

TOWN OF MOUNT DESERT
Board of Assessment Review
Rules of Procedure and Standards

Adopted: May 23, 2007

These Rules of Procedure and Standards are to assist the Mount Desert Board of Assessment Review and parties before the board in organizing the appeals process, conducting complete and thorough hearings and delivering fair, thorough and sound decisions. They are not intended to supersede or replace sound judgment or the legal standards governing the Board's jurisdiction, responsibilities or authority in administering property tax appeals.

A. Filing Requirements

1. Written materials and Exhibits. To assist the Board in becoming familiar with a property and the issues concerning an appeal, Applicants and the Assessor shall prefile seven copies of written materials and exhibits, including appraisals, with the Board fourteen (14) days before the date of commencement of hearings. The Board may deem inadmissible written materials or exhibits that are not timely filed in accordance with this requirement.
2. Memoranda or Briefs. The Board may require the parties to submit pre hearing or post hearing memoranda or briefs outlining their positions.

B. Board Procedures for Hearings and Meetings

1. The Chair will call the meeting to order and will supervise meetings and hearings. Meetings are public proceedings and will be electronically recorded. Three members of the Board shall constitute a quorum for purposes of conducting hearings and voting.
2. Alternate Members: Alternate members may and are encouraged to attend all meetings of the Board, workshops and training sessions. Alternate members may sit and participate as full voting board members when:
 - a. a full member is not available to sit so long as the alternate member commences his or her participation at the beginning of any hearings, or
 - b. in a matter when a full member becomes unavailable during proceedings so long as the alternate has been present for the entire proceedings up until the time when the alternate's service commences,
 - c. when a vacancy occurring on the Board remains unfilled.
3. The Chair asks for a roll call of the members and alternate members.
4. The Chair requests the Board to complete any old business, approval of minutes, etc.
5. The Chair asks Board members to introduce themselves, the parties to introduce themselves and states the reason for hearing.
6. The Chair swears in the parties and any person who is to give testimony.

7. The Chair reviews standards, procedures and summarizes the legal standards under which the Board operates (see below).
8. If the applicant is to be represented by legal counsel in proceedings before the Board, the Board may also seek legal representation.
9. The Chair explains to the parties the order of presentation in the hearing.
 - (a) The Assessor(s) or the Assessors' Agent (hereinafter collectively "Assessor") will explain the assessment, the valuation methods used, any abatements previously granted and present other background information. The Board members may ask background questions of the Assessor concerning the assessment.
 - (b) The Board, if it deems it helpful or at the request of either party, may schedule a formal inspection of the property. The inspection may be scheduled prior to the parties' presentations, or for a later date. Board members shall not engage in individual inspections of the property. The procedure for inspections will be for the Board to set a mutually acceptable time and date for the Board members, the applicant and his or her representatives and the Assessor and his or her representatives to meet at the property. The Board and the parties will then complete the inspection together. The applicant and the Assessor may request that certain elements of the property be the subject of the inspection. At the meeting following the inspection, the Board shall summarize on the record the inspection and the members' observations. The applicant and the Assessor may then also state on the record any observations or comments concerning the inspection.
 - (c) The applicant or the applicant's representative presents the applicant's case. The applicant or applicant's representative may make an opening statement outlining the theory of the appeal and the evidence to be presented. The Applicant may testify personally, and may present witnesses and documentary evidence, including appraiser testimony and reports and assessment ratio evidence. The Assessor may question any person testifying, including the applicant, following their direct testimony. The Board members may ask additional questions of any witness.
 - (d) Following close of the applicant's case, the Board makes a preliminary determination as to whether the applicant has met his or her burden of showing that the assessment is "manifestly wrong". If the Board finds that the applicant has not met this burden, the appeal must be denied. If the Board finds that the applicant has met this burden, the Assessor may present evidence concerning the market value of the property and the proper assessment.
 - (e) The Assessor presents the Assessor's case. The Assessor may make an opening statement and present witness testimony and documentary evidence. The Assessor's evidence may include evidence of a fair market value other than the valuation originally determined by the Assessor, or evidence supporting the original valuation. The Applicant may question any person testifying, including the Assessor, following their direct testimony. The Board members may ask additional questions of any witness.
 - (f) Upon request, the Board may allow the presentation of rebuttal evidence by the applicant.
 - (g) The Board may allow the parties to make closing statements or arguments.

