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**MEMORANDUM**

**TO:** Annette Kreitzer  
**FROM:** Charles A. Cacciola  
**RE:** Redoing 2023 Assessments  
**DATE:** October 16, 2023

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Haines Borough sent 2023 property tax assessment notices, set a mill rate, and has conducted board of equalization appeals. The assessor and the board of equalization are presently working to resolve the remaining valuation appeals. You asked if the assembly can legislatively vacate the existing 2023 property tax assessments and restart the process.

The assembly may direct the assessor to undertake a systematic reevaluation of taxable property. However, a systematic reevaluation of taxable property does not require vacating existing 2023 assessments and our opinion is that the Haines Borough assembly cannot do so. Vacating the existing assessments could jeopardize the borough's ability to collect 2023 property taxes. An attempt to take this action is likely to result in litigation.

Should the assembly wish to direct the assessor to undertake a systematic reevaluation of taxable property with a view toward adjusting values, it should first devise a detailed plan for correcting assessments and the collateral effects of doing so.

Our view is that a late-in-the-game revisiting of assessments is not an effective means of addressing concerns regarding the 2023 assessment process. Concerns regarding perceived errors in individual assessments must be resolved through appeal to the board of equalization, and, if not satisfactorily addressed by the board, by appeal to the superior court. General public concern as to assessment methods and the integrity of the 2023 assessment process is best addressed by an audit of 2023 assessment procedure.

**A. The assembly can order a systematic reevaluation of taxable property. It cannot void existing assessments.**

An assembly or council legislating a do-over of a tax year appears to be unprecedented. We reviewed judicial decisions and other published materials at the Alaska Court System's law library and were unable to find an instance of an Alaska municipality taking such action. We also

inquired with the state assessor and several other municipal attorneys. None was aware of any municipality having taken action of this type. The lack of precedent highlights the extraordinary irregularity of such an action and also means there is little experience to draw from to determine how to accomplish it or what pitfalls may be lurking.

We recently opined that the likely intended purpose of AS 29.45.150 is to enable a municipality to systematically reevaluate a tax year's existing assessments when unusual circumstances require reexamination of the full and true value of taxable property.<sup>1</sup> Under a plausible alternative interpretation of AS 29.45.150, the statute refers to examining all taxable property on a multi-year cycle. If this latter interpretation is correct, AS 29.45.150 does not provide any basis for directing the assessor to revisit the 2023 assessments.

Assuming AS 29.45.150 does *not* refer to the process of examining all property on a multi-year cycle, the assembly may order a systematic reevaluation of taxable property when circumstances justify doing so. But it does not follow that AS 29.45.150 allows an assembly to abandon existing assessments.

Alaska Statute 29.45.150 certainly does not *require* a municipality to begin a systematic reevaluation by vacating the year's existing assessments. Whether doing so is *permissible* is less obvious. We conclude that AS 29.45.150 does not authorize an assembly to vacate or "throw out" existing assessments. This conclusion is based on our review of the statutory regime and judicial precedent, summarized below.

A municipal assessor is required to assess property at its full and true value as of January 1 of the assessment year.<sup>2</sup> The assessor must then mail a notice of assessment showing the assessed value of the property.<sup>3</sup> Property owners have 30 days to appeal the assessment to the board of equalization.<sup>4</sup>

"The board may alter an assessment of a lot *only* pursuant to an appeal filed as to the particular lot."<sup>5</sup> "The board of equalization shall certify its actions to the assessor within seven days. Except as to supplementary assessments, the assessor shall enter the changes and certify the final assessment roll by June 1."<sup>6</sup> "A municipality shall annually determine the rate of levy before June 15. By July 1 the tax collector shall mail tax statements setting out the levy, dates when taxes are payable and delinquent, and penalties and interest."<sup>7</sup> These statutes apply to all municipalities that levy property tax, including home rule municipalities.<sup>8</sup>

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<sup>1</sup> Memo re: 2023 Property Tax Assessment & AS 29.45.150 (October 5, 2023).

<sup>2</sup> AS 29.45.110(a); HBC 3.72.020.

<sup>3</sup> AS 29.45.170; HBC 3.72.080.

<sup>4</sup> AS 29.45.190; HBC 3.72.100.

