
5.12.050. Valuation and flat tax appeal procedure.

- A. A property owner or agent or assign of the property owner may appeal to the board of equalization for relief from an alleged error in valuation not adjusted by the assessor to the property owner's satisfaction, or, in the case of property subject to a flat tax, an alleged error in ownership or classification of property.
- B. An appellant must, within 30 days after the mailing of the notice of assessment, submit to the assessor, by delivery to the borough clerk, a written appeal. The appeal must state the name of the owner, a legal description of the property, and the grounds for the appeal. If the party making the request is an assign of the record owner, documentation of the assignment must bear a stamp reflecting the recording district and the book and page number or serial number of the recorded assignment. If the party making the request is an agent of the property owner, the property owner's signature granting the authority must be notarized and attached to the request. It must be submitted to the borough clerk within 30 days after the mailing of the notice of assessment, or the right to appeal ceases unless the board of equalization finds that the taxpayer was unable to comply. No appeal application may be accepted unless a filing fee in the amount listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees is received by the clerk at the time of filing. If the appeal is withdrawn before evidence is due, or if the appellant or agent of the appellant is present for the appellant's hearing before the BOE or participates telephonically pursuant to KPB 5.12.060(T) then the filing fee shall be fully refunded within 30 days after the hearing date. For purposes of this section, the appeal is submitted on the date it is received in the office of the clerk or, if delivered by first class mail, the date it is postmarked by the U.S. Postal Service. Appeal forms shall be available from the borough assessor's office, borough clerk's office, or city offices within the borough. The borough clerk will provide to the assessor each appeal within two days of receipt. An application to proceed with an appeal as an indigent may be filed with the borough

clerk's office in accordance with the procedures and schedule described in KPB 21.20.250(B).

- C. Taxpayer request for a finding that the taxpayer was unable to comply with the timely filing requirement of KPB 5.12.050(B).
1. A property owner or agent or assign of the property owner may request a finding that the taxpayer was unable to comply with the requirement to timely file an appeal as required in paragraph B. of this section by filing a written request with the borough clerk within 14 days after the inability to comply ceased or within 14 days after the taxpayer should have become aware of the reason for filing the appeal, whichever is earlier.
 2. The request for a finding of inability to comply must be based upon a serious condition or event beyond the taxpayer's control that resulted in the inability to timely file the appeal. For purposes of this subsection, a serious condition or event may include a serious medical condition or other similar serious condition or event that prevented the taxpayer from timely filing the appeal. Absent extraordinary circumstances, a failure to pick up or read mail or to make arrangements for an appropriate and responsible person to pick up or read mail or a failure to timely provide a current address to the Department of Assessing will not be deemed to result in an inability to comply.
 3. A request for a finding of inability to comply is limited to an appeal of the notice of assessment for the current assessment year.
 4. The written request must be submitted on a request form supplied by the borough clerk and must include the following:
 - a. Name of the property owner or agent or assign of the property owner;
 - b. The parcel number of the property;

-
- c. If the party making the request is an assign of the record owner, documentation of the assignment must bear a stamp reflecting the recording district and the book and page number or serial number where the assignment is recorded;
 - d. If the party making the request is an agent of the property owner, the property owner's signature granting the authority must be notarized and attached to the request;
 - e. A description of the justification for the request must be subscribed and sworn or affirmed before a notary public or other official with similar authority by the property owner or duly authorized agent or assign;
 - f. Information sufficient to determine whether the request has been submitted within the time stated in KPB 5.12.050(C)(1);
 - g. An attached and properly completed and executed appeal form alleging one or more of the grounds for appeal stated in KPB 5.12.050(E).
5. A request bearing insufficient justification or information for evaluation constitutes a basis for final denial of the request.
- D. Determination by the chair whether a request meets the requirements for consideration, procedure for evaluation of the merits of the asserted justification, and for scheduling a required hearing.
- 1. The chair is delegated the authority to review the request for compliance with KPB 5.12.050(C)(4). If the chair determines that the request does not meet the requirements of KPB 5.12.050(C)(4)(a—g), the chair will so indicate on the request.
 - 2. If the chair finds that the request meets the requirements for consideration of the inability to comply, the chair will so indicate on the request. The chair will then consider the merits regarding the nature of circumstances of the inability to comply with the timely filing requirement. The chair may require additional evidence or