- (h) If legal issues have been raised during the hearing, the Board may require the parties to file post-hearing briefs on those issues specified by the Board.
10. After the Assessor and applicant have finished their presentations and any post-hearing briefs have been filed, the Chair will close the hearing and the Board shall commence deliberations. Deliberations shall be conducted in public and no further testimony or evidence is to be offered or admitted unless the hearing is reopened. The Board's charge in the deliberative process is to review the evidence presented under the applicable legal standards, (see below for standards). If the Board has determined that the assessment is manifestly wrong and the property is over-assessed, it shall undertake an independent valuation of fair value of the property based on all relevant evidence presented at the hearing.
- (a) During deliberations, Board members should discuss their views of the facts and express their opinions about the evidence presented. Based on the deliberations and comments of Board members, the Secretary or his or her designee, shall prepare a list of proposed findings for consideration by the Board. Based on the evidence and testimony presented, the Board shall then summarize its findings and conclusions as Findings of Fact and vote to render its decision by one of the following means:
 - (b) By motion and vote, the Board will vote to accept (or reject) each of the proposed Findings of Fact as listed by the Secretary or his or her designee and then vote to grant or deny the appeal. The Chair may seek authority from the Board to authorize the Chair, another member that participated in all of the appeal proceedings or the Board's secretary to prepare the Board's written decision, and for the Chair or other Board member who participated in the appeal proceeding, to sign and issue the final written decision on behalf of the Board;
 - (c) The Board may vote to defer making a decision on the appeal and either on its own or with the assistance from its attorneys, draft written Findings of Fact and a Decision for the Board's further consideration and vote at a later date, or
 - (d) The Board may require the parties to each submit proposed Findings of Fact and a Decision for the Board's further consideration and vote at a later date.
11. The Chair will then entertain any other business and as necessary schedule the next meeting. After conducting other business and scheduling the next meeting, the Chair will request a motion to adjourn.
12. Adjournment.
13. The Board Secretary is responsible for archiving and maintaining all materials submitted during Board proceedings, the Board minutes, the Findings of Fact, and the Decision. These materials shall be maintained as part of the public record. The Secretary is also responsible to make sure that the Board's Findings of Fact and Decision are timely sent to the parties. The Board's written Decision must be sent within ten (10) days of the date of the Board's final vote and decision. The Decision must also include a statement advising the parties of their appeal rights in accordance with state law.

C. Board Standards

1. With exception of setting up hearing dates, scheduling matters or other non-substantive matters, Board members must ensure that all Board business takes place only during meetings of the Board. For the purpose of this ordinance, three or more members meeting to discuss official business constitutes a meeting, including discussions by three or more members over email concerning official business. Board members must avoid ex parte communications with applicants or the Assessor on substantive matters related to any proceeding before the Board, and must avoid deliberating with other Board members on issues raised in the appeal outside of the Board's scheduled meetings.
2. Except in cases by directive of Court order or in other matters that are the proper subject of Executive Sessions, all proceedings of the Board are to take place at scheduled meetings of the Board.
3. Board members must avoid participation in proceedings where they have a conflict of interest. "Conflicts of interest" for these purposes are situations where members have direct or indirect financial interests in a matter, relationships by blood or marriage with an applicant, or a predisposition related to the a matter that is the subject of appeal. The common law standard related to conflicts of interest defined by Maine courts is "whether the municipal official by reason of his interest, is placed in a situation of temptation to serve his own personal pecuniary interest to the prejudice of the interest of those for whom the law authorized and required him to act."

Certain conflict situations are governed by statute (30-A M.R.S.A. Section 2605). It is presumed that an official or deciding party is "self interested" in connection with the performance of governmental actions or decision making when the official is an "officer, director, partner, associate or stockholder of a private corporation, business or other economic entity" which is the subject of the issue before the body; *and* the individual is "directly or indirectly the owner of at least 10% of the stock of the private corporation or owns at least 10% interest in the business or other economic entity."

