

REVENUE DEPARTMENT[701]

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 701—Chapter 115
“Property Assessment Appeal Board”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 421.1A, 441.37A

State or federal law(s) implemented by the rulemaking: 421.1A, 427.1(40), 441.37A, 441.37B, 441.42

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

October 12, 2023
9:30 a.m.

PAAB Hearing Room 1N
Hoover State Office Building
Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Property Assessment Appeal Board (PAAB) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

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Des Moines, Iowa 50306
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Purpose and Summary

These rules primarily implement Iowa Code sections 421.1A, 441.37A, and 441.37B. They establish necessary processes for adjudication of contested case appeals before the PAAB. This rulemaking is proposed pursuant to Executive Order 10.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Parties to PAAB contested cases will bear the costs.
 - Classes of persons that will benefit from the proposed rulemaking:
Parties to PAAB contested cases will benefit.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
No quantitative impact is anticipated.
 - Qualitative description of impact:
No qualitative impact is anticipated.

3. Costs to the State:
 - Implementation and enforcement costs borne by the agency or any other agency:
Implementation of these rules is within PAAB’s current allocated operating budget. No other state agencies are expected to bear any costs.
 - Anticipated effect on state revenues:
No effect on state revenues is anticipated.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The rules are necessary to establish processes for adjudicating contested cases before PAAB. A lack of rules implementing a consistent, fair, and deliberate process is not feasible and would be detrimental to the parties participating in the contested cases. It would also hinder PAAB's ability to efficiently consider and issue orders on the contested cases.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The proposed rules are considered to be the least costly and least intrusive method for establishing a fair and consistent administrative appeal process as required by statute.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

No alternative methods were considered.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

PAAB completed a comprehensive review of its administrative rules in 2022. At that time, input was obtained from constituent groups through deliberate engagement. PAAB considered that input and amended Chapter 15 in response. Pursuant to Executive Order 10, PAAB has further considered its rules to conform to the requirements therein.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

This rulemaking is not expected to have a substantial impact on small businesses.

Text of Proposed Rulemaking

ITEM 1. Amend rules 701—115.1(421,441) to 701—115.11(22,421) as follows:

701—115.1(421,441) Applicability and definitions.

115.1(1) *Applicability and scope.* ~~The rules set forth in this chapter govern the proceedings for all cases in which appeals filed under Iowa Code section 441.37A before the property assessment appeal board (board) has jurisdiction to hear appeals from the action of a local board of review. In cases filed under Iowa Code section 427.1(40), Iowa Code section 441.42, or other applicable provision, the board may use these rules and issue other necessary orders consistent with law.~~

115.1(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.

"Appellee" means the party responding to the appeal.

"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.~~

"Contested case" means a proceeding defined by Iowa Code section 17A.2(5) or 17A.10A.

"Custodian" means the board or a person lawfully delegated authority by the board to act for the board in implementing Iowa Code chapter 22.

"Decision" means the board's findings of fact, conclusions of law, decision, and order in a contested case.

"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 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.

115.1(3) *Waivers Waiver of procedures.* A party may seek waiver from a rule adopted by the board following Iowa Code section 17A.9A.

~~*a.*—In response to a request, or on its own motion, the board may grant a waiver from a rule adopted by the board, in whole or in part, as applied to a specific set of circumstances, if the board finds, based on clear and convincing evidence, that:~~

- ~~(1) The application of the rule would pose an undue hardship on the person for whom the waiver is requested;~~
- ~~(2) The waiver would not prejudice the substantial rights of any person;~~
- ~~(3) The provisions of the rule subject to a petition for waiver are not specifically mandated by statute or another provision of law; and~~
- ~~(4) Substantially equal protection of public health, safety, and welfare will be afforded by means other than that prescribed in the rule for which the waiver is requested.~~

~~*b.*—Persons requesting a waiver may submit their request in writing. The waiver request must state the relevant facts and reasons the requester believes will justify the waiver, if the reasons have not already been provided to the board in another pleading.~~

~~*c.*—Grants or denials of waiver requests shall contain a statement of the facts and reasons upon which the decision is based. The board may condition the grant of the waiver on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question. The board may at any time cancel a waiver upon appropriate notice and opportunity for hearing.~~

115.1(4) *Time requirements.* Time shall be is computed as provided in Iowa Code section 4.1(34). For good cause, the board may extend or shorten the time to take any action, except as precluded by statute. Except for good cause stated in the record, before extending or shortening the time to take any action, the board shall will afford all parties an opportunity to be heard or ~~to~~ file written arguments.