-
- testimony from the property owner or agent or assign. The clerk shall notify the party and shall schedule a time to meet with the chair, if necessary. Any additional information provided by the property owner shall be preserved for potential review.
3. If the chair determines that the taxpayer has not proven an inability to comply, the taxpayer may appeal the chair's decision within 15 days of the notice of decision to a panel of three other BOE members chosen by lot. The BOE panel shall conduct a review of the merits of the taxpayer's inability to comply. No deference shall be given to the decision by the chair. No new evidence may be presented to the panel. The decision by the three-member BOE panel shall be the final decision of the BOE. The clerk shall notify the parties in writing of the BOE's decision.
 4. The taxpayer and borough shall have the right to appeal a final decision under KPB 5.12.050(C) and KPB 5.12.050(D) to court under the rules of appellate procedure governing appeals from administrative agency decisions.
 5. If the chair or three-member BOE panel determines that the appellant's inability to comply with the filing requirements of KPB 5.12.050(B) was due to a serious condition or event beyond their control as defined in KPB 5.12.050(C)(2), the clerk shall schedule a hearing for the appeal and give the notices required by KPB 5.12.050(F). The matter shall proceed as provided in this Chapter.
- E. The grounds for appeal are: unequal, excessive, improper or under valuation of the property not adjusted by the assessor to the property owner's satisfaction, or an error in ownership or classification of property. The potential validity or invalidity of asserted errors in assessment shall have no bearing on the determination of whether the taxpayer was unable to timely file an appeal.
 - F. After the time for filing valuation appeals has expired and after consultation with the assessor, and at the direction of the chair of the

board of equalization, the borough clerk shall schedule meetings of the board of equalization. The clerk on behalf of the assessor shall schedule meetings of the board of equalization. The clerk on behalf of the assessor shall notify each appellant by electronic transmission, if the appellant consents to electronic notice, or first class mail of the time and place of hearing and board of equalization procedures at least 15 days before the evidence or documents required by KPB 5.12.055(A) and (B) must be provided to the borough clerk. A party can request a continuance of hearing only for good cause and the continuance must be requested no later than 15 days prior to the hearing date unless the reason for the continuance is a serious condition or event that prevented a timely request or that arose after the deadline. For the purposes of this subsection, a serious condition or event may include a serious medical condition, a serious family emergency requiring the presence of the party, a death in the family, or other similar serious condition or event. Additionally, a continuance shall not be granted if it will cause substantial prejudice to the other party. The chair of the board of equalization is given the discretion to determine whether to grant a request for a continuance. A continuance, however, does not extend the deadline for any party to file any documents or evidence under KPB 5.12.055(A) or (B), if the application was not filed with the borough clerk before the original deadline for filing such documents or evidence. If the application for a continuance was filed before the original deadline for filing documents and the application is denied, the application for a continuance will not extend the original deadline for filing documents. A hearing shall be scheduled for all notices of appeal unless the notice is clearly not based on one or more of the grounds stated in KPB 5.12.050(E) as determined by the BOE chair. When a hearing is not scheduled, the borough clerk shall notify the person who submitted the notice that a hearing will not be scheduled.

- G. A city in the borough may appeal an assessment to the borough board of equalization in the same manner as the property owner. Within five days after receipt of the appeal, the assessor shall notify the property

owner of the appeal by the city. The property owner may appear and participate in an appeal of an assessment by a city.

