



DATE: 10/5/2022
TO: Deputy Mayor Gladyszewski, Assembly Committee of the Whole
FROM: Adam Gottschalk, Assistant Municipal Attorney
SUBJECT: Ord. 2022-21: Board of Equalization Rules

The 2021 Board of Equalization process was frustrating for all involved—property owners, the Board of Equalization members, and the Assessor’s staff. While the bulk of the frustrations likely originate from opinions of property value, there are many changes to CBJ code that can alleviate some procedural frustrations.

Procedural Background

On September 20, 2022, the five remaining members of the Board of Equalization (“Board”) reviewed Ordinance 2022-21. The Board recommended the proposed ordinance with several minor grammatical changes and two substantive changes, which increased appellants’ opportunities to be heard. On September 26, 2022, the Assembly Committee of the Whole discussed the ordinance and requested it stay in committee.

Substantive Background

The proposed changes in Ord. 2022-21 affect *process*. Notably, tax payers’ burdens and the assessor’s discretion derive from state law. *E.g.*, AS 29.45.210(b) (tax payer burden); AS 29.45.110(a) (full and true value). Many of the proposed changes in Ord. 2022-21 have already been tested and are in place through the Board’s adopted rules of procedure, which have been included in the materials distributed prior to every Board hearing. Through codification, every appellant and potential appellant (i.e., property owner), and any other interested person, will have ready access to these rules of procedure. One goal of codifying these rules is to demystify the tax appeal process.

Beyond providing more notice of and further clarifying the tax appeal process, the proposed changes should also increase the efficiency of the Board. This is accomplished by creating a prehearing structure between appellants and the assessor. This structure will curtail eleventh-hour document submissions—absent good cause—that tend to trigger confusion and delays during hearings and often result in appeals being remanded back to the assessor for more consideration (and then coming back before the Board). This structure will also result in appeals being “hearing ready” sooner and providing a heads up to the Board so that potential conflicts of interest can be spotted and addressed in advance.

Short explanations for changes in Proposed Ordinance 2022-21 vCOW are provided below:

The following proposed amendments were modeled off of authorizing language in state law (*i.e.* A.S. 29.45.200(b)) and off of the Anchorage Board of Equalization rules (*i.e.* AMC 12.05.053).

Section 2, CBJC 15.05.041. This proposed change renders the superior court—rather than the assembly—the proper body to hear appeals from assessor determinations regarding property exemptions.

Section 3, CBJC 15.05.140. This proposed change removes an unexercised board oversight function regarding the assessment process and assessment.

Section 4, CBJC 15.05.150.

(a) This proposed change increases clarity by removing unnecessary language. The categories of error can be found at CBJC 15.05.180, which is not included in Ord. 2022-21.

(b) This proposed change is a relocation of CBJC 15.05.160(a) and reflects the notice of appeal is sent to the assessor rather than to the board.

(c) This proposed change provides a process for taxpayers to advocate before the board regarding late-filed appeals. The code currently does not describe this process, so the board has long operated on a case-by-case basis with guidance from a 2013 memo by former city attorney, John Hartle. In the review process on September 20, 2022, the Board added a five-minute oral argument component for this issue. The proposed changes will provide more guidance and process to late-filing taxpayers than current code and board procedure.

(1) This proposed change provides a definition for “unable to comply,” which is currently found in the same above-mentioned 2013 memo and is consistent with the code and long-standing application (e.g., CBJC 15.05.160(a); CBJC 69.10.020(1)(C)).

Section 5, CBJC 15.05.160.

(a) Under the proposed changes, this section will be relocated to CBJC 15.05.150(b).

(b) Under the proposed changes, this section will be relocated to CBJC 15.05.150(b) and (c) and is partially obviated by these as the notice will solely be sent to the assessor.

Section 6, CBJC 15.05.170. Under the proposed changes, this section will be relocated to CBJC 15.05.190(a).

Section 7, CBJC 15.05.185.

(a)

(1) This proposed change clarifies that quorum for the board shall be five members. Further, the proposed change removes the concept of fixed three-member panels, a concept that is impractical (it is easier to have *any* three members available on a set date than *an exact* three members) and does not work when the board has five, seven, or eight members (rendering one or two members “leftover”).

(3) This proposed change reflects the board does not exercise an oversight function regarding the assessment process and assessment roll as codified in CBJC 15.05.140.

