

BOARD OF EQUALIZATION 2021 ORIENTATION

KENAI PENINSULA BOROUGH

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Orientation Overview

- ❖ **Municipal Tax Basics**
- ❖ **What is the Board of Equalization (BOE)?**
- ❖ **Rules & Responsibilities of BOE members.**
- ❖ **The Hearing**
- ❖ **BOE decision.**



Municipal Property Tax

[Alaska Statute AS 29.45]

- ❖ The assessor shall assess property at its full and true value as of January 1 of the assessment year...The full and true value is the estimated price that the property would bring in an open market and under the then prevailing market conditions...AS 29.45.110(a).
- ❖ The only grounds for adjustment of assessment are proof of unequal, excessive, improper, or under valuation based on facts that are stated in a valid written appeal or proven at the appeal hearing. AS 29.45.210(b).
- ❖ The board of equalization shall certify its actions to the assessor within seven days. Except as to supplementary assessments, the assessor shall enter the changes and certify the final assessment roll by June 1. AS 29.45.210(c).



What is the BOE?

- ❖ The BOE hears property assessment appeals from property owners seeking relief from alleged errors in valuation not adjusted by the assessor to the owners satisfaction or, in the case of property subject to a flat tax, an alleged error in ownership or classification of property.
- ❖ The duties of the BOE are set out in the Alaska statutes [AS 29.45] and borough code [KPB 5.12].

What is the BOE?

❖ The BOE is a quasi-judicial body.

- An individual or organization which has powers resembling those of a court of law or judge.
- **BOE has an *adjudicative*, not a *legislative* function**
- BOE members must be willing and able to apply the relevant law to each case
- **Referred to as an administrative appeal -- BOE makes decisions, not recommendations.**
- If either party disagrees with the BOE decision, they can appeal to the superior court.



The BOE's Rules & Responsibilities

- ❖ **Identify conflicts of interest.**
- ❖ Avoid ex parte contact.
- ❖ **Provide fair & impartial hearing**
- ❖ Rely on the evidence.
- ❖ **Apply the correct burden of proof.**
- ❖ Develop the record.
- ❖ **Make a decision supported by findings of facts.**



Conflicts of Interest

Per borough code -

- ❖ BOE members may not serve on board for a particular appeal if they have a pecuniary interest in the case. KPB Chapter 2.58.

(Pecuniary: related to money; financial)

- ❖ Interests of spouses, dependents and certain companies are attributed to the board member for purposes of determining conflict.
- ❖ If a BOE member believes conflict exists, the member must disclose the nature of conflict.

Conflicts of Interest

Common law rules -

- ❖ Avoidance of actual conflicts as well as the **appearance of impropriety**
- ❖ Conflict exists where there is the potential for a public official to influence the outcome of a matter where s/he has personal or pecuniary interest – regardless of intent
- ❖ Public trust. Always better to err on the safe side and disclose a conflict BEFORE hearing a matter; let the chairperson and body decide.

Ex Parte Contact

- ❖ *Ex parte* contact is contact outside of the hearing with one party regarding the appeal, without the other party present.
- ❖ BOE members may not have *ex parte* contact with either the appellant or the assessor's office about a case.
- ❖ If such contact occurs, then the member must fully disclose the contact at the hearing and the chair may rule on whether the contact was sufficient to preclude the member from serving on the board for that hearing.



Ex Parte Contact

- ❖ Please notify the BOE attorney of any potential conflict prior to a hearing, so arrangements for an alternate BOE member to attend the hearing, if necessary.

- ***Always err on the side of caution for full disclosure.***

The public has your emails so be careful what you open during appeal season as people don't always follow the rules.

