

REVENUE DEPARTMENT[701]

Notice of Intended Action

Proposing rule making related to the property assessment appeal board and providing an opportunity for public comment

The Property Assessment Appeal Board hereby proposes to amend Chapter 126, “Property Assessment Appeal Board,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 17A.4, 421.1A(4)“f” and 421.1A(4)“g.”

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 441.37A and 2017 Iowa Acts, House File 478.

Purpose and Summary

The Board proposes the following amendments to its rules:

Item 1 rescinds rule 701—71.21(421,17A). This rule is no longer needed.

Items 2 through 12 remove references to appeals filed prior to 2018 and references to content in rule 701—71.21(421,17A).

Item 2 adds a definition for “written consideration.”

Item 3 amends the rule to remove any reference to assessment years 2018 and prior since these appeals have largely been adjudicated. The amendment also clarifies what is to be included in the board of review’s answer to a notice of appeal.

Item 4 amends the rule to permit parties, upon agreement, to serve one another via email.

Item 5 amends the rule to identify where a public access terminal is available for the public based on changes to the Hoover State Office Building and the Board’s office. The amendment also clarifies which documents the Board’s staff may electronically file on behalf of a party.

Item 6 amends the rule to include a requirement for filing a motion to dismiss for lack of jurisdiction within 90 days of filing the notice of appeal.

Item 7 amends the rule establishing a threshold for required filing of hearing scheduling and discovery plans from \$2 million to \$3 million.

Item 8 amends the Board’s discovery rules by limiting the number of discovery requests that may be served in cases involving property assessed for less than \$1 million.

Item 9 amends language regarding waiving 30-day notice of a Board hearing and permits video proceedings before the Board. The amendment identifies that participants in a hearing before the Board may now elect to participate via video conference. The amendment also defines “ex parte” communications and notifies parties that ex parte communication with Board members is prohibited.

Item 10 amends the rule regarding reopening the record and reconsiderations by specifying and clarifying the requirements for each filing.

Item 11 amends the rule to clarify service requirements for petitions for judicial review and to require that a party seeking judicial review shall bear the cost of producing the transcript of a Board hearing, if a transcript is requested.

Item 12 amends the rule to include provision for records retention following guidelines established by the State Records Commission.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Board no later than 4:30 p.m. on November 8, 2022. Comments should be directed to:

Jessica Braunschweig-Norris
Property Assessment Appeal Board
Hoover State Office Building
P.O. Box 10486
Des Moines, Iowa 50306
Phone: 515.725.0338
Email: jessica.braunschweig-norris@iowa.gov

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

- ITEM 1. Rescind and reserve rule **701—71.21(421,17A)**.
- ITEM 2. Amend rule 701—126.1(421,441) as follows:

701—126.1(421,441) Applicability and definitions.

126.1(1) Applicability and scope. The rules set forth in this chapter govern the proceedings for all cases ~~filed on or after January 1, 2015,~~ in which the property assessment appeal board (board) has jurisdiction to hear appeals from the action of a local board of review.

126.1(2) Definitions. For the purpose of these rules, the following definitions shall apply:

“*Appellant*” means the party filing the appeal with the property assessment appeal board.

“*Board*” means the property assessment appeal board as created by Iowa Code section 421.1A and governed by Iowa Code chapter 17A and section 441.37A.

“*Department*” means the Iowa department of revenue.

“*Electronic filing*” means the electronic transmission of a document to the electronic filing system together with the production and transmission of a notice of electronic filing.

“*Electronic filing system*” means the system established by the board for the filing of papers and service of the same to opposing parties.

“*Electronic record*” means a record, file, or document created, generated, sent, communicated, received, or stored by electronic means.

“*Electronic service*” means the electronic transmission of a notification to the registered users who are entitled to receive notice of the filing.

“*Local board of review*” means the board of review as defined by Iowa Code section 441.31.

“*Nonelectronic filing*” means a process by which a paper document or other nonelectronic item is filed with the board.

“*Notice of electronic filing*” means an ~~e-mail~~ email notification generated by the electronic filing system when a document is electronically filed.

“*Party*” means each person or entity named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

“*PDF*” means an electronic document filed in a portable document format which is readable by the free Adobe® Acrobat® Reader.

“*Presiding officer*” means the chairperson, member or members of the property assessment appeal board who preside over an appeal of proceedings before the board.