~~115.1(5) Judgment of the board.~~ Nothing in this chapter should be construed as prohibiting the exercise of honest judgment, as provided by law, by the board in matters pertaining to valuation and assessment of individual properties.

701—115.2(421,441) Appeal and answer.

~~115.2(1) Appeal and jurisdiction.~~ The procedure for appeals and parameters for jurisdiction are as follows: The deadline for filing an appeal is as stated in Iowa Code section 441.37A. The appeal may be filed through the board's electronic filing system, delivered in person, mailed by first-class mail, or delivered to an established courier service for immediate delivery. An appeal filed using the electronic filing system must be filed by 11:59 p.m. on the last day for filing.

~~a.~~ Jurisdiction is conferred upon the board by filing an appeal with the board. The appeal shall set forth the grounds for appeal and the relief sought. The appeal shall be filed with the board within 20 calendar days after the date of adjournment of the local board of review or May 31, whichever is later. Appeals postmarked within this time period shall also be considered to have been timely filed. For an appeal filed through the electronic filing system to be timely, the appeal must be filed by 11:59 p.m. on the last day for filing.

~~b.~~ The appeal may be filed through the board's electronic filing system, delivered in person, mailed by first-class mail, or delivered to an established courier service for immediate delivery.

115.2(2) Form of appeal. The appeal shall ~~shall~~ should include:

- a. The appellant's name, mailing address, email address, and telephone number;
- b. The address of the property being appealed and its parcel number;
- c. The grounds for appeal;
- d. A short and plain statement of the claim;
- e. The relief sought; and
- f. If the party is represented by an attorney or designated representative, the attorney or designated representative's name, mailing address, email address, and telephone number.

115.2(3) Amendment of appeal. The appellant may amend the appeal once as a matter of course within 20 days after it is filed to add or modify the grounds for appeal. Otherwise, the appellant may only amend the appeal by leave of the board or by written consent of the adverse party.

115.2(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. The board considers grounds for appeal as listed in Iowa Code sections 441.37(1) "a"(1)(a) to (e) and 441.37(2) "a" in the manner described in Iowa Code section 441.37A(1) "b."~~ The board may order the appellant to clarify the grounds on which the appellant seeks relief.

~~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. The burden of proof is as stated in Iowa Code section 441.21(3).~~

~~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.~~

115.2(5) Notice to local board of review. The board shall ~~shall~~ will serve, through the electronic filing system, a copy of the appellant's appeal to the local board of review whose decision is being appealed. ~~Notice to all affected taxing districts shall be deemed to have been given when written notice is served on the local board of review.~~

115.2(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 ~~shall~~ should include:

- 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~~ The local board of review's attorney or designated representative's name, mailing address, email address, and telephone number.

~~115.2(7) Docketing. Appeals shall be~~ are assigned 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. The board will maintain electronic records of the appeal name, the docket number, and all filings made in the appeal.

~~115.2(8) Consolidation and severance. The board or presiding officer may determine if consolidation or severance of issues or proceedings should be performed in order to efficiently resolve matters on appeal before the board.~~

a. ~~Consolidation. The presiding officer~~ board may consolidate any or all matters at issue in two or more ~~appeal proceedings~~ appeals where:

- (1) The matters at issue involve common parties or common questions of fact or law;
- (2) Consolidation would expedite and simplify consideration of the issues involved; and
- (3) Consolidation would not adversely affect the rights of any of the parties to those ~~proceedings~~ appeals.

b. ~~Severance. The presiding officer~~ board may, for good cause shown, order any ~~appeal proceedings~~ appeals or portions ~~of the proceedings~~ thereof severed.

~~115.2(9) Appearances. Any party may appear and be heard on its own behalf, or by its attorney or designated representative. Attorneys and designated representatives both shall file a notice of appearance with the board for each appeal. A designated representative who is not an attorney shall also file a power of attorney. When acting as a designated representative on behalf of a party, the designated representative acknowledges that the representative has read and will abide by the board's rules.~~

701—115.3(421,441) Nonelectronic service ~~on parties and filing with the board~~ and filing of documents.