<sup>5</sup> AS 29.45.200(b) (emphasis added); *see also* HBC 3.72.110.C.

<sup>6</sup> AS 29.45.210(c); HBC 3.12.120.D.

<sup>7</sup> AS 29.45.240(b)

<sup>8</sup> AS 29.10.200(50).

A systematic reevaluation of property could result in corrected notices.<sup>9</sup> It could result in a supplementary assessment roll.<sup>10</sup> It could result in pro rata adjustment to the full and true value of all taxable property.<sup>11</sup> But none of these require that systematic reevaluation begin by vacating the existing assessment. The term “reevaluation” suggests that values may *change* through the systematic process. This terminology does not suggest that the existing value is void, but that process could result in corrections or adjustments to existing values. In other words, AS 29.45.150 may authorize a process that *ends* with valuation changes but not one that *begins* with the municipality walking away from the existing values.

This interpretation of systematic reevaluation coheres with concepts that appear throughout AS Chapter 29.45. Numerous statutes speak to correcting errors and omissions and adjusting values.<sup>12</sup> Alaska Statute 29.45.230 even allows “reassessment” in specific circumstances. Conversely, no statute contemplates a wholesale “do over.” No obvious policy would be furthered by voiding or vacating existing valuations to conduct a systematic reevaluation and doing so would conflict with clear legislative policies furthered by the statutes.

Deadlines and finality are an essential feature of the assessment and taxation process. Once the assessor certifies the assessment roll and makes any corrections and amendments required by law, the certified roll is “valid and binding on all persons, notwithstanding any defect, error, omission or invalidity in the assessment roll or proceedings pertaining to the assessment roll.”<sup>13</sup> The only exception is amendment to conform to a successful appeal to the superior court.<sup>14</sup>

The statutory deadlines for assessment of taxes, setting of mill rate, and mailing tax statements are construed as directory.<sup>15</sup> A municipality’s failure to meet the deadlines does not automatically invalidate its decisions.<sup>16</sup> In the absence of strict compliance, a municipality must demonstrate substantial compliance with the requirements and purposes of the statute.<sup>17</sup> “Where the local government’s action fails to meet the substantial compliance test, however, prejudice to the taxpayer will be presumed and the tax or assessment will be overturned.”<sup>18</sup>

The Alaska Supreme Court’s precedent on substantial compliance also weighs against interpreting AS 29.45.150 to authorize an assembly to vacate assessments, at least insofar as doing so would result in the municipality failing to adhere to the statutory deadlines. The court suggested that substantial delays in complying with the deadlines may be justified where the

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<sup>9</sup> See AS 29.45.180.

<sup>10</sup> See AS 29.45.220.

<sup>11</sup> See *Bullock v. State*, 19 P. 3d 1209 (Alaska 2001).

<sup>12</sup> AS 29.45.180, AS 29.45.190; AS 29.45.210; AS 29.45.220.

<sup>13</sup> AS 29.45.290

<sup>14</sup> HBC 3.74.010.

<sup>15</sup> *City of Yakutat v. Ryman*, 654 P. 2d 785 (Alaska 1982).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*, at 791.

<sup>18</sup> *Id.*

municipality made significant efforts to comply but nevertheless had substantial delays.<sup>19</sup> A discretionary decision to abandon a completed or nearly completed process that results in significant delay in complying with the statutory deadlines is unlikely to be found to substantially comply with the statutory deadlines.

Based on the text of AS 29.45.150, its place in structure of Chapter 29.45, and the Alaska Supreme Court’s application of relevant statutes, we conclude that AS 29.45.150 does not authorize an assembly to vacate assessments. The statute specifies how an assembly may direct a systematic reevaluation of taxable property. But a systematic reevaluation does not enable a municipality to abandon existing assessments that the municipality is required by law to make.

**B. An assembly should not order a systematic reevaluation of taxable property without a definitive plan and timeline for that process. Adjustments or corrections from an untimely process may be void and present litigation risks.**

Alaska Statute 29.45.150 provides, in part, that a systematic reevaluation of all taxable property in the municipality be completed in the shortest period of time practicable, as fixed in the resolution or act.