“*Public access terminal*” means a computer located at the board’s office where the public may view, print, and electronically file documents.

“*Registered user*” means an individual who can electronically file documents and electronically view and download files through the use of a username and password.

“*Remote access*” means a registered user’s ability to electronically search, view, copy, or download electronic documents in an electronic record without the need to physically visit the board’s office.

“*Secretary*” means the secretary for the property assessment appeal board.

“*Signature*” means a registered user’s username and password accompanied by one of the following:

1. “Digitized signature” means an embeddable image of a person’s handwritten signature;
2. “Electronic signature” means an electronic symbol (“/s/” or “/registered user’s name/”) executed or adopted by a person with the intent to sign; or
3. “Nonelectronic signature” means a handwritten signature applied to an original document.

“*Written consideration*” means the board’s consideration of an appeal without a hearing.

126.1(3) to 126.1(5) No change.

ITEM 3. Amend rule 701—126.2(421,441) as follows:

701—126.2(421,441) Appeal and answer.

126.2(1) to 126.2(3) No change.

126.2(4) Scope of review.

a. Grounds for appeal. The appellant may appeal the action of the board of review relating to protests of assessment, valuation, or the application of an equalization order. The board shall determine anew all questions arising before the local board of review which relate to the liability of the property to assessment or the amount thereof.

~~(1) For assessment years prior to January 1, 2018, no new grounds in addition to those set out in the protest to the local board of review can be pleaded but additional evidence to sustain those grounds may be introduced.~~

~~(2) For assessment years beginning on or after January 1, 2018, new~~ New grounds in addition to those set out in the protest to the local board of review may be pleaded, and additional evidence to sustain those grounds may be introduced. The board may order the appellant to clarify the grounds on which the appellant seeks relief.

b. Burden of proof. There shall be no presumption as to the correctness of the valuation of the assessment appealed from.

(1) ~~For assessment years prior to January 1, 2018, the burden of proof is on the appellant; however, when the appellant offers competent evidence by at least two disinterested witnesses that the market value of the property is less than the market value determined by the assessor, the burden of proof thereafter shall be upon the party seeking to uphold the valuation.~~

(2) ~~For assessment years beginning on or after January 1, 2018, the~~ The burden of proof is on the appellant; however, when the appellant offers competent evidence that the market value of the property is different than the market value determined by the assessor, the burden of proof thereafter shall be upon the officials or persons seeking to uphold the valuation.

c. The appeal is a contested case.

126.2(5) No change.

126.2(6) *Answer by local board of review.* Using the form provided by the board or a conforming document, the local board of review's attorney or representative shall file an answer within 30 days after service of the notice of appeal, unless the time period is shortened or extended by the board. The answer shall include: a statement setting forth the local board of review's position on the appeal and the

a. The subject property's current assessed value;

b. A statement regarding the timeliness of the protest to the local board of review and the timeliness of the appeal to the board;

c. How the local board of review will participate in the hearing; and

d. If the local board of review is represented by an attorney or designated representative, the attorney or designated representative's name, mailing address, email address, and telephone number.

126.2(7) *Docketing.* Appeals shall be assigned ~~consecutive~~ docket numbers. Electronic records consisting of the case name and the corresponding docket number assigned to the case shall be maintained by the board, as well as all filings made in the appeal.

126.2(8) and **126.2(9)** No change.

ITEM 4. Amend rule 701—126.3(421,441) as follows:

701—126.3(421,441) Nonelectronic service on parties and filing with the board.

126.3(1) No change.

126.3(2) *Service and filing of paper documents.* After the appeal has been filed, all motions, pleadings, briefs, and other papers shall be served upon each of the parties of record contemporaneously with their filing with the board.

a. *Service on parties to the appeal.* All documents are deemed served at the time they are delivered in person to the opposing party; delivered to an established courier service for immediate delivery; ~~or~~ mailed by first-class mail, so long as there is proof of mailing; or emailed to the opposing party per mutual agreement.

b. and c. No change.

126.3(3) to **126.3(6)** No change.

ITEM 5. Amend rule 701—126.4(421,441) as follows:

701—126.4(421,441) Electronic filing system.

126.4(1) to **126.4(5)** No change.

