

# **BOARD OF PROPERTY TAX REVIEW**

## **DIGEST OF BOARD DECISIONS**

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## **LIST OF CASES**

### I. Assessment/Valuation Cases

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*Great Cove Boat Club, Inc. v. Town of Eliot*, Nos. 91-01 & 91-21  
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*Great Cove Boat Club, Inc. v. Town of Eliot*, No. 91-01 (Mar. 3, 1993)  
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*aff'd*, CV-93-700 (Super. Ct., York Cty. Aug. 1, 1995)

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- BOC Group, Inc. v. Town of Kittery*, No. 99-029 (Dec. 7, 2000)
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- Dirigo Dowels & Pins, Inc. v. Town of New Portland*, No. 2000-007 (Apr. 11, 2002)
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- PPL Maine, LLC v. Town of Milford and PPL Maine, LLC v. City of Old Town*, Nos. 2008-013 & -029 (Sept. 30, 2010), *aff'd*, AP-10-56 (Super. Ct., Ken. Cty. Feb. 8, 2012)
- Caleb Affordable Housing Associates, L.P. v. City of Saco*, Nos. 2008-021—024, and *Falls Development Associates, L.P. v. City of Saco*, No. 2008-026 (Sept. 19, 2011)(order on motion to deny pending appeals)
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- Boralex Sherman, LLC v. Town of Stacyville*, Nos. 2009-007 & 2010-002-A (July 25, 2011)
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*GGP-Maine Mall, LLC v. City of South Portland*, Nos. 2011-022 – -030 (Apr. 26, 2013)(*Maine Mall II*)

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*Down East Hospitality Partners, LLC v. Town of Lincolnville*, No. 2012-010  
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*MHC Narrows Too, LLC v. Town of Trenton*, No. 2012-013 (Dec.10, 2013)

*LaBoca Corp. v. Town of Falmouth*, No. 2012-027 (May 12, 2014)

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*Dexter Shoe Co. v. Town of Dexter*, No. 2015-008 (Nov. 6, 2015)(order on  
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*Emera Maine v. Town of Eddington*, No. 2015-010, and *Emera Maine v. Town  
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*Soil Preparation, Inc. v. Town of Plymouth*, Nos. 2015-015, -016, -017  
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*Louisiana-Pacific Corp. v. Town of New Limerick*, No. 2016-012 (Apr. 23, 2019)  
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*395 Bangor Brewer, LLC v. City of Brewer*, No. 2017-005 (Feb. 15, 2018)  
*Somerset Acquisitions, LLC v. Town of Madison*, No. 2017-008 (Apr. 16, 2018)

*Wal-Mart Real Estate Business Trust v. City of Ellsworth*, No. 2019-001  
(Jan. 29, 2020)(decision on jurisdiction)

## II. Exemption From Taxation Cases

### **Public Property (36 M.R.S. § 651)**

*Madison and Anson Water District v. Town of Embden*, No. 96-036  
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713 A.2d 328

*Town of Standish v. State of Maine, Bureau of Revenue Services*, No. 99-031  
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### **Institutions and Organizations (36 M.R.S. § 652)**

*New Marblehead North Housing Corp. v. Taylor*, No. 90-10 (June 12, 1991)  
*Finance Authority of Maine v. City of Caribou*, No. 90-36 (Feb. 12, 1996),  
*aff'd*, 1997 ME 95, 694 A.2d 913

*The Salvation Army v. City of Lewiston*, No. 91-29 (Apr. 16, 1992)(Case I),  
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Court), *aff'd*, CV-93-393 (Super. Ct., And. Cty. June 24, 1994); *see*  
*later case*, 1998 ME 98, 710 A.2d 914

*Marcotte Congregate Housing, Inc. v. City of Lewiston*, Nos. 93-23 & 93-24  
(June 2, 1994), *aff'd*, 673 A.2d 209 (Me. 1996)

*Marcotte Congregate Housing, Inc. v. City of Lewiston*, Nos. 94-16, 94-17,  
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*Big Lake Camp Meeting Ass'n v. Bureau of Taxation*, No. 95-013 (Oct. 24, 1995)  
*The Salvation Army v. City of Lewiston*, No. 95-119 (Jan. 26, 1995)  
*Marcotte Congregate Housing, Inc. v. City of Lewiston*, Nos. 95-147 &  
95-148 (Feb. 23, 1996)

*The Salvation Army v. City of Lewiston*, No. 96-031 (Sept. 14, 1996)

*Gregory v. MMC Realty Corp. & Maine Medical Center*, No. 2000-001  
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*Francis Small Heritage Trust, Inc. v. Town of Limington*, Nos. 2009-032 &  
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## III. Classified Use Property Cases

### **Tree Growth Tax Law (36 M.R.S. §§ 571-584-A)**

*Reynolds v. Town of Fairfield*, No. 86-01 (Dec. 31, 1986)

*Hornberger v. Town of Bremen*, No. 86-02 (Dec. 1, 1987)

*Pisano v. Town of Surry*, No. 87-14 (June 17, 1987)

*Hope v. Town of Bristol*, No. 87-16 (June 21, 1989)

*Hudson Pulp & Paper Corp. v. Town of Centerville*, No. 88-02  
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*Lord v. Town of Fayette*, No. 89-15 (Apr. 4, 1994)

*Gottschalk v. Town of Brooklin*, No. 90-30 (Feb. 12, 1996)

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*Filaroska v. Town of Vienna*, No. 90-44 (Oct. 25, 1991)

*Hardison v. Town of Waltham*, No. 91-16 (Oct. 25, 1991)

*Russell v. Town of Fryeburg* No. 91-33 (Apr. 5, 1994)

*Edward C. and Cynthia M. Hunt v. Town of Phippsburg*, No. 91-41  
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*Kenneth and Julie Hunt v. Town of Phippsburg*, No. 91-42 (Sept. 14, 1992)

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*Ferguson v. Town of Otisfield*, No. 91-66 (Apr. 5, 1994)  
*Gray v. Town of Blue Hill*, No. 91-92 (Apr. 5, 1994)  
*Coulter v. Town of Oxford*, No. 91-95 (May 14, 1992)

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*Anzivino v. Town of Beddington*, No. 92-33 (Apr. 19, 1994)

*Damian v. Town of Newcastle*, No. 93-01 (Apr. 19, 1994)  
*Winslow v. Town of Falmouth*, No. 93-36 (Apr. 4, 1995)  
*Everett v. Town of Waterford*, No. 93-136 (May 30, 1995)

*Dale Henderson Logging, Inc. v. City of Old Town*, No. 94-05  
 (Sept. 20, 1995)  
*Estate of Perkins v. Town of Castine*, No. 94-47 (Aug. 14, 1995)

*Brower, Denis & Powers v. Town of Starks*, No. 95-007 (June 12, 1995)

*Bone v. Bureau of Taxation*, No. 96-005 (July 3, 1996)  
*McGhee v. Town of Maxfield*, No. 96-044 (Mar. 11, 1997)  
*Blanch v. Town of Lubec*, No. 96-048 (Feb. 28, 1997)

*Welch v. Town of Wells*, No. 97-001 (Feb. 28, 1997)  
*Roderick v. Town of Crystal*, No. 97-103 (Nov. 14, 2000)

*Crosby v. Town of Belgrade*, No. 98-022 (Oct. 9, 1998)

*Page v. Town of Damariscotta*, No. 99-014 (June 4, 1999)

*Pachowsky v. Town of Clinton*, No. 2001-005 (Feb. 19, 2002)

*Davis v. Town of Lamoine*, No. 2002-003 (Mar. 10, 2003)  
*Fasse v. Town of St. Albans & Town of Ripley*, No. 2002-005  
 (Oct. 23, 2002)  
*Demaris v. Town of Bradford*, No. 2002-008 (May 17, 2003)

*Fowler v. Town of Lubec*, No. 2004-002 (Dec. 21, 2005); *see also* panel  
 chair's post-hearing stay order, Feb. 17, 2006, *vacated and remanded*,  
 AP-06-16 (Super. Ct., Ken. Cty. Sept. 25, 2007)

*Richmond v. Town of Moscow*, No. 2004-004 (Nov. 13, 2005)  
*Curtis v. Town of Sherman*, No. 2004-005 (Jan. 19, 2005)(order on  
 jurisdiction)

*Zorn v. Town of Lubec*, No. 2004-007 (Sept. 21, 2005)

*Gray v. Town of Sedgwick*, No. 2005-005 (Aug. 23, 2006)

*KeyBank National Ass'n v. Town of Phippsburg*, No. 2006-002  
(Dec. 11, 2006)

*Campbell v. Town of Brownville*, No. 2006-003 (Sept. 15, 2006)

*Pierce v. Maine Revenue Services*, No. 2006-007 (Feb. 13, 2007)

*Kendall v. Town of Perry*, No. 2008-004 (Dec. 30, 2008)

*Dale Henderson Logging, Inc. v. Town of Steuben*, No. 2008-016  
(Sept. 1, 2009)

*Rum Cove, LLC v. Town of Westport Island*, No. 2008-032 (Jan. 23, 2012)

*Davis v. Town of Lamoine* and *Maine Coast Baptist Church v. Town of Lamoine*, Nos. 2009-001 & -002 (Mar. 14, 2010)

*Bayroot, LLC v. Highland Plantation*, Nos. 2009-004, -005 & -033  
(Apr. 29, 2010)

*Harold MacQuinn, Inc. v. Town of Hancock*, No. 2009-014 (May 23, 2011)  
(in part), *aff'd*, AP-11-05 (Super. Ct., Han. Cty. Dec. 17, 2012)

*Hunt, Trustee, Hunt Family Irrevocable Trust v. Maine Revenue Services*,  
Nos. 2009-020 & -021 (Dec. 20, 2011)

*Brown v. Town of Bucksport*, No. 2009-031 (Feb. 19, 2010)(order on  
motion to dismiss), decision by Board, Jan. 30, 2012

*Francis Small Heritage Trust, Inc. v. Town of Limington*, Nos. 2009-032 &  
2010-016 (Aug. 22, 2012)(also open space), *vacated*, 2014 ME 102,  
98 A.3d 1012

*McLaughlin v. Town of Dexter*, 2010-001 (Apr. 29, 2012)

*Prentiss & Carlisle Management Co., Inc. v. Town of Merrill and Town of Smyrna*, Nos. 2010-007 & 2010-006 (Aug. 4, 2011)(*Prentiss & Carlisle I*)

*Smith v. Town of Livermore Falls*, No. 2010-008 (Sept. 29, 2010)(order on  
jurisdiction)

*See Old Point, Inc. v. Town of Lamoine*, Nos. 2010-009 & 2011-016  
(Apr. 9, 2012), *aff'd*, AP-2012-16 (Super. Ct., Ken. Cty. Oct. 12, 2013)

*Haggard v. Town of Swan's Island*, No. 2010-012 (June 19, 2012)

*McClure v. Town of Lubec*, No. 2010-013 (June 8, 2012)

*Cyr Family Ltd. Partnership v. Town of Wade*. No. 2011-010 (June 28, 2012)

*Gerrity Family Ltd. Partnership v. Town of East Machias*, No. 2011-036

(July 30, 2012)(order on motion to dismiss); Nos. 2011-036 & 2013-011  
(August 8, 2013)(consolidated decision)

*See Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2013-026

(July 2, 2014)(*Greenleaf Cove II*)

*Peckham & Trott v. Town of Lake View Plantation*, No. 2014-003

(Oct. 24, 2014)(dismissal order)

*Day v. Town of Madison*, No. 2014-006 (Nov. 12, 2014)

*Prentiss & Carlisle Management Co., Inc. v. Town of Smyrna*, No. 2015-001 (Aug. 18, 2015)(*Prentiss & Carlisle I*)(order on motion to dismiss)

*Prentiss & Carlisle Management Co., Inc. v. Town of Smyrna and Town of Merrill*, Nos. 2015-001 & -002 (Feb. 8, 2016)(*Prentiss & Carlisle II*)

*Pulpit Trust v. Town of North Haven*, No. 2019-013 (Nov. 19, 2019)  
(dismissal order)

**Farmland and Open Space (36 M.R.S. §§ 1101-1121)**

*Mary R. Schellens & Co. v. Town of St. George*, No. 87-01 (Nov. 17, 1987)

*Heirs of Fogg v. Town of Readfield*, No. 89-07 (Apr. 5, 1990)

*Sirois v. Town of Lebanon*, No. 89-08 (Feb. 20, 1990)

*Wentworth and Goodyear v. Town of Lebanon*, No. 90-13 (Apr. 25, 1991)

*Greaves v. Town of Phippsburg*, No. 90-15 (May 21, 1994)

*Rice v. City of Belfast*, No. 91-14 (Nov. 19, 1991)

*Bryant v. City of Belfast*, No. 91-17 (Nov. 19, 1991)

*Gile v. Town of Lebanon*, No. 91-32 (May 11, 1995)

*Gleason v. Town of Southport*, No. 91-43 (Apr. 16, 1992)

*Wellin v. Town of Friendship*, No. 91-51 (Nov. 3, 1992)

*Chatfield v. Town of Rockport*, No. 91-56 (Apr. 21, 1995)

*Filaroska v. Town of Dresden*, No. 91-88 (Nov. 13, 1992)

*Harbor Island Trust v. Town of Friendship*, No. 91-93 (Dec. 1, 1992)

*Nargesian v. Town of Northport*, No. 91-97 (Nov. 8, 1993)

*Lockabaugh v. Town of Lubec*, No. 92-12 (Dec. 1, 1992)

*Needham v. Town of Brooklin*, No. 92-17 (Apr. 3, 1993)

*Wesson v. Town of Bremen*, No. 92-52 (Dec. 2, 1992)

*Tidebrook Conservation Trust v. Town of Freeport*, No. 93-52 (Apr. 24, 1995)(Decision I), and (Aug. 4, 1995)(Decision II)(decision on motion to stay)

*LeMaistre v. Town of Freeport*, No. 93-56 (June 27, 1994)

*Kendall v. Town of Perry*, No. 93-60 (Jan. 3, 1995)

*Eastler v. Town of Farmington*, No. 93-62 (June 13, 1994)

*Wesson v. Town of Bremen*, No. 93-88 (Apr. 24, 1995)

*Brant-Meyer v. Town of Freeport*, No. 93-99 (July 15, 1994)

*Forbes v. Town of Southwest Harbor*, No. 95-008 (May 8, 1995)

- Wesson v. Town of Bremen*, No. 95-115 (Nov. 22, 1995)  
*Phillips v. Town of Rangeley*, No. 95-137 (Nov. 8, 1995)  
*Eastler v. Town of Farmington*, No. 95-138 (May 24, 1996)
- Haskell v. Town of Phippsburg*, No. 96-004 (Mar. 5, 1996)  
*Forbes v. Town of Southwest Harbor*, No. 96-045 (Dec. 4, 1996);  
see also 2001 ME 9, 763 A.2d 1183
- Keene v. City of Auburn*, No. 98-023 (Nov. 14, 2000)
- Sayer v. Town of Canton*, No. 99-022 (Aug. 8, 2001)
- Carroll v. Town of Cornish*, No. 2001-02 (Nov. 30, 2001)(order on jurisdiction)(Decision I), and (Feb. 4, 2002)(Decision II)(decision on merits)
- Hinkley v. Town of Waldoboro*, No. 2003-009 (Aug. 5, 2004)(order on jurisdiction)
- Smith v. Town of Surry*, No. 2005-015 (Jan. 23, 2006)(order on jurisdiction)
- Satterfield v. Town of Cushing*, No. 2009-022 (Aug. 27, 2010)(dismissal order)  
*Francis Small Heritage Trust, Inc. v. Town of Limington*, Nos. 2009-032 & 2010-016 (Aug. 22, 2012)(also tree growth), *vacated*, 2014 ME 102, 98 A.3d 1012
- Eames v. Town of Winslow*, No. 2011-015 (Nov. 20, 2012)
- Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2012-009 (Aug. 23, 2013)  
(*Greenleaf Cove I*)
- Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2013-026 (July 2, 2014)  
(*Greenleaf Cove II*)
- Burt v. Town of Denmark*, No. 2014-007 (Sept. 5, 2014)(order on jurisdiction)
- Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2015-003 (Sept. 28, 2015)(*Greenleaf Cove III*)
- Roque Island Gardner Homestead Corp. v. Town of Jonesport*, No. 2016-003  
(May 18, 2017)
- 395 Bangor Brewer, LLC v. City of Brewer*, No. 2017-005 (Feb. 15, 2018)
- Roque Island Gardner Homestead Corp. v. Town of Jonesport*, No. 2018-001

(May 15, 2019)

*Pulpit Trust v. Town of North Haven*, No. 2019-013 (Nov. 19, 2019)(dismissal order)

**Working Waterfront (36 M.R.S. § 1131-1140-B)**

*Brackett v. Town of Bristol*, Nos. 2007-010 & -011 (Nov. 21, 2008)

*See Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2012-009 (Aug. 23, 2013)(*Greenleaf Cove I*)

**Mine Site (36 M.R.S. § 2865)**

*No cases*

IV. Equalized Municipal Valuation Cases

**Municipal Valuation Appeals (36 M.R.S. § 272)**

(not including cases in which an agreement on valuation was reached or the municipality withdrew its petition, or cases involving only issues of sales ratio analysis)

*Inhabitants of the Town of Madison v. State Tax Assessor*, No. 86-07 (Jan. 14, 1987), *vacated*, 541 A.2d 939 (Me. 1988)

*Town of Madison v. State Tax Assessor*, No. 87-11 (Feb. 12, 1988)  
(decided in accordance with previous year's case)

*Town of Frenchville v. State Tax Assessor*, No. 87-12 (Dec. 22, 1987)

*Town of Glenburn v. Bureau of Taxation*, No. 87-13 (Jan. 15, 1988)

*Town of Monmouth v. Bureau of Taxation*, No. 90-20 (Jan. 11, 1991)

*Town of Sherman v. Bureau of Taxation*, No. 90-21 (Jan. 11, 1991)

*Town of Penobscot v. Bureau of Taxation*, No. 90-23 (Jan. 11, 1991)

*Carroll Plantation v. Bureau of Taxation*, No. 90-25 (Jan. 11, 1991)

*Town of Jefferson v. Bureau of Taxation*, No. 91-80 (Jan 9, 1992)

*City of Ellsworth v. Bureau of Taxation*, No. 91-84 (Jan. 9, 1992)

*Town of Lubec v. Bureau of Taxation*, No. 91-85 (Jan. 9, 1992)

*Town of Danforth v. Bureau of Taxation*, No. 92-24 (Nov. 9, 1992)

*Town of Mechanic Falls v. Bureau of Taxation*, No. 92-26 (Sept. 14, 1992)

*Town of Whitefield v. Bureau of Taxation*, No. 92-27 (Sept. 14, 1992)

*Town of Franklin v. Bureau of Taxation*, No. 92-35 (Sept. 14, 1992)

*Town of Winn v. Bureau of Taxation*, No. 92-36 (Nov. 9, 1992)  
*Town of Washington v. Bureau of Taxation*, No. 92-37 (Nov. 9, 1992),  
vacated, CV-92-187 (Super. Ct., Knox Cty. Apr. 6, 1994)  
*Drew Plantation v. Bureau of Taxation*, No. 92-38 (Nov. 9, 1992)  
*Town of Limerick v. Bureau of Taxation*, No. 92-76 (Jan. 12, 1993)  
*Town of Montville v. Bureau of Taxation*, No. 92-77 (Jan 12, 1993)  
*Town of Frenchboro v. Bureau of Taxation*, No. 92-88 (Jan. 9, 1993)  
*Town of Limestone v. Bureau of Taxation*, No. 92-89 (Jan. 9, 1993)  
*Town of Isleboro v. Bureau of Taxation*, No. 92-91 (Mar. 29, 1993)

*Carroll Plantation v. Bureau of Taxation*, No. 93-126 (Jan. 7, 1994)  
*Town of Monroe v. Bureau of Taxation*, No. 93-131 (Jan. 7, 1994)

*Town of Waldoboro v. Bureau of Taxation*, No. 95-109 (Jan. 9, 1995)  
*Town of Weston v. Bureau of Taxation*, No. 95-121 (Jan. 9, 1995)

*City of Caribou v. Bureau of Taxation*, No. 96-014 (Jan.8, 1996)  
*Town of Weston v. Bureau of Taxation*, No. 96-017 (Jan. 8, 1996)  
*Town of St. Agatha v. Bureau of Taxation*, No. 96-025 (Jan. 8, 1996)  
*City of Presque Isle v. Bureau of Taxation*, No. 96-026 (Jan. 8, 1996)

*Town of Standish v. State of Maine, Bureau of Revenue Services*,  
No. 99-031 (Jan. 12, 2000)  
*City of South Portland v. State of Maine, Bureau of Revenue Services*,  
No. 99-033 (Jan. 13, 2000)  
*Town of Gilead v. State of Maine, Bureau of Revenue Services*, No. 99-035,  
(Jan. 13, 2000)

*Town of Solon v. State of Maine, Bureau of Revenue Services*, No. 2000-012  
(Jan. 15, 2001)

*Town of Abbott v. Maine Revenue Services*, No. 2001-011 (Jan. 15, 2002)  
*Town of Bucksport v. Maine Revenue Services*, No. 2001-012 (Jan. 15,  
2000)  
*Town of Dexter v. Maine Revenue Services*, No. 2001-014 (Jan. 9, 2002)

*Town of Danforth v. Maine Revenue Services*, No. 2002-013 (Jan. 14, 2003)  
*Town of Milo v. Maine Revenue Services*, No. 2002-014 (Jan. 14, 2003)  
*Town of Shirley v. Maine Revenue Services*, No. 2002-016 (Jan 14, 2003)  
*Town of Stockholm v. Maine Revenue Services*, No. 2002-017 (Jan. 14,  
2003)  
*Town of Dexter v. Maine Revenue Services*, No. 2002-018 (Jan. 14, 2003)

*Town of Liberty v. Maine Revenue Services*, No. 2003-015 (Jan. 2, 2004)  
*Town of Palermo v. Maine Revenue Services*, No. 2003-016 (Jan. 2, 2004)



*Town of Easton v. Maine Revenue Services*, No. 2003-017 (Jan. 2, 2004)

*Town of Abbott v. Maine Revenue Services*, No. 2004-008 (Jan. 6, 2005)

*Town of Palermo v. Maine Revenue Services*, No. 2005-016 (Jan. 19, 2006),  
decision after legislative resolve, Apr. 14, 2006

*Town of Waldo v. Maine Revenue Services*, No. 2007-001 (Jan. 25, 2007)

*Town of Milbridge v. Maine Revenue Services*, No. 2007-009 (Dec. 21, 2007)  
(order on jurisdiction)

*Town of Mars Hill v. Maine Revenue Services*, No. 2009-030 (Nov. 17, 2009)  
(order on jurisdiction), *confirmed by Board*, Feb. 10, 2010 (decision on  
jurisdiction)

*Town of East Millinocket v. Maine Revenue Services*, No. 2014-010  
(Jan. 2, 2015)

*Town of Madison v. Maine Revenue Services*, No. 2014-011 (Jan. 14, 2015)

*Town of Skowhegan v. Maine Revenue Services*, No. 2014-012 (Jan. 14, 2015)

*Town of Freedom v. Maine Revenue Services*, No. 2018-015 (Nov. 6, 2018)  
(dismissal order)

## V. Poverty Cases

*See Pachowsky v. Town of Clinton*, No. 2001-005 (Feb. 19, 2002)

*See Pierce v. Maine Revenue Services*, No. 2006-007 (Feb. 13, 2007)

## **IMPORTANT POINTS FROM THE DECISIONS**

### I. General Principles

Taxation is an essential attribute of sovereignty and vital to pay for the demands of citizens on government

*Gregory v. MMC Realty Corp. & Maine Medical Center*, No. 2000-001,  
at 33, 34

The state cannot transfer to municipalities the authority to determine what real estate is subject to taxation, Me. Const. art. IX, § 9

*Gregory v. MMC Realty Corp. & Maine Medical Center*, No. 2000-001,  
at 31

Assessors' and the Board's constitutional (Me. Const. art. IX, § 8) and statutory (36 M.R.S. § 701-A) duty to determine just value

*Alstores Realty Corp. v. City of South Portland*, No. 87-03, at 4  
*Central Maine Power Co. v. Town of Moscow*, No. 90-43, at 2  
*Messina & Sprowl Associates, Inc. v. Town of Hampden*, No. 92-97,  
at 2

*Central Way Realty Associates v. City of Lewiston*, Nos. 93-37–  
93-40, consolidated with *KNL Associates v. City of Lewiston*,  
Nos. 93-41–93-49 & 92-55–92-64, at 3 n.1

*Guy Gannett Publishing Co. v. City of South Portland*, Nos. 93-75 &  
93-135, at 4, 5 (constitutional requirement is to obtain a rough  
equality in assessments of similarly situated property owners)

*Champion International Corp. v. Town of Bucksport*, No. 93-98,  
at 5 n.2

*Spang Enterprises v. Town of Kennebunkport*, No. 96-011, at 2  
*Maine Public Service Co. v. City of Caribou*, No. 97-108, at 4 n.2  
(just value is the equivalent of true value or market value)

*Port Resort Realty Corp. v. Town of Kennebunkport*, No. 98-004,  
at 2 n.1

*B & B Properties v. City of Ellsworth*, No. 98-026, at 7

*Northeast Empire Ltd. Partnership #2 v. Town of Ashland*, Nos.  
99-015 & 99-027, at 3 n.1

*Gregory v. MMC Realty Corp. & Maine Medical Center*, No. 2000-001,  
at 32

*Town of Dexter v. Maine Revenue Services*, No. 2001-014, at 8

- (noting same duty is imposed on Board)
- Sprague Energy Corp. v. Town of Bucksport*, No. 2003-003, at 31-32  
(this is done by Board's deciding whether or not taxpayer has met its burden to prove assessor manifestly wrong)
- U. S. Optical Disc, Inc. v. Town of Sanford*, No. 2003-004, at 26  
(constitution contains both valuation and apportionment requirements)
- Fowler v. Town of Lubec*, 2004-002, at 4 (Board has no authority to entertain substantive constitutional challenges to tree growth law)
- Norumbega Bed & Breakfast, LLC v. Town of Camden*, No. 2005-017, at 3 n.2
- Woodland Kittery Ltd. Partnership v. Town of Kittery*, No. 2006-008, at 2 n.1 (just value is the equivalent of true value or market value)
- City of Brewer v. Ellen M. Leach Memorial Home & Ellen M. Leach Memorial Home v. City of Brewer*, Nos. 2006-012 & -013, at 3 & n.2 (just value is the equivalent of true value or market value)
- Brackett v. Town of Bristol*, Nos. 2007-010 & -011, at 5-6 & n.6  
(working waterfront statute, section 1135 (1)(A), (2), requiring determination of land's just value or its ordinary assessed value, and section 701-A give voice to highest and best use; just value is the equivalent of fair market value)
- Cushing Holdings, LLC v. Town of Cushing and Last Resort Holdings, LLC v. Town of Cushing*, Nos. 2006-017 & -018, at 3 n.4
- GGP-Maine Mall, LLC v. City of South Portland*, No. 2008-001 (*Maine Mall I*), at 3 & n.3
- Falls Development Associates, L.P. v. City of Saco*, No. 2008-025, at 4
- Boralex Sherman, LLC v. Town of Stacyville*, Nos. 2009-007 & 2010-002-A, at 2 n.3
- Harold MacQuinn, Inc. v. Town of Hancock*, No. 2009-014, at 16, 27 n.11 (section 701-A implements highest and best use)
- Bangor Gas Co., LLC v. Town of Bucksport*, No. 2010-002, at 2 n.2
- Prentiss & Carlisle Management Co., Inc. v. Town of Merrill and Town of Smyrna*, Nos. 2010-007 & 2010-006, at 3 n.2
- Day v. Town of Madison*, No. 2014-006, at 3 n.1 (just value is the equivalent of true value or market value)

Assessing authority is not required to apply each factor of 36 M.R.S. § 701-A or weigh each equally

*U. S. Optical Disc, Inc. v. Town of Sanford*, No. 2003-004, at 11 n.6

36 M.R.S. § 701-A requires land to be assessed according to its presently possible use

*Sawyer Environmental Recovery Facility v. Town of Hampden*,  
No. 93-34, at 4  
*Kennebunkport Inn, Inc. v. Town of Kennebunkport*, No. 94-43, at 3  
(assessors are to consider all permissible uses, not just the  
current use)

Assessors are required to value real estate, which is a fairly constant fixed asset, according to its just value over a period of time that is measurably stable, not the fleeting or speculative

*Town of Abbott v. Maine Revenue Services*, No. 2001-011, at 4  
*MHC Narrows Too, LLC v. Town of Trenton*, No. 2012-013, at 15 n.6

No tax can be imposed without express statutory authority

*Emera Maine v. Town of Eddington*, No. 2015-010, and *Emera Maine v. Town of Bradley*, No. 2015-011, at 10 (section 841(1)(2<sup>nd</sup> ¶)),  
at 9

The role of the common law in taxation, and statutory modification thereof

*Hunt, Trustee, Hunt Family Irrevocable Trust v. Maine Revenue Services*, Nos. 2009-020 & -021, at 12-13, 18-19 (although the common law provided for interest on the return of a tax wrongfully imposed, the Legislature can change the rule by statute; there is no inherent right to a return of a tax paid when the tax is later declared unconstitutional)

Maine has taxed its unorganized areas from its beginning as a state

*Hunt, Trustee, Hunt Family Irrevocable Trust v. Maine Revenue Services*, Nos. 2009-020 & -021, at 2

The State Tax Assessor, through the Property Tax Division of Maine Revenue Services, administers assessment and taxation of properties in the unorganized territory

*Hunt, Trustee, Hunt Family Irrevocable Trust v. Maine Revenue Services*, Nos. 2009-020 & -021, at 2

Taxpayers have the legal right to avoid, though not evade, taxes

*Gregory v. MMC Realty Corp. & Maine Medical Center*, No. 2000-001, at 68

What constitutes a tax

*Hunt, Trustee, Hunt Family Irrevocable Trust v. Maine Revenue Services*, Nos. 2009-020 & -021, at 11 (“tax” includes penalties and interest)

What constitutes taxable property, 36 M.R.S. §§ 551, 553

*Great Cove Boat Club, Inc. v. Town of Eliot*, Nos. 91-01 & 91-21, at 7-8 (leasehold interest in submerged lands, obtained from state)

*Great Cove Boat Club, Inc. v. Town of Eliot*, Nos. 91-21, 92-94 & 92-95, at 4 (town has jurisdiction only to low water mark)

*Gregory v. MMC Realty Corp. & Maine Medical Center*, No. 2000-001, at 33 (all but that which is exempt by law)

Double-taxation is impermissible

*Sprague Energy Corp. v. Town of Bucksport*, No. 2003-003, at 29  
*PPL Maine, LLC v. Town of Milford* and *PPL Maine, LLC v. City of Old Town*, Nos. 2008-013 & -029, at 4 (dam improperly taxed both separately and as a part of a hydroelectric generating facility)

*Emera Maine v. Town of Eddington*, No. 2015-010, and *Emera Maine v. Town of Bradley*, No. 2015-011, at 9 (“the assessment amounts to double taxation and is illegal”); at 10 (“This amounts to double taxation and is illegal . . . no double tax burden shall be imposed . . . unless the statutes so clearly require it that no other construction is possible”)

*Madison Paper Industries v. Town of Madison*, No. 2016-009, at 25-26 (town properly considered avoided costs in valuing property as a benefit equivalent to income to taxpayer for purposes of applying income approach to taxed property as whole)

An illegal tax is illegal from the date of assessment

*KeyBank National Ass'n v. Town of Phippsburg*, No. 2006-002, at 9

The duty to determine just value means assessors must treat taxpayers with consistency and treat similarly situated taxpayers alike

*Fasse v. Town of St. Albans & Town of Ripley*, No. 2002-005, at 12

It is preferable that there be uniformity and clarity in the administration of property tax laws

*Pierce v. Maine Revenue Services*, No. 2006-007, at 9

*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2012-009, at 23

Taxation must be practical and bring results

*Town of Alfred v. Schiavi*, Nos. 2005-010, 2005-011, 2005-012,  
2005-013 & 2005-014, at 3

*Brown v. Town of Bucksport*, No. 2009-031, at 23

Paying a tax under protest does not mean it was not paid voluntarily

*Hunt, Trustee, Hunt Family Irrevocable Trust v. Maine Revenue Services*, Nos. 2009-020 & -021, at 13 n.6

Creation of the Board of Property Tax Review

*Wingate, and Dale & Sea Meadow, LLC v. Town of York*, Nos. 2003-05 & 2003-006, at 5 (order on jurisdiction), *confirmed by Board*, June 4, 2000 (decision on jurisdiction)

Composition of the Board, 36 M.R.S. § 271(1)

*Mobile Imaging Consortium v. City of Portland*, Nos. 94-44 & 96-32,  
at 3-4 & n.1 (professions represented on Board qualify it to  
consider facts relevant to valuation)

*Cyr Family Ltd. Partnership v. Town of Wade*. No. 2011-010, at 2 n.2

(three members from each of five stated disciplines)

Three members are a quorum of the Board, 36 M.R.S. § 271(5)

*Glenridge Development Co. v. City of Augusta*, No. 91-90, at 1

The Board is administratively a part of the Department of Financial and Administrative Services

*Town of Palermo v. Maine Revenue Services*, No. 2005-016, at 2

The Board is an adjudicatory body

*Town of Dexter v. Maine Revenue Services*, No. 2001-014, at 9  
(and so gives deference to agency interpretation of rule that agency has responsibility to enforce)

*Town of Dexter v. Maine Revenue Services*, No. 2002-018, at 5 n.4  
(same)

*Sprague Energy Corp. v. Town of Bucksport*, No. 2003-003, at 31  
(without enforcement powers)

*U. S. Optical Disc, Inc. v. Town of Sanford*, No. 2003-004, Appx. at  
2 n.2 (subject to the Maine Administrative Procedure Act)

*Gray v. Town of Sedgwick*, No. 2005-005, at 9 (without enforcement powers, Board has no authority to assess property)

Property tax appeals are judicial in nature

*U. S. Optical Disc, Inc. v. Town of Sanford*, No. 2003-004, Appx. at  
2 n.2

The Board's authority to render an advisory opinion in the adjudicatory context

*U. S. Optical Disc, Inc. v. Town of Sanford*, No. 2003-004, Appx. at 5  
(an agency has authority only outside the adjudicatory process, pursuant to 5 M.R.S. § 9001, but Board has no such authority pursuant to its authority to hear and decide appeals, 36 M.R.S. § 271(2)(A))

*Harold MacQuinn, Inc. v. Town of Hancock*, No. 2009-014, at 3, 14  
(authority is discretionary pursuant to section 9001(1))

When the Board is evenly divided, a party with a burden of persuasion or proof has not met its burden

*Town of Dexter v. Maine Revenue Services*, No. 2002-018, at 8-9

Rule of Necessity: where Board member testifies for a party, Board is not disqualified for bias or conflict of interest because there is no other competent tribunal to hear the case

*Cyr Family Ltd. Partnership v. Town of Wade*. No. 2011-010, at 2

Board member, not assigned to appeal, can testify for a party

*Louisiana-Pacific Corp. v. Town of New Limerick*, No. 2016-012  
(decision on merits), at 2 n.1

The Board is not an equalizing board

*Sprague Energy Corp. v. Town of Bucksport*, No. 2003-003, at 31

The Board has no authority to assess property, or increase assessment on what it may think was an under-assessment in the first instance

*Sprague Energy Corp. v. Town of Bucksport*, No. 2003-003, at 31  
*Gray v. Town of Sedgwick*, No. 2005-005, at 9

Power of the Board to raise or lower assessment, 36 M.R.S. §§ 271(2)(B), 843(1-A), 844(2)

*Hunt, Trustee, Hunt Family Irrevocable Trust v. Maine Revenue Services*, Nos. 2009-020 & -021, at 11

*Francis Small Heritage Trust, Inc. v. Town of Limington*, Nos. 2009-032 & 2010-016, at 2 n.2

Power of the Board to correct illegality, error, or irregularity, 36 M.R.S. § 841(1)(2<sup>nd</sup> ¶)



*Spague v Energy Corp. v. Town of Bucksport*, No. 2003-003, at 30-35  
*Haggard v. Town of Swan's Island*, No. 2010-012, at 9

The Board has the authority only to determine that a taxpayer has met its burden to prove an assessment manifestly wrong, in which case it is to grant such a reasonable abatement as the Board thinks proper, or that the taxpayer has not met its burden, in which case the assessment stands

*Gray v. Town of Sedgwick*, No. 2005-005, at 9-10 (Board cannot adjust an assessment upward by dividing the fair market value of tree growth parcels by the certified ratio, but can apply tiered formula used by municipality consistent with its use in other comparable properties)

Challenge to municipality's authority to assess property not within its jurisdiction (and thus to Board's authority to entertain an abatement request)

*Mobile Imaging Consortium v. City of Portland*, Nos. 94-44 & 96-32, *passim* (mobile scanner units were located in towns other than Portland on April 1<sup>st</sup> of tax year in issue; Board held its authority is only to determine questions of overvaluation in an abatement proceeding; declaratory judgment action may be used to determine jurisdiction; no mention of *Siemens Credit Corp.* case)

*Siemens Credit Corp. v. City of Portland*, No. 94-45, at 2 (in case decided before *Mobile Imaging Consortium*, Board held property not within city on April 1<sup>st</sup> of tax year in issue was not subject to taxation by city, and tax must be wholly abated)

*Fasse v. Town of St. Albans & Town of Ripley*, No. 2002-005, at 1-5, 10, 14 n.12 (confusion over location of property due to obscure statute placing it in town other than where all thought it to be)

Ownership defined: often may be title interest or possession and control interest, 36 M.R.S. § 553

*Gregory v. MMC Realty Corp. & Maine Medical Center*, No. 2000-001, at 50-52

*Sprague Energy Corp. v. Town of Bucksport*, No. 2003-003, at 6 n.3

Property may be taxed to owner or one in possession, 36 M.R.S. § 553

*Rangeley Lake Resort Development Co., LLC v. Town of Rangeley*,  
No. 2003-019, at 13  
*Brown v. Town of Bucksport*, No. 2009-031, at 23 n.22

Property may not be taxed to one who does not own it

*Sprague Energy Corp. v. Town of Bucksport*, No. 2003-003, at 34  
(if assessment is over-inclusive, Board may abate assessment)

A tenant in common or joint tenant may be considered the sole owner unless he notifies the assessors otherwise, 36 M.R.S. §§ 555, 557

*KeyBank National Ass'n v. Town of Phippsburg*, No. 2006-002, at 8, 19

Personal property is taxable to the owner where he resides, and includes goods and chattels wherever they are located, 36 M.R.S. §§ 601, 602

*UAH-Hydro v. Town of Winslow*, 2001-009, at 9 & n.8

Question whether a financing arrangement benefit is not taxable because it is an intangible, not expressly included in the definition of personal property, 36 M.R.S. § 601, or is a value-enhancing factor and thus relevant under 36 M.R.S. § 701-A to a determination of fair market value

*Mountain View Associates v. Town of Madison*, No. 91-35 (FmHA section 515)

*Searsport Realty Associates v. Town of Searsport*, No. 91-89 (same)

*Glenridge Development Co. v. City of Augusta*, No. 91-90 (section 236 of the National Housing Acts of 1937 and 1949)

*Lincoln Realty Associates v. Town of Lincoln*, No. 91-103 (FmHA section 515)

*Applewood Housing Associates v. Town of Camden*, No. 92-18 (same),

*Weymouth (Townhouse Estates I) v. Town of Camden*, No. 92-29 (same)

*Weymouth (Townhouse Estates II) v. Town of Camden*, No. 92-30 (same)

*Camden Housing Associates v. Town of Camden*, No. 92-32 (same),

*Rankin Center Associates v. City of Rockland*, Nos. 93-18 & 93-97 (section 8 elderly housing project)

- Marcotte Congregate Housing, Inc. v. City of Lewiston*, Nos. 93-23 & 93-24 (section 8 congregate housing project)
- Knox Hotel Associates v. Town of Thomaston*, No. 95-132 (section 8 elderly housing project)
- UAH-Hydro v. Town of Winslow*, 2001-009 (purchase power agreement)
- Woodland Kittery Ltd. Partnership v. Town of Kittery*, No. 2006-008 (low-income housing tax credit under section 42 of the Internal Revenue Code)
- City of Brewer v. Ellen M. Leach Memorial Home & Ellen M. Leach Memorial Home v. City of Brewer*, Nos. 2006-012 & -013 (same)
- Falls Development Associates, L.P. v. City of Saco*, No. 2008-025 (section 8 apartment complex), at 38-39 (intangible must be valued so long as it runs with the land because it then is inextricably intertwined with the real property); at 39-40 (intangibles *per se* are not taxable, and do not have a value precisely corresponding to the value of the property); at 47 (the very success of subsidized housing is dependent on section 8 subsidies, thus inextricably intertwining the loan agreements with the value of the property)

How Maine and other jurisdictions have regarded valuing intangibles such as mortgage subsidies and low-income housing tax credits

- Falls Development Associates, L.P. v. City of Saco*, No. 2008-025 at 48-53 (Maine); at 53-60 (other jurisdictions)

Whether a financing agreement is transferable to a new owner

- Falls Development Associates, L.P. v. City of Saco*, No. 2008-025, at 41-42 (value is to the property, not the owner; financing must be considered when available to a subsequent owner); at 45 (that MSHA retains the right to approve an assumption of the financing does not negate marketability of property)

Transfer of title to real property requires delivery of a deed

- Davis v. Town of Lamoine and Maine Coast Baptist Church v. Town of Lamoine*, Nos. 2009-001 & -002, at 2

Efficacy of a deed by which the owner purports to convey an interest to itself

*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2013-026, at 5, 23-24 (dissent holds deed was unnecessary to provide public access for open space purposes)

When property is transferred, the value of the property must be declared in a transfer tax declaration, 36 M.R.S. § 4641-D, accompanying the deed when presented for recording

*McLaughlin v. Town of Dexter*, No. 2010-001, at 4 n.4

Transfer tax declarations are sent by Register of Deeds to State Tax Assessor and then to assessors

*KeyBank National Ass'n v. Town of Phippsburg*, No. 2006-002, at 19-20 n. 9

*McLaughlin v. Town of Dexter*, No. 2010-001, at 4 n.4

Importance of stability of municipal income

*B & B Properties v. City of Ellsworth*, No. 98-026, at 7 (abatement)

*Gregory v. MMC Realty Corp. & Maine Medical Center*, No. 2000-001, at 34 (exemption)

*KeyBank National Ass'n v. Town of Phippsburg*, No. 2006-002, at 11 (abatement; tree growth)

*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2013-026, at 23 (abatement; open space)

But that must nonetheless give way to the constitutional obligation to assess property according to just value

*B & B Properties v. City of Ellsworth*, No. 98-026, at 7

*KeyBank National Ass'n v. Town of Phippsburg*, No. 2006-002, at 11

Responsibility of municipality to perform annual assessments, 36 M.R.S. § 708, to ascertain “the nature, amount and value [of property] as of the first day of each April”

*Toussaint v. City of Lewiston*, Nos. 95-143–95-146, at 3

*U. S. Optical Disc, Inc. v. Town of Sanford*, No. 2003-004, Appx. at 4  
*Smith v. Town of Surry*, No. 2005-015, at 2-3 (order on jurisdiction)  
*Kendall v. Town of Perry*, No. 2008-004, at 5 n.4 (assessors are  
 obligated to correct assessment errors when carrying out their  
 section 708 responsibilities)

Significance of April 1<sup>st</sup>—“doom day”—is to fix tax liability, 36 M.R.S.  
 §§ 502, 708, and it also provides a filing deadline in some circumstances

*New Marblehead North Housing Corp. v. Taylor*, No. 90-10, at 5-6  
 (exemption)  
*Finance Authority of Maine v. City of Caribou*, No. 90-36, at 2  
*Russell v. Town of Fryeburg* No. 91-33, at 2 (tree growth)  
*Haskell v. Town of Phippsburg*, No. 96-004, at 2 (farmland and  
 open space)  
*Crosby v. Town of Belgrade*, No. 98-022, at 1 (tree growth)  
*Sayer v. Town of Canton*, No. 99-022, at 2 (farmland and open space)  
*Gregory v. MMC Realty Corp. & Maine Medical Center*, No. 2000-001,  
 at 44, 56, 61 (exemption; 36 M.R.S. § 652, last ¶; but that  
 paragraph does not itself speak to consequences of a late  
 application)  
*Fasse v. Town of St. Albans & Town of Ripley*, No. 2002-005,  
 at 11 n.10 (tree growth)  
*Sprague Energy Corp. v. Town of Bucksport*, No. 2003-003, at 27  
 (abatment)  
*U. S. Optical Disc, Inc. v. Town of Sanford*, No. 2003-004, Appx. at 4  
 (abatment; tax year runs from April 1<sup>st</sup> to next April 1<sup>st</sup>; taxes  
 are determined as of April 1<sup>st</sup>; tax status is fixed as of April 1<sup>st</sup>)  
*KeyBank National Ass’s v. Town of Phippsburg*, No. 2006-002,  
 at 4 n.5  
*Camp O-At-Ka v. Town of Sebago*, No. 2016-01, at 1 (last paragraph  
 of 36 M.R.S. § 652 establishes due date for written application  
 for exemption)

Relevance of events occurring, or of information obtained, after April 1<sup>st</sup> of  
 tax year at issue

*GTS Foreside Ltd. v. Town of Falmouth*, No. 91-12, at 2  
*City of Biddeford v. Landco Realty, Inc.*, No. 92-104, consolidated  
 with *Landco Realty Co. v. City of Biddeford*, No. 93-70, at 6  
*Central Way Realty Associates v. City of Lewiston*, Nos. 93-37–  
 93-40, consolidated with *KNL Associates v. City of Lewiston*,  
 Nos. 93-41–93-49 & 92-55–92-64, at 4

- Alpine Realty Trust v. City of Biddeford*, No. 93-72, at 2  
*Maine Orion Properties v. Town of Falmouth*, No. 93-107, at 2  
*Davis v. Town of Lamoine*, No. 2002-003, at 3 (town may withdraw property from tree growth even if it learns after April 1<sup>st</sup> of noncomplying use of property)  
*Sprague Energy Corp. v. Town of Bucksport*, No. 2003-003, at 27-28 (information brought to attention of town after both doom date and commitment date was too late)  
*U. S. Optical Disc, Inc. v. Town of Sanford*, No. 2003-004, Appx. at 5 (events occurring after April 1<sup>st</sup> are deemed to have occurred in a separate tax year)  
*GGP-Maine Mall, LLC v. City of South Portland*, No. 2008-001 (*Maine Mall I*), at 5 (where taxpayer did not own property on April 1<sup>st</sup>, the Board lacks jurisdiction over appeal of that property properly appealed along with other properties)

Assessor can change assessment before commitment without this being considered an abatement

*Sprague Energy Corp. v. Town of Bucksport*, No. 2003-003, at 28 n.15

Assessment not final until commitment; up to date of commitment, assessor may review and change assessment for any property within assessor's jurisdiction for relevant tax year

*Maine Coast Medical Realty, Inc. v. City of Ellsworth*, Nos. 2018-013, -014 & -015, at 8

Signed return receipt belies town's claim that it never received taxpayer's communication with town

*Needham v. Town of Brooklin*, No. 92-17, at 3 (letter indicating gross income from farmland)

The Board's jurisdiction

- Chatfield v. Town of Rockport*, No. 91-56, at 3 (where Board has no subject matter jurisdiction, appeal must be dismissed)  
*Gregory v. MMC Realty Corp. & Maine Medical Center*, No. 2000-001, at 54 (three aspects: personal jurisdiction, subject matter jurisdiction, and the scope of its statutory authority)

- Hamlin v. City of Lewiston*, No. 2000-018 at 1 (petitioner's appeal asked Board to do something it has no authority to do: declare him the owner of property)
- GGP-Maine Mall, LLC v. City of South Portland*, No. 2008-001 (*Maine Mall I*), at 2 (non-residential property of greater than \$1,000,000); at 5 (where taxpayer on appeal did not own property on April 1<sup>st</sup>, appeal on that property must be dismissed); at 10 (where taxpayer by clerical error failed to include a parcel in its petition for assessment review, Board does not have jurisdiction over that parcel)
- Falls Development Associates, L.P. v. City of Saco*, No. 2008-025 , at 7 (Board notes timeliness of all steps in appeal process)
- Hunt, Trustee, Hunt Family Irrevocable Trust v. Maine Revenue Services*, Nos. 2009-020 & -021, at 9 (subject matter jurisdiction at issue)
- Ocean State Job Lot of Belfast, LLC v. City of Belfast*, No. 2011-022-A, at 10 (order on motion to dismiss; discussing meaning of subject matter jurisdiction); at 12 (listing statutes that define the Board's subject matter jurisdiction)
- Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2012-009, at 1 (jurisdiction means adjudicatory authority); at 32 (Board has no jurisdiction over untimely appeal, and appeal must be dismissed)
- Down East Hospitality Partners, LLC v. Town of Lincolnville*, No. 2012-010, at 5 (dismissal order; Board has no subject matter jurisdiction where party failed to appeal to board of assessment review as required, and appeal must be dismissed)
- Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2013-026, at 3-4 (steps in applying for open space classification were all met)
- Burt v. Town of Denmark*, No. 2014-007, at 5 (order on jurisdiction; jurisdiction is not conferred simply by timely appeal)
- Emera Maine v. Town of Eddington*, No. 2015-010, and *Emera Maine v. Town of Bradley*, No. 2015-011, at 10 (section 841(1)(2<sup>nd</sup> ¶))
- See generally *Xpress Natural Gas, LLC v. Town of Baileyville*, No. 2016-001 (Board has the authority to determine that taxpayer's appeal is barred due to not responding to town's demands for information under 36 M.R.S. § 706)
- Camp O-At-Ka, Inc. v. Town of Sebago*, No. 2016-010, at 5 (dismissal order)(Board has no jurisdiction over deficient request for exemption, and appeal must be dismissed)
- Somerset Acquisitions, LLC v. Town of Madison*, No. 2017-008, at 2 (dismissal order; Board has no subject matter jurisdiction where party failed to appeal to board of assessment review as required, and appeal must be dismissed)
- Maine Coast Medical Realty, Inc. v. City of Ellsworth*, Nos. 2018-013, -014 & -015, at 6 (taxpayer's filing for exemption before

April 1<sup>st</sup> of relevant tax year is mandatory and a condition precedent to Board's jurisdiction to hear appeal)

The Board has a duty to inquire into its jurisdiction

*Gregory v. MMC Realty Corp. & Maine Medical Center*, No. 2000-001, at 55

*Dirigo Dowels & Pins, Inc. v. Town of New Portland*, No. 2000-007, at 12

*Rangeley Lake Resort Development Co., LLC v. Town of Rangeley*, No. 2003-019, at 11

*Caleb Affordable Housing Associates, L.P. v. City of Saco*, No. 2006-001, at 5 (order on jurisdiction)

*Wescott & Payson II v. City of Saco*, 2006-006, at 1 (order on jurisdiction)

*Hunt, Trustee, Hunt Family Irrevocable Trust v. Maine Revenue Services*, Nos. 2009-020 & -021, at 9

*RiverRidge Associates v. Town of Kennebunk*, No. 2011-033, at 4 & n.2 (dismissal order)

*Peckham & Trott v. Town of Lake View Plantation*, No. 2014-003, at 6 (dismissal order; tree growth case)

A party must affirmatively demonstrate that the Board has jurisdiction

*Hunt, Trustee, Hunt Family Irrevocable Trust v. Maine Revenue Services*, Nos. 2009-020 & -021, at 8 (tree growth case; if petition for assessment review, response, and information sheets do not do so)

*Smith v. Town of Livermore Falls*, No. 2010-008, at 6 (order on jurisdiction; tree growth case)

*RiverRidge Associates v. Town of Kennebunk*, No. 2011-033, at 4 & n.3 (dismissal order)

*Peckham & Trott v. Town of Lake View Plantation*, No. 2014-003, at 6 (dismissal order; tree growth case)

