

Board of Equalization Orientation

The BOE's Purpose:¹

The BOE determines whether an error in valuation occurred regarding annual CBJ property assessments. If the BOE determines there was an error, the BOE alters the property assessment to the correct value **or** remands the matter to the assessor for reconsideration.² The decision to remand is based on whether or not the BOE has sufficient evidence of value in the record or it is necessary for the assessor and appellant to gather more evidence.

Appeal Process:

(a) Assessment Notice

The assessor gives every person named in the assessment roll a notice of assessment containing their property's assessed value, the date payment is due, and date when the Board will meet.³ The notice is sufficiently given if it is mailed first class 30⁴ or more days prior to the BOE hearing, and the notice must be either addressed or delivered to the person's last known address.⁵

(b) The Assessor

The assessor determines properties' "full and true value" in money as of January 1 of the assessment year.⁶ Under state statute, "full and true value is the estimated price that the property would bring in an open market and under the then prevailing market conditions in a sale between a willing seller and a willing buyer both conversant with the property and with prevailing general

¹ This memo's purpose is to provide big picture guidance regarding the BOE process. Pursuant to Ordinance 2022-21, substantial changes were made to the BOE process in late 2022. BOE members should review CBJC 15.05.041—.210 online (or the ordinance itself) to see all changes made (particularly CBJC 15.05.190). As always, BOE members should defer to the guidance of their designated CBJ attorney advisor.

² AS 29.45.200(b); AS 29.45.210(b).

³ AS 29.45.170; CBJC 15.05.120(a).

⁴ CBJC 15.05.120(b). The date the notice is mailed or delivered is the date the notice is given (i.e. the "mailbox rule").

⁵ CBJC 15.05.120(b).

⁶ AS 29.45.110(a); CBJC 15.05.100; CBJC 15.05.020.

price levels.”⁷ The assessor has broad discretion to adopt assessment methods to set values for properties.⁸

(c) The Appellant

The appellant has 30 days to appeal their property assessment, which they must do by submitting a written notice of appeal to the assessor specifying the grounds for their appeal.⁹ If an appeal is filed late, the would-be appellant must show—to the BOE’s satisfaction—they were unable to comply with the 30-day period.¹⁰

(d) Prehearing Information Exchange Between the Assessor and the Appellant

Once the 30-day appeal period closes, the appellant has 15 days to send the assessor all documentary evidence and briefing in their possession that the appellant believes is relevant and wishes the Board to consider.¹¹ During this same 15-day window, the assessor must make available to the appellant all reasonably relevant assessor records requested by the appellant.¹² If the appellant and the assessor agree, the 15-day deadline to supplement the record may be waived up until 10 days prior to the BOE hearing.¹³ Supplementation after the 10-days-out point will require authorization from the BOE’s chair (the chair will determine whether CBJC 01.50.110(e) criteria is satisfied).¹⁴ If an appellant has refused or failed to provide the assessor or assessor’s agent full access to property or records, the appellant shall be precluded from offering evidence on the issue or issues affected by that access and those issues shall be decided in favor of the assessor.¹⁵ *A timeline for this process is provided below.*

⁷ AS 29.45.110(a).

⁸ CBJC 15.05.100. *Fairbanks Gold Mining, Inc. v. Fairbanks North Star Borough Assessor*, 488 P.3d 959, 967 (Alaska 2021) (“The assessor has broad discretion to decide how to complete this task. We will only upset the assessor’s choice of method in cases of ‘fraud or the clear adoption of a fundamentally wrong principle of valuation.’ Accordingly, we review the Board’s approval of the assessor’s valuation method under the deferential ‘reasonable basis standard.’”).

⁹ AS 29.45.190(b); CBJC 15.05.150(b); *see also* AS 29.45.180(a).

¹⁰ CBJC 15.05.150(c)(1).

¹¹ CBJC 15.05.190(a).

¹² CBJC 15.05.190(c)(8)(iii); *see also* AS 29.45.190(d).

¹³ CBJC 15.05.190(c)(8)(ii).

¹⁴ CBJC 15.05.190(c)(8)(ii).

¹⁵ CBJC 15.05.190(c)(8)(iv).

(e) Rules (Robert's, Evidence)

Robert's Rules of Order: Robert's Rules of Order (11th ed.) is the default set of conduct rules governing BOE hearings and meetings. However, Robert's Rules takes the backseat where CBJ Code, ordinances, and resolutions conflict.

Resolution 2976 (A Resolution Repealing and Reestablishing the Assembly Rules of Procedure): These rules of procedure replace Robert's Rules where the two sets are in conflict.

Rules of Evidence: The formal rules of evidence do not apply to hearings. Still, evidence must be relevant to the issues on appeal. Hearsay evidence may be considered as long as it is sufficiently trustworthy and it is more probative on the point for which it is offered than any other evidence the proponent can procure by reasonable efforts.

(f) Presentation

CBJC 15.05.190(c)(7) – (8) are the primary Code provisions on appeal presentations' lengths and content. Three notable Code changes are (1) clarification the BOE may provide parties additional time for good cause,¹⁶(2) limitations on evidence that may be considered at the hearing,¹⁷ and (3) clarification on confidentiality of commercial enterprises' income information.¹⁸

(g) Voting

Once a member makes a motion, and the presiding officer has restated the motion, the members should discuss the motion—this discussion should include statements regarding the evidence and arguments and whether these were or were not persuasive. The point here is to let the parties know (and create a record in case there is an appeal) the reasons for the BOE's decision.

The norm:

- Member makes the motion.
- Presiding officer restates the motion and asks the maker to speak to their motion.

¹⁶ CBCJ 15.05.190(c)(7).