(6) This proposed change seeks to compensate members for their time reviewing records and hearing appeals. Compensation serves to acknowledge current members’ commitment and contribution, and to incentivize potential members to apply for any of the *four* vacant seats. Having a full, nine-member board would promote timely cycle completions.

(b) This proposed change reflects current practice and minimizes the risk of inadvertent *ex parte* communication between the board and the assessor.

(c) This proposed change reflects panels should not be fixed, so each panel will need to elect a presiding officer. Under the board’s current rules of procedure, a presiding officer is appointed for each hearing.

Section 8, CBJC 15.05.190.

(a) This proposed change creates a structured process for appellants and the assessor to submit and exchange evidence and create a record for the board. This structured timeline is similar to the Municipality of Anchorage’s, which is found at AMC 12.05.053(C)(7). Timely submission and exchange facilitates board review and consideration and minimizes eleventh-hour submissions that tend to frustrate the process (e.g., the board having insufficient time to review evidence, the board remanding an appeal back to the assessor for further consideration of late-filed evidence). Notably, under the proposed changes, appellants and the assessor may agree to waive the deadline to supplement the record (*see* Proposed CBJC 15.05.190(c)(8)(ii)) and they may also supplement the record within the ten days preceding their hearings by way of motions showing evidence satisfies the criteria of CBJC 01.50.110(e) (e.g., newly discovered, wrongly withheld).

(b)

(1) This proposed change clarifies that a panel consists of three members and reaffirms that only a simple majority of the panel is necessary for quasi-judicial action.

(2) This proposed change clarifies that the assessor’s original recommended valuation is the default valuation in the absence of a successful appeal or affirmative board vote altering the assessed valuation otherwise. This proposed change also redirects board voting to

remove the unconventional vote posture whereby board members commonly move for “no” votes.

(c)

(1) This proposed change reaffirms that, except where specifically provided, the appeal procedures of CBJC 01.50 do not apply to board hearings. This non-application already comes from CBJC 01.50.020(a)(2). The proposed change is sought to provide additional notice of CBJC 01.50’s non-application in order to curb any confusion, similar to the explicit statement of non-application found at CBJC 53.50.425(a).

(2) This proposed change is a relocation of CBJC 15.05.210.

(3) This proposed change expresses the longstanding practice, consistent through code, whereby parties to an appeal, as well as hearing officers and quasi-judicial panels, may be represented by counsel.

(4) This proposed change clarifies the duty to maintain records. The provision regarding hearing appeals in the absence of a properly notified appellant is a relocation of CBJC 15.05.190(b) and echoes state precedent that it is the appellant’s burden to prove error.

(5) This proposed change describes appellants’ burdens under state statute and case law. The consequences for untimely submissions echo that burden.

(6) This proposed change further supports and describes the presiding officer’s duties pursuant to CBJC 15.05.185(c). Beyond clarifying the duties of the presiding officer, this more descriptive provision can assist parties’ preparation and presentations.

(7) This proposed change represents current board practice. This will provide appellants substantially more time than appellants are provided by Anchorage’s corresponding code, AMC 12.05.050-55, which only guarantees appellants five minutes (*see* AMC 12.05.053(C)(6)). These limitations reflect the relatively narrow scope of the board’s review and the substantial discretion afforded to assessors’ methodologies under state statute and case law. On September 20, 2022, the board further sought to make clear board members’ questioning would not interrupt parties’ presentations or count as parties’ time.

(8)

(i) This proposed change represents current board practice.

(ii) This proposed change provides conditions to waive deadlines and/or belatedly supplement the record when there is good cause.

(iii) This proposed change represents a corresponding duty of the assessor indicating mutual obligations of parties to exchange information.

(iv) This proposed change prevents appellants from making arguments about factual evidence the assessor is unable to investigate, confirm, or rebut.

(v) This proposed change makes clear to appellants they can submit sensitive or confidential business income information to the assessor and have that information

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be considered while remaining confidential. It is hoped this will incentivize communication between the parties and that more information will increase assessments' accuracy.

(9) This proposed change reaffirms state precedent and the duties of quasi-judicial boards.

(10) This proposed change reflects current board procedure and is a relocation of part of CBJC 15.05.210.

(11) This proposed change clarifies that parties may withdraw an appeal if they come to an agreed upon valuation without the board's intervention.

Section 9, CBJC 15.05.200. This proposed change expresses state statute for board appeals (*see* AS 29.45.200(c), Alaska R. App. P. 602(a)(2)).

Section 10, CBJC 15.05.210. This proposed change clarifies the duties of the municipal clerk following board hearings.

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