~~115.3(1) Applicability. This rule applies to all nonelectronic filings made with the board by parties not voluntarily using the electronic filing system or in all other cases for which the board has not ordered the conversion of the case to an electronic file. Electronic filing and service of documents using the board's electronic filing system is governed by rule 701—115.4(421,441).~~

~~115.3(2) Service and filing of paper documents. After the appeal has been filed, all~~ 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; mailed by first-class mail, so long as there is proof of mailing; or emailed to the opposing party per mutual agreement.

b. ~~Filing with the board.~~ Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the board; delivered to an established courier service for immediate delivery; or mailed by first-class mail, so long as there is proof of mailing. A registered user of the board's electronic filing system may electronically file documents with the board pursuant to rule 701—115.4(421,441).

c. ~~Proof of mailing.~~ Proof of mailing includes: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Property Assessment Appeal Board and to the names and addresses of the parties listed below by depositing the same in a (United States post office mailbox with correct postage properly affixed).

(Date) (Signature)

~~115.3(3) Board-generated documents. The board will mail copies of all board-generated documents to any party not served by the board's electronic filing system.~~

~~115.3(4) Conversion of filed paper documents. The board will convert all filed paper documents to an electronic format viewable to registered users of record in the electronic filing system.~~

~~115.3(5) Form of paper documents. Each document delivered to the board must~~ should be printed on ~~only~~ one side and have no tabs, staples, or permanent clips. ~~The document~~ It may be organized with paperclips, clamps, or another type of temporary fastener or be contained in a file folder.

~~115.3(6) Return of copies by mail. If a party requests that a paper document filed in paper form be returned by mail, the party must deliver to the board~~ provide a postage-paid, self-addressed envelope, with proper postage, large enough to accommodate the returned document.

701—115.4(421,441) Electronic filing system.

115.4(1) Electronic filing and applicability.

a. *Electronic filing.* The board will maintain an electronic filing system, which ~~shall be~~ is the preferred method for filing documents with the board.

b. *Applicability.* This rule applies to electronic filing and service of documents using the board's electronic filing system. Nonelectronic filing and service are governed by rule 701—115.3(421,441).

(1) The board may order the conversion of any ~~ease~~ appeal to an electronic file. Upon such an order, all future filings must be made using the board's electronic filing system in compliance with this rule, unless a filing is subject to the exception in paragraph 115.4(1)"c."

(2) In all other cases, a party or parties to a proceeding may voluntarily choose to use the electronic filing system in compliance with this rule.

c. *Exceptions.* Any item ~~that is~~ not capable of electronic filing shall be filed in a nonelectronic format pursuant to rule 701—115.3(421,441).

115.4(2) Registration.

a. *Registration required.* Every individual ~~who is filing documents or viewing or downloading documents filed in an appeal~~ filing, viewing, or downloading appeal documents must register as a registered user of the electronic filing system.

b. *How to register.* ~~To register, an~~ An individual must complete the registration process online at efile-paab.iowa.gov, consent to the user agreement, and obtain a username and password for the electronic filing system.

c. *Changing passwords.* Once registered, the user may change the user's password. If the registered user believes the security of an existing password has been compromised, the registered user ~~must~~ should change the password immediately. The board may require password changes periodically.

d. *Changes in a registered user's contact information.* If a registered user's email address, mailing address, or telephone number changes, the registered user ~~must~~ should promptly ~~make the necessary changes to the registered user's~~ change the information contained in the electronic filing system. The registered user ~~shall~~ should promptly ~~give notice of changes in contact information to~~ notify any nonregistered party of changes in contact information in every active proceeding in which the registered user is a party.

e. *Duties of a registered user.* Each registered user ~~shall~~ will ensure ~~that~~ the user's email account information is current, ~~that~~ the account is monitored regularly, and ~~that~~ email notices sent to the account are timely opened.

f. *Canceling registration.* Withdrawal from participation in the electronic filing system cancels the registered user's profile but does not authorize nonelectronic filing of documents and is not a withdrawal from a proceeding.

g. *Use of username and password.* A registered user is responsible for all documents filed with the registered user's username and password unless proven by clear and convincing evidence that the registered user did not make or authorize the filing.

h. *Username and password security.* If a username or password is lost, misappropriated, misused, or compromised, the registered user ~~of that username and password shall~~ will notify the board promptly.

i. *Denial of access.* The board may refuse to allow an individual to electronically file or download information in the electronic filing system due to misuse, fraud or other good cause.

115.4(3) Signatures.

a. *Registered user.* A username and password accompanied by a digitized, electronic, or nonelectronic signature serve as the registered user's signature on all electronically filed documents.

b. *Documents requiring oaths, affirmations or verifications.* Any document filed requiring a signature under oath or affirmation or with verification may be signed electronically or nonelectronically but shall be filed electronically.

c. *Format.* Any filing requiring a signature must be signed, with either a nonelectronic signature (~~actual signature scanned~~), an electronic signature (~~the symbol "/s/" or "/registered user's name/"~~), or a digitized signature (~~an inserted image of a handwritten signature~~).

d. *Multiple signatures.* By filing a document containing multiple signatures, the registered user confirms ~~that~~ the content of the document is acceptable to all persons signing the document and ~~that~~ all such persons consent to having their signatures appear on the document.

