



Board of Equalization

HANDBOOK

For Appeal Questions:

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Procedures Governing Expectations of Board of Equalization Members

As a member of an adjudicatory board, the members of the Board of Equalization (BOE) are subject to the provisions of DMC 4.15.120 - 4.15.140 with certain specific additional requirements and clarifications discussed herein.

Attendance: Panels of three Council members and the mayor, who will preside, are empowered to hear appeals. If a member agrees to participate on a specific panel and does not appear, there is no quorum and the appeals cannot be heard. Therefore, it is imperative to notify the Chair or the City Clerk if circumstances prohibit you from participating on the panel. Notification should be, at a minimum, 24 hours before the scheduled hearings.

Improper communications. Board members are advised not to discuss pending hearings with anyone including fellow board members. Under no circumstances should a board member have communication with an appellant except in the hearing itself.

Improper statements on the record. Board members are cautioned that personal opinions and comments are not to be expressed while on the record or in the hearing room and surrounding area. Board members are to uphold the law as enacted no matter what their personal opinions may be.

PROCEDURAL GUIDELINES FOR CONDUCTING A BOARD OF EQUALIZATION HEARING

- I. Call to Order
- II. Roll Call
- III. Assessor-Recommended Assessment Revisions (if not yet voted)
- IV. Suggested introduction before hearing cases
 - A. Review informal hearing procedure for appeal and request to late-file appeal
 1. Order of presentations for Appeal:¹ Appellant, then Assessor
 2. Time for each side (including BOE questions during presentation) is ___ min.
 3. After presentations, BOE member makes motion to DENY, which motion is restated by Chair
 4. BOE debates/deliberates on the motion to DENY
 5. BOE votes/takes action on motion to DENY
 6. Chair announces whether motion to DENY carries/fails, and if carried:
 - a. Request to Late-File: that the request is denied and a late-file appeal will not be heard;
 - b. Appeal: that the appeal is denied and the original assessment is unaltered.
 7. If the motion to DENY failed, BOE member makes motion to GRANT, which motion is restated by Chair
 8. BOE debates/deliberates on the motion to GRANT
 9. BOE votes/takes action on motion to GRANT
 10. Chair announces whether motion to GRANT carries/fails, if carried:
 - a. Request to Late-File: that the request is granted and when the appeal will be heard (hearing date can be set or scheduled later by city clerk);
 - b. Appeal: that the appeal is granted and the revised valuation amount.
 - B. Review controlling legal standards that apply to all BOE cases
 1. Appellant has burden of proof in all cases
 2. To accept a late-filed appeal, BOE must find that:

Taxpayer was unable to comply with filing deadline. (ie, disability or other situation beyond taxpayer's control)
 3. To grant an appeal on the merits, BOE must find that:

Taxpayer proves unequal, excessive, improper, or under valuation based on facts stated in written appeal as proven at hearing.

¹ The BOE reviews a request to late-file an appeal solely on the written request. A taxpayer may not make an oral presentation at this hearing. DMC 4.15.125(G)(1).

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4. The appellant has the right to appeal a decision to the Superior Court within 30 days.
- V. Consideration of Requests to Late-File an Appeal
- VI. Conduct Appeal Hearings
- VII. Adjournment

SAMPLE/MODEL MOTION LANGUAGE

Motions and voting related to granting and denying appeals/requests can become confusing. Depending upon the form of the motion, a NO vote could be in favor of or against granting the appeal. The best way to establish a clear record is, at the end of presentations, for a member to motion to DENY the appeal/request *regardless* of whether the member supports the motion or believes the BOE will deny the appeal/request. The BOE, as deliberation on the motion to DENY, proceeds to discuss the merits of the appeal/request. At the conclusion of deliberation, the question should be called on the motion to DENY and a vote taken.

If the motion to DENY the appeal/request does not carry, a motion to GRANT the appeal/request should be made. Often, deliberation on the motion to GRANT is unnecessary because the substance was already discussed in response to the motion to deny. On the other hand, if the BOE has gotten to this point the request/appeal will presumably be granted. So this may be a good opportunity to discuss a revised valuation on an assessment appeal because, at this point, the appeal will presumably be granted and a revised valuation issued.

This procedure avoids confusion and ensures a clear record. If for some reason neither motion carries, the appeal/request is considered denied.