*Burt v. Town of Denmark*, No. 2014-007, at 1 (order on jurisdiction; open space case)

Parties cannot confer jurisdiction by concession, agreement, waiver, or admission by pleading

*Gregory v. MMC Realty Corp. & Maine Medical Center*, No. 2000-001, at 54-55, 56



*Dirigo Dowels & Pins, Inc. v. Town of New Portland*, No. 2000-007, at 11  
*Town of Abbott v. Maine Revenue Services*, No. 2004-008, at 5  
*Rangeley Lake Resort Development Co., LLC v. Town of Rangeley*, No. 2003-019, at 11  
*Caleb Affordable Housing Associates, L.P. v. City of Saco*, No. 2006-001, at 5 (order on jurisdiction)  
*RiverRidge Associates v. Town of Kennebunk*, No. 2011-033, at 3-4, 4 & nn.2, 4 (dismissal order)  
*Peckham & Trott v. Town of Lake View Plantation*, No. 2014-003, at 5, 6 (dismissal order)

The Legislature's use of equalized valuation for jurisdictional purposes is to provide a level playing field for taxpayers who may be taxed at different assessment ratios

*Bethel Inn Corp. & Riverview Timeshare Trust v. Town of Bethel*, 003-001 & 2003-002, at 7-8 (equalized valuation need not be considered if assessed valuation is \$1,000,000 or more); at 8-9 (discussion of which assessment ratio used by Maine Revenue Services is appropriate)

The Board has no jurisdiction if property is valued at less than the statutory minimum (formerly \$500,000, now \$1,000,000)

*Ames Dept. Store, Inc. #347 v. Town of Skowhegan*, No. 88-19, at 2 (section 843(1-A))  
*Wesson v. Town of Bremen*, No. 91-02, at 3 (section 843)  
*Sawyer Environmental Recovery Facility v. Town of Hampden*, No. 93-34, at 1 (section 843(1-A))  
*Dirigo Dowels & Pins, Inc. v. Town of New Portland*, No. 2000-007, at 4  
*International Woolen Co., Inc. v. Town of Sanford*, No. 2000-009, at 3 n.2  
*Wingate, and Dale & Sea Meadow, LLC v. Town of York*, Nos. 2003-005 & 2003-006, at 5 (order on jurisdiction), *confirmed by Board*, June 4, 2004, at 1 (decision on jurisdiction)  
*See Topsham Hydro Partners v. Town of Topsham*, No. 2003-007, at 2  
*Peaker v. City of Biddeford*, 2003-018, at 1 (order on jurisdiction), *confirmed by Board*, Mar. 31, 2005, at 1-2 (decision on jurisdiction)  
*Town of Alfred v. Schiavi*, Nos. 2005-010, 2005-011, 2005-012, 2005-013 & 2005-014, at 2  
*Wescott & Payson II v. City of Saco*, 2006-006, at 2 (order on

jurisdiction)  
*Bangor Gas Co., LLC v. Town of Bucksport*, No. 2010-002, at 2  
*Narrows Too #5038 v. Town of Trenton*, No. 2012-013, at 3  
 (whether or not municipality has a board of assessment review)

Board has not decided if the Board retains jurisdiction if one or more properties aggregated to obtain \$1,000,000 in value are abandoned, thereby leaving any remaining parcels at less than \$1,000,000

*Harold MacQuinn, Inc. v. Town of Hancock*, No. 2009-014, at 2 n.1

Property claimed to be exempt and valued at less than \$1,000,000 cannot be aggregated with other property valued at more than \$1,000,000

*Maine Coast Medical Realty, Inc. v. City of Ellsworth*, Nos. 2018-013, -014 & -015, at 6-7

Remedy for failure to meet \$1,000,000 requirement is dismissal of appeal

*Gregory v. MMC Realty Corp. & Maine Medical Center*, No. 2000-001, at 68

*Riverview Timeshare Trust v. Town of Bethel*, No. 2002-009, at 2, 6  
*Rangeley Lake Resort Development Co., LLC v. Town of Rangeley*, No. 2003-019, at 16

*Wescott & Payson II v. City of Saco*, 2006-006, at 3 (order on jurisdiction)

“Nonresidential property or properties with an equalized valuation of \$1,000,000 or greater either separately or in the aggregate,” 36 M.R.S. §§ 843(1-A), 844(2)

*Wingate, and Dale & Sea Meadow, LLC v. Town of York*, Nos. 2003-005 & 2003-006, at 12-13 (order on jurisdiction; does not refer to (1) nonresidential properties of any value and (2) residential properties of that value, but rather to a single taxpayer being able to aggregate nonresidential properties that are, alone, less than that value), *confirmed by Board*, June 4, 2004 (decision on jurisdiction)

*Sprague Energy Corp. v. Town of Bucksport*, No. 2003-003, at 9 n.6  
*Town of Alfred v. Schiavi*, Nos. 2005-010, 2005-011, 2005-012, 2005-013 & 2005-014, at 2-3

*Wescott & Payson II v. City of Saco*, 2006-006, at 2, 3-4 (order on jurisdiction)  
*GGP-Maine Mall, LLC v. City of South Portland*, No. 2008-001 (*Maine Mall I*), at 2  
*Boralex Sherman, LLC v. Town of Stacyville*, Nos. 2009-007 & 2010-002-A, at 2  
*Harold MacQuinn, Inc. v. Town of Hancock*, No. 2009-014, at 2  
*LaBoca Corp. v. Town of Falmouth*, No. 2012-027, at 1 (\$1,000,000 threshold met)  
*LaBoca Corp. v. Town of Falmouth*, No. 2014-001, at 1-2 (same)  
*Camp O-At-Ka v. Town of Sebago*, No. 2016-010, at 1 (\$1,000,000 threshold met)

Factors to consider in determining if aggregation is appropriate are, in order, ownership, commonality of interests, and contiguity

*Town of Alfred v. Schiavi*, Nos. 2005-010, 2005-011, 2005-012, 2005-013 & 2005-014, at 5

A taxpayer need not challenge the assessments of all its lands that may be aggregated for jurisdictional purposes

*Harold MacQuinn, Inc. v. Town of Hancock*, No. 2009-014, at 14-15

Different property owners may not aggregate individually owned properties, even though they have common interests, to meet the \$1,000,000 requirement giving the Board jurisdiction

*Riverview Timeshare Trust v. Town of Bethel*, No. 2002-009, at 5, 6  
*Bethel Inn Corp. & Riverview Timeshare Trust v. Town of Bethel*, 2003-001 & 2003-002, at 2 n.3  
*Rangeley Lake Resort Development Co., LLC v. Town of Rangeley*, No. 2003-019, at 10

Where petitioner did not own a store, among many, at shopping center, that store must be excluded from appeal of challenge to denial of abatement

*GGP-Maine Mall, LLC v. City of South Portland*, No. 2008-001 (*Maine Mall I*), at 5

The Board will not simply accept form of tax bills, but will inquire into the nature of the property being taxed, for purposes of determining its jurisdiction

*Rangeley Lake Resort Development Co., LLC v. Town of Rangeley*, No. 2003-019, at 10-12 (tax bills need not be as specific for assessment purposes as for lien purposes)

The Board now has no jurisdiction over residential properties, and such appeals are to be dismissed

*Wesson v. Town of Bremen*, No. 91-02, at 3

*Lauder v. Town of South Bristol*, No. 91-07, at 1

*Hood Trust v. Town of South Bristol*, No. 91-08, at 1

*Page v. Town of Damariscotta*, No. 99-014, at 5, 7 n.6

*Wingate, and Dale & Sea Meadow, LLC v. Town of York*, Nos. 2003-005 & 2003-006, at 11-13 (order on jurisdiction; where Board has no subject matter jurisdiction, appeal must be dismissed), *confirmed by Board*, June 4, 2004, at 1 (decision on jurisdiction)

*See Topsham Hydro Partners v. Town of Topsham*, No. 2003-007, at 2

*Peaker v. City of Biddeford*, 2003-018, at 1 (order on jurisdiction), *confirmed by Board*, Mar. 31, 2005, at 1-2 (decision on jurisdiction)

*Rangeley Lake Resort Development Co., LLC v. Town of Rangeley*, No. 2003-019, at 13 (timeshares sold to individuals are residential properties)

*Town of Alfred v. Schiavi*, Nos. 2005-010, 2005-011, 2005-012, 2005-013 & 2005-014, at 3

*Turner & Buchanan v. Maine Revenue Services*, Nos. 2006-010 & -011, at 1-2 (collecting cases)

*Wescott & Payson II v. City of Saco*, 2006-006, at 2 (order on jurisdiction)

*Old Point, Inc. v. Town of Lamoine*, Nos. 2010-009 & 2011-016, at 4, 6

*Narrows Too #5038 v. Town of Trenton*, No. 2012-013, at 3

History of the Board's hearing residential appeals, and legislative history

*Wingate, and Dale & Sea Meadow, LLC v. Town of York*, Nos. 2003-005 & 2003-006, at 5-9, 10, 13 (order on jurisdiction), *confirmed by Board*, June 4, 2004 (decision on jurisdiction)

Where taxpayer claims property is both residential and nonresidential,

the Board will not separate the parts of the property in order to confer jurisdiction when it finds property is residential

*Wesson v. Town of Bremen*, No. 91-02, at 3

The Board has an obligation to distinguish nonresidential from residential properties as a component of determining its jurisdiction

*Rangeley Lake Resort Development Co., LLC v. Town of Rangeley*, No. 2003-019, at 10-11

Definition of “nonresidential property,” 36 M.R.S. §§ 843(1-A), 844(2)

*Wingate, and Dale & Sea Meadow, LLC v. Town of York*, Nos. 2003-005 & 2003-006, at 9 n.9 (order on jurisdiction), *confirmed by Board*, June 4, 2004 (decision on jurisdiction)

“Nonresidential property” does not mean “property owned by a nonresident”

*Lauder v. Town of South Bristol*, No. 91-07, at 2  
*Hood Trust v. Town of South Bristol*, No. 91-08, at 2

“Nonresidential” in 36 M.R.S. §§ 843 and 843(1-A) was not defined originally, but covers apartments not owner-occupied

*New Marblehead North Housing Corp. v. Taylor*, No. 90-10, at 2  
*Lincoln Realty Associates v. Town of Lincoln*, No. 91-103, at 1-2  
*Wescott & Payson II v. City of Saco*, 2006-006, at 2 (order on jurisdiction)

Parcels of a residential development held for sale are business inventory which are nonresidential properties for purposes of the Board’s jurisdiction

*Cushing Holdings, LLC v. Town of Cushing and Last Resort Holdings, LLC v. Town of Cushing*, Nos. 2006-017 & -018, at 8 n.6

Timeshare properties held by developer for sale, but not yet sold, are nonresidential properties within the jurisdiction of the Board

*Bethel Inn Corp. & Riverview Timeshare Trust v. Town of Bethel*,  
2003-001 & 2003-002, at 6-7  
*Rangeley Lake Resort Development Co., LLC v. Town of Rangeley*,  
No. 2003-019, at 10

Municipality's authority to permit or require management entity to collect taxes for timeshare owners, 33 M.R.S. § 593(4)

*Rangeley Lake Resort Development Co., LLC v. Town of Rangeley*,  
No. 2003-019, at 13-15

It is the burden of a party seeking to enforce the statute of frauds to affirmatively raise the issue

*Gregory v. MMC Realty Corp. & Maine Medical Center*, No. 2000-001,  
at 53 n.23

A mortgage is an interest in land

*Falls Development Associates, L.P. v. City of Saco*, No. 2008-025, at 44

A mortgage is a contract

*Falls Development Associates, L.P. v. City of Saco*, No. 2008-025, at 44

Role of Maine State Housing Authority and municipal housing authority

*Rankin Center Associates v. City of Rockland*, Nos. 93-18 & 93-97, at 5  
(MSHA)  
*Falls Development Associates, L.P. v. City of Saco*, No. 2008-025,  
at 14 n.2 (MSHA); 16 n.3 (city authority)

## II. Procedural Issues

All steps for perfecting a tax appeal are jurisdictional and must be complied with strictly

*RiverRidge Associates v. Town of Kennebunk*, No. 2011-033, at 2  
*Burt v. Town of Denmark*, No. 2014-007, at 12 (order on jurisdiction)  
*Dexter Shoe Co. v. Town of Dexter*, No. 2015-008, at 1 (order on respondent's motion to dismiss)

What constitutes an application for abatement

*Wells Industrial Development Corp. v. Town of Wells*, No. 93-67, at 3F  
 (letter enclosing an appraisal and indicating the appraised value of property is lower than assessed value was found by Board to be intended to open negotiations and is not an application, particularly when followed by a formal application)

Who can file an application for abatement on behalf of a corporation

*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2012-009, at 2  
 (non-profits: 13-B M.R.S. §§ 403, 710, 719)

Filing requirements of 36 M.R.S. § 841(1)

*Messina & Sprowl Associates, Inc. v. Town of Hampden*, No. 93-113,  
 at 2 (request for abatement based on valuation, not error, is not within this section)

Time requirements for applying for an abatement, 36 M.R.S. § 841(1)(1<sup>st</sup> ¶):  
 within 185 days from commitment

*Messina & Sprowl Associates, Inc. v. Town of Hampden*, No. 93-113,  
 at 2 (Board applied time in effect at time of commitment of taxes,  
 not shortened period later put into effect)

*UAH Hydro Kennebec v. Town of Winslow*, Nos. 95-120 & 95-150,  
 at 1 (185-day period to apply for abatement after commitment  
 cannot be extended by agreement of the parties)

*KPMG Peat Marwick v. City of Lewiston*, No. 96-047, at 1-2 (185-  
 day requirement met when application mailed on 185<sup>th</sup> day)

*Friendly Ice Cream Corp. v. City of Brewer*, No. 97-011, at 1-2 (185-day

- period to apply for abatement after commitment cannot be extended when no intent to deceive is shown)
- Sayer v. Town of Canton*, No. 99-022, at 2 & n.1, 3 (farmland case)
- Dirigo Dowels & Pins, Inc. v. Town of New Portland*, No. 2000-007, at 2
- International Woolen Co., Inc. v. Town of Sanford*, No. 2000-009, at 2
- Carroll v. Town of Cornish*, No. 2001-002, at 3 (Decision I)(farmland case)
- Davis v. Town of Lamoine*, No. 2002-003, at 2 (tree growth case)
- Curtis v. Town of Sherman*, No. 2004-005, at 3 (order on jurisdiction; tree growth case)
- Caleb Affordable Housing Associates, L.P. v. City of Saco*, No. 2006-001, at 1-2 & n.1 (order on jurisdiction)
- KeyBank National Ass'n v. Town of Phippsburg*, No. 2006-002, at 6 (tree growth case; one of three time periods in section 841(1))
- Dale Henderson Logging, Inc. v. Town of Steuben*, No. 2008-016, at 3-4 (tree growth case)
- Bayroot, LLC v. Highland Plantation*, Nos. 2009-004, -005 & -033 at 2-3 (tree growth case; errors relating to valuation of property must be filed within 185 days from commitment although section 841(1) does not speak of valuation)
- Francis Small Heritage Trust, Inc. v. Town of Limington*, Nos. 2009-032 & 2010-016, at 1 (tree growth and open space case)
- McLaughlin v. Town of Dexter*, No. 2010-001, at 1, 10, 12 (Board does not have discretion under any circumstances to extend the 185-day period following commitment in which a taxpayer can request an abatement); at 11 (Board must dismiss an appeal in which the taxpayer did not request an abatement within 185 days of commitment)
- Smith v. Town of Livermore Falls*, No. 2010-008, at 3-4 (tree growth case)
- Haggard v. Town of Swan's Island*, No. 2010-012, at 5 (tree growth case; Board must dismiss an appeal in which the taxpayer did not request an abatement within 185 days of commitment); at 4-5 (taxpayer excused from complying when town affirmatively misstated how and when she could challenge withdrawal penalty)
- RiverRidge Associates v. Town of Kennebunk*, No. 2011-033, at 1
- Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2012-009, at 7, 21, 28 (open space case)
- Peckham & Trott v. Town of Lake View Plantation*, No. 2014-003, at 3, 5 (dismissal order; tree growth case)
- Burt v. Town of Denmark*, No. 2014-007, at 6 (order on jurisdiction; open space case); at 6-8 (mandatory nature of time for filing by taxpayer)
- Dexter Shoe Co. v. Town of Dexter*, No. 2015-008, at 2 n.2 (order on



respondent's motion to dismiss)

There is no second method for appeal based on date that taxpayer files a request for exemption

*Maine Coast Medical Realty, Inc. v. City of Ellsworth*, Nos. 2018-013, -014 & -015, at 8

Assessors on their own initiative may revisit valuation within one year of commitment

*KeyBank National Ass'n v. Town of Phippsburg*, No. 2006-002, at 6  
*Burt v. Town of Denmark*, No. 2014-007, at 9-10 (order on jurisdiction; second alternative under section 841(1)(1<sup>st</sup> ¶))

Three-year backwards reach of 36 M.R.S. §§ 713, 841(1)(2<sup>nd</sup> ¶)

*Great Cove Boat Club, Inc. v. Town of Eliot*, Nos. 91-21, 92-94 & 92-95, at 5

*Messina & Sprowl Associates, Inc. v. Town of Hampden*, No. 93-113, at 1

*Fasse v. Town of St. Albans & Town of Ripley*, No. 2002-005, at 6, 11-12, 13 (where assessors in tree growth case granted abatement for one year, even though not required to do so, it was also required to grant abatement for the other two years within the reach of section 841(1) when the evidence for those two years was identical as for the one year; assessors authority not dependent on taxpayer's satisfying section 579)

*Sprague Energy Corp. v. Town of Bucksport*, No. 2003-003, at 32 n.16

*KeyBank National Ass'n v. Town of Phippsburg*, No. 2006-002, at 6 (correction of illegality, error, or irregularity other than valuation, from one to three years after commitment); at 10-11 (taxpayer cannot challenge more-than-three-year old tree growth classification by challenging withdrawal penalty)

*Dale Henderson Logging, Inc. v. Town of Steuben*, No. 2008-016, at 7-8 (appeal to selectmen was premature and was a challenge to valuation, not merely classification as tree growth, over which selectmen had no authority)

*Burt v. Town of Denmark*, No. 2014-007, at 10-12 (order on jurisdiction; same)

*Emera Maine v. Town of Eddington*, No. 2015-010, and *Emera Maine v. Town of Bradley*, No. 2015-011, at 9 (taxpayer presented

enough evidence of error and/or illegality to give the Board jurisdiction)

Taxpayer cannot avoid compliance with abatement application or appeal requirements simply because he may believe the process will be futile

*Curtis v. Town of Sherman*, No. 2004-005, at 5 (order on jurisdiction)

Taxpayer may file only once for abatement for each tax year, at least on the same basis, and the first denial is controlling

*Perkins v. Town of Kittery*, No. 97-002, at 2 (this is so even though taxpayer claimed to have obtained additional information on valuation after denial)

Taxpayer filed twice, on different grounds

*Dale Henderson Logging, Inc. v. Town of Steuben*, No. 2008-016, at 15 n.13 (noting cases on taxpayer's right to file appeal (to municipal assessors between one and three years) when first appeal was untimely because premature)

Where first application for abatement was dismissed by city as untimely, but was filed without authorization, a second application is nonetheless invalid where city was not informed of lack of authorization

*Penobscot Bay Development Co. v. City of Belfast*, No. 90-41, at 3

Although one does not necessarily have the right to apply twice for an abatement on the same property for a single tax year, where the town denied a first application "as presented," it "reconsidered" its denial when the taxpayer resubmitted her application

*Davis v. Town of Lamoine*, No. 2002-003, at 2-3

Deemed denials, 36 M.R.S. § 842

*James River Corp. v. City of Old Town*, No. 86-12, at 2  
*J. J. Nissen Baking Co. v. City of Portland*, No. 86-13, at 2

*A. C. Lawrence Leather Co., Inc. v. Town of Paris*, No. 87-06, at 2-3  
*Maine Central Railroad Co. v. Town of Dexter*, No. 89-03, at 3  
*Penobscot Bay Development Co. v. City of Belfast*, No. 90-41, at 2  
*Filaroska v. Town of Vienna*, No. 90-44, at 1 (tree growth)  
*Marine Atlantic, Inc. v. Town of Bar Harbor*, Nos. 91-03 & 91-52,  
 at 3  
*Mountain View Associates v. Town of Madison*, No. 91-35, at 2  
 (“deemed denied by operation of law”)  
*A-R Cable Services – Me., Inc. v. City of Lewiston*, No. 91-37, at 2-4  
*Ferguson v. Town of Otisfield*, No. 91-66, at 1 (tree growth)  
*Robertshaw Controls Co. v. Town of Kittery*, No. 92-10, at 1-2  
*Kennebunkport Inn, Inc. v. Town of Kennebunkport*, No. 94-43, at 2  
*Phillips v. Town of Rangeley*, No. 95-137, at 2  
*Seaside Hotel Associates v. Town of Kennebunkport*, No. 96-019,  
 at 1-2  
*Sayer v. Town of Canton*, No. 99-022, at 2 (farmland and open  
 space law)  
*Dirigo Dowels & Pins, Inc. v. Town of New Portland*, No. 2000-007,  
 at 2, 7  
*International Woolen Co., Inc. v. Town of Sanford*, No. 2000-009, at 3  
*Carroll v. Town of Cornish*, No. 2001-02, at 2-3 (Decision I), at 4  
 (Decision II)(farmland)  
*Caleb Affordable Housing Associates, L.P. v. City of Saco*, No. 2006-001,  
 at 2 & n.3 (order on jurisdiction)  
*Dale Henderson Logging, Inc. v. Town of Steuben*, No. 2008-016, at 5  
 (tree growth)  
*Ocean State Job Lot of Belfast, LLC v. City of Belfast*, No. 2011-022-A,  
 at 2 (order on motion to dismiss)  
*Gerrity Family Ltd. Partnership v. Town of East Machias*, Nos. 2011-036  
 & 2013-011, at 1  
*MHC Narrows Too, LLC v. Town of Trenton*, No. 2012-013, at 2  
*Peckham & Trott v. Town of Lake View Plantation*, No. 2014-003, at 5-6  
 (dismissal order)  
*Maine Coast Medical Realty, Inc. v. City of Ellsworth*, Nos. 2018-013,  
 -014 & -015, at 3 (decision on jurisdiction)  
*Wal-Mart Real Estate Business Trust v. City of Ellsworth*, No. 2019-  
 001, at 4 (decision on jurisdiction)

Deemed denials operate to protect the taxpayer from having one’s appeal languish

*Sprague Energy Corp. v. Town of Bucksport*, No. 2003-003, at 2 n.1

Deemed denials are inevitable when a board of assessment review is inactive

*Sprague Energy Corp. v. Town of Bucksport*, No. 2003-003, at 2 n.1

Appeal period of 60 days in deemed denials starts on date of deemed denial; once assessors fail to act an application for abatement, the application is deemed denied on the 60<sup>th</sup> day

*Maine Central Railroad Co. v. Town of Dexter*, No. 89-03, at 3

*Penobscot Bay Development Co. v. City of Belfast*, No. 90-41, at 2

*Mountain View Associates v. Town of Madison*, No. 91-35, at 2

*Ferguson v. Town of Otisfield*, No. 91-66, at 1

*Robertshaw Controls Co. v. Town of Kittery*, No. 92-10, at 2

*Kennebunkport Inn, Inc. v. Town of Kennebunkport*, No. 94-43, at 2

*Sayer v. Town of Canton*, No. 99-022, at 2

*Dirigo Dowels & Pins, Inc. v. Town of New Portland*, No. 2000-007,  
at 5 n.2, 10

*Caleb Affordable Housing Associates, L.P. v. City of Saco*, No. 2006-001,  
at 2 & n.5 (order on jurisdiction)

*Peckham & Trott v. Town of Lake View Plantation*, No. 2014-003, at 5-6  
(dismissal order)

Taxpayer has 60 days to appeal from date of last nonaction by assessor on extension granted by assessor for taxpayer to provide information on application for abatement

*Wal-Mart Real Estate Business Trust v. City of Ellsworth*, No. 2019-001, at 5 (decision on jurisdiction)

Municipalities are to dismiss, not merely deny, untimely applications or appeals

*Curtis v. Town of Sherman*, No. 2004-005, at 4 n.3 (order on jurisdiction)

*Dale Henderson Logging, Inc. v. Town of Steuben*, No. 2008-016,  
at 15 n.11

*Smith v. Town of Livermore Falls*, No. 2010-008, at 7 n.4 (order on jurisdiction)

*RiverRidge Associates v. Town of Kennebunk*, No. 2011-033, at 5 n.8  
(dismissal order; and only the jurisdiction of the Board, not a board of assessment review, is susceptible to consideration under section 271(5))

*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2012-009, at 29

A dismissal and a denial are very different

*Caleb Affordable Housing Associates, L.P. v. City of Saco*, Nos. 2008-021— -024, and *Falls Development Associates, L.P. v. City of Saco*, No. 2008-026, at 2 n.1 (order on motion to deny pending appeals)

*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2012-009, at 29

Taxpayers are presumed to know the law

*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2012-009, at 27

Taxpayers are responsible for knowing what the status of their property is

*KeyBank National Ass'n v. Town of Phippsburg*, No. 2006-002, at 14 & n.8

*Pierce v. Maine Revenue Services*, No. 2006-007, at 4

*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2012-009, at 27

Assessors are under no obligation to notify taxpayers of a deemed denial, and taxpayer has responsibility to keep track of appeal period deadlines

*Dirigo Dowels & Pins, Inc. v. Town of New Portland*, No. 2000-007, at 5 n.2

*International Woolen Co., Inc. v. Town of Sanford*, No. 2000-009, at 8 (Board notes that assessor did not notify taxpayer that he intended to allow the 60-day period to lapse)

*Peckham & Trott v. Town of Lake View Plantation*, No. 2014-003, at 5 (dismissal order)

Requirement of consent (in writing) to extend period for decision

*James River Corp. v. City of Old Town*, No. 86-12, at 1

*Northeast Bank of Sanford v. Town of Sanford*, No. 93-128, at 2 (agreement to extend time must be documented)

*Kennebunkport Inn, Inc. v. Town of Kennebunkport*, No. 94-43, at 2 (assessors' tabling of application taken as an agreement on part of taxpayer to delay decision)

- Seaside Hotel Associates v. Town of Kennebunkport*, No. 96-019, at 3  
(county commissioners were deemed to have denied appeal when they failed to issue written decision for over 90 days)
- Maine Public Service Co. v. City of Caribou*, Nos. 97-108 & 98-008, at 2-3 (cooperative course of conduct; conduct after the 60<sup>th</sup> day may be relevant to conduct during the 60-day period)
- Dirigo Dowels & Pins, Inc. v. Town of New Portland*, No. 2000-007, at 3
- International Woolen Co., Inc. v. Town of Sanford*, No. 2000-009, at 3-4
- Sprague Energy Corp. v. Town of Bucksport*, No. 2003-003, at 2 n.1 (consent may be implicit despite language of statute)

Whether negotiations and correspondence amount to an implied extension of time for city assessors to issue a decision

- KNL Associates v. City of Lewiston & Central Way Realty v. City of Lewiston*, Nos. 92-55-92-64, at 2-3
- Northeast Bank of Sanford v. Town of Sanford*, No. 93-128, at 2 (letter from taxpayer's representative to taxpayer indicating date of hearing before board of assessment review, based on letter from town, constituted sufficient evidence of an agreement to extend time)
- Seaside Hotel Associates v. Town of Kennebunkport*, No. 96-019, at 3 (implicit agreement must be interpreted reasonably so taxpayer can plan for further appeal)
- McGhee v. Town of Maxfield*, No. 96-044, at 2 (where selectman gave taxpayer schedule of meetings, offered to put him on the agenda, and requested taxpayer let him know when he wanted to have matter heard, taxpayer constructively agreed or acquiesced to having matter continued generally)
- Maine Public Service Co. v. City of Caribou*, Nos. 97-108 & 98-008, at 2 (cooperative course of conduct)
- Dirigo Dowels & Pins, Inc. v. Town of New Portland*, No. 2000-007, at 12-18 (same)
- International Woolen Co., Inc. v. Town of Sanford*, No. 2000-009, at 4-9 (course of conduct did not show that taxpayer implicitly or in writing agreed to extend the 60-day period)

Consent to extend period for decision cannot be made after the deemed denial date

- Marine Atlantic, Inc. v. Town of Bar Harbor*, Nos. 91-03 & 91-52, at 4 (No. 91-52)

- KNL Associates v. City of Lewiston & Central Way Realty v. City of Lewiston*, Nos. 92-55-92-64, at 4
- Northeast Bank of Sanford v. Town of Sanford*, No. 93-128, at 1 n.1, 2 (consent given within 60-day period)
- McGhee v. Town of Maxfield*, No.96-044, at 3 (implicit agreement to extend time for assessors to act was made within the 60-day period)
- Northeast Empire Ltd. Partnership v. Town of Livermore Falls*, Nos. 97-101 & 98-005, at 3 (taxpayer conceded no agreement existed within 60 days from date of application, and subsequent conduct could not foist jurisdiction on Board; Board stresses delay and litigation long after filing applications for abatement)
- Maine Public Service Co. v. City of Caribou*, Nos. 97-108 & 98-008, at 3 (cooperative course of conduct found to exist within the 60-day period)
- Dirigo Dowels & Pins, Inc. v. Town of New Portland*, No. 2000-007, at 3-4 n.1 (rejecting Superior Court decision holding that agreement can be reached after the 60-day period expired)
- International Woolen Co., Inc. v. Town of Sanford*, No. 2000-009, at 4, 9

Contrary view would render 60-day time limit meaningless, create hardship and delay, reduce parties' control over litigation, preclude appeals, and undermine finality

- Northeast Empire Ltd. Partnership v. Town of Livermore Falls*, Nos. 97-101 & 98-005, at 3
- Dirigo Dowels & Pins, Inc. v. Town of New Portland*, No. 2000-007, at 4 n.1
- International Woolen Co., Inc. v. Town of Sanford*, No. 2000-009, at 2, 3, 4

Law Court decision in *Kokernak v. Town of Vienna* applies with equal force to 36 M.R.S. §§ 843 and 844

- Dirigo Dowels & Pins, Inc. v. Town of New Portland*, No. 2000-007, at 3
- International Woolen Co., Inc. v. Town of Sanford*, No. 2000-009, at 3 & n.3

Where town issued a decision after the deemed denial date, that decision is of no effect (*N. B.*: this point must be considered overruled by the Law

Court's decision in *International Woolen Co., Inc. v. Town of Sanford*, at least where an agreement to extend the 60-day period might be inferred)

*Page v. Town of Damariscotta*, No. 99-014, at 4 n.3

*Dirigo Dowels & Pins, Inc. v. Town of New Portland*, No. 2000-007, at 9

Where town issued a decision after the deemed denial date, the Board will utilize the date of notice of the decision, not the deemed denial date, as the date on which the appeal period to the Board begins to run

*Marine Atlantic, Inc. v. Town of Bar Harbor*, Nos. 91-03 & 91-52, at 3 (No. 91-03)

What constitutes notice that application has been granted

*Wesson v. Town of Bremen*, No. 93-88, at 1-2 (no prescribed form required for granting application for open space classification)

What constitutes notice of a denial, triggering appeal period or time to request an abatement

*Filaroska v. Town of Vienna*, No. 90-44, at 2 (sending tax bill)

*The Salvation Army v. City of Lewiston*, No. 91-29 (Case II), at 5

(letter stating property is not tax exempt and will remain on tax rolls is a denial triggering appeal period)

*Key Bank of Maine v. Town of Old Orchard Beach*, No. 92-15, at 3

*Wingate, and Dale & Sea Meadow, LLC v. Town of York*, Nos. 2003-005 & 2003-006, at 3-4 (order on jurisdiction; Board has not finally decided, but notes 36 M.R.S. § 842 requires written decision by municipality), *confirmed by Board*, June 4, 2004 (decision on jurisdiction)

*Pierce v. Maine Revenue Services*, No. 2006-007, at 3, 5 (transfer tax declaration)

*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2012-009, at 16 (application for abatement); at 24-25 (denial under 36 M.R.S. § 1109(4)(1<sup>st</sup> ¶) is not appealable)

Whether information sent by town was sufficient notice of appeal rights

*Wells Industrial Development Corp. v. Town of Wells*, No. 93-67, at 4 (sending taxpayer Property Tax Bulletin #10, Property Tax



Abatement and Appeals Procedures, does not constitute notice)  
*Everett v. Town of Waterford*, No. 93-136, at 1 (question left open  
 whether by dispensing Property Tax Bulletin #19, Tree Growth  
 Tax Law, to town taxpayers it had given notice of appeal rights)  
*Haggard v. Town of Swan's Island*, No. 2010-012, at 4-5, 8-9  
*Dexter Shoe Co. v. Town of Dexter*, No. 2015-008, at 4-5

#### Appeal process summarized

*Filaroska v. Town of Dresden*, No. 91-88, at 2-3  
*Champion International Corp. v. Town of Bucksport*, No. 93-98,  
 at 18-19  
*Dirigo Dowels & Pins, Inc. v. Town of New Portland*, No. 2000-007,  
 at 2-5 (36 M.R.S. §§ 843 and 844 differ according to whether  
 municipality has a board of assessment review)  
*International Woolen Co., Inc. v. Town of Sanford*, No. 2000-009,  
 at 2-3  
*Davis v. Town of Lamoine*, No. 2002-003, at 2 (tree growth case)  
*Narrows Too #5038 v. Town of Trenton*, No. 2012-013, at 3 n.1, 3-5

Three factors determine the course of an appeal: (1) whether property is residential or nonresidential; (2) whether or not the property has an equalized valuation of \$1,000,000 or greater; and (3) whether or not the municipality has a board of assessment review

*Narrows Too #5038 v. Town of Trenton*, No. 2012-013, at 3

An aggrieved taxpayer cannot skip a step in the appeal process and invoke the jurisdiction of the appellate body appealed to

*Down East Hospitality Partners, LLC v. Town of Lincolnville*,  
 No. 2012-010, at 4 (dismissal order)

The Board cannot hear an appeal that has not been properly appealed through the municipal level

*Cobalt Properties, Ltd. v. Town of West Gardiner*, Nos. 2012-006  
 & -016, at 2 (prehearing order)  
*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2012-009, at 28-29  
 (filing premature either as an application for abatement or as an  
 appeal); at 31 (timely requesting an abatement after commitment

is a condition precedent to an appeal)

Sections 843(1) and 843(1-A): In cases involving the \$1,000,000 threshold, one must first appeal a decision at the assessor level to a board of assessment review, if one exists, in order to appeal properly to the Board of Property Tax Review

*Down East Hospitality Partners, LLC v. Town of Lincolnville*,  
No. 2012-010, at 2-3 (dismissal order)

Appeals in residential cases from the decision of the local assessors (to county commissioners and then to Superior Court) or board of assessment review (directly to Superior Court), 36 M.R.S. §§ 843(1), 844(1)

*Narrows Too #5038 v. Town of Trenton*, No. 2012-013, at 3 n.1

Appeals in nonresidential cases involving \$1,000,000 or more may be to either county commissioners or the Board where there is no board of assessment review, 36 M.R.S. § 844(2)

*Harold MacQuinn, Inc. v. Town of Hancock*, No. 2009-014, at 15 n.5  
*Narrows Too #5038 v. Town of Trenton*, No. 2012-013, at 4

Appeals in unclassified property cases must be to the local board of assessment review or county commissioners

*Tidebrook Conservation Trust v. Town of Freeport*, No. 93-52, at 3  
(Decision I), at 1 (Decision II)  
*McGhee v. Town of Maxfield*, No.96-044, at 4

County commissioners have no role in an appeal from a board of assessment review, 36 M.R.S. § 843(1-A); appeal is directly to the Board

*Narrows Too #5038 v. Town of Trenton*, No. 2012-013, at 3 n.1, 4

If a municipality does not have a board of assessment review, an appeal concerning nonresidential property is to the county commissioners or, in the alternative, if the property has an equalized valuation of \$1,000,000 or greater, to the Board

*Narrows Too #5038 v. Town of Trenton*, No. 2012-013, at 3 n.1, 4-5, 5-6 (there is no requirement of an appeal to the county commissioners preceding an appeal to the Board)

Under 36 M.R.S. § 843(2), appeals from primary assessing areas are directly to the Board

*Danny's, Inc. v. Town of Old Orchard Beach*, No. 91-38, at 1, 2  
*Schurman v. State of Maine, Bureau of Taxation*, No. 91-62, at 1  
*Hardy, Wolf & Downing v. City of Lewiston*, No. 92-06, at 1  
*Key Bank of Maine v. Town of Old Orchard Beach*, No. 92-15, at 1  
*Pine Brook Associates v. Town of Old Orchard Beach*, No. 92-98, at 1  
*Given v. City of Lewiston*, No. 92-103, at 1  
*Toussaint v. City of Lewiston*, Nos. 93-06–93-11, at 1  
*Harris v. City of Lewiston*, Nos. 93-19–93-22, at 1  
*Marcotte Congregate Housing, Inc. v. City of Lewiston*, Nos. 93-23 & 93-24, at 1  
*Toussaint v. City of Lewiston*, Nos. 95-143–95-146, at 1  
*Friendly Ice Cream Corp. v. City of Lewiston*, No. 95-158, at 1  
*The Salvation Army v. City of Lewiston*, No. 96-031, at 1  
*Pope v. Town of Old Orchard Beach*, Nos. 96-39–96-41, at 1  
*KPMG Peat Marwick v. City of Lewiston*, No. 96-047, at 1  
*Wingate, and Dale & Sea Meadow, LLC v. Town of York*, Nos. 2003-005 & 2003-006, at 5-6 (order on jurisdiction), *confirmed by Board*, June 4, 2004 (decision on jurisdiction)

Once primary assessing area adopted a board of assessment review, initial appeal was to that board

*Fleet Bank v. City of Lewiston*, Nos. 97-113–97-116, at 1

Appeals from unorganized territories are directly to the Board, 36 M.R.S. §§ 302, 843(2)

*Moore v. Bureau of Taxation*, No. 93-110, at 1  
*Corliss v. Bureau of Taxation*, No. 93-132, at 1  
*Big Lake Camp Meeting Ass'n v. Bureau of Taxation*, No. 95-013, at 1

Filing fees

*Developers Diversified Cooks Corner, L.P. v. Town of Brunswick*, Nos. 2009-022 & -025 (prehearing order), at 1-2 (appeal will be docketed if filed without the fee, but no further action will be taken; at 3 (dismissal improper when Board Secretary has not notified taxpayer that filing fee has not been paid)

Where a local board of assessment review has affirmed denial of application for abatement, taxpayer does not risk an *increase* of municipality's valuation, which is presumed correct, upon appeal to the Board

*Champion International Corp. v. Town of Bucksport*, No. 93-98, at 18-19

Cases in which the municipality or assessor appealed from adverse decision of a board of assessment review

*City of Biddeford v. Landco Realty, Inc.*, No. 92-104, *consolidated with Landco Realty Co. v. City of Biddeford*, No. 93-70, at 1-2  
*City of Belfast v. Cooper*, No. 95-154, at 1  
*Gregory v. MMC Realty Corp. & Maine Medical Center*, No. 2000-001, at 6

There is no requirement of a cross-appeal by municipality to defend assessment modified by a board of assessment review or county commissioners

*U. S. Optical Disc, Inc. v. Town of Sanford*, No. 2003-004, Appx. at 7-10

Whether 36 M.R.S. § 843(4) or § 844(4)—or former section 582-A in tree growth cases—requires suspension or dismissal of appeals when taxes for previous year have not been paid (*N.B.*: This is now governed by Law Court decision in *Interstate Food Processing Corp. v. Town of Fort Fairfield*, which reversed the Board's dismissal in that case)

*Central Way Realty Associates v. City of Lewiston*, Nos. 93-37–93-40, *consolidated with KNL Associates v. City of Lewiston*, Nos. 93-41–93-49, at 2-3 (order on motion for stay)  
*Eliot Commons Associates v. Town of Eliot*, Nos. 93-73, 93-74 & 95-011, at 4 (failure to pay taxes when due results in dismissal)  
*Dale Henderson Logging, Inc. v. City of Old Town*, No. 94-05, at 2

- (tree growth case; former 36 M.R.S. § 582-A, now repealed, which required payment of due taxes did not specifically preclude taxpayer from appealing its assessment should it not pay its taxes before appealing)
- Carle Street Associates v. City of Waterville*, Nos. 94-23 & 95-162, at 1-2 (taxes paid in installments after due date but before appeal to board of assessment review were not paid when due and appeal must be dismissed)
- KNL Associates v. City of Lewiston*, Nos. 94-30–94-33, consolidated with *Central Way Realty Associates v. City of Lewiston*, Nos. 94-34–94-42, at 2-4 (failure to pay taxes by due date cannot result in just a suspension—statute is silent to length of suspension—but in dismissal)
- Mobile Imaging Consortium v. City of Portland*, Nos. 94-44 & 96-32, at 2 (Board found taxes were timely paid)
- Estate of Perkins v. Town of Castine*, No. 94-47, at 1 (tree growth case; Board has no jurisdiction where taxes not paid by due date, notwithstanding pendency of petition for abatement)
- Brower, Denis & Powers v. Town of Starks*, No. 95-007, at 1 (tree growth case; Board suspended hearing until taxes were paid)
- Interstate Food Processing Corp. v. Town of Fort Fairfield*, No. 95-105, at 2-3 (failure to pay taxes when due results in dismissal that cannot be cured by payment after the fact)
- UAH Hydro Kennebec v. Town of Winslow*, Nos. 95-120 & 95-150, at 2 (section 844(4); where town allows payment of taxes in installments, taxpayer need not pay entire tax before first installment in order to appeal)
- Madison and Anson Water District v. Town of Embden*, No. 96-036, at 1 (by contrast, no requirement of payment of taxes before seeking declaratory or injunctive relief)
- McGhee v. Town of Maxfield*, No. 96-044, at 1-2 (tree growth case; nonpayment of taxes requires suspension of appeal; Board found taxes were paid)
- Country Host Inn v. City of Presque Isle*, No. 96-046, at 1-2 (before 1996, Board had no jurisdiction; failure to pay taxes when due results in dismissal that cannot be cured by payment after the fact)
- Great Northern Paper, Inc. v. Town of East Millinocket*, No. 2000-006, at 2 & n.2 (taxpayer need pay only taxes due for the year in issue, not a subsequent year)
- Riverview Timeshare Trust v. Town of Bethel*, No. 2002-009, at 1-2 n.1 (parties agreed that appeals of property owners who had not timely paid taxes must be suspended)
- Curtis v. Town of Sherman*, No. 2004-005, at 3 & n.1 (order on jurisdic-

tion; appeals in tree growth cases are not suspended when taxes have not been paid)

*Hunt, Trustee, Hunt Family Irrevocable Trust v. Maine Revenue Services*, Nos. 2009-020 & -021, at 6 (no need to pay assessment in tree growth case in order to appeal)

*Haggard v. Town of Swan's Island*, No. 2010-012, at 10-11 n.8 (same)

Purpose of 36 M.R.S. § 843(4) was to assist municipalities held hostage by major taxpayers that refused to pay taxes while pursuing abatements

*KNL Associates v. City of Lewiston*, Nos. 94-30–94-33, consolidated with *Central Way Realty Associates v. City of Lewiston*, Nos. 94-34–94-42, at 3

Due date for payment of taxes is not date of commitment of taxes, but is date after which taxes are delinquent and interest accrues

*Maine Public Service Co. v. City of Caribou*, Nos. 93-137 & 95-152, at 2-3

*Country Host Inn v. City of Presque Isle*, No. 96-046, at 1-2

Interim procedural order of the Board is not appealable

*Great Northern Paper, Inc. v. Town of East Millinocket*, No. 2000-006, at 2-3 n.3

Time during which a taxpayer may seek to appeal the denial of an abatement or exemption request

*Spencer Press of Maine, Inc. v. Town of Wells*, No. 86-10, consolidated with *Shaw's Realty, Inc. v. Town of Wells*, No. 86-11, at 3

*James River Corp. v. City of Old Town*, No. 86-12, at 2-3

*J. J. Nissen Baking Co. v. City of Portland*, No. 86-13, at 2

*A. C. Lawrence Leather Co., Inc. v. Town of Paris*, No. 87-06, at 2-3

*The Salvation Army v. City of Lewiston*, No. 91-29 (Case II), at 5 (exemption)

*Ferguson v. Town of Otisfield*, No. 91-66, at 1 (60 days in tree growth cases)

*Key Bank of Maine v. Town of Old Orchard Beach*, No. 92-15, at 3 (60 days from notice of denial; where date of notice is not clear, Board assumes it was within 10 days of date of denial)

- Town of Washington v. Bureau of Taxation*, No. 92-37, at 1 (45 days in municipal equalization cases, 36 M.R.S. § 272(1))
- Winslow v. Town of Falmouth*, No. 93-36, at 2 (60 days in tree growth cases, in accordance with 36 M.R.S. §§ 843 and 844)
- Eastler v. Town of Farmington*, No. 93-62, at 2-3 (60 days in farmland and open space cases, reading 36 M.R.S. § 1118 in conjunction with 36 M.R.S. §§ 841 and 843)
- CFS Ltd. Partnership v. Town of Sanford*, No. 93-106, at 1
- Phillips v. Town of Rangeley*, No. 95-137, at 3 (within 60 days in farmland and open space cases, reading 36 M.R.S. § 1118 in conjunction with 36 M.R.S. §§ 841 and 843)
- Keene v. City of Auburn*, No. 98-023, at 2 (*semble*; farmland and open space case)
- Sayer v. Town of Canton*, No. 99-022, at 2 (in farmland and open space cases, within 60 days from date of notice of decision or from date of deemed denial)
- Town of Standish v. State of Maine, Bureau of Revenue Services*, No. 99-031, at 2 (45 days in municipal equalization cases)
- Dirigo Dowels & Pins, Inc. v. Town of New Portland*, No. 2000-007, at 5 & n.2 (within 60 days of notice of denial or within 60 days of date of deemed denial)
- International Woolen Co., Inc. v. Town of Sanford*, No. 2000-009, at 4
- Town of Solon v. State of Maine, Bureau of Revenue Services*, No. 2000-012, at 1 (45 days in municipal equalization cases)
- Carroll v. Town of Cornish*, No. 2001-02, at 3-4 (Decision I)(within 60 days in farmland cases)
- Davis v. Town of Lamoine*, No. 2002-003, at 2 (within 60 days of notice of denial in tree growth cases)
- Fasse v. Town of St. Albans & Town of Ripley*, No. 2002-005, at 6, 7 n.7, 8 (same)
- Town of Stockholm v. Maine Revenue Services*, No. 2002-017, at 1-2 (45 days in municipal equalization cases)
- Wingate, and Dale & Sea Meadow, LLC v. Town of York*, Nos. 2003-005 & 2003-006, at 2 n.2, 4 (order on jurisdiction; 30 days to Superior Court; 60 days to Board), *confirmed by Board*, June 4, 2004 (decision on jurisdiction)
- McLaughlin v. Town of Dexter*, No. 2010-001, at 1 (tree growth case)
- Haggard v. Town of Swan's Island*, No. 2010-010, at 7-9 (requirement of notice to taxpayer mandatory when rights of taxpayer would be prejudiced by erroneous notice; notice instructed her to appeal, not apply for an abatement)
- Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2012-009, at 7, 21, 28-29
- Peckham & Trott v. Town of Lake View Plantation*, No. 2014-003, at 6 (dismissal order; 60 days in tree growth cases)

*Dexter Shoe Co. v. Town of Dexter*, No. 2015-008, at 2 n.3 (order on respondent's motion to dismiss)

Time for appealing or applying for abatement is mandatory and jurisdictional

*Spencer Press of Maine, Inc. v. Town of Wells*, No. 86-10, consolidated with *Shaw's Realty, Inc. v. Town of Wells*, No. 86-11, at 3

*James River Corp. v. City of Old Town*, No. 86-12, at 2

*J. J. Nissen Baking Co. v. City of Portland*, No. 86-13, at 2

*A. C. Lawrence Leather Co., Inc. v. Town of Paris*, No. 87-06, at 2

*The Salvation Army v. City of Lewiston*, No. 91-29 (Case II), at 5

*Ferguson v. Town of Otisfield*, No. 91-66, at 2 (tree growth)

*Town of Whitefield v. Bureau of Taxation*, No. 92-27, at 2  
(municipal equalization case)

*Town of Franklin v. Bureau of Taxation*, No. 92-35, at 2  
(municipal equalization case)

*Dirigo Dowels & Pins, Inc. v. Town of New Portland*, No. 2000-007, at 11

*Caleb Affordable Housing Associates, L.P. v. City of Saco*, No. 2006-001, at 3 (order on jurisdiction)(untimely appeal to BAR deprived BAR and Board of jurisdiction)

*Haggard v. Town of Swan's Island*, No. 2010-012, at 5

*RiverRidge Associates v. Town of Kennebunk*, No. 2011-033, at 2, 4  
(dismissal order)

*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2012-009, at 31  
(timeliness is a condition precedent to appeal)

*Down East Hospitality Partners, LLC v. Town of Lincolnville*, No. 2012-010, at 3 (dismissal order)

*Narrows Too #5038 v. Town of Trenton*, No. 2012-013, at 5

*Peckham & Trott v. Town of Lake View Plantation*, No. 2014-003, at 6  
(dismissal order)

*Burt v. Town of Denmark*, No. 2014-007, at 6-7, 12 (order on jurisdiction)

*Dexter Shoe Co. v. Town of Dexter*, No. 2015-008, at 1-2 (order on respondent's motion to dismiss)

*Maine Coast Medical Realty, Inc. v. City of Ellsworth*, No. 2018-013, -014 & -015, at 6 (decision on jurisdiction)

Time in which to apply for abatement cannot be waived (in the absence of intentional misleading by municipality)

*Friendly Ice Cream Corp. v. City of Brewer*, No. 97-011, at 2 (*dictum* on



waiver of time limit)  
*Curtis v. Town of Sherman*, No. 2004-005, at 5 (order on jurisdiction)  
*Smith v. Town of Livermore Falls*, No. 2010-008, at 5 (order on jurisdiction; noting *dictum* in *Curtis*)  
*Haggard v. Town of Swan's Island*, No. 2010-012, at 5  
*RiverRidge Associates v. Town of Kennebunk*, No. 2011-033, at 4  
*See Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2012-009, at 28, 31  
*Burt v. Town of Denmark*, No. 2014-007, at 7 (order on jurisdiction)

Timely notice of appeal is, more precisely, a claim processing rule and a mandatory precondition to the exercise of jurisdiction, and is required to invoke jurisdiction and avoid the finality of an administrative decision

*Down East Hospitality Partners, LLC v. Town of Lincolnville*,  
 No. 2012-010, at 3-4 (dismissal order)  
*See Burt v. Town of Denmark*, No. 2014-007, at 7 (order on jurisdiction)

There is no doubt the state will be zealous in assessing and collecting taxes but may not be so zealous in giving notice before the state takes action against taxpayers

*Haggard v. Town of Swan's Island*, No. 2010-012, at 11

Administrative boards have no inherent authority to extend or ignore statutory appeal periods

*Town of Standish v. State of Maine, Bureau of Revenue Services*,  
 No. 99-031, at 3  
*Dirigo Dowels & Pins, Inc. v. Town of New Portland*, No. 2000-007,  
 at 12  
*Town of Solon v. State of Maine, Bureau of Revenue Services*,  
 No. 2000-012, at 2  
*Curtis v. Town of Sherman*, No. 2004-005, at 6 (order on jurisdiction)  
*Caleb Affordable Housing Associates, L.P. v. City of Saco*, No. 2006-001,  
 at 4 (order on jurisdiction)

Because the Board has no jurisdiction over an appeal from the denial of an application for abatement or of the denial of a municipal-level appeal that was not timely requested, the appeal must be dismissed

