

**NEVADA COUNTY ASSESSMENT APPEALS BOARD MEETING
MINUTES
JULY 20, 2020**

REGULAR MEETING: 9:00 a.m.

Call to Order:

ACTION TAKEN: Chair Bushore called the meeting to order at 9:09 a.m.

The following Board Members attended by remote:

Gerald Bushore (Chair)
James Rees
James Dal Bon
David Guerland

Pledge of Allegiance:

ACTION TAKEN: Pledge of allegiance held.

Corrections and/or deletions to the agenda.

ACTION TAKEN: Ms. Lelia Loomis, Deputy Clerk noted that there is a correction to the Local Rules: #3A, 2d the word application should be applicant.

Public Comment:

None.

CONSENT CALENDAR

1. 18/19 Regular Assessment #18-023: Dolgen California LLC (Dollar General), Applicant. CTMI, LLC, Agent. APN 035-400-019. Property located at 2033 Nevada City Highway, Grass Valley. Assessor's current value on the roll: \$2,962,017. Request for a written stipulation between the Assessor and Applicant for a new stipulated value: \$650,000 land, \$1,850,000 for improvements, for a total value of \$2,500,000. Findings of Fact are not requested. (Pulled from consent by James Rees)

Requested Action: Approval of the stipulated value.

2. Acceptance of minutes for May 18, 2020.

MOTION: Motion made by Mr. Rees, seconded by Mr. Dal Bon, to pull Agenda item #1 from the Consent Calendar and to approve the May 18, 2020 minutes. On a roll call vote, the motion passed unanimously.

Items pulled from Consent:

1. 18/19 Regular Assessment #18-023: Dolgen California LLC (Dollar General), Applicant. CTMI, LLC, Agent. APN 035-400-019. Property located at 2033 Nevada City Highway, Grass Valley. Assessor's current value on the roll: \$2,962,017. Request for a written stipulation between the Assessor and Applicant for a new stipulated value: \$650,000 land, \$1,850,000 for improvements, for a total value of \$2,500,000, executed stipulation has not been received. Findings of Fact are not requested. (Pulled from consent by James Rees)

Requested Action: Approval of the stipulated value upon receipt of executed stipulation.

ACTION TAKEN: Mr. Rees noted that the Board members did not get the supporting documentation (the stipulation) in the Agenda materials. Ms. Loomis apologized for the oversight and agreed to provide the stipulation to the Board members.

Chair Bushore read the item into the record. He spoke to the validity of the agent, CTMI, LLC which shows as forfeited by the Franchise Tax Board and he noted a letter in the packet that there is a new agent. Mr. Scott McLeran, County Counsel, responded that if the application does not have the name of the current agent that is a legitimate concern. He noted he is also aware that the Clerk has not received the signed original stipulation which could be a basis to continue the matter.

Mr. Rees asked when the 2-year statute runs out for this appeal. Ms. Loomis responded that it is November 29, 2020.

Chair Bushore asked if the Board wanted to continue the item to the August 19th meeting.

Ms. Loomis noted that the Agency on record did not change, only a different agent within the same Agency, CTMI, LLC, has been assigned the appeal.

Discussion ensued regarding the validity of the Agent Authorization, including agent's name as listed and whether the company was authorized to do business within the State of California.

Mr. Peter Villaverde, CTMI, LLC agent representing the appeal, noted that CTMI, LLC does still exist and is going through a name change. They are an LLC based in the State of Texas.

Chair Bushore reiterated that he believes a company needs to register in California. Mr. Villaverde responded that he was not aware of that requirement.

Mr. McLeran responded regarding the issue of agency, the general rule is that any individual can serve on behalf of another and his legal opinion was that the mere fact that they are not currently registered in California does not prohibit them from representing the applicant. He added that if the Board has a legitimate concern regarding the agent authorization and whether it has the correct information and in addition the signed stipulation has not been received. By continuing the matter he believed that both of these issues could be resolved so that the Board is comfortable with the Agent Authorization.