ASSESSOR-RECOMMENDED REVISIONS

DMC 4.15.125(D) allows the assessor to work with a taxpayer to resolve an appeal before the BOE hearing. The assessor is to submit a memo that identifies all assessments where the assessor has agreed with the taxpayer that the valuation should be revised and the revised amount. The BOE is supposed to review this memo and approve or deny the recommended revisions at an organizational meeting held before the appeal hearing meeting. But this does not always happen; sometimes this matter is considered at the appeal hearing meeting.

The BOE usually agrees with the assessor's recommendations, but it is not required to. A motion should be made to accept the revised valuation for any (or all) property where the BOE agrees with the assessor's revision. This motion can be done in one "batch" motion rather than an individual motion for each property. The following is appropriate motion language for adopting all, some, or none of the assessor's revised recommendations.

- *I move that the Board DENY all valuation revisions set forth in the assessor's memorandum and ask for a YES vote DENYING these revisions.*
- *I move that the Board GRANT ALL valuation revisions set forth in the assessor's memorandum and ask for a YES vote granting the revisions for the reasons given in the assessor's memorandum.*
- *I move that the Board GRANT the valuation revisions set forth in the assessor's memorandum as to the following properties: [recite tax ID numbers for granted*

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revisions]. I ask for a YES vote granting the revisions for the reasons given in the assessor's memorandum as to each granted revision.

REQUESTS TO LATE-FILE AN APPEAL

The question for the BOE to answer is if the taxpayer has sufficiently shown that he or she was unable to comply with the deadline for filing an appeal. If the board grants the request, it is allowing the taxpayer to present the appeal despite missing the appeal deadline.

The BOE reviews a request to late-file an appeal solely on the written request. A taxpayer may not make an oral presentation at this hearing. Information or argument regarding the valuation of the underlying property should not be considered.

- *I move that the Board DENY the taxpayer's request to accept the late-filed appeal and ask for a YES vote DENYING the request because the taxpayer has not shown that he/she was unable to file an appeal before the deadline.*
- *I move that the Board GRANT the taxpayer's request to accept the late-filed appeal and ask for a YES vote GRANTING the request for the reasons provided by the appellant;*

Only if the BOE grants the request to accept a late-filed appeal should consider the merits of the appeal. The appeal hearing could be conducted at the same meeting if the clerk gave the appellant notice that it will occur at the same meeting if the request to late-file is granted. Otherwise a date for the appeal hearing should be set.

APPEALS HEARD ON THE MERITS

A taxpayer may appeal the assessor's assessment of the property on the basis that the original valuation was unequal, excessive, improper or (rarely) undervalued. The taxpayer has the burden to show that the original assessment is improper. The first question the BOE members must determine is if they believe the taxpayer has shown that it is more likely than not that the original assessment is improper. This determination does not require a vote, but if the individual members are not persuaded that the original assessment is improper, the assessor's assessment stands and the BOE need not consider a different amount. **The BOE could defer all discussion of a revised amount until after a vote on the motion to DENY. If the motion to DENY carries, discussion of a revised valuation is unnecessary.**

If and only if the taxpayer has shown that the original valuation is improper should the BOE consider the "correct" valuation. The BOE does not need to accept the taxpayer's recommended amount. The BOE may grant the appeal and determine that neither the assessor's nor the taxpayer's valuation is correct. If the BOE grants the appeal, it must state the true valuation, whether that requested by the appellant or some other amount.

- *I move that the Board DENY the appeal and that the original assessment stands. I ask for a YES vote DENYING the appeal because the appellant failed to show that the original assessment was improper/for the reasons given by the assessor/ for the following reasons:*
- *I move that the Board GRANT the appeal and I ask for a YES vote GRANTING the appeal and valuing the property at \$_____ for the following reasons/ the reasons provided by the appellant.*

4.15.120 Membership of the board of equalization.

A. Membership—Duties.

1. Membership. The board of equalization shall be composed of three city council members and the mayor, who will preside. Members shall not be in default with the city for taxes.
2. Duties. The board may determine equalization on properties brought before the board by appellants or by one or more members of the board. The board may alter an assessment of a lot only pursuant to an appeal filed as to the particular lot.