*Spencer Press of Maine, Inc. v. Town of Wells*, No. 86-10, consolidated with *Shaw's Realty, Inc. v. Town of Wells*, No. 86-11, at 5  
*J. J. Nissen Baking Co. v. City of Portland*, No. 86-13, at 3  
*Maine Central Railroad Co. v. Town of Dexter*, No. 89-03, at 3  
*Penobscot Bay Development Co. v. City of Belfast*, No. 90-41, at 3-4  
*The Salvation Army v. City of Lewiston*, No. 91-29 (Case II), at 5  
*Ferguson v. Town of Otisfield*, No. 91-66, at 2  
*Key Bank of Maine v. Town of Old Orchard Beach*, No. 92-15, at 3  
*Town of Whitefield v. Bureau of Taxation*, No. 92-27, at 2  
(municipal equalization case)  
*Town of Franklin v. Bureau of Taxation*, No. 92-35, at 2  
(municipal equalization case)  
*KNL Associates v. City of Lewiston & Central Way Realty v. City of Lewiston*, Nos. 92-55-92-64, at 4 (deemed denial case)  
*Winslow v. Town of Falmouth*, No. 93-36, at 2  
*Eastler v. Town of Farmington*, No. 93-62, at 3  
*CFS Ltd. Partnership v. Town of Sanford*, No. 93-106, at 1-2  
*Phillips v. Town of Rangeley*, No. 95-137, at 3  
*UAH Hydro Kennebec v. Town of Winslow*, Nos. 95-120 & 95-150, at 1  
*Friendly Ice Cream Corp. v. City of Lewiston*, No. 95-158, at 2  
*Haskell v. Town of Phippsburg*, No. 96-004, at 2  
*Friendly Ice Cream Corp. v. City of Brewer*, No. 97-011, at 2  
*Northeast Empire Ltd. Partnership v. Town of Livermore Falls*, Nos. 97-101 & 98-005, at 3  
*Sayer v. Town of Canton*, No. 99-022, at 2  
*Town of Standish v. State of Maine, Bureau of Revenue Services*, No. 99-031, at 5  
*Gregory v. MMC Realty Corp. & Maine Medical Center*, No. 2000-001, at 56  
*Dirigo Dowels & Pins, Inc. v. Town of New Portland*, No. 2000-007, at 12  
*International Woolen Co., Inc. v. Town of Sanford*, No. 2000-009, at 9  
*Curtis v. Town of Sherman*, No. 2004-005, at 4 & n.3 (order on jurisdiction; tree growth case; untimely application for abatement is to be dismissed, not simply denied)  
*Caleb Affordable Housing Associates, L.P. v. City of Saco*, No. 2006-001, at 3 (order on jurisdiction)  
*GGP-Maine Mall, LLC v. City of South Portland*, No. 2008-001 (*Maine Mall I*), at 5 (untimely appeal at municipal level)  
*Dale Henderson Logging, Inc. v. Town of Steuben*, No. 2008-016, at 14-15  
*McLaughlin v. Town of Dexter*, No. 2010-001, at 11 (tree growth case; late request for abatement)  
*Smith v. Town of Livermore Falls*, No. 2010-008, at 5 (order on juris-

diction; tree growth case)  
*RiverRidge Associates v. Town of Kennebunk*, No. 2011-033, at 2-3  
 (where application for abatement was late, assessor could only  
 reject it as such, and remainder of appeal process was futile); 4  
*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2012-009, at 32  
*Narrows Too #5038 v. Town of Trenton*, No. 2012-013, at 5  
*Dexter Shoe Co. v. Town of Dexter*, No. 2015-008, at 2 (order to  
 respondent's motion to dismiss)

Appeal to municipal officers before the one- to three-year look back period  
 in 36 M.R.S. § 841(1)(2<sup>nd</sup> ¶) is premature, so the Board has no jurisdiction

*Dale Henderson Logging, Inc. v. Town of Steuben*, No. 2008-016,  
 at 6-9, 14 (appeal pursuant to 36 M.R.S. § 841(1)(2<sup>nd</sup>¶), allowing  
 municipal officers to correct any illegality, error, or irregularity,  
 but not correct an error in valuation, is not timely if taken  
 prematurely—before one year from denial)  
*Burt v. Town of Denmark*, No. 2014-007, at 10-12 (order on  
 jurisdiction; same)

Appeal to the Board before commitment of taxes is premature and must be  
 dismissed

*The Salvation Army v. City of Lewiston*, No. 95-119, at 2  
*Smith v. Town of Surry*, No. 2005-015, at 2 (order on jurisdiction)  
*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2012-009, at 28-29  
*Pulpit Trust v. Town of North Haven*, No. 2019-013 (dismissal order),  
 at 3

Where law provides for appeal to another body, or first to another body,  
 appeal to the Board is premature and the Board does not have jurisdiction

*Filaroska v. Town of Dresden*, No. 91-88, at 2 (initial appeal from  
 denial of request for abatement re unclassified property is to  
 town, not the Board)  
*Elifsofan v. Town of Vinalhaven*, No. 91-65, at 3 (portions of  
 property were in tree growth and others were not, so challenge  
 to enhancement factor used by town on nonclassified portions  
 to recapture revenues lost to land in tree growth is an  
 abatement case, the denial of which must be appealed to county  
 commissioners)  
*Robertshaw Controls Co. v. Town of Kittery*, No. 92-10, at 2 (where

taxpayer failed to appeal timely to board of assessment review that body had no jurisdiction and further appeal to the Board is necessarily untimely)

*Tidebrook Conservation Trust v. Town of Freeport*, No. 93-52, at 3 (Decision I)(open space)

*Fleet Bank v. City of Lewiston*, Nos. 97-113–97-116, at 1 (appeal should have been filed first with board of assessment review)

*River Dam Millyard, L.L.C. v. City of Biddeford*, No. 98-028, at 1 (same)

*Page v. Town of Damariscotta*, No. 99-014, at 8 (applications for abatement under tree growth must be presented first to town)

*Down East Hospitality Partners, LLC v. Town of Lincolnville*, No. 2012-010, at 4 (dismissal order; Board has no jurisdiction if party did not appeal to board of assessment review as required)

*Camp O-At-Ka v. Town of Sebago*, No. 2016-010, at 5 (taxpayer filed request for exemption prematurely, before town's commitment)

Town cannot grant an abatement in a case after an appeal has been taken

*Great Cove Boat Club, Inc. v. Town of Eliot*, Nos. 91-21, 92-94 & 92-95, at 5

Where town has granted application, contrary to taxpayer's understanding, an appeal to the Board must be dismissed

*Wesson v. Town of Bremen*, No. 93-88, at 2

Fact that town misadvised taxpayer regarding appeal, causing him to lose appeal right, cannot confer jurisdiction on the Board

*Enos v. Town of Stetson*, No. 93-03, at 3 (appeal to Superior Court)

*Phillips v. Town of Rangeley*, No. 95-137, at 3 (appeal to Board)

*Friendly Ice Cream Corp. v. City of Brewer*, No. 97-011, at 2

*See Caleb Affordable Housing Associates, L.P. v. City of Saco*, No. 2006-001, at 4 (order on jurisdiction; city's misadvice to taxpayer to appeal to BAR denial of request for abatement on nonresidential property of more than \$1,000,000, when appeal should have been to Board, was inconsequential in circumstances)

*But see Haggard v. Town of Swan's Island*, No. 2010-012, at 4-5, 8-9 (town's notice misadvised taxpayer of her rights and excused her failure to have applied for an abatement)

Town's Board of Appeals, acting as board of assessment review, thoroughly misadvised taxpayer on its right to appeal

*Dexter Shoe Co. v. Town of Dexter*, No. 2015-008, at 4-5 n.5 (order on respondent's motion to dismiss; board of appeals gave rights pertinent to a zoning appeal)

Taxpayer's misunderstanding appeal process cannot confer jurisdiction on the Board

*Eastler v. Town of Farmington*, No. 93-62, at 2 (farmland case)  
*Phillips v. Town of Rangeley*, No. 95-137, at 3 (open space case;  
 Board notes taxpayer was represented by counsel)  
*Curtis v. Town of Sherman*, No. 2004-005, at 5 (order on jurisdiction;  
 tree growth case)  
*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2012-009, at 31  
 (town's errors did not cause taxpayer not to file request for  
 abatement)

Appeal incorrectly filed with the Board rather than a board of assessment review and forwarded by the Board to the board of assessment review is not considered thereby filed with that board

*Fleet Bank v. City of Lewiston*, Nos. 97-113-97-116, at 1  
*River Dam Millyard, L.L.C. v. City of Biddeford*, No. 98-028, at 1

Appeal erroneously filed with county commissioners rather than the Board is of no consequence

*Fasse v. Town of St. Albans & Town of Ripley*, No. 2002-005, at 8  
 (tree growth case)  
*Narrows Too #5038 v. Town of Trenton*, No. 2012-013, at 5

Purpose of Board Rule 4(A) is to provide the Board with adequate information prior to hearing

*A-R Cable Services – Me., Inc. v. City of Lewiston*, No. 91-37, at 4-5  
*Developers Diversified Cooks Corner, L.P. v. Town of Brunswick*, Nos.  
 2009-022 & -025, at 1 (prehearing order)

A notice of appeal to the Board need only provide information required by Rule 4(A), and need not utilize the Board's form petition

*New Marblehead North Housing Corp. v. Taylor*, No. 90-10, at 3  
*A-R Cable Services – Me., Inc. v. City of Lewiston*, No. 91-37, at 4  
*Given v. City of Lewiston*, No. 92-103, at 2

What constitutes a petition for assessment review under Rule 4(A)(1)

*The Salvation Army v. City of Lewiston*, No. 91-29 (Case II), at 5  
 (letter stating intention to appeal)  
*A-R Cable Services – Me., Inc. v. City of Lewiston*, No. 91-37, at 4  
 (same)  
*Danny's, Inc. v. Town of Old Orchard Beach*, No. 91-38, at 3  
 (letter requesting review)  
*Donhauser Enterprises, LLC v. Town of Eliot*, No. 2002-001, *passim*  
 (where sufficient form petition was timely filed, petitioner could seek continuance to perfect appeal by more complete petition)

It is the obligation of a taxpayer to clearly identify what is being appealed

*GGP-Maine Mall, LLC v. City of South Portland*, No. 2008-001 (*Maine Mall I*), at 10 (taxpayer by clerical error did not list a property, among many, at shopping center; Board lacks jurisdiction to consider appeal of challenge to denial of abatement)

It is the taxpayer's right to control what claims it presents, and this necessarily includes challenging all or only some of the assessments of its lands

*Harold MacQuinn, Inc. v. Town of Hancock*, No. 2009-014, at 14

A taxpayer is entitled to an annual assessment of property and to a new appeal to the Board

*U. S. Optical Disc, Inc. v. Town of Sanford*, No. 2003-004, Appx. at 4  
*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2012-009, at 13

Presentation of case by representations of counsel or stipulation rather than formal admission of evidence approved

*Old Point, Inc. v. Town of Lamoine*, Nos. 2010-009 & 2011-016, at 2  
*Gerrity Family Ltd. Partnership v. Town of East Machias*, Nos. 2011-036  
 & 2013-011, at 3 (consolidated decision)  
*Wal-Mart Real Estate Business Trust v. City of Ellsworth*, No. 2019-001,  
 at 2, 5 (decision on jurisdiction)

Board can rely on evidence from previous hearing, if it makes that evidence a part of the record in the case at issue

*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2012-009, at 13  
*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2013-026, at 2,  
 15 n.6

Amending petition

*Sawyer Environmental Recovery Facility v. Town of Hampden*,  
 No. 93-34 (taxpayer permitted to amend petition to allege value of property over statutory minimum)  
*Eliot Commons Associates v. Town of Eliot*, Nos. 93-73, 93-74 & 95-011 at 3 (taxpayer permitted to amend petition to reflect true ownership in name of Eliot Associates)  
*Donhauser Enterprises, LLC v. Town of Eliot*, No. 2002-001, at 5 (where taxpayer timely filed facially adequate petition that he thought should include more information, simultaneously filed motion for enlargement to file more complete petition would be granted in absence of opposition)  
*UAH-Hydro v. Town of Winslow*, 2001-009, at 3 (claims of failure to state a claim and to include essential allegations in petition for assessment review may be corrected by amendment of petition)

Purpose of Board Rule 4(B) is to secure just, speedy, and economic determination of appeals

*Developers Diversified Cooks Corner, L.P. v. Town of Brunswick*, Nos. 2009-022 & -025, at 3 (prehearing order)

Effect of wrong characterization or designation of person to be assessed

*Cobalt Properties, Ltd. v. Town of West Gardiner*, Nos. 2012-006 & -016, at 3-4 (prehearing order)

Petition need not be brought in name of “Inhabitants of . . .”

*G S Building Systems Corp. v. Town of Pittsfield*, No. 98-003, at 1 n.1

Petition should be brought against the municipality as such

*Ocean State Job Lot of Belfast, LLC v. City of Belfast*, No. 2011-022-A,  
at 1 n.1 (order on motion to dismiss)

*395 Bangor Brewer, LLC v. City of Brewer*, No. 2017-005, at 1 n.1

Ascertaining when appeal to the Board has been filed: postmark constitutes filing, 36 M.R.S. § 153(1); *see also* 36 M.R.S. § 271(3-A) (depositing in mail constitutes filing)

*Friendly Ice Cream Corp. v. City of Lewiston*, No. 95-158, at 2 (appeal filed when mailed; Board’s records do not support taxpayer’s assertion that appeal was mailed on a certain date)

*KPMG Peat Marwick v. City of Lewiston*, No. 96-047, at 1-2

*Keene v. City of Auburn*, No. 98-023, at 2

*Sayer v. Town of Canton*, No. 99-022, at 3 (mailing means filing)

*Dirigo Dowels & Pins, Inc. v. Town of New Portland*, No. 2000-007,  
at 7 n.4, 10

*Carroll v. Town of Cornish*, No. 2001-02, at 5 n.4 (Decision I)

*Donhauser Enterprises, LLC v. Town of Eliot*, No. 2002-001, at 3

*Wingate, and Dale & Sea Meadow, LLC v. Town of York*, Nos. 2003-005 & 2003-006, at 3 (order on jurisdiction), *confirmed by Board*, June 4, 2004 (decision on jurisdiction)

*Town of Waldo v. Maine Revenue Services*, No. 2007-001, at 3 & n.1

*Brown v. Town of Bucksport*, No. 2009-031, at 2-3 n.4 (order on motion to dismiss; discussing depositing versus postmarking, either of which could mean mailing)

*Peckham & Trott v. Town of Lake View Plantation*, No. 2014-003, at 5 (dismissal order; filing means mailing)

*Day v. Town of Madison*, No. 2014-006, at 2 (where Board did not receive taxpayer’s appeal, reappeal filed within 15 days of notification by Board of nonreceipt was timely)

*Dexter Shoe Co. v. Town of Dexter*, No. 2015-008, at 6 (order on respondent’s motion to dismiss)

Presumption of regularity in mailing



*McLaughlin v. Town of Dexter*, No. 2010-001, at 11-12 (problems with United States Postal Service on national level are irrelevant to whether taxpayer received proper notice at its post office); 12 (mailing provides sufficient notice pursuant to section 713, as provided by section 706)

When the Board cannot ascertain date of mailing it will use the date received by the Board as the date of filing

*Dirigo Dowels & Pins, Inc. v. Town of New Portland*, No. 2000-007, at 7 n.4

*Carroll v. Town of Cornish*, No. 2001-002, at 5 n.5 (Decision I)

*Donhauser Enterprises, LLC v. Town of Eliot*, No. 2002-001, at 3 n.1

*Wingate, and Dale & Sea Meadow, LLC v. Town of York*, Nos. 2003-005 & 2003-006, at 3 (order on jurisdiction), *confirmed by Board*, June 4, 2004 (decision on jurisdiction)

*Dexter Shoe Co. v. Town of Dexter*, No. 2015-008, at 6 n.6 (order on respondent's motion to dismiss; filing coincides with receipt when appeal is hand-delivered to the Board)

Effect of 36 M.R.S. § 153(2) and M.R. Civ.P. 6(a) regarding weekends and holidays

*Maine Public Service Co. v. City of Caribou*, Nos. 93-137 & 95-152, at 2 (taxes due on October 1<sup>st</sup>, a Saturday, were timely paid on October 3<sup>rd</sup>)

*Dirigo Dowels & Pins, Inc. v. Town of New Portland*, No. 2000-007, at 7 n.4

*Carroll v. Town of Cornish*, No. 2001-002, at 5 n.3 (Decision I) (where 60<sup>th</sup> day for deemed denial date was a Sunday, it became Monday by law)

*Donhauser Enterprises, LLC v. Town of Eliot*, No. 2002-001, at 2-3

*Wingate, and Dale & Sea Meadow, LLC v. Town of York*, Nos. 2003-005 & 2003-006, at 4 & n.5 (order on jurisdiction), *confirmed by Board*, June 4, 2004 (decision on jurisdiction)

*Caleb Affordable Housing Associates, L.P. v. City of Saco*, No. 2006-001, at 2 n.2 (order on jurisdiction)

*Town of Waldo v. Maine Revenue Services*, No. 2007-001, at 3

*Dale Henderson Logging, Inc. v. Town of Steuben*, No. 2008-016, at 5 n.4

*Brown v. Town of Bucksport*, No. 2009-031, at 2 n.3 (order on motion to dismiss)

*Dexter Shoe Co. v. Town of Dexter*, No. 2015-008, at 6-7 & n.7 (order on respondent's motion to dismiss)

Pursuant to M.R. Civ.P. 6(a), time periods start on the day following an act or event in issue

*Town of Standish v. State of Maine, Bureau of Revenue Services*, No. 99-031, at 4 n.3  
*Dirigo Dowels & Pins, Inc. v. Town of New Portland*, No. 2000-007, at 7 n.4  
*Carroll v. Town of Cornish*, No. 2001-002, at 5 n.4 (Decision I)  
*Donhauser Enterprises, LLC v. Town of Eliot*, No. 2002-001, at 2-3 (petition for assessment review filed, by fax, on last possible day)  
*Wingate, and Dale & Sea Meadow, LLC v. Town of York*, Nos. 2003-005 & 2003-006, at 4 & n.5 (order on jurisdiction), *confirmed by Board*, June 4, 2004 (decision on jurisdiction)  
*Caleb Affordable Housing Associates, L.P. v. City of Saco*, No. 2006-001, at 2 n.2 (order on jurisdiction)  
*Town of Waldo v. Maine Revenue Services*, No. 2007-001, at 2-3

The Board's Rule 4(A)(2) requires a response within 20 days of notice of petition

*MCI International, Inc. v. Town of Andover*, No. 88-20, at 2  
*MCI International, Inc. v. Town of Andover*, No. 89-16, at 2  
*Rum Cove, LLC v. Town of Westport Island*, No. 2008-032, at 6-7

But does not require that response be served on taxpayer

*MCI International, Inc. v. Town of Andover*, No. 88-20, at 2

And under liberal construction of the Board's rules, delay in filing response may be excused

*MCI International, Inc. v. Town of Andover*, No. 89-16, at 3

Rule 2(B) requires the Board's rules to be liberally construed

*MCI International, Inc. v. Town of Andover*, No. 89-16, at 3

*The Salvation Army v. City of Lewiston*, No. 91-29 (Case II), at 5  
*A-R Cable Services – Me., Inc. v. City of Lewiston*, No. 91-37, at 3  
*Danny’s, Inc. v. Town of Old Orchard Beach*, No. 91-38, at 3  
*Town of Weston v. Bureau of Taxation*, No. 95-121, at 2 (but this  
 does not permit setting aside statutory requirements)

The Board chairman’s review of cases, 36 M.R.S. § 271(5), and Board Rule 4(A)(1)

*Dirigo Dowels & Pins, Inc. v. Town of New Portland*, No. 2000-007,  
 at 5-6 (function of section 271(5) is to give Board chairman  
 opportunity for meaningful review of jurisdictional issues;  
 comment on parties’ need to be accurate in their filings to allow  
 Board to manage its cases economically)

*Donhauser Enterprises, LLC v. Town of Eliot*, No. 2002-001, at 1-2  
 (lack of answer to petition for assessment review and response  
 to motion for enlargement requires action on motion for  
 enlargement without town’s position being considered); at 4-5  
 (where it is unclear upon initial review of case by the chairman  
 whether appeal is proper under 36 M.R.S. § 844(2) or whether a  
 case must first have been appealed to the board of assessment  
 review, 36 M.R.S. § 843 (1-A)), the chairman will not assume a  
 lack of jurisdiction pending a hearing)

*Wingate, and Dale & Sea Meadow, LLC v. Town of York*, Nos. 2003-  
 005 & 2003-006 (order on jurisdiction), at 2 n.3 (function of  
 section 271(5) is to give Board chairman opportunity for  
 meaningful review of jurisdictional issues), *confirmed by Board*,  
 June 4, 2004 (decision on jurisdiction)

*Peaker v. City of Biddeford*, 2003-018, at 1-2 (order on jurisdiction)  
 (residential property, and worth less than \$1,000,000),  
*confirmed by Board*, Mar. 31, 2005 (decision on jurisdiction)

*Curtis v. Town of Sherman*, No. 2004-005 (order on jurisdiction),  
 at 6-7 (dismissal, for failure to file for abatement from  
 imposition of tree growth penalty, where lack of jurisdiction  
 is clear)

*Wescott & Payson II v. City of Saco*, 2006-006, at 4 (order on  
 jurisdiction; dismissal where property clearly worth less  
 than \$1,000,000)

*Caleb Affordable Housing Associates, L.P. v. City of Saco*, Nos. 2008-  
 021— 024, and *Falls Development Associates, L.P. v. City of  
 Saco*, No. 2008-026, at 2 (order on motion to deny pending  
 appeals; section 271(5) can be used to review only questions of  
 jurisdiction)

*Harold MacQuinn, Inc. v. Town of Hancock*, No. 2011-017, at 2 (order

on Town's motion to dismiss; if a motion to dismiss does not implicate the Board's jurisdiction, the chairman must refer it to an assigned panel; and if a party has a legitimate argument that the Board has jurisdiction, it should be given a chance to state its position to the Board)

*Ocean State Job Lot of Belfast, LLC v. City of Belfast*, No. 2011-022-A, at 3 (order on motion to dismiss; motion to dismiss on grounds of lack of jurisdiction can be considered only pursuant to section 271(5))

*RiverRidge Associates v. Town of Kennebunk*, No. 2011-033 (dismissal order), at 5 & n.7 (party is entitled to a hearing before the Board unless the lack of jurisdiction is clear); at 5 & n.8 (dismissal order; only the jurisdiction of the Board is susceptible to consideration under section 271(5))

*Gerrity Family Ltd. Partnership v. Town of East Machias*, No. 2011-036, at 3 (order on motion to dismiss; where only some grounds for dismissal appear to raise jurisdictional issues, motion is deferred to a hearing before the Board)

*Peckham & Trott v. Town of Lake View Plantation*, No. 2014-003, at 6 (dismissal order; chairman will not dismiss appeal if jurisdiction is reasonably arguable)

*Burt v. Town of Denmark*, No. 2014-007, at 1 (order on jurisdiction; review pursuant to section 271(5) does not require a party to file a challenge to Board's jurisdiction); at 1-2 (party is entitled to a hearing before the Board unless the lack of jurisdiction is clear, but not otherwise)

*Dexter Shoe Co. v. Town of Dexter*, No. 2015-008, at 1 n.1 (order on respondent's motion to dismiss; not all motions to dismiss involve the Board's jurisdiction, and when they do not, section 271(5) is not proper vehicle to address motion); at 4 (dispute over when party received notice of decision of board of assessment review is sufficient for board chairman not to act on motion to dismiss under section 271(5))

The Board can consider the rationale of an order of the chairman, pursuant to 36 M.R.S. § 271(5), that is on appeal

*GGP-Maine Mall, LLC v. City of South Portland*, Nos. 2011-022 – -030 (*Maine Mall II*), at 8 n.5

Jurisdictional hearings are advisable in all but the clearest of cases

*Dirigo Dowels & Pins, Inc. v. Town of New Portland*, No. 2000-007,

at 7 n.4  
*Wingate, and Dale & Sea Meadow, LLC v. Town of York*, Nos. 2003-005 & 2003-006, at 14 (order on jurisdiction), *confirmed by Board*, June 4, 2004 (decision on jurisdiction)  
*Curtis v. Town of Sherman*, No. 2004-005, at 6-7 (order on jurisdiction)  
*Caleb Affordable Housing Associates, L.P. v. City of Saco*, No. 2006-001, at 5 (order on jurisdiction)  
*Harold MacQuinn, Inc. v. Town of Hancock*, No. 2011-017, at 2  
*RiverRidge Associates v. Town of Kennebunk*, No. 2011-033, at 5 (dismissal order)  
*Gerrity Family Ltd. Partnership v. Town of East Machias*, No. 2011-036, at 2 (order on motion to dismiss)  
*Peckham v. Trott v. Town of Lake View Plantation*, No. 2014-003, at 6 (dismissal order; no dismissal by chairman if jurisdiction is reasonably arguable)  
*Dexter Shoe Co. v. Town of Dexter*, No. 2015-008, at 4 (order on respondent's motion to dismiss)

#### Summary of the Board's pretrial procedures

*Great Northern Paper, Inc. v. Town of East Millinocket*, No. 2000-006, at 2 n.1  
*UAH-Hydro v. Town of Winslow*, 2001-009, at 3 n.4

#### Purposes served by parties' prehearing exchange of information

*G S Building Systems Corp. v. Town of Pittsfield*, No. 98-003, at 3

#### Use of prehearing conference, 5 M.R.S. § 9053(4) and Board Rule 4(D)(2)

*Bath Iron Works Corp. v. City of Bath*, Nos. 92-43, 92-102 & 93-14, at 2-3  
*Maine Public Service Co. v. City of Caribou*, Nos. 93-137 & 95-152 at 1  
*Falls Development Associates, L.P. v. City of Saco*, No. 2008-025, at 7-11  
*Peckham & Trott v. Town of Lake View Plantation*, No. 2014-003, at 3-4 (dismissal order; telephone conference call allowing for supplementing record made to date)

Role of panel chair to limit admissibility of evidence, 5 M.R.S. § 9053(4)

*Falls Development Associates, L.P. v. City of Saco*, No. 2008-025,  
at 7, 11

*Harold MacQuinn, Inc. v. Town of Hancock*, No. 2011-017, at 3  
(order on Town's motion to dismiss)

The chair of the panel hearing an appeal acts as the presiding officer during the hearing, with authority to regulate the course of the hearing and take action authorized by statute or agency rule

*U. S. Optical Disc, Inc. v. Town of Sanford*, No. 2003-004, Appx. at 2  
n.2 (chair of panel thus has authority to determine whether,  
during hearing, appellant can withdraw its appeal in part)

The Board hears cases *de novo*, 36 M.R.S. §§ 273, 843(1-A), 844(2)

*Messina & Sprowl Associates, Inc. v. Town of Hampden*, No. 92-97,  
at 2 (without regard to any decision of board of assessment  
review)

*Guy Gannett Publishing Co. v. City of South Portland*, Nos. 93-75 &  
93-135, at 2 (same)

*Champion International Corp. v. Town of Bucksport*, No. 93-98, at 4  
(same)

*Maine Public Service Co. v. City of Caribou*, No. 97-108, at 3

*Page v. Town of Damariscotta*, No. 99-014, at 8 n.8 (this means  
party can present new evidence, not that party can raise issues  
not raised before the assessors or that Board has the authority  
to make a determination of value without regard to taxpayer's  
burden to prove case)

*Northeast Empire Ltd. Partnership #2 v. Town of Ashland*, Nos.  
99-015 & 99-027, at 2 (hearing is without regard to the decision  
of the town assessors)

*Great Northern Paper, Inc. v. Town of East Millinocket*, No. 2000-006,  
at 3 (same)

*Topsham Hydro Partners v. Town of Topsham*, No. 2003-007, at 2

*City of Brewer v. Ellen M. Leach Memorial Home & Ellen M. Leach  
Memorial Home v. City of Brewer*, Nos. 2006-012 & -013, at  
2 n.1, 5 (hearing is without regard to any decision of board  
of assessment review; municipality continues to enjoy the  
presumption that the assessor was correct)

*Cushing Holdings, LLC v. Town of Cushing and Last Resort Holdings,  
LLC v. Town of Cushing*, Nos. 2006-017 & -018, at 2-3 (same)

*GGP-Maine Mall, LLC v. City of South Portland*, No. 2008-001 (*Maine Mall I*), at 2  
*Falls Development Associates, L.P. v. City of Saco*, No. 2008-025, at 6  
*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2012-009, at 8

In its discretion, the Board has noted a legal position being argued when the relief now being sought was not asked of the assessor

*Gregory v. MMC Realty Corp. & Maine Medical Center*, No. 2000-001, at 79-80

Written argument of counsel that is not supported by testimonial or documentary evidence will be given no weight

*Maine Public Service Co. v. City of Caribou*, No. 97-108, at 9 n.4

In absence of controlling Law Court decisions, the Board will look to decisions of the Superior Court

*Central Way Realty Associates v. City of Lewiston*, Nos. 93-37–93-40, consolidated with *KNL Associates v. City of Lewiston*, Nos. 93-41–93-49, at 2-3 (order on motion for stay)  
*Cf. Dirigo Dowels & Pins, Inc. v. Town of New Portland*, No. 2000-007, at 3-4 n.1 (rejecting a Superior Court decision)

An attorney cannot both litigate a case and be a witness, Code of Professional Responsibility, Rule 3.7

*Brown v. Town of Bucksport*, No. 2009-031, at 6 n.3

Motion to disqualify attorney for conflict of interest is within the authority of a court, not the Board, to decide

*LaBoca Corp. v. Town of Falmouth*, No. 2012-027, at 2-3

The Board, as an adjudicatory board, gives deference to agency interpretation of rule that agency has responsibility to enforce

*Town of Dexter v. Maine Revenue Services*, No. 2001-014, at 9

*Town of Dexter v. Maine Revenue Services*, No. 2002-018, at 5 n.4

Courts are to defer to adjudicatory board's construction of a statute, especially when that construction is long-standing and of an ambiguous statute; and administrative construction should be upheld unless plainly contrary to statute

*Dirigo Dowels & Pins, Inc. v. Town of New Portland*, No. 2000-007, at 4 n.1

The Board should disregard the fiction of a corporation's separate identity whenever the concept is asserted in an endeavor to circumvent a statute and defeat legislative policy; but there may be countervailing considerations that dictate honoring separate corporate structure

*Gregory v. MMC Realty Corp. & Maine Medical Center*, No. 2000-001, at 68

The Board does not have authority to direct municipality or agency engaged in valuation to adopt a given procedure or methodology

*Town of Dexter v. Maine Revenue Services*, No. 2001-014, at 8

Request for hearing in location of taxpayer's residence

*Seaborne v. Inhabitants of Town of Jonesport*, No. 88-09, at 1

Hearing held in location of property at issue

*Gleason v. Town of Southport*, No. 91-43, at 2

*Marine Atlantic, Inc. v. Town of Bar Harbor*, Nos. 91-03 & 91-52, at 1

*Bath Iron Works Corp. v. City of Bath*, Nos. 92-43, 92-102 & 93-14 at 4

*Sprague Energy Corp. v. Town of Bucksport*, No. 2003-003, at 2

View by the Board of the property at issue

*Gleason v. Town of Southport*, No. 91-43, at 2



*Champion International Corp. v. Town of Bucksport*, No. 93-98, at 3  
*Great Northern Paper, Inc. v. Town of East Millinocket*, No. 2000-006,  
 at 3

*UAH-Hydro v. Town of Winslow*, 2001-009, at 4

*Sprague Energy Corp. v. Town of Bucksport*, No. 2003-003, at 2, 5  
 (a view is not evidence but a tool to aid Board in understanding  
 the evidence)

The Board's proceeding with hearing in absence of party (not including  
 equalized municipal valuation cases unless also cited for other issues)

*Hope v. Town of Bristol*, No. 87-16, at 1 (town notified Board it  
 agreed with taxpayer's request for abatement)

*Hudson Pulp & Paper Corp. v. Town of Centerville*, No. 88-02, at 1-2  
 (Board was satisfied town had notice)

*Sirois v. Town of Lebanon*, No. 89-08, at 1 (same)

*Filaroska v. Town of Vienna*, No. 90-44, at 2

*Everett v. Town of Anson*, No. 91-99, at 1 (Board waited for half  
 hour for petitioner to appear)

*Gray v. Town of Blue Hill*, No. 91-92, at 1 (town telephoned Board  
 that it would rely on its written response)

*Town of Littleton v. Bureau of Taxation*, No. 92-86, at 1-2 (town  
 telephoned that it would not appear)

*Pine Brook Associates v. Town of Old Orchard Beach*, No. 92-98,  
 at 1-2 (Board called taxpayer and was told general counsel  
 did not intend to attend)

*Wesson v. Town of Bremen*, No. 93-88, at 1 (town chose to rely on  
 documents submitted)

*Federal Insurance Deposit Corp. v. Town of Sanford*, No. 93-114,  
 at 1-2 (petitioner's representative declined to appear for  
 personal reasons, was reminded of burden of proof, and stated  
 he would accept dismissal)

*Carroll Plantation v. Bureau of Taxation*, No. 93-126, at 1 (although  
 aware of time and place of hearing, plantation did not appear  
 and had not advised Board of an inability to attend)

*Town of Monroe v. Bureau of Taxation*, No. 93-131, at 1 (town  
 selectmen advised it would not be fruitful to attend hearing  
 where the outcome was already decided)

*Hackel v. Town of Sabbatus*, No. 96-015, at 1 (with consent of  
 Board, neither party appeared)

*Carroll v. Town of Cornish*, No. 2001-02, at 1 (Decision I), at 2 & n.3  
 (Decision II)(on hearing date, Board secretary called town and  
 offered to postpone hearing; town declined to attend; no question  
 about town's not having received notice of hearing)

The Board must decide case on evidence developed at the hearing, but is not bound by methodologies used by witnesses

*Great Northern Paper, Inc. v. Town of East Millinocket*, No. 2000-006, at 5  
*U. S. Optical Disc, Inc. v. Town of Sanford*, No. 2003-004, at 27

A judicial admission is generally binding on the one making it

*Sprague Energy Corp. v. Town of Bucksport*, No. 2003-003, at 28  
*Harold MacQuinn, Inc. v. Town of Hancock*, No. 2009-014, at 28  
 (citing tax cases applying this rule, at 28 n.12)  
*Brown v. Town of Bucksport*, No. 2009-03, at 2-3 (order on motion to dismiss)  
*RiverRidge Associates v. Town of Kennebunk*, No. 2011-033, at 3  
*MHC Narrows Too, LLC v. Town of Trenton*, No. 2012-013, at 14, 21  
*Passamaquoddy Tribe at Pleasant Point v. City of Eastport*, No. 2015-005, at 6  
*Expera Old Town v. City of Old Town*, Nos. 2015-013 & 2016-002, at 17 (assessor acknowledged not subtracting value of exempt real and personal property from assessment)

A judicial admission by pleading cannot bind the Board or invest the Board with jurisdiction

*Caleb Affordable Housing Associates L.P. v. City of Saco*, No. 2006-001, at 5 (order on jurisdiction)  
*RiverRidge Associates v. Town of Kennebunk*, No. 2011-033, at 3-4, 4 & nn.2, 4 (dismissal order)

The Board cannot consider, in making its decision, what the municipality's assessing authority would prefer, as more politically palatable

*MHC Narrows Too, LLC v. Town of Trenton*, No. 2012-013, at 16 n.7

The Board need not accept the entire testimony of a witness, whether an expert or nonexpert

*IBM Credit Corp. v. City of Bath*, Nos. 92-42 & 93-32, at 2-3

*Maine Public Service Co. v. City of Caribou*, No. 97-108, at 14  
*Great Northern Paper, Inc. v. Town of East Millinocket*, No. 2000-006,  
 at 4-5  
*U. S. Optical Disc, Inc. v. Town of Sanford*, No. 2003-004, at 18  
*Harold MacQuinn, Inc. v. Town of Hancock*, 2009-014, at 24-25 (Board  
 finds taxpayer presented credible evidence of value as to certain  
 of its lands, but not others)  
*MHC Narrows Too, LLC v. Town of Trenton*, No. 2012-013, at 17

An assessor's agent need not be licensed as an appraiser in Maine to testify

*Norumbega Bed & Breakfast, LLC v. Town of Camden*, No. 2005-017,  
 at 4 n.4 (witness had testified in courts in Maine previously and  
 was a certified assessor, and need not be an appraiser)

Witness offering appraisal testimony and report need not be licensed as a  
 Maine real estate appraiser under 10 M.R.S. § 8003-C

*Expera Old Town, LLC v. City of Old Town*, Nos. 2015-013 & 2016-002,  
 at 16-17

Witness called as an appraiser of machinery and equipment is not excused  
 from requirements that attend a real estate appraiser

*Expera Old Town, LLC v. City of Old Town*, Nos. 2015-013 & 2016-002,  
 at 17 n.6

Expert is in no position to criticize another witness who does not rely on  
 given transactions when the expert himself excludes those transactions in  
 arriving at his own appraisal result

*Great Northern Paper, Inc. v. Town of East Millinocket*, No. 2000-006,  
 at 20

The Board cannot credit expert appraiser's credentials or the substance of  
 the appraisal report where appraiser does not testify

*Zorn v. Town of Lubec*, No. 2004-007, at 4-5

Taxpayer is not required to submit an appraisal to the Board in support of its claim of valuation, but when it does, it can expect assessor to have reviewed the appraisal

*U. S. Optical Disc, Inc. v. Town of Sanford*, No. 2003-004, at 26

Official notice, 36 M.R.S. 9058(1)

*Fasse v. Town of St. Albans & Town of Ripley*, No. 2002-005, at 5  
(Board's own records)

*Town of Waldo v. Maine Revenue Services*, No. 2007-001, at 3-4  
(federal government did not deliver mail due to observance of death of former president)

*Dale Henderson Logging, Inc. v. Town of Steuben*, No. 2008-016,  
at 5 n.5

*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2013-026,  
at 15 n.6 (square footage in an acre)

*Prentiss & Carlisle Management Co., Inc. v. Town of Smyrna and Town of Merrill*, Nos. 2015-001 & -002 (*Prentiss & Carlisle II*), at 6-7 n.2 (square footage in an acre)

Maine has undertaken to train assessors, 36 M.R.S. § 301 *et seq.*

*U. S. Optical Disc, Inc. v. Town of Sanford*, No. 2003-004, at 32 n.25

Maine Rules of Civil Procedure do not govern the Board but may be looked to for guidance

*Dirigo Dowels & Pins, Inc. v. Town of New Portland*, No. 2000-007,  
at 11 n.8 (but Board follows Rule 6(a))

*Wingate, and Dale & Sea Meadow, LLC v. Town of York*, Nos. 2003-005 & 2003-006, at 4 n.4 (order on jurisdiction; same),  
*confirmed by Board*, June 4, 2004 (decision on jurisdiction)

*U. S. Optical Disc, Inc. v. Town of Sanford*, No. 2003-004, Appx. at 8

*Caleb Affordable Housing Associates, L.P. v. City of Saco*, No. 2006-001,  
at 2 n.2 (order on jurisdiction; Board follows Rule 6(a))

*Town of Waldo v. Maine Revenue Services*, No. 2007-001, at 2 (same)

*Brown v. Town of Bucksport*, No. 2009-031, at 2 n.3 (order on motion to dismiss; same)

*GGP-Maine Mall, LLC v. City of South Portland*, Nos. 2011-022 – -030 (*Maine Mall II*), at 9 (work product)

Maine Rules of Evidence do not apply in the administrative process

*Edward C. and Cynthia M. Hunt v. Town of Phippsburg*, No. 91-41, at 3 (but witness limited to personal knowledge outside of hearsay report)

*Kenneth and Julie Hunt v. Town of Phippsburg*, No. 91-42, at 3 (same)

*Alpine Realty Trust v. City of Biddeford*, No. 93-72, at 1-2 (where appraisal report was admitted in absence of report writer, witness could not testify to writer's methodology)

*AWD Management (Chiricahua, Inc.) v. City of Westbrook*, No. 95-163, at 2 (Board cannot credit appraisals where no witnesses testified)

*Harold MacQuinn, Inc. v. Town of Hancock*, 2009-014 at 19-20 n.8 (M.R. Evid. 701 governs admissibility of lay opinions in court litigation, but 5 M.R.S. § 9057(2) governs the Board)

Unobjected-to leading questions affect the weight, not the admissibility, of the evidence

*Harold MacQuinn, Inc. v. Town of Hancock*, 2009-014 at 23

Admission of legal memorandum prepared by taxpayer and not presented to town before hearing, so that town had no opportunity to respond

*Lincoln Realty Associates v. Town of Lincoln*, No. 91-103, at 2

Objection to Bureau's testifying because its file was not timely made available to municipality

*Town of Glenburn v. Bureau of Taxation*, No. 87-13, at 2 (substantial compliance by Bureau with Rule 4(D)(3) sufficient, but failure of town to supply its exhibits to Bureau results in their exclusion)

Objection by town to appraiser testifying without having produced his appraisal report, which was referred to in the witnesses' summary of testimony

*LaBoca Corp. v. Town of Falmouth*, No. 2012-027, at 3 n.1 (testimony

of appraiser disallowed)

Admissibility of late-filed exhibit, Board Rule 4(F)(12)

- MCI International, Inc. v. Town of Andover*, No. 88-20, at 2  
 (right of taxpayer to file exhibit late when town's response to  
 petition, not served on taxpayer, raised affirmative defense)  
*Town of Mechanic Falls v. Bureau of Taxation*, No. 92-26, at 1  
 (including "post-period" information)  
*LaBoca Corp. v. Town of Falmouth*, No. 2012-027, at 3-4 (admission  
 disallowed because appraisal report was not unavailable and  
 was not, in any event, timely offered after hearing)

The Board will not consider a document not in evidence

- Maine Orion Properties v. Town of Falmouth*, No. 93-107, at 2  
 (appraisal report)  
*U. S. Optical Disc, Inc. v. Town of Sanford*, No. 2003-004, at 8 n.4  
 (appraisal reports)

The Board will disregard estimates of value contained in excluded appraisal reports

- U. S. Optical Disc, Inc. v. Town of Sanford*, No. 2003-004, at 8-9 n.4  
 (even though parties have cited such estimates in post-hearing  
 memoranda)

Objection to exhibit on grounds of relevance

- Town of Mechanic Falls v. Bureau of Taxation*, No. 92-26, at 1  
*Town of Washington v. Bureau of Taxation*, No. 92-37, at 2

Technical defenses are not favored in administrative proceedings

- Eliot Commons Associates v. Town of Eliot*, Nos. 93-73, 93-74  
 & 95-011, at 2-3 (deed held in name of Eliot Associates is a  
 nonsubstantive discrepancy)  
*Gregory v. MMC Realty Corp. & Maine Medical Center*, No. 2000-001,  
 at 56  
*UAH-Hydro v. Town of Winslow*, 2001-009, at 3 (claims of failure to

state a claim and to include essential allegations in petition for assessment review may be corrected by amendment of petition)  
*Ocean State Job Lot of Belfast, LLC v. City of Belfast*, No. 2011-022-A, at 12 (order on motion to dismiss)

Possible recusal of a member of the Board

*Champion International Corp. v. Town of Bucksport*, No. 93-98, at 2, 3 (adjudicators are assumed to be qualified and to be capable of deciding cases on the evidence)  
*Moore v. Bureau of Taxation*, No. 93-110, at 1-2 (Board member knew petitioner; neither side objected to Board member's participating)

Whether a Board member can participate in decision when he did not attend all the hearing

*S. D. Warren Co. v. City of Westbrook*, No. 90-11, at 2-3 (transcript of missed testimony provided to Board member)  
*A-R Cable Services – Me., Inc. v. City of Lewiston*, No. 91-37, at 1-2 (Board member who left hearing did not participate further)  
*Mobile Imaging Consortium v. City of Portland*, Nos. 94-44 & 96-32, at 2 n.1 (Board member attended only first day of hearing; parties agreed deliberations should proceed without him)

Board entered deliberations without Board member who had attended evidentiary hearing

*Brower, Denis & Powers v. Town of Starks*, No. 95-007, at 2  
*Sayer v. Town of Canton*, No. 99-022, at 4 n.4  
*Brackett v. Town of Bristol*, Nos. 2007-010 & -011, at 2

Requirements of due process in administrative proceedings are flexible

*Gregory v. MMC Realty Corp. & Maine Medical Center*, No. 2000-001, at 56

Comments made by members of the Board during deliberations are not binding

*B & B Properties v. City of Ellsworth*, No. 98-026, at 4 n.2  
*Rangeley Lake Resort Development Co., LLC v. Town of Rangeley*,  
 No. 2003-019, at 7 n.5  
*Dale Henderson Logging, Inc. v. Town of Steuben*, No. 2008-016,  
 at 15 n.12

Need for decision that can be reviewed for support in the record

*Rangeley Lake Resort Development Co., LLC v. Town of Rangeley*,  
 2003-019, at 7 n.5  
*U. S. Optical Disc, Inc. v. Town of Sanford*, No. 2003-004, at 4

Motion to withdraw appeal

*U. S. Optical Disc, Inc. v. Town of Sanford*, No. 2003-004, Appx.  
 (party to an appeal before Board may withdraw its appeal in  
 part only with consent of the other party)

Withdrawal of appeal in part can have no effect on tax years not appealed

*U. S. Optical Disc, Inc. v. Town of Sanford*, No. 2003-004, Appx. at 3-5

Consolidation

*Prentiss & Carlisle Management Co., Inc. v. Town of Smyrna and Town  
 of Merrill*, Nos. 2015-001 & -002 (*Prentiss & Carlisle II*),  
 at 13-14 (parties must prove facts that warrant applying  
 evidence in one case to a joined case)  
*Emera Maine v. Town of Eddington*, No. 2015-010, and *Emera Maine  
 v. Town of Bradley*, No. 2015-011, at 1 (the matters involved  
 common issues of law and fact; no prejudice shown if appeals  
 were consolidated)

Statutes of limitations

*KeyBank National Ass'n v. Town of Phippsburg*, No. 2006-002,  
 at 11-12

Standing



- McDonald's Corp. v. Town of Freeport*, No. 89-17, at 2-3 (right of franchise owner to contest abatement)
- Toussaint v. City of Lewiston*, Nos. 93-06–93-11, at 1-2 (Board denies motion to dismiss for lack of standing where petitioner acquired ownership after April 1<sup>st</sup> and paid tax bill for second half of tax year)
- Winslow v. Town of Falmouth*, No. 93-36, at 2 n.1 (issue not addressed because Board dismissed case for lack of jurisdiction)
- Eliot Commons Associates v. Town of Eliot*, Nos. 93-73, 93-74 & 95-011, at 2-3 (deed held in name of Eliot Associates is a nonsubstantive discrepancy)
- Sayer v. Town of Canton*, No. 99-022, at 4 (those in possession of land may prosecute appeal with assent of owner, which was shown here)
- KeyBank National Ass'n v. Town of Phippsburg*, No. 2006-002, at 1 n.1 (only trust against which tree growth withdrawal penalty was assessed has standing)

Subpoenas, 36 M.R.S. § 271(2)(D), are discretionary with the Board

- Champion International Corp. v. Town of Bucksport*, No. 93-98, at 2
- Great Northern Paper, Inc. v. Town of East Millinocket*, No. 2000-006, at 2 & n.2
- McLaughlin v. Town of Dexter*, No. 2010-001, at 3 n.3 (subpoenas will issue upon showing of necessity)

Protective orders

- Bath Iron Works Corp. v. City of Bath*, Nos. 92-43, 92-102 & 93-14 at 3-4
- Champion International Corp. v. Town of Bucksport*, No. 93-98, at 2-3 n.1
- UAH-Hydro v. Town of Winslow*, 2001-009, at 3-4
- GGP-Maine Mall, LLC v. City of South Portland*, No. 2008-001 (*Maine Mall I*), at 1
- Bangor Gas Co., LLC v. Town of Bucksport*, No. 2010-002, at 3, 9 (taxpayer had obtained protective order from Superior Court, and highlighted such material at noted pages of decision)
- GGP-Maine Mall, LLC v. City of South Portland*, No. 2008-001 (*Maine Mall I*), at 8 (order provides adequate protection against release of information claimed to be privileged)

### Confidentiality agreements

- Champion International Corp. v. Town of Bucksport*, No. 93-98, at 2  
(and Freedom of Access Act)  
*Great Northern Paper, Inc. v. Town of East Millinocket*, No. 2000-006,  
at 3

The Board is without authority to bar the public from a hearing at which testimony relating to confidential agreements is elicited

- Champion International Corp. v. Town of Bucksport*, No. 93-98, at 2

### Continuances

- Town of Sherman v. Bureau of Taxation*, No. 90-21, at 1-2 (denied due to lateness and inability to meet January 15<sup>th</sup> deadline in state equalization case)  
*Nargesian v. Town of Northport*, No. 91-97, at 2 (second request from petitioner denied)  
*Alpine Realty Trust v. City of Biddeford*, No. 93-72, at 2 (request for continuance to obtain live witness denied where there had been three previous continuances)  
*G S Building Systems Corp. v. Town of Pittsfield*, No. 98-003, at 2 (dismissal for want of prosecution proper after continuances had been granted to both parties)  
*Donhauser Enterprises, LLC v. Town of Eliot*, No. 2002-001, at 3, 5 (motions for continuance filed within time period at issue are considered timely, and no opposition should be assumed in absence of response to motion)

### Waiver of issues

- S. D. Warren Co. v. City of Westbrook*, No. 90-11, at 2 (section 706)  
*Dirigo Dowels & Pins, Inc. v. Town of New Portland*, No. 2000-007, at 11 (lack of jurisdiction cannot be waived)  
*Rum Cove, LLC v. Town of Westport Island*, No. 2008-032, at 6 (tree growth issues: that application did not contain the names of the owners; that taxpayer did not comply with section 706; that application was not timely because amended after April 1<sup>st</sup> filing date; that application was not filed in duplicate; and that the town did not respond timely to petition for assessment)

- review)
- Boralex Sherman, LLC v. Town of Stacyville*, Nos. 2009-007 & 2010-002-A, at 1 n.2 (taxpayer withdrew argument that assessment was illegal because of alleged failure to conduct decennial revaluation)
- Harold MacQuinn, Inc. v. Town of Hancock*, No. 2009-014, at 2 n.1 (abandonment of claim of eligibility of parcel for tree growth classification on appeal is a waiver)
- Town of Madison v. Maine Revenue Services*, No. 2014-011, at 8 n.3 (where issue is mentioned in pre-hearing filings and in opening statement, but no evidence is presented on the point, it is waived)

#### Equitable estoppel

- Spencer Press of Maine, Inc. v. Town of Wells*, No. 86-10, consolidated with *Shaw's Realty, Inc. v. Town of Wells*, No. 86-11, at 3-5
- Babcock-Ultrapower West Enfield v. Town of Enfield*, No. 96-049, at 3
- Bangor Gas Co., LLC v. Town of Bucksport*, No. 2010-002, at 10 n.7 (Board did not reach town's claim that taxpayer was estopped from disputing the value set forth in its schedule because taxpayer failed to produce credible evidence of value)

#### *Res judicata* and collateral estoppel

- Perkins v. Town of Kittery*, No. 97-002, at 2 (decision of board of assessment review is final; taxpayer cannot file a second application for abatement in same tax year)
- Harold MacQuinn, Inc. v. Town of Hancock*, No. 2011-017 (order on Town's motion to dismiss)
- Expera Old Town, LLC v. City of Old Town*, Nos. 2015-013 & 2016-002, at 14-16 (bankruptcy court order does not bind the Board)

#### Motions to stay

- Central Way Realty Associates v. City of Lewiston*, Nos. 93-37-93-40, consolidated with *KNL Associates v. City of Lewiston*, Nos. 93-41-93-49, *passim*
- Tidebrook Conservation Trust v. Town of Freeport*, No. 93-52, at 1-2 (Decision II)
- Marcotte Congregate Housing, Inc. v. City of Lewiston*, Nos. 94-16,

94-17, 95-147, 95-148, 96-33–96-35, at 1 (pending judicial review)

*Marcotte Congregate Housing, Inc. v. City of Lewiston*, Nos. 95-147 & 95-148, at 2 (appropriate where pending Law Court decision will likely control)

*International Woolen Co., Inc. v. Town of Sanford*, No. 2002-012, at 1-2 (appropriate where pending Law Court decision in related case will likely control)