¹⁷ CBJC 15.05.190(c)(8)(ii) & (iv).

¹⁸ CBJC 15.05.190(c)(8)(v).

- The maker explains the reasons for their motion.
- The members discuss the arguments/evidence.
- Members then vote.

A change this year is a “deemed denied” default¹⁹ meaning that, unless there is a majority vote to grant, alter, or remand an assessment, the appeal is considered denied and the assessment stands. This means you do not have to vote to deny an appeal.

(h) Sample Motions:

“I move that the Board grant the appeal because the appellant has provided sufficient evidence of error showing the assessed valuation is”

“I move that the Board adjust the assessment to _____ as requested by the _____ because”

“I move that the Board remand the assessment to the assessor for further consideration because the appellant has proved there was error in valuation; however, the Board lacks sufficient evidence of valuation on the record.”

Deemed Denied

*For each of the scenarios above, if the vote fails, then the appeal is deemed denied and no further motions are necessary.

*If the case presentation concludes and no member wishes to make a motion, then the appeal is deemed denied and no further action is necessary.

(i) FAQs/Reminders:

Discretion: BOE members have reasonable discretion to decide which items of evidence and arguments they find persuasive. Likewise, they have the discretion to interpret Code; members may—and are likely to—have varying thresholds of what constitutes “excessive” or “unequal.”

¹⁹ CBJC 15.05.190(b)(2).

Ex Parte Communication: Generally, in the interests of fairness and credibility, BOE members should not discuss appeals with parties outside of appeal hearings. There are some minor exceptions, such as when the chair makes a ruling on supplemental evidence. For further guidance, BOE members should contact their CBJ attorney advisor.

Due Process: In essence, due process is the “opportunity to be heard and the right to adequately represent one’s interests[.]”²⁰ The reasonableness of the opportunity to be heard is based on the nature of the case.²¹ The BOE’s current process has undergone and overcome several recent challenges.²² A cornerstone of due process is fairness to the parties, so best practice is to afford each party equal opportunity (e.g., if one party receives extra time, the other should as well).²³

Absent Appellant: Due process requires a reasonable opportunity—it does not require the appellant take advantage of their reasonable opportunity. If the appellant chooses not to attend after they were properly notified of the hearing, the Board may proceed without them.²⁴

Making a Record: BOE members should articulate the reasons for their motions and votes in order to inform parties (and potentially the superior court) the bases for the BOE’s decision.

²⁰ *Fairbanks North Star Borough Assessor’s Office v. Golden Heart Utilities, Inc.*, 13 P.3d 263, 274 (Alaska 2000).

²¹ *Markham v. Kodiak Island Borough of Equalization*, 441 P.3d 943, 953 (Alaska 2019).

See Griswold v. Homer Bd. of Adjustment, 426 P.3d 1044, 1045 (Alaska 2018) (“[P]rocedural due process under the Alaska Constitution requires notice and opportunity for hearing appropriate to the nature of the case.” (alteration in original) (quoting *Price v. Eastham*, 75 P.3d 1051, 1056 (Alaska 2003))).

²² *See, e.g., James Sydney et al v. CBJ, Bd. of Equalization*, 1JU-21-00929 CI (Alaska Superior Court, Hon. Schally, Decision issued

²³ *See, e.g., CBJC 15.05.190(c)(7)*.

²⁴ AS 29.45.210(a); CBJC 15.05.190(c)(4).

BOE Hearing Guideline

1. Presiding officer appointed by panel.
2. Call to order: “*I call the [May 1, 2023] meeting of the Board of Equalization to order.*”
3. Roll call: “*Will the clerk please do a roll call?*”
4. [If applicable] Presiding officer announces if there will be hearings regarding late-filed appeals and, if so, whether those will take place before or after the appeal hearings.
5. Presiding officer introduces the first appeal for hearing.
 - “*We are on the record with respect to ‘Petition for Review of Assessed Value’ in Appeal [2023-0523] filed by [Coin Shop] with respect to Parcel Id. No. [1CO....].*”
6. Presiding officer recites the hearing rules/procedures.
 - This should be done before each appeal hearing *unless* the appellant was in attendance for an earlier reading. The below statements are intended as guidance:
 - a. *The appellant has the burden of proving error in the assessment, which they can do by sufficiently showing—with factual evidence—the assessed value of their property was unequal, excessive, improper, or too low.*²⁵
 - b. *The formal rules of evidence do not apply to this hearing. However, the presiding officer may exclude evidence irrelevant to the issues on appeal.*
 - c. *The appellant and the assessor will each have 15 minutes total to make their arguments and present their evidence.*
 - d. *The appellant will present first, followed by the assessor.*
 - e. *The appellant may reserve up to 10 minutes of their time for rebuttal after the assessor’s presentation. The appellant’s rebuttal is limited to issues raised by the assessor during the assessor’s presentation.*
 - f. *After the parties’ presentations, Board members may ask the parties questions.*
 - g. *After Board members are done questioning the parties, the presiding officer will call for a motion from the Board members. Once a motion is made, the Board members will discuss the motion and then vote on the motion.*
 - h. *Does either party have questions?*
 - i. *Are the parties ready to proceed?*
7. The Board will hear appeals.
 - The presiding officer should recite hearing rules/procedures as necessary (i.e., if the appellant was not present for an earlier reading).
8. [If applicable]The Board will hear late-filed appeals.
9. After the hearing, the chair will call for discussion and motions. If no motion is made, the appeal is deemed denied. If a motion is made and fails, the appeal is deemed denied.
10. Adjourn.

²⁵ AS 29.45.210(b); CBJC 15.05.190(c)(5)