126.4(6) *Filing and service using electronic filing.*

a. and b. No change.

c. ~~E-mail~~ Email or fax. The ~~e-mailing~~ emailing or faxing of a document to the board will not generate a notice of electronic filing and does not constitute electronic filing of the document unless otherwise ~~ordered~~ authorized by the board.

d. *Public access terminal.* ~~The board shall maintain a public access terminal at the board's office.~~ A public access terminal is available at the reception desk on the first floor of the Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319.

e. to g. No change.

126.4(7) *Filing by the board on behalf of a party.*

a. and b. No change.

c. Only the following motions or requests may be filed by board staff on behalf of a party:

(1) ~~Motion for telephone hearing~~ Request to participate in a hearing in person, by telephone, or by video;

~~(2) Motion to appear in person at hearing;~~

(3) (2) Motion for hearing;

(4) (3) Motion for continuance;

(5) (4) Motion to withdraw appeal.

d. Upon filing of the motion or request, board staff will provide a courtesy copy of the filing to the party.

ITEM 6. Amend rule 701—126.5(421,441) as follows:

701—126.5(421,441) Motions and settlements.

126.5(1) No change.

126.5(2) Motions. No technical form for motions is required. All prehearing motions shall be in writing, shall be filed with the board and shall contain the reasons and grounds supporting the motion. The board shall act upon such motions as justice may require. Motions based on matters which do not appear of record shall be supported by affidavit. Any party may file a written response to a motion no later than ~~40~~ ten days from the date the motion is filed, unless the time period is extended or shortened by the board or presiding officer. The presiding officer may schedule oral argument on any motion.

a. *Filing of motions.* Motions pertaining to the hearing, except motions ~~for summary judgment, discussed in paragraph 126.5(2) “b,”~~ must be filed and served at least ~~40~~ ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by the board or presiding officer.

b. *Motions for summary judgment and motions to dismiss for lack of jurisdiction.*

(1) Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 1.981 and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this chapter or any other provision of law governing the procedure in contested cases.

(2) Motions for summary judgment and motions to dismiss for lack of jurisdiction must be filed and served no later than 90 days after service of the notice of appeal, unless good cause is shown for a later filing. Good cause may include, but is not limited to, information the moving party obtains through discovery. Any party resisting the motion shall file and serve a resistance within 20 days, unless otherwise ordered by the board or presiding officer, from the date a copy of the motion was served. ~~The time fixed for hearing or nonoral submission shall be not less than 30 days after the filing of the motion, unless a shorter time is ordered by the presiding officer. The board may request oral argument on the motion or may issue a ruling without argument. A summary judgment order rendered on all issues in a contested case or order on motion to dismiss for lack of jurisdiction is subject to rehearing reconsideration pursuant to subrule 126.9(2).~~

c. *Motions to withdraw.* An appellant may withdraw the appeal ~~prior to the hearing~~. Such a withdrawal of an appeal must be in writing and signed by the appellant or the appellant’s designated representative. Unless otherwise provided, withdrawal shall be with prejudice and the appellant shall not be able to refile the appeal. Within 20 days of the board’s granting of a withdrawal of appeal, the appellant may make a motion to reopen the file and rescind the withdrawal based upon fraud, duress, undue influence, or mutual mistake.

d. *Motions for refund.* ~~For assessment years beginning on or after January 1, 2018, if~~ If the board reduces an assessment following a contested case hearing, the appellant shall be notified in the board’s final agency action of the appellant’s right to elect to be refunded for taxes already paid by filing a motion with the board. Such a motion shall be filed within ~~40~~ ten days of the board’s final agency action. If the appellant does not timely file a motion for refund, any change in taxes resulting from the assessment reduction shall be credited toward future tax payments.

126.5(3) No change.

ITEM 7. Amend rule 701—126.6(421,441) as follows:

701—126.6(421,441) Hearing scheduling and discovery plan.

126.6(1) *When required.* For appeals involving properties ~~classified commercial, industrial, or multiresidential~~ and assessed at \$2 ~~\$3~~ million or more, the parties shall confer and file a hearing scheduling and discovery plan within 60 days of the notice provided in subrule 126.2(5). In any other appeal, the parties may jointly file a hearing scheduling and discovery plan or the board may, on its own motion or the motion of any party, require parties to file a hearing scheduling and discovery plan. The dates established in a hearing scheduling and discovery plan under this rule shall supersede any dates set forth in any other rule in this chapter.

126.6(2) to 126.6(4) No change.