*Fowler v. Town of Lubec*, 2004-002 (*passim*)(addressing requirements, in order of chair of panel, for post-hearing stay under 5 M.R.S. § 11004)

#### Motions for directed verdict

*Champion International Corp. v. Town of Bucksport*, No. 93-98, at 4 (moot where all the evidence was already before Board)

#### Newly discovered evidence

*Tidebrook Conservation Trust v. Town of Freeport*, No. 93-52, at 1-2 (Decision II)(newly discovered application for classification as tree growth is not relevant to Board's previous denial of jurisdiction on open space classification claim)

#### Motions to reopen evidence

*Brower, Denis & Powers v. Town of Starks*, No. 95-007, at 1-2 (denied where evidence was previously available to party)

#### Reopening of evidence on Board's order

*Brackett v. Town of Bristol*, Nos. 2007-010 & -011, at 2

#### Motions to reconsider are within discretion of the Board

*Tidebrook Conservation Trust v. Town of Freeport*, No. 93-52, at 1 (Decision II)

*Adams v. City of Biddeford*, Nos. 95-029–95-104, at 1 (Decision II)

*Madison and Anson Water District v. Town of Embden*, No. 96-036, *on motion to reconsider*, at 1

*Great Northern Paper, Inc. v. Town of East Millinocket*, No. 2000-006,  
at 3

#### Mootness

*Hunt, Trustee, Hunt Family Irrevocable Trust v. Maine Revenue Services*, Nos. 2009-020 & -021, at 10 n.4

#### Assessment of costs, 36 M.R.S. § 850 (now repealed)

*Wesson v. Town of Bremen*, Nos. 92-04 & 92-66 (Decision I), at 8-9  
*Bath Iron Works Corp. v. City of Bath*, Nos. 92-43, 92-102 & 93-14,  
at 13; at 1-2, *on reconsideration of assessment of costs*  
(expenses of Board members to attend hearing, charges  
of reporter service, rent of meeting room)

*Adams v. City of Biddeford*, Nos. 95-029-95-104, at 5 (Decision I)  
(same)

*U. S. Optical Disc, Inc. v. Town of Sanford*, No. 2003-004, Appx. at 6  
n.3 (Board no longer has authority to impose costs)

#### Dismissal for want of prosecution in absence of petitioner

*Nargesian v. Town of Northport*, No. 91-97, at 2

*Everett v. Town of Anson*, No. 91-99, at 1

*Dupuy v. Bureau of Taxation*, No. 92-07, at 2 (neither party  
appeared for rescheduled hearing)

*Anzivino v. Town of Beddington*, No. 92-33, at 1

*Pine Brook Associates v. Town of Old Orchard Beach*, No. 92-98,  
at 2

*Federal Insurance Deposit Corp. v. Town of Sanford*, No. 93-114,  
at 1-2

*Carroll Plantation v. Bureau of Taxation*, No. 93-126, at 1

*Town of Monroe v. Bureau of Taxation*, No. 93-131, at 2

*G S Building Systems Corp. v. Town of Pittsfield*, No. 98-003,  
*passim* (after continuances granted to both sides, including a  
request from town for taxpayer to have more time, and failure of  
taxpayer to follow Board orders to provide information before  
hearing)

*BOC Group, Inc. v. Town of Kittery*, No. 99-029, at 1 (failure of  
petitioner to file response within 30 days as directed)

*Demaris v. Town of Bradford*, No. 2002-008, at 1

*Hinkley v. Town of Waldoboro*, No. 2003-009, at 2

*Satterfield v. Town of Cushing*, No. 2009-022, at 2-4 (dismissal order)  
(discussion of adequacy of notice of hearing to petitioner  
pursuant to 5 M.R.S. § 9052(1)(A), (B) and 36 M.R.S. § 111(2))

Signing a stipulation of dismissal is generally a formality

*Peckham & Trott v. Town of Lake View Plantation*, No. 2014-003, at 2  
(dismissal order)

Default may be set aside for good cause, 5 M.R.S. § 9053(3)

*Developers Diversified Cooks Corner, L.P. v. Town of Brunswick*, Nos.  
2009-022 & -025, at 3 (prehearing order)

Appeals to Superior Court after appeal to board of assessment review, 36  
M.R.S. § 843(1), or county commissioners, 36 M.R.S. § 844(1), in residential  
cases or cases below jurisdictional limit of the Board

*Ames Dept. Store, Inc. #347 v. Town of Skowhegan*, No. 88-19, at 1  
(section 843(1))

*Seaside Hotel Assocites v. Town of Kennebunkport*, No. 96-019, at 1-2  
(section 844(1))

*Wesson v. Town of Bremen*, No. 97-005, at 2 (section 843(1))

*Page v. Town of Damariscotta*, No. 99-014, at 5 & n.4, 6 (section  
844(1))

*International Woolen Co., Inc. v. Town of Sanford*, No. 2000-009,  
at 3 n.2

*Riverview Timeshare Trust v. Town of Bethel*, No. 2002-009, at 4

*Wingate, and Dale & Sea Meadow, LLC v. Town of York*, Nos. 2003-  
005 & 2003-006, at 2 n.2, 5 n.6 (order on jurisdiction),  
*confirmed by Board*, June 4, 2004 (decision on jurisdiction)

*Narrows Too #5038 v. Town of Trenton*, No. 2012-013, at 3 n.1

Declaratory judgment action

*Mobile Imaging Consortium v. City of Portland*, Nos. 94-44 & 96-32,  
at 4 (declaratory judgment action may proceed in court at same  
time as abatement case before Board)

*Madison and Anson Water District v. Town of Embden*, No. 96-036,  
at 1 (does not require payment of taxes first)

*Great Northern Paper, Inc. v. Town of East Millinocket*, No. 2000-006,

at 2-3 n.3 (interim procedural order of Board is not appealable and subject to declaratory judgment action)  
*Ocean State Job Lot of Belfast, LLC v. City of Belfast*, No. 2011-022-A, at 11-12 (order on motion to dismiss; taxpayer cannot be consigned to declaratory judgment action to litigate section 706 issues)

1 M.R.S. § 71 states rules of construction to be followed unless such construction is inconsistent with plain meaning of statute

*Pachowsky v. Town of Clinton*, No. 2001-005, at 6

Plain meaning of statutes controls, absent any of several exceptions

*Lauder v. Town of South Bristol*, No. 91-07, at 2 (contrary intent)

*Hood Trust v. Town of South Bristol*, No. 91-08, at 2 (same)

*Welch v. Town of Wells*, No. 97-001, at 2 (ambiguity; need to avoid results that are absurd, against public policy, or contrary to constitution)

*Town of Standish v. State of Maine, Bureau of Revenue Services*, No. 99-031, at 4 (need to avoid conflict with other statutes, to effectuate legislative scheme as a whole, and to avoid giving statutes an unreasonable meaning)

*Pachowsky v. Town of Clinton*, No. 2001-005, at 6 (if statute is clear, there is no need to go beyond the words)

*Wingate, and Dale & Sea Meadow, LLC v. Town of York*, Nos. 2003-005 & 2003-006, at 10 (order on jurisdiction), *confirmed by Board*, June 4, 2004 (decision on jurisdiction)

*Bethel Inn Corp. & Riverview Timeshare Trust v. Town of Bethel*, 2003-001 & 2003-002, at 5-6

Statutes are to be read to effectuate legislative intent, considering the entire legislation of which a word or section at issue is a part

*Wingate, and Dale & Sea Meadow, LLC v. Town of York*, Nos. 2003-005 & 2003-006, at 10, 11 (order on jurisdiction), *confirmed by Board*, June 4, 2004 (decision on jurisdiction)

No part of a statutory scheme is to be rendered superfluous if statutes can reasonably be construed to avoid that result; statutes are to be interpreted so as to preserve the meaning of their constituent parts

*Gregory v. MMC Realty Corp. & Maine Medical Center*, No. 2000-001,  
at 60

*Wingate, and Dale & Sea Meadow, LLC v. Town of York*, Nos. 2003-  
& 2003-006, at 11 (order on jurisdiction), *confirmed by Board*,  
June 4, 2004 (decision on jurisdiction)

A statutory tax scheme is to be considered as a whole in order to reach a  
harmonious result between sections of law

*Brackett v. Town of Bristol*, Nos. 2007-010 & -011, at 5 n.5

Statutes are to be construed to preserve constitutionality in substance and  
application

*Roque Island Gardner Homestead Corp. v. Town of Jonesport*,  
No. 2018-001, at 8

Statutes are to be read with reasoning and judgment

*Pachowsky v. Town of Clinton*, No. 2001-005, at 7

Specific provisions of law prevail over general provisions

*Gregory v. MMC Realty Corp. & Maine Medical Center*, No. 2000-001,  
at 51

*Pachowsky v. Town of Clinton*, No. 2001-005, at 8

*Hunt, Trustee, Hunt Family Irrevocable Trust v. Maine Revenue  
Services*, Nos. 2009-020 & -021, at 17

Factors of statutory interpretation to use when statutes are ambiguous

*McClure v. Town of Lubec*, No. 2010-013,, at 4 (consider overall  
statutory context of provision in issue and legislative history)

Rule of the last antecedent

*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2012-009,  
at 13 n.6 (noting application to 36 M.R.S. § 1109(3))

*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2013-026,



at 13-17 (rule described); at 25-27 (dissent interpreting 36 M.R.S. § 1109(3))  
*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2015-003, at 6

Meaning of specific provision of tax law is to be considered in its statutory context

*KeyBank National Ass'n v. Town of Phippsburg*, No. 2006-002, at 7, 18  
*McClure v. Town of Lubec*, No. 2010-013, at 4 (one factor to rely on when statutes are ambiguous)

The Board will not read into tax statutes asserted requirements that are not there

*KeyBank National Ass'n v. Town of Phippsburg*, No. 2006-002, at 16  
*Pierce v. Maine Revenue Services*, No. 2006-007, at 4-5  
*Dale Henderson Logging, Inc. v. Town of Steuben*, No. 2008-016, at 13-14  
*McClure v. Town of Lubec*, No. 2010-013, at 3

Tax statutes susceptible of more than one interpretation are to be construed in a light most favorable to the taxpayer

*KeyBank National Ass'n v. Town of Phippsburg*, No. 2006-002, at 21  
*See Harold MacQuinn, Inc. v. Town of Hancock*, No. 2009-014, at 29

Amendments to statutes generally do not have retroactive effect

*Dale Henderson Logging, Inc. v. Town of Steuben*, No. 2008-016, at 13 n.10 (section 581(1); citing 1 M.R.S. § 302)  
*McLaughlin v. Town of Dexter*, 2010-001, at 10 (section 581(1))

An unallocated section of an enacted law means that the Revisor of Statutes did not assign it a title and section number in the Maine Revised Statutes

*Dale Henderson Logging, Inc. v. Town of Steuben*, No. 2008-016, at 13  
*Hunt, Trustee, Hunt Family Irrevocable Trust v. Maine Revenue Services*, Nos. 2009-020 & -021, at 5 n.2

The Board's reliance on legislative history

- Wingate, and Dale & Sea Meadow, LLC v. Town of York*, Nos. 2003-005 & 2003-006, at 8-9, 12-13 (order on jurisdiction), *confirmed by Board*, June 4, 2004 (decision on jurisdiction)
- Dale Henderson Logging, Inc. v. Town of Steuben*, No. 2008-016, at 9-13 (tracing amendments to 36 M.R.S. § 581(1))
- McClure v. Town of Lubec*, No. 2010-013, at 4 (one factor to rely on when statutes are ambiguous)

“Shall” and “must” generally connote a mandatory requirement

- Town of Standish v. State of Maine, Bureau of Revenue Services*, No. 99-031, at 3 (terms are not always mandatory)
- Gregory v. MMC Realty Corp. & Maine Medical Center*, No. 2000-001, at 63
- Town of Solon v. State of Maine, Bureau of Revenue Services*, No. 2000-012, at 2
- Pachowsky v. Town of Clinton*, No. 2001-005, at 6 & n.3 (relying on 1 M.R.S. § 71(9-A) as well as case law to determine when terms are mandatory and when they are not)
- Town of Dexter v. Maine Revenue Services*, No. 2001-014, at 6 n.6
- Fowler v. Town of Lubec*, 2004-002, at 5 (relying on 1 M.R.S. § 71(9-A))
- Zorn v. Town of Lubec*, No. 2004-007, at 4 (same)
- Dale Henderson Logging, Inc. v. Town of Steuben*, No. 2008-016, at 10 & n.8 (relying on 1 M.R.S. § 71(9-A) as well as case law to determine when terms are mandatory and when they are not)
- Ocean State Job Lot of Belfast, LLC v. City of Belfast*, No. 2011-022-A, at 3 n.3 (order on motion to dismiss)
- Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2012-009, at 23-24 & n.11 (1 M.R.S. § 71(9-A) “countenances no noncompliance,” but there are exceptions which make a deadline directory only)
- Xpress Natural Gas, LLP v. Town of Baileyville*, No. 2016-001, at 7 (amendment of 36 M.R.S. § 706, “may” for “shall”)

Resort to dictionary definitions

- Blanch v. Town of Lubec*, No. 96-048, at 2 (“forest”)
- Town of Danforth v. Maine Revenue Services*, No. 2002-013, at 1-2 n.1 (what constitutes an affidavit)
- Town of Shirley v. Maine Revenue Services*, No. 2002-016, at 2 n.1

(same)

*Town of Waldo v. Maine Revenue Services*, No. 2007-001, at 5 & n.2  
*Brackett v. Town of Bristol*, Nos. 2007-010 & -011, at 20-21

(“incidental”; “inconsistent”; “interfere”)

*Expera Old Town, LLC v. City of Old Town*, Nos. 2015-013 & 2016-002, at 3 n.3 (“rossing”—mechanical process for removing bark; “pulp wood”—wood logs, peeled or unpeeled, usually cut in four foot lengths suitable and intended for manufacture into wood pulp commonly used in making paper)

A trust document is to be read to effectuate the intent of the creators of the trust

*KeyBank National Ass’n v. Town of Phippsburg*, No. 2006-002, at 21

Mortgages are subject to usual rules of construction

*Falls Development Associates, L.P. v. City of Saco*, No. 2008-025, at 44

Mortgage documents are to be considered as a whole in light of the overall transactions between the parties

*Falls Development Associates, L.P. v. City of Saco*, No. 2008-025, at 44

Maine’s beautiful coastline property

*MHC Narrows Too, LLC v. Town of Trenton*, No. 2012-013, at 20

Reliance on Property Tax Bulletins

*Hardison v. Town of Waltham*, No. 91-16, at 2 (#19, Tree Growth Tax Law)

*Sawyer Environmental Recovery Facility v. Town of Hampden*, No. 93-34, at 4 (#10, Property Tax Abatement and Appeal Procedures)

*LeMaistre v. Town of Freeport*, No. 93-56, at 1, 3 (#18, Farmland and Open Space; bulletin sets forth only recommended farmland values)

*Kendall v. Town of Perry*, No. 93-60, at 2 (#18, Farmland and Open Space)

- Wells Industrial Development Corp. v. Town of Wells*, No. 93-67, at 2, 3-4 (#10, Property Tax Abatement and Appeal Procedures: broad discussion of appeal procedures does not meet statutory requirement that a taxpayer be notified of his appeal rights, 36 M.R.S. § 842)
- Everett v. Town of Waterford*, No. 93-136, at 1 (#19, Tree Growth Tax Law; question left open whether by dispensing bulletin to taxpayers it had given notice of appeal rights)
- Keene v. City of Auburn*, No. 98-023, at 3 (#18, Farmland and Open Space law; bulletin suggests valuation ranges according to soils, topography, and use options)
- Sayer v. Town of Canton*, No. 99-022, at 5 (#18, Farmland and Open Space law; bulletin suggests valuation ranges according to use, sales, yield, classification of land, soils, topography, drainage, and rocks)
- Gregory v. MMC Realty Corp. & Maine Medical Center*, No. 2000-001, at 6 (#5, exemptions for charitable and benevolent corporations: discussing the breadth and undefined scope of 36 M.R.S. § 652)
- Carroll v. Town of Cornish*, No. 2001-02, at 2 n.4 (Decision II) (#18, Farmland and Open Space; soil types are relevant to productivity and hence to per acre valuation as suggested by bulletin); at 3-4 (assessors' use of bulletin to understand what products qualify land as farmland); at 6 (valuation according to current use, not fair market value); at 7 (three kinds of farmland)
- Brackett v. Town of Bristol*, Nos. 2007-010 & -011, at 11 n.9 (#24, Effects of Easements on Just Value)
- Brown v. Town of Bucksport*, No. 2009-031, at 13 n.17 (#19, Tree growth)
- Emera Maine v. Town of Eddington*, No. 2015-010, and *Emera Maine v. Town of Bradley*, No. 2015-011, at 7 n.4 (#25, Valuation of Power Lines)
- Xpress Natural Gas, LLP v. Town of Baileyville*, No. 2016-001, at 11 (Property Tax Bulletins do not carry the force of law and are not binding on the Board); at 9-10 & n.1, 12 (#2, The Use of Taxpayers' Lists); at 10-11 (Board holds #2 does not require actual notice); at 12-13 (two-step process for acquiring information)
- Roque Island Gardner Homestead Corp. v. Town of Jonesport*, No. 2018-001, at 2 n.1 (#20)

Better Equipment Tax Reimbursement (BETR), 36 M.R.S. §§ 6651-6663

*Sprague Energy Corp. v. Town of Bucksport*, No. 2003-003, at 10 &

n.8

## Mediation

*Pulpit Trust v. Town of North Haven*, No. 2019-013, at 3 (36 M.R.S. § 271(5-A) requires Board first to determine whether it has jurisdiction over an appeal before the matter is mediated by mandate under that section, but section 271(5-A) does not prohibit parties from agreeing to voluntarily mediate)

### III. Appeals From Municipal Assessments

The assessment and collection of taxes is a unitary process, of which the Board is a part

*Ocean State Job Lot of Belfast, LLC v. City of Belfast*, No. 2011-022-A,  
at 14 (order on motion to dismiss)

Assessors, although employed by municipalities, are public officers and agents of the sovereign and are not agents of municipalities

*U. S. Optical Disc, Inc. v. Town of Sanford*, No. 2003-004, Appx. at 9  
n.5

*Ocean State Job Lot of Belfast, LLC v. City of Belfast*, No. 2011-022-A,  
at 15 (order on motion to dismiss)

They are accountable to no one so long as they act in accord with their constitutional mandate and statutory direction

*Ocean State Job Lot of Belfast, LLC v. City of Belfast*, No. 2011-022-A,  
at 15 (order on motion to dismiss)

When selectmen and assessors are the same individuals, selectmen assume all responsibilities of assessors and may be called such by the Board, 36 M.R.S. § 703

*Sayer v. Town of Canton*, No. 99-022, at 3 n.2

*Fasse v. Town of St. Albans & Town of Ripley*, No. 2002-005, at 4 n.6

Selectmen as such have no assessing authority

*Dale Henderson Logging, Inc. v. Town of Steuben*, No. 2008-016,  
at 8 n.6

*Burt v. Town of Denmark*, No. 2014-007, at 9-10 (order on jurisdiction)

Who qualifies as municipal officers, 1 M.R.S. § 72(12), 30-A M.R.S. § 2001(10)(A), (B), and 36 M.R.S. § 501(4)

*Dale Henderson Logging, Inc. v. Town of Steuben*, No. 2008-016,  
at 4 n.2

Municipal officers are not the assessors; if the same individuals serve in both capacities, they must be sworn in both

*Dale Henderson Logging, Inc. v. Town of Steuben*, No. 2008-016,  
at 4 & n.2

36 M.R.S. § 706 has long been a part of Maine law

*U. S. Optical Disc, Inc. v. Town of Sanford*, No. 2003-004, at 22 n.17  
*Ocean State Job Lot of Belfast, LLC v. City of Belfast*, No. 2011-022-A,  
at 5 (order on motion to dismiss)

Purposes of 36 M.R.S. § 706 are to allow taxpayer, who is in the best position to know, to furnish correct information to assessor, and to prevent property liable to be taxed from escaping taxation

*Sprague Energy Corp. v. Town of Bucksport*, No. 2003-003 at 33 & n.17  
*Ocean State Job Lot of Belfast, LLC v. City of Belfast*, No. 2011-022-A,  
at 5 (order on motion to dismiss)  
*GGP-Maine Mall, LLC v. City of South Portland*, Nos. 2011-022 – -030  
(*Maine Mall II*), at 2  
*Xpress Natural Gas, LLP v. Town of Baileyville*, No. 2016-001, at 3

Request for information may be treated as section 706 request although the request does not explicitly cite section 706

*Louisiana-Pacific Corp. v. Town of New Limerick*, No. 2016-012 at 4  
(decision on respondent's prehearing motion in limine)

The Board has assumed over the years that it has the authority to decide questions concerning the propriety and timeliness of assessors' demands for information as well as the adequacy of taxpayers' responses, thus potentially barring their right to file a request for abatement or appealing a denial

*Ocean State Job Lot of Belfast, LLC v. City of Belfast*, No. 2011-022-A,  
at 3-4 (order on motion to dismiss)(section 706 does not give  
jurisdiction to a court but deny it to the Board)  
*GGP-Maine Mall, LLC v. City of South Portland*, Nos. 2011-022 – -030

(*Maine Mall II*), at 8 (the Board is not precluded from enforcing section 706; court does not have sole authority to do so)

Enforcement of 36 M.R.S. § 706 is a jurisdictional question

*Xpress Natural Gas, LLP v. Town of Baileyville*, No. 2016-001, at 1

Whether the Board has or does not have jurisdiction to hear an appeal by a taxpayer from assessor's determination it did not comply with assessor's demands for information pursuant to 36 M.R.S. § 706 is a jurisdictional question that can be decided by the Board chairman pursuant to 36 M.R.S. § 271(5)

*Ocean State Job Lot of Belfast, LLC v. City of Belfast*, No. 2011-022-A, at 9-15 (order on motion to dismiss)  
*GGP-Maine Mall, LLC v. City of South Portland*, Nos. 2011-022 – -030 (*Maine Mall II*), at 8

The propriety of an assessor's 36 M.R.S. § 706 demands and the adequacy of taxpayer's responses is not a jurisdictional question and cannot be decided by the Board chairman pursuant to 36 M.R.S. § 271(5)

*Ocean State Job Lot of Belfast, LLC v. City of Belfast*, No. 2011-022-A, at 3-9 (order on motion to dismiss; these are defenses that a municipality can waive)  
*Cobalt Properties, Ltd. v. Town of West Gardiner*, Nos. 2012-006 & -016, at 3 (prehearing order)

The Legislature intended in 36 M.R.S. § 706(1<sup>st</sup> ¶) that a municipality may send notices to any number of taxpayers without sending such to every taxpayer

*Xpress Natural Gas, LLP v. Town of Baileyville*, No. 2016-001, at 7-8

If municipality invokes 36 M.R.S. § 706 it must prove that it timely mailed request for information

*Alpine Realty Trust v. City of Biddeford*, No. 93-72, at 1 (request for information after assessment date is untimely)  
*Marcotte Congregate Housing, Inc. v. City of Lewiston*, Nos. 94-16,



94-17, 95-147, 95-148, 96-33–96-35, at 2 (exemption case)  
*UAH Hydro Kennebec v. Town of Winslow*, Nos. 95-120 & 95-150,  
 at 1-2 (without a timely request for information town is barred  
 from asserting that unanswered follow-up inquiries preclude  
 taxpayer from appealing)  
*Friendly Ice Cream Corp. v. City of Lewiston*, No. 96-042, at 2  
*Northeast Empire Ltd. Partnership v. Town of Livermore Falls*, Nos.  
 97-101 & 98-005, at 4-5 (where town waited two months to  
 file follow-up questions and then demanded they be answered  
 within 30 days, its request was unreasonable and thus  
 improper under section 706)  
*Northeast Empire Ltd. Partnership #2 v. Town of Ashland*, Nos.  
 99-015 & 99-027, at 1-2  
*Bethel Inn Corp. & Riverview Timeshare Trust v. Town of Bethel*,  
 2003-001 & 2003-002, at 3  
*GGP-Maine Mall, LLC v. City of South Portland*, Nos. 2011-022 – -030  
 (*Maine Mall II*), at 5  
*Xpress Natural Gas, LLP v. Town of Baileyville*, No. 2016-001, at 6  
 (section 706 list must be furnished before an assessment is  
 made)

Mailings to give notice pursuant to 36 M.R.S. § 706 can be made by regular,  
 first-class mail, and need not be have been done by certified mail

*McLaughlin v. Town of Dexter*, No. 2010-001, at 10 (tree growth case)  
 See generally *Xpress Natural Gas, LLP v. Town of Baileyville*,  
 No. 2016-001

36 M.R.S. § 706 does not require proof of actual notice to taxpayer

*Xpress Natural Gas, LLP v. Town of Baileyville*, No. 2016-001, at 10-11

Burden then shifts to the taxpayer to show that it answered the assessor's  
 proper inquiries, that the inquiries were not proper, or that it was unable to  
 answer them

*GGP-Maine Mall, LLC v. City of South Portland*, Nos. 2011-022 – -030  
 (*Maine Mall II*), at 5

Taxpayer's burden to show it need not comply with 36 M.R.S. § 706  
 requests is onerous

*GGP-Maine Mall, LLC v. City of South Portland*, Nos. 2011-022 – -030  
(*Maine Mall II*), at 11

Alternatively, if the assessor did not mail notice, the assessor may still require the taxpayer to answer inquiries as to the nature, situation, and value of its properties

*GGP-Maine Mall, LLC v. City of South Portland*, Nos. 2011-022 – -030  
(*Maine Mall II*), at 5

Although assessment suffered from lack of income data, assessor never demanded it under 36 M.R.S. § 706

*Falls Development Associates L.P. v. City of Saco*, No. 2008-025, at 61

Adequacy of municipality's notice of requirements of 36 M.R.S. § 706

*Great Cove Boat Club, Inc. v. Town of Eliot*, Nos. 91-01 & 91-21,  
at 4-5 (notice published in annual town report and delivered  
to every address is inadequate, and so taxpayer not barred  
from contesting assessment)

*C.S.R. Associates v. City of Portland*, Nos. 92-03 & 92-20, at 3  
(where taxpayer asserted it had never received section 706  
request, mailing section 706 request to taxpayer's last known  
address, not contested as incorrect, is sufficient)

*UAH Hydro Kennebec v. Town of Winslow*, Nos. 95-120 & 95-150,  
at 2 (correspondence from town was not a proper section 706  
request for information)

*Friendly Ice Cream Corp. v. City of Lewiston*, No. 96-042, at 2  
(city's routine mailing of request and records of non-returns  
conformed with section 706)

*Northeast Empire Ltd. Partnership v. Town of Livermore Falls*, Nos.  
97-101 & 98-005, at 3 (demand to answer complicated follow-  
up questions was unreasonable and improper)

*Bethel Inn Corp. & Riverview Timeshare Trust v. Town of Bethel*,  
2003-001 & 2003-002, at 4-6 (notice confusing when it told  
taxpayers both that a list of property must be provided and that  
no list need be provided if there are no changes to report)

Whether requests for information constituted proper inquiries by town under 36 M.R.S. § 706

- MCI International, Inc. v. Town of Andover*, No. 88-20, at 5-6  
*MCI International, Inc. v. Town of Andover*, No. 89-16, at 6-7  
*Boralex Sherman, LLC v. Town of Stacyville*, Nos. 2009-007 & 2010-002-A, at 7 (town was unable to produce requests for tax year in question)  
*GGP-Maine Mall, LLC v. City of South Portland*, Nos. 2011-022 – -030 (*Maine Mall II*), at 6-10 (Board has no authority to enforce section 706; appraisal sought by assessor was trade secret; attorney-client work product; inquiries were overbroad; assessor did not show appraisal was made available to taxpayer; assessor did not make further inquiry about the nature, situation, and value of properties)

Whether schedule of 36 M.R.S. § 706 was substantively satisfied

- MCI International, Inc. v. Town of Andover*, No. 88-20, at 3-7  
*MCI International, Inc. v. Town of Andover*, No. 89-16, at 4-6, 7-9  
*McDonald's Corp. v. Town of Freeport*, No. 89-17, at 2  
*Mystic Motor Inn v. Town of Freeport*, No. 91-19, at 3 (failure to supply income data not a violation)  
*Great Cove Boat Club, Inc. v. Town of Eliot*, Nos. 91-01 & 91-21, at 5-6 (taxpayer's answers to specific inquiries)  
*Eliot Commons Associates v. Town of Eliot*, Nos. 93-73, 93-74 & 95-011, at 3-4 (taxpayer complied with town's request for income and expense information)  
*Babcock-Ultrapower West Enfield v. Town of Enfield*, No. 96-049, *passim* (taxpayer could state information in terms of cost, not fair market value)  
*Rum Cove, LLC v. Town of Westport Island*, No. 2008-032, at 6 (issue waived)  
*Boralex Sherman, LLC v. Town of Stacyville*, Nos. 2009-007 & 2010-002-A, at 7-8 (town's simple disagreement that taxpayer had not provided the correct information requested by the town is not a basis on which to conclude taxpayer had failed to comply with section 706, particularly when town could not articulate, before the Board, the reasons for its disagreement)

Taxpayer must respond to town's proper inquiries pursuant to 36 M.R.S. § 706 and can defend not answering only on grounds of inability, not good cause or reasonable excuse

*MCI International, Inc. v. Town of Andover*, No. 88-20, at 6  
*MCI International, Inc. v. Town of Andover*, No. 89-16, at 7  
*UAH-Hydro v. Town of Winslow*, No. 2001-009, at 3 (where taxpayer had no appraisal, it was unable to respond to section 706 request from town)  
*Sprague Energy Corp. v. Town of Bucksport*, No. 2003-003, at 33 n.18  
*GGP-Maine Mall, LLC v. City of South Portland*, Nos. 2011-022 – -030 (*Maine Mall II*), at 11  
*Louisiana-Pacific Corp. v. Town of New Limerick*, No. 2016-012, at 4 (inability standard met where requested information does not exist and no such information was used by taxpayer)

Taxpayer's failure to respond to a proper 36 M.R.S. § 706 request by municipality bars it from pursuing an appeal of an assessment

*MCI International, Inc. v. Town of Andover*, No. 88-20, at 7  
*MCI International, Inc. v. Town of Andover*, No. 89-16, at 4  
*Great Cove Boat Club, Inc. v. Town of Eliot*, Nos. 91-01 & 91-21, at 3  
*C.S.R. Associates v. City of Portland*, Nos. 92-03 & 92-20, at 3  
*UAH Hydro Kennebec v. Town of Winslow*, Nos. 95-120 & 95-150, at 1  
*Friendly Ice Cream Corp. v. City of Lewiston*, No. 96-042, at 2  
*Bethel Inn Corp. & Riverview Timeshare Trust v. Town of Bethel*, 2003-001 & 2003-002, at 3  
*Boralex Sherman, LLC v. Town of Stacyville*, Nos. 2009-007 & 2010-002-A, at 6  
*Bangor Gas Co., LLC v. Town of Bucksport*, No. 2010-002, at 4 n.4 (although assessor maintained taxpayer did not provide her with financial information, she did not assert it had lost its right to appeal)  
*Ocean State Job Lot of Belfast, LLC v. City of Belfast*, No. 2011-022-A, at 6-7 (order on motion to dismiss)  
*GGP-Maine Mall, LLC v. City of South Portland*, Nos. 2011-022 – -030 (*Maine Mall II*), at 5, 11  
*See generally Xpress Natural Gas, LLP v. Town of Baileyville*, No. 2016-001

Taxpayer need not list exempt properties in responding to assessor's demand for information pursuant to 36 M.R.S. § 706

*Ocean State Job Lot of Belfast, LLC v. City of Belfast*, No. 2011-022-A,

at 6 n.8 (order on motion to dismiss)

Taxpayer may be bound by its initial 36 M.R.S. § 706 statement, but it can later argue that property it claimed as its own should be excluded from an assessment

*Sprague Energy Corp. v. Town of Bucksport*, No. 2003-003, at 33-34

Assessors are not bound by taxpayer's 36 M.R.S. § 706 declarations

*U. S. Optical Disc, Inc. v. Town of Sanford*, No. 2003-004, at 23 n.17, 32 (inconsistent for assessor to have relied on personal property declarations and to have rejected real property declarations)

Proper party to whom municipality's 36 M.R.S. § 706 inquiries are to be addressed

*Great Cove Boat Club, Inc. v. Town of Eliot*, Nos. 91-01 & 91-21, at 6 (taxpayer who responded in one tax year cannot assert this defense for another year without notifying town it was not proper party)

Taxpayer need not personally deliver its 36 M.R.S. § 706 statement to the assessor

*Sprague Energy Corp. v. Town of Bucksport*, No. 2003-003, at 34

Taxpayer's unwillingness to allow the assessor to inspect property may make its claims of valuation less credible

*U. S. Optical Disc, Inc. v. Town of Sanford*, No. 2003-004, at 31 n.24

The Board has jurisdiction to determine if a taxing authority must repay a taxpayer with interest when a tax paid as a penalty is to be refunded

*Hunt, Trustee, Hunt Family Irrevocable Trust v. Maine Revenue Services*, Nos. 2009-020 & -021, at 13-14

Whether the overpayment of tax is to be refunded to taxpayer with interest, 36 M.R.S. § 506-A

*Gottschalk v. Town of Brooklin*, No. 90-30, at 2 (yes)  
*Chatfield v. Town of Rockport*, No. 91-56, at 5 (yes)  
*Hunt, Trustee, Hunt Family Irrevocable Trust v. Maine Revenue Services*, Nos. 2009-020 & -021, at 14-19 (no, under particular legislation)

Assessment is presumed correct, and burden is on taxpayer to show that the assessment is manifestly wrong

*Alstores Realty Corp. v. City of South Portland*, No. 87-03, at 4  
*McDonald's Corp. v. Town of Freeport*, No. 89-17, at 5  
*Kamp Kohut, Ltd. v. Town of Oxford*, No. 90-18, at 2 (strong presumption of validity)  
*Oxford Homes, Inc. v. Town of Oxford*, No. 90-31, at 5 (presumption in favor of assessors' determination of value)  
*Central Maine Power Co. v. Town of Moscow*, No. 90-43, at 5  
*Mountain View Associates v. Town of Madison*, No. 91-35, at 4  
*Searsport Realty Associates v. Town of Searsport*, No. 91-89, at 3  
*Glenridge Development Co. v. City of Augusta*, No. 91-90, at 3  
*Oxford Paper Co. (Boise Cascade) v. Town of Mexico*, No. 91-102, at 3 (stated in terms of (1), below)  
*Lincoln Realty Associates v. Town of Lincoln*, No. 91-103, at 3  
*Wesson v. Town of Bremen*, Nos. 92-04 & 92-66, at 6 (Decision I)  
*Applewood Housing Associates v. Town of Camden*, No. 92-18, at 3  
*Weymouth (Townhouse Estates I) v. Town of Camden*, No. 92-29, at 3  
*Weymouth (Townhouse Estates II) v. Town of Camden*, No. 92-30, at 3  
*Camden Housing Associates v. Town of Camden*, No. 92-32, at 3  
*Bath Iron Works Corp. v. City of Bath*, Nos. 92-43, 92-102 & 93-14, at 5  
*Wesson v. Town of Bremen*, Nos. 92-04 & 92-66, at 1 (Decision II)  
*City of Biddeford v. Landco Realty, Inc.*, No. 92-104, consolidated with *Landco Realty Co. v. City of Biddeford*, No. 93-70, at 5 (burden is not on assessors to show the accuracy of their valuation)  
*Toussaint v. City of Lewiston*, Nos. 93-06–93-11, at 6  
*Rankin Center Associates v. City of Rockland*, Nos. 93-18 & 93-97, at 3 (city argued that merely presenting alternative values did not prove assessment was manifestly wrong)

- Central Way Realty Associates v. City of Lewiston*, Nos. 93-37–93-40, consolidated with *KNL Associates v. City of Lewiston*, Nos. 93-41–93-49 & 92-55–92-64, at 3
- Alpine Realty Trust v. City of Biddeford*, No. 93-72, at 2
- Guy Gannett Publishing Co. v. City of South Portland*, Nos. 93-75 & 93-135, at 4
- Champion International Corp. v. Town of Bucksport*, No. 93-98, at 5
- Cumberland Property Trust v. Town of Gorham*, No. 93-111, at 2
- Unitrode Corp. v. City of Westbrook*, No. 93-116, at 6
- Carle Street Associates v. City of Waterville*, Nos. 94-23 & 95-162, at 2
- Capitol Shopping Center v. City of Augusta*, Nos. 94-29 & 95-164, at 3
- Adams v. City of Biddeford*, Nos. 95-029-95-104, at 4 (Decision I), at 3 (Decision III)
- FLS Associates v. City of Augusta*, No. 95-153, at 2
- Pope v. Town of Old Orchard Beach*, Nos. 96-039–96-041, at 2
- McGhee v. Town of Maxfield*, No. 96-044, at 3
- Forbes v. Town of Southwest Harbor*, No. 96-045, at 5 (farmland case)
- KPMG Peat Marwick v. City of Lewiston*, No. 96-047, at 3
- Roderick v. Town of Crystal*, No. 97-103, at 3 (burden is showing assessor was manifestly wrong in relation to just value)
- Maine Public Service Co. v. City of Caribou*, No. 97-108, at 3-4
- Port Resort Realty Corp. v. Town of Kennebunkport*, No. 98-004, at 1-2 (same)
- Keene v. City of Auburn*, No. 98-023, at 4 (farmland case)
- B & B Properties v. City of Ellsworth*, No. 98-026, at 2 (burden is to show that assessment is unjust—that is, overrated or rated for more than just value)
- Provost, Inc. v. Town of Windham*, No. 98-029, at 3
- Northeast Empire Ltd. Partnership #2 v. Town of Ashland*, Nos. 99-015 & 99-027, at 3
- Sayer v. Town of Canton*, No. 99-022, at 7 (farmland case in which taxpayers proffered credible evidence of value and demonstrated assessors were manifestly wrong)
- Carroll v. Town of Cornish*, No. 2001-002, at 8 (same)
- UAH-Hydro v. Town of Winslow*, 2001-009, at 7
- Davis v. Town of Lamoine*, No. 2002-003, at 5 (tree growth case)
- Great Northern Paper, Inc. v. Town of East Millinocket*, No. 2000-006, at 4, 5
- Sprague Energy Corp, Inc. v. Town of Bucksport*, No. 2003-003, at 3
- U. S. Optical Disc, Inc. v. Town of Sanford*, No. 2003-004, at 12 (quoting *Sprague Energy*); at 14 (unless, or until, the assessor is shown to be manifestly wrong, he is entitled to the presumption that his assessment is valid); Appx. at 10

*Topsham Hydro Partners v. Town of Topsham*, No. 2003-007, at 2  
*Rangeley Lake Resort Development Co., LLC v. Town of Rangeley*,  
 No. 2003-019, at 15  
*Fowler v. Town of Lubec*, 2004-002, at 2 (tree growth case)  
*Richmond v. Town of Moscow*, No. 2004-004, at 3 (same)  
*Zorn v. Town of Lubec*, No. 2004-007, at 3 (same)  
*Gray v. Town of Sedgwick*, No. 2005-005, at 2 (same)  
*KeyBank National Ass'n v. Town of Phippsburg*, No. 2006-002, at 17  
 (same)  
*Pierce v. Maine Revenue Services*, No. 2006-007, at 10 (same)  
*Norumbega Bed & Breakfast, LLC v. Town of Camden*, No. 2005-017,  
 at 2, 3 (taxpayer carries its burden to prove subject property is  
 substantially overvalued when it proves the assessed value  
 is relation to just value is manifestly wrong)  
*Woodland Kittery Ltd. Partnership v. Town of Kittery*, No. 2006-008, at 2  
*Brackett v. Town of Bristol*, Nos. 2007-010 & -011, at 12 (working  
 waterfront case)  
*City of Brewer v. Ellen M. Leach Memorial Home & Ellen M. Leach  
 Memorial Home v. City of Brewer*, Nos. 2006-012 & -013, at 3  
*Kendall v. Town of Perry*, No. 2008-004, at 2 (tree growth case)  
*PPL Maine, LLC v. Town of Milford and PPL Maine, LLC v. City of Old  
 Town*, Nos. 2008-013 & -029, at 2  
*GGP-Maine Mall, LLC v. City of South Portland*, No. 2008-001 (*Maine  
 Mall I*), at 3 (burden is to show valuation is unjust)  
*Falls Development Associates, L.P. v. City of Saco*, No. 2008-025, at 5  
*Boralex Sherman, LLC v. Town of Stacyville*, Nos. 2009-007 &  
 2010-002-A, at 2  
*Harold MacQuinn, Inc. v. Town of Hancock*, No. 2009-014, at 16, 24  
*Brown v. Town of Bucksport*, No. 2009-031, at 15 (tree growth case)  
*Bangor Gas Co., LLC v. Town of Bucksport*, No. 2010-002, at 2  
*Prentiss & Carlisle Management Co., Inc. v. Town of Merrill and Town  
 of Smyrna*, Nos. 2010-007 & 2010-006, at 2 (tree growth case)  
*MHC Narrows Too, LLC v. Town of Trenton*, No. 2012-013, at 13  
*LaBoca Corp. v. Town of Falmouth*, No. 2012-027, at 1-2, 7 (unjust  
 assessment requires taxpayer to show substantial  
 overvaluation)  
*LaBoca Corp. v. Town of Falmouth*, No. 2014-001, at 2, 7  
*Day v. Town of Madison*, No. 2014-006, at 3 (tree growth)  
*Prentiss & Carlisle Management Co., Inc. v. Town of Smyrna and Town of  
 Merrill*, Nos. 2015-001 & -002, at 11  
*Emera Maine v. Town of Eddington*, No. 2015-010, and *Emera Maine  
 v. Town of Bradley*, No. 2015-011, at 2, 9  
*Expera Old Town, LLC v. City of Old Town*, Nos. 2015-013 & 2016-002,  
 at 14  
*Roque Island Gardner Homestead Corp. v. Town of Jonesport*,



No. 2016-003, at 3 (farmland case)  
*Madison Paper Industries v. Town of Madison*, No. 2016-009, at 10  
*Louisiana-Pacific Corp. v. Town of New Limerick*, No. 2016-012  
 (decision on merits), at 16  
*395 Bangor Brewer, LLC v. City of Brewer*, No. 2017-005, at 9.

To meet this burden, taxpayer must do more than impeach the assessor; taxpayer must affirmatively present credible evidence of value by which the Board can compare valuations, and so independently value the property based on the entire record

*Wesson v. Town of Bremen*, Nos. 92-04 & 92-66, at 3 (Decision II)  
*Central Way Realty Associates v. City of Lewiston*, Nos. 93-37–  
 93-40, consolidated with *KNL Associates v. City of Lewiston*,  
 Nos. 93-41–93-49 & 92-55–92-64, at 3-4  
*Champion International Corp. v. Town of Bucksport*, No. 93-98, at 5  
*Unitrode Corp. v. City of Westbrook*, No. 93-116, at 6 (despite  
 evidence of contamination which had some effect on value,  
 where petitioner presented no figures or methodology with  
 which Board can determine value, it has not met its burden)  
*Adams v. City of Biddeford*, Nos. 95-029-95-104, at 3 (Decision III)  
*Toussaint v. City of Lewiston*, Nos. 95-143–95-146, at 4  
*AWD Management (Chiricahua, Inc.) v. City of Westbrook*, No. 95-163,  
 at 2-3  
*Spang Enterprises v. Town of Kennebunkport*, No. 96-011, at 2, 3  
 (town’s witness’ testimony that many commercial properties in  
 town are over-assessed and that it would be unfair to correct  
 one without correcting all may be considered impeachment of  
 value, but taxpayer presented no credible evidence of true value  
 against which to compare assessor’s value)  
*Pope v. Town of Old Orchard Beach*, Nos. 96-039–96-041, at 2-3  
 (absence of historical and market evidence supporting a  
 determination of stabilized estimate of net operating income  
 from which to apply an appropriate capitalization rate itself  
 demonstrates taxpayer did not present a credible value)  
*McGhee v. Town of Maxfield*, No.96-044, at 3  
*Forbes v. Town of Southwest Harbor*, No. 96-045, at 5  
*KPMG Peat Marwick v. City of Lewiston*, No. 96-047, at 3  
*Maine Public Service Co. v. City of Caribou*, No. 97-108, at 4  
*Port Resort Realty Corp. v. Town of Kennebunkport*, No 98-004, at 2  
*B & B Properties v. City of Ellsworth*, No. 98-026, at 2  
*Provost, Inc. v. Town of Windham*, No. 98-029, at 3  
*Northeast Empire Ltd. Partnership #2 v. Town of Ashland*, Nos.

