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**MEMORANDUM**

**TO:** Annette Kreitzer  
**FROM:** Charles A. Cacciola   
**RE:** Information Disclosure for Assessment Appeals  
**DATE:** April 4, 2024

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Introduced Ordinance 24-02-668 would establish a procedure for the assessor and appellant to exchange information prior to the board of equalization hearing an assessment appeal. The assessor opined that the ordinance would shift the burden of proof from the appellant to the assessor. You asked whether the proposed ordinance is lawful and for identification of drafting and practical issues that the assembly may wish to consider.

This proposed ordinance is lawful. It does not conflict with AS 29.45.210(b) or the parallel HBC 3.72.10(B), which provide that the appellant has the burden of proof.

**A. Drafting Considerations**

The following are suggestions to improve Ordinance 24-02-668 without altering the intent or substance. These suggestions do not address the practical concerns presented by the ordinance, which are discussed further below.

1. *Deadlines.* It's unclear how the ten- and five-day deadlines in proposed HBC 3.72.105 (A) and (C) function as relates to mailing. We recommend that the ordinance specify that the deadlines are from the time information is received, not when it is mailed. A minor point, but the borough code generally uses "business days" not "working days" to establish deadlines.
2. *Notice of Information Availability.* Under the ordinance, the assessor is required to make information available at least ten days before the board of equalization hearing. The assessor can satisfy that requirement by putting the information on the borough website. Together, these provisions render email or mail notification of availability of the information superfluous. We recommend that (B) be deleted and (A) restated as:

“Information to be presented by the assessor to the board of equalization shall be available on the borough’s website not less than ten business days before the scheduled date of the appeal hearing.” The appellant can retrieve the information from the website, knowing when it will be available. No additional notice is necessary. Requiring additional notice imposes an unnecessary burden on the borough administration and is a potential ground for error.

3. *Information.* “Information” should be defined. The board of equalization has historically allowed oral statements of fact during arguments on assessment appeals. Based on that practice, we assume that the intent of this ordinance is to require disclosure of documents, photos, sales data, appraisals and other such material that the party will rely upon and that it is *not* intended to require disclosure of “testimony” and argument to be presented to the board. If this is the intent, we recommend adding a new subsection that reads: “For the purpose of this section, “information” consists of documents, photographs, and other recorded or printed materials.”
4. *Use of Undisclosed Information.* It appears the intent of the ordinance is to preclude the parties from presenting to the board information that was *not* disclosed in accordance with (A) and (C). However, this is not explicit. If this is the intent, it should be stated in the code that information presented to the board of equalization shall be limited to information disclosed in accordance with HBC 3.72.105. Additionally, the current subsection (D) specifies that the appellant and assessor may continue to exchange information. It is unclear if this later-exchanged information may also be presented to the board. The ordinance should be revised to clarify these issues.
5. *Resolution by Agreement.* We recommend that (D) be revised to read: “Nothing in this section shall preclude the assessor and appellant from conferring to resolve an alleged error in an assessment prior to the board of equalization hearing the appeal.”

## **B. The Ordinance in Practice**

While the proposed ordinance does not shift the burden of proof from the appellant to the assessor in contravention of AS 29.45.210(b) and HBC 3.72.10(B), the assessor’s concern is understandable. In short, this proposed procedure has the appellant responding to the appellee, not the other way around. The appellant still has the burden of proof legally, but less so in practice.

The proposed procedure prevents the assessor from effectively responding to the appellant’s facts and arguments. In judicial and quasi-judicial appeals, and in argument and debate generally, the party with the burden presents their position first and the other party then presents rebuttal to show that the burden has not been satisfied. For assessment appeals to the board of equalization, the appellant first argues that the valuation is unequal, excessive, or improper. Then the assessor responds to the facts and arguments presented by the appellant.

Exchange of information to be used as in support of an appellant's position and of the assessor's rebuttal should generally follow the same sequence: The party with the burden provides the information intended to satisfy the burden and the other party then discloses rebuttal information.

Requiring the responding party (here, the assessor) to disclose information to be used for rebuttal without first knowing what needs to be rebutted does not make sense and stymies effective rebuttal. Say an appellant provides the board of equalization with two comparable sales, one for \$300,000 and another for \$325,000 to show that the assessor's \$500,000 value is excessive. However, the seller of the first comp was the buyer's parent (at a non-market in light of the familial relationship) and the second comp was the sale of a home with extensive lead paint and asbestos. If the appellant does not present these facts (which the appellant may not be aware of), the assessor cannot demonstrate that the first sale is not indicative of market value and the second sale is not of comparable property.

