



Agenda Date: 4/4/2006
Agenda Placement: 8B
Set Time: 9:50 AM
Estimated Report Time: 10 Minutes

NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

TO: Board of Supervisors
FROM: Britt Ferguson for Nancy Watt - County Executive Officer
County Executive Office
REPORT BY: Pamela Miller, Clerk of the Board/Admin. Manager, 253-4196
SUBJECT: Public Hearing on Fee Increases for Board of Equalization

RECOMMENDATION

County Executive Officer and County Counsel request adoption of a resolution increasing fees for preparation of Findings of Fact for Assessment Appeal decisions by the Napa County Board of Equalization.

EXECUTIVE SUMMARY

On February 15, 2005, Supervisor Dodd requested staff review the current County fee rate of \$20 for Board of Equalization Findings of Fact and Conclusions ("findings"). Only one residential finding has been prepared in the last 10 years, but County Counsel estimates that preparing such findings would take approximately 8 hours of attorney time (at a cost to the County of \$1,014). More complex industrial findings typically require additional preparation time. Recent industrial findings have taken from 14.5 to 34.25 hours of attorney time (at a cost to the County of \$1,835 to \$4,351), however there have only been 4 in the last 10 years. The current fee rate is significantly below the estimated average cost of providing this service, and the proposed rate is still below the actual estimated cost. However, for practical and legal reasons, staff recommends setting the increased rates at \$150 for residential properties or undeveloped land, and \$250 for commercial, industrial or developed agricultural properties. Staff further recommends that these fees be reviewed annually. As additional findings are prepared and more information becomes available concerning the amount of time required to prepare the findings, it may be possible to adjust the fees to more accurately reflect the actual cost of providing the service.

FISCAL IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	Yes
Where is it budgeted?	Salaries/Benefits involved are budgeted in County Counsel. The incremental revenue is not budgeted. Because the preparation of findings occurs so

infrequently, it is not possible to estimate the amount of additional revenue that would be received annually as a result of this action.

Is it Mandatory or Discretionary? Discretionary

Discretionary Justification: If an applicant for an assessment appeal requests written findings and pays the fee imposed by the Board of Supervisors for the preparation of such findings, the County is required to prepare written findings. Currently the County charges a flat fee of \$20 for findings preparation. The average time spent by County Counsel to prepare written findings for routine assessment appeal decisions is estimated to be 8 hours per residential case at an hourly rate that far exceeds the total of \$20. Residential findings normally take less time to prepare than industrial findings. The proposed rate will improve the rate of cost recovery for this work but still does not cover the full cost of preparing the findings, especially for complex findings.

Is the general fund affected? Yes

Future fiscal impact: These fees would apply to applications for assessment appeals for which a written findings request is on file and the fee has been paid prior to the close of the assessment appeal hearing. Because of requests for preparation of findings occur so infrequently, it is not possible to estimate the additional annual revenue that might be received as a result of this action.

Consequences if not approved: While the proposed fee increase does not recover the cost of preparation of the findings, it presents a significant improvement in cost recovery. If the increases are not approved, almost the entire cost of preparing such findings will continue to be borne by the County General Fund.

Additional Information: None

ENVIRONMENTAL IMPACT

The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

BACKGROUND AND DISCUSSION

Pursuant to State Board of Equalization Rule 308, the County may impose a reasonable fee, as determined by the County Board of Supervisors, to cover the expense of preparing written findings adopted by the County Board of Equalization when ruling on an application for assessment appeal if the applicant has filed a written request for findings. Findings are required to be prepared and the fees would therefore only be applicable when an applicant requests the preparation of findings in writing prior to the commencement of the hearing on the appeal and pays the fee prior to the close of the hearing.

Currently Napa County charges a flat fee of \$20 for preparation of these written findings, which does not begin to cover the time and labor costs associated with its preparation. As a result, staff is proposing to increase the fees charged by the County for the cost of preparation of the findings. The proposed increased fees do not exceed the reasonable cost of providing the service, but probably also do not fully cover that cost.

There are various property types for which applications for changed assessments can be filed. Commercial or

industrial property appeals are intrinsically more complex and as a result the findings are lengthier and take longer to prepare than findings for appeals involving only residential properties or undeveloped land. During the past 10 years, County Counsel has prepared four (4) commercial findings and one (1) residential finding. County Counsel estimates eight (8) hours as the average time to be spent on residential appeals (which would result in a cost of \$1,014), but with only one actual appeal to base this on this estimate is somewhat problematic. The average time spent in the preparation of the four (4) commercial appeals was 25.7 hours each (which would result in a cost of \$3,253), but the actual time spent on any given appeal varies greatly (from 14.5 to 34.25 hours) and, with the relatively small number of appeals for which findings are requested, the average time is not reliably representative of the actual time. For this reason, it is staff's recommendation not to charge a fee equal to the average costs, as charging that rate may subject the County in individual cases to a challenge based on exceeding the reasonable cost.

Likewise, staff does not recommend going to a deposit and hourly rate system. Because the fee must be paid prior to the end of the hearing, the deposit would have to be set at the maximum likely amount in order to obtain cost recovery in all cases, and this could have an unfair effect on bona fide appellants of more modest means who might have difficulty posting a large deposit even if they might ultimately receive a partial refund. As a result, staff recommends that the fee be set in an amount roughly equivalent to the cost of one hour of attorney's time for residential appeals and two hours for commercial/industrial appeals, as this would ensure recovery with no risk of challenge and no deposit, trust fund, or refund processing costs. A study of rates charged by other counties was conducted (copy attached), and the proposed new fees are within the range of the fees charged by the surveyed counties.

The County Executive Officer and County Counsel therefore recommend the Board approve the following new fee rates for preparation of findings for assessment appeals decided by the Napa County Board of Equalization:

1. \$250 per application, for commercial, industrial or developed agricultural properties, including ag-zoned parcels that have commercial or industrial uses on them such as wineries, and business personal property/fixtures; and
2. \$150 per application, for residential properties or for undeveloped land.

As noted above, a fee of \$250 represents approximately 2 hours of Attorney time and \$150 represents approximately 1 hour.

Any fee paid would be refundable only if the request for preparation of written findings has been withdrawn prior to the close of the hearing on the assessment appeal. These fees will be effective immediately and apply to all existing applications on file for which the fees have not yet been paid as well as any new applications received after April 4, 2006. It is also recommended these fees be reviewed on an annual basis. As additional findings are prepared, it may be possible to develop a higher level of confidence concerning the average time required to prepare the findings and the fees can then be adjusted appropriately to more fully cover the County's actual costs.

SUPPORTING DOCUMENTS

- A . County Board of Equalization Findings of Fact Fee Survey
- B . Resolution

CEO Recommendation: Approve

Reviewed By: Britt Ferguson