Mr. Villaverde noted that he would work to his company to see what can be resolved. He added that previously any agent under the company could be assigned an appeal.

Discussion ensued.

Chair Bushore asked if August 19th would be a good date to reschedule. Mr. Villaverde responded that it was. Ms. Loomis added that if the appeal was continued any later than the August 19th date, a two-year waiver would be required.

Mr. Ernie Thompson, Chief Appraiser, commented that in the past stipulations have been approved with the notation that the original signed stipulation is on its way. He asked for clarification whether this is acceptable or not. He noted that we do have a scanned signed copy of the stipulation.

Chair Bushore had questions regarding accepting scanned signatures, does there have to be an agreement between the parties that electronic signatures will be accepted for them to be valid.

Mr. McLeran noted that is currently correct. The Board would have the authority to change the rule in the Local Rules if desired. He added that the County is in the process of reviewing the signature policy and is moving forward with accepting electronic signatures for their contracts. He noted that it would be at the Board's discretion whether they wanted to accept an electronically signed stipulation.

Chair Bushore noted that there would still be time to receive the signed stipulation if the appeal was postponed to August. He would feel more comfortable if the Board had the original signed stipulation. Ms. Loomis noted that she had received word from Mr. Villaverde that he received the stipulation yesterday and Mr. Villaverde added that it was sent back to the Clerk last Friday afternoon.

Mr. Rees commented that if the appeal was re-scheduled until August all these issues could be taken care of. Also, the Board would then have the stipulation for review.

Mr. Thompson noted that a correction needs to be made on the stipulation. On the date on the last portion where the final value is discussed of the stipulation it says 10-8-2014 and it should be 12-8-2014.

Mr. Rees asked if that could just be lined through and corrected before they receive their copy. Ms. Loomis responded that she would correct the date.

MOTION: Motion made by Mr. Dal Bon to continue the appeal (#18-024 APN 35-480-015) to August 19, 2020, Mr. Rees amended the appeal information to #18-023 APN 035-400-019 and seconded the motion for continuance with that modification. On a roll call vote the motion passed unanimously.

NEW BUSINESS

3 Organization of Assessment Appeals Board for 2020/21 Tax Year.

a) Selection of Chair and Vice Chair for Fiscal Year 2020/21.

MOTION: Motion made by Mr. Rees, seconded by Mr. Dal Bon, to elect Mr. Gerald Bushore as Chair. On a roll call vote the motion passed as follows: Mr. Rees, Mr. Dal Bon, Mr. Guerland – Ayes; Mr. Bushore – Abstain.

MOTION: Motion made by Mr. Dal Bon, seconded by Mr. Bushore, to elect Mr. James Rees as Vice-Chair for the 2020/21 Fiscal Year. On a roll call vote, the motion passed unanimously.

b) Approval of Fiscal Year 2020/21 meeting calendar.

MOTION: Motion made by Mr. Dal Bon, seconded by Mr. Rees, to approve the Fiscal Year 2020/21 calendar. On a roll call vote, the motion passed unanimously.

c) Approval of updated Nevada County Local Rules.

ACTION TAKEN: Chair Bushore introduced the item and commented on Mr. Guerland's received suggested changes. He felt that the procedure should be to go over each item individually.

The first item is 3A-2d, Chair Bushore asked for comment. Mr. Rees felt everyone was in agreement.

Mr. Loomis asked for clarification regarding different agents under the same business entity. Chair Bushore restated that his concern regarding in this situation was that it was a different organization. Mr. Rees felt that if it is a valid business entity, different agents could show up. The question may be whether the business entity has to be registered in the State of California.

Mr. McLeran stated that the Board of Equalization does not require a business entity who is representing an appellant be registered in the State of California. The larger concern is that we are not clear whether this is the same organization because there has been a name change. His legal opinion is that the business entity does not have to be registered with the State in order to have a representative relationship as refers to the Assessment Appeals Board.