Property owners may view information disclosure by the appellant followed by information disclosure by the assessor as simply putting the appellant in the same disadvantageous position that the assessor would be in as described above. (And if one party must shoulder this disadvantage, why not the subject matter expert?) However, this view doesn't consider the burden of proof. The situation is not that either the assessor or appellant must guess at what will need to be rebutted because the law imposes the burden of proof on the appellant. It is the assessor who responds to the appellant, not the other way around.

An appellant needs a summary of the property information that the assessor relied upon for the assessment to make an informed decision as to assessment error. For each assessed property, Haines Borough has a property card that contains this information. An example of such a property card is attached.<sup>1</sup> Property cards are public records open to inspection. Some municipalities have this information available on their websites as part of a searchable database and/or accessible by a link in the GIS parcel viewer.

Ideally, a property owner should obtain the property card information *before* appealing an assessment because the information obtained in the card is often necessary for an owner to determine if there is an error in the assessment. Property card information is information that a property owner should certainly have and review before gathering and disclosing information to be used in support of proving an error. This information enables the appellant to specifically identify the alleged error and provide information that supports a specific alleged error.

As noted, property cards are public records. Any person, including a property owner, is entitled to request or inspect a property card. However, having every property owner who believes there may be an error in an assessment request a copy or inspection of a property card imposes an unnecessary burden on property owners and borough staff. Mailing a copy of a

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<sup>1</sup> Although this property card, like all property cards, is a public record that any person may request or inspect, we have nevertheless redacted the name of the owner and address.

property card with each assessment notice is at least as inefficient. In our experience, the best practice is for property card information to be available on the municipality's website.

With the benefit of the property card information, a property owner can make an informed decision to accept an assessment or appeal based on an alleged error. In addition to enabling an owner to identify erroneous facts assumed by the assessor, simplified public access to property cards better enables a property owner to determine if property has been assessed unequally. Should the owner decide to appeal, the owner can gather, and then disclose, information that supports the owner's allegation of error that the owner will present to the board of equalization to prove error. The assessor can subsequently provide the appellant with the assessor's rebuttal information.

The proposed ordinance incentivizes a significant increase in the work burden on the assessor (and thus on the borough's finances), on the appellant, and on the board of equalization. Without knowing what information the assessor will need to respond to or rebut, the assessor's rational action is to provide a massive information dump – everything the assessor thinks could possibly be relevant in responding to the appellant – for every appeal. The assessor is incentivized to submit *all* available information on *all* potentially similar properties, assessment history, and professional resources and methodologies. This could be hundreds, if not thousands, of pages for each appeal. The *appellant* will then need to wade through voluminous information, most of which will be irrelevant to the appeal. If the appeal is not resolved and is heard by the board of equalization, the board will also have before it a tremendous volume of information that it will need to consider. On the other hand, if the assessor knows what information needs to be responded to, the assessor can tailor rebuttal information to information that actually responds to the appellant's position rather than providing a document dump.

Moreover, having the appellant's information disclosure occur first eliminates appeals where the assessor concludes that the appellant is correct. Errors are often obvious to the owner and easily proven. If an assessment is based on a 2,800 sq. ft. home and the appellant shows that it's actually 1,800 sq. ft., the assessor can correct the error without preparing extensive information for a moot appeal.

Finally, the assessor's concerns with adopting this ordinance about a month before board of equalization hearings is understandable. Public comment at the March 26, 2024 assembly meeting included expressions of frustration with perceived delay and that action needed to be taken lest potential code changes drag on. The assessor's concerns and those expressed during public comment can be reconciled by adopting an ordinance with an effective date following completion of 2024 appeal hearings (*e.g.*, July 1, 2024). This would enable immediate legislative action without altering the 2024 appeal process mid-stream.

In summary, our view is that sequence of information disclosure should consist of:

1. Online access to property card information, which allows the owner to make an informed decision as to assessment error.

2. Disclosure by the appellant of documents and other media that the appellant intends to present to the board of equalization in support of an allegation of error.
3. Disclosure by the assessor of documents and other media that the assessor intends to present to in response or rebuttal to the appellant's position and information.

### **CONCLUSION**

Introduced Ordinance 24-02-668 is lawful, legally enforceable legislation. Clarity of the proposed legislation can be improved while retaining the intent. However, the intent of the ordinance, even following clarification, poses challenges to effective and efficient resolution of assessment appeals.