ITEM 8. Amend rule 701—126.7(421,441) as follows:

701—126.7(421,441) Discovery and evidence.

126.7(1) *Discovery procedure.* The scope of discovery described in Iowa Rule of Civil Procedure 1.503 shall apply to contested case proceedings. When considering a question of relevancy, the board shall consider the provisions of Iowa Code chapter 441, 701—Chapter 71, and other applicable law. The following discovery procedures available in the Iowa Rules of Civil Procedure are available to the parties in a contested case proceeding: depositions upon oral examination or written questions; written interrogatories; production of documents, electronically stored information, and things; entry upon land for inspection and other purposes; and requests for admission. The time frames for discovery in specific Iowa Rules of Civil Procedure govern those specific procedures, unless lengthened or shortened by the board.

a. No change.

b. Subject to the limitations in paragraph 126.7(1)“h,” Iowa Rule of Civil Procedure 1.509 shall apply to any interrogatories propounded in an appeal.

c. Subject to the limitations in paragraph 126.7(1)“h,” Iowa Rule of Civil Procedure 1.512 shall apply to any requests for production of documents, electronically stored information, and things; and entry upon land for inspection and other purposes in an appeal.

d. to g. No change.

h. In addition to the limits on discovery requests in Iowa Rule of Civil Procedure 1.509 and 1.512, the following limits shall apply to appeals of property assessed for less than \$1 million:

(1) A party shall not serve on any other party more than 15 interrogatories, including all discrete subparts.

(2) A party shall not serve on any other party more than ten requests for production of documents, electronically stored information, and things.

A party to the appeal may file a motion with the board requesting leave to serve additional discovery requests. The motion shall set forth the proposed interrogatories or requests for production of documents and the reasons establishing good cause for their use.

126.7(2) to 126.7(4) No change.

ITEM 9. Amend rule 701—126.8(421,441) as follows:

701—126.8(421,441) Hearings before the board.

126.8(1) No change.

126.8(2) *Notice of hearing.* Unless otherwise designated by the board, the hearing shall be held in the hearing room of the board. All hearings are open to the public. ~~If~~ Unless subject to a hearing scheduling and discovery plan, if a hearing is requested, the board shall serve a notice of hearing to the parties at least 30 days prior to the hearing. The parties may jointly waive the 30-day notice by following the provisions of subrule 126.8(3). The notice of hearing shall contain the following information:

a. to j. No change.

126.8(3) *Waiver of 30-day notice.* The parties to the appeal may jointly waive the 30-day written notice requirement for a hearing in Iowa Code section 441.37A by submitting a mutually agreed upon

hearing date approved by the board. ~~The waiver must be signed by the parties or their designated representatives and filed with the board. By waiving notice, the parties acknowledge they are ready to proceed with the hearing. The parties will be contacted when a hearing date is available but notice for said date may be less than 30 days. The parties will have the right to accept or reject the hearing date.~~

126.8(4) No change.

126.8(5) *Telephone and video proceedings.* The board or presiding officer may conduct a telephone or video conference in which all parties have an opportunity to participate to resolve preliminary procedural motions. Other proceedings, including contested case hearings, may be held by telephone or video. The board will determine the location of the parties and witnesses for telephone and video hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when the location is chosen.

126.8(6) *Hearing procedures.* A party to the appeal may request a hearing, or the appeal may proceed ~~without a hearing~~ as a written consideration. The local board of review may be present and participate at such hearing. Hearings may be conducted by the board or by one or more of its members.

a. to e. No change.

126.8(7) to 126.8(9) No change.

126.8(10) *Ex parte communications with board members.* Written, oral or other forms of communication are “ex parte” if made without notice and opportunity for all parties to participate. Ex parte communications between a person or party and any board members in connection with any issue of fact or law in the contested case proceeding is prohibited except as permitted by Iowa Code section 17A.17. All of the provisions of Iowa Code section 17A.17 apply to proceedings before the board.

~~**126.8(10)**~~ **126.8(11)** *Disqualification of board member.* A board member or members must, on their own motion or on a motion from a party in the proceeding, withdraw from participating in an appeal if there are circumstances that warrant disqualification.

a. No change.

b. Motion for disqualification.

(1) If a party asserts disqualification on any appropriate ground, including those listed in paragraph ~~126.8(10)~~ “a,” ~~126.8(11)~~ “a,” the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.11. The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification, but must establish the grounds by the introduction of evidence into the record.