(Ord. No. 2016-28 , § 1, 8-23-16; Ord. No. 2011-32, § 4, 9-20-11; Ord. No. 2009-21, §§ 1, 2, 5-5-09, eff. 1-1-2010; Ord. No. 2009-01, § 1, 2-3-09; Ord. No. 2007-38, § 1, 1-8-08; Ord. No. 2006-11, §§ 1, 2, 5-2-06; Ord. No. 2005-29, § 1, 8-2-05; Ord. No. 2005-03, § 1, 2-15-05; Ord. No. 2002-12, § 1, 5-12-02; Ord. No. 2000-49, § 1, 12-12-00; Ord. No. 2000-05, § 2, 2-15-00; Ord. No. 97-73, § 2, 1997; Ord. No. 90-12, § 1(part), 1990)

5.12.052. Board of equalization.

- A. The board of equalization is established with five regular members selected from the public. It shall also include four alternate members who shall meet the same qualifications as a regular board member. Members of the public shall be appointed by the mayor and confirmed by the assembly on the basis of their expertise in real and personal property appraisal, the real estate market, the personal property market, and other fields related to their functions as board members. Additionally, each member shall be a resident of the Kenai Peninsula Borough. Assembly members may serve as members of the board of equalization, subject to appointment by the Assembly.
- B. The board shall select a chairperson and vice-chairperson at each first annual meeting.
- C. Term. Board members' terms shall be three years with the first board appointed so that expiration dates of terms shall be staggered.
- D. Vacancies. A vacancy is created under the following conditions and upon a declaration of vacancy by the board:
 - 1. Fails to take office within 30 days after his or her appointment;
 - 2. Is physically absent from the borough for a 90-day period, unless excused by the board;
 - 3. Resigns and the resignation is accepted;

-
4. Is physically or mentally unable to perform the duties of his or her office;
 5. Is removed from office;
 6. Misses three consecutive regular meetings unless excused;
 7. Is convicted of a felony or of an offense involving a violation of his or her oath of office;
 8. Changes his or her residency to a location outside of the borough for a period longer than 60 days.
- E. A vacancy on the board shall be filled by appointment as described in paragraph A of this section for the unexpired term, or for a three-year term if no unexpired term remains.
- F. The board shall be called as required for equalization matters.
- G. Board members shall be compensated at the rate of \$100.00 per session for each session except the board chair, who shall be compensated at the rate of \$150.00 per session for each session, subject to a maximum of \$100.00 per day or \$150.00 per day respectively. All requests for reimbursement shall be actual expenses incurred on authorized board business.
- (Ord. No. 2016-28 , § 2, 8-23-16; Ord. No. 2013-24 , § 1, 8-6-13; Ord. No. 2012-17, § 2, 6-5-12; Ord. No. 2005-29, § 2, 8-2-05)

5.12.055. Record—Discovery—Motions—Written presentation—On appeal.

- A. *Discovery*: No more than 20 days after a written appeal is filed, the assessor and the appellant may submit interrogatories and requests for production to the other party. All such interrogatories and requests must seek information relevant to the valuation or, in the case of a flat tax appeal, an alleged error in ownership or classification of property. A party may not submit more than ten interrogatories and ten requests for production, including all discrete subparts of each interrogatory and

request for production, to the opposing party. Responses shall be due no later than ten days after the request has been served by fax, in person, or mail upon the opposing party. For good cause shown the board chair may grant additional time to respond and authorize additional interrogatories and requests for production. In determining good cause for this purpose, the chair shall consider the burden and expense on the party to timely produce the requested information, whether the party seeking the extension has exercised due diligence in attempting to respond timely, whether the party seeking additional information has exercised due diligence in attempting to gain the necessary information from other sources, the complexity of the case, prejudice to the other party for allowing additional time and/or requests for information, and other factors deemed relevant by the chair. Any request for an extension or for additional discovery that is granted to one party shall also be equally granted to the other party. In any event, all responses must be delivered to the requesting party no later than 20 days before the board hearing on the appealed assessment.