- 99-015 & 99-027, at 3, 6 n.3, 7 (despite impeaching assessment, taxpayer did not come forward with credible evidence of value)
- Great Northern Paper, Inc. v. Town of East Millinocket*, No. 2000-006, at 4
- UAH-Hydro v. Town of Winslow*, 2001-009, at 7 (taxpayer failed to impeach assessor)
- Sprague Energy Corp. v. Town of Bucksport*, No. 2003-003, at 4, 30 (taxpayer failed to present any impeaching evidence as to value of personal property and one parcel of real property, and failed to show assessor was manifestly wrong as to another parcel of realty)
- U. S. Optical Disc, Inc. v. Town of Sanford*, No. 2003-004, at 11 n.6, 12 (quoting *Sprague Energy*; taxpayer must do more than show assessor did not apply all factors in 36 M.R.S. § 701-A, but must show how such failure resulted in assessor being manifestly wrong)
- Topsham Hydro Partners v. Town of Topsham*, No. 2003-007, at 2
- Norumbega Bed & Breakfast, LLC v. Town of Camden*, No. 2005-017, at 3
- Woodland Kittery Ltd. Partnership v. Town of Kittery*, No. 2006-008, at 2, 6, 9 (despite impeaching assessor, taxpayer did not come forward with credible evidence of value)
- Brckett v. Town of Bristol*, Nos. 2007-010 & -011, at 12
- City of Brewer v. Ellen M. Leach Memorial Home & Ellen M. Leach Memorial Home v. City of Brewer*, Nos. 2006-012 & -013, at 3, 5, 19-25 (taxpayer impeached assessment and came forward with credible evidence of value)
- Cushing Holdings, LLC v. Town of Cushing and Last Resort Holdings, LLC v. Town of Cushing*, Nos. 2006-017 & -018, at 3
- GGP-Maine Mall, LLC v. City of South Portland*, No. 2008-001 (*Maine Mall I*), at 3 (quoting also 36 M.R.S. § 701-A)
- PPL Maine, LLC v. Town of Milford and PPL Maine, LLC v. City of Old Town*, Nos. 2008-013 & -029, at 2-3 (taxpayer presented credible evidence of value); at 3-4 (one town's assessor was impeached when assessor's agent could not find any records to support assessment, so town could not establish what approaches to value were applied, and other town relied on brief handwritten notes not related to income)
- Falls Development Associates, L.P. v. City of Saco*, No. 2008-025, at 5-6, 6-7 (taxpayer impeached assessment but did not present credible evidence of value, and so loses its appeal even though assessment was too high); at 60-61, 63 (taxpayer's failure to present credible evidence of value means assessor's value prevails even though too high)

*Boralex Sherman, LLC v. Town of Stacyville*, Nos. 2009-007 & 2010-002-A, at 2-3  
*Harold MacQuinn, Inc. v. Town of Hancock*, No. 2009-014, at 18  
*Brown v. Town of Bucksport*, No. 2009-031, at 15  
*Bangor Gas Co., LLC v. Town of Bucksport*, No. 2010-002, at 2  
*Prentiss & Carlisle Management Co., Inc. v. Town of Merrill and Town of Smyrna*, Nos. 2010-007 & 2010-006, at 3  
*MHC Narrows Too, LLC v. Town of Trenton*, No. 2012-013, at 13  
*LaBoca Corp. v. Town of Falmouth*, No. 2012-027, at 2, 7  
*LaBoca Corp. v. Town of Falmouth*, No. 2014-001, at 2, 7 (several reasons appraiser not credible)  
*Day v. Town of Madison*, No. 2014-006, at 3 (tree growth)  
*Prentiss & Carlisle Management Co., Inc. v. Town of Smyrna and Town of Merrill*, Nos. 2015-001 & -002, at 11  
*Passamaquoddy Tribe at Pleasant Point v. City of Eastport*, No. 2015-005, at 3-4, 6 (taxpayer failed to present credible evidence of value)  
*Expera Old Town, LLC v. City of Old Town*, Nos. 2015-013 & 2016-002, at 14 (even multiple grounds for impeachment are inadequate to warrant abatement if the taxpayer's evidence of value is not credible)  
*Louisiana-Pacific Corp. v. Town of New Limerick*, No. 2016-012 (decision on merits), at 17-18  
*395 Bangor Brewer, LLC v. City of Brewer*, No. 2017-005, at 10-11

This is an application of a more general principle that when a party has the burden of proof, the absence of affirmative evidence itself supports denying relief to that party

*Harold MacQuinn, Inc. v. Town of Hancock*, No. 2009-014, at 18 n.7

In considering whether the taxpayer has met its burden to show the assessment is manifestly wrong, the Board considers whether the taxpayer has impeached the assessor

*GGP-Maine Mall, LLC v. City of South Portland*, No. 2008-001 (*Maine Mall I*), at 10

Only if the proffered value in comparison with the assessment shows substantial overvaluation can the Board conclude the assessment is manifestly wrong

*U. S. Optical Disc, Inc. v. Town of Sanford*, No. 2003-004, at 14  
*Topsham Hydro Partners v. Town of Topsham*, 2003-007, at 2  
*Falls Development Associates, L.P. v. City of Saco*, No. 2008-025,  
 at 6, 64  
*Harold MacQuinn, Inc. v. Town of Hancock*, No. 2009-014, at 18  
*Bangor Gas Co., LLC v. Town of Bucksport*, No. 2010-002, at 2  
*Prentiss & Carlisle Management Co., Inc. v. Town of Merrill and Town  
 of Smyrna*, Nos. 2010-007 & 2010-006, at 3  
*Expera Old Town, LLC v. City of Old Town*, Nos. 2015-013 & 2016-002,  
 at 14  
*Madison Paper Industries v. Town of Madison*, No. 2016-009, at 24  
 (taxpayer did not prove substantial overvaluation)

A taxpayer carries its burden to prove that the subject property is substantially overvalued when it proves that the assessed value in relation to just value is manifestly wrong

*Cushing Holdings, LLC v. Town of Cushing and Last Resort Holdings,  
 LLC v. Town of Cushing*, Nos. 2006-017 & -018, at 3  
*GGP-Maine Mall, LLC v. City of South Portland*, No. 2008-001 (*Maine  
 Mall I*), at 3  
*Boralex Sherman, LLC v. Town of Stacyville*, Nos. 2009-007 &  
 2010-002-A, at 2  
*Prentiss & Carlisle Management Co., Inc. v. Town of Smyrna and Town of  
 Merrill*, Nos. 2015-001 & -002, at 12

Where a municipality admits a given value, the Board is bound by this value if the taxpayer does not present credible evidence of value, and may examine the entire record to determine fair market value, when measured against the admitted value, only if the taxpayer does present credible evidence of value

*MHC Narrows Too, LLC v. Town of Trenton*, No. 2012-013, at 14

Assessor can be manifestly wrong in three ways: (1) substantial overvaluation leading to an injustice; (2) unjust discrimination; or (3) fraudulent, dishonest, or illegal action

*Alstores Realty Corp. v. City of South Portland*, No. 87-03, at 4  
*McDonald's Corp. v. Town of Freeport*, No. 89-17, at 5 (stating this  
 as four ways with (1) divided into (a) irrational and (b) so  
 unreasonable that an injustice occurs)  
*Great Cove Boat Club, Inc. v. Town of Eliot*, Nos. 91-21, 92-94 &

92-95, at 5 ((2) involved)  
*Mountain View Associates v. Town of Madison*, No. 91-35, at 4  
*Chatfield v. Town of Rockport*, No. 91-56, at 3  
*Harbor Island Trust v. Town of Friendship*, No. 91-93, at 2  
*Oxford Paper Co. (Boise Cascade) v. Town of Mexico*, No. 91-102,  
 at 4 (stating only (1))  
*Lincoln Realty Associates v. Town of Lincoln*, No. 91-103, at 3  
*Wesson v. Town of Bremen*, Nos. 92-04 & 92-66, at 6, 7  
 ((2) involved)(Decision I)  
*Hardy, Wolf & Downing v. City of Lewiston*, No. 92-06, at 3 (stating  
 only (1))  
*Applewood Housing Associates v. Town of Camden*, No. 92-18, at 3  
 (Board notes this is not (2))  
*Weymouth (Townhouse Estates I) v. Town of Camden*, No. 92-29,  
 at 3  
*Weymouth (Townhouse Estates II) v. Town of Camden*, No. 92-30  
 at 3  
*Camden Housing Associates v. Town of Camden*, No. 92-32, at 3  
*Dirigo Management Co. v. City of Bath*, No. 92-34, at 4 ((1) involved)  
*IBM Credit Corp. v. City of Bath*, Nos. 92-42 & 93-32, at 2 (taxpayer  
 claimed (1) and (2))  
*Bath Iron Works Corp. v. City of Bath*, Nos. 92-43, 92-102 & 93-14,  
 at 5-6, 9 ((1) involved re realty and (2) involved re personalty)  
*Wesson v. Town of Bremen*, Nos. 92-04 & 92-66, at 1 (Decision II)  
 (taxpayer claimed(2)), 2 (stating burden in terms of (1))  
*Messina & Sprowl Associates, Inc. v. Town of Hampden*, No. 92-97,  
 at 2 (taxpayer proves (1) when it proves assessor was  
 manifestly wrong)  
*Thayer Garden Associates v. City of Waterville*, No. 92-99, at 3  
 ((1) involved)  
*City of Biddeford v. Landco Realty, Inc.*, No. 92-104, consolidated  
 with *Landco Realty Co. v. City of Biddeford*, No. 93-70, at 5  
*Poorvu Family Trust v. City of Presque Isle*, No. 93-04, at 3  
 ((1) proved due to shift of the economic community in city)  
*Toussaint v. City of Lewiston*, Nos. 93-06–93-11, at 6  
*Rankin Center Associates v. City of Rockland*, Nos. 93-18 & 93-97,  
 at 4 (Board found (1))  
*Sawyer Environmental Recovery Facility v. Town of Hampden*,  
 No. 93-34, at 5 (Board found (1))  
*Central Way Realty Associates v. City of Lewiston*, Nos. 93-37–  
 93-40, consolidated with *KNL Associates v. City of Lewiston*,  
 Nos. 93-41–93-49 & 92-55–92-64, at 3  
*LeMaistre v. Town of Freeport*, No. 93-56, at 3 (farmland case)  
*Alpine Realty Trust v. City of Biddeford*, No. 93-72, at 2, 3 (no proof  
 of (2))

- Guy Gannett Publishing Co. v. City of South Portland*, Nos. 93-75 & 93-135, at 5-8 ((1) involved)
- J & N Sanford Trust v. Town of Sanford*, No. 93-82, at 3
- Champion International Corp. v. Town of Bucksport*, No. 93-98, at 4, 5, 6-17 ((1) and (2) involved)
- Brant-Meyer v. Town of Freeport*, No. 93-99, at 2 (farmland; (1) involved)
- Messina & Sprowl Associates, Inc. v. Town of Hampden*, No. 93-103, at 2 ((1) proved due to lack of public water, sewer, and access roads)
- Maine Orion Properties v. Town of Falmouth*, No. 93-107, at 2 ((1) involved)
- Unitrode Corp. v. City of Westbrook*, No. 93-116, at 6
- Presque Isle Investors v. City of Presque Isle*, No. 94-03, at 3 ((1) proved due to shift of the economic community in city)
- Adams v. City of Biddeford*, Nos. 95-029-95-104, at 4 (Decision I), at 2 (Decision II)
- Knox Hotel Associates v. Town of Thomaston*, No. 95-132, at 2-3 ((1) involved)
- Toussaint v. City of Lewiston*, Nos. 95-143-95-146, at 3 ((1) at involved)
- AWD Management (Chiricahua, Inc.) v. City of Westbrook*, No. 95-163, at 2 ((1) involved)
- Roderick v. Town of Crystal*, No. 97-103, at 3 (taxpayer met burden in tree growth case)
- Maine Public Service Co. v. City of Caribou*, No. 97-108, at 3
- Port Resort Realty Corp. v. Town of Kennebunkport*, No. 98-004, at 1 ((1) involved)
- Keene v. City of Auburn*, No. 98-023, at 4 (no proof of (1))
- B & B Properties v. City of Ellsworth*, No. 98-026, at 2
- Provost, Inc. v. Town of Windham*, No. 98-029, at 3
- Northeast Empire Ltd. Partnership #2 v. Town of Ashland*, Nos. 99-015 & 99-027, at 2-3 ((1) involved)
- Great Northern Paper, Inc. v. Town of East Millinocket*, No. 2000-006, at 3 (Board found (1) in part)
- Carroll v. Town of Cornish*, No. 2001-002, at 8 (to misclassify property and deny an abatement request is to cause an overvaluation)
- UAH-Hydro v. Town of Winslow*, 2001-009, at 7-9 (noting requirements; taxpayer failed to prove (1), (2), and (3))
- Sprague Energy Corp. v. Town of Bucksport*, No. 2003-003, at 3
- U. S. Optical Disc, Inc. v. Town of Sanford*, No. 2003-004, at 12 (quoting *Sprague Energy*)
- Topsham Hydro Partners v. Town of Topsham*, No. 2003-007, at 2, 3

- (where Board finds (1), it need not reach claim of (2); proof of (1) is not required for proof of (3))
- Norumbega Bed & Breakfast, LLC v. Town of Camden*, No. 2005-017, at 2 ((1) involved)
- KeyBank National Ass's v. Town of Phippsburg*, No. 2006-002, at 5
- Woodland Kittery Ltd. Partnership v. Town of Kittery*, No. 2006-008, at 2 ((1) involved)
- Brackett v. Town of Bristol*, Nos. 2007-010 & -011, at 12 ((1) and (2) involved)
- City of Brewer v. Ellen M. Leach Memorial Home & Ellen M. Leach Memorial Home v. City of Brewer*, Nos. 2006-012 & -013, at 2 ((1) involved)
- Cushing Holdings, LLC v. Town of Cushing and Last Resort Holdings, LLC v. Town of Cushing*, Nos. 2006-017 & -018, at 3 ((1) and (2) involved)
- GGP-Maine Mall, LLC v. City of South Portland*, No. 2008-001 (*Maine Mall I*), at 4, 14 (discrimination defined; (1) and (2) involved); at 14 (mere fact that stores are adjacent in shopping center does not make them similarly situated)
- Falls Development Associates, L.P. v. City of Saco*, No. 2008-025, at 4 ((1) involved; substantial overvaluation means overrated with reference to just value)
- Rum Cove, LLC v. Town of Westport Island*, No. 2008-032, at 2 ((1) Involved)
- Boralex Sherman, LLC v. Town of Stacyville*, Nos. 2009-007 & 2010-002-A, at 2 ((1) involved)
- Harold MacQuinn, Inc. v. Town of Hancock*, No. 2009-014, at 16-17 ((1) involved)
- Brown v. Town of Bucksport*, No. 2009-031, at 15 ((1) involved)
- Bangor Gas Co., LLC v. Town of Bucksport*, No. 2010-002, at 2
- Prentiss & Carlisle Management Co., Inc. v. Town of Merrill and Town of Smyrna*, Nos. 2010-007 & 2010-006, at 2 ((1) involved)
- LaBoca Corp. v. Town of Falmouth*, No. 2012-027, at 1-2 ((1) involved)
- LaBoca Corp. v. Town of Falmouth*, No. 2014-001, at 2 ((1) involved)
- Day v. Town of Madison*, No. 2014-006, at 3 (tree growth)
- Madison Paper Industries v. Town of Madison*, No. 2016-009, at 11
- Louisiana-Pacific Corp. v. Town of New Limerick*, No. 2016-012 (decision on merits), at 17, 18-19 ((1) involved)
- 395 Bangor Brewer, LLC v. City of Brewer*, No. 2017-005, at 10 ((1) involved)

Burden is on the taxpayer to clearly state its argument and produce evidence in support of it position

*GGP-Maine Mall, LLC v. City of South Portland*, No. 2008-001 (*Maine Mall I*), at 15

A municipality's ambiguous and inconsistently applied taxing policy will be construed in favor of the taxpayer

*Harold MacQuinn, Inc. v. Town of Hancock*, No. 2009-014, at 29  
(town inconsistently classified similar properties in either of two different land classifications with different per acre values)

Where a municipality classified more acreage as a certain land type than appeared on the face of the earth, the taxpayer met its burden to prove the assessment was manifestly wrong

*Harold MacQuinn, Inc. v. Town of Hancock*, No. 2009-014, at 28-29

"Manifestly wrong" is not an initial burden that a taxpayer must meet, but the ultimate point that may be reached only if sufficient credible evidence of value has first been presented

*U. S. Optical Disc, Inc. v. Town of Sanford*, No. 2003-004, at 13

"Manifestly wrong" describes a substantive burden, not to be equated with preponderance of the evidence, clear and convincing evidence, or proof beyond a reasonable doubt

*B & B Properties v. City of Ellsworth*, No. 98-026, at 3-4 n.1

*U. S. Optical Disc, Inc. v. Town of Sanford*, No. 2003-004, at 14-15 n.7

Any prior formulations by the Law Court of taxpayer's burden are not now to be followed

*B & B Properties v. City of Ellsworth*, No. 98-026, at 3-4 n.1

The burden to show the assessor was manifestly wrong never shifts from taxpayer

*Central Way Realty Associates v. City of Lewiston*, Nos. 93-37-



93-40, consolidated with *KNL Associates v. City of Lewiston*,  
Nos. 93-41-93-49 & 92-55-92-64, at 3  
*Champion International Corp. v. Town of Bucksport*, No. 93-98,  
at 5, 16  
*Adams v. City of Biddeford*, Nos. 95-029-95-104, at 3 (Decision III)  
*Port Resort Realty Corp. v. Town of Kennebunkport*, No. 98-004, at 1  
*Great Northern Paper, Inc. v. Town of East Millinocket*, No. 2000-006,  
at 4, 5  
*U. S. Optical Disc, Inc. v. Town of Sanford*, No. 2003-004, at 31 n.24

It is not enough for an aggrieved taxpayer simply to disagree with the assessment

*Harold MacQuinn, Inc. v. Town of Hancock*, No. 2009-014, at 18, 24

The Board can undertake an independent determination of value only if taxpayer presents sufficient credible evidence of valuation, and cannot do so without such a showing

*Sprague Energy Corp. v. Town of Bucksport*, No. 2003-003, at 4,  
22-23, 28-29  
*U. S. Optical Disc, Inc. v. Town of Sanford*, No. 2003-004, at 11-12  
(quoting *Sprague Energy*), 13, 18, 31 n.24  
*Topsham Hydro Partners v. Town of Topsham*, No. 2003-007, at 2  
*Norumbega Bed & Breakfast, LLC v. Town of Camden*, No. 2005-017,  
at 3, 5 n.5  
*Woodland Kittery Ltd. Partnership v. Town of Kittery*, No. 2006-008,  
at 2-3  
*City of Brewer v. Ellen M. Leach Memorial Home & Ellen M. Leach  
Memorial Home v. City of Brewer*, Nos. 2006-012 & -013, at 3  
*Cushing Holdings, LLC v. Town of Cushing and Last Resort Holdings,  
LLC v. Town of Cushing*, Nos. 2006-017 & -018, at 3  
*PPL Maine, LLC v. Town of Milford and PPL Maine, LLC v. City of Old  
Town*, Nos. 2008-013 & -029, at 3  
*GGP-Maine Mall, LLC v. City of South Portland*, No. 2008-001 (*Maine  
Mall I*), at 3  
*Boralex Sherman, LLC v. Town of Stacyville*, Nos. 2009-007 &  
2010-002-A, at 3  
*Harold MacQuinn, Inc. v. Town of Hancock*, No. 2009-014, at 18  
*See LaBoca Corp. v. Town of Falmouth*, No. 2012-027, at 6, 8  
(taxpayer did not present credible evidence of value)  
*LaBoca Corp. v. Town of Falmouth*, No. 2014-001, at 2  
*Prentiss & Carlisle Management Co., Inc. v. Town of Smyrna and Town of*

*Merrill*, Nos. 2015-001 & -002, at 12-13  
*Expera Old Town, LLC v. City of Old Town*, Nos. 2015-013 & 2016-002,  
 at 14  
*395 Bangor Brewer, LLC v. City of Brewer*, No. 2017-005, at 10

What constitutes sufficient credible evidence of value is determined case-by-case

*U. S. Optical Disc, Inc. v. Town of Sanford*, No. 2003-004, at 14 n.7

Assessors are presumed correct because of their special knowledge of local conditions, giving them judgment and practicality that are equal to, or greater than, that of experts

*B & B Properties v. City of Ellsworth*, No. 98-026, at 4-5

Assessors are not always experts

*U. S. Optical Disc, Inc. v. Town of Sanford*, No. 2003-004, at 32 n.25

Assessing and appraising are imperfect endeavors and may involve a substantial amount of judgment

*U. S. Optical Disc, Inc. v. Town of Sanford*, No. 2003-004, at 32 n.25,  
 35

*MHC Narrows Too, LLC v. Town of Trenton*, No. 2012-013, at 15

Valuation inherently cannot be perfect and does not demand mathematical precision

*B & B Properties v. City of Ellsworth*, No. 98-026, at 5

*Gregory v. MMC Realty Corp. & Maine Medical Center*, No. 2000-001,  
 at 35

*U. S. Optical Disc, Inc. v. Town of Sanford*, No. 2003-004, at 32 n.25,  
 35

Assessors are obliged to avoid speculation

*Harold MacQuinn, Inc. v. Town of Hancock*, No. 2009-014, at 25, 26-27

(the rule of avoiding speculation also applies to eminent domain)

A taxpayer need not present a flawless attack on the assessor in order to prove he is manifestly wrong

*U. S. Optical Disc, Inc. v. Town of Sanford*, No. 2003-004, at 36

The Board must be wary about equating flaws in appraisal with a conclusion that an appraiser has failed to present credible evidence of value

*U. S. Optical Disc, Inc. v. Town of Sanford*, No. 2003-004, at 18-19

An abatement is the proper remedy for violations of 36 M.R.S. § 841(1)(1<sup>st</sup> ¶) (overvaluation) and (2<sup>nd</sup> ¶)(illegality, error, irregularity)

*Brackett v. Town of Bristol*, Nos. 2007-010 & -011, at 12 (1<sup>st</sup> ¶)

*Brown v. Town of Bucksport*, No. 2009-031, at 15 (1<sup>st</sup> ¶)

*Haggard v. Town of Swan's Island*, No. 2010-012, at 9 (2<sup>nd</sup> ¶)

Claims of overvaluation are quintessentially abatement cases

*Fasse v. Town of St. Albans & Town of Ripley*, No. 2002-005, at 13

In overvaluation claims, manifestly wrong means that the judgment of the assessor was irrational or so unreasonable in light of the circumstances that the property is substantially overvalued and an injustice results

*Sprague Energy Corp. v. Town of Bucksport*, No. 2003-003, at 3-4

*U. S. Optical Disc, Inc. v. Town of Sanford*, No. 2003-004, at 12  
(quoting *Sprague Energy*)

*Brackett v. Town of Bristol*, Nos. 2007-010 & -011, at 12

*Brown v. Town of Bucksport*, No. 2009-031, at 15

*395 Bangor Brewer, LLC v. City of Brewer*, No. 2017-005, at 10

Overvaluation can also be connoted by arbitrariness (although that concept ordinarily relates to discrimination)

*Harold MacQuinn, Inc. v. Town of Hancock*, No. 2009-014, at 17 n.6  
(taxpayer made no claim of discrimination); at 29-30

Board has no duty to perpetuate arbitrariness in either context

*Harold MacQuinn, Inc. v. Town of Hancock*, No. 2009-014, at 17 n.6

Unjust discrimination defined

- Bath Iron Works Corp. v. City of Bath*, Nos. 92-43, 92-102 & 93-14, at 5 (unjust discrimination occurs only when the valuation system necessarily results in unequal treatment)
- Guy Gannett Publishing Co. v. City of South Portland*, Nos. 93-75 & 93-135, at 5 (same)
- Champion International Corp. v. Town of Bucksport*, No. 93-98, at 6, 15 (same)
- U. S. Optical Disc, Inc. v. Town of Sanford*, No. 2003-004, at 11 n.6 (defining unjust discrimination variously under Law Court decisions)
- Topsham Hydro Partners v. Town of Topsham*, No. 2003-007, at 3 (unjust discrimination occurs only when the valuation system necessarily results in unequal treatment)
- Norumbega Bed & Breakfast, LLC v. Town of Camden*, No. 2005-017, 3 n.1 (same)
- Brackett v. Town of Bristol*, Nos. 2007-010 & -011, at 17 (defining unjust discrimination as in *U. S. Optical Disc*)
- Cushing Holdings, LLC v. Town of Cushing and Last Resort Holdings, LLC v. Town of Cushing*, Nos. 2006-017 & -018, at 3 (unequal apportionment, prohibited by Art. IX, § 8)
- GGP-Maine Mall, LLC v. City of South Portland*, No. 2008-001 (*Maine Mall I*), at 4, 14 (occurs when a taxpayer proves the method of assessment results in unequal apportionment because taxpayer has been treated differently than similarly situated property)
- LLP v. Town of Baileyville*, No. 2016-001, at 8 (five elements of discrimination claims)

Unjust discrimination discussed

- Wesson v. Town of Bremen*, Nos. 92-04 & 92-66, at 3-4 (Decision II) (straight line method of assessing resulted in discrimination when used for both shorefront, inland island property, and mainland shorefront property and for islands of different sizes and shapes)
- Toussaint v. City of Lewiston*, Nos. 93-06–93-11, at 6 (no discrimination)

where comparable multi-family units were assessed across the board at same ratio)

*Champion International Corp. v. Town of Bucksport*, No. 93-98, at 15-17 (no evidence of result oriented assessment; personal property was properly accounted for; and cost of personalty was not selectively trended)

*Cumberland Property Trust v. Town of Gorham*, No. 93-111, at 3 (use of certified ratio based on market value, not assessed value, does not discriminate against taxpayer)

*Kennebunkport Inn, Inc. v. Town of Kennebunkport*, No. 94-43, at 3 (none found)

*Adams v. City of Biddeford*, Nos. 95-029-95-104, at 4 (Decision I) (none found when assessor made reasonable adjustments between neighborhoods as he thought warranted); at 4, 5-7 (Decision III) (“gut feel” of assessor, his changing neighborhood code for valuation, consideration of wildlife preserve acreage in determining lot sizes in one neighborhood were larger are all arbitrary, but not fatally); at 8 (but discrimination found only when those facts are combined with failure of assessor to apply to one neighborhood sales from another similar neighborhood that adjusted downward assessments there)

*Riverview Timeshare Trust v. Town of Bethel*, No. 2002-009, at 1 (noting petitioner’s claim)

*UAH-Hydro v. Town of Winslow*, 2001-009, at 8-9 (market value of leases, not value of leases in place, should be used because otherwise good management is penalized and poor management rewarded)

*GGP-Maine Mall, LLC v. City of South Portland*, No. 2008-001 (*Maine Mall I*), at 14 (mall in-line stores are not similarly situated with mall anchor stores or parcels in proximity to mall)

Unjust discrimination connotes a systematic purpose to cast a disproportionate share of the public burden on one taxpayer or one class of taxpayers

*Brackett v. Town of Bristol*, Nos. 2007-010 & -011, at 16

Invidious intent is unique to discrimination claims

*Brackett v. Town of Bristol*, Nos. 2007-010 & -011, at 16

*See Old Point, Inc. v. Town of Lamoine*, Nos. 2010-009 & 2011-016, at 6 n.3

“Intentional violation of essential principles of practical uniformity” applies only in discrimination cases

*Great Northern Paper, Inc. v. Town of East Millinocket*, No. 2000-006, at 5 n.5 (that taxpayer must show an “intentional violation of essential principles of practical uniformity” may apply only in discrimination cases)

*Sprague Energy Corp. v. Town of Bucksport*, No. 2003-003, at 4-5 n.2 (although Board notes that Law Court in the past had cited this standard also in overvaluation cases)

*Brackett v. Town of Bristol*, Nos. 2007-010 & -011, at 16-17 n.10 (Board again notes that Law Court in the past had cited this standard also in overvaluation cases)

No unjust discrimination if assessors’ method of appraising was general and uniform in application

*Brackett v. Town of Bristol*, Nos. 2007-010 & -011, at 15

No unjust discrimination if properties at issue are not similarly situated

*Brackett v. Town of Bristol*, Nos. 2007-010 & -011, at 17, 19 (petitioners’ properties not similarly situated with those of other taxpayers)

*GGP-Maine Mall, LLC v. City of South Portland*, No. 2008-001 (*Maine Mall I*), at 14

*See Old Point, Inc. v. Town of Lamoine*, Nos. 2010-009 & 2011-016, at 6 n.3

One property’s merely being adjacent to a second particular property does not make the two similar or part of the same neighborhood

*GGP-Maine Mall, LLC v. City of South Portland*, No. 2008-001 (*Maine Mall I*), at 14

*See Old Point, Inc. v. Town of Lamoine*, Nos. 2010-009 & 2011-016, at 6 n.3

Fair market value need not be shown to establish discrimination in assessment, although evidence of fair market value of other properties is useful

*Wesson v. Town of Bremen*, Nos. 92-04 & 92-66, at 3 (Decision II)  
*Adams v. City of Biddeford*, Nos. 95-029-95-104, at 4 (Decision I),  
 at 8 (Decision III)

Overvaluation is not required to prove a case of discrimination

*UAH-Hydro v. Town of Winslow*, 2001-009, at 8  
*Topsham Hydro Partners v. Town of Topsham*, No. 2003-007,  
 at 3  
*Brackett v. Town of Bristol*, Nos. 2007-010 & -011, at 15-16

To do more than impeach the assessor here means that the taxpayer must do more than show merely that the assessor has made an error in judgment, or that there are sporadic differences in valuation here and there, although that may result in a lack of uniformity

*Brackett v. Town of Bristol*, Nos. 2007-010 & -011, at 17-18 & n.11  
 (Board notes the Law Court formerly applied this rule to overvaluation cases as well)

Possible underassessment of property does not defeat claim of discrimination when city still applied valuation adjustments to similar neighborhoods unequally

*Adams v. City of Biddeford*, Nos. 95-029-95-104, at 4 (Decision I)

Abatement is the proper remedy for unjust discrimination

*Brackett v. Town of Bristol*, Nos. 2007-010 & -011, at 15

Illegality defined: an act that is unauthorized by law or that exceeds the bounds of the taxing entity's authority

*Carroll v. Town of Cornish*, No. 2001-002, at 8 n.6 (considering misclassification as an overvaluation, there is no need to consider whether it is an illegality)  
*U. S. Optical Disc, Inc. v. Town of Sanford*, No. 2003-004, at 11 n.6  
 (illegality exists when assessing authority acts beyond its authority or without authority)

*KeyBank National Ass'n v. Town of Phippsburg*, No. 2006-002, at 6, 10  
*Bayroot, LLC v. Highland Plantation*, Nos. 2009-004, -005 & -033 at 3 (giving as examples of illegality the assessment of exempt property or the overvaluation of property due to a clerical error)  
*Harold MacQuinn, Inc. v. Town of Hancock*, No. 2009-014, at 17 n.6

Claim of illegality in valuing an intangible (reciprocal easements)

*GGP-Maine Mall, LLC v. City of South Portland*, No. 2008-001 (*Maine Mall I*), at 15 (rejected because easements generally run with the land and, being inseparable from it, must be considered under section 701-A)

An error made in determining valuation is not an illegality but simply an error in the valuation of property

*UAH-Hydro v. Town of Winslow*, 2001-009, at 9 (taxpayer argued assessor's use of intangible property, a purchase power agreement, was an illegality)  
*U. S. Optical Disc, Inc. v. Town of Sanford*, No. 2003-004, at 11 n.6 (mere error leading to overvaluation is not an illegality)  
*Topsham Hydro Partners v. Town of Topsham*, No. 2003-007, at 3  
*KeyBank National Ass'n v. Town of Phippsburg*, No. 2006-002, at 10

Claim of illegality based on argument that the assessors succumbed to political pressure in increasing property values in town

*Harold MacQuinn, Inc. v. Town of Hancock*, No. 2009-014, at 17 n.6 (correct question is not one of political pressure but whether increases resulted in overvaluation or discrimination)

Highest and best use

*Kamp Kohut, Ltd. v. Town of Oxford*, No. 90-18, at 2 (town misidentified highest and best use of camp as a residential subdivision)  
*Kennebunkport Inn, Inc. v. Town of Kennebunkport*, No. 94-43, at 3 (highest and best use is potential use)  
*UAH-Hydro v. Town of Winslow*, 2001-009, at 7 (purchase power agreement, an intangible, must be considered in determining



- highest and best use because entwined with tangible property)  
*Norumbega Bed & Breakfast, LLC v. Town of Camden*, No. 2005-017, at 5, 6 (highest and best use is the foundation upon which all further analysis of fair market value rests)
- Woodland Kittery Ltd. Partnership v. Town of Kittery*, No. 2006-008, at 7 (IRS section 42 LIHTC project's highest and best use cannot be compared to the highest and best use of an unregulated market; low rent rates in a federally subsidized housing project do not translate into poor management); at 7-9 (taxpayer relying on rent restrictions imposed by LIHTC program but not considering tax benefits of program because they are an intangible did not present credible evidence of value); at 9 (rent restrictions and tax credits are inextricably intertwined with highest and best use)
- Brackett v. Town of Bristol*, Nos. 2007-010 & -011, at 5-6 (working waterfront statute, section 1135 (1)(A), (2), and section 701-A speak to definition offered in *The Appraisal of Real Estate*; current use value is different)
- City of Brewer v. Ellen M. Leach Memorial Home & Ellen M. Leach Memorial Home v. City of Brewer*, Nos. 2006-012 & -013, at 15, 17, 20 (Board finds credible taxpayer's conclusion of highest and best use as IRS section 42 LIHTC program congregate housing, rather than city appraiser's conclusion of elderly housing without considering section 42 rent restrictions and tax credits)
- Falls Development Associates, L.P. v. City of Saco*, No. 2008-025, at 27 (assessor improperly regarded property as if unencumbered); at 28, 37 (taxpayer's appraiser properly regarded property as rent restricted); at 33, 37 (city's appraisers properly regarded property as a rent restricted); at 36 (section 701-A implements highest and best use; where intangible is inextricably intertwined with highest and best use, it must be valued); at 36- 37 (definition stated); at 37 (actual use is a strong consideration); at 37, 62-63 (assessor ignored what is legally permissible)
- Harold MacQuinn, Inc. v. Town of Hancock*, No. 2009-014, at 26 (fair market value must be determined according to highest and best use); at 27 n.11 (section 701-A implements highest and best use)
- MHC Narrows Too, LLC v. Town of Trenton*, No. 2012-013, at 16-17 (determining highest and best use of land as improved is a recognized approach, but may leave open the possibility that another use would take advantage of improvements and be maximally productive); at 17 (highest and best use looks to all

permissible uses and is the foundation upon which any true analysis of fair market value rests)

*Madison Paper Industries v. Town of Madison*, No. 2016-009, at 18, 21, 22, 23) (highest and best use as liquidation rejected by Board although Maine Revenue Services and taxpayer's appraiser agreed otherwise)

Use of leased fee interest, a contract analysis, rather than fee simple interest, a market analysis, for properties generally sold subject to leases

*J & N Sanford Trust v. Town of Sanford*, No. 93-82, at 2, 3  
(subsequently rejected by the Law Court)

*Capitol Shopping Center v. City of Augusta*, Nos. 94-29 & 95-164, at 2, 3 (both sides used this, and city used market analysis as well)

*AWD Management (Chiricahua, Inc.) v. City of Westbrook*, No. 95-163, at 2 (taxpayer used combination of leased fee interest and market rents)

*Falls Development Associates, L.P. v. City of Saco*, No. 2008-025, at 8-10 (error to rely on lease fee value alone, although it may aid an assessor in determining market value, but appraisers' use of "investment value" in the circumstances was shorthand for their analysis of the benefit of financing arrangements)

*LaBoca Corp. v. Town of Falmouth*, No. 2014-001, at 7-8 (potential earning capacity, not leases, best distributes tax burden; assessor is not required to take into account relatively poor conditions, which rewards poor management)

Just value is market value is true value

*Alstores Realty Corp. v. City of South Portland*, No. 87-03, at 4

*Central Maine Power Co. v. Town of Moscow*, No. 90-43, at 2

*Bath Iron Works Corp. v. City of Bath*, Nos. 92-43, 92-102 & 93-14, at 5

*Messina & Sprowl Associates, Inc. v. Town of Hampden*, No. 92-97, at 2

*Central Way Realty Associates v. City of Lewiston*, Nos. 93-37-93-40, consolidated with *KNL Associates v. City of Lewiston*, Nos. 93-41-93-49 & 92-55-92-64, at 3 n.1

*Guy Gannett Publishing Co. v. City of South Portland*, Nos. 93-75 & 93-135, at 4

*Champion International Corp. v. Town of Bucksport*, No. 93-98, at 5 n.2

- Adams v. City of Biddeford*, Nos. 95-029-95-104, at 3 n.2  
(Decision III)
- Spang Enterprises v. Town of Kennebunkport*, No. 96-011, at 2
- Maine Public Service Co. v. City of Caribou*, No. 97-108, at 4 n.2
- Port Resort Realty Corp. v. Town of Kennebunkport*, No 98-004,  
at 2 n.1
- B & B Properties v. City of Ellsworth*, No. 98-026, at 6
- Northeast Empire Ltd. Partnership #2 v. Town of Ashland*, Nos.  
99-015 & 99-027, at 3 n.1
- Great Northern Paper, Inc. v. Town of East Millinocket*, No. 2000-006,  
at 4
- Norumbega Bed & Breakfast, LLC v. Town of Camden*, No. 2005-017,  
at 3 n.2
- Woodland Kittery Ltd. Partnership v. Town of Kittery*, No. 2006-008,  
at 2 n.1
- Brackett v. Town of Bristol*, Nos. 2007-010 & -011, at 5 n.6
- City of Brewer v. Ellen M. Leach Memorial Home & Ellen M. Leach  
Memorial Home v. City of Brewer*, Nos. 2006-012 & -013, at  
3 n.2
- Cushing Holdings, LLC v. Town of Cushing and Last Resort Holdings,  
LLC v. Town of Cushing*, Nos. 2006-017 & -018, at 3 n.4
- GGP-Maine Mall, LLC v. City of South Portland*, No. 2008-001 (*Maine  
Mall I*), at 3 n.3
- Falls Development Associates, L.P. v. City of Saco*, No. 2008-025, at 4
- Boralex Sherman, LLC v. Town of Stacyville*, Nos. 2009-007 &  
2010-002-A, at 2 n.3
- Harold MacQuinn, Inc. v. Town of Hancock*, No. 2009-014, at 16, 27  
n.11 (fair market value is defined similarly in both assessment  
cases and eminent domain cases; both kinds of cases may take  
comparable sales into account; and both rely on highest and  
best use)
- Bangor Gas Co., LLC v. Town of Bucksport*, No. 2010-002, at 2 n.2
- Prentiss & Carlisle Management Co., Inc. v. Town of Merrill and Town  
of Smyrna*, Nos. 2010-007 & 2010-006, at 3 n.2
- Prentiss & Carlisle Management Co., Inc. v. Town of Smyrna and Town of  
Merrill*, Nos. 2015-001 & -002, at 13

Market value is determined by what a willing buyer would pay a willing seller at a fair public sale

*Messina & Sprowl Associates, Inc. v. Town of Hampden*, No. 92-97,  
at 2

*Guy Gannett Publishing Co. v. City of South Portland*, Nos. 93-75 &  
93-135, at 4-5

*Northeast Empire Ltd. Partnership #2 v. Town of Ashland*, Nos. 99-015 & 99-027, at 12  
*Sprague Energy Corp. v. Town of Bucksport*, No. 2003-003, at 21-22  
*Harold MacQuinn, Inc. v. Town of Hancock*, No. 2009-014, at 27 n.11

Fair market value is a question of fact

*Sprague Energy Corp. v. Town of Bucksport*, No. 2003-003, at 30  
*U. S. Optical Disc, Inc. v. Town of Sanford*, No. 2003-004, at 19

An arm's length sale of property at or near the valuation date may be considered as evidence of fair market value

*Topsham Hydro Partners v. Town of Topsham*, No. 2003-007, at 12

Fair market value cannot be derived from a non-arm's length transaction

*Waterville Homes, Inc. v. City of Waterville*, Nos. 90-16 & 91-06, at 4  
*Cf. GTS Foreside Ltd. v. Town of Falmouth*, No. 91-12, at 2  
 (petitioner failed to prove transaction was non-arm's length)  
*Cf. GTS Foreside Ltd. v. Town of Falmouth*, No. 91-63, at 2 (same)  
*J & N Sanford Trust v. Town of Sanford*, No. 93-82, at 3 (Board suggests even distress sales are some indication of value)  
*Maine Orion Properties v. Town of Falmouth*, No. 93-107, at 2  
*Toussaint v. City of Lewiston*, Nos. 95-143-95-146, at 3  
*Northeast Empire Ltd. Partnership #2 v. Town of Ashland*, Nos. 9-015 & 99-027, at 12 (at the very least, sales price must be the result of an arm's length transaction)  
*Cushing Holdings, LLC v. Town of Cushing and Last Resort Holdings, LLC v. Town of Cushing*, Nos. 2006-017 & -018, at 8 (the market for unfinished developments may involve bankruptcies and foreclosures which are not arm's length transactions and so are not indicative of fair market value)

Fair market value cannot be determined from listings that did not result in sales

*U. S. Optical Disc, Inc. v. Town of Sanford*, No. 2003-004, at 23 n.18  
*MHC Narrows Too, LLC v. Town of Trenton*, No. 2012-013, at 20 n.8

Fair market value of personal property or real estate is not to be determined strictly by purchase price

*Danny's, Inc. v. Town of Old Orchard Beach*, No. 91-38, at 5  
(personalty)

*B & B Properties v. City of Ellsworth*, No. 98-026, at 7 (real estate; sales price may represent value as an investment, possible future value)

Investment value (subjective and personal to the owner or investor) defined and distinguished from market value (objective, impersonal, detached)

*Falls Development Associates, L.P. v. City of Saco*, No. 2008-025, at 8-9; at 35 (city's appraisers distinguished favorable financing from investment value; true investment value will vary with fluctuating interest rates)

Evidence of just value may be offered through opinions of property owners and expert appraisers

*Harold MacQuinn, Inc. v. Town of Hancock*, No. 2009-014, at 16

A property owner is competent to give an opinion of value by virtue of ownership

*Waterville Homes, Inc. v. City of Waterville*, Nos. 90-16 & 91-06, at 5

*U. S. Optical Disc, Inc. v. Town of Sanford*, No. 2003-004, at 23 n.17

*Harold MacQuinn, Inc. v. Town of Hancock*, No. 2009-014, at 19

*Brown v. Town of Bucksport*, No. 2009-031, 18

*Passamaquoddy Tribe at Pleasant Point v. City of Eastport*, No. 2015-005, at 4, 6 (witness was not an owner)

Right of a corporate officer to offer an opinion of value does not arise *merely* from one's owning or holding an office in a company

*Harold MacQuinn, Inc. v. Town of Hancock*, No. 2009-014, at 19

*Prentiss & Carlisle Management Co., Inc. v. Town of Merrill and Town of Smyrna*, Nos. 2010-007 & 2010-006, at 7 n.5

An owner's opinion of value is only as good as the witness' qualifications and logic of his opinion

*See U. S. Optical Disc, Inc. v. Town of Sanford*, No. 2003-004,  
at 23 n.17

*Harold MacQuinn, Inc. v. Town of Hancock*, No. 2009-014, at 19

*Brown v. Town of Bucksport*, No. 2009-031, 18

An owner's opinion of value does not by itself always constitute credible evidence of value, for otherwise the evidentiary burden placed on taxpayers challenging an assessment arguably could become so easily met as to be meaningless

*Harold MacQuinn, Inc. v. Town of Hancock*, No. 2009-014, at 23-24  
(owner's opinion was unconventional in that he accepted town's value assigned to various land types but disagreed as to the acreage assigned to the land types, but was not thereby unhelpful or unreliable)

Owner's credible opinion of value taken together with bases for impeaching the assessment prove assessments were arbitrary, and so were substantially overvalued and therefore manifestly wrong

*Harold MacQuinn, Inc. v. Town of Hancock*, No. 2009-014, at 24-30

While it is true that an owner's opinion of value may be self-serving, the same may be said of almost any interested witness

*Harold MacQuinn, Inc. v. Town of Hancock*, No. 2009-014, at 23

Industrial property cannot be valued according to sales of residential properties

*Bath Iron Works Corp. v. City of Bath*, Nos. 92-43, 92-102 & 93-14,  
at 8

Valuation is not to be arrived at by treating taxpayers with equality, but by first determining fair market value

*U. S. Optical Disc, Inc. v. Town of Sanford*, No. 2003-004, at 11-12 n.6, 26-27

Uniformity and equality are preferred only if one cannot determine fair market value

*U. S. Optical Disc, Inc. v. Town of Sanford*, No. 2003-004, at 27

If it is impossible to secure both true value and uniformity, the latter is preferred

*Inhabitants of the Town of Madison v. State Tax Assessor*, No. 86-07, at 6

*395 Bangor Brewer, LLC v. City of Brewer*, No. 2017-005, at 13

Valuation is not value

*B & B Properties v. City of Ellsworth*, No. 98-026, at 6

Fair market value is not book value

*Babcock-Ultrapower West Enfield v. Town of Enfield*, No. 96-049, at 3

Valuation of land, buildings, and personalty for bookkeeping purposes was relevant to, but not determinative of, fair market value

*Oxford Homes, Inc. v. Town of Oxford*, No. 90-31, at 4

Discussion of assessor's reliance on purchase power agreement (an intangible property right) on valuation

*UAH-Hydro v. Town of Winslow*, 2001-009, at 13-17 (purchase power agreement is so intertwined with highest and best use that it must be considered when valuing property); at 13 n.10 (intangible rights have been considered when valuing real purposes); at 17 (the value of intangible rights, without which a possessory interest could be put to beneficial use, should be considered in valuing the possessory interest)

*Topsham Hydro Partners v. Town of Topsham*, No. 2003-007, at 9

(town failed to account for income stream following end date of purchase power agreement)

Discussion of effect on value of tax credits and rent restrictions (intangibles) under federal Low-Income Housing Tax Credit (LIHTC) Program, 26 U.S.C. § 42

*Woodland Kittery Ltd. Partnership v. Town of Kittery*, No. 2006-008, at 6-10 (both mandated rent restrictions and IRS section 42 tax credit benefits are inextricably intertwined with the highest and best use of the property and thus must be considered in determining fair market value; although assessor did not include value of tax credits in his assessment, taxpayer did not offer evidence of value of the credits, so even though assessor was impeached his assessment stood in the absence of credible evidence of value offered by taxpayer)

*City of Brewer v. Ellen M. Leach Memorial Home & Ellen M. Leach Memorial Home v. City of Brewer*, Nos. 2006-012 & -013, at 7, 8 (question is not whether section 42 low-income housing tax credits should be considered in determining fair market value, but how the credits should be valued); at 19-25 (tax credits and rent restrictions must be considered as inextricably intertwined with value of property at its highest and best use); at 21 (tax credits are dollar for dollar deductions off tax liability of property owner, regardless of owner's income level)

Effect of federal housing program subsidies on value

*Mountain View Associates v. Town of Madison*, No. 91-35 (FmHA section 515), at 4 (income approach not necessarily the only approach to use); at 5 (subsidies are a benefit to owner and add value)

*Searsport Realty Associates v. Town of Searsport*, No. 91-89 (same), at 3 (incentives, guarantees, and tax write-offs render income approach inappropriate); at 4 (cost approach used)

*Glenridge Development Co. v. City of Augusta*, No. 91-90 (section 236 of the National Housing Acts of 1937 and 1949), at 4 (subsidies are a value-influencing factor; cost approach used)

*Lincoln Realty Associates v. Town of Lincoln*, No. 91-103 (FmHA section 515), at 3 (relying on conventional properties "may be questionable"; cost approach most appropriate to value favorable interest rates)

*Applewood Housing Associates v. Town of Camden*, No. 92-18 (same),



- at 2-3 (only question: value of operating expenses)
- Weymouth (Townhouse Estates I) v. Town of Camden*, No. 92-29 (same), at 2-3 (same)
- Weymouth (Townhouse Estates II) v. Town of Camden*, No. 92-30 (same), at 2-3 (same)
- Camden Housing Associates v. Town of Camden*, No. 92-32 at 2-3 (same)
- Rankin Center Associates v. City of Rockland*, Nos. 93-18 & 93-97 (section 8, Housing and Urban Development elderly housing project); at 4 (Board agreed income approach as used by city was inadequate; however, no relief granted where taxpayer's claimed value was within 10% of correct assessment; cost approach inadequate when based on construction costs, not actual costs); at 5 (sales of comparable Maine State Housing Authority elderly housing also used)
- Marcotte Congregate Housing, Inc. v. City of Lewiston*, Nos. 93-23 & 93-24 (section 8 congregate housing project), *passim*
- Knox Hotel Associates v. Town of Thomaston*, No. 95-132 (HUD Housing Assistance Program), at 2 (taxpayer did not use cost approach, which it believed was inapplicable to federally subsidized housing); at 2-3 (Board found cost approach appropriate and income approach speculative)
- Woodland Kittery Ltd. Partnership v. Town of Kittery*, No. 2006-008 (Low Income Housing Tax Credits), at 7-9 (taxpayer relying on rent restrictions imposed by IRS section 42LIHTC program but not considering tax benefits of program because they are an intangible did not present credible evidence of value)
- City of Brewer v. Ellen M. Leach Memorial Home & Ellen M. Leach Memorial Home v. City of Brewer*, Nos. 2006-012 & -013 (same), at 22 (income subsidy in form of obligation to fund operational losses inclusive of support services and payment of debt service, when made as a condition of the award of tax credits, is entwined with the property and therefore influences its value); at 23 (income stabilization from subsidy)
- Falls Development Associates, L.P. v. City of Saco*, No. 2008-025, at 3 (financing agreement was the very essence of apartment complex's operation, and the very vehicle which allowed it to be developed and maintained); at 4 (such arrangements are to be considered in valuing property when they are inextricably intertwined with its highest and best use); at 10 (valuing a subsidized housing project is different from valuing property in the unregulated market based on poor management); at 21-24 (section 8 described); at 27 (assessor relied on cost approach only); at 36 (where an intangible is inextricably intertwined with highest and best use, it must be valued); at 57, 61 (income approach preferred); at 59, 65 (error for taxpayer to ignore effect of financing arrangements on value); at

60, 65-66 (valuation process must consider both positive and negative aspects of regulatory agreements)

Valuation of a subsidy “above the line” (providing owner with a benefit) vs. “below the line” (saving the owner money)

*Falls Development Associates, L.P. v. City of Saco*, No. 2008-025, at 26 n.5; at 59 (they have the same practical effect); at 65 (a difference without a principled distinction; taxpayer erred in seeking to have the Board consider only section 8 restrictions and not benefits of financing)

Reduction in value for environmental tax exemptions

*Oxford Paper Co. (Boise Cascade) v. Town of Mexico*, No. 91-102, at 4

Effect of Public Utilities Commission regulation on value

*Central Maine Power Co. v. Town of Moscow*, No. 90-43, at 2-5  
*UAH-Hydro v. Town of Winslow*, No. 2001-009, at 12-13

Value for rate-making purposes (net book value) is not necessarily the same as for tax assessment purposes

*Central Maine Power Co. v. Town of Moscow*, No. 90-43, at 3-4

Condominiums, 33 M.R.S. § 1601-105(b), and timeshare units, 33 M.R.S. § 593(2), are to be separately assessed and taxed

*Gregory v. MMC Realty Corp. & Maine Medical Center*, No. 2000-001, at 39, 67-68 (condominiums)

*Riverview Timeshare Trust v. Town of Bethel*, No. 2002-009, at 5-6 (timeshares)

*Bethel Inn Corp. & Riverview Timeshare Trust v. Town of Bethel*, 2003-001 & 2003-002, at 4 (timeshares)

*Rangeley Lake Resort Development Co, LLC v. Town of Rangeley*, No. 2003-019, at 3 & n.4 (timeshares)

Discussion of advantages of timeshares

*Rangeley Lake Resort Development Co., LLC v. Town of Rangeley*,  
No. 2003-019, at 8-9

#### Valuation questions involving timeshares

*Riverview Timeshare Trust v. Town of Bethel*, No. 2002-009, at 6  
(individually owned timeshares cannot be aggregated to meet  
\$1,000,000 jurisdictional threshold)

*Bethel Inn Corp. & Riverview Timeshare Trust v. Town of Bethel*,  
Nos. 2003-001 & 2003-002, at 7 (timeshare interests held by  
developer for sale are nonresidential, commercial properties)

*Rangeley Lake Resort Development Co., LLC v. Town of Rangeley*,  
No. 2003-019, at 10 (individually owned timeshares cannot be  
aggregated to meet \$1,000,000 jurisdictional threshold  
although developer paid property taxes for all *en masse* together  
with taxes on its unsold timeshare interests)

#### Docks can be assessed as personal property

*Great Cove Boat Club, Inc. v. Town of Eliot*, Nos. 91-21, 92-94 &  
92-95, at 5

#### Use of “trending” as a valuation tool is legitimate for assessing machinery and equipment

*Champion International Corp. v. Town of Bucksport*, No. 93-98,  
at 15, 17

*Great Northern Paper, Inc. v. Town of East Millinocket*, No. 2000-006,  
at 21-22 (commonly used to value machinery and equipment)

#### Trending described

*Great Northern Paper, Inc. v. Town of East Millinocket*, No. 2000-006,  
at 21-22 (using generic factors for broad categories of equipment;  
it may create substantial risks of inaccuracy in developing  
reproduction costs and trend factors may not match the items  
being appraised)

#### Approaches to valuation and methods of valuation are to be distinguished

*Harold MacQuinn, Inc. v. Town of Hancock*, No. 2009-014, at 21 n.9

Assessors have considerable leeway in choosing the method or methods they will use to determine value

*B & B Properties v. City of Ellsworth*, No. 98-026, at 6

*Harold MacQuinn, Inc. v. Town of Hancock*, No. 2009-014, at 21

An assessor or appraiser may use a combination of valuation methods

*Sprague Energy Corp. v. Town of Bucksport*, No. 2003-003, at 20-21

Assessors using one method of valuation are to test the reasonableness of their conclusion by reference to other methods

*Sprague Energy Corp. v. Town of Bucksport*, No. 2003-003, at 14 n.11

Variations on traditional approaches or new methodologies may be useful if accurate and reasonably related to fair market value

*Falls Development Associates, L.P. v. City of Saco*, No. 2008-025, at 58

Assessment of a unique property may call for a unique appraisal method

*Guy Gannett Publishing Co. v. City of South Portland*, Nos. 93-75 & 93-135, at 5

*Harold MacQuinn, Inc. v. Town of Hancock*, No. 2009-014, at 21

Municipality need not resort to an alternative method of valuation unless the method used leads to an unjust result

*Alstores Realty Corp. v. City of South Portland*, No. 87-03, at 5  
(use of replacement cost less depreciation)

A municipality can use different assessment methods for different types of property

*Great Cove Boat Club, Inc. v. Town of Eliot*, Nos. 91-21, 92-94 & 92-95, at 5  
*Guy Gannett Publishing Co. v. City of South Portland*, Nos. 93-75 & 93-135, at 5  
*Champion International Corp. v. Town of Bucksport*, No. 93-98, at 17

Whether an approach to valuation is appropriate is a question of fact in each case

*U. S. Optical Disc, Inc. v. Town of Sanford*, No. 2003-004, at 19

Whether any formula or methodology determines just value is a question of fact

*Harold MacQuinn, Inc. v. Town of Hancock*, No. 2009-014, at 16

Whether an approach to valuation has been considered is a question of fact

*LaBoca Corp. v. Town of Falmouth*, No. 2014-001, at 2  
*Passamaquoddy Tribe at Pleasant Point v. City of Eastport*, No. 2015-005, at 4

Consideration of all three traditional approaches to value is required

*Searsport Realty Associates v. Town of Searsport*, No. 91-89, at 3-4  
*Northeast Empire Ltd. Partnership #2 v. Town of Ashland*, Nos. 99-015 & 99-027, at 6  
*Great Northern Paper, Inc. v. Town of East Millinocket*, No. 2000-006, at 19  
*Norumbega Bed & Breakfast, LLC v. Town of Camden*, No. 2005-017, at 4  
*PPL Maine, LLC v. Town of Milford* and *PPL Maine, LLC v. City of Old Town*, Nos. 2008-013 & -029, at 3 (although taxpayer argued municipalities did not consider all three approaches to value, appraisers for municipalities did so)  
*Falls Development Associates, L.P. v. City of Saco*, No. 2008-025, at 26 (assessor considered all three traditional approaches, but relied only on income); at 28 (taxpayer's appraiser considered all three approaches, but relied only on cost); at 32 (city's appraisers

considered all three approaches); at 62 (rule stated; less satisfactory approach should not be adopted, which assessor did here)

*Harold MacQuinn, Inc. v. Town of Hancock*, No. 2009-014, at 20-22

*MHC Narrows Too, LLC v. Town of Trenton*, No. 2012-013, at 17

(appraiser did not fail to consider all approaches, but it is up to the Board to decide the effect of failing to apply a certain approach)

*LaBoca Corp. v. Town of Falmouth*, No. 2012-027, at 5, 7 (assessor considered all three approaches to valuation)

*LaBoca Corp. v. Town of Falmouth*, No. 2014-001, at 2

*Passamaquoddy Tribe at Pleasant Point v. City of Eastport*, No. 2015-

005, at 4, 5 (assessor impeached where he did not explain why he did not apply sales and income approaches); at 5-6

(sales approach not limited to city where assessment is applied)

Assessor or appraiser cannot simply say he or she considered a given approach, but should explain why it was not used

*LaBoca Corp. v. Town of Falmouth*, No. 2014-001, at 2

*Passamaquoddy Tribe at Pleasant Point v. City of Eastport*, No. 2015-005, at 4, 5

Assessors cannot begin and end by considering only one method of valuation, even if it should yield a just result

*B & B Properties v. City of Ellsworth*, No. 98-026, at 6, 12-13

*U. S. Optical Disc, Inc. v. Town of Sanford*, No. 2003-004, at 17, 33-34

*Topsham Hydro Partners v. Town of Topsham*, No. 2003-007, at 7

Failure of assessors to adequately rely on any of the three traditionally recognized approaches to valuation

*Boralex Sherman, LLC v. Town of Stacyville*, Nos. 2009-007 &

2010-002-A, at 6 (town was unable to produce any records

to show how it arrived at assessments for two years); at 12

(“although the Town may have made an earnest effort to value the property . . . , it ultimately lacked the skills to process the information associated with the property,” and admitted it did not apply any of the approaches)

*Harold MacQuinn, Inc. v. Town of Hancock*, No. 2009-014, at 20-22

(town performed revaluation and made adjustments thereto)  
*Bangor Gas Co., LLC v. Town of Bucksport*, No. 2010-002, at 4  
 (assessor used only cost approach); at 10 (not fatal to assessor's  
 conclusion where taxpayer's appraiser did not produce credible  
 evidence of value)

The failure to apply an approach to value impeaches the assessment or the  
 appraisal where the Board finds it should have been applied