There are two plausible interpretations of AS 29.45.150.<sup>20</sup> One interpretation is that the statute speaks to examining all taxable property on a cyclical basis rather than each tax year. The other interpretation is that the statute speaks to unusual circumstances where a municipality systematically revisits assessed values after initially determining the year’s property values.

Under the first interpretation, “the shortest period of time practicable” would refer to the number of years in the cycle and the assembly’s only task is to determine the least number of years that is practicable. Under the second interpretation, the assembly has a significantly more complex burden in determining “the shortest period of time practicable” for the systematic reevaluation.

The second interpretation of AS 29.45.150 is predicated upon “reevaluation” requiring an initial valuation as well as the principle that full and true value requires looking at the property’s value as of January 1 of the tax year independent of valuation in previous years.<sup>21</sup> Thus, a “systematic reevaluation” can occur only *after* there has been a systematic valuation. As a practical matter, the earliest an assembly would order a systematic reevaluation would likely be in late March or April, shortly before the May 1 deadline for mailing assessment notices. Under this interpretation of, AS 29.45.150, the systematic reevaluation is required to occur in “the shortest period of time practicable” because of the several statutory deadlines implicated by reevaluating values established for that tax year.

As explained above, the deadlines are considered “directory.” A municipality’s failure to strictly comply may be justified where the municipality sought to satisfy the purposes of the

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<sup>19</sup> *Id.*

<sup>20</sup> See Memo re: 2023 Property Tax Assessment & AS 29.45.150 (October 5, 2023).

<sup>21</sup> *Varilek v. Burke*, 254 P.3d 1068, 1073 (Alaska 2011) (AS 29.45.110(a) means that “[p]roperty assessments must take into account the current market value, rather than previous assessed values[.]”).

statute, but circumstances were such that strict compliance was not feasible. Under the second interpretation of AS 29.45.150, an assembly should carefully consider the timing of a systematic reevaluation before directing it. The need for and importance of a systematic reevaluation must be weighed against any delay in compliance with the statutory deadlines that will result from the a systematic reevaluation.

As explained above, our view is that an assembly may not resolve or ordain to abandon a year's assessments. A systematic reevaluation does not permit this. As long as the otherwise valid assessed values stand *until adjusted or corrected in accordance with the applicable statutes*, the risk that a systematic reevaluation invalidates the year's taxation is minimal. If the systematic reevaluation causes the municipality to not substantially comply with the statutory deadlines, the much more likely result is that the any adjustments resulting from the systematic reevaluation would be invalid.

Haines mailed 2023 assessment notices, has and is conducting board of equalization appeals, set mill rates, and mailed tax statements. Property tax is due on November 1.

Assuming a systematic reevaluation determines that the value of property or a class of property should be adjusted from the current assessed value, it is unclear what would follow. Assuming the borough could adjust assessed values (we note that AS 29.45.150 stands alone in using the term "reevaluation" in contradistinction to "reassessment")<sup>22</sup> based on a systematic reevaluation, it would presumably need to issue corrected notices of assessment and provide the opportunity for appeal.<sup>23</sup> The borough would not be able to set a new mill rate were a significant change in full and true value to result. With taxes due November 1, the borough would need to consider a process, as well as the fiscal implications, for tax refunds that could become necessary. Haines Borough Code Chapters 3.72 and 3.74 reflect a carefully constructed system for assessing and collecting taxes. The implications of an ad hoc restructuring of this system are far reaching. These implications should be considered before taking action to potentially revisit 2023 assessments.

Finally, there is a substantial risk of litigation should the assembly set out to revisit 2023 assessments, pursuant to AS 29.45.150 or otherwise. Any person owning taxable property in Haines could seek to enjoin this action. Given the unprecedented nature of a systematic revisiting of assessments on the eve of property tax becoming due, the uncertain legal authority for the borough to do so, and the significant consequences that could result, a temporary injunction is not implausible.

**C. Errors in individual assessments are addressed by appeals. Generalized concerns are best addressed by the state assessor auditing the process and the borough correcting major errors, if any, in the next tax year.**

Alaska's property tax statutes — and Haines's closely related ordinances — reflect decades of developments in property taxation procedure to provide a process that is efficient and fair to individual property owners and the public as a whole. Every person owning property or

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<sup>22</sup> See AS 29.45.230.