On Appeal

- ❖ The appellant bears the burden of proof. AS 29.45.210(b); KPB 5.12.060(P)
- ❖ Cool Homes, Inc. v. Fairbanks North Star Borough, 860 P.2d 1248 (1993)
 - A taxpayer contesting an assessment need only prove that the valuation is improper. The taxpayer does not have to offer the correct amount, range or method of valuation.
 - The burden then shifts to the taxing authority to introduce credible evidence which substantiates its assessment.
 - **However, AS 29.45.210(b) still requires that the taxpayer prove facts at the hearing (emphasis added).**
 - **Taxing authorities are to be accorded broad discretion in deciding among recognized valuation methods.**
 - **If a reasonable basis for the taxing agency's method exists, the taxpayer must show fraud or the clear adoption of a fundamentally wrong principle of valuation.**

Alaska Case Law

- Precise method for determining full and true value of property is within assessor's discretion.
 - *Black v. Municipality of Anchorage BOE*
- But assessor must consider actual recent sales as one of "a whole range of factors."
 - *CH Kelly Trust v. Municipality of Anchorage BOE*
- If assessor has a reasonable basis for a valuation method, that method will be allowed so long as there was no fraud or clear adoption of a fundamentally wrong principle of valuation.
 - *FNSB Assessor's Office v. Golden Heart Utilities, Inc.*

Valuation

- ❖ **The relevant inquiry is whether a valuation method selected by the assessor provides a reasonable estimate of the market value of the interest to be taxed, not whether the appraisal method has received the imprimatur of acceptance from the appraisal community.**

(FNSB Assessor's Office v. Golden Heart Utilities, Inc.)

- Assessors rely on mass valuation techniques that differ from those used by private appraisers.
- Imprimatur – fancy way of saying “thumbs-up”

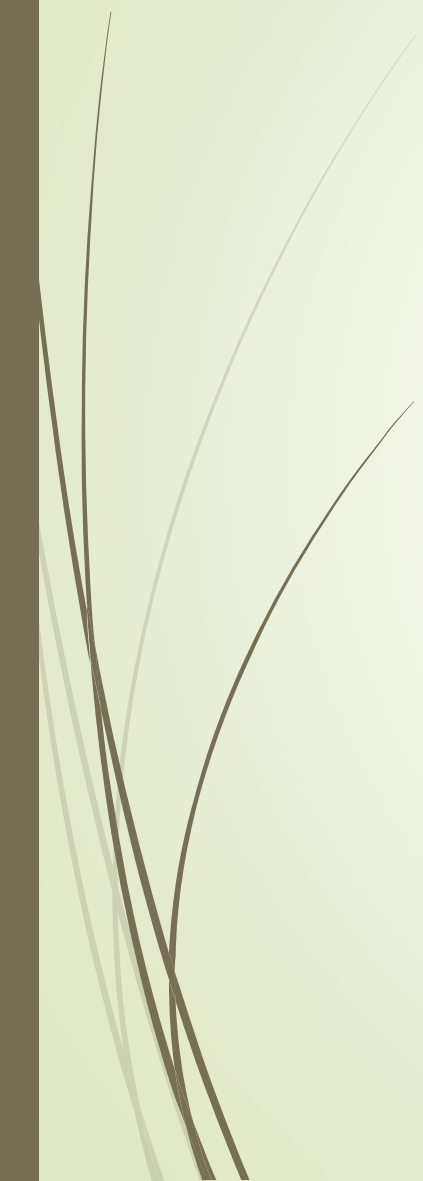


A few key points from the case law:

- ❖ Opening premise is that assessor's valuation is correct.
- ❖ Assessor has broad discretion to apply any reasonable method of valuation.
- ❖ However, no matter the method, must consider full range of relevant factors.
- ❖ Appellant has the burden of showing that the valuation is wrong.
- ❖ Courts on review are focused on a showing of fraud, or adoption of a fundamentally flawed approach to valuation – a high bar for appellants.



The Hearing

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1. Summary of Assessment data - i.e. BOE Chair introduces cases & summarizes appeal
 2. BOE takes up any outstanding issues/motions/requests for additional time.
 3. Appellant's Opening Presentation
 4. Assessor's Opening Presentation
 5. Appellant's Rebuttal
 6. Assessor's Rebuttal/Closing
 7. Appellant's Sur-Rebuttal/Closing

Rely on the Evidence

- ❖ Decisions made by the BOE must be based on the Board’s general knowledge of the real estate market and evidence presented during the appeal process.
- ❖ Decisions may not be based on an individual board member’s specific knowledge of a property obtained outside the appeal process.
 - ❖ Ex. “I have been to that property and know you cannot access the beach from that property.”
 - ❖ Note – this can also be the source of a conflict of interest



Rely on the Evidence

- ❖ Do not introduce your own evidence.
 - Example: “I live on that road, and I know my neighbor's house went up in value last year.”
- ❖ Do not make assumptions about the evidence.
 - If you don't understand exhibits or testimony, ask questions.
- ❖ The BOE cannot accept exhibits into the record that were not properly submitted prior to the hearing.
- ❖ If the appellant has refused to allow the assessor to access their property, the BOE cannot consider testimony from the appellant about any issue related to items for which the assessor lacked access to.
- ❖ The BOE cannot come up with it's own valuation.