*Harold MacQuinn, Inc. v. Town of Hancock*, No. 2009-014, at 22  
 (assessment)  
*MHC Narrows Too, LLC v. Town of Trenton*, No. 2012-013, at 17  
 (appraisal)  
*LaBoca Corp. v. Town of Falmouth*, No. 2014-001, at 7  
*Louisiana-Pacific Corp. v. Town of New Limerick*, No. 2016-012  
 (decision on merits), at 17-18, 22

Failure to consider all recognized approaches to valuation risks not  
 capturing the best evidence of fair market value

*U. S. Optical Disc, Inc. v. Town of Sanford*, No. 2003-004, at 17  
*PPL Maine, LLC v. Town of Milford and PPL Maine, LLC v. City of Old  
 Town*, Nos. 2008-013 & -029, at 3 (one town could not establish  
 which approaches to value were used)  
*LaBoca Corp. v. Town of Falmouth*, No. 2014-001, at 2

Whether inability to obtain information justifies not using an approach to  
 valuation

*B & B Properties v. City of Ellsworth*, No. 98-026, at 10 n.4  
 (town councilor instructed assessor not to gather income  
 information from business owners)  
*Northeast Empire Ltd. Partnership #2 v. Town of Ashland*, Nos.  
 99-015 & 99-027, at 7 (income approach)  
*Great Northern Paper, Inc. v. Town of East Millinocket*, No. 2000-006,  
 at 19 (all methods must be considered but one or more need not  
 be applied if shown to be inappropriate); at 20 (sales or market  
 approach inapplicable)  
*Cf. U. S. Optical Disc, Inc. v. Town of Sanford*, No. 2003-004, at 34  
 (assessor's errors were greater than an inability to obtain  
 information)  
*Falls Development Associates, L.P. v. City of Saco*, No. 2008-025, at 61

(assessor may have been hamstrung by taxpayer's not providing income data)

*See Harold MacQuinn, Inc. v. Town of Hancock*, No. 2009-014, at 21 n.9 (present case does not suffer from this shortcoming)

*Bangor Gas Co., LLC v. Town of Bucksport*, No. 2010-002, at 4 (assessor claimed taxpayer did not provide financial information to allow her to use income approach)

Because a hearing before the Board is *de novo*, a municipality may rectify an assessor's failure to consider more than one approach to valuation by calling other witnesses

*Topsham Hydro Partners v. Town of Topsham*, No. 2003-007, at 7-8

Revaluations or town-wide assessments are a widely used methodology for municipal assessors

*Harold MacQuinn, Inc. v. Town of Hancock*, No. 2009-014, at 21-22 (revaluation)

*Brown v. Town of Bucksport*, No. 2009-031, at 17 (town-wide assessments used to develop land schedules))

*395 Bangor Brewer, LLC v. City of Brewer*, No. 2017-005, at 5 (city revaluation relied on cost approach)

But mass assessments, by not necessarily applying three traditional approaches to valuation, run the risk of not capturing true value

*Harold MacQuinn, Inc. v. Town of Hancock*, No. 2009-014, at 22

Fact that an approach was previously developed during town revaluation and was carried forward to tax year in issue is not necessarily adequate consideration of that approach

*Northeast Empire Ltd. Partnership #2 v. Town of Ashland*, Nos. 99-015 & 99-027, at 7 (sales approach)

Use by assessor's agent of taxpayer attempting a "tax dodge," while unfortunate, is not relevant to any substantive issue

*Rum Cove, LLC v. Town of Westport Island*, No. 2008-032, at 9



## Correlation or reconciliation of approaches to determining value

- Mountain View Associates v. Town of Madison*, No. 91-35, at 3-4
- Searsport Realty Associates v. Town of Searsport*, No. 91-89, at 3-4  
(requirement that town consider all approaches to valuation)
- Glenridge Development Co. v. City of Augusta*, No. 91-90, at 3
- Applewood Housing Associates v. Town of Camden*, No. 92-18, at 3  
(taxpayer conceded income approach was a proper check on replacement cost approach)
- Weymouth (Townhouse Estates I) v. Town of Camden*, No. 92-29,  
at 3 (same)
- Weymouth (Townhouse Estates II) v. Town of Camden*, No. 92-30  
at 3 (same)
- Camden Housing Associates v. Town of Camden*, No. 92-32 at 3 (same)
- Dirigo Management Co. v. City of Bath*, No. 92-34, at 4
- Bath Iron Works Corp. v. City of Bath*, Nos. 92-43, 92-102 & 93-14,  
at 8 (income and market approaches are not appropriate to special purpose properties)
- Thayer Garden Associates v. City of Waterville*, No. 92-99, at 2 (city used cost method for commercial properties, for consistency, but correlated valuation by use of other methods)
- Poorvu Family Trust v. City of Presque Isle*, No. 93-04, at 2 (city admitted not using one method and not correlating the two used)
- Toussaint v. City of Lewiston*, Nos. 93-06–93-11, at 5 (city considered all methods of valuation)
- Rankin Center Associates v. City of Rockland*, Nos. 93-18 & 93-97,  
at 3 (both sides correlated approaches)
- Alpine Realty Trust v. City of Biddeford*, No. 93-72, at 3 (city used cost approach, supported by market and income approaches)
- J & N Sanford Trust v. Town of Sanford*, No. 93-82, at 1-2 (taxpayer correlated sales and income approaches)
- Knox Hotel Associates v. Town of Thomaston*, No. 95-132, at 1-2  
(taxpayer correlated sales and income approaches, and town used all three)
- Toussaint v. City of Lewiston*, Nos. 95-143–95-146, at 2 (taxpayer considered all three methods)
- FLS Associates v. City of Augusta*, No. 95-153, at 1 (taxpayer used two methods and rejected use of third)
- Spang Enterprises v. Town of Kennebunkport*, No. 96-011, at 1, 3  
(taxpayer considered all three methods, but its rejection of two means taxpayer did not prove assessor manifestly wrong)
- Pope v. Town of Old Orchard Beach*, Nos. 96-039–96-041, at 3

- (town considered all three approaches but rejected use of one)
- KPMG Peat Marwick v. City of Lewiston*, No. 96-047, at 2-3 (assessor testified to use of all three approaches)
- Port Resort Realty Corp. v. Town of Kennebunkport*, No 98-004, at 2, 3 (taxpayer reconciled with income approach; town used all three)
- B & B Properties v. City of Ellsworth*, No. 98-026, at 10 & n.4, 11 (while taxpayer presented evidence of correlation, assessor was unable to do so because city councilor urged her not to seek to obtain income information from store owners who did not want to divulge it)
- Provost, Inc. v. Town of Windham*, No. 98-029, at 2 (assessor considered all three approaches)
- Northeast Empire Ltd. Partnership #2 v. Town of Ashland*, Nos. 99-015 & 99-027, at 6, 8 (town must consider all three approaches, but need not apply one or more if a reasonable basis for that decision exists; question whether all three approaches were considered is a fact question bearing on credibility of assessment; appraiser considered all three methods)
- Great Northern Paper, Inc. v. Town of East Millinocket*, No. 2000-006, at 13-14 (town's effort at reconciliation of two methods when third method deemed inappropriate due to lack of sufficient financial records); at 19 (same as *Northeast Empire Ltd. Partnership #2*, above)
- PPL Maine, LLC v. Town of Milford* and *PPL Maine, LLC v. City of Old Town*, Nos. 2008-013 & -029, at 3-4 (one town's assessor was impeached when assessor's agent could not find any records to support assessment, so town could not establish what approaches to value were applied, and other town relied on brief handwritten notes not related to income)
- Boralex Sherman, LLC v. Town of Stacyville*, Nos. 2009-007 & 2010-002-A, at 9-13 (taxpayer's appraiser applied all three approaches, thereby producing credible evidence of value, and considered sales and income most useful)
- LaBoca Corp. v. Town of Falmouth*, No. 2014-001, at 5 (it is assessor's correlated value that is presumed correct)
- Madison Paper Industries v. Town of Madison*, No. 2016-009, at 11-13 (town assessors sought guidance from Maine Revenue Services, which reconciled (correlated) all approaches to value of mill and hydro property, work that was accepted in part by the town)
- 395 Bangor Brewer, LLC v. City or Brewer*, No. 2017-005, at 4 (appraiser's reconciled value was equal to the only one of three approaches to value that he considered reliable)

## Adequacy or usefulness of income approach

- S. D. Warren Co. v. City of Westbrook*, No. 90-11, at 6 (project incomplete and inoperable; no income attributable to it)
- Kamp Kohut, Ltd. v. Town of Oxford*, No. 90-18, at 2
- Great Cove Boat Club, Inc. v. Town of Eliot*, No. 91-01, at 3
- GTS Foreside Ltd. v. Town of Falmouth*, No. 91-12, at 2
- Mountain View Associates v. Town of Madison*, No. 91-35, at 3-4 (not required with subsidized housing, but when used should include rent and interest subsidies as income)
- Searsport Realty Associates v. Town of Searsport*, No. 91-89, at 2-3 (application to FmHA project; said to not involve normal investment expectations due to incentives, guarantees, and tax write-offs; town's asserted use of this approach rewards bad management)
- Lincoln Realty Associates v. Town of Lincoln*, No. 91-103, at 2 (application to FmHA project; said by town to overlook the value of favorable interest rates)
- Applewood Housing Associates v. Town of Camden*, No. 92-18, at 2-3 (claim that with FmHA property town should have utilized actual expenses of operation, rather than a traditionally used expense factor extrapolated from owners of other income producing properties)
- Weymouth (Townhouse Estates I) v. Town of Camden*, No. 92-29, at 2-3 (same)
- Weymouth (Townhouse Estates II) v. Town of Camden*, No. 92-30 at 2-3 (same)
- Camden Housing Associates v. Town of Camden*, No. 92-32 at 2-3 (same)
- Dirigo Management Co. v. City of Bath*, No. 92-34, at 3 (city had criticisms over taxpayer's expert's deductions for "concessions or unrecovered expense chargebacks"; management fees; additional leasing commission fees; repairs and renovations; local property taxes—when after all entire exercise is to determine the appropriate amount of tax)
- Bath Iron Works Corp. v. City of Bath*, Nos. 92-43, 92-102 & 93-14, at 8 (not appropriate for special purpose property)
- Thayer Garden Associates v. City of Waterville*, No. 92-99, at 2 (taxpayer claimed income approach best accounts for locational, economic, and functional obsolescence)
- City of Biddeford v. Landco Realty, Inc.*, No. 92-104, consolidated with *Landco Realty Co. v. City of Biddeford*, No. 93-70, at 3-5, 6 (taxpayer claimed income approach best accounts for rapid depreciation of real estate values; city did not rely on

- income approach because of net operating loss; Board found it deficient here for lack of verifiable supporting documentation and not being derived from audited accounting statements)
- Rankin Center Associates v. City of Rockland*, Nos. 93-18 & 93-97, at 5 (city should have deducted real estate taxes from net operating income)
- Harris v. City of Lewiston*, Nos. 93-19–93-22, at 2 (city performed income analysis based on values generated by cost approach, proving no inequitable valuations)
- J & N Sanford Trust v. Town of Sanford*, No. 93-82, at 3 (town did not use this approach and declined to assert that its assessment represented fair market value)
- Champion International Corp. v. Town of Bucksport*, No. 93-98, at 8, 10-11, 13-14 (taxpayer developed three analyses for income approach: merger and acquisition, leveraged buyout, and initial public offering (which resembles a discounted cash flow analysis); Board found income approach may not be reliable for cyclical industries)
- Carle Street Associates v. City of Waterville*, Nos. 94-23 & 95-162, at 2 (taxpayer asserted city must use individual income and expense figures; city used market income and expense information and standardized adjustments for all taxpayers, so no inequality resulted, although taxpayer contended this is a form of averaging that penalized properties that perform below market expectations)
- Capitol Shopping Center v. City of Augusta*, Nos. 94-29 & 95-164, at 2, 3 (both sides used lease fee analysis—a contract income analysis—and city used market value also)
- AWD Management (Chiricahua, Inc.) v. City of Westbrook*, No. 95-163, at 2 (city challenged methodology as inadequate for not considering cost approach, excluding improvements to building, averaging of market rents, use of lease fee figures on the property itself, and reliability of income figures supplied by taxpayer)
- Spang Enterprises v. Town of Kennebunkport*, No. 96-011, at 1-2 (taxpayer used this method and challenged town’s appraisal as having no basis for its income figures)
- Pope v. Town of Old Orchard Beach*, Nos. 96-039–96-041, at 1-2, 3 (taxpayer alleged town underestimated capitalized expenses for maintenance and associated contract labor, and overstated salary expenses; town based its analysis on market determination of average rental fees with allowance for unused lots and undeveloped areas)
- KPMG Peat Marwick v. City of Lewiston*, No. 96-047, at 2 (not used by taxpayer because appraiser could not find an investor market for building in issue)

- Maine Public Service Co. v. City of Caribou*, No. 97-108, at 8 (property taxes are not considered an expense excluded from net operating income; if property taxes are excluded and then are ultimately determined to be too high, the fair market value as appraised would be too low, and vice versa; instead, the property tax rate is loaded into the cap rate, thus avoiding distortion of fair market value); at 13 (city could not explain method used to arrive at 40% cap rate)
- Keene v. City of Auburn*, No. 98-023, at 4 (farmland case; income approach not used due to lack of information)
- Provost, Inc. v. Town of Windham*, No. 98-029, at 2 (used by assessor as a reasonable check on cost approach)
- Northeast Empire Ltd. Partnership #2 v. Town of Ashland*, Nos. 99-015 & 99-027, at 6, 8-10 (assessor's assistant did not use income approach because of great difficulty in obtaining information on large scale electrical generation facility; appraiser undervalued electricity price, adjusted weighted costs of capital without explanation and wrongly included income taxes as operating expenses when they are a expense of ownership; *Maine Public Service Co.* language quoted)
- Great Northern Paper, Inc. v. Town of East Millinocket*, No. 2000-006, at 20-21, 22-23 (income approach one of two methodologies used by appraiser, but he did not deduct economic obsolescence); at 22 (taxpayer's appraisers utilized income approach); at 24 n.24 (income approach relevant to calculation of economic obsolescence appraiser applied to cost approach)
- Sprague Energy Corp. v. Town of Bucksport*, No. 2003-003, at 19 (appraiser opined that income approach was inapplicable to special use property (oil terminal) that is owner operated and not typically built to lease to collect revenue)
- U. S. Optical Disc, Inc. v. Town of Sanford*, No. 2003-004, at 20 (appraiser of real property relied secondarily on income approach)
- Woodland Kittery Ltd. Partnership v. Town of Kittery*, No. 2006-008, at 6 (income approach most useful, but it was not developed by town's appraiser); at 7-9 (although taxpayer relied on income approach, appraiser considered rent restrictions but not value of tax credits)
- City of Brewer v. Ellen M. Leach Memorial Home & Ellen M. Leach Memorial Home v. City of Brewer*, Nos. 2006-012 & -013, at 15, 20 (Board finds credible taxpayer's appraiser's reliance on income approach that, taking into account rent restrictions and value of tax credits, and consistent with *Woodland Kittery*); at 24 (city's appraiser's reliance on market rents inconsistent with highest and best use of property as low-income elderly congregate care facility)

- PPL Maine, LLC v. Town of Milford* and *PPL Maine, LLC v. City of Old Town*, Nos. 2008-013 & -029, at 3, 4-6 (parties agreed income approach should be given most weight and discounted cash flow analysis was most appropriate method of determining fair market value, but disagreed on several questions about valuing electricity on doom day, how to predict rate of change in price of natural gas upon which electricity is dependant, and how to calculate the cost of debt and aspects of equity)
- GGP-Maine Mall, LLC v. City of South Portland*, No. 2008-001 (*Maine Mall I*), at 6, 7-9 (application to super regional mall or shopping center urged by taxpayer); at 9-10 (particulars criticized by city); at 10-11 (city's stabilizing of rent preferable to taxpayer's averaging of rents)
- Falls Development Associates, L.P. v. City of Saco*, No. 2008-025, at 57 (use depends on availability of income and expense data, but may be inapposite where property fails to generate high enough rentals to justify property's quality, size, and layout); at 58 & n.20 (discussing mortgage-equity methodology)
- Boralex Sherman, LLC v. Town of Stacyville*, Nos. 2009-007 & 2010-002-A, at 10-11 (taxpayer's appraiser correctly deducted income and property taxes from operating expenses because these are an expense of ownership; *Maine Public Service Co.* language quoted)
- Harold MacQuinn, Inc. v. Town of Hancock*, No. 2009-014, at 26 & n.10 (in valuing minerals: in eminent domain cases one is to avoid as speculative the capitalization of future earnings, while in abatement cases income capitalization looks precisely to future earnings)
- Bangor Gas Co., LLC v. Town of Bucksport*, No. 2010-002, at 6-7, 9 (taxpayer's appraiser relied solely on income approach, but did so by considering contract-in-place rather than market rates for use of gas pipeline, and by assuming income would be the same in the last year of the contract as in the first year)
- MHC Narrows Too, LLC v. Town of Trenton*, No. 2012-013, at 18 (taxpayer's appraiser used erroneous cap rate); at 19 (he also excluded income from certain property that he considered personal, not real, property and that were a part of the town's assessment); at 19-20 (and he excluded other sources of income from real property)
- LaBoca Corp. v. Town of Falmouth*, No. 2012-027, at 5-6, 7
- LaBoca Corp. v. Town of Falmouth*, No. 2014-001, at 4-5; at 6 (appraiser applied only income approach)
- Madison Paper Industries v. Town of Madison*, No. 2016-009, at 12, 20 (avoided costs are income; approach not applied by taxpayer's appraiser)

*Louisiana-Pacific Corp. v. Town of New Limerick*, No. 2016-012  
(decision on merits), at 19 (Board deems flawed appraiser's use  
of asking rents rather than market rents)

### Capitalization rates

- Thayer Garden Associates v. City of Waterville*, No. 92-99, at 2-3  
(obtained through mortgage equity band of investment analysis,  
which accounts for real estate taxes twice, and thus yields an  
unduly high valuation)
- Rankin Center Associates v. City of Rockland*, Nos. 93-18 & 93-97,  
at 4-5 (city argued taxpayer's calculation derived from bonds  
and investment market was not recognized as valid; city used  
data from comparable sales of elderly housing; Board agreed the  
latter is more reliable)
- Champion International Corp. v. Town of Bucksport*, No. 93-98,  
at 7, 10 (taxpayer argued cost of excess workers should be  
capitalized over the expected life of the mill rather than  
expensed from its yearly cash flow, while town submitted this  
may be analyzed both in terms of capitalization and non-  
capitalization of excess costs)
- Pope v. Town of Old Orchard Beach*, Nos. 96-039-96-041, at 3  
(historical and market evidence lacking to support  
determination of stabilized estimate of net operating income  
from which to apply appropriate capitalization rate)
- Provost, Inc. v. Town of Windham*, No. 98-029, at 2-3 (direct  
capitalization, not discounted cash flow, was appropriate, as  
were rates used)
- Topsham Hydro Partners v. Town of Topsham*, No. 2003-007, at 8  
(Board found discounted cash flow capitalization rate offered by  
town's witness, when confused and not confined to industry at  
issue, not reasonable and so his conclusion of value not credible);  
at 10-11 (Board found appraiser's suggested capitalization rate  
based on studies of other states was too high, although his  
methodology as a whole was credible)
- City of Brewer v. Ellen M. Leach Memorial Home & Ellen M. Leach  
Memorial Home v. City of Brewer*, Nos. 2006-012 & -013, at 16,  
24-25 (taxpayer's appraiser should have loaded tax rate into  
capitalization rate rather than considering real estate tax as a  
line item expense); at 21 (discounted cash flow reasonable and  
appropriate to determine value of tax credits because their value  
is a definite benefit over a time certain)
- GGP-Maine Mall, LLC v. City of South Portland*, No. 2008-001 (*Maine  
Mall I*), at 9 (city criticized taxpayer's cap rate because mall is

well established, monopolizes the market, and generates a highly rated undisputed income)  
*Boralex Sherman, LLC v. Town of Stacyville*, Nos. 2009-007 & 2010-002-A, at 11 (property taxes are loaded into the cap rate)  
*MHC Narrows Too, LLC v. Town of Trenton*, No. 2012-013, at 19 (the higher the cap rate, the lower the estimated value)  
*LaBoca Corp. v. Town of Falmouth*, No. 2014-001, at 4, 5-6

Income/capitalization-of-cost-savings approach estimates costs saved by avoiding payment of commercial disposal fees and then capitalizes them

*Oxford Paper Co. (Boise Cascade) v. Town of Mexico*, No. 91-102, at 2-3

“Stabilized income” analysis and “market derived income” analysis

*Searsport Realty Associates v. Town of Searsport*, No. 91-89, at 2  
*City of Brewer v. Ellen M. Leach Memorial Home & Ellen M. Leach Memorial Home v. City of Brewer*, Nos. 2006-012 & -013, at 23

Use of “business enterprise value” or “BEV” (a measure of a property’s going concern) with the income approach

*GGP-Maine Mall, LLC v. City of South Portland*, No. 2008-001 (*Maine Mall I*), at 2, 7, 11-12 (taxpayer argued going concern is an intangible not subject to ad valorem taxation); at 10 (city criticized its subtraction from value as not well accepted); at 13 (application of concept to shopping malls is not well developed and has been rejected as speculative)

Income tax obligations are not to be relied on as evidence of net operating income to establish valuation, but are an expense of ownership

*Pope v. Town of Old Orchard Beach*, Nos. 96-039–96-041, at 3  
*Maine Public Service Co. v. City of Caribou*, No. 97-108, at 8  
*Northeast Empire Ltd. Partnership #2 v. Town of Ashland*, Nos. 99-015 & 99-027, at 9  
*Boralex Sherman, LLC v. Town of Stacyville*, Nos. 2009-007 & 2010-002-A, at 11



Property taxes are not considered an expense to be excluded from net operating income when determining valuation, but are loaded into capitalization rate, thus avoiding distortion of ultimate determination of value, given that all properties within town are assessed at same ratio

*Northeast Empire Ltd. Partnership #2 v. Town of Ashland*, Nos. 99-015 & 99-027, at 10  
*City of Brewer v. Ellen M. Leach Memorial Home & Ellen M. Leach Memorial Home v. City of Brewer*, Nos. 2006-012 & -013, at 16, 25

Subdivision development method of valuation

*Cushing Holdings, LLC v. Town of Cushing and Last Resort Holdings, LLC v. Town of Cushing*, Nos. 2006-017 & -018, at 8-9 & n.6 (discussed and criticized, especially given its controversial nature, applicability to a partially completed project, and revisions by appraiser; this is not the only method to value the project being marketed); at 9 (town's appraiser did not use method because he was not trying to determine owner's interest, but the value of the parcels for sale)

Adequacy or usefulness of sales, or market data, approach

*S. D. Warren Co. v. City of Westbrook*, No. 90-11, at 6 (unworkable in absence of comparable sales)  
*Westpoint Pepperell, Inc. v. City of Biddeford*, No. 91-91, at 1-2 (factors discussed: sales outside Maine, six to eight years old, auction sales, skyrocketing prices, size of properties)  
*Wesson v. Town of Bremen*, Nos. 92-04 & 92-66, at 4-5 (Decision I) (Board notes weaknesses in analysis of comparables), at 7 (Decision I)(valid for mass valuations except for straight line measurements for shore frontage; town should attempt to equalize values for similarly shaped islands); at 3-4 (Decision II)(Board notes weaknesses in analysis of comparables)  
*Dirigo Management Co. v. City of Bath*, No. 92-34, at 3  
*Bath Iron Works Corp. v. City of Bath*, Nos. 92-43, 92-102 & 93-14, at 8 (not appropriate for special purpose property)  
*City of Biddeford v. Landco Realty, Inc.*, No. 92-104, consolidated with *Landco Realty Co. v. City of Biddeford*, No. 93-70, at 3-4, 7 (taxpayer claimed sales approach was inapplicable due to outdated sales and effects of economic recession; Board finds lack of comparable sales, negating use of sales approach)

- Toussaint v. City of Lewiston*, Nos. 93-06–93-11, at 5, 6 (few other sales, among which were distress sales)
- Rankin Center Associates v. City of Rockland*, Nos. 93-18 & 93-97, at 5 (city appropriately considered other sales, but inappropriately used sales with favorable tax incentives)
- Harris v. City of Lewiston*, Nos. 93-19–93-22, at 2 (taxpayer argued market approach is inapplicable where recent sales were at auctions or by mortgagors seeking to salvage investments)
- Central Way Realty Associates v. City of Lewiston*, Nos. 93-37–93-40, consolidated with *KNL Associates v. City of Lewiston*, Nos. 93-41–93-49 & 92-55–92-64, at 4 (bank sales should not have been used); at 4-5 (Board accepted city assessor’s values, but based upon methodology and data of taxpayer’s expert)
- J & N. Sanford Trust v. Town of Sanford*, No. 93-82, at 2 (use of sales approach challenged by town); at 3 (sales used by taxpayer, whether distress sales or not, were an indication of the market)
- Champion International Corp. v. Town of Bucksport*, No. 93-98, at 6, 9, 11, 14 (considered but not used by assessor, although taxpayer asserted its use; Board found it inapplicable to specialized industrial property; based on public information, taxpayer used three paper mill sales, which town said was inadequate; Board found other sales to be too few and with too many variables to be meaningful)
- Kennebunkport Inn, Inc. v. Town of Kennebunkport*, No. 94-43, at 3 (petitioner proffered comparables, but town dismissed their relevance because they were not located close to petitioner’s inn; location an important factor in assessment)
- Toussaint v. City of Lewiston*, Nos. 95-143–95-146, at 3 (Board found sales approach had least credibility where non-arm’s length transactions were included in taxpayer’s analysis)
- FLS Associates v. City of Augusta*, No. 95-153, at 2 (city argued taxpayer’s comparables were inadequate due to age, etc.)
- Spang Enterprises v. Town of Kennebunkport*, No. 96-011, at 1-2 (rejected by taxpayer due to lack of arm’s length sales, who also criticized town’s appraisal for not listing comparable sales in report)
- Pope v. Town of Old Orchard Beach*, Nos. 96-039–96-041, at 2 (taxpayer did not use sales approach; town used it to test income approach)
- KPMG Peat Marwick v. City of Lewiston*, No. 96-047, at 2, 3 (Board found taxpayer’s use only of sales approach inadequate, especially given appraiser’s use of only one comparable)
- Port Resort Realty Corp. v. Town of Kennebunkport*, No 98-004, at 2 (not used by taxpayer because of lack of comparable sales)

- B & B Properties v. City of Ellsworth*, No. 98-026, at 10, 11 & n.6 (taxpayer offered comparables that assessor attacked, although it was not her burden to do so)
- Provost, Inc. v. Town of Windham*, No. 98-029, at 3 (assessor did not use sales, as few, if any, were available)
- Northeast Empire Ltd. Partnership #2 v. Town of Ashland*, Nos. 99-015 & 99-027, at 11-12 (sales approach doomed where comparables were not identified, purchase prices of comparables were not disclosed, and there was lack of evidence of arm's length sales; appraiser wrongly assumed liquidation or removal of property, which remained operational)
- Great Northern Paper, Inc. v. Town of East Millinocket*, No. 2000-006, at 19-20 (appraiser for town correctly disregarded sales approach when it was difficult to find complex industrial property comparables); at 19 & n.19 (sales approach inappropriate when details of other sales are unavailable, although that is admittedly often the case with complex transactions)
- UAH-Hydro v. Town of Winslow*, 2001-009, at 18 (use of power generating that are not stand-alone hydro-power as is the subject property is not credible; sale of facility, during time or deregulation when utilities were required to divest themselves of assets, was forced sale; other sales, of hydro-power facilities are suspect due to time of sales and lack of detailed description)
- Sprague Energy Corp. v. Town of Bucksport*, No. 2003-003, at 23-26 (appraiser opined sales approach was most useful for special use property (oil terminal), but in the end his opinion of value was based on an arbitrary price per unit)
- U. S. Optical Disc, Inc. v. Town of Sanford*, No. 2003-004, at 19 (appraiser of real property relied primarily on sales approach)
- Topsham Hydro Partners v. Town of Topsham*, No. 2003-007, at 12 ("auction" open to public, lasting six months, and generating 10 interested, competitive purchasers was not a duress sale)
- Woodland Kittery Ltd. Partnership v. Town of Kittery*, No. 2006-008, at 6 (neither sales nor cost approach is useful where recorded rent restrictions and tax credits are not factored in)
- City of Brewer v. Ellen M. Leach Memorial Home & Ellen M. Leach Memorial Home v. City of Brewer*, Nos. 2006-012 & -013, at 15 (taxpayer's appraiser did not rely on sales approach, finding no comparables); at 17 (city's appraiser did not rely heavily on sales approach; her other sales were not comparable)
- Cushing Holdings, LLC v. Town of Cushing and Last Resort Holdings, LLC v. Town of Cushing*, Nos. 2006-017 & -018, at 4-6 (assessors' agent valuing subdivisions began with assessment of original "mother lot" and then considered actual sales to determine base

lot value of each project, taking into account rising market and fact properties were not finished, and then reduced the value of common lots, with unbuildable restrictions); at 10 (town's appraiser appropriately considered sales in all relevant subdivisions and did not consider sales after market conditions began to change)

*GGP-Maine Mall, LLC v. City of South Portland*, No. 2008-001 (*Maine Mall I*), at 9 (use urged by city's review appraiser because the market for super regional malls is national in scope); at 10-11 (not used by city due to absence of comparables, but its appraiser did test his income and cost approaches against sale within three years of valuation date, as required by USPAP); at 12-13 (taxpayer considered "bulk sale of property" not useful, did not make an allocation for intangible property, did not consider certain tax implications, did not inquire about capitalization rate involved in purchase, did not produce actual contracts and start up data to support his assumptions of value)

*Falls Development Associates, L.P. v. City of Saco*, No. 2008-025, at 57 (often limited by lack of comparables; typically will result in lower values than cost approach)

*Boralex Sherman, LLC v. Town of Stacyville*, Nos. 2009-007 & 2010-002-A, at 10 (taxpayer's appraiser gave sales of similar facilities considerable weight as a good indicator of value)

*MHC Narrows Too, LLC v. Town of Trenton*, No. 2012-013, at 20 (Board had reservations that taxpayer's appraiser's adjustments to comparables were too subjective; comparables suffered from poorer locations)

*LaBoca Corp. v. Town of Falmouth*, No. 2012-027, at 5, 7

*LaBoca Corp. v. Town of Falmouth*, No. 2014-001, at 3-4 (assessor developed sales approach); at 5 (appraiser did not use sales approach)

*Expera Old Town v. City of Old Town*, Nos. 2015-013 & 2016-002, at 19 (appraisals used prior bankruptcy sale of subject property as comparable for the two tax years in issue but described the market for that sale as equal for one year and identical for the other year without adequate explanation; adjustments made for both tax years were inadequately explained)

*Madison Paper Industries v. Town of Madison*, No. 2016-009, at 20, 23 (appraiser relied on sales, but Board found taxpayer omitted whether comparable sales were in fact subject to owner-imposed restrictions and their effect if any)

*Louisiana-Pacific Corp. v. Town of New Limerick*, No. 2016-012 (decision on merits), at 14 (USPAP does not require visit to or inspection of comparables); at 21-22 (appraiser conceded comparables were inadequate)

*395 Bangor Brewer, LLC v. City of Brewer*, No. 2017-005, at 4 (appraiser found only sales approach reliable); at 12 (listing of property not entirely disregarded by the Board); at 13 (auction sale noted as being less than fair market value); at 13-14 (discussions for sale not resulting in an agreement are not relied on by the Board in determining fair market value)

Comparables need not be “identicals,” but the sales approach is only as good as the comparables that are offered for comparison

*Champion Int’l Corp. v. Town of Bucksport*, No. 93-98, at 14 (few sales with multiple variables makes applicability of sales approach improbable)

*Sprague Energy Corp. v. Town of Bucksport*, No. 2003-003, at 24

*U. S. Optical Disc, Inc. v. Town of Sanford*, No. 2003-004, at 18 n.12

*MHC Narrows Too, LLC v. Town of Trenton*, No. 2012-013, at 20

(sales approach is only as good as the comparables identified)

Use of effective gross income multiplier (EGIM), a derivative of the sales approach

*MHC Narrows Too, LLC v. Town of Trenton*, No. 2012-013, at 10

(derived by dividing a property’s sales price by its effective or actual gross income at the time of the sale); at 18 (appraiser used an EGIM that tended to produce a reduced value)

Absorption rate

*Cushing Holdings, LLC v. Town of Cushing and Last Resort Holdings, LLC v. Town of Cushing*, Nos. 2006-017 & -018, at 9 (taxpayer failed to establish credible evidence of value when its appraiser changed the length of the rate term, did not account for market appreciation or test the values arrived at by comparable sales, deducted for improvements not related to the subject property, failed to establish a clear cut-off date for market change in regard to date of valuation, and did not offer persuasive reason why he a large lot would not sell until later in the absorption period, thus reducing return to the property’s owner)

The appropriate geographical market is to be determined on a case-by-case basis by considering factors such as whether the commercial activity is

more global, or local; whether a far-flung market can be shown to be similar to Maine's; and whether fewer comparable properties and sales exist in proximity to the subject property

*Sprague Energy Corp. v. Town of Bucksport*, No. 2003-003, at 20 n.13

Adequacy or usefulness of cost (less depreciation) approach

*S. D. Warren Co. v. City of Westbrook*, No. 90-11, at 10-12 (discussion of costs to be added and deducted)

*Waterville Homes, Inc. v. City of Waterville*, Nos. 90-16 & 91-06, at 5

*Kamp Kohut, Ltd. v. Town of Oxford*, No. 90-18, at 3 (not meaningful in absence of fully comparable sales)

*Searsport Realty Associates v. Town of Searsport*, No. 91-89, at 1, 3 (said by taxpayer not to account for economic obsolescence; said by town to be more appropriate with subsidized housing)

*Lincoln Realty Associates v. Town of Lincoln*, No. 91-103, at 2-3 (same; held by Board to be best assessment method for new buildings)

*Dirigo Management Co. v. City of Bath*, No. 92-34, at 2 (said by town to be more appropriate with subsidized housing)

*IBM Credit Corp. v. City of Bath*, Nos. 92-42 & 93-32, at 2-3 (computer equipment)

*Bath Iron Works Corp. v. City of Bath*, Nos. 92-43, 92-102 & 93-14, at 8 (most appropriate for special purpose properties)

*Thayer Garden Associates v. City of Waterville*, No. 92-99, at 1-2 (taxpayer argued cost approach does not consider economic obsolescence)

*City of Biddeford v. Landco Realty, Inc.*, No. 92-104, consolidated with *Landco Realty Co. v. City of Biddeford*, No. 93-70, at 3, 6-7 (same; and appropriate with net operating loss)

*Toussaint v. City of Lewiston*, Nos. 93-06-93-11, at 2 (taxpayer asserted this approach results in a higher than market value, which must be adjusted downwards for economic obsolescence)

*Rankin Center Associates v. City of Rockland*, Nos. 93-18 & 93-97, at 2 (taxpayer asserted cost approach is inadequate with federally subsidized housing)

*Guy Gannett Publishing Co. v. City of South Portland*, Nos. 93-75 & 93-135, at 3 (parties agree this approach is the most appropriate), at 5-6 (no cost schedule can accommodate all possible types of special purpose buildings), at 6 (where actual costs are available, they can be used as a guideline)

- J & N Sanford Trust v. Town of Sanford*, No. 93-82, at 2 (not used by taxpayer because of large margin of error due to depreciation)
- Champion International Corp. v. Town of Bucksport*, No. 93-98, at 6-7, 9, 11 (cost approach, which assertedly accounted for irregularities in deductions for depreciation and functional obsolescence, was primarily used by assessor; criticized by taxpayer for miscalculating physical depreciation, not capitalizing of excess operating costs, failing to deduct economic obsolescence, and misapplying assessment ratio; Board found this approach preferred for assessing industrial property)
- Capitol Shopping Center v. City of Augusta*, Nos. 94-29 & 95-164, at 2 (rejected by appraiser because age of building made depreciation difficult to determine)
- Knox Hotel Associates v. Town of Thomaston*, No. 95-132, at 2-3 (taxpayer asserted cost approach not applicable to federally subsidized housing; Board found by its nonuse taxpayer failed to establish evidence of just value against which Board could compare town's assessment)
- Toussaint v. City of Lewiston*, Nos. 95-143-95-146, at 4 (most reliable as it does not fluctuate with market and is especially appropriate for relative new property)
- FLS Associates v. City of Augusta*, No. 95-153, at 1 (taxpayer rejected cost approach as invalid where cost of construction could not be sustained by market rents)
- AWD Management (Chiricahua, Inc.) v. City of Westbrook*, No. 95-163, at 2 (taxpayer rejected cost approach due to age of building)
- Spang Enterprises v. Town of Kennebunkport*, No. 96-011, at 1-2 (rejected by taxpayer due to difficulty of estimating accrued depreciation, who also criticized town for not concluding that economic obsolescence was relevant)
- KPMG Peat Marwick v. City of Lewiston*, No. 96-047, at 2 (not used by taxpayer because too subjective, and argued city's use of cost approach did not adequately consider physical depreciation and functional obsolescence)
- Maine Public Service Co. v. City of Caribou*, No. 97-108, at 10-12 (taxpayer developed credible value by both replacement cost new, which takes into account functional obsolescence, and reproduction cost new); at 12 ("Commonly, in a reproduction cost new less depreciation analysis, functional obsolescence is considered and deducted from reproduction cost new. This is so . . . because generally, technology improves over time")
- Port Resort Realty Corp. v. Town of Kennebunkport*, No 98-004,

- at 2, 3 (taxpayer asserted that since land value was nearly all total value, building had reached the end of its productive life, which Board rejected because hotel was still operational)
- B & B Properties v. City of Ellsworth*, No. 98-026, at 9, 11 (only approach used by city in making assessment; taxpayer attacked it as not supported by property's actual income)
- Provost, Inc. v. Town of Windham*, No. 98-029, at 2 (assessor's principal approach was reasonable)
- Northeast Empire Ltd. Partnership #2 v. Town of Ashland*, Nos. 99-015 & 99-027, at 6, 7, 8 (cost approach used by assessor's assistant with deduction for economic obsolescence; appraiser placed little weight on cost approach, and even at that with no adequate explanation deducted economic obsolescence that was derived solely from income approach)
- Great Northern Paper, Inc. v. Town of East Millinocket*, No. 2000-006, at 24 (cost approach given greater weight than income approach, but appraiser incorrectly included two items in his analysis which must be excluded)
- UAH-Hydro v. Town of Winslow*, 2001-009, at 19-21
- Sprague Energy Corp. v. Town of Bucksport*, No. 2003-003, at 11 (cost approach used by assessor); at 23 & n.14 (*Bath Iron Works* and *Champion International* decisions by Board did not hold that only the cost approach is appropriate in special use property cases)
- U. S. Optical Disc, Inc. v. Town of Sanford*, No. 2003-004, at 20, 22 (Board used cost approach on real property, as did assessor, although appraiser thought it least satisfactory); at 27-28 (cost approach requires consideration of square footage of building); at 30, 35-36 (assessor used only cost approach on personal property; appraiser of personal property used it centrally and credibly)
- Topsham Hydro Partners v. Town of Topsham*, No. 2003-007, at 8-10 (town's witness depreciated property over too long a period, thus contributing to Board's finding his conclusions unhelpful, whereas taxpayer's witness' shorter depreciation period which took into account income stream during that period contributed to his conclusions being credible)
- Woodland Kittery Ltd. Partnership v. Town of Kittery*, No. 2006-008, at 6 (neither cost nor sales approach is useful where recorded restrictions and tax credits are not factored in)
- City of Brewer v. Ellen M. Leach Memorial Home & Ellen M. Leach Memorial Home v. City of Brewer*, Nos. 2006-012 & -013, at 15 (taxpayer's appraiser determined cost approach resulted in similar value as income approach that he relied on); at 17 (assessor used cost approach, and city's appraiser arrived at



value similar to assessor, but appraiser did not rely heavily on cost approach); at 20 (cost approach failed to capture influence on value of both rent restrictions, tax credits, subsidies for operational losses and payment for debt services; and fact it led to city's appraiser to a conclusion substantially different from assessed value was further indication of unreliability)

*Falls Development Associates, L.P. v. City of Saco*, No. 2008-025, at 27 (assessor used only cost approach); at 56 (more relevant where property is new, but less relevant where restriction on income is unrelated to costs; may overstate fair market value of subsidized housing and is generally inappropriate for such); at 61 (while this was not necessarily error, the income approach is preferred for income producing property); at 62 (assessor used cost approach on older buildings without information on original costs)

*Boralex Sherman, LLC v. Town of Stacyville*, Nos. 2009-007 & 2010-002-A, at 9 (taxpayer's appraiser used the cost approach by applying a "comparative-unit method" and then took the mean of income and sales approaches, and deducted that amount as economic obsolescence, and then added value of the land; cost approach given least weight)

*Bangor Gas Co., LLC v. Town of Bucksport*, No. 2010-002, at 4 (assessor relied only on cost approach, but considered cost information from taxpayer unreliable and so relied on MRS estimated cost of construction); at 6 (appraiser did not apply cost approach because it would have been circular simply to subtract income from cost and call the difference economic obsolescence); at 8 (replacement cost new, less depreciation, is proper for special purpose property); at 8-9 (appraiser's conclusion thus not persuasive or credible)

*Prentiss & Carlisle Management Co., Inc. v. Town of Merrill and Town of Smyrna*, Nos. 2010-007 & 2010-006, at 7 (only practical approach to use)

*MHC Narrows Too, LLC v. Town of Trenton*, No. 2012-013, at 18 (failure of taxpayer's appraiser to apply cost approach fatal to his opinion of value; Board found unpersuasive his statement that replacement cost of improvements would be difficult to estimate accurately; appraiser did not give both land and building value)

*LaBoca Corp. v. Town of Falmouth*, No. 2012-027, at 5, 7

*LaBoca Corp. v. Town of Falmouth*, No. 2014-001, at 4 (assessor used Marshall & Swift, visited property, and considered age and vacancies); at 5 (appraiser did not use cost approach, on an older building)

*Prentiss & Carlisle Management Co., Inc. v. Town of Smyrna and Town of Merrill*, Nos. 2015-001 & -002 (*Prentiss & Carlisle II*), at 3, 8

(parties agreed cost approach was only applicable approach in absence of sales and income information); at 10 (best suited for mass revaluation; measures amount it would cost, if land were unimproved, to buy land and build functionally equivalent structure)

*Expera Old Town v. City of Old Town*, Nos. 2015-013 & 2016-002, at 19 (appraisals depreciated property by 100% due to economic obsolescence, then changed this to 5% without explanation; even a 5% difference in economic obsolescence can vary the value of the subject property greatly)

*Madison Paper Industries v. Town of Madison*, No. 2016-009, at 13, 19-20, 24 (functional obsolescence not applied to state-of-the-art facilities; cost approach not applied by taxpayer's appraiser, as it should have)

*Louisiana-Pacific Corp. v. Town of New Limerick*, No. 2016-012 (decision on merits), at 8-9 (cost approach defined); at 9 (cost does not equal market in many cases); appraiser's reasons for rejecting cost approach; at 20 (generally but not always applied only to special use properties); at 22 (cost approach justified when property being valued is special purpose; but Board did not hold such approach must be used with such property)

*395 Bangor Brewer, LLC v. City of Brewer*, No. 2017-005, at 5 (cost approach used in city revaluation and subsequently relied on by assessor, but rejected by the Board)

#### Reproduction cost and replacement cost defined and compared

*Champion International Corp. v. Town of Bucksport*, No. 93-98, at 9, 11-12 (Board agreed with town's assertion that replacement costs ordinarily would be lower than reproduction costs; and found taxpayer's cost approach may have not eliminated deductions for functional obsolescence from replacement cost)

*Great Northern Paper, Inc. v. Town of East Millinocket*, No. 2000-006, at 25 (unclear whether taxpayer's appraiser correctly took into account the entire length of dam); at 25-26 (appraiser also failed to include certain equipment and excluded two other pieces that the taxpayer's other appraiser included)

*UAH-Hydro v. Town of Winslow*, 2001-009, at 19 n.14 (reproduction cost new is the estimated cost to construct property that is similar in all respects to that being appraised; replacement cost is the estimated cost to construct property using modern materials and technology of equivalent utility to the property being appraised)

*Sprague Energy Corp. v. Town of Bucksport*, No. 2003-003, at 19

(cost approach is premised on concept of substitution)

Reliance on actual construction costs in developing value is reasonable

*Guy Gannett Publishing Co. v. City of South Portland*, Nos. 93-75 & 93-135, at 6

*Prentiss & Carlisle Management Co., Inc. v. Town of Smyrna and Town of Merrill*, Nos. 2015-001 & -002 (*Prentiss & Carlisle II*), at 6, 14 (not reasonable to project costs based on cost of gravel when gravel is not used in road building)

No cost schedule can accommodate all possible types of special purpose buildings

*Guy Gannett Publishing Co. v. City of South Portland*, Nos. 93-75 & 93-135, at 5-6

Use of segregated cost methodology

*Guy Gannett Publishing Co. v. City of South Portland*, Nos. 93-75 & 93-135, at 6, 7 (classification of structure by occupancy and height as well as class is a matter of judgment)

Argument over appropriate depreciation

*Alstores Realty Corp. v. City of South Portland*, No. 87-03, at 5-8  
*Scientific Games, Inc. v. City of Lewiston*, No. 88-04, at 3 (where taxpayer does not provide sufficient information regarding workings of equipment, municipality's depreciation schedule prevails)

*Hardy, Wolf & Downing v. City of Lewiston*, No. 92-06, at 2

*IBM Credit Corp. v. City of Bath*, Nos. 92-42 & 93-32, at 2-3

(Board agrees city's "straight line" depreciation for computer equipment inadequately recognizes continual rapid advance in technology, but rejects taxpayer's claim in part as not recognizing income it derives from leasing of equipment)

*Bath Iron Works Corp. v. City of Bath*, Nos. 92-43, 92-102 & 93-14, at 10 (BIW personalty; declining balance methodology)

*Poorvu Family Trust v. City of Presque Isle*, No. 93-04, at 2 (primary difference in parties' use of cost approach was over depreciation)

- Guy Gannett Publishing Co. v. City of South Portland*, Nos. 93-75 & 93-135, at 7-8 (Board found city's 50-year life expectancy for building reasonable)
- J & N Sanford Trust v. Town of Sanford*, No. 93-82, at 2 (unfavorable leases, opening of competitive store, generally depressed economic conditions)
- Champion International Corp. v. Town of Bucksport*, No. 93-98, at 7, 13
- Presque Isle Investors v. City of Presque Isle*, No. 94-03, at 3 (city maintained taxpayer's expert's evidence was only speculative)
- B & B Properties v. City of Ellsworth*, No. 98-026, at 9 (taxpayer asserted city did not adequately consider this)
- Provost, Inc. v. Town of Windham*, No. 98-029, at 2 (assessor depreciated property 45%: 10% for physical, 25% for functional, and 10% for vacancies)
- Great Northern Paper, Inc. v. Town of East Millinocket*, No. 2000-006, at 26 (70% depreciation unreasonable when that would, in essence, mean dams are unsafe)
- U. S. Optical Disc, Inc. v. Town of Sanford*, No. 2003-004, at 28-29 (appraiser of real property used too high a depreciation rate); at 33 (appraiser of personal property properly used a higher depreciation rate than assessor had used)
- Topsham Hydro Partners v. Town of Topsham*, No. 2003-007, at 8-10 (Board agrees plant should be depreciated over 50, not 100, years; town expert's failure to consider replacement and structural repairs leads to his conclusions being unhelpful)
- Prentiss & Carlisle Management Co., Inc. v. Town of Smyrna and Town of Merrill*, Nos. 2015-001 &f -002 (*Prentiss & Carlisle II*), at 8-10 (straight-line depreciation and weighted average depreciated value per acre)

#### Use of IRS depreciation schedules

- Hardy, Wolf & Downing v. City of Lewiston*, No. 92-06, at 3 (not normally used for personal property values for property tax purposes as they are not intended to determine "just value")

#### Functional or physical obsolescence

- S. D. Warren Co. v. City of Westbrook*, No. 90-11, at 7, 9, 12 (the loss in value due to inability of a structure or equipment to perform adequately its function; illegality of agreement between taxpayer and city of annual 5% discount rate)

- Danny's, Inc. v. Town of Old Orchard Beach*, No. 91-38, at 4-5
- IBM Credit Corp. v. City of Bath*, Nos. 92-42 & 93-32, at 2-3  
(Board agrees city's "straight line" depreciation for computer equipment inadequately recognizes continual rapid advance in technology, but rejects taxpayer's claim in part as not recognizing income it derives from leasing of equipment)
- Bath Iron Works Corp. v. City of Bath*, Nos. 92-43, 92-102 & 93-14, at 9 (BIW buildings and site improvements)
- Guy Gannett Publishing Co. v. City of South Portland*, Nos. 93-75 & 93-135, at 7 (functional obsolescence irrelevant where it depends on speculative economic obsolescence)
- Champion International Corp. v. Town of Bucksport*, No. 93-98, at 7-8 & n.5, 13 (said to be a "hard" number that should be subtracted from cost approach value before subtracting percent figures such as economic obsolescence)
- Unitrode Corp. v. City of Westbrook*, No. 93-116, *passim* (due to physical deterioration, specialized interior configuration, location on a former land fill, and presence of extensive soil contamination)
- Maine Public Service Co. v. City of Caribou*, No. 97-108, at 12 ("the application of depreciation, in and of itself, incorporates consideration of functional obsolescence")
- B & B Properties v. City of Ellsworth*, No. 98-026, at 9, 11 (none existed except as reflected by vacancies)
- Provost, Inc. v. Town of Windham*, No. 98-029, at 2 (calculated reasonably)
- Great Northern Paper, Inc. v. Town of East Millinocket*, No. 2000-006, at 23-24 (long-term observation of machinery and equipment gives credibility to obsolescence analysis; reference to marketplace to establish replacement costs comparable to physical and economic depreciation are a credible measure of value of machinery and equipment)
- U. S. Optical Disc, Inc. v. Town of Sanford*, No. 2003-004, at 19 (where "clean room" was no longer necessary, assessor overvalued property); at 24 (appraiser improperly applied higher rate of depreciation than did assessor)

#### Economic obsolescence

- Waterville Homes, Inc. v. City of Waterville*, Nos. 90-16 & 91-06, at 2 (partial occupancy, lack of access, lack of public sewer)
- Searsport Realty Associates v. Town of Searsport*, No. 91-89, at 2
- Lincoln Realty Associates v. Town of Lincoln*, No. 91-103, at 3  
(determined by examining vacancy rates and inspecting for

- physical depreciation)
- IBM Credit Corp. v. City of Bath*, Nos. 92-42 & 93-32 at 2-3  
(Board agrees city's "straight line" depreciation for computer equipment inadequately recognizes continual rapid advance in technology, but rejects taxpayer's claim in part as not recognizing income it derives from leasing of equipment)
- Poorvu Family Trust v. City of Presque Isle*, No. 93-04, at 3-4  
(depreciation of building due to economic development elsewhere in city)
- Guy Gannett Publishing Co. v. City of South Portland*, Nos. 93-75 & 93-135, at 7 (presently speculative)
- Champion International Corp. v. Town of Bucksport*, No. 93-98, at 7-8 & n.5, 13 (taxpayer applied an economic obsolescence rate after subtracting depreciation and before subtracting functional obsolescence from its cost approach value)
- Presque Isle Investors v. City of Presque Isle*, No. 94-03, at 3  
(depreciation of building due to economic development elsewhere in city)
- B & B Properties v. City of Ellsworth*, No. 98-026, at 9 (downturn in market generally and crisis in credit left commercial real estate less attractive, although assessor testified to rapid growth of area)
- Great Northern Paper, Inc. v. Town of East Millinocket*, No. 2000-006, at 21, 22-23 (town's appraiser improperly did not include economic obsolescence in determining net value of machinery and equipment; determination of economic obsolescence is based on subjective judgment of appraiser 23 n.23 (deduction for economic obsolescence is indicated if income approach yields a lower value than cost approach); at 24 n.24 (income approach is relevant to calculation of economic obsolescence that appraiser applied to cost approach)
- UAH-Hydro v. Town of Winslow*, 2001-009, at 19 (appraiser's determination of substantial economic obsolescence is not supported); at 20 (appraiser's reliance on market data on supply of electricity that was flawed in several respects, including lack of evidentiary support showing how closure of power plants was analyzed, makes appraiser's conclusions not credible); at 21 (Board questioned whether model used by appraiser was appropriate when report on deregulation did not support use of replacement cost method of valuation and economies of scale do not necessarily apply to smaller facility at issue)
- U. S. Optical Disc, Inc. v. Town of Sanford*, No. 2003-004, at 30-31  
(significant depreciation proper where equipment was

outmoded due to decline in industry and cheaper, faster, and better equipment had become available)

