and thereafter while the judicial review is pending may be so corrected only with leave of the appellate court.

Rule 29: Motion for Board View.

(a) On the motion of any party or intervenor or upon its own motion, the Board may see or examine any property or place. The determination to see or examine any property or place shall be guided by whether, in the Board's opinion, the view will aid the Board's understanding of the evidence being presented or whether the interests of justice and fairness would otherwise warrant the view.

(b) Any costs incurred by the Board in conducting a view upon the granting of a party's or an intervenor's motion under this rule may be assessed against the moving party or intervenor.