115.4(4) Format and redaction of electronic documents. ~~All documents must be converted to a PDF format before they are filed in the electronic filing system. Prior to~~ Except proposed orders, all electronically filed documents must be filed as a PDF. Before filing any document, the registered user shall ensure that the document is certified as confidential or that the confidential information is omitted or redacted.

115.4(5) Exhibits and other attachments. Any attachments to a filing, such as an exhibit, shall be uploaded and electronically attached to the filing. Each exhibit ~~shall~~ should be filed as a separate PDF. Exhibits ~~shall~~ should be labeled as required by paragraph 115.7(3)“d.”

115.4(6) Filing and service using electronic filing.

a. *What constitutes filing.* The electronic transmission of a document to the electronic filing system ~~consistent with~~ following the procedures specified in these rules, together with the production and transmission of a notice of electronic filing, constitutes the filing of the document.

b. *Electronic file stamp.* Electronic documents are officially filed when affixed with an electronic file stamp. Filings so endorsed shall have the same force and effect as documents time-stamped in a nonelectronic manner.

c. *Email or fax.* ~~The emailing~~ 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 authorized by the board.

d. *Public access terminal.* 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. *Service of filings.* When a document is electronically filed, the electronic filing system will produce and transmit a notice of electronic filing to all parties ~~to the appeal~~ who are registered users. The notice of electronic filing shall constitute service of the filing on registered users. No other service is required on registered users unless ordered by the board. The filing party is responsible for ensuring service, pursuant to paragraph 115.3(2)“a,” on any party that is not a registered user. Notices of electronic filing will continue to be sent to registered users appearing or intervening in a proceeding until the users have filed a withdrawal of appearance.

f. *Proof of service of nonelectronic filings.* Parties filing a document nonelectronically pursuant to paragraph 115.3(2)“c” and rule 701—115.3(421,441) shall electronically file a notice of nonelectronic filing along with proof of service.

g. *Electronic filing and service of board-generated documents.* All board-generated documents issued in an appeal governed by this chapter ~~shall~~ will be electronically filed and served. The board ~~shall~~ will only mail paper copies of documents as provided in subrule 115.3(3).

115.4(7) Filing by the board on behalf of a party.

a. ~~Where the circumstances and administrative efficiency requires, board~~ Board staff may file a motion on behalf of a party to an appeal pursuant to this subrule.

b. When a party ~~to an appeal~~ contacts board staff via telephone or other means and indicates the party’s desire to file a motion ~~or request~~ specified in paragraph 115.4(7)“c,” board staff may file the ~~request or~~ motion in the electronic filing system on behalf of the party. The ~~request or~~ motion ~~shall~~ will be consistent with the instructions and information provided by the party and shall only be filed with the permission of the party. Board staff ~~shall~~ will not file any motions ~~or requests~~ on behalf of a party if any opposing party requires nonelectronic service under subrule 115.3(2).

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

- (1) ~~Request~~ Motion to participate in a hearing in person, by telephone, or by video;
- (2) Motion for hearing;
- (3) Motion for continuance;
- (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.

701—115.5(421,441) Motions and settlements.

115.5(1) Authority of board to issue procedural orders. The board may issue preliminary orders regarding procedural matters.

115.5(2) Motions. No technical form for motions is required. All prehearing motions ~~shall~~ should be in writing, ~~shall be~~ filed with the board and ~~shall~~ contain the reasons and grounds supporting the motion. The board ~~shall~~ will 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 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~~ board may schedule oral argument on any motion.

a. *Filing of motions.* Motions pertaining to the hearing, except motions discussed in paragraph 115.5(2)“b,” must be filed and served at least ten days ~~prior to~~ before 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~~ and motions to dismiss for lack of jurisdiction ~~should~~ comply with the requirements of Iowa Rule of Civil Procedure 1.981 ~~and shall~~. Notwithstanding the time for filing motions in Iowa Rule of Civil Procedure 1.981, motions should be filed within ten days of issuance of a notice of hearing or written consideration. Responses should follow the provisions of Iowa Rule of Civil Procedure 1.981. Motions will be subject to disposition disposed of according to the requirements of that rule to the extent unless 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 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 reconsideration pursuant to subrule 115.9(2).~~

c. Motions to withdraw. An appellant may withdraw the appeal. ~~Such a~~ 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. 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 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.