The Board declines to consider salvage value of new equipment with state-of-the-art, one-of-a-kind equipment

*S. D. Warren Co. v. City of Westbrook*, No. 90-11, at 11

Indirect costs (insurance, interest and fees on construction loans, taxes, overhead, profit) should be included when valuing a construction project by cost approach, thus adding to cost of project

*S. D. Warren Co. v. City of Westbrook*, No. 90-11, at 8, 11

Reduction of total cost by deducting non-value added costs

*S. D. Warren Co. v. City of Westbrook*, No. 90-11, at 10

Discussion of proper methodology where property contains mixed uses

*McDonald's Corp. v. Town of Freeport*, No. 89-17, at 3-6 (office space and restaurant)

The Board is not required to accept an assessment that is inadequately explained or based on outdated or poorly substantiated methods

*B & B Properties v. City of Ellsworth*, No. 98-026, at 7

*Great Northern Paper, Inc. v. Town of East Millinocket*, No. 2000-006, at 21-23

*UAH-Hydro v. Town of Winslow*, 2001-009, at 17-21

*U. S. Optical Disc, Inc. v. Town of Sanford*, No. 2003-004, at 32 (assessor testified that he had no idea what the personal property he assessed is worth)

Weight to be given appraisal reports prepared for purposes other than property taxation

*City of Biddeford v. Landco Realty, Inc.*, No. 92-104, consolidated with *Landco Realty Co. v. City of Biddeford*, No. 93-70, at 6

(assessment commissioned by lender and financial management group)

*Alpine Realty Trust v. City of Biddeford*, No. 93-72, at 2 (one appraisal prepared after assessment date; another prepared for bank on unreliable financial data)

*U. S. Optical Disc, Inc. v. Town of Sanford*, No. 2003-004, at 8 n.4 (appraisal done for other than abatement purposes not given weight by Board)

The Board will not give weight to appraisal reports prepared some years before tax year in question

*U. S. Optical Disc, Inc. v. Town of Sanford*, No. 2003-004, at 8 n.4

Although appraiser did not offer a formal opinion of value for one of two years in issue, Board can apply to the first year his opinion for the second year where appraiser testified that nothing he learned of the first year was different from the second year

*City of Brewer v. Ellen M. Leach Memorial Home & Ellen M. Leach Memorial Home v. City of Brewer*, Nos. 2006-012 & -013, at 24

Failure of expert to account for all aspects of the property he was appraising

*Alstores Realty Corp. v. City of South Portland*, No. 87-03, at 10

Assessor cannot avoid double-taxing by excluding other includable property

*Sprague Energy Corp. v. Town of Bucksport*, No. 2003-003, at 32

Taxpayer's submission of one part of town's zoning ordinance was inadequate to overcome presumption of validity to assessment

*McDonald's Corp. v. Town of Freeport*, No. 89-17, at 5-6

Mischaracterization of property

*Alstores Realty Corp. v. City of South Portland*, No. 87-03, at 9-10 (anchor store at Maine Mall is not an average community)



shopping center)

Argument over valuation of land on which commercial property is located

*Alstores Realty Corp. v. City of South Portland*, No. 87-03, at 8-9  
*Bath Iron Works Corp. v. City of Bath*, Nos. 92-43, 92-102 & 93-14,  
 at 6-9

When assessed value was related to possible expansion, for which town permit has lapsed, assessment must be reduced

*Port Resort Realty Corp. v. Town of Kennebunkport*, No 98-004, at 3

Vacancies

*City of Biddeford v. Landco Realty, Inc.*, No. 92-104, consolidated with *Landco Realty Co. v. City of Biddeford*, No. 93-70, at 5 (city maintained it cannot revise assessments annually to account for changing vacancy rates)  
*Poorvu Family Trust v. City of Presque Isle*, No. 93-04, at 2, 3-4 (vacancies contributed to overvaluation)  
*Toussaint v. City of Lewiston*, Nos. 93-06–93-11, at 4 (vacancies had decreased for year in issue compared to previous years)  
*Presque Isle Investors v. City of Presque Isle*, No. 94-03, at 2, 3 (same as *Poorvu Family Trust*)  
*Capitol Shopping Center v. City of Augusta*, Nos. 94-29 & 95-164, at 1-2, 3 (failure to renew lease reduced value)  
*Toussaint v. City of Lewiston*, Nos. 95-143–95-146, at 2-3 (dispute over whether city considered downward trend of rental market)  
*B & B Properties v. City of Ellsworth*, No. 98-026, at 8-9  
*Provost, Inc. v. Town of Windham*, No. 98-029, at 2 (given that actual vacancy was 6%, using 10% to calculate depreciation was reasonable)

Effect of easement across property

*Capitol Shopping Center v. City of Augusta*, Nos. 94-29 & 95-164, at 3 (reduced value where assessor was unaware of it)  
*Kennebunkport Inn, Inc. v. Town of Kennebunkport*, No. 94-43, at 3  
*Brackett v. Town of Bristol*, Nos. 2007-010 & -011, at 13-14 (right of way across adjoining property does not burden subject

property; right of way now owned by owners of subject property does not burden subject property)

Annual discount rate agreed upon by city and taxpayer is illegal and non-binding

*S. D. Warren Co. v. City of Westbrook*, No. 90-11, at 12

Certified ratio analysis of assessed values

*S. D. Warren Co. v. City of Westbrook*, No. 90-11, at 12-13 (must be used across the board)

*Toussaint v. City of Lewiston*, Nos. 93-06–93-11, at 6 (methodology employed by assessor, and by Bureau of Taxation, eliminates highest and lowest values)

*Champion International Corp. v. Town of Bucksport*, No. 93-98, at 17-18 (whether town's 100% ratio or formula developed in another case were used, results were within 5%)

*Sprague Energy Corp. v. Town of Bucksport*, No. 2003-003, at 14 n.10 (taxpayer abandoned argument that fair market value should be adjusted according to town's assessment ratio)

*Cushing Holdings, LLC v. Town of Cushing and Last Resort Holdings, LLC v. Town of Cushing*, Nos. 2006-017 & -018, at 8 (taxpayer failed to meet its burden to establish the relevant assessment ratio that it intends to contest)

Applicability of 36 M.R.S. § 848-A, providing a defense to municipal assessments if made within reasonable limits of practicality, unless there is a proven deviation of 10% or more from the assessment ratio of the municipality

*Poorvu Family Trust v. City of Presque Isle*, No. 93-04, at 2

*Rankin Center Associates v. City of Rockland*, Nos. 93-18 & 93-97, at 4

*Guy Gannett Publishing Co. v. City of South Portland*, Nos. 93-75 & 93-135, at 8 (10% rule supports finding in favor of city's appraisal)

*Toussaint v. City of Lewiston*, Nos. 95-143–95-146, at 4 (applicable to income approach in this case)

*See Keene v. City of Auburn*, No. 98-023, at 4-5 (farmland case; difference of 10% or less is insufficient to prove overvaluation)

*Great Northern Paper, Inc. v. Town of East Millinocket*, No. 2000-006,

- at 5 n.5 (statute applies only in discrimination cases)
- Sprague Energy Corp. v. Town of Bucksport*, No. 2003-003, at 35 (regardless of section 848-A, assessor is prohibited by art. IX, § 8 from assessing property that she admitted should have been reduced or not included)
- Gray v. Town of Sedgwick*, No. 2005-005, at 10 (assessor cannot assess property that he admitted should have been reduced by a certain amount to arrive at fair market value)
- Cushing Holdings, LLC v. Town of Cushing* and *Last Resort Holdings, LLC v. Town of Cushing*, Nos. 2006-017 & -018, at 4 (taxpayer must prove ratio applied deviated more than 10% from relevant assessment ratio applied to all other properties); at 6-7 (taxpayer asserted, based on MLS data, that town over-assessed properties, was inferior to town's reliance on transfer tax declaration)
- Madison Paper Industries v. Town of Madison*, No. 2016-009, at 24-25 (difference of 10% or less is insufficient to prove overvaluation)

Certified assessment ratio is a statistical concept not well anchored in reality when not based on an adequate number of recent comparable sales, at which point it becomes simply the middle number in a wide range

*Poorvu Family Trust v. City of Presque Isle*, No. 93-04, at 3

Adjustment in valuation to account for computation error

- Alstores Realty Corp. v. City of South Portland*, No. 87-03, at 11
- A-R Cable Services – Me., Inc. v. City of Lewiston*, No. 91-37, at 6 (city included value of personalty twice in developing assessment)
- Bath Iron Works Corp. v. City of Bath*, Nos. 92-43, 92-102 & 93-14, at 10-11 (city assessor acknowledged error)

Assessor's use of computer-generated appraisal systems

- Sprague Energy Corp. v. Town of Bucksport*, No. 2003-003, at 28 (criticism of use of such a system is only impeachment of assessment)
- U. S. Optical Disc, Inc. v. Town of Sanford*, No. 2003-004, at 22 n.16 (use of such a system is not itself problematic)
- Harold MacQuinn, Inc. v. Town of Hancock*, No. 2009-014, at 4, 22 (typically used for mass revaluations; taxpayer's criticism of such use normally can amount to no more than impeachment)

of the assessment)

Witness' merely checking an unnamed internet site does not lend credibility to his methodology

*Topsham Hydro Partners v. Town of Topsham*, No. 2003-007, at 7

#### Use of Maine Assessment Manual

*Poorvu Family Trust v. City of Presque Isle*, No. 93-04, at 3  
*Capitol Shopping Center v. City of Augusta*, Nos. 94-29 & 95-164,  
 at 2

#### Use of market publications

*IBM Credit Corp. v. City of Bath*, Nos. 92-42 & 93-32, at 4-5  
 (*Computer Price Watch* re depreciation of computers)

#### Use of Marshall & Swift Valuation Service Manual

*Alstores Realty Corp. v. City of South Portland*, No. 87-03, at 10-11  
 (misapplication of tables and charts in developing replacement costs)  
*S. D. Warren Co. v. City of Westbrook*, No. 90-11, at 9, 12 (Board does not use for determining discount factor)  
*Waterville Homes, Inc. v. City of Waterville*, Nos. 90-16 & 91-06, at 3 (used to determine replacement costs)  
*Lincoln Realty Associates v. Town of Lincoln*, No. 91-103, at 3 (used to determine reproduction cost and appreciable depreciation)  
*Wesson v. Town of Bremen*, Nos. 92-04 & 92-66, at 3, 4 (Decision I) (depreciation)  
*City of Biddeford v. Landco Realty, Inc.*, No. 92-104, consolidated with *Landco Realty Co. v. City of Biddeford*, No. 93-70, at 4 (land value and cost schedules)  
*Poorvu Family Trust v. City of Presque Isle*, No. 93-04, at 2  
*Rankin Center Associates v. City of Rockland*, Nos. 93-18 & 93-97, at 4-5 (Board held cost approach inadequate when based on construction costs in manual, rather than actual costs, and when manual accounts only for original construction rather than improvements)

- Knox Hotel Associates v. Town of Thomaston*, No. 95-132, at 2-3  
(Board rejected taxpayer's claim that values were inappropriate or impeaching of town's assessment)
- KPMG Peat Marwick v. City of Lewiston*, No. 96-047, at 3 (assessor used this for cost approach)
- Great Northern Paper, Inc. v. Town of East Millinocket*, No. 2000-006, at 21-22 (Marshall & Swift does not develop trend factors for valuing specific machinery and equipment)
- Sprague Energy Corp. v. Town of Bucksport*, No. 2003-003, at 11 (assessor relied on Marshall Valuation Service depreciation tables)
- U. S. Optical Disc, Inc. v. Town of Sanford*, No. 2003-004, at 25 (assessor used Marshall & Swift only as a check on replacement cost, but in testimony offered too high a classification of building); at 28-29 (Board relied on Marshall & Swift cost tables)
- MHC Narrows Too, LLC v. Town of Trenton*, No. 2012-013, at 9 (Taxpayer's appraiser opined that improvements to campground were too complex to estimate cost, but town professed to have relied on Marshall & Swift)
- LaBoca Corp. v. Town of Falmouth*, No. 2014-001, at 4

Reliance on the Uniform Standards of Professional Appraisal Practice (USPAP)

- GGP-Maine Mall, LLC v. City of South Portland*, No. 2008-001 (*Maine Mall I*), at 11, 12 (requirement of testing valuation by reference to sales of property within three years of valuation date, in order to understand what is being purchased and under what circumstances)
- Falls Development Associates, L.P. v. City of Saco*, No. 2008-025, at 32 (USPAP requires financing to be treated as an intangible)

#### IV. Exemptions From Taxation

History, theory, and criticisms of property tax exemptions

*Gregory v. MMC Realty Corp. & Maine Medical Center*, No. 2000-001,  
at 28-33

Maine constitution does not provide for exemptions, and they are not constitutionally-based

*Gregory v. MMC Realty Corp. & Maine Medical Center*, No. 2000-001,  
at 30

Absent legislative exemption, all Maine real estate is taxable

*Gregory v. MMC Realty Corp. & Maine Medical Center*, No. 2000-001,  
at 33

Exemptions from taxation are legislative

*Soil Preparation, Inc. v. Town of Plymouth*, Nos. 2015-015, -016, -017,  
at 5

The authority of the Legislature to provide exemptions from taxation cannot be questioned

*Soil Preparation, Inc. v. Town of Plymouth*, Nos. 2015-015, -016, -017,  
at 5

Exemptions are legislative policy choices the Board must respect

*Gregory v. MMC Realty Corp. & Maine Medical Center*, No. 2000-001,  
at 37

The wisdom of the legislative scope of exemptions is not for courts (or the Board) to consider

*Soil Preparation, Inc. v. Town of Plymouth*, Nos. 2015-015, -016, -017,  
at 5

Exemption cases are abatement cases over which the Board has jurisdiction

*New Marblehead North Housing Corp. v. Taylor*, No. 90-10, at 1-2  
*The Salvation Army v. City of Lewiston*, No. 95-119, at 2  
*Francis Small Heritage Trust, Inc. v. Town of Limington*, Nos. 2009-032  
 & 2010-016, at 2 n.2 (an exemption is nothing more than a  
 total abatement)  
*Camp O-At-Ka, Inc. v. Town of Sebago*, No. 2016-010, at 2  
*Maine Coast Medical Realty, Inc. v. City of Ellsworth*, Nos. 2018-013,  
 -014 & -015, at 7

What is necessary to file an application for exemption: the interplay of 36  
 M.R.S. § 652(1)(C)(4) and § 652(last ¶)

*Gregory v. MMC Realty Corp. & Maine Medical Center*, No. 2000-001,  
 at 55-66

Taxation is the rule and exemption the exception; and all doubts are  
 weighed against exemption and exemptions are construed strictly

*Great Cove Boat Club, Inc. v. Town of Eliot*, Nos. 91-01 & 91-21,  
 at 7  
*Big Lake Camp Meeting Ass'n v. Bureau of Taxation*, No. 95-013, at 2-3  
*Gregory v. MMC Realty Corp. & Maine Medical Center*, No. 2000-001,  
 at 33-34, 36, 62  
*Francis Small Heritage Trust, Inc. v. Town of Limington*, Nos. 2009-032  
 & 2010-016, at 3  
*Soil Preparation, Inc. v. Town of Plymouth*, Nos. 2015-015, -016, -017,  
 at 5

Exemptions should be strictly construed

*Francis Small Heritage Trust, Inc. v. Town of Limington*, Nos. 2009-032  
 & 2010-016, at 3 (because they conflict with the universal  
 obligation of all to contribute a just proportion toward the  
 public burden)  
*Soil Preparation, Inc. v. Town of Plymouth*, Nos. 2015-015, -016, -017,  
 at 5

All doubts and uncertainties as to the meaning of a statute are to be weighed against exemption

*Francis Small Heritage Trust, Inc. v. Town of Limington*, Nos. 2009-032 & 2010-016, at 3

*Soil Preparation, Inc. v. Town of Plymouth*, Nos. 2015-015, -016, -017, at 5

Two views: (1) exemptions are not to be extended to situations not clearly coming within the scope of the statutory provisions *vs.* (2) this does not require the narrowest reading possible; strict construction still must be reasonable

*Gregory v. MMC Realty Corp. & Maine Medical Center*, No. 2000-001, at 36

Taxpayer's burden to prove it qualifies for exemption

*Given v. City of Lewiston*, No. 92-103, at 2 (personal property exemption: preponderance of the evidence)

*Big Lake Camp Meeting Ass'n v. Bureau of Taxation*, No. 95-013, at 2, 3

*The Salvation Army v. City of Lewiston*, No. 96-031, at 2

*Gregory v. MMC Realty Corp. & Maine Medical Center*, No. 2000-001, at 35-36, 59 n.24 (Law Court has stated one's burden of qualifying for an exemption in two different ways: (1) come unmistakably within the exemption and (2) fair preponderance of the evidence)

*Francis Small Heritage Trust, Inc. v. Town of Limington*, Nos. 2009-032 & 2010-016, at 3

One claiming exemption has the burden to bring its case unmistakably within the spirit and intent of the act creating the exemption

*Soil Preparation, Inc. v. Town of Plymouth*, Nos. 2015-015, -016, -017, at 5-6

Strict construction should be followed to avoid interpretations yielding overbroad exemptions, yet the strict construction must still be a reasonable construction

*Soil Preparation, Inc. v. Town of Plymouth*, Nos. 2015-015, -016, -017,



at 6

An exemption from taxation, while entitled to reasonable interpretation in accordance with its purpose is not to be extended by application to situations not clearly coming within the scope of the exemption provisions

*Soil Preparation, Inc. v. Town of Plymouth*, Nos. 2015-015, -016, -017,  
at 6

Where *appraised* value of property as a whole consists of both exempt and nonexempt property, without distinguishing between them, the *assessed* value of the exempt property cannot simply be subtracted from the appraised value of the property as whole

*Madison Paper Industries v. Town of Madison*, No. 2016-009, at 25  
(BETE: Business Equipment Tax Exemption, 36 M.R.S. §§ 691-699)

Application for exemption must be filed by April 1<sup>st</sup> of tax year in which classification is sought, 36 M.R.S. § 652(last ¶)

*Gregory v. MMC Realty Corp. & Maine Medical Center*, No. 2000-001,  
at 44, 56

*Camp O-At-Ka, Inc. v. Town of Sebago*, No. 2016-010, at 1

*Maine Coast Medical Realty, Inc. v. City of Ellsworth*, Nos. 2018-013,  
-014 & -015, at 7-8

Abatement is always initially requested from the assessor

*Camp O-At-Ka, Inc. v. Town of Sebago*, No. 2016-010, at 3

A request for tax exempt status is not itself an application for abatement, which can be made only after the city's denial of the request; section 652(1) sets forth no appeal procedure

*The Salvation Army v. City of Lewiston*, No. 95-119, at 2

*Maine Coast Medical Realty, Inc. v. City of Ellsworth*, Nos. 2018-013,  
-014 & -015, at 7

Application for abatement must be filed within 185 days of commitment, and if denied (or deemed denied) must be appealed within 60 days

*Camp O-At-Ka, Inc. v. Town of Sebago*, No. 2016-010, at 3  
*Maine Coast Medical Realty, Inc. v. City of Ellsworth*, Nos. 2018-013, -014 & -015, at 4

36 M.R.S. § 652 does not set forth an appeal procedure

*The Salvation Army v. City of Lewiston*, No. 95-119, at 2  
*Camp O-At-Ka, Inc. v. Town of Sebago*, No. 2016-010, at 3  
*Maine Coast Medical Realty, Inc. v. City of Ellsworth*, Nos. 2018-013, -014 & -015, at 7

The Board cannot hear a claim that has not been properly appealed through the municipal level

*Camp O-At-Ka, Inc. v. Town of Sebago*, No. 2016-010, at 4 (premature request, no timely application after commitment)

Once an exemption is granted, it remains in effect until the assessor has evidence to disqualify it, 36 M.R.S. § 652(last ¶)

*Gregory v. MMC Realty Corp. & Maine Medical Center*, No. 2000-001, at 44-45, 64

One who has obtained an exemption is entitled to retain it year to year until it is denied by the assessors, at which point the taxpayer again must prove its eligibility for the exemption

*Soil Preparation, Inc. v. Town of Plymouth*, Nos. 2015-015, -016, -017, at 6

Subsequent purchase of property by tax exempt entity does not permit rebate of taxes for period of time that that entity owned property

*Finance Authority of Maine v. City of Caribou*, No. 90-36, at 2

Tax exemptions cannot be prorated for a part of a year

*New Marblehead North Housing Corp. v. Taylor*, No. 90-10, at 6

Property under construction on April 1<sup>st</sup> is eligible for exemption

*New Marblehead North Housing Corp. v. Taylor*, No. 90-10, at 5-7

Relevant question is whether the property is devoted to the purposes of the owner-institution, not actual, physical use, as of April 1<sup>st</sup>

*New Marblehead North Housing Corp. v. Taylor*, No. 90-10, at 6-7

Public property, 36 M.R.S. § 651, is presumptively exempt from property taxation, so taxation of it is generally disfavored

*Town of Standish v. State of Maine, Bureau of Revenue Services*,  
No. 99-031, at 3 n.2

*Gregory v. MMC Realty Corp. & Maine Medical Center*, No. 2000-001,  
at 30-31

A benevolent and charitable corporation is one organized and conducted exclusively for such purposes, 36 M.R.S. § 652 (1)(C)(1)

*Marcotte Congregate Housing, Inc. v. City of Lewiston*, Nos. 93-23 &  
93-24, at 7

*Big Lake Camp Meeting Ass'n v. Bureau of Taxation*, No. 95-013, at 3

Benevolent and charitable are synonymous terms

*Gregory v. MMC Realty Corp. & Maine Medical Center*, No. 2000-001,  
at 42

Definitions of these terms

*Gregory v. MMC Realty Corp. & Maine Medical Center*, No. 2000-001,  
at 42-43

For an activity to be benevolent and charitable it must be for the benefit of an indefinite number of persons, either by bringing the minds and hearts under the influence of education or religion, by relieving their bodies from disease, suffering, or constraint, by assisting them to establish themselves in life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government

*Gregory v. MMC Realty Corp. & Maine Medical Center*, No. 2000-001, at 43  
*Francis Small Heritage Trust, Inc. v. Town of Limington*, Nos. 2009-032 & 2010-016, at 4

To be a benevolent and charitable corporation it must exist exclusively and purely for such purposes

*Gregory v. MMC Realty Corp. & Maine Medical Center*, No. 2000-001, at 42  
*Francis Small Heritage Trust, Inc. v. Town of Limington*, Nos. 2009-032 & 2010-016, at 4

This is primarily a question of law

*Francis Small Heritage Trust, Inc. v. Town of Limington*, Nos. 2009-032 & 2010-016, at 4

If the Board determines that property is not organized and conducted exclusively for benevolent and charitable purposes, no further analysis is needed

*Francis Small Heritage Trust, Inc. v. Town of Limington*, Nos. 2009-032 & 2010-016, at 4-5 (Board finds trust did not qualify for exempt status because, under its articles of incorporation, its activities were not restricted solely to benevolent and charitable purposes)

Synthesis from Maine cases on what factors determine whether a corporation is benevolent and charitable

*Gregory v. MMC Realty Corp. & Maine Medical Center*, No. 2000-001, at 71-72

Land conservation is not thought to constitute a benevolent and charitable use

*Francis Small Heritage Trust, Inc. v. Town of Limington*, Nos. 2009-032 & 2010-016, at 7

Application of factors to modern health care facilities

*Gregory v. MMC Realty Corp. & Maine Medical Center*, No. 2000-001, at 72-78

36 M.R.S. § 652(1)(A) requires an entity to be incorporated in Maine

*The Salvation Army v. City of Lewiston*, No. 91-29 (Case I), at 3  
*The Salvation Army v. City of Lewiston*, No. 96-031, at 3 (Board notes contrary holding of Superior Court)

*Gregory v. MMC Realty Corp. & Maine Medical Center*, No. 2000-001, at 41

*Francis Small Heritage Trust, Inc. v. Town of Limington*, Nos. 2009-032 & 2010-016, at 4

Real and personal property owned by benevolent and charitable corporations that is used and occupied by such corporations for their own purposes are exempt, 36 M.R.S. § 652(1)(A)

*Marcotte Congregate Housing, Inc. v. City of Lewiston*, Nos. 93-23 & 93-24, at 7

*The Salvation Army v. City of Lewiston*, No. 96-031, at 3 (thrift store)

*Gregory v. MMC Realty Corp. & Maine Medical Center*, No. 2000-001, at 40

*Francis Small Heritage Trust, Inc. v. Town of Limington*, Nos. 2009-032 & 2010-016, at 4

This is primarily a question of fact

*Francis Small Heritage Trust, Inc. v. Town of Limington*, Nos. 2009-032 & 2010-016, at 4

36 M.R.S. § 652(1)(C) adds further requirements to subsections (1)(A) and (1)(B)

*Gregory v. MMC Realty Corp. & Maine Medical Center*, No. 2000-001, at 43-44 & n.18

Exemption as a scientific institution, 36 M.R.S. § 652(1)(B)

*Francis Small Heritage Trust, Inc. v. Town of Limington*, Nos. 2009-032 & 2010-016, at 7 (claim based on educational activities found to be only incidental to trust's main objective of preserving natural resources)

36 M.R.S. § 652(1)(C)(1) requires that an entity be organized exclusively for benevolent and charitable purposes, and being a religious organization is not necessarily that

*The Salvation Army v. City of Lewiston*, No. 91-29 (Case I), at 3-4  
*Big Lake Camp Meeting Ass'n v. Bureau of Taxation*, No. 95-013, at 3  
*Gregory v. MMC Realty Corp. & Maine Medical Center*, No. 2000-001, at 29-30 (exemption for religious institutions is not a matter of right, but such institutions may qualify for exemptions otherwise established)

Certain properties of religious sects and denominations are exempt, 36 M.R.S. § 652(1)(G)

*Big Lake Camp Meeting Ass'n v. Bureau of Taxation*, No. 95-013, at 2 (religious tabernacle)  
*Gregory v. MMC Realty Corp. & Maine Medical Center*, No. 2000-001, at 30

Property owned by a benevolent and charitable corporation that is occupied and used by another benevolent and charitable corporation is exempt, 36 M.R.S. § 652(1)(J)

*Marcotte Congregate Housing, Inc. v. City of Lewiston*, Nos. 93-23 & 93-24, at 7-8  
*Gregory v. MMC Realty Corp. & Maine Medical Center*, No. 2000-001, at 40

Under 36 M.R.S. §§ (1)(A) and (1)(J) a taxpayer need not be tax exempt under IRS Code § 501(c)(3), but it must be a nonprofit and only non-profits can qualify for section 501(c)(3) status

*Gregory v. MMC Realty Corp. & Maine Medical Center*, No. 2000-001,  
at 41

Property leased by non-profit hospitals, etc. are tax exempt, 36 M.R.S. § 652(1)(K)

*Gregory v. MMC Realty Corp. & Maine Medical Center*, No. 2000-001,  
at 40-41

Other health related entities may qualify for exemptions as benevolent and charitable corporations or as scientific and literary institutions

*Gregory v. MMC Realty Corp. & Maine Medical Center*, No. 2000-001,  
at 31

Leasing under 36 M.R.S. § 562 (1)(K) does not require a written lease unless this would violate another provision of Maine law

*Gregory v. MMC Realty Corp. & Maine Medical Center*, No. 2000-001,  
at 52-54

36 M.R.S. § 652(1)(K) does require IRS Code § 501(c)(3) status

*Gregory v. MMC Realty Corp. & Maine Medical Center*, No. 2000-001,  
at 41

36 M.R.S. § 652(last ¶) articulates procedures required to apply for exemptions and is applicable to section 652 in its entirety

*Gregory v. MMC Realty Corp. & Maine Medical Center*, No. 2000-001,  
at 44

36 M.R.S. § 652(last ¶) requires, among other things, a new owner of property to reapply for tax exemption

*Marcotte Congregate Housing, Inc. v. City of Lewiston*, Nos. 94-16, 94-17, 95-147, 95-148, 96-33–96-35, at 2

The test for qualifying for exemption is (1) ownership *and* (2) *either* occupancy *or* use

*Gregory v. MMC Realty Corp. & Maine Medical Center*, No. 2000-001, at 41

Sole use doctrine: if a benevolent and charitable corporation owns property that is in any way occupied or used for purposes inconsistent with the corporation, *none* of the property may qualify for exemption

*Gregory v. MMC Realty Corp. & Maine Medical Center*, No. 2000-001, at 2, 47-50

Partial exemptions: under former statutes, property is exempt to the extent that it is used consistent with purposes of a tax exempt entity, but not otherwise

*Marcotte Congregate Housing, Inc. v. City of Lewiston*, Nos. 93-23 & 93-24, at 8-9 (*N. B.*: this approach was rejected by the Law Court)

*Gregory v. MMC Realty Corp. & Maine Medical Center*, No. 2000-001, at 45-47, 49-50

Partial exemptions still exist under 36 M.R.S. § 652(1)(G) and (H)

*Gregory v. MMC Realty Corp. & Maine Medical Center*, No. 2000-001, at 47 n.20

Incidental use: use of property that, strictly speaking, may be inconsistent with the purposes of the tax exempt entity but are intimately tied to its successful operation

*Gregory v. MMC Realty Corp. & Maine Medical Center*, No. 2000-001, at 48-50 (may be occasional use of all the property or part of the property more regularly; some economic benefit does not detract from incidental use)



Whether property is used exclusively for benevolent and charitable purposes

*The Salvation Army v. City of Lewiston*, No. 91-29 (Case II), at 3  
*Marcotte Congregate Housing, Inc. v. City of Lewiston*, Nos. 93-23 &  
 93-24, at 7-8

*Marcotte Congregate Housing, Inc. v. City of Lewiston*, Nos. 94-16,  
 94-17, 95-147, 95-148, 96-33–96-35, at 2 (no change in use  
 since Law Court decision)

Exclusive use requirement, 36 M.R.S. § 652(1), is satisfied so long as any  
 contrary use of the property is incidental to dominant purpose of the  
 benevolent and charitable corporation and any income is not motivated by  
 profit but by providing services consistent with the corporation's purpose

*Marcotte Congregate Housing, Inc. v. City of Lewiston*, Nos. 93-23 &  
 93-24, at 8

A non-profit corporation that operates federally subsidized housing for low-  
 income and disabled elderly persons is a benevolent and charitable  
 institution

*Marcotte Congregate Housing, Inc. v. City of Lewiston*, Nos. 93-23 &  
 93-24, at 8

Pretense to avoid taxation—where the taxpayer conducts itself quite  
 inconsistently with what it professes—will deny qualification for exemption,  
 but otherwise motive to obtain exemption is permissible

*Gregory v. MMC Realty Corp. & Maine Medical Center*, No. 2000-001,  
 at 36-37, 68-69

Stock-in-trade, 36 M.R.S. § 655(1)(B)

*Given v. City of Lewiston*, No. 92-103, at 2-3 (videotapes for sale,  
 either wholesale or retail, are stock-in-trade and therefore  
 exempt)

Reliance on Property Tax Bulletin #5, exemptions for charitable and benevolent corporations

*Gregory v. MMC Realty Corp. & Maine Medical Center*, No. 2000-001,  
at 6

Interplay of Maine Condominium Act, 33 M.R.S. §§ 1601-101–1601-118

*Gregory v. MMC Realty Corp. & Maine Medical Center*, No. 2000-001,  
at 37-40, 69-71 (each condominium is separately owned and  
so must be taxed separately)

For a condominium unit to be exempt it must be determined if it is owned  
by a tax exempt entity

*Gregory v. MMC Realty Corp. & Maine Medical Center*, No. 2000-001,  
at 2

Water pollution control facilities, 36 M.R.S. § 656(1)(E)

*Soil Preparation, Inc. v. Town of Plymouth*, Nos. 2015-015, -016, -017

## V. Classified Use Properties

### **Tree Growth Tax Law**

Constitutional authority to provide for assessment of timberlands and woodlands based on current use, Me. Const. art. IX, § 8, cl. 2

*Blanch v. Town of Lubec*, No. 96-048, at 2

Enactment of the Tree Growth Tax Law, 1971

*Hunt, Trustee, Hunt Family Irrevocable Trust v. Maine Revenue Services*, Nos. 2009-020 & -021, at 1

Purpose of the Tree Growth Tax Law, 36 M.R.S. § 572; see also § 563

*Blanch v. Town of Lubec*, No. 96-048, at 2

*Pachowsky v. Town of Clinton*, No. 2001-005, at 3

*Key Bank National Ass'n v. Town of Phippsburg*, No. 2006-002, at 6-7

*McClure v. Town of Lubec*, No. 2010-013, at 5

State Tax Assessor, through the Property Tax Division of Maine Revenue Services, administers assessment and taxation of tree growth in the unorganized territory

*Hunt, Trustee, Hunt Family Irrevocable Trust v. Maine Revenue Services*, Nos. 2009-020 & -021, at 2, 5

Tree Growth Tax Law is to be liberally construed, 36 M.R.S. § 584-A

*Page v. Town of Damariscotta*, No. 99-014, at 7 n.5 (but this does not mean facts can be forced to fit the law)

*Pachowsky v. Town of Clinton*, No. 2001-005, at 3, 9 (but this does not overcome plain language of specific statute in tree growth law)

*KeyBank National Ass'n v. Town of Phippsburg*, No. 2006-002, at 18 (Board thus should construe evidence to support tree growth classification where possible)

*Pierce v. Maine Revenue Services*, No. 2006-007, at 8 (but this does

not excuse filing either statement required by section 574-B(3))

*McClure v. Town of Lubec*, No. 2010-013, at 5 (consider also section 572)

Definitions under statute, principally 36 M.R.S. § 573

*Blanch v. Town of Lubec*, No. 96-048, at 2 (“forest land,” 36 M.R.S. § 573(3), requires current use as presently forested; “forest plan,” section 573(3-A), includes reference to “a standing crop of timber”; this is consistent with a dictionary definition of “forest”)

*Rum Cove, LLC v. Town of Westport Island*, No. 2008-032, at 5 (“forest land,” section 573(3))

*Hunt, Trustee, Hunt Family Irrevocable Trust v. Maine Revenue Services*, Nos. 2009-020 & -021, at 11 (“tax” includes penalties and interest)

Tree growth cases are abatement cases, 36 M.R.S. § 583, subject to 36 M.R.S. § 841

*Fasse v. Town of St. Albans & Town of Ripley*, No. 2002-005, at 13

*Fowler v. Town of Lubec*, 2004-002, at 2

*Zorn v. Town of Lubec*, No. 2004-007, at 2

*Gray v. Town of Sedgwick*, No. 2005-005, at 2

*KeyBank National Assn. v. Town of Phippsburg*, No. 2006-002, at 7

*Campbell v. Town of Brownville*, No. 2006-003, at 3

*Kendall v. Town of Perry*, No. 2008-004, at 1

*Dale Henderson Logging, Inc. v. Town of Steuben*, No. 2008-016, at 8 (this includes abatement of withdrawal penalties)

*Rum Cove, LLC v. Town of Westport Island*, No. 2008-032, at 2

*Bayroot, LLC v. Highland Plantation*, Nos. 2009-004, -005 & -033, at 2

*Brown v. Town of Bucksport*, No. 2009-031, at 2 (order on motion to dismiss); at 15 (Board decision; this includes abatement of withdrawal penalties)

*Francis Small Heritage Trust, Inc. v. Town of Limington*, Nos. 2009-032 & 2010-016, at 1

*Prentiss & Carlisle Management Co., Inc. v. Town of Merrill and Town of Smyrna*, Nos. 2010-007 & 2010-006, at 2

*Smith v. Town of Livermore Falls*, No. 2010-008, at 3-4, 5 (order on jurisdiction)

*Cyr Family Ltd. Partnership v. Town of Wade*, No. 2011-010, at 1

A party must affirmatively demonstrate that the Board has jurisdiction

*Hunt, Trustee, Hunt Family Irrevocable Trust v. Maine Revenue Services*, Nos. 2009-020 & -021, at 8 (where petition for assessment review, response, and information sheets do not so demonstrate)

*Smith v. Town of Livermore Falls*, No. 2010-008, at 6 (order on jurisdiction)

*Peckham & Trott v. Town of Lake View Plantation*, No. 2014-003, at 6 (dismissal order)

The Board has no jurisdiction to classify land as tree growth when the taxpayer had not sought that classification in application for abatement

*Page v. Town of Damariscotta*, No. 99-014, at 6-7

The Board has no authority to entertain a substantive constitutional challenge to the Tree Growth Tax Law

*Fowler v. Town of Lubec*, No. 2004-002, at 4 (cannot address taxpayer's assertions that he was treated unfairly and that the statute does not provide due process for a claimed taking of his property, but notes that taxpayer availed himself of all statutory process available and that penalty for withdrawal is not a taking)

*McLaughlin v. Town of Dexter*, No. 2010-001, at 10-11

*McClure v. Town of Lubec*, No. 2010-013, at 5

*Ocean State Job Lot of Belfast, LLC v. City of Belfast*, No. 2011-022-A, at 9 n.10 (order on motion to dismiss)

To qualify for tree growth, land must be currently forested

*Blanch v. Town of Lubec*, No. 96-048, at 3

To qualify for tree growth, trees must be subject to harvesting for commercial use

*Rum Cove, LLC v. Town of Westport Island*, No. 2008-032, at 8-9

*Francis Small Heritage Trust, Inc. v. Town of Limington*, Nos. 2009-032

& 2010-016, at 6 (where forested land may be harvested for commercial use, it cannot for this reason alone qualify for a benevolent and charitable exemption)

Where tree growth land is subjected to a conservation easement prior to 1982, the tree growth need not be commercially harvested, 36 M.R.S. § 573(3)(C)

*Old Point, Inc. v. Town of Lamoine*, Nos. 2010-009 & 2011-016,  
at 1 n.1

Tax advantage for tree growth property is that it is taxed according to its current use, not fair market value

*Dale Henderson Logging, Inc. v. Town of Steuben*, No. 2008-016, at 8

Valuation of tree growth annually by Maine Revenue Services based on data collected by Bureau of Forestry

*Brown v. Town of Bucksport*, No. 2009-031, at 13  
*Old Point, Inc. v. Town of Lamoine*, Nos. 2010-009 & 2011-016, at 5

The Board has no authority to alter tree growth values, which are based on statute, 36 M.R.S. §§ 576, 577, with reference to prices of standing timber of the relevant forest type in a given area during the previous calendar year and, by MRS Reg. 08-125, ch. 201 § (4)(B)(1), on 100% of per acre values determined by State Tax Assessor

*Town of Shirley v. Maine Revenue Services*, No. 2002-016, at 2-3  
*Old Point, Inc. v. Town of Lamoine*, Nos. 2010-009 & 2011-016, at 5

Failure of town to apply tree growth tax rates properly

*Filaroska v. Town of Vienna*, No. 90-44, at 3

Certified ratio analysis of assessed values, 36 M.R.S. § 578, explained or described

*Town of Shirley v. Maine Revenue Services*, No. 2002-016, at 2

*Bayroot, LLC v. Highland Plantation*, Nos. 2009-004, -005 & -033, at 1-2 (Board did not reach question whether failure to adjust current use value of property by the appropriate ratio under section 578 is an illegality unrelated to valuation)  
*Haggard v. Town of Swan's Island*, No. 2010-012, at 3 n.5

Valuing tree growth, and nontree growth area within tree growth parcel, 36 M.R.S. §§ 576, 576-A, 576-B, 577

*Sayer v. Town of Canton*, No. 99-022, at 5-6, 7 (farmland and open space law implicated tree growth where farmland includes woodlands)  
*Prentiss & Carlisle Management Co., Inc. v. Town of Merrill and Town of Smyrna*, Nos. 2010-007 & 2010-006, at 2 (areas other than forest land within tree growth are to be valued at fair market value pursuant to section 576-A); at 3-8 (discussion using cost approach)

It is the taxpayer's responsibility to obtain information and do what is necessary to maintain his property in tree growth if that is his desire

*Everett v. Town of Waterford*, No. 93-136, at 2  
*Richmond v. Town of Moscow*, No. 2004-004, at 3 (landowner's dispute over acreage does not excuse failure to file timely application for tree growth)  
*KeyBank National Ass'n v. Town of Phippsburg*, No. 2006-002, at 14 & n.8  
*Pierce v. Maine Revenue Services*, No. 2006-007, at 4

Application for tree growth requires unanimous consent of all owners, 36 M.R.S. § 574-B

*KeyBank National Ass'n v. Town of Phippsburg*, No. 2006-002, at 7, 15

Assessors need not search out all joint owners for assurance of their consent

*KeyBank National Ass'n v. Town of Phippsburg*, No. 2006-002, at 16

Application need not be signed by all co-owners

*KeyBank National Ass'n v. Town of Phippsburg*, No. 2006-002, at 16

Whether application needs to list all owners

*Rum Cove, LLC v. Town of Westport Island*, No. 2008-032, at 6  
(issue waived)

Taxpayer need not be given an opportunity to amend a deficient application for classification, 36 M.R.S. § 579

*See Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2012-009, at 23 n.10

Acts of owner may be taken by an agent, which bind the owner, 36 M.R. S. § 579(8<sup>th</sup> ¶)

*KeyBank National Ass'n v. Town of Phippsburg*, No. 2006-002, at 19  
*Brown v. Town of Bucksport*, No. 2009-031, at 7 n.5

Assessment is presumed correct, and burden is on taxpayer to show that the assessor is manifestly wrong

*Davis v. Town of Lamoine*, No. 2002-003, at 5 (withdrawal penalty)  
*Fowler v. Town of Lubec*, 2004-002, at 2 (same)  
*Richmond v. Town of Moscow*, No. 2004-004, at 3 (same)  
*Zorn v. Town of Lubec*, No. 2004-007, at 3(same)  
*Gray v. Town of Sedgwick*, No. 2005-005, at 2  
*KeyBank National Ass'n v. Town of Phippsburg*, No. 2006-002, at 17;  
at 16-18 (burden of showing assessor's classification decision was manifestly wrong can be placed on taxpayer as the party in the best position to adduce evidence of owners' intent)  
*Pierce v. Maine Revenue Services*, No. 2006-007, at 10 (withdrawal penalty)  
*Kendall v. Town of Perry*, No. 2008-004, at 2, 3 (location and dimension of areas of buildings within tree growth, and assessment of those areas, also presumed correct)  
*Davis v. Town of Lamoine and Maine Coast Baptist Church v. Town of Lamoine*, Nos. 2009-001 & -002, at 4  
*Brown v. Town of Bucksport*, No. 2009-031, at 15; at 19 (withdrawal



penalty)  
*Prentiss & Carlisle Management Co., Inc. v. Town of Merrill and Town of Smyrna*, Nos. 2010-007 & 2010-006, at 2  
*Day v. Town of Madison*, No. 2014-006, at 3

In absence of contrary information, municipality's assessment prevails

*Hornberger v. Town of Bremen*, No. 86-02, at 4  
*Day v. Town of Madison*, No. 2014-006, at 3 (taxpayer must offer credible evidence of value against which assessment may be compared in order to establish assessed value is manifestly wrong, and only then may the Board engage in an independent determination of value)

Penalties assessed for withdrawal of land from tree growth are presumed correct, and assessor must be shown to be manifestly wrong

*Davis v. Town of Lamoine*, No. 2002-003, at 5  
*Fowler v. Town of Lubec*, 2004-002, at 2  
*Richmond v. Town of Moscow*, No. 2004-004, at 3  
*Zorn v. Town of Lubec*, No. 2004-007, at 3  
*Pierce v. Maine Revenue Services*, No. 2006-007, at 10  
*Brown v. Town of Bucksport*, No. 2009-031, at 19  
*Day v. Town of Madison*, No. 2014-006, at 3

Landowner cannot establish assessment is manifestly wrong in the absence of evidence that withdrawal penalty is excessive

*Zorn v. Town of Lubec*, No. 2004-007, at 4  
*Pierce v. Maine Revenue Services*, No. 2006-007, at 10 (no flaw in methodology of calculating withdrawal penalty)  
*Brown v. Town of Bucksport*, No. 2009-031, at 19

Application need not be made on prepared form sent by municipality

*Davis v. Town of Lamoine and Maine Coast Baptist Church v. Town of Lamoine*, Nos. 2009-001 & -002, at 5

Application—the “schedule”—must show location of each forest type, 36 M.R.S. § 579(1<sup>st</sup> ¶)

*Brown v. Town of Bucksport*, No. 2009-031, at 11 n.13

Application must be in writing, 36 M.R.S. § 579(1<sup>st</sup> ¶)

*Russell v. Town of Fryeburg* No. 91-33, at 2

*Crosby v. Town of Belgrade*, No. 98-022, at 1

*Fasse v. Town of St. Albans & Town of Ripley*, No. 2002-005, at 11

*Smith v. Town of Livermore Falls*, No. 2010-008, at 6 (order on jurisdiction)

Failure to meet the requirement that application must be filed in duplicate, 36 M.R.S. § 579(1<sup>st</sup> ¶), is a technical violation that, in the absence of prejudice to the town, does not preclude an appeal

*Rum Cove, LLC v. Town of Westport Island*, No. 2008-032, at 6

36 M.R.S. § 579(1<sup>st</sup> ¶) allows assessors to request information upon 120 days' notice

*Dale Henderson Logging, Inc. v. City of Old Town*, No. 94-05, at 3

*Fasse v. Town of St. Albans & Town of Ripley*, No. 2002-005, at 11 n.9

Failure of parties to comply with order of the Board to supply information

*Hornberger v. Town of Bremen*, No. 86-02, at 1

*Richmond v. Town of Moscow*, No. 2004-004, at 2, 3 (not providing assessors with requested information resulted in inability of landowner to file timely request for tree growth)

Application for classification as tree growth must be filed by April 1<sup>st</sup> of the first tax year in which classification is sought, 36 M.R.S. § 579(1<sup>st</sup> ¶)

*Russell v. Town of Fryeburg* No. 91-33, at 2

*Fasse v. Town of St. Albans & Town of Ripley*, No. 2002-005, at 10-11 & n. 10 (suggesting April 1<sup>st</sup> deadline is mandatory)

*Fowler v. Town of Lubec*, 2004-002, at 3 n.3

*Maine Coast Medical Realty, Inc. v. City of Ellsworth*, Nos. 2018-013, -014 & -015, at 6

Whether application is timely if amended after April 1<sup>st</sup>

*Rum Cove, LLC v. Town of Westport Island*, No. 2008-032, at 6  
(issue waived)

Application for tree growth classification requires that taxpayer identify the various areas included in the application, including building areas, which are assessed at fair market value

*Kendall v. Town of Perry*, No. 2008-004, at 5

Contents of forestry management plan, 36 M.R.S. § 573(3-A)

*Brower, Denis & Powers v. Town of Starks*, No. 95-007, at 3 (law requires plan to include location of water bodies and wildlife habitat, but presence of such does not disqualify property from tree growth)

36 M.R.S. § 575-A provides for landowner to make forest management and harvest plan available to the assessors and the Department of Conservation, Bureau of Forestry to provide assistance in evaluating the plan

*Rum Cove, LLC v. Town of Westport Island*, No. 2008-032, at 4-5  
(but Bureau of Forestry will not opine on whether a taxpayer's covenant or recorded declaration prohibits cutting of trees)

The Board is not obligated to accept the conclusion of the Bureau of Forestry that a management plan is acceptable

*Rum Cove, LLC v. Town of Westport Island*, No. 2008-032, at 8

Argument that management plan is adequate although it does not call for harvesting of trees within 10 years, and therefore conservation easement that prohibits commercial activity cannot deprive landowner of tree growth status

*Rum Cove, LLC v. Town of Westport Island*, No. 2008-032, at 7-9  
(conservation easement prohibiting commercial activity)

disqualifies land from tree growth classification)

Taxpayer has 185 days from commitment of taxes to file application for abatement

- Davis v. Town of Lamoine*, No. 2002-003, at 2
- Fowler v. Town of Lubec*, 2004-002, at 2
- Curtis v. Town of Sherman*, No. 2004-005, at 3 (order on jurisdiction)
- Zorn v. Town of Lubec*, No. 2004-007, at 2
- Gray v. Town of Sedgwick*, No. 2005-005, at 2
- Campbell v. Town of Brownville*, No. 2006-003, at 3
- Kendall v. Town of Perry*, No. 2008-004, at 1
- KeyBank National Ass'n v. Town of Phippsburg*, No. 2006-002, at 6
- Dale Henderson Logging, Inc. v. Town of Steuben*, No. 2008-016, at 3-4
- Rum Cove, LLC v. Town of Westport Island*, No. 2008-032, at 2
- Bayroot, LLC v. Highland Plantation*, Nos. 2009-004, -005 & -033, at 2-3 (errors relating to valuation of property must be filed within 185 days from commitment although section 841(1) does not speak of valuation)
- Francis Small Heritage Trust, Inc. v. Town of Limington*, Nos. 2009-032 & 2010-016, at 1
- McLaughlin v. Town of Dexter*, No. 2010-001, at 11
- Smith v. Town of Livermore Falls*, No. 2010-008, at 3-4 (order on jurisdiction)
- Haggard v. Town of Swan's Island*, No. 2010-012, at 5 (Board must dismiss an appeal in which the taxpayer did not request an abatement within 185 days of commitment); at 4-5 (taxpayer excused from complying when town affirmatively misstated how and when she could challenge withdrawal penalty)
- Peckham & Trott v. Town of Lake View Plantation*, No. 2014-003, at 3, 5 (dismissal order)

Whether a municipality has provided proper notice to the taxpayer that its 36 M.R.S. § 574-B statements are due does not extend taxpayer's 185-day period to file a request for abatement

*McLaughlin v. Town of Dexter*, No. 2010-001, at 10

What constitutes an illegality, error, or irregularity in 36 M.R.S. § 841(1) (2<sup>nd</sup> ¶)

*Haggard v. Town of Swan's Island*, No. 2010-012, at 9-10 & n.7 (citing Law Court decisions suggesting illegality corresponds with irregularity)

36 M.R.S. § 841(1)(2<sup>nd</sup> ¶) is addressed to the municipal officers, not assessors, because it specifically excludes correcting an error in the valuation of property

*Dale Henderson Logging, Inc. v. Town of Steuben*, No. 2008-016, at 8 n.6

Municipality need not notify taxpayer that his application for exemption classification has been granted or denied

*KeyBank National Ass'n v. Town of Phippsburg*, No. 2006-002, at 14 (grant of tree growth classification)  
*Maine Coast Medical Realty, Inc. v. City of Ellsworth*, Nos. 2018-013, -014 & -015, at 8 (denial of benevolent and charitable classification)

Tax bill stating "tree growth" is sufficient for the Board to find property was classified as such

*Filaroska v. Town of Vienna*, No. 90-44, at 2

Real estate transfer tax declaration put taxpayers on notice that property was classified

*Pierce v. Maine Revenue Services*, No. 2006-007, at 3, 5

Taxpayer had to file map or plan to satisfy 36 M.R.S. § 579, but since town admitted at least a certain amount of land belonged in tree growth, that much should have been so classified

*Edward C. and Cynthia M. Hunt v. Town of Phippsburg*, No. 91-41, at 5  
*Kenneth and Julie Hunt v. Town of Phippsburg*, No. 91-42, at 5-6

The Board orders reclassification as tree growth upon agreement of town

*Coulter v. Town of Oxford*, No. 91-95, at 1

The Board finds entire parcel, including road and stream, should be classified as tree growth, 36 M.R.S. § 574-B

*Gray v. Town of Blue Hill*, No. 91-92, at 1

Property in tree growth treated as one parcel though divided by a road, 36 M.R.S. § 574-B