Apply the Burden of Proof

- ❖ The appellant (property owner) bears the burden of proof.
- ❖ This means that they must demonstrate that the assessor's valuation is unequal, excessive, improper, **OR** undervalued.
- ❖ The burden shifts to the assessor **if and only if** the appellant meets their initial burden.



Checklist for Hearing

- Appellant (property owner) has the burden of proof.
- Did they present facts (not opinion) that the assessor's adjustment was
 1. unequal; OR
 2. Excessive; OR
 3. Improper; OR
 4. Under valued

If yes to any of the above, then the burden moves to the assessor



Applying Burden of Proof

- ❖ If the appellant does not meet their initial burden, the assessor's valuation must stand.
- ❖ If the appellant does meet initial burden, then the assessor must show the BOE why the valuation is correct.



Establishing Fact

- Statement: The assessor overvalued my home's worth, giving too much value to the view. The view was destroyed last year when a new condo complex was developed.
- Is this enough to meet the burden?

NO – it is just a statement. To be enough to satisfy the law, there must be something to back up the statement. A photo showing the new condo complex in relation to the home and showing that it in fact blocks the view is a “fact” as opposed to a statement.



Fact vs. Opinion

- Not all facts need proof, it is okay to use common sense on some facts.

For example, appellant states: “when I go swimming in the ocean I get wet.”

It is okay to use your own personal experiences and common sense to this statement. However, if you have never seen an ocean or ever heard of an ocean, you cannot research it.

Develop the Record


- ❖ The BOE may only decide a case based on the evidence presented.
 - More evidence is better.
 - Ask questions! Do not wait until you are deliberating to realize that you do not have all the information you need to make good findings.
 - If a party appeals, the superior court will likely rely entirely on the BOE record.
- **It must be clear from the record why the BOE reached its decision.**



Motions



- ❖ Decisions are made by motion.
- ❖ Make motion for action, wait for a second.
 - If seconded, discuss motion.
 - Make findings supporting or not supporting motion
- ❖ Vote on motion.



Two examples of most used motions

➤ **Motion to move into adjudicative session**

- **2017 example -**

- At hearing, BOE member Mr. Bagley states, “I move we go into adjudicative session to discuss this.” BOE member Mr. Cox, “I second.” [Chair asks if there is any objection, receiving none, the BOE goes off record, and into adjudicative session]

➤ **Motion to uphold assessor’s valuation, reduce or increase assessment, defer a decision, or dismiss the appeal.**

- Ex. From 2017 Decision: “After deliberating in an adjudicative session, the BOE returned on the record. BOE member Mr. Bagley moved to reduce the Assessor’s 2017 revised recommended value for parcel number 12345 to \$10,000, which includes a land value of \$1,000 and an improvements value of \$9,000. The motion received a second and no objections were received. Having received no objections, the following findings were made:”



Example of Motion (cont.)

Findings:

The appellant demonstrated via photos that the view from his home has been eliminated due to the development of a condominium complex;

The photos show that the 25 story condo complex completely block all views to the mountains and no longer give the property a scenic view;

The assessor testified that the scenic view accounted for \$10,000 worth of the assessment. The documents presented by the assessor's office support her statements.



Getting to the Decision

❖ **BOE may immediately decide, or take the matter under advisement.**

- Motion to uphold, reduce, or increase the assessment.
- BOE cannot make a new appraisal.
- If the BOE decides to take the matter under advisement, it must issue its decision by the last day of hearings.

❖ **Deliberations do not need to be public.**

- Motion to adjourn into adjudicative session.
 - TIP: Don't leave adjudicative session w/out developing findings
- BUT your decision must be public.