Discussion ensued regarding whether an agent must be registered in the State of California to do business.

Mr. McLeran responded that the law does not specify who can and cannot be an agent. It essentially provides that anyone or any entity can appear as an agent as long as the appropriate authorization has been executed and signed by the applicant.

Mr. Rees suggested the matter be agendaized as another discussion matter, and Chair Bushore requested Counsel do further research into the matter.

Chair Bushore moved on to the next item, 3D-2 second paragraph.

Mr. McLeran commented on the next Local Rules item that in Section 3.D the second paragraph could be deleted. He felt that the it is duplicative of 3.D, 8b.

Mr. Rees commented that he agreed and that it also was in line with comments made by Mr. Guerland regarding this section.

MOTION: Motion made by Mr. Rees, seconded by Mr. Dal Bon, to approve deletion of Section 3.D second paragraph. On a roll call vote, the motion passed unanimously.

Chair Bushore moved on to Section 3.D 4 Stipulation of Error in Value Judgement. Mr. Guerland requested a wording change. Mr. Rees read Mr. Guerland's suggested wording; "A fully executed stipulation must be received by the Clerk at least seven (7) calendar days prior to the hearing or the Clerk shall reset the hearing to a future date and so inform the applicant." Mr. Guerland felt this required the Clerk to reschedule and thus protect the right of the applicant to a hearing, but would not have to involve the Board, Clerk, Counsel and Assessor to do a continuance. Mr. Rees and Mr. Dal Bon agreed.

Mr. McLeran stated that this could provide the opportunity for the Board to clarify if they would require an original signature or if they would accept an electronic signature.

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Mr. Dal Bon asked if that would require new wording, for instance, “a fully executed stipulation containing either an electronic signature or wet signature must be received by the Clerk etc...”. Mr. Dal Bon asked if that would bring it into conformity with County policy?

Mr. McLeran responded that is correct. Mr. Dal Bon felt that was fine.

Chair Bushore asked if everyone would want to see the Local Rules after these changes have been made for one last review. Everyone responded affirmative.

MOTION: Motion made by Mr. Rees, seconded by Mr. Dal Bon, to adopt new language proposed by Mr. Guerland for Section 3.D 4 with additional changes discussed regarding wet signatures or electronic signatures to be brought back by Counsel for review. On a roll call vote, the motion passed unanimously.

Chair Bushore introduced the next issue, Section 3.D 6 b.

Mr. Rees requested the following words be added “First Class.” Mr. Rees stated that he believed in the code of civil procedure it states that if mail is sent by First Class mail there is a presumption that it is received. He felt there is some precedent for using that language.

Mr. McLeran responded that is correct.

MOTION: Motion made by Mr. Rees, seconded by Mr. Dal Bon, to add “First Class” before U.S. mail. On a roll call vote, the motion passed unanimously.

Chair Bushore introduced the next item, Section 3.D 8a and b.

Mr. McLeran clarified the changes to paragraph a, that the Board has the final determination whether an application was received timely. In paragraph b, is the change is per the Property Tax Rules, R & T Code, regarding the submission of a statement or affidavit... within one year of the deadline...”. These changes place the responsibility on the Board to make the determination. He believed the jurisdiction is with the Board.

Discussion ensued.

MOTION: Motion made by Mr. Dal Bon, seconded by Mr. Rees, to bring Section 3.D.8a and b into conformity with the Revenue and Taxation Code and the State Board of Equalization Property Tax Rules. On a roll call vote, the motion passed unanimously.

Chair Bushore introduced the next item, Section 4, first paragraph.

Mr. Rees shared concerns with the last sentence of the first paragraph, “Acceptance of a withdrawal...” because he felt it could be interpreted as denying the Assessment Appeals Board the jurisdiction to review and assessment on its own motion. If there is a final action on the acceptance of the withdrawal, then it could be argued that the Board can’t go back and look. He did not think this was in accord with the law.

