

5.12.060. - Board of equalization procedure.

- A. All appeals must be heard and decided before June 1, unless the board finds a hearing after this date will not prejudice the appellant and the delay is administratively justified or the appellant has requested a later hearing date. The board must also find that the proposed hearing date will enable the assessor to substantially comply with the requirement that the assessment roll be certified by June 1. The meetings of the board may be scheduled either on weekends, during business hours, or during evening hours. In no event may an appeal hearing begin after midnight.
- B. A quorum of the board must be present in order for the board of equalization to convene and take action. Actions of the board shall be by the majority of members present. A quorum consists of three members. The presiding officer shall select the alternate member to fill a vacancy or substitute in the absence of a regular board member. If membership of the board changes while an appeal is pending the new member may participate only by making an oral or written statement on the record that the member has reviewed the record and proceedings thus far and feels qualified to render an informed and impartial decision.
- C. The chairperson shall preside over the board hearing. In the absence of the chairperson, the vice-chairperson shall preside. If both are absent, the members present shall select a person to preside. The borough clerk shall attend the hearings to record the proceedings, record votes, and administer the oaths to witnesses. The borough attorney or designee shall attend the hearing to advise the board.
- D. The presiding officer shall open the board session by calling the board to order and by calling each appellant's name and asking if the appellant or representative is present. The presiding officer shall bring each appeal before the board in the order scheduled by the borough clerk.  
*Agenda.* Each appeal shall be conducted in the following order:
  - 1. Summary of Assessment Data (read into the record by the presiding officer);
  - 2. Appellant's Opening Presentation;
  - 3. Assessor's Opening Presentation;
  - 4. Rebuttal by the Appellant;
  - 5. Rebuttal and closing by the Assessor;
  - 6. Sur-Rebuttal and closing by the Appellant.
- E. If the appellant or representative is not present when called, the board shall consider any written presentation, evidence, and documents presented to it pursuant to [KPB 5.12.055](#) and thereafter proceed according to the remaining applicable provisions of this chapter.
- F. All persons presenting evidence shall do so under oath, administered by the borough clerk.

- G. 1. *Hearing:* The hearing shall be conducted informally with respect to the introduction of evidence. Irrelevant evidence may be excluded by the presiding officer. Each side shall have a total of no more than 15 minutes to present their case. Each side shall be responsible for dividing their 15 minutes between oral presentation, argument, testimony (including witness testimony), and rebuttal. The board may expand or limit the length of the hearing depending on its complexity, or take other action to expedite the proceedings. Cross-examination will not be permitted during presentation of the case. If a witness testifies during presentation of either the appellant's or the assessor's case, unless excused by the board with the concurrence of the appellant and the assessor, the witness must remain available in the assembly room to be called to testify during rebuttal by the appellant and the assessor.
2. *Exhibits:* The only exhibits that shall be admitted into the record at the hearing are those exhibits provided to the clerk in accordance with KPB 5.12.055 B through KPB 5.12.055 D. However, at the hearing, parties may use demonstrative or illustrative exhibits, provided that all such exhibits may only be duplicates of exhibits or information provided to the board in accordance with KPB 5.12.055 B through KPB 5.12.055 D. Additionally, witnesses may write on a board while orally testifying to illustrate their testimony. The limitation on the use of exhibits in this section shall not preclude the parties from presenting oral testimony at the hearing.
3. *Failure to respond to requests:* Failure to timely provide information requested pursuant to these rules without good cause shown shall, upon notice from the requesting party to the clerk and the other party, prevent the party failing to provide the information from including such information in the written evidence or using such evidence at the hearing. Before a ruling is issued on this matter, the party failing to provide the requested information shall be provided with a reasonable opportunity by the board chair to present its case as to why this sanction should not be imposed, and the opposing party shall have a reasonable opportunity to respond.
- H. The presiding officer shall first present a brief, factual summary of assessment data concerning the appealed property. This summary is not charged against the time allowed the assessor to present his or her case.
- I. The appellant or representative then presents the appellant's case when called by the presiding officer. At this time the appellant may call the assessor or appropriate appraiser or any other witnesses the appellant intends to present as a witness at this time. The scope of direct questioning is limited to the issues in dispute. Should the appellant wish, and prior to beginning the presentation, a portion of the 15 minutes allowed may be reserved for rebuttal, sur-rebuttal, and closing arguments. At the conclusion of the appellant's presentation, board

members may question the appellant or their witnesses.