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



SKETCH/AREA TABLE ADDENDUM

Parcel No: 3-EMR-00-0900

City: HAINES AK

Area: 4.5 AC

Use: R-Residential

Property: SFR

Service Area: FD3

Net Livable Area: 2,016 SF

Year Built: 1993

Effective Age: 20

Taxable Interest: Fee Simple

Zone: General

CURRENT OWNER

HAINES AK 99827

Property Identification

Parcel # **3-EMR-00-0900** Use **R-Residential**

City Number  Property **SFR**

Service Area **FD3**

Property Information

Improvement Size **2,016 SF** Year Built **1993 Estimated** Land Size **4.5 AC**

Basement Size  Effective Age **20** Zone **General**

Garage Size  Taxable Interest **Fee Simple**

Legal Description

Plat #  Lot # **9** Block  Tract  Doc #  Rec. District **106-HAINES**

Describe **EMERSON SUB, LOT 9** Date recorded

PROPERTY HISTORY

Year	Taxable Interest	Land	Improvement	Assessed Value	Exempt Value	Taxable Value	Trending
2024	Fee Simple	\$71,700	\$182,600	\$254,300	\$0	\$254,300	
2023	Fee Simple	\$71,700	\$112,400	\$184,100	\$0	\$184,100	
2022	Fee Simple	\$58,000	\$94,700	\$152,700	\$0	\$152,700	
2021	Fee Simple	\$58,000	\$52,400	\$110,400	\$0	\$110,400	

NOTES

% comp updated 08/09/2021. DMO  
Updated % complete 4/7/2022 DML



**LAND DETAIL**

Market Neighborhood **1106** Site Area **4.5** **A** Topo **STEEP** Vegetation **Brushy**

Access **PUBLIC ROAD** Frontage **Ft** View **NEUTRAL** Soil **Buildable**

Utilities  Typical  Water  Sewer  Telephone  Electric LQC

Comments

**SITE IMPROVEMENTS**

Site Improvements  Total

Description	Area	Unit Value	Adj.	Value	Comments
	4.5	AC x \$15,933.33		\$71,700	No changes noted. Land Values were imported from the 2023 Certified Roll Spreadsheet. Imported Assessed value was \$71700. Rounding discrepancies may occur
		AC x		=	
		AC x		=	
		AC x		=	
		AC x		=	
<b>Total</b>	<b>4.5</b>	<b>AC</b> Fee Value:		<b>\$71,700</b>	

**SUMMARY FEE SIMPLE VALUATION**

Inspected By **Scott Hansen** Date Inspected **2/24/2021** Valued By **Dean Olsen** Date Valued **8/9/2021**

VALUATION CHECK	FEE VALUE SUMMARY
The Total Fee Value <b>\$254,300/2,016 SF Indicates \$126.14 Value/SF GBA</b>	<b>Total Residential \$182,600</b>
Income Value =                      NOI Ratio                      = NOI                      /                      =	<b>Total Commercial</b>
Comments <input type="text"/>	<b>Other Improvements</b>
	<b>Total Improvements \$182,600</b>
	<b>Land &amp; Site imp \$71,700</b>
	<b>Total Property Value \$254,300</b>



RESIDENTIAL

Description **Main House** Property Type **SFR** Design **1.5** Bedrooms **4**  
 Quality **Q5 - Fair** Plumbing Fixture Count **Fixtures -** Energy Efficiency **Typical** Bathrooms **1**  
 Total Rooms **8**

Roof  Typical  Comp  Metal  Wood shingles  Other  
 Exterior  Typical  Wood  Metal  Cement Fiber  Log  Vinyl  Other  
 Foundation  Typical  Concrete Perim  Slab  Piling  Other  
 Heat Fuel  Typical  Oil  Electric  Wood  Other  
 Heat Type  Typical  BB  Space Heater  Radiant  Forced Air  Heat Pump  Other  
 Interior  Typical  Sheetrock  Plywood  Panel WD  Other  
 Floor  Typical  Slab  Plywood  Carpet  Vinyl  Wood - Laminate  Other

Year Built **1993** Estimate  
 Effective age **20**  
 Total Life **55**  
 Condition **C4 -**  
 Effective age Status **Not**

Extra Lump Sums Total  
 Porches, Deck 312SF \$5,248 Total **\$5,935**

Garage

Built-in  SF Basement Garage  SF Attached  SF Detached  SF Carport  SF Finished  SF  
 Comments

Basement

Size Finished Size Describe

Description	Status	Area	Base Value	Factor	Unit Value	RCN	% Good	Net Value
1.5 Unfin. Hous	Unfinishe	2,016	SF \$83.92	1.45	\$121.68	\$245,315	72%	\$176,627
			SF		\$0.00	\$0		
			SF		\$0.00	\$0		
			SF		\$0.00	\$0		
			SF		\$0.00	\$0		

Additional Adjustment

Lump Sum Total

\$5,935

Main House **Total**

**\$182,600**

Comment