- B. Upon receipt of a written appeal, the assessor shall provide documents or evidence relating to each assessment that is appealed, including a summary of assessment data, to the borough clerk, for the board of equalization, no later than 15 days before the board hearing on the appealed assessment. Pages shall be marked as assessor's exhibits and numbered. The borough clerk shall mail a copy of the documents or evidence to the appellant by first class mail or email, if appellant consents to electronic service, within two business days of receipt.
- C. The appellant shall provide a copy of any documents or evidence relating equalization, no later than 15 days before the board hearing on the appealed assessment. Pages shall be marked as appellant's exhibits and numbered. The clerk shall provide a copy of the appellant's documents to the assessor within two business days of receipt.
- D. The appellant's case may be made by written presentation, if the appellant so elects, the pages shall be marked as appellant's brief and

numbered. The written presentation, along with any documents and evidence referred to in 5.12.055(B), must be provided to the borough clerk, for the board of equalization, no later than 15 days before the board hearing on the appealed assessment. The clerk shall provide a copy of appellant's filings to the assessor upon receipt.

- E. Except as provided below, all motions submitted by either party to the board of equalization must be submitted to the borough clerk in writing no later than seven days before the scheduled hearing. The opposing party shall have three business days to respond to any motion filed with the clerk. Any motion or opposition thereto must be accompanied by a certificate of service certifying that a true and correct copy of the motion or opposition was served on the opposing party by fax, electronic transmission if the party consents to electronic transmission, in person, or first-class mail at the last known mailing address, email address, or fax number. The chair of the board, or in his or her absence, the vice-chair, is authorized to decide each submitted motion. The decision may be reviewed by the board at the discretion of the chair or vice-chair, as appropriate. For good cause shown, including without limitation the bad faith conduct of the other party or new evidence which could not reasonably be obtained before the seven-day deadline with the exercise of due diligence, a party may submit a motion to the board no less than two business days before the scheduled hearing. In this instance, the chair, or in the chair's absence the vice-chair, shall provide the opposing party with a reasonable opportunity to oppose the motion prior to issuing a decision.

(Ord. No. 2016-28 , § 3, 8-23-16; Ord. No. 2009-01, § 1, 2-3-09; Ord. No. 2004-05(Sub.), § 1, 9-7-04; Ord. No. 2000-49, §§ 2—4, 12-12-00; Ord. No. 2000-05, § 3, 2-15-00; Ord. No. 95-03, § 1, 1995; Ord. No. 90-12, § 1(part), 1990)

5.12.060. Board of equalization procedure.

- A. All appeals must be heard and decided before June 1, unless the board finds a hearing after this date will not prejudice the appellant and the

delay is administratively justified or the appellant has requested a later hearing date. The board must also find that the proposed hearing date will enable the assessor to substantially comply with the requirement that the assessment roll be certified by June 1. The meetings of the board may be scheduled either on weekends, during business hours, or during evening hours. In no event may an appeal hearing begin after midnight.

- B. A quorum of the board must be present in order for the board of equalization to convene and take action. Actions of the board shall be by the majority of members present. A quorum consists of three members. The presiding officer shall select the alternate member to fill a vacancy or substitute in the absence of a regular board member. If membership of the board changes while an appeal is pending the new member may participate only by making an oral or written statement on the record that the member has reviewed the record and proceedings thus far and feels qualified to render an informed and impartial decision.
- C. The chairperson shall preside over the board hearing. In the absence of the chairperson, the vice-chairperson shall preside. If both are absent, the members present shall select a person to preside. The borough clerk shall attend the hearings to record the proceedings, record votes, and administer the oaths to witnesses. The borough attorney or designee shall attend the hearing to advise the board.
- D. The presiding officer shall open the board session by calling the board to order and by calling each appellant's name and asking if the appellant or representative is present. The presiding officer shall bring each appeal before the board in the order scheduled by the borough clerk.