Mr. McLeran referred the Board back to Section 2a-1, Property Tax Rule 307. He couldn’t find any authority of the Board to refuse a withdrawal. However, he felt that the Board clearly has the authority, on its own, with proper notice, to set any matter for review, where there is a higher valuation.

Mr. Rees felt the wording could be interpreted as a final decision or final action by the Board, which would preclude the Board from raising the assessment on its own motion. He felt the sentence increased ambiguity and was unnecessary.

MOTION: Motion made by Mr. Rees, seconded by Mr. Dal Bon, to strike the last sentence from the first paragraph of Section 4. On a roll call vote, the motion passed unanimously.

d) Discussion regarding Assessment Appeals Board and the Brown Act.

Chair Bushore introduced the Brown Act discussion.

Mr. Rees felt that with the new electronic procedure we have to have a procedure for going into Closed Session. He read from the Property Tax Rule 313 regarding the Board taking a matter under submission and deliberate in private. He was asking about procedure the AAB would follow for Closed Session.

Mr. McLeran commented that he understood there is a procedure for closed session hearings.

Mr. Thorsby provided information regarding how closed sessions have been held by the Board of Supervisors during their regular meetings which have been electronic TEAMS meetings. He recommended setting up a second meeting that only the members and council would have access to that is not recorded. After that closed session was finished the Board members could return back to the regular meeting.

Mr. McLeran asked about a "Break-Out" session meeting. Mr. Thorsby responded that he would have to check with our IT Department.

Chair Bushore suggested scheduling a totally different meeting, separately from the regular meeting and the Assessment Appeals Board members have 45 days to send out a written decision.

Mr. McLeran confirmed that once the Board has heard evidence, they can take the matter under submission and close the regular meeting.

Mr. Dal Bon asked regarding taking a matter under submission if it can be resolved during a closed session resulting in a decision, and that decision can be relayed to the appellant back in the regular meeting or at a later date through a published decision.

Mr. McLeran responded that was correct and stated that if the Board wanted Counsel to create a more formal procedure, and perhaps make a change to the Local Rules regarding electronic meetings he would look into that and bring recommendations back to the Board at the next meeting.

Chair Bushore added that when the Board goes into closed session they always have the option of taking the matter under submission. He asked to clarify if, during electronic meetings, the rule would change to make it automatic to take matters under submission.

Mr. McLeran said he wanted to research the matter a bit more and would come back to the Board with something more specific for the Board to consider.

Chair Bushore commented that the Assessment Appeals Board is not under the Brown Act.

Board discussion ensued.

Mr. McLeran commented that it has been a long standing policy that the Assessment Appeals Board follow the basic Brown Act provisions to ensure that the meetings are transparent and open.

e) Discussion regarding Agent Authorizations, including the foreign agent issue of registration in the State of California.

Chair Bushore introduced the item and asked who would like to lead discussion. He asked if

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anyone has questions regarding the Agent Authorization form.

The Board members did not have concerns regarding the current form.

Mr. McLeran noted per previously expressed Board concerns, a sentence might be added that any name changes in a foreign Agent's business entity status before the appeal is heard, would require an updated Agent Authorization form be submitted.

The Board agreed with this proposed change to the form.

Mr. McLeran will draft the sentence language and provide it to Ms. Loomis who will then submit the changed wording to the Board of Equalization for approval.

MOTION: Motion made by Mr. Dal Bon, seconded by Mr. Rees, to close the meeting. On a roll call vote, the motion passed unanimously.

Adjournment.

ACTION TAKEN: There being no further business, Chair Bushore adjourned the meeting at 9:49 a.m.



Chair of the Assessment Appeals Board

ATTEST:

By: 

Lelia Loomis, Deputy Clerk to the Board