

**701—115.7(421,441) Discovery and evidence.**

**115.7(1) *Discovery procedure.*** The scope of discovery described in Iowa Rule of Civil Procedure 1.503 applies to board appeals. When considering relevancy, the board shall consider the provisions of Iowa Code chapter 441, 701—Chapter 102, and other applicable law. The following discovery procedures in the Iowa Rules of Civil Procedure are available to the parties in an appeal: 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 the Iowa Rules of Civil Procedure govern, unless lengthened or shortened by the board.

*a.* Iowa Rules of Civil Procedure 1.701 through 1.717 regarding depositions apply to any depositions taken in an appeal. Any party taking a deposition in an appeal is responsible for any deposition costs. Deposition costs include but are not limited to reimbursement for mileage of the deponent, costs of a certified shorthand reporter, and expert witness fees, as applicable.

*b.* Subject to the limitations in paragraph 115.7(1)“*h*,” Iowa Rule of Civil Procedure 1.509 applies to any interrogatories propounded.

*c.* Subject to the limitations in paragraph 115.7(1)“*h*,” Iowa Rule of Civil Procedure 1.512 applies to any requests for production of documents, electronically stored information, and things; and entry upon land for inspection and other purposes.

*d.* Iowa Rule of Civil Procedure 1.510 applies to any requests for admission. Iowa Rule of Civil Procedure 1.511, regarding the effect of an admission, applies.

*e.* The mandatory disclosure and discovery conference requirements in Iowa Rules of Civil Procedure 1.500 and 1.507 do not apply to appeals before the board.

*f.* Iowa Rule of Civil Procedure 1.508 applies to discovery of any experts identified by a party.

*g.* Discovery shall be served on all parties but should not be filed with the board. Parties should file a notice with the board when a notice of deposition or a discovery request or response is served on another party. The notice filed with the board should include the date, the manner of service, and the names and addresses of the persons served. Other discovery materials should not be filed unless ordered by the board.

*h.* In addition to the limits on discovery requests in Iowa Rules of Civil Procedure 1.509 and 1.512, the following limits 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 must include the proposed interrogatories or requests for production of documents and the reasons establishing good cause for their use.

**115.7(2) *Discovery motions.*** Before filing any motion related to discovery, parties must make a good-faith effort to resolve discovery disputes without the involvement of the board. Any motion related to discovery should state the moving party has made a good-faith attempt to resolve the discovery issues involved with the opposing party. Opposing parties may respond within ten days of the filing of the motion unless the time is shortened by order of the board. The board may rule on the basis of the written motion and any response or may have a hearing or other proceedings on the motion.

**115.7(3) *Evidence.***

*a. Admissibility.* The board will rule on admissibility of evidence and may take official notice of facts in accordance with applicable legal requirements. Evidence obtained in discovery may be used in the appeal if that evidence would otherwise be admissible.

*b. Stipulations.* Stipulation of facts by the parties is encouraged. The board may make a decision based on stipulated facts.

*c. Scope of admissible evidence.* Admission of evidence is governed by Iowa Code section 17A.14. Upon an objection pursuant to paragraph 115.7(3)“*e*,” evidence may be excluded. Hearsay evidence is admissible.

*d. Exhibits, exhibit and witness lists, and briefs.* The party seeking admission of an exhibit must provide an opposing party with an opportunity to examine the exhibit before the ruling on its admissibility. Copies of documents to be used as evidence, exhibit lists, and a list of witnesses intended to be called at hearing shall be served on the opposing party at least 21 calendar days before the hearing, unless the time period is extended or shortened by the board or the parties have filed a hearing scheduling and discovery plan under rule 701—115.6(421,441). Upon an objection pursuant to paragraph 115.7(3)“e,” late-filed exhibits may be excluded. Rebuttal evidence need not be exchanged or served on the opposing party before the hearing. All exhibits and briefs admitted into evidence will be appropriately marked and be made part of the record. The appellant should mark each exhibit with consecutive numbers. The appellee should mark each exhibit with consecutive letters.

The local board of review must file the following exhibits:

(1) The appealed property’s property record card after implementation of the final decision of the board of review, including the cost report showing the property listing, costs, and multipliers.

(2) The final decision of the local board of review.

(3) The appellant’s petition to the local board of review.

*e. Objections.* Any party may object to specific evidence or request limits on the scope of examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds for the objection. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The board may rule on the objection at the time it is made or may reserve a ruling until the written decision.

*f. Offers of proof.* Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the board, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

*g. Judicial notice of property record cards.* Without additional notice, the board may take judicial notice of the property record card or cost report of the subject property if electronically available to the public through the assessor’s website. At its discretion, the board may take judicial notice of property record cards or cost reports of comparable properties identified by the parties as provided under Iowa Code section 17A.14(4) if electronically available to the public through the assessor’s website. Where such information is not publicly available or the public information lacks the formulas and methods used to determine the actual value, including all listing data, costs, and multipliers, the board may order a party to file the full property record card. If the board takes judicial notice or orders the filing of any property record card or cost report, such card or report shall become part of the appeal record.

**115.7(4) Subpoenas.**

*a. Issuance.*

(1) Pursuant to Iowa Code section 17A.13(1), a subpoena shall be issued to a party on request unless otherwise excluded pursuant to this subrule. The request shall be in writing and include the name, address, and telephone number of the requesting party. In absence of good cause for permitting later action, a request for subpoena must be received at least 14 days before the scheduled hearing.

(2) Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

(3) The board will refuse to issue a subpoena when there is reasonable ground to believe the subpoena is requested for the purpose of harassment; may seek irrelevant information as provided under Iowa Code section 441.21, 701—Chapter 102, or other applicable law; or is untimely. If the board refuses to issue a subpoena, the board shall provide a written statement of the ground for refusal. A party to whom a refusal is issued may obtain a prompt hearing before the board regarding the refusal by filing with the board and serving on all parties a written request for hearing.

*b. Motion to quash or modify.* Upon motion, the board may quash or modify a subpoena for any lawful reason in accordance with the Iowa Rules of Civil Procedure or pursuant to this subrule.

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