The BOE Decision

Requirements for all decisions:

- ❑ Majority vote.
- ❑ All sitting members must vote.
 - ❖ Excluding any sitting members with a conflict specific to the case being decided.
- ❑ FINDINGS using
FACTS/ADMITTED EVIDENCE from hearing to support
DECISION
- ❑ Must be in writing

Make Good Findings

****MOST IMPORTANT ASPECT OF DECISION****

- ❖ The BOE's findings of fact need to be specific and detailed.
 - What evidence did you rely on to reach your decision?
 - List or describe the specific evidence, or lack thereof, that you relied on to make your decision.
 - Ex. "...based on the appellant's appraisal..."
 - Ex. "...the 50 comparables provided by the Assessor.."
 - Findings should be customized to each specific appeal
 - Findings should explain or address why & how the BOE decided each disputed fact or argument. **ADDRESS THE ARGUMENTS MADE.**



Improper Grounds for Findings

- ❖ The taxes are too high.
- ❖ The value changed too much in one year.
- ❖ The appellant cannot afford the taxes.

- Recommend -

► IF RULING IN FAVOR OF APPELLANT (TAXPAYER):

1. First finding may be *"The appellant shifted the burden of proof in this case by showing [insert reason]..."*
2. Second finding should address the Assessor's response to the shifted burden i.e. validating the assessment.

► IF UPHOLDING ASSESSOR'S VALUE

1. First finding may be *"The appellant did not submit sufficient facts to shift the burden in this case."*
2. [Address primary arguments presented].

► IF UPHOLDING ASSESSOR'S VALUE *and* INCORPORATING ASSESSOR'S SUGGESTED FINDINGS

- ✓ Best practice is to state (on record) the findings
- ✓ Next best approach is to state the page where the Assessor's recommended findings are found in the evidence and that they are "incorporated herein by reference"



BEST PRACTICE

When *reducing* Assessor's value

- First Finding addresses the burden of proof and the evidence that shifted burden from appellant to assessor.
- Second Finding addresses assessor's response to shifted burden and reason response was not persuasive.
- Third Finding addresses specific arguments made and applies the facts (witness testimony, evidence) of the case in support of decision in case.
- Any other findings should continue to use specific evidence in case to support BOE's reasoning.



BEST PRACTICE

When *upholding* Assessor's value

- First Finding addresses the burden of proof and that appellant's evidence failed to shift burden to assessor
- Additional findings may simply incorporate the assessor's recommended findings and/or
BOE can include specific evidence in case to support BOE's finding that burden was not shifted.

Note: if Appellant does not shift burden the appeal fails and the assessor's recommended value stands.

One last bit of case law that has been good law since 1961

Taken from: Twentieth Century Inv. Co. v. City of Juneau, 359 P.2d 783, 787-788 (1961).

The valuation and assessment of property for taxes does not contravene the due process clause of the Fourteenth Amendment unless it is plainly demonstrated that there is involved, not the exercise of the taxing power, but the exertion of a different and forbidden power, such as the confiscation of property. Such a demonstration is not made simply by showing overvaluation; there must be something which, in legal effect, is equivalent to an intention or fraudulent purpose to place an excessive valuation on property, and thus violate fundamental principles that safeguard the taxpayer's property rights.

....

Although the income from property may be a legitimate factor to consider in fixing value for tax purposes, it is not the sole standard to apply. **The City was not bound by any particular formula, rule or method, either by statute or otherwise.** Its choice of one recognized method of valuation over another was simply the exercise of a discretion committed to it by law. **Whether or not it exercised a wise judgment is not our concern.**

This court has nothing to do with complaints of that nature. **It will not substitute its judgment for the judgment of those upon whom the law confers the authority and duty to assess and levy taxes. This court is concerned with nothing less than fraud or the clear adoption of a fundamentally wrong principle of valuation.** Neither has been shown here. The actions of the assessor and the Board of Equalization are entirely compatible with a sincere effort to adopt valuations not relatively unjust or unequal; **their determinations have not transgressed the bounds of honest judgment.**



QUESTION & ANSWER SESSION