Where a member's situation falls within the statutory definition of a conflict of interest they cannot participate in either the proceedings or decision. Where the member's situation involves what could be a perceived as common law conflict of interest or the appearance of a conflict of interest, the Board member may either abstain or participate. If the member seeks to participate in the proceedings, he or she must:

- (a) Identify the situation and circumstances on the record;
 - (b) State that if he or she continues to participate that he or she will be impartial, receive the evidence with an open mind and base any decision on the record and in accordance with the applicable standards and law; and
 - (c) Receive the permission of the Board after the Board discusses the circumstances on the record, solicits the views of the applicant as to the member's continued participation, and then by motion and vote determines that the member can continue to sit.
4. Evidence and testimony shall be admitted unless it is irrelevant, unreliable, or unduly repetitious. Evidence is deemed reliable if it is the kind of evidence on which persons customarily rely in the conduct of serious affairs. Opinion evidence as to valuation issues can be either in the form of the owner's opinion or the opinion of another qualified person. Appraisal evidence offered must be in conformance with standards of professional appraisal practice and Maine law.

5. Unless the Board receives permission in writing from the applicant, it shall hold hearings and decide all appeals within sixty (60) days of the date the filing of the application or petition. Matters not acted on by the Board within such period or extended period are deemed denied.
6. The Board must base its Decision and its Findings of Fact on the evidence in the record. The Board shall issue a written Notice of Decision and Findings of Fact within ten (10) days in accordance with 36 MRSA § 843 following the date it takes final action on an appeal. Decisions of the Board may be appealed under Rule 80B of the Maine Rules of Civil Procedure within thirty (30) days of the date of the decision to the Hancock Superior Court, or if the property involves non-residential property with an equalized valuation exceeding \$1,000,000, within sixty (60) days of the date of the decision to the Maine State Board of Property Tax Review.
7. The Board is authorized to rely on Town staff to assist in clerical matters relating to the Board's activities, including scheduling meetings, posting and advertising notices regarding Board proceedings, recording meetings, and otherwise assisting with the drafting and distribution of the Board's Findings of Fact and Decisions.

Appendix

Standards of Review and Burdens of Proof for Property Tax Appeal Hearings

1. The Maine Constitution requires that all property (unless tax-exempt) is to be assessed at its “just value” and that taxpayers are to equally bear their proportionate shares of the tax burden, i.e. similar properties should have similar assessments. Maine courts have determined that “just value” is the same as market value. Market value is generally defined as the price a willing buyer would reasonably pay to a willing seller in an open market transaction, free from unusual conditions or circumstances (bankruptcy, foreclosure, sales to relative, etc.) and where the property has had reasonable exposure to the marketplace and prospective buyers.
2. Assessors have considerable discretion and leeway in the choice of methods or combination of methods they choose to rely on to arrive at an estimate of a property’s just value. In the valuation process, however, assessors must at least consider the appropriate professionally accepted assessment and appraisal methodologies to arrive at their estimates of a property’s fair market value.

The three generally accepted methodologies are the cost approach, the comparative sales or market approach, and the income approach. The income approach is appropriate for valuing business and commercial properties, i.e. where the property is used as part of the related business’s production of an income stream. As a result, the income approach is not considered an appropriate valuation method for valuation of individual residential properties; such properties are generally not held for use as income producing properties.

3. Assessments, assessing methodologies and an assessor’s judgment are presumed valid. To overcome these presumptions a taxpayer must prove the assessment is “manifestly wrong”. To prove manifest error the taxpayer has the burden of proof to demonstrate one or more of the following:
 - That the judgment of the assessor was so irrational or so unreasonable in light of the circumstances that the property was substantially over-valued and an injustice resulted;
 - That there was unjust discrimination; or
 - That the assessment was fraudulent, dishonest or illegal.

The first of these three prongs concerns disputes where the taxpayer and assessor have differing opinions related to the fair market value of a property. The second prong concerns disputes about the assessment method or how the assessor applies the method. The concern is with the second constitutional standard that requires equal apportionment of the tax burden, i.e. similar properties should have similar assessments. The third prong addresses improprieties in the assessing process. Illegality in this context means that there is a legal defect in the authority of the assessor or in the assessing or taxation process. Differences of opinion related to a property’s valuation do not make an assessment “illegal”.