(2) If a majority of the board determines that disqualification is appropriate, the board member shall withdraw. If a majority of the board determines that withdrawal is not required, the board shall enter an order to that effect. ~~A party asserting disqualification may seek an interlocutory appeal and a stay as provided under 701—Chapter 7.~~

c. and d. No change.

ITEM 10. Amend rule 701—126.9(421,441) as follows:

701—126.9(421,441) Posthearing motions.

126.9(1) *Motion to reopen records.* The board or presiding officer, on the board’s or presiding officer’s own motion or on the motion of a party, may reopen the record for the reception of further evidence. A motion to reopen the record may be made anytime prior to the issuance of a final decision. A motion to reopen the record filed after issuance of the final decision will not be considered. In ruling on a motion to reopen the record from a party filed prior to issuance of the final decision, the board may consider:

a. Whether the information sought to be admitted is material;

b. The timeliness of the motion;

c. Whether the information sought to be admitted was available as of the date for hearing or written consideration and whether there is good cause for failing to present it;

d. The prejudice on the other party;

e. Any and all other factors deemed relevant by the board.

126.9(2) Rehearing and reconsideration.

a. Application for rehearing or reconsideration. Any party to a case may file an application for rehearing or reconsideration of the final decision. The application for rehearing or reconsideration shall be filed within 20 days after the final decision in the case is issued. The board's consideration of the application shall be limited to the admitted exhibits and testimony offered at the hearing. No new evidence will be accepted or considered.

b. Contents of application. Applications for rehearing or reconsideration shall specify the findings of fact and conclusions of law claimed to be erroneous, with a brief statement of the alleged grounds of error and the relief sought. If a claim of error of fact is asserted, the application should clearly specify the factual error and cite to admitted exhibits or testimony in support of the claim. If a claim of error of law is asserted, the application should clearly specify the legal error and cite statutes, case law, administrative rules, or other sources of law in support of the claim. Any application for rehearing or reconsideration asserting that evidence has arisen since the final order was issued as a ground for rehearing or reconsideration shall present the evidence by affidavit that includes an explanation of the competence of the person to sponsor the evidence and a brief description of the evidence sought to be included.

c. Notice to other parties. ~~A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein.~~ The applicant shall serve a copy of the application on all parties to the contested case in accordance with rules 701—126.3(421,441) and 701—126.4(421,441). If the application does not contain a certificate of service, the board shall serve copies on all parties.

d. Requirements for objections Resistance to applications for rehearing or reconsideration. ~~An answer or objection~~ A resistance to an application for rehearing or reconsideration must be filed within 14 ~~ten~~ days of the date the application was filed with the board, unless otherwise ordered by the board.

e. Disposition. Any application for a rehearing shall be deemed denied unless the board grants the application within 20 days after its filing.

ITEM 11. Amend rule 701—126.10(17A,441) as follows:

701—126.10(17A,441) Judicial review.

126.10(1) Appeals of board decisions. A party may seek judicial review of a decision rendered by the board. The filing of the petition does not itself stay execution or enforcement of the board's final decision. The board may grant a stay on appropriate terms or other temporary remedies during the pendency of judicial review.

~~*a.* For assessment years prior to January 1, 2018, a party may seek judicial review by filing a written notice of appeal with the clerk of the district court where the property is located within 20 days after the board's final agency action is postmarked to the appellant or the final agency action is filed in the board's electronic filing system. Iowa Code chapter 17A applies to judicial review of the board's final decision.~~

~~*b. a.* For assessment years beginning on or after January 1, 2018, a A party may seek judicial review of a decision rendered by the board by filing a petition for judicial review with the clerk of the district court where the property is located within 30 days after the board's action pursuant to Iowa Code chapter 17A. Within ten days of filing for judicial review, the party seeking judicial review must serve notice on the board and notice on all parties to the contested case proceeding pursuant to Iowa Code chapter 17A.~~

~~*b.* The party or parties seeking judicial review shall bear the costs of preparing the transcription of the board hearing, if a transcription is required by the reviewing court.~~

126.10(2) No change.

ITEM 12. Amend rule 701—126.11(22,421) as follows:

701—126.11(22,421) Records access.

126.11(1) to 126.11(7) No change.

126.11(8) *Retention of board records.* The board will follow the records retention schedule for administrative case files established by the state records commission.