Agenda. Each appeal shall be conducted in the following order:

- 1. Summary of Assessment Data (read into the record by the presiding officer);
- 2. Appellant's Opening Presentation;
- 3. Assessor's Opening Presentation;

-
4. Rebuttal by the Appellant;
 5. Rebuttal and closing by the Assessor;
 6. Sur-Rebuttal and closing by the Appellant.
- E. If the appellant or representative is not present when called, the board shall consider any written presentation, evidence, and documents presented to it pursuant to KPB 5.12.055 and thereafter proceed according to the remaining applicable provisions of this chapter.
- F. All persons presenting evidence shall do so under oath, administered by the borough clerk.
- G. 1. *Hearing:* The hearing shall be conducted informally with respect to the introduction of evidence. Irrelevant evidence may be excluded by the presiding officer. Each side shall have a total of no more than 15 minutes to present their case. Each side shall be responsible for dividing their 15 minutes between oral presentation, argument, testimony (including witness testimony), and rebuttal. The board may expand or limit the length of the hearing depending on its complexity, or take other action to expedite the proceedings. Cross-examination will not be permitted during presentation of the case. If a witness testifies during presentation of either the appellant's or the assessor's case, unless excused by the board with the concurrence of the appellant and the assessor, the witness must remain available in the assembly room to be called to testify during rebuttal by the appellant and the assessor.
2. *Exhibits:* The only exhibits that shall be admitted into the record at the hearing are those exhibits provided to the clerk in accordance with KPB 5.12.055 B through KPB 5.12.055 D. However, at the hearing, parties may use demonstrative or illustrative exhibits, provided that all such exhibits may only be duplicates of exhibits or information provided to the board in accordance with KPB 5.12.055 B through KPB 5.12.055 D. Additionally, witnesses may write on a board while orally testifying to illustrate their testimony. The limitation on the use

of exhibits in this section shall not preclude the parties from presenting oral testimony at the hearing.

3. *Failure to respond to requests:* Failure to timely provide information requested pursuant to these rules without good cause shown shall, upon notice from the requesting party to the clerk and the other party, prevent the party failing to provide the information from including such information in the written evidence or using such evidence at the hearing. Before a ruling is issued on this matter, the party failing to provide the requested information shall be provided with a reasonable opportunity by the board chair to present its case as to why this sanction should not be imposed, and the opposing party shall have a reasonable opportunity to respond.
- H. The presiding officer shall first present a brief, factual summary of assessment data concerning the appealed property. This summary is not charged against the time allowed the assessor to present his or her case.
- I. The appellant or representative then presents the appellant's case when called by the presiding officer. At this time the appellant may call the assessor or appropriate appraiser or any other witnesses the appellant intends to present as a witness at this time. The scope of direct questioning is limited to the issues in dispute. Should the appellant wish, and prior to beginning the presentation, a portion of the 15 minutes allowed may be reserved for rebuttal, sur-rebuttal, and closing arguments. At the conclusion of the appellant's presentation, board members may question the appellant or their witnesses.
- J. The assessor or designee then presents the borough's case when called by the presiding officer. At this time the assessor may call the appellant or any other witnesses the assessor intends to present as a witness. The scope of direct questioning is limited to the issues in dispute. Should the assessor wish, and prior to beginning the presentation, a portion of the 15 minutes allowed may be reserved for rebuttal, and/or closing argument. At the conclusion of the assessor's presentation, board members may ask questions of the assessor or their witnesses.