115.5(3) Settlements. Parties to ~~a case an appeal~~ may propose to settle all or some of the issues in the ~~case~~ appeal at any time ~~prior to~~ before the issuance of a final decision. A settlement of an appeal shall be jointly signed by the parties, or their designated representatives, and filed with the board. The settlement filed with the board shall indicate whether the assessment modification will result in a tax refund or a credit toward future tax payments. ~~The board will not approve a settlement unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest.~~ Board adoption of a settlement constitutes the final decision of the board on issues addressed in the settlement.

701—115.6(421,441) Hearing scheduling and discovery plan.

115.6(1) When required. For appeals involving properties assessed at \$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 115.2(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.

115.6(2) Prehearing conference. A party may request a prehearing conference to resolve any disputed issue pertaining to the ~~hearing scheduling and discovery~~ plan.

115.6(3) Modification. The parties may jointly agree to modify the plan. If one party seeks to modify the plan, the party must show good cause for the modification.

115.6(4) Failure to comply. A party that ~~fails to~~ does not comply with a plan ~~shall be required to~~ must show good cause for ~~failing to comply~~ not complying and that the other party is not substantially prejudiced by the noncompliance. Failing to comply with a plan may result in sanctions including, but not limited to, the exclusion of evidence or dismissal of the appeal.

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 ~~shall apply~~ applies to contested case proceedings board appeals. When considering a ~~question of relevancy~~, the board shall consider the provisions of Iowa Code chapter 441, 701—Chapter 102, 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 an appeal:~~

stored information, and things; entry upon land for inspection and other purposes; and requests for admission. The time frames for discovery in specific the Iowa Rules of Civil Procedure govern those specific procedures, unless lengthened or shortened by the board.

a. Iowa Rules of Civil Procedure 1.701 through 1.717 regarding depositions ~~shall apply to any depositions taken in an appeal. Any party taking a deposition in an appeal shall be 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 ~~shall apply~~ applies to any interrogatories propounded ~~in an appeal~~.

c. Subject to the limitations in paragraph 115.7(1)“h,” Iowa Rule of Civil Procedure 1.512 ~~shall apply~~ applies 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. Iowa Rule of Civil Procedure 1.510 ~~shall apply~~ applies to any requests for admission ~~in an appeal~~. Iowa Rule of Civil Procedure 1.511 regarding the effect of an admission ~~shall apply in an appeal~~ 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 ~~shall apply~~ applies to discovery of any experts identified by a party ~~to an appeal~~.

g. Discovery shall be served on all parties ~~to the appeal~~, but shall should not be filed with the board. Parties shall 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 shall should include the date, the manner of service, and the names and addresses of the persons served. Other discovery materials shall should not be filed unless ordered by the ~~presiding officer~~ board.

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 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. ~~Prior to~~ Before filing any motion related to discovery, parties shall must make a good-faith effort to resolve discovery disputes without the involvement of the board ~~or presiding officer~~. Any motion related to discovery shall ~~allege that~~ should state the moving party has made a good-faith attempt to resolve the discovery issues involved with the opposing party. Opposing parties shall ~~be given the opportunity to~~ may respond within ~~10~~ ten days of the filing of the motion unless the time is shortened by order of the board ~~or presiding officer~~. The board ~~or presiding officer~~ 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 ~~presiding officer shall~~ board will rule on admissibility of evidence and may take official notice of facts in accordance with ~~all applicable legal requirements of law~~. Evidence obtained in discovery may be used in the ~~ease~~ proceeding ~~appeal~~ if that evidence would otherwise be admissible ~~in that proceeding~~.

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

c. *Scope of admissible evidence.* ~~Evidence in the proceeding shall be confined to the issues contained in the notice from the board prior to the hearing, unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. Admissible evidence is that which, in the opinion of the board, is determined to be material, relevant, or necessary for the making of a just decision in accordance with the provisions of Iowa Code section 441.21, 701—Chapter 102, or other applicable law. Admission of evidence is governed by Iowa Code section 17A.14. Upon an objection pursuant to paragraph 115.7(3)“e,” irrelevant, immaterial or unduly repetitious evidence may be excluded. A finding shall be based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based upon such evidence even if it would be inadmissible in a jury trial. Hearsay evidence is admissible. The rules of privilege apply in all proceedings before the board.~~

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 ~~prior to~~ 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 ~~prior to~~ before the hearing, unless the time period is extended or shortened by the board or ~~presiding officer~~ 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 ~~prior to~~ before the hearing. All exhibits and briefs admitted into evidence ~~shall~~ will be appropriately marked and be made part of the record. The appellant ~~shall~~ should mark each exhibit with consecutive numbers. The appellee ~~shall~~ should mark each exhibit with consecutive letters.

