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# Memo

To: Mayor McConnell and Assembly Members

From: Robin Schmid, Municipal Attorney

Date: May 2, 2016

Re: Board of Equalization Procedures

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These are the legal procedures regarding the Board of Equalization hearings set for Monday, May 2, 2016 at 6:00 p.m. Although many of you already know, for new members, the Assembly sits as the Board of Equalization to hear and decide property tax appeals, and two property tax appeals have been filed this year.

Board of Equalization hearings are different from the other meetings at which the Assembly votes on ordinances and resolutions.

1. **Please do not discuss the issues or merits** of any particular property tax appeal with either the Assessor or any person who has appealed before the Board of Equalization meets. (Those who appeal are called “Appellants.”) Following this advice will allow the Board to make decisions based on the record before it. Following this advice will also help prevent the disqualification of the Assembly Member involved or even the invalidation of the decision made by the Board of Equalization.

2. Unlike other Assembly meetings, Board of Equalization hearings are contested adversarial proceedings in which the Appellant taxpayer and the Assessor choose the witnesses, who are subject to cross-examination by the other side. The procedure used in Sitka has been as follows:

- A. Appellant makes presentation, with each witness subject to cross-examination
- B. Assessor makes presentation, with each witness subject to cross-examination
- C. Appellant gives rebuttal of Assessor’s presentation (no new evidence)

- D. Assessor gives rebuttal of Appellant's presentation (no new evidence)
- E. Appellant makes closing argument
- F. Assessor makes closing argument
- G. Appellant makes rebuttal closing argument

3. The presiding officer of the Assembly presides over the Board of Equalization. The presiding officer exercises such control over the proceedings as is reasonable and necessary. One duty is to enforce **time limits**, which of course should be announced in advance.

4. Another duty of the presiding officer is to rule on the admissibility of evidence at the hearings. The Board of Equalization is not restricted to the formal rules of evidence used in court, but instead follows rules consistent with general rules of administrative procedure. The rules of evidence in Alaska's Administrative Procedure Act are attached.

5. **The taxing authority has broad discretion in deciding among recognized valuation methods.** The appeal from a determination by a Board of Equalization on an assessment is appealable to the Superior Court. The question for the courts in reviewing a determination on an assessment is "whether there is a reasonable basis for the taxing authority's method." If the court finds such a reasonable basis, to prevail in court the taxpayer must show fraud or the "clear adoption of a fundamentally wrong principle of valuation."

6. **At the Board of Equalization hearing, the burden of proof is on the Appellant.** The only grounds for adjustment of an assessment are "proof of unequal, excessive, improper, or under valuation based on **facts** that are stated in a valid written appeal or proven at the appeal hearing." The Assessor is presumed to have done his job and based it on the best information he can procure. Mathematical exactness is not required.

7. An Appellant appealing an assessment does not need to prove the correct amount, range, or method of valuation. However, the Appellant cannot just say the Assessor is wrong or be critical of the method used, they must present independent evidence themselves. If they manage to do so, the burden then shifts to the Assessor to introduce credible evidence which substantiates the assessment.

8. **The Board of Equalization needs to adopt written findings.** Findings to facilitate review by a court and assist the parties. **The findings should address the arguments made by the Appellant taxpayer and the Assessor, particularly those arguments made by the side that does not prevail. In your packet you will find the Assessor's suggested Findings of Fact.**

I will be present for the hearings, and I will work to assist the Board to prepare those written findings which could be voted on and adopted by the Board at such time as the Board may direct. The Board of Equalization shall certify its actions to the Assessor within seven days of the hearing.

9. If the Board chooses, the Board may deliberate in **executive session** to decide the property tax appeals it hears. AS 44.62.310(d)(1) (Open Meetings Act does not apply to a

governmental body performing a judicial or quasi-judicial function when holding a meeting solely to make a decision in an adjudicatory proceeding). Given that the Board's role resembles that of a panel of judges or a jury, there should be no one else present but members of the Board if the Board elects to deliberate in executive session. If the Board has questions regarding the applicable law, the Board could come out of executive session and request answers from the Attorney in open session.

10. The same members of the Board of Equalization must be in attendance throughout the hearing, and only those members who have been in attendance throughout the hearing may vote on matters before the Board.

RLK/slj

Attachment