-
- K. The time required to answer questions from the board shall not be charged against either party.
 - L. If the appellant or the assessor has reserved a portion of their 15 minutes, each may then present rebuttal evidence, with the appellant proceeding first. The appellant and assessor may call and cross-examine each other's witnesses during rebuttal. The scope of cross-examination is limited to the issues raised in direct questioning.
 - M. The assessor may recommend changes to the existing value during the hearing.
 - N. After the appellant and assessor have presented their cases, the hearing shall be closed by the presiding officer, and no further evidence shall be offered or considered in deliberations unless a member of the board of equalization asks for additional information from either party. Both parties shall be given an equal opportunity to respond to any such requests for additional information.
 - O. The board may decide the appeal after the presentations, or it may defer a decision until no later than the last hearing date. The board may move to go into an adjudicative session for purposes of making a decision. Final board action shall be taken by motions, after reconvening in public, that set out specific findings of fact, and shall not be reconsidered, amended or rescinded by the board. The motions available to the board are: motion to uphold the assessor's valuation, motion to reduce the assessment, motion to increase the assessment, motion to dismiss the appeal, motion to defer the decision, or any other motion set out in Alaska statutes and regulations governing board of equalization appeals. Only one motion may be on the floor at a time, and the board shall vote on the motions until its findings are established. The vote must be taken and entered into the permanent record of the proceedings.
 - P. The burden of proof is on the appellant. The only grounds for the board to adjust the assessment are proof of unequal, excessive, improper, or under valuation, based on facts proven at the appeal hearing. The board

may not alter the assessment of a property unless a timely written appeal has been filed concerning the property. If an appellant has refused or failed to provide the assessor or the assessor's agent full access to property or records related to assessment of the property, upon notice from the assessor to the appellant and the clerk, the appellant shall be precluded from offering evidence on the issue or issues affected by that lack of access. Before a ruling is issued on the admissibility of such evidence, the appellant shall be provided with a reasonable opportunity by the presiding officer to present its case as to why this sanction should not be imposed, and the assessor shall have a reasonable opportunity to respond.

- Q. After the last scheduled appeal is heard, the presiding officer shall adjourn the session.
- R. The attorney for the board shall prepare the board's decisions. The borough clerk shall certify the decisions of the board, and shall keep the decisions on file as part of the public record. The clerk shall promptly mail a copy of the board's decision to each appellant, by certified mail, and deliver a copy to the borough assessor.
- S. Either the appellant or the assessor may appeal the decision of the board to the superior court in the Kenai venue district, within 30 days of the date of mailing of the board's decision, as provided by the rules of appellate procedure governing appeals from administrative agency decisions. The record on appeal is the record established at the board hearing.
- T. All parties or their agents and witnesses must appear in person at the BOE hearing unless good cause, such as a serious medical condition that prevents travel, or where the reasonable travel expenses clearly outweigh the potential benefit of the appeal is shown. Telephonic participation may be denied if it would cause substantial prejudice to the other party. Any request for telephonic participation must be received by the borough clerk at 144 North Binkley Street, Soldotna, Alaska, no later than 15 days before the hearing, unless good cause is shown for filing a late

request. Good cause for filing a later request may include a serious medical condition, a serious family emergency requiring the presence of the party, a death in the family, or other similar serious condition or event that either prevented the party from filing a timely request for telephonic participation or that arose after the deadline for filing the request. If telephonic participation is approved, then the party requesting telephonic participation shall be responsible for arranging the telephone call and for payment of associated telephone charges. The chair of the board of equalization is given the discretion to determine whether to grant a request for telephonic participation.

(Ord. No. 2016-28 , § 4, 8-23-16; Ord. No. 2005-29, § 3, 8-2-05; Ord. No. 2005-32, § 1, 8-16-05; Ord. No. 2004-05(Sub.), §§ 2—5, 9-7-04; Ord. No. 2000-49, §§ 5, 6, 12-12-00; Ord. No. 2000-05, § 4, 2-15-00; Ord. No. 98-21, § 1, 7-14-98; Ord. No. 95-03, § 2, 1995; Ord. No. 94-45, § 1, 1994; Ord. No. 90-12, § 1(part), 1990)