The local board of review must file the following exhibits:

(1) ~~The local board of review’s Exhibit A shall be the subject~~ 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 local board of review’s Exhibit B shall be the final decision of the local board of review.~~

(3) ~~The local board of review’s Exhibit C shall be the appellant’s petition to the local board of review.~~

e. Objections. Any party may object to specific evidence or ~~may~~ request limits on the scope of examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds ~~upon which~~ for the objection is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The ~~presiding officer~~ 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 ~~presiding officer~~ 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 ~~board’s official agency appeal record for the appeal.~~

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 ~~shall~~ 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 or ~~presiding officer~~ may quash or modify a subpoena for any lawful reason in accordance with the Iowa Rules of Civil Procedure or pursuant to this subrule.

701—115.8(421,441) Hearings before the board.

115.8(1) Prehearing conference. An informal conference of parties may be ordered at the discretion of the board or ~~presiding officer~~ or at the request of any party for any appropriate purpose. Any agreement reached at the conference shall be made a part of the record in the manner directed by the board or ~~presiding officer~~.

115.8(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. ~~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 115.8(3). The notice of hearing shall contain the following information: The notice of hearing will contain information required by Iowa Code section 17A.12.~~

- ~~a. A statement of the date, time, and place of the hearing;~~
- ~~b. A statement of legal authority and jurisdiction under which the hearing is to be held;~~
- ~~c. A reference to the particular sections of the statutes and rules involved;~~
- ~~d. That the parties may appear and present oral arguments;~~
- ~~e. That the parties may submit evidence and briefs;~~
- ~~f. That the hearing will be electronically recorded by the board;~~
- ~~g. That a party may obtain a certified court reporter for the hearing at the party's own expense;~~
- ~~h. That audiovisual aids and equipment are to be provided by the party intending to use them;~~
- ~~i. A statement that, upon submission of the appeal, the board will take the matter under advisement. An order will be issued to the parties; and~~
- ~~j. A compliance notice required by the Americans with Disabilities Act (ADA).~~

~~**115.8(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.~~

~~**115.8(4) Continuance.** Any hearing may be continued for "good cause." "Good cause" is equated to any cause not growing out of the fault or negligence of the movant, which satisfies the board that substantial justice will more nearly be obtained if the case is continued. A motion to continue the hearing or written consideration shall be in writing and, except in exigent or other unusual circumstances the case of unanticipated emergencies, filed not later than 7 seven days before the hearing or immediately upon "the cause" becoming known written consideration. The motion must contain sufficient specific information or be supported by sufficient evidentiary materials or both to allow the board to determine whether there is "good cause" and whether the alleged cause grows out of the fault or negligence of the moving party should state the specific reason for the request and indicate whether the opposing party was contacted and agrees to a continuance. An emergency oral continuance may be obtained from the board or presiding officer based on "good cause" and at the discretion of the board or presiding officer. In determining whether to grant a continuance, the board or presiding officer may consider:~~

- ~~a. Prior continuances;~~
- ~~b. The interests of all parties;~~
- ~~c. The likelihood of informal settlement;~~
- ~~d. The existence of an emergency;~~
- ~~e. Any objection;~~
- ~~f. Any applicable time requirements;~~
- ~~g. The existence of a conflict in the schedules of counsel, parties, or witnesses;~~
- ~~h. The timeliness of the request; and~~
- ~~i. Other relevant factors, including the existence of a hearing scheduling and discovery plan.~~

~~**115.8(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.~~

~~**115.8(6) 115.8(5) Hearing procedures.** A party to the appeal may request a hearing, or the appeal may proceed 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. Hearings and any preliminary proceedings may be conducted in person, by telephone, or by video, or the appeal may proceed as a written consideration.~~

~~a. *Authority of presiding officer.* The presiding officer presides at the hearing and may rule on motions, require briefs, issue a decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.~~

~~b. *a. Representation.* Parties to the appeal have the right to participate or to be represented in all hearings. Any party may be represented by an attorney or by a designated representative. A partnership, corporation, or association may be represented by any member, officer, director, or duly authorized agent.~~

~~e. *b. Participation in hearing.* Parties have the right to introduce evidence relevant to the grounds set out in the protest to the local board of review on appeal. Subject to terms and conditions prescribed by the presiding officer board, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses~~

present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument. The hearing will proceed as provided by Iowa Code sections 17A.12 and 17A.14.