B. Duties of Municipal Assessor. The municipal assessor shall furnish the board of equalization with copies of the appellant's appeal and a short narrative of the assessor's position. The assessor shall certify that material furnished to the board is true and correct, and such material shall be considered as part of the official record the board may consider. The assessor or his representative may supplement the record by additional testimony, documentation and exhibits in accordance with Section 4.15.130(J). (Ord. 13-02 § 4 (part), 2013.)

4.15.125 Appeals to board of equalization.

A. A person whose name appears on the assessment roll or his agent or assigns may appeal to the board of equalization for relief from an alleged error in valuation.

B. No appeal may be taken unless the applicant files with the city clerk written notice of appeal specifying grounds for such appeal within thirty days from the date the assessment notice was mailed.

C. The city clerk shall acknowledge the written appeal by sending the appellant a notice indicating the time and location of the board's organizational meeting, and shall refer all appeals to the assessor, including transmitting to the assessor any documents submitted by the appellant.

D. Prior to the hearing, the appellant taxpayer may present relevant information directly to the assessor, who may revise the original assessment if the information indicates that the original assessment was unequal, excessive, improper or under valued. If the assessor and the appellant taxpayer tentatively agree upon a revised assessment value prior to the hearing, the assessor will prepare a memorandum to the board of equalization stating the reasons for the revised assessment, the amount thereof, and requesting approval of the new value. The board shall consider the memo at the organizational meeting described in subsection E of this section. If the board of equalization does not approve the value, the assessor shall schedule the appeal for a hearing and the city clerk shall properly notify the appellant.

E. [ORGANIZATIONAL MEETING] As soon as practicable after the deadline for filing appeals expires, the board shall convene an organizational meeting to determine the number of outstanding appeals and schedule hearings. No more appeals shall be accepted except as provided in subsection G of this section.

F. [OUTSTANDING APPEALS] Hearings for all outstanding appeals shall be held prior to May 15th of the tax year for which the assessment is appealed, unless the board determines at its organizational meeting that additional time is necessary to conduct all the hearings. All hearings and assessments must be complete before the council considers the resolution required by Section 4.15.020(B).

[4.15.020 Property subject to taxation, rate, council resolution.

B. The rate of levy of tax, the date of equalization of the tax, and the date when the taxes shall become delinquent shall be fixed before June 15th of each year by resolution of the council.]

G. [LATE FILED APPEALS] A property owner who seeks to appeal the assessor's valuation after the thirty-day filing period has closed may request a finding that the property owner was unable to comply with the requirement to timely file an appeal by filing a written request with the city clerk within fourteen days after the inability to comply ceased or within fourteen days after the taxpayer should have become aware of the reason for filing the appeal, whichever is earlier. The written request must include information sufficient to determine whether the request has been submitted within the time stated in this section.

1. Each letter shall be considered in a scheduled hearing by not less than three members of the board of equalization, although the entire board may convene if available and convenient. The city clerk shall provide notice to the public and the property owner no less than five days prior to the hearing. The panel shall only consider reasons the appellant was unable to comply within the thirty-day period and shall not consider evidence regarding property valuation. The panel's determination shall be based on the letter and supporting documents. A taxpayer may not make an oral presentation at this hearing.

2. The panel shall interpret the term "unable to comply" to mean that a property owner has demonstrated compelling reasons or circumstances that were beyond the property owner's control and which would prevent a reasonable person under the circumstances from filing a timely appeal.

3. If the request is denied, the city clerk shall notify the property owner of the panel's decision. If the request is granted, the property owner shall have thirty days from the date the city clerk so notifies the property owner to file an appeal and submit all evidence required by Sections 4.15.130(G) and (J). A hearing shall be scheduled to occur within thirty days from the deadline identified in the previous sentence, and a decision rendered at the conclusion of the hearing or as soon as practicable thereafter.

4. A request for a finding of inability to comply is limited to an appeal of the notice of assessment for the current assessment year. (Ord. 13-02 § 4 (part), 2013; Ord. 14-05 § 4, 2014.)

4.15.130 Board of equalization hearing.

The following procedures shall govern the hearing:

A. Quorum. A quorum shall consist of three members.

B. Voting. The board shall act by simple majority vote, and may decide to reject, approve, or partially approve or reject an adjustment requested by either party by a majority vote of the board members present at the hearing.