4. To meet the legal threshold of proof required to prove “manifest error” where a taxpayer is claiming overvaluation, the taxpayer must:

- (a) Provide evidence and proof that the Board accepts as sufficient and credible which impeaches the validity of the assessment **and**
- (b) Provide evidence and proof that the Board accepts as sufficient and credible of the disputed property's fair market value.

Only if the taxpayer satisfies **both** of these burdens is the Board authorized to engage in an independent determination of the fair market value of the property for purpose of granting an abatement.

5. The rule and remedy for a discrimination claim is that "whenever it can be established indisputably by competent and sufficient evidence that a given assessment upon an aggrieved taxpayer's property has been laid upon an distinctively higher valuation than the assessments upon the property of taxpayers in general and that his discrimination was intentional ... the courts will intervene to reduce or annul the tax to the extent necessary to place the complaining taxpayer on a plane of equality with others in his class." Shawmut Manufacturing Co. v. Town of Benton, 123 Me. 121, 129 (1952).

To obtain an abatement based on a discrimination claim, a taxpayer does not have to present evidence related to the actual fair market value to have their assessment reduced. Instead, the taxpayer must demonstrate that the assessment system, by its nature "necessarily will result in unequal apportionment" of the tax burden. Moser v. Phippsburg, 553 A.2d 1249 (1989); Biddeford v. Adams, 1999 Me. 49. A taxpayer can meet this burden by showing that at group of similarly situated properties were assessed at "drastically lower valuations; that there are no distinctions between the properties that justify the disparity; and that any rational that the assessor offers for the lower valuation is unfounded or arbitrary." Rams Head Partners, LLC v. Cape Elizabeth, 2003 Me. 131, ¶ 12.

Even so, sporadic or spot under assessments of other properties or errors of judgment on the part of the assessor are not adequate to support a finding of unjust discrimination or to grant an abatement. The results of a review of the assessment must show the assessor used systematic or intentional methods to create the disparity and that the methodology or assumptions relied on by the assessor that led to the disparity were unfounded or arbitrary. Rams Head Partners, LLC v. Cape Elizabeth, 2003 Me. 131, ¶ 12. Thus, "'some specific instances here or there' ... 'sporadic differences in valuations' or 'mere errors of judgment by officials will not support a claim of discrimination. There must be something more--something which in effect amounts to an intentional violation of the essential principle of practical uniformity.'" Id. ¶ 11.

6. Where an assessment "represents a fair and just determination of value", a taxpayer is not entitled to an abatement even if they demonstrate a potential flaw in the assessor's methodology. If a property is assessed at its true or just value and the valuation is consistent with similarly situated properties the taxpayer has not incurred harm from the assessment that is properly remedied by an abatement. Yusem v. Raymond, 2001 ME 61 ¶ 14; Chase v. Machiasport, 1998 ME 260, ¶ 11.
7. The total value for a parcel, (land, buildings and other improvements) is the controlling value for tax assessment purposes. As a result, demonstration that a component of a property's value has been over assessed is insufficient legal grounds to prove overvaluation. A property owner must prove overvaluation of the total value to receive an abatement. Roberts v. Southwest Harbor, 2004 ME 132, ¶¶ 3 and 4.

8. Maine law recognizes that mass valuation is not an exact science and that tax assessments and valuations may be valid though not entirely precise. By statute (36 M.R.S.A. section 848-A) assessors are therefore afforded a “margin of error” in their valuations. Thus, assessments are valid if they are “accurate within reasonable limits of practicality”. The margin of error allowed assessors is 10% of the Town’s assessment ratio or, if contested the ratio that is otherwise proven. Assessment ratios are statistical ratios derived from annual studies comparing assessed values assigned to properties with the reported sales prices for the properties. Assessors annually report assessment ratios derived from these studies to the Property Tax Division of Maine Revenue Services. The Property Tax Division then completes its own ratio studies and reports the results back to the Town.