~~d. — *Decorum.* The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.~~

~~e. — *Conduct of the hearing.* The presiding officer shall conduct the hearing in the following manner:~~

~~(1) The presiding officer shall give an opening statement briefly describing the nature of the proceedings;~~

~~(2) The parties shall be given an opportunity to present opening statements;~~

~~(3) The parties shall present their cases in the sequence determined by the presiding officer;~~

~~(4) Each witness shall be sworn or affirmed by the presiding officer and shall be subject to examination and cross-examination. Witnesses may be sequestered during the hearing. The presiding officer may limit questioning in a manner consistent with law; and~~

~~(5) When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.~~

~~**115.8(7) 115.8(6) *Dismissal.* If a party fails to appear or participate in an appeal hearing after proper service of notice, the presiding officer may dismiss the appeal unless a continuance is granted for good cause. If an appeal is dismissed for failure to appear, the board shall have no jurisdiction to consider any subsequent appeal on the appellant's protest. If a party fails to appear, the appeal may be dismissed under Iowa Code section 441.37A(2) "a."**~~

~~**115.8(8) 115.8(7) *Hearing recordings.* All hearings shall be electronically recorded. Any party may request a copy of the hearing recording and pay a fee associated with preparing the copy. Any party may provide a certified court reporter at the party's own expense.**~~

~~**115.8(9) *Members participating.* Each appeal may be considered by one or more members of the board, and the chairperson of the board may assign members to consider appeals. If the appeal is considered by less than the full membership of the board, the determination made by such members shall be forwarded to the full board for approval, rejection, or modification. Decisions shall affirm, modify, or reverse the decision, order, or directive from which an appeal was made. In order for the decision to be valid, a majority of the board must concur on the decision on appeal.**~~

~~**115.8(10) 115.8(8) *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 Ex parte communications are prohibited in appeals before the board following the provisions of Iowa Code section 17A.17 apply to proceedings before the board.**~~

~~**115.8(11) 115.8(9) *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 under Iowa Code sections 17A.11(2) through 17A.11(4) and 17A.17(8).**~~

~~a. — A board member or members shall withdraw from participation in the making of any proposed or final decision in an appeal before the board if that member is involved in one of the following circumstances:~~

~~(1) Has a personal bias or prejudice concerning a party or a representative of a party;~~

~~(2) Has personally investigated, prosecuted, or advocated in connection with the appeal, the specific controversy underlying that appeal, or another pending factually related matter, or a pending factually related controversy that may culminate in an appeal involving the same parties;~~

~~(3) Is subject to the authority, direction, or discretion of any person who has personally investigated, prosecuted, or advocated in connection with that matter, the specific controversy underlying the appeal, or a pending factually related matter or controversy involving the same parties;~~

~~(4) Has acted as counsel to any person who is a private party to that proceeding within the past two years;~~

~~(5) Has a personal financial interest in the outcome of the appeal or any other significant personal interest that could be substantially affected by the outcome of the appeal;~~

~~(6) Has a spouse or relative within the third degree of relationship who:~~

~~1. — Is a party to the appeal, or an officer, director or trustee of a party;~~

~~2. — Is a lawyer in the appeal;~~

~~3. — Is known to have an interest that could be substantially affected by the outcome of the appeal; or~~

~~4. — Is likely to be a material witness in the appeal; or~~

~~(7) Has any other legally sufficient cause to withdraw from participation in the decision-making in that appeal.~~

~~b. — Motion for disqualification.~~

(1) ~~If a party asserts disqualification on any appropriate ground, including those listed in paragraph 115.8(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.~~

~~c.—The term “personally investigated” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term “personally investigated” does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person’s investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other functions of the board, including fact gathering for purposes other than investigation of the matter which culminates in an appeal. Factual information relevant to the merits of an appeal received by a person who later serves as presiding officer or a member of the board shall be disclosed if required by Iowa Code section 17A.11 and this rule.~~

~~d.—Withdrawal. In a situation where a presiding officer or any other board member knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.~~

701—115.9(421,441) Posthearing motions.

115.9(1) Motion to reopen records. ~~The board or presiding officer, on the board’s or presiding officer’s~~ On its own motion or on the motion of a party, the board may reopen the record for the reception of further evidence. A motion to reopen the record may be made anytime prior to before the issuance of a final decision. A motion to reopen the record filed prior to before issuance of the final decision will not be considered. In ruling on a motion to reopen the record from a party filed prior to before 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.