C. Conduct of Hearings. Except as otherwise provided in this chapter, hearings shall be conducted by the board in accordance with Robert's Rules of Order, Newly Revised.

D. Record. The city clerk shall keep verbatim stenographic records or electronic recordings of the board's proceedings, showing the vote of each member on every question and all of the evidence presented. The city clerk shall prepare written minutes for all board proceedings and the chairperson of the board and the city clerk shall sign such minutes.

E. Counsel. All parties may be represented by counsel during hearings before the board. The municipal attorney may offer legal counsel to the board in the course of its proceedings.

F. Case Number. Every appeal shall be assigned a case number which shall be read into the record along with the name of the appellant before the hearing on that appeal commences.

G. Burden of Proof. The burden of proof rests with the appellant. The only grounds for adjustment of an assessment are unequal, excessive, improper or under valuation based on the facts that are stated in a valid written appeal or provided at the appeal hearings in accordance with subsection J of this section. If the valuation is found to be too low, the board of equalization may raise the assessment. The municipality shall make available to the appellant all reasonably pertinent documents requested for presentation of the appeal.

H. Rules of Evidence. The board shall not be restricted by the formal rules of evidence; however, the chairperson may exclude evidence irrelevant to the issues appealed. Hearsay evidence may be considered provided that there are adequate guarantees of its trustworthiness and that it is more probative on the point for which it is offered than any other evidence which the proponent can procure by reasonable efforts.

I. Order of Presentation. The appellant may present his appeal in person, in writing, or by authorized representative and shall present his argument first. If any party to whom notice of the hearing was mailed fails to appear, the board may proceed with the hearing in his/her absence. Following the appellant, the assessor shall present the municipality's argument. The appellant may, at the discretion of the chairperson, make rebuttal presentations directed solely to the issues raised by the assessor. The municipal attorney may question the appellant or the assessor on matters relating to the appeal. The members of the board may ask questions of either the appellant or the assessor at any time during the hearing.

J. Witnesses and Exhibits. The appellant and the assessor may offer oral testimony of witnesses and documentary evidence during the hearing. Any documents presented to the board by either party must be provided to the opposing party and to the city clerk at least seven days before the hearing, but failure to produce such documents prior to the hearing shall not prevent the board from accepting the documents as evidence unless doing so would substantially prejudice the other party. All testimony before the board shall be under oath.

K. Decisions. At the conclusion of the hearing, the boards shall determine the correct valuation and shall clearly state the reason for its decision on the record.

L. Certification. The city clerk shall transmit the results of the hearings to the parties and the city finance department within three days of the hearings in accordance with Section 4.15.140. Except as to supplementary assessments, the city council shall certify the final assessment roll by June 15th. (Ord. 13-02 § 4 (part), 2013.)

4.15.140 Appeal record.

The clerk shall be ex officio clerk of the board of equalization and shall record in the minutes of the meeting all proceedings before the board and the names of all persons protesting assessments. All changes, revisions, corrections, and orders relating to claims or adjustments and final decisions shall be recorded in a record to be kept by the clerk and to be known as the appeal record. Within three days following the final hearings of the board, the clerk shall transmit to the assessor all corrections, revisions, or changes authorized and approved by the board and shall certify that the changes so reported are as approved by the board of equalization. Appeals to the board of equalization determination may be made to the superior court as provided in AS 29.45.210. (Ord. 01-12 § 1 (part), 2001.)

4.15.150 Assessment roll—Changes/supplementary roll.

A. Prior to the time of the board of equalization hearing, the assessor may correct any error or supply any omission made or arising in the preparation of the assessment roll. It shall be the duty of every person receiving a notice of assessment to advise the assessor of any error or omission observed in the assessment of his/her property in order that a correction may be entered.

B. Following the board of equalization hearing, the assessor shall enter the changes, so certified, upon his records, and no assessed valuations shall thereafter be changed. The assessor shall complete the annual assessment roll, at a time to be determined by the board, which shall be based on values as of January 1st immediately preceding or, in the case of business inventories, pursuant to Section 4.15.060 and shall certify the same.

C. Such supplementary assessment rolls shall be prepared and certified as may be necessary or expedient; provided, however, that the date taxes are due and delinquent shall be the same as for property listed on the original roll. (Ord. 01-12 § 1 (part), 2001.)