<sup>23</sup> See AS 29.45.180(b); AS 29.45.230(c).

receiving a notice of assessment has a right to appeal the assessment.<sup>24</sup> If the person is not satisfied with the board of equalization's decision, the person has the right to appeal to the superior court.<sup>25</sup> The rights to notice and appeal are essential for due process and fair treatment of taxpayers.

On the other hand, Alaska's property tax laws also reflect the tremendous importance of finality. The legislature made that clear with AS 29.45.290:

Certified assessment and tax rolls are valid and binding on all persons, *notwithstanding a defect, error, omission, or invalidity in the assessment rolls or proceedings pertaining to the assessment roll.*<sup>26</sup>

Alaska Statute Chapter 29.45 and Haines Borough Code Chapter 3.72 provide a thorough and public process for persons to seek redress for alleged errors in the assessment process. These rights are paired with a "speak now or forever hold your peace" approach to errors.

This legislative policy of finality in assessments extends to the authority of the state assessor. Even if the state assessor determines "that major errors have been found in [a municipality's] assessment, valuation, or taxation procedures," the state assessor cannot undo or revisit that year's assessment roll.<sup>27</sup> Rather, if the state assessor finds a major error, "the municipality shall correct its procedures before the beginning of the next fiscal year[.]"<sup>28</sup>

Haines property owners are aggrieved that the assessed value of their property increased. Assessed values increased because market values increased. The average sale price of single-family homes in Alaska increased over 18% in the past two years, by 8.7% in 2022 alone.<sup>29</sup> Haines Borough's property tax has not increased nearly as much, in part because the assembly set a lower mill rate because of the increase in full and true value. The FY 2024 budget is based on an increase of \$134,000, or 5%, in property tax revenue over the FY 2023 budget. Attempting a re-do of the assessment and appeal procedure would likely cost the borough as much or more than the \$134,000 by which property tax revenue is anticipated to increase as a result of higher property values.

Legislative policy of the state and of the borough is for errors in individual assessments to be addressed through the appeals process. Even the board of equalization is prohibited from adjusting an error in the valuation of a property absent an appeal of the assessment for that

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<sup>24</sup> AS 29.45.190(a); HBC 3.72.090.A.

<sup>25</sup> AS 29.45.210(d); HBC 3.72.0120.E.

<sup>26</sup> *See also* HBC 3.74.010 ("An assessment roll as completed and certified by the assessor and as corrected and amended by the assessor in conformity with this title and the decisions of the board of equalization is, except as amended as a result of an appeal to the court as provided by this title, valid and binding on all persons, notwithstanding any defect, error, omission or invalidity in the assessment roll or proceedings pertaining to the assessment roll.").

<sup>27</sup> AS 29.45.105(a).

<sup>28</sup> AS 29.45.105(a).

<sup>29</sup> Alaska Department of Labor & Workforce Development. Alaska Economic Trends, May 2023.

particular property.<sup>30</sup> Major or systemic errors are addressed by identifying the error and ensuring that it is not repeated the following year.

We are informed that the state assessor intends to review Haines Borough's 2023 property tax procedure owing to the number of inquiries made to his office regarding the 2023 assessments. The state assessor will report any major errors in the borough's valuation method or procedure. The assessor's reports are public records. If the assessor finds that there were no major errors, the public can be confident in the integrity of the 2023 assessments. Should the assessor find any major error, the borough is legally required to fix the problem for the next fiscal year. This is the procedure for addressing a general public concern that the borough's 2023 property tax assessments are improper, while instances of property-specific errors are addressed through the appeals process.

### CONCLUSION

Alaska Statute 29.45.150 allows the assembly to direct the assessor to undertake a systematic reevaluation of all taxable property, but the assembly cannot abandon the existing 2023 assessments. Concerns regarding 2023 property assessments are addressed through the appeal process. Concerns regarding the overall process are best addressed by the state assessor investigating the borough's processes and procedures and the borough fixing any errors identified by the state assessor.

Please let us know if you have any further questions regarding this matter.

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<sup>30</sup> AS 29.45.200(b); HBC 3.72.110.C.