115.9(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 under Iowa Code section 17A.16. 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 statement of the alleged grounds of error and the relief sought~~ comply with Iowa Code section 17A.16. 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.

c. *Notice to other parties.* The applicant shall serve a copy of the application on all parties to the contested case in accordance with rules 701—115.3(421,441) and 701—115.4(421,441). If the application does not contain a certificate of service, the board shall serve copies on all parties.

d. *Resistance to applications for rehearing or reconsideration.* A resistance to an application for rehearing or reconsideration must be filed within 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.

701—115.10(17A,441) Judicial review.

115.10(1) Appeals of board decisions.

a. A party may seek judicial review of a decision rendered by the board under Iowa Code sections 441.37B and 17A.19. ~~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. 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.

115.10(2) Stays of agency actions. ~~Any party to a contested case proceeding may petition the board for a stay or other temporary remedies pending judicial review of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy. The board may grant a stay during the pendency of judicial review under Iowa Code section 17A.19(5). In determining whether to grant a stay, the board or presiding officer shall consider the factors listed in Iowa Code section 17A.19(5) "c."~~ A stay may be vacated by the board upon application of any other party.

701—115.11(22,421) Records access.

115.11(1) Location of record. A request for access to a record should be directed to the custodian.

115.11(2) Office hours. Open records shall be made available during all customary office hours, which are 8 a.m. to 4:30 p.m. Monday through Friday excluding holidays.

115.11(3) Request for access. Requests for access to open records may be made in writing, in person, by email, or by telephone. Requests shall identify the particular records sought by name or description in order to facilitate the location of the record. Mail, email, and telephone requests shall include the name, address, and telephone number of the person requesting the information. A person shall not be required to give a reason for requesting an open record.

115.11(4) Response to requests. Access to an open record shall be provided promptly upon request unless the size or nature of the request makes prompt access infeasible. If the size or nature of the request for access to an open record requires time for compliance, the custodian shall comply with the request as soon as feasible. Access to an open record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4). The custodian shall promptly give notice to the requester of the reason for any delay in access to an open record and an estimate of the length of that delay and, upon request, shall promptly provide that notice to the requester in writing. The custodian of a record may deny access by members of the public to the record only on the grounds that such a denial is warranted under Iowa Code sections 22.8(4) and 22.10(4), or that it is a confidential record, or that its disclosure is prohibited by a court or board order. Access by members of the public to a confidential record is limited by law and, therefore, may generally be provided only in accordance with the applicable provisions of law. Open records are routinely disclosed without the consent of the parties.

115.11(5) Security of record. No person may, without permission from the ~~secretary~~ custodian, search or remove any record from board files. Examination and copying of board records shall be supervised by the ~~secretary~~ custodian. Records shall be protected from damage and disorganization.

115.11(6) Copying. A reasonable number of copies of an open record may be made in the board's office. If photocopying equipment is not available, the custodian shall permit examination of the record and shall arrange to have copies promptly made elsewhere.

115.11(7) Fees.

a. When charged. The board may charge fees in connection with the examination or copying of records only if the fees are authorized by law. To the extent permitted by applicable provisions of law, the payment of fees may be waived when the imposition of fees is inequitable or when a waiver is in the public interest.

b. Copying and postage costs. Price schedules for published materials and for photocopies of records supplied by the board are available from the custodian. Copies of records may be made by or for members of the public on board photocopying machines or from electronic storage systems at cost as determined and made available by the custodian. When the mailing of copies of records is requested, the actual costs of such mailing may also be charged to the requester.

c. *Supervisory fee.* An hourly fee may be charged for actual board expenses in supervising the examination and copying of requested records when the supervision time required is in excess of one hour. The custodian shall provide the hourly fees to be charged for supervision of records during examination and copying. That hourly fee shall not be in excess of the hourly wage of a board clerical employee who ordinarily would be appropriate and suitable to perform this supervisory function.

d. *Advance deposits.*

(1) When the estimated total fee chargeable under this subrule exceeds \$25, the custodian may require a requester to make an advance payment to cover all or a part of the estimated fee.

(2) When a requester has previously failed to pay a fee chargeable under this subrule, the custodian may require advance payment of the full amount of any estimated fee before the custodian processes a new request from that requester.

115.11(8) *Retention of board records.* The board will follow the records retention schedule for administrative case files established by the state records commission.