- J. The assessor or designee then presents the borough's case when called by the presiding officer. At this time the assessor may call the appellant or any other witnesses the assessor intends to present as a witness. The scope of direct questioning is limited to the issues in dispute. Should the assessor wish, and prior to beginning the presentation, a portion of the 15 minutes allowed may be reserved for rebuttal, and/or closing argument. At the conclusion of the assessor's presentation, board members may ask questions of the assessor or their witnesses.
- K. The time required to answer questions from the board shall not be charged against either party.
- L. If the appellant or the assessor has reserved a portion of their 15 minutes, each may then present rebuttal evidence, with the appellant proceeding first. The appellant and assessor may call and cross-examine each other's witnesses during rebuttal. The scope of cross-examination is limited to the issues raised in direct questioning.
- M. The assessor may recommend changes to the existing value during the hearing.
- N. After the appellant and assessor have presented their cases, the hearing shall be closed by the presiding officer, and no further evidence shall be offered or considered in deliberations unless a member of the board of equalization asks for additional information from either party. Both parties shall be given an equal opportunity to respond to any such requests for additional information.
- O. The board may decide the appeal after the presentations, or it may defer a decision until no later than the last hearing date. The board may move to go into an adjudicative session for purposes of making a decision. Final board action shall be taken by motions, after reconvening in public, that set out specific findings of fact, and shall not be reconsidered, amended or rescinded by the board. The motions available to the board are: motion to uphold the assessor's valuation, motion to reduce the assessment, motion to increase the assessment, motion to dismiss the appeal, motion to defer the decision, or any other motion set out in Alaska statutes and regulations governing board of equalization appeals. Only one motion may be on the floor at a time, and the board shall vote on the motions until its findings are established. The vote must be taken and entered into the permanent record of the proceedings.
- P. The burden of proof is on the appellant. The only grounds for the board to adjust the assessment are proof of unequal, excessive, improper, or under valuation, based on facts proven at the appeal hearing. The board may not alter the assessment of a property unless a timely written appeal has been filed concerning the property. If an appellant has refused or failed to provide the assessor or the assessor's agent full access to property or records related

to assessment of the property, upon notice from the assessor to the appellant and the clerk, the appellant shall be precluded from offering evidence on the issue or issues affected by that lack of access. Before a ruling is issued on the admissibility of such evidence, the appellant shall be provided with a reasonable opportunity by the presiding officer to present its case as to why this sanction should not be imposed, and the assessor shall have a reasonable opportunity to respond.

- Q. After the last scheduled appeal is heard, the presiding officer shall adjourn the session.
- R. The attorney for the board shall prepare the board's decisions. The borough clerk shall certify the decisions of the board, and shall keep the decisions on file as part of the public record. The clerk shall promptly mail a copy of the board's decision to each appellant, by certified mail, and deliver a copy to the borough assessor.
- S. Either the appellant or the assessor may appeal the decision of the board to the superior court in the Kenai venue district, within 30 days of the date of mailing of the board's decision, as provided by the rules of appellate procedure governing appeals from administrative agency decisions. The record on appeal is the record established at the board hearing.
- T. All parties or their agents and witnesses must appear in person at the BOE hearing unless good cause, such as a serious medical condition that prevents travel, or where the reasonable travel expenses clearly outweigh the potential benefit of the appeal is shown. Telephonic participation may be denied if it would cause substantial prejudice to the other party. Any request for telephonic participation must be received by the borough clerk at 144 North Binkley Street, Soldotna, Alaska, no later than 15 days before the hearing, unless good cause is shown for filing a late request. Good cause for filing a later request may include a serious medical condition, a serious family emergency requiring the presence of the party, a death in the family, or other similar serious condition or event that either prevented the party from filing a timely request for telephonic participation or that arose after the deadline for filing the request. If telephonic participation is approved, then the party requesting telephonic participation shall be responsible for arranging the telephone call and for payment of associated telephone charges. The chair of the board of equalization is given the discretion to determine whether to grant a request for telephonic participation.

(Ord. No. 2016-28, § 4, 8-23-16; Ord. No. 2005-29, § 3, 8-2-05; Ord. No. 2005-32, § 1, 8-16-05; Ord. No. 2004-05(Sub.), §§ 2—5, 9-7-04; Ord. No. 2000-49, §§ 5, 6, 12-12-00; Ord. No. 2000-05, § 4, 2-15-00; Ord. No. 98-21, § 1, 7-14-98; Ord. No. 95-03, § 2, 1995; Ord. No. 94-45, § 1, 1994; Ord. No. 90-12, § 1(part), 1990)