*Kendall v. Town of Perry*, No. 2008-004, at 2

It is reasonable for a municipality to consider a parcel of land as a whole when enrolling property as tree growth

*Gray v. Town of Sedgwick*, No. 2005-005 at 8

Physical features and man-made infrastructures ancillary to tree growth, such as roads, are not excluded from valuation but are valued at fair market value rather than at current use as is tree growth

*Prentiss & Carlisle Management Co., Inc. v. Town of Smyrna*,  
No. 2015-001, at 2 (order on motion to dismiss)

Throughout the Tree Growth Tax Law, classified property is addressed in terms of acres, so that while the law does not specifically prescribe the particular area of buildings to be assessed at fair market value within tree growth that is to be done in acres

*Kendall v. Town of Perry*, No. 2008-004, at 5  
*Smith v. Town of Livermore Falls*, No. 2010-008, at 1 n.1

Challenge to town's use of enhancement factor to recapture revenue lost when land is in tree growth

*Elisofan v. Town of Vinalhaven*, No. 91-65, at 3 (issue not decided; see also farmland and open space cases)

Increase in assessment of non-tree growth land, arguably done to allow town to recoup revenue lost from land in tree growth, does not translate into an over-assessment of the tree growth land

*Old Point, Inc. v. Town of Lamoine*, Nos. 2010-009 & 2011-016, at 5-6

Where assessors took the initiative pursuant to 36 M.R.S. § 841(1) to look back over three years, but no more than that, to see if they had committed any illegality, error, or irregularity, they must act consistently as to all years in which the evidence is the same

*Fasse v. Town of St. Albans & Town of Ripley*, No. 2002-005, at 12, 13 (any other conclusion would countenance arbitrariness)

If appeal to municipal officers before the one- to three-year look-back period in 36 M.R.S. § 841(1)(2<sup>nd</sup> ¶) is premature, the Board has no jurisdiction

*Dale Henderson Logging, Inc. v. Town of Steuben*, No. 2008-016, at 6-9, 14 (appeal pursuant to 36 M.R.S. § 841(1)(2<sup>nd</sup> ¶), allowing municipal officers to correct any illegality, error, or irregularity, but not correct an error in valuation, is not timely if taken prematurely—before one year from commitment of denial)

The Board has not decided if a taxpayer has remedies other than 36 M.R.S. § 841(1) to have past taxes, assuming illegality or error in assessment, corrected

*Fasse v. Town of St. Albans & Town of Ripley*, No. 2002-005, at 14 n.12

Interrelationship of 36 M.R.S. §§ 579 and 581

*Brown v. Town of Bucksport*, No. 2009-031, at 1-5

Withdrawal penalties are means to recapture revenues lost by classification in tree growth

*Elisofan v. Town of Vinalhaven*, No.91-65, at 3

*Brown v. Town of Bucksport*, No. 2009-031, at 17

Land taken out of tree growth is valued at just or value for purposes of assessing penalties, with reference to comparable properties, 36 M.R.S. §§ 576-A, 581(3)

*Brown v. Town of Bucksport*, No. 2009-031, 17 (town may use town-wide assessment that developed land schedules); at 19 (assessor correctly assessed withdrawn land, and, so, penalty)

*Day v. Town of Madison*, No. 2014-006, at 3 (penalty based on just value on date of withdrawal)

Withdrawal of property from tree growth and assessment of penalties, 36 M.R.S. §§ 579, 581

*Reynolds v. Town of Fairfield*, No. 86-01, at 3

*Hornberger v. Town of Bremen*, No. 86-02, at 4

*Hope v. Town of Bristol*, No. 87-16, at 2 (penalty mandatory)

*Lord v. Town of Fayette*, No. 89-15, at 2-3 (miscalculation of penalty)

*Hardison v. Town of Waltham*, No. 91-16, at 2 (when residence may be built on formerly classified property, penalty to be assessed, as are neighboring lots, as “wildwood” and not as “phantom house lot”)

*Damian v. Town of Newcastle*, No. 93-01, *passim* (with calculations)

*Dale Henderson Logging, Inc. v. City of Old town*, No. 94-05, at 4 (listing ways in which property is considered withdrawn; sale, so property no longer meets 10-acre requirement; owner’s not submitting a forestry plan pursuant to section 574-B; owner’s request pursuant to section 581; assessors’ determination that property no longer qualifies pursuant to sections 573 and 581)

*Bone v. Bureau of Taxation*, No. 96-005, at 2 (state assessed penalties fairly)

*Roderick v. Town of Crystal*, No. 97-103, at 1 (withdrawal may be voluntary or upon town’s noticing disqualifying change of use); at 2-3 (discussion of calculation of penalties when one was undeveloped land and was not a base acre)

*Pachowsky v. Town of Clinton*, No. 2001-005, at 6, 8 (penalty is mandatory upon withdrawal of land from tree growth—for failure to file forest management plan timely—and statute does not distinguish between intentional and unintentional withdrawals); at 7, 8 (existence of arguably extenuating family matters does not excuse failure to file forest management plan by December 31, 2000)



- Davis v. Town of Lamoine*, No. 2002-003, at 4 (failure of taxpayer to notify town of change in use justified withdrawal penalty; taxpayer argued town miscalculated penalty)
- Fowler v. Town of Lubec*, 2004-002, at 1, 5 (penalty is mandatory upon withdrawal of land from tree growth for failure to file forest management plan timely); at 5 (existence of pressing personal matters does not excuse failure to timely file a statement from a forester, as section 574-B(2) is mandatory)
- Richmond v. Town of Moscow*, No. 2004-004, at 1, 3-4 (dispute over acreage does not excuse failure to timely file a section 574-B(3) statement)
- Curtis v. Town of Sherman*, No. 2004-005, at 2 (order on jurisdiction; placement of a small camp on sills; that structure was not intended to be permanent and taxpayer would have been glad to remove it is not a defense)
- Zorn v. Town of Lubec*, No. 2004-007, at 1, 3-4 (existence of pressing business matters does not excuse failure to timely file a section 574-B(3) statement)
- KeyBank National Ass'n v. Town of Phippsburg*, No. 2006-002, at 7 (penalty may be assessed as supplemental assessment and is subject to abatement process)
- Campbell v. Town of Brownsville*, No. 2006-003, at 2, 3-4 (failure to timely file section 574-B(3) statement automatically causes withdrawal)
- Pierce v. Maine Revenue Services*, No. 2006-007, at 5-7 (penalty is mandatory upon withdrawal of land from tree growth for failure to file forest management plan timely; (deaths of family members and friends and loss of home in fire do not excuse failure to file either statement required by section 574-B(3), which is mandatory; at 7, exemptions for inadvertence or not filing either section 574-B(3) statement is up to Legislature; at 8, softening of mandatory penalty for not filing section 574-B(3) statement is up to Legislature; at 9, all-or-nothing quality of withdrawal and penalty, and sometimes excessive appearing penalty does not allow Board to ignore statutory requirements)
- Kendall v. Town of Perry*, No. 2008-004, at 2 n.1 (upon change of ownership, failure to file sworn statement indicating that land is being managed in accordance with plan prepared by previous landowner, section 574-B(3))
- Dale Henderson Logging, Inc. v. Town of Steuben*, No. 2008-016, at 2 (failure to timely file section 574-B(3) statement); at 6, 10-11 (penalty is mandatory upon withdrawal, whether intentional or inadvertent); at 8 (penalty is based on fair market value); at 14 (if Legislature wanted to provide relief, it may do so, but has

- not)
- Davis v. Town of Lamoine and Maine Coast Baptist Church v. Town of Lamoine*, Nos. 2009-001 & -002, at 1 (failure to file section 574-B(1) or (3) statement)
- Hunt, Trustee, Hunt Family Irrevocable Trust v. Maine Revenue Services*, Nos. 2009-020 & -021, at 3 (failure to comply with section 574-B; Board has previously commented on role of Legislature to ameliorate harshness of failure to comply); at 5-6 (failure to file statements required by section 574-B(1), (2)); at 10-11 (withdrawal penalties raise abatement issues); at 12 (penalties are imposed as supplemental assessments)
- Brown v. Town of Bucksport*, No. 2009-031, at 3 n.1 (section 579 applies to what may be called inadvertent or unintentional withdrawals—where taxpayer did not mean to lose tree growth status); at 4 (section 581 withdrawals are voluntary)
- McLaughlin v. Town of Dexter*, No. 2010-001, at 1 n.1 (penalties are added taxes when property is withdrawn from classification); at 2-3 (withdrawal for failure to comply with section 574-B(3) results in penalties); at 4-5 (penalties assessed under section 713, which describes the supplemental assessment process, and section 713-B are imposed for withdrawal of property from tree growth under section 581(1)); at 12 (if Legislature wanted to provide relief, it may do so, but has not)
- Smith v. Town of Livermore Falls*, No. 2010-008, at 2-3, 6 n.3 (order on jurisdiction; Tree Growth Tax Law does not distinguish between intentional or inadvertent withdrawals; building a new house and road without notifying town; that property owner asserted he did not knowingly break the law is not a defense; Tree Growth Tax Law contains no *scienter* requirement); at 5 (section 581 covers also section 579 withdrawals)
- Haggard v. Town of Swan's Island*, No. 2010-012, at 2 n.3 (failure to file section 574-B(3) statement results in withdrawal and penalties); at 3 n.5 (penalties are assessed as supplemental assessments pursuant to sections 713 and 713-B, such as for not complying with section 574-B); at 5-6 (municipality must notify taxpayer of such under section 713(5<sup>th</sup> ¶), with notice satisfying section 706(2<sup>nd</sup> ¶))
- McClure v. Town of Lubec*, No. 2010-013, at 1 n.1, 3 (forester's statement did not state property was in compliance on April 1<sup>st</sup>); at 5 (failure to comply with section 574-B(1), (2); notice cannot be sent unless taxpayer found not in compliance)
- Cyr Family Ltd. Partnership v. Town of Wade*, No. 2011-010, at 1 (failure to comply with section 574-B(3); at 3 (sections 574-B(1), (2)); at 8 (notice cannot be sent unless taxpayer found not in compliance)

*Peckham & Trott v. Town of Lake View Plantation*, No. 2014-003, at 3 (dismissal order; withdrawal penalties under section 581(4) in tree growth case are issued as supplemental assessments pursuant to sections 713 and 713-B)

*Day v. Town of Madison*, No. 2014-006, at 2-3 (penalty mandatory whether taxpayer withdraws land or the land no longer qualifies for tree growth classification); at 4 (Board has no authority to waive statutory penalty)

#### Voluntary withdrawal, 36 M.R.S. § 581

*Roderick v. Town of Crystal*, No. 97-103, at 1-2 (municipalities want to encourage withdrawal, which results in increased tax revenues and eliminates need to investigate changes in use)

*Day v. Town of Madison*, No. 2014-006, at 4 (municipality need not advise taxpayer to file for voluntary withdrawal; taxpayer is responsible for understanding the obligations that go with beneficial tax treatment of property)

36 M.R.S. § 574-B(1) requires owners of land long in tree growth to prepare a forest management plan by December 31, 2000, and thereafter every 10 years, defined statements must be filed, 36 M.R.S. § 574-B(1), (2)

*Pachowsky v. Town of Clinton*, No. 2001-005, at 2 & n.1, 5-6, 7-9 (December 31<sup>st</sup> deadline is mandatory; arguably extenuating circumstances which distracted taxpayers do not excuse their not complying with statute)

*Fasse v. Town of St. Albans & Town of Ripley*, No. 2002-005, at 11 n.10

*Fowler v. Town of Lubec*, 2004-002, at 1

*Dale Henderson Logging, Inc. v. Town of Steuben*, No. 2008-016, at 2

*Rum Cove, LLC v. Town of Westport Island*, No. 2008-032, at 3 (noting that tree growth application provides for this to be done)

*Cyr Family Ltd. Partnership v. Town of Wade*. No. 2011-010, at 3

The 10-year deadline for filing 36 M.R.S. § 574-B(1), (2) statements is measured from the date of the last forest plan related to the property

*Davis v. Town of Lamoine and Maine Coast Baptist Church v. Town of Lamoine*, Nos. 2009-001 & -002, at 4 n.3

36 M.R.S. § 574-B(1) and (2) are reporting preconditions to enrollment of property in tree growth

*Hunt, Trustee, Hunt Family Irrevocable Trust v. Maine Revenue Services*, Nos. 2009-020 & -021, at 2

10-acre requirement, 36 M.R.S. § 574-B(1), (2), including failure to meet such

*Reynolds v. Town of Fairfield*, No. 86-01, at 2

*Pisano v. Town of Surry*, No. 87-14, at 3

*Hope v. Town of Bristol*, No. 87-16, at 2

*Hardison v. Town of Waltham*, No. 91-16, at 2

*Bone v. Bureau of Taxation*, No. 96-005, at 2

*KeyBank National Ass'n v. Town of Phippsburg*, No. 2006-002, at 4

*See Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2013-026, at 23

36 M.R.S. § 574-B(3) requires a land owner, within one year of acquiring land in tree growth, to file a sworn statement that a new a forestry plan has been prepared or statement of a forester that property is being managed under an existing plan

*Everett v. Town of Waterford*, No. 93-136, at 1

*Pachowsky v. Town of Clinton*, No. 2001-005, at 2 n.1

*Fasse v. Town of St. Albans & Town of Ripley*, No. 2002-005, at 2 n.2, 8-10 (taxpayer's letter that she intended to continue land in tree growth and to rely on previous owner's forest management plan was sufficient where towns accepted letter for such purposes)

*Richmond v. Town of Moscow*, No. 2004-004, at 1, 3-4

*Zorn v. Town of Lubec*, No. 2004-007, at 1, 3-4

*Campbell v. Town of Brownville*, No. 2006-003, at 1-2

*Pierce v. Maine Revenue Services*, No. 2006-007, at 1-2

*Kendall v. Town of Perry*, No. 2008-004, at 2 n.1

*Dale Henderson Logging, Inc. v. Town of Steuben*, No. 2008-016, at 2

*McLaughlin v. Town of Dexter*, No. 2010-001, at 2

*Cyr Family Ltd. Partnership v. Town of Wade*. No. 2011-010, at 2

A taxpayer's failure to make 36 M.R.S. § 574(B)(1), (B)(2), or (B)(3) filings when required must result in withdrawal of property from tree growth and assessment of a penalty, 36 M.R.S. § 581(4)

*Dale Henderson Logging, Inc. v. Town of Steuben*, No. 2008-016, at 2  
*Davis v. Town of Lamoine and Maine Coast Baptist Church v. Town of Lamoine*, Nos. 2009-001 & -002, at 1  
*Hunt, Trustee, Hunt Family Irrevocable Trust v. Maine Revenue Services*, Nos. 2009-020 & -021, at 2, 6  
*McLaughlin v. Town of Dexter*, No. 2010-001, at 2 (can result)  
*McClure v. Town of Lubec*, No. 2010-013, at 1 n.1  
*Cyr Family Ltd. Partnership v. Town of Wade*, No. 2011-010, at 2

Taxpayers are excused from compliance with 36 M.R.S. 574-B by the federal Servicemembers Civil Relief Act, 50 U.S.C. § 501 *et seq.*, when husband was serving in the armed forces

*Campbell v. Town of Brownville*, No. 2006-003, at 5-10

Assessors until 1991 had the discretion whether to remove property from tree growth for failure to comply with 36 M.R.S. § 574-B

*Dale Henderson Logging, Inc. v. Town of Steuben*, No. 2008-016, at 9-11  
*Hunt, Trustee, Hunt Family Irrevocable Trust v. Maine Revenue Services*, Nos. 2009-020 & -021, at 2 n.1

36 M.R.S. § 581 formerly did not require taxing authority to notify a taxpayer that it intended to withdraw property from tree growth

*Pierce v. Maine Revenue Services*, No. 2006-007, at 4 (file required statement of forestry statement or plan)  
*Dale Henderson Logging, Inc. v. Town of Steuben*, No. 2008-016, at 13-14  
*Hunt, Trustee, Hunt Family Irrevocable Trust v. Maine Revenue Services*, Nos. 2009-020 & -021, at 3  
*McLaughlin v. Town of Dexter*, 2010-001, at 4 n.6

Requirement of 36 M.R.S. § 581(1) as amended, effective September 20, 2007, and again on July 18, 2008, until July 12, 2010, to give taxpayer 60 days notice of intent to withdraw property from tree growth and, pursuant to 36 M.R.S. § 581(1-A), 185 (or 120) days' notice after July 12, 2010

*Dale Henderson Logging, Inc. v. Town of Steuben*, No. 2008-016,

at 9-10 (withdrawal originally was discretionary with assessors); 12-14 (new statute not retroactive); 14 (notice provision changes the rules of the game)

*Davis v. Town of Lamoine & Maine Coast Baptist Church*, Nos. 2009-001 & -002, at 5-6 (failure to give 60-days' notice of need to comply with section 574-B(2) and (3) is manifest error that negates supplemental assessment and abates penalty)

*Hunt, Trustee, Hunt Family Irrevocable Trust v. Maine Revenue Services*, Nos. 2009-020 & -021, at 3 (60-days' notice); 4 (enactment of section 581(1-A));

*Brown v. Town of Bucksport*, No. 2009-031, at 4 n.2

*McLaughlin v. Town of Dexter*, 2010-001, at 9-10 (section 581(1) is not applied retroactively)

*McClure v. Town of Lubec*, No. 2010-013, at 2, 5 (statement complying may be filed anytime within the 60-day "grace period," notice of which is appropriate when taxpayer has been found to be out of compliance)

*Cyr Family Ltd. Partnership v. Town of Wade*. No. 2011-010, at 2, 7-9 (section 581(1); town cannot withdraw land without notice if sole reason is noncompliance with section 574-B; 60-days' notice was a "grace period"); at 3 (if taxpayer complies with 60-days' notice, town cannot withdraw land from tree growth)

The amendment to 36 M.R.S.A § 581(1) was not retroactive

*Dale Henderson Logging, Inc. v. Town of Steuben*, No. 2008-016, at 9 n.7, 12-13, 14

*McLaughlin v. Town of Dexter*, 2010-001, at 9-10

The amendment to 36 M.R.S. § 581(1) applies where the municipality wrote to the taxpayers to explain the need for a tree growth application and the taxpayers filed their applications before July 18, 2008, but the municipality did not act on the applications until after that date (and then withdrew the properties from tree growth for failure to file 36 M.R.S. § 574(B)(1) and (B)(3) statements)

*Davis v. Town of Lamoine and Maine Coast Baptist Church v. Town of Lamoine*, Nos. 2009-001 & -002, at 3-4

Legislative enactment of special law to assist tree growth owners in the Unorganized Territory; repeal of 36 M.R.S. § 581(1) in part; enactment of new 36 M.R.S. § 581(1-A)

*Hunt, Trustee, Hunt Family Irrevocable Trust v. Maine Revenue Services*, Nos. 2009-020 & -021, at 4-5

The Board originally had not decided if the failure of assessors to give notice of an intent to withdraw property from tree growth is an illegality, error, or irregularity that can be remedied under 36 M.R.S. § 841(1)(2<sup>nd</sup> ¶)

*Dale Henderson Logging, Inc. v. Town of Steuben*, No. 2008-016, at 9 n.7 (question reserved)

Failure of municipality to give notice to taxpayers when the amendment to 36 M.R.S. § 581(1) applies constitutes manifest error

*Davis v. Town of Lamoine and Maine Coast Baptist Church v. Town of Lamoine*, Nos. 2009-001 & -002, at 4

Where town did not inform taxpayers of their right to then-existing 60-day period to comply with 36 M.R.S. § 574-B, assessment of penalty is error, causing penalty tax to be abated

*Davis v. Town of Lamoine and Maine Coast Baptist Church v. Town of Lamoine*, Nos. 2009-001 & -002, at 5-6 (manifest error)  
*Cyr Family Ltd. Partnership v. Town of Wade*. No. 2011-010, at 8-9

Where town misadvised taxpayer of how and when she could challenge withdrawal penalty, although otherwise giving proper notice of consequences of not complying with 36 M.R.S. § 574-B, taxpayer is excused from not having applied for abatement because town's error under 36 M.R.S. § 841(1)

*Haggard v. Town of Swan's Island*, No. 2010-012, at 4-5; 6-7 (where notice must be given, failure to do so voids the assessment)

Whether municipality misadvised tree growth landowner of its rights under 36 M.R.S. § 581(1) or 36 M.R.S. § 581(1-A)

*Cyr Family Ltd. Partnership v. Town of Wade*. No. 2011-010, at 8 (failure to clearly provide taxpayer with 60-day notice)

Fact that taxpayer did not necessarily intend to maintain land in tree growth does not relieve municipality of its duty to send notice that was not defective

*Haggard v. Town of Swan's Island*, No. 2010-012, at 8 n.6

Real estate transfer tax declaration form puts taxpayers on notice that they face a withdrawal penalty if they do not ensure that their land remains in tree growth

*Pierce v. Maine Revenue Services*, No. 2006-007, at 5

36 M.R.S. § 581(2) requires taxpayer to file a plan of the area to be withdrawn and area not to be withdrawn

*Brown v. Town of Bucksport*, No. 2009-031, at 4-5, 11 n.13

Effective date of withdrawal

*Roderick v. Town of Crystal*, No. 97-103, at 2 (date taxpayer notifies town of desire to withdraw)

*Zorn v. Town of Lubec*, No. 2004-007, at 3 n.3 (one year from landowner's acquisition of property, where he failed to provide proper filing within that time under section 574-B(3))

When notice of withdrawal was sent to wrong address, taxpayer was not properly notified of municipality's intention to withdraw land from tree growth

*Pisano v. Town of Surry*, No. 87-14, at 4

What constitutes a certification to the assessor of notice to withdraw

*Brown v. Town of Bucksport*, No. 2009-031, at 4 n.2 (issue not decided)

36 M.R.S. § 581(3) has two alternative methods for calculating withdrawal penalties, centered on just value



*Brown v. Town of Bucksport*, No. 2009-031, at 5-6

Calculation of withdrawal penalty is to be the greater of two alternatives under 36 M.R.S. § 581(3), with the fair market value of the property at withdrawal being the assessed value of comparable property adjusted by the municipality's certified adjustment ratio

*Gray v. Town of Sedgwick*, No. 2005-005, at 4

*Brown v. Town of Bucksport*, No. 2009-031, at 5

Whether, if withdrawal penalty imposed by supplemental assessment was in error, taxing authority must refund penalty with interest, 36 M.R.S. § 506-A

*Gottschalk v. Town of Brooklin*, No. 90-30, at 2 (yes)

*Hunt, Trustee, Hunt Family Irrevocable Trust v. Maine Revenue*

*Services*, Nos. 2009-020 & -021, at 14-19 (no, under particular legislation)

Fact that withdrawal penalties are far larger than the statutory late filing fee in 36 M.R.S.A § 574-B(1) does not excuse payment of penalties

*Pachowsky v. Town of Clinton*, No. 2001-005, at 10 n.6 (statute does not distinguish between intentional and unintentional withdrawals)

Fact of withdrawal penalty means such is not inconsistent with purposes of Tree Growth Tax Law, 36 M.R.S. § 572, or a broad construction of the statute, section 584-A

*Pierce v. Maine Revenue Services*, No. 2006-007, at 7-8

It is reasonable for a municipality to consider a parcel of land as a whole when calculating withdrawal penalties

*Gray v. Town of Sedgwick*, No. 2005-005, at 8

Municipality cannot assess withdrawal penalty for failure to comply with 36 M.R.S. § 579 after purchase of property previously in tree growth

*Pisano v. Town of Surry*, No. 87-14, at 4

Municipality may impose withdrawal penalties for any number of years, 36 M.R.S. § 713-B, but this does not give taxpayer a correlative right to challenge initial classification outside strictures of section

*KeyBank National Ass'n v. Town of Phippsburg*, No. 2006-002,  
at 12-13

Tax year, 36 M.R.S. § 581, that provides for town to look back five years in calculating withdrawal penalty and period cannot be extended by six months due to town's changing from calendar to fiscal year five years ago

*Welch v. Town of Wells*, No. 97-001, at 2-3

Remand for determination of value of property so that withdrawal penalty could be calculated

*Hornberger v. Town of Bremen*, No. 86-02, at 1

Miscalculation of withdrawal penalty due to town's applying value for undeveloped land rather than seasonal lots without shore frontage

*Diamond Occidental Forest, Inc. v. Town of Eastbrook*, No. 90-39,  
at 5

Taxpayer has obligation to notify assessor of change in use, 36 M.R.S. § 579(7<sup>th</sup> ¶)

*Davis v. Town of Lamoine*, No. 2002-003, at 3-4  
*Brown v. Town of Bucksport*, No. 2009-031, at 2

36 M.R.S. § 579 does not say when or in what manner taxpayer must notify assessor of change of use

*Brown v. Town of Bucksport*, No. 2009-031, at 2

Taxpayer does not notify assessor of change of use by obtaining a building permit

*Damian v. Town of Newcastle*, No. 93-01, at 3

*Brown v. Town of Bucksport*, No. 2009-031, at 12 n.15, 21 n.20

Question whether there had been a change in use, requiring withdrawal of property from tree growth and assessment of penalty, or 25% added penalty for failure to notify municipality, 36 M.R.S. § 579(6<sup>th</sup> & 7<sup>th</sup> ¶¶)

*Hornberger v. Town of Bremen*, No. 86-02, at 2, 4, 5

*Gottschalk v. Town of Brooklin*, No. 90-30, at 2

*Damian v. Town of Newcastle*, No. 93-01, at 1-2 (building of hunting camp), 3-4

*Brown v. Town of Bucksport*, No. 2009-031, at 16 (building road and house was a change of use); at 19-22 (taxpayer did notify assessor of change of use, so imposition of added penalty was manifestly wrong)

Cause for waiving the 25% added penalty is discretionary with assessor

*Davis v. Town of Lamoine*, No. 2002-003, at 4 (forgetfulness and life's normal experiences are not cause to waive added penalty)

*Brown v. Town of Bucksport*, No. 2009-031, at 22 n.21 (forgetfulness and life's normal experiences are not cause to waive added penalty; circumstance for assessor's exercising discretion are not set forth)

In absence of an explanation for town's assessing more acreage than taxpayer demonstrates it owns, over-taxation exists

*Hudson Pulp & Paper Corp. v. Town of Centerville*, No. 88-02, at 3

Whether information sent by town was sufficient notice of appeal rights

*Everett v. Town of Waterford*, No. 93-136, at 1 (sending of #19, Tree Growth Tax Law; question left open)

Appeals in tree growth cases are directly to the Board, 36 M.R.S. § 583

*Filaroska v. Town of Vienna*, No. 90-44, at 1  
*Ferguson v. Town of Otisfield*, No. 91-66, at 1  
*Winslow v. Town of Falmouth*, No. 93-36, at 1  
*Bone v. Bureau of Taxation*, No. 96-005, at 1  
*McGhee v. Town of Maxfield*, No. 96-044, at 1  
*Blanch v. Town of Lubec*, No. 96-048, at 1  
*Welch v. Town of Wells*, No. 97-001, at 1  
*Page v. Town of Damariscotta*, No. 99-014, at 6  
*Davis v. Town of Lamoine*, 2002-003, at 2  
*Fasse v. Town of St. Albans & Town of Ripley*, No. 2002-005,  
 at 6, 7 n.7, 8 (appeal to county commissioners was of no legal  
 consequence)  
*Curtis v. Town of Sherman*, No. 2004-005, at 6 n.5 (order on  
 jurisdiction)  
*Harold MacQuinn, Inc. v. Town of Hancock*, No. 2009-014, at 15 & n.5  
 (misadvice by assessor's agent did not mislead taxpayer)  
*Prentiss & Carlisle Management Co., Inc. v. Town of Merrill and Town  
 of Smyrna*, Nos. 2010-007 & 2010-006, at 2  
*Smith v. Town of Livermore Falls*, No. 2010-008, at 1 (order on  
 jurisdiction)  
*Haggard v. Town of Swan's Island*, No. 2010-012, at 8 n.6

The Board has plenary and exclusive authority over tree growth appeals, 36 M.R.S. §§ 271(2)(A)(1), 583

*Hunt, Trustee, Hunt Family Irrevocable Trust v. Maine Revenue  
 Services*, Nos. 2009-020 & -021, at 9  
*Old Point, Inc. v. Town of Lamoine*, Nos. 2010-009 & 2011-016, at 4, 5  
*Haggard v. Town of Swan's Island*, No. 2010-012, at 8 n.6, 9

But this does not mean the Board always has jurisdiction in a tree growth appeal

*Hunt, Trustee, Hunt Family Irrevocable Trust v. Maine Revenue  
 Services*, Nos. 2009-020 & -021, at 9

Effect on the Board's jurisdiction where taxes not paid by due date, 36 M.R.S. § 582-A (now repealed)

*Estate of Perkins v. Town of Castine*, No. 94-47, at 1 (Board had no  
 jurisdiction)  
*Dale Henderson Logging, Inc. v. City of Old Town*, No. 94-05, at 2

(appeal suspended)  
*Brower, Denis & Powers v. Town of Starks*, No. 95-007, at 1  
 (same)  
*McGhee v. Town of Maxfield*, No.96-044, at 1-2 (same, but here  
 taxes were paid)  
*Curtis v. Town of Sherman*, No. 2004-005, at 3 & n.1 (order on  
 jurisdiction; appeals in tree growth cases are not suspended  
 when taxes have not been paid, after repeal of section 582-A)  
*Hunt, Trustee, Hunt Family Irrevocable Trust v. Maine Revenue Services*,  
 Nos. 2009-020, -021, at 6 (same)  
*Haggard*, No. 2010-012 n. 8

Former 36 M.R.S. § 582-A (now repealed), which required payment of due  
 taxes, did not specifically preclude taxpayer from appealing its assessment  
 should it not pay its taxes before appealing

*Dale Henderson Logging, Inc. v. City of Old Town*, No. 94-05, at 2  
*Brower, Denis & Powers v. Town of Starks*, No. 95-007, at 1  
*McGhee v. Town of Maxfield*, No.96-044, at 1-2

Appeal period in tree growth cases is 60 days

*Ferguson v. Town of Otisfield*, No. 91-66, at 1  
*Winslow v. Town of Falmouth*, No. 93-36, at 2 (in accordance with  
 36 M.R.S. §§ 843 and 844)(*cf. Wesson v. Town of Bremen*, No.  
 No. 92-52, at 3 (open space case))  
*Davis v. Town of Lamoine*, No. 2002-003, at 2 (in accordance with  
 36 M.R.S. §§ 583, 841, 842)  
*Fasse v. Town of St. Albans & Town of Ripley*, No. 2002-005, at 6-8  
 (in accordance with 36 M.R.S. §§ 843 and 844, and upholding  
 Board Rule 4(A) to be correct)  
*Brown v. Town of Bucksport*, No. 2009-031, at 2, 3-4 (order on  
 motion to dismiss)(60 days from date notice of town's denial is  
 received, 36 M.R.S. § 842, discussing reasons for not using  
 date of denial or date of mailing of denial)  
*Peckham & Trott v. Town of Lake View Plantation*, No. 2014-003, at 6  
 (dismissal order)

Appeal is unaffected by change in who is the assessor

*Winslow v. Town of Falmouth*, No. 93-36, at 2

The fifth paragraph of 36 M.R.S. § 579, which provides for loss of appeal under 36 M.R.S. § 583 upon taxpayer's not providing information to assessors, does not preclude taxpayer from appealing assessors' determination to *declassify* property but does preclude appeal where assessors have *reclassified* forest type under 36 M.R.S. § 580

*Dale Henderson Logging, Inc. v. City of Old Town*, No. 94-05, at 4-5

Reliance on Property Tax Bulletin #19, Tree Growth Tax Law

*Hardison v. Town of Waltham*, No. 91-16, at 2

*Everett v. Town of Waterford*, No. 93-136, at 1 (town dispensed bulletin to taxpayers; question of sufficiency of notice to taxpayer of appeal rights left open)

*Brown v. Town of Bucksport*, No. 2009-031, at 13 n.17 (bulletin describes how penalties are calculated under section 581(3))

*Haggard v. Town of Swan's Island*, No. 2010-012, at 3-4 n.5 (citing *Brown*)

### **Farm and Open Space Tax Law**

Constitutional authority to provide for assessment of property as farmland or open space based on current use, Me. Const. art. IX, § 8, cl. 2

*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2012-009, at 1  
*Roque Island Gardner Homestead Corp. v. Town of Jonesport*,  
No. 2018-001, at 8

Board's jurisdiction, 36 M.R.S. § 271(2)(A)(2)

*Francis Small Heritage Trust, Inc. v. Town of Limington*, Nos. 2009-032  
& 2010-016, at 2 n.2

*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2012-009, at 16

Does the Board have jurisdiction to decide whether a supplemental assessment, *see* 36 M.R.S. §§ 1112 (5<sup>th</sup> ¶), 713, 713-B, was lawful and should be abated when, despite the taxpayer's failure to satisfy any alternative of 36 M.R.S. § 841(1), the legality of the commitment has not been proved?

*Burt v. Town of Denmark*, No. 2014-007, at 13-15 (order on

jurisdiction)

Public benefit or public interest purposes of law, 36 M.R.S. §§ 1101, 1102(6), 1109(3)

- Mary R. Schellens & Co. v. Town of St. George*, No. 87-01, at 2  
*Wentworth and Goodyear v. Town of Lebanon*, No. 90-13, at 4-5, 8  
*Gile v. Town of Lebanon*, No. 91-32, 2  
*Wesson v. Town of Bremen*, No. 92-52, at 6  
*LeMaistre v. Town of Freeport*, No. 93-56, at 3  
*Kendall v. Town of Perry*, No. 93-60, at 2  
*Forbes v. Town of Southwest Harbor*, No. 95-008, at 4  
*Carroll v. Town of Cornish*, No. 2001-02, at 1-2 (Decision I),  
 at 5-6 (Decision II)  
*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2012-009, at 9  
 (something greater than exists in any other unencumbered  
 property)  
*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2013-026, at 11  
 (same); 12 n.3 (Board has not decided if panel members must  
 unanimously agree which section 1102(6) or section 1109(3)(A)-  
 (O) factors are met); at 18 (section 1102(6) public benefits not  
 proved); at 23 (dissent cites section 1101 purpose of law)  
*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2015-003, at 5  
 (same as *Greenleaf Cove I*)  
*Roque Island Gardner Homestead Corp. v. Town of Jonesport*,  
 No. 2018-001, at 1 (purpose is to preserve land without  
 development through reduced assessment and lower taxes)

Land that comes within the ambit of 36 M.R.S. § 1102(6) is to be classified and taxed as open space, 36 M.R.S. § 1109(3)

- Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2012-009, at 11  
*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2013-026, at 21

Meeting any one of the restriction or preservation factors of 36 M.R.S. § 1109(3) qualifies property for open space classification

- Gile v. Town of Lebanon*, No. 91-32, at 2  
*Gleason v. Town of Southport*, No. 91-43, at 3 (Board specifically  
 found land has a conservation easement encumbrance, but  
 otherwise does not qualify for open space classification)  
*Lockabaugh v. Town of Lubec*, No. 92-12, at 2

- Kendall v. Town of Perry*, No. 93-60, at 2  
*Forbes v. Town of Southwest Harbor*, No. 95-008, at 4  
*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2012-009, at 10  
 (but property can still qualify without meeting any of the factors  
 in section 1109(3))  
*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2013-026,  
 at 11-12 (flexibility of proof under section 1109(3) does not  
 relieve taxpayer of having to prove public benefit under  
 section 1102(6))  
*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2015-003,  
 at 5 (same as *Greenleaf Cove II*)

#### Whether property satisfies requirements of 36 M.R.S. § 1109(3)

- Rice v. City of Belfast*, No. 91-14, at 2-3 (yes, subsections B, C,  
 and J)  
*Bryant v. City of Belfast*, No. 91-17, at 2 (same)  
*Gile v. Town of Lebanon*, No. 91-32, at 2 (no)  
*Gleason v. Town of Southport*, No. 91-43, at 2-3 (yes)  
*Lockabaugh v. Town of Lubec*, No. 92-12, at 2 (yes, research and  
 educational use qualifies under subsection (D))  
*Wesson v. Town of Bremen*, No. 92-52, at 6 (no, property does not  
 confer any greater public benefit than any other unencumbered  
 island property)  
*Kendall v. Town of Perry*, No. 93-60, at 2-3 (yes, eagle's nest qualifies  
 under subsection (K); shoreline zoning restrictions do not  
 disqualify land from classification)  
*Forbes v. Town of Southwest Harbor*, No. 95-008, at 4 (yes,  
 conservation easement to ensure preservation and scenic  
 beauty, historic resource in residence, existence or proximity of  
 other conservation lands, and petitioner's intended use of land  
 for research and teaching qualifies it under subsections H, I,  
 and N)  
*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2012-009, at 10-11  
*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2013-026, at 11-12  
 (factors may be considered in determining if land has public  
 benefit)

#### Effect of conservation easement on open space classification

- Gleason v. Town of Southport*, No. 91-43, at 3 (that conservation  
 easement specifically prohibits public access does not  
 disqualify property)



- Harbor Island Trust v. Town of Friendship*, No. 91-93, at 3 (36 M.R.S. § 701-A requires assessors to consider effect of enforceable restrictions on property)
- Wesson v. Town of Bremen*, Nos. 92-04 & 92-66, at 8 (Decision I)
- Lockabaugh v. Town of Lubec*, No. 92-12, at 2 (being in process of placing land under a conservation easement is evidence of intent to preserve land as open to public)
- Wesson v. Town of Bremen*, No. 92-52, at 6 (does not guarantee public access)
- Forbes v. Town of Southwest Harbor*, No. 95-008, at 2 (U. S. Department of the Interior easement, Acadia National Park land, will ensure its preservation and scenic beauty)
- Phillips v. Town of Rangeley*, No. 95-137, at 1 (forever wild easement held by Maine Coast Heritage Trust)
- Forbes v. Town of Southwest Harbor*, No. 96-045, at 3-5, 5-6 (addressing valuation under section 1106-A(1) and (2))
- Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2012-009, at 10-11
- Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2013-026, at 24

#### Effect of land not being open unreservedly to the public

- Greaves v. Town of Phippsburg*, No. 90-15, at 2 (classification cannot be granted where benefit from land inures to property owners and not the general public, who may view its beauty but are neither encouraged nor invited to use it)
- Gleason v. Town of Southport*, No. 91-43, at 3 (that conservation easement specifically prohibits public access does not disqualify property)
- Wellin v. Town of Friendship*, No. 91-51, at 2 (while preservation of land may confer a public interest, limiting access to the public by signs prohibiting trespassing and no hunting and fishing disqualifies land from classification as open space)
- Wesson v. Town of Bremen*, No. 92-52, at 5-6 (property does not qualify for classification as open space where public can be banned at any time, access to island is limited, and there are no educational programs conducted)
- Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2012-009, at 11
- Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2013-026, at 18-19, 20, 22 (question whether sign barred or discouraged public access)

#### Meaning of “structures” in 36 M.R.S. § 1109(3)

*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2013-026, at 13-16 (parties' positions); 20 (majority does not pass on question); 26-27 (dissent holds structure is not just a building)  
*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2015-003, at 6

#### Effect of presence of structures

*Wellin v. Town of Friendship*, No. 91-51, at 3 (structures and improvements here are inconsistent with classification)  
*Forbes v. Town of Southwest Harbor*, No. 95-008, at 4 (presence of residence listed on National Register of Historic Places supports classification)  
*Eastler v. Town of Farmington*, No. 95-138, at 2 (land of farmhouse and barn cannot be excluded from consideration of farmland as one unit)  
*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2013-026, at 15 & nn.5-7 (effect of minimum lot size requirements and shoreland zoning for purposes of excluding land under section 1109(3)); at 20 (majority does not reach structure issue); at 25-27 (dissent holds structure alone is not disqualifying but, to be disqualifying, must be inconsistent with preservation of land as open space)  
*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2015-003, at 6-7; at 8 n.4 (citing *Greenleaf Cove II* dissent: Board has never held that presence of a structure *ipso facto* disqualifies land from open space classification)

Open space land may be of any area up to 15,000 acres, 36 M.R.S. §§ 1102(6), 1114

*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2012-009, at 9  
*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2013-026, at 23 (unlike tree growth program, open space has no minimum lot size)

#### Methods for valuing open space land, 36 M.R.S. § 1106-A(1), (2)

*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2012-009, at 11-13  
*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2013-026, at 17-18, 23, 27-28 (public access cumulative reduction, see 36 M.R.S. § 1106-A(3)(C), not proved)  
*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2015-003, at 7

(town argued taxpayer, if it qualified for open space at all, was not entitled to more than basic 20% reduction); at 8-9 (land qualified for additional 25% reduction for public access under 36 M.R.S. § 1106-A(3)(C))

Town's taxing procedures designed to recapture revenues lost when property is classified as farmland or open space by artificially inflating or enhancing the value of the non-classified portions of the land that is shore frontage is inconsistent with law

*Chatfield v. Town of Rockport*, No. 91-56, at 1-2, 3-4 (see also tree growth cases)

Schedule called for by 36 M.R.S. § 1109(1<sup>st</sup> ¶) is functionally an application

*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2012-009, at 14  
*Burt v. Town of Denmark*, No. 2014-003, at 4 (order on jurisdiction)

Classification process begins with a written application to assessor, 36 M.R.S. §§ 1103, 1109(1<sup>st</sup> ¶), 1118

*Wesson v. Town of Bremen*, No. 95-115, at 2 (where town used alternative valuation method under the law, taxpayer had to file application for abatement with assessor, not appeal to Board)  
*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2012-009, at 14  
*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2013-026, at 3  
*Pulpit Trust v. Town of North Haven*, No. 2019-013, at 2 (open space) (dismissal order)(this is "the first step in the abatement process for all property, including classified and exempt property")

Application for classification as farmland or open space must be filed by April 1<sup>st</sup> of tax year in which classification is sought, 36 M.R.S. §§ 1109(1), (3), 1118

*Haskell v. Town of Phippsburg*, No. 96-004, at 2 (open space)  
*Sayer v. Town of Canton*, No. 99-022, at 2 (farmland)  
*Carroll v. Town of Cornish*, No. 2001-02, at 3 (Decision I)(farmland)  
*Smith v. Town of Surry*, No. 2005-015, at 2 (order on jurisdiction) (open space)  
*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2012-009, at 14 (open space)

*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2013-026, at 3  
 (open space)  
*Burt v. Town of Denmark*, No. 2014-007, at 4 (order on jurisdiction;  
 open space)

Assessors have the annual obligation to determine if open space land continues to qualify for the classification, which, if granted, it presumptively retains, 36 M.R.S. §§ 1109(6), 1114

*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2012-009, at 17  
*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2013-026, at 3  
*Burt v. Town of Denmark*, No. 2014-007, at 4, 5 (order on jurisdiction;  
 a change in ownership can prompt a municipality to question  
 continued classification)

The Board has no jurisdiction where application for open space classification was not timely made to town

*Haskell v. Town of Phippsburg*, No. 96-004, at 2  
*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2012-009, at 14-15; at 28-29 (this includes a premature appeal)  
*Pulpit Trust v. Town of North Haven*, No. 2019-013 (dismissal order), at 3 (this includes a premature appeal)

The Board has no jurisdiction to classify land as open space when the taxpayer had not sought that classification in application for abatement

*Tidebrook Conservation Trust v. Town of Freeport*, No. 93-52, at 3  
 (Decision I)

Adequacy of application for classification

*Sirois v. Town of Lebanon*, No. 89-08, at 2-3  
*Lockabaugh v. Town of Lubec*, No. 92-12, at 1  
*Tidebrook Conservation Trust v. Town of Freeport*, No. 93-52, at 1-2  
 (Decision II)(application for classification as tree growth will not be considered as an application for classification as open space)

Application for open space requires unanimous written consent of all owners, 36 M.R.S. § 1103

*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2012-009, at 14, 18 & n.8; at 20 (what constitutes written consent)

Application need not be signed by all co-owners, 36 M.R.S. § 1103

*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2012-009, at 14, 18 & n.8

Acts of a non-profit corporation, as owner, may be taken by its president, consistent by by-laws, as instructed by the board of directors, 13-B M.R.S. §§ 403, 710, 719

*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2012-009, at 2

Obligations of assessors if they deny an application for classification as open space, 36 M.R.S. § 1109(4)(1<sup>st</sup> ¶): to notify taxpayer of denial; to state reasons for denial; and to allow for correction of deficiencies

*Carroll v. Town of Cornish*, No. 2001-02, at 3 (Decision I)  
*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2012-009, at 5, 15, 22-23; at 16 (denial can be by sending tax bill)  
*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2013-026, at 3

Town must notify taxpayer whether application is granted or denied, but no particular form of notice is required

*Wesson v. Town of Bremen*, No. 93-88, at 2

Whether June 1<sup>st</sup> deadline of 36 M.R.S. § 1109(4)(1<sup>st</sup> ¶), which presumably applies to each of the town's notice obligations, is directory or mandatory

*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2012-009, at 23-24 & n.11 (date directory)  
*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2013-026, at 3 (suggesting mandatory)

Taxpayer has 185 days from commitment of taxes to file an application for abatement

*Sayer v. Town of Canton*, No. 99-022, at 2 & n.1, 3  
*Carroll v. Town of Cornish*, No. 2001-02, at 3 (Decision I)  
*Smith v. Town of Surry*, No. 2005-015, at 2 (order on jurisdiction)  
*Francis Small Heritage Trust, Inc. v. Town of Limington*, Nos. 2009-032  
 & 2010-016, at 1  
*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2012-009, at 7,  
 21, 28  
*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2013-026, at 3  
*Burt v. Town of Denmark*, No. 2014-007, at 6 (order on jurisdiction);  
 at 6-8 (mandatory nature of time for filing)

Taxpayer bears the burden of proof as to qualifications of land for farmland or open space classification, 36 M.R.S. § 1102(4)

*Carroll v. Town of Cornish*, No. 2001-02, at 6 (Decision II)(farmland)  
*Burt v. Town of Denmark*, No. 2014-007, at 5 (order on jurisdiction;  
 open space)

A party must affirmatively demonstrate that the Board has jurisdiction

*Burt v. Town of Denmark*, No. 2014-007, at 1 (order on jurisdiction;  
 open space case)

Assessment is presumed correct, and burden is on taxpayer to show that the assessor is manifestly wrong

*Wesson v. Town of Bremen*, Nos. 92-04 & 92-66, at 6 (Decision I)  
*Wesson v. Town of Bremen*, Nos. 92-04 & 92-66, at 1 (Decision II)  
*Forbes v. Town of Southwest Harbor*, No. 96-045, at 5  
*Keene v. City of Auburn*, No. 98-023, at 4  
*Sayer v. Town of Canton*, No. 99-022, at 7  
*Carroll v. Town of Cornish*, No. 2001-002, at 8  
*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2012-009, at 2  
 (whether assessors were manifestly wrong to deny open space  
 application is the substantive merits question); at 17 (usual  
 presumptions, burdens, and rules apply)  
*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2013-026, at 11  
*Roque Island Gardner Homestead Corp. v. Town of Jonesport*,  
 No. 2016-003, at 3  
*Roque Island Gardner Homestead Corp. v. Town of Jonesport*,

No. 2018-001, at 5-6 (over-valuation, unjust discrimination, or fraud, dishonesty, or illegality)

Town is not obligated to notify landowners of reporting requirements of the law

*Eames v. Town of Winslow*, No. 2011-015, at 3-4 (failure to sign and date petition, 36 M.R.S. § 1109(1), and failure to respond to assessor's interrogatories, 36 M.R.S. § 1109(4))

*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2012-009, at 18 (change of use, 36 M.R.S. § 1109(5))

Town is under no obligation to notify taxpayers of statutory changes that affect farmland classification

*Heirs of Fogg v. Town of Readfield*, No. 89-07, at 4

Town may seek information from taxpayer under 36 M.R.S. § 1109(4), and implicit in this is a reasonableness requirement

*Wesson v. Town of Bremen*, No. 92-52, at 3-4 (Board finds town's request for survey was not necessary)

*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2012-009, at 15-16

Town can request further information from taxpayer and undertake its own investigation, 36 M.R.S. § 1109(4)

*Wesson v. Town of Bremen*, No. 92-52, at 3

*Carroll v. Town of Cornish*, No. 2001-02, at 3 (Decision I), at 10 n.7 (Decision II)

*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2012-009, at 15

Taxpayer may waive its right to appeal if it does not provide information requested by town, 36 M.R.S. § 1109(4)(5<sup>th</sup> ¶)

*Wesson v. Town of Bremen*, No. 92-52, at 3-4 (since survey was unnecessary, taxpayer did not waive appeal by not providing such)

*Carroll v. Town of Cornish*, No. 2001-02, at 3 (Decision I); at 10 n.7 (Decision II)

*Eames v. Town of Winslow*, No. 2011-015, at 4 (taxpayer must respond to written questions or interrogatories sent by certified mail; failure to sign and date petition, and failure to respond to notices does not waive appeal)  
*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2012-009, at 15-16

Where town neither denies application by June 1<sup>st</sup> nor seeks further information from taxpayer, it cannot complain of taxpayer's otherwise late amendment to his application

*Carroll v. Town of Cornish*, No. 2001-02, at 5-6 (Decision I), at 10 (Decision II)

Neither assessors' not deciding case by June 1<sup>st</sup> nor date taxpayer provided information in this circumstance bears on taxpayer's right to appeal

*Carroll v. Town of Cornish*, No. 2001-02, at 6 (Decision I)

Taxpayers have the obligation to report change of use of land, 36 M.R.S. § 1109(5) (1<sup>st</sup> ¶), but municipalities have no responsibility to notify taxpayers of their obligation here

*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2012-009, at 17-18

Withdrawal of property from farmland or open space

*Heirs of Fogg v. Town of Readfield*, No. 89-07, at 3-4 (assessment of penalties)

*Needham v. Town of Brooklin*, No. 92-17, at 3 (question whether there had been a change in use); at 3-4 (withdrawal without notice to taxpayer due to failure of taxpayer to provide information of his gross income derived from farmland;

*Kendall v. Town of Perry*, No. 93-60, at 2-3 (assessor withdrew property from farmland after a change in her understanding of the law; notice required from town before withdrawal)

*Eames v. Town of Winslow*, No. 2011-015, at 2-3 (failure to report farm income under section 1109(5); at 4-5 (taxpayer's being preoccupied with tending to his farm during busy time of year does not excuse compliance with law)



There is no provision in the Farm and Open Space Tax Law for excusing compliance with law based on good cause

*Eames v. Town of Winslow*, No. 2011-015, at 4-5

Where town takes the initiative to withdraw property from farmland or open space, 36 M.R.S. § 1110 requires that town notify taxpayer of its intention

*Needham v. Town of Brooklin*, No. 92-17, at 3-4

*Kendall v. Town of Perry*, No. 93-60, at 2-3

*Pierce v. Maine Revenue Services*, No. 2006-007, at 4 (tree growth case compared to farmland and open space cases)

*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2012-009, at 17

*Burt v. Town of Denmark*, No. 2014-007, at 5 (order on jurisdiction)

Failure of taxpayer to report change of use requires withdrawal of land from open space and imposition of recapture penalty

*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2012-009, at 17

36 M.R.S. § 713 describes the supplemental assessment process

*Burt v. Town of Denmark*, No. 2014-007, at 13 (order on jurisdiction)

Appeals in farmland and open space cases, 36 M.R.S. § 1118, are pursuant to section 841, as abatement cases

*Harbor Island Trust v. Town of Friendship*, No. 91-93, at 2 (open space)

*Wesson v. Town of Bremen*, No. 92-52, at 3 (open space; but this makes no mention of sections 843 or 844)

*Wesson v. Town of Bremen*, No. 95-115, at 1-2 (open space)

*Phillips v. Town of Rangeley*, No. 95-137, at 1-2 (open space)

*Carroll v. Town of Cornish*, No. 2001-02, at 2 (Decision I), at 7 (Decision II)(farmland; effect of denying classification is to deny abatement)

*Smith v. Town of Surry*, No. 2005-015, at 2 (open space; order on jurisdiction)

*Francis Small Heritage Trust, Inc. v. Town of Limington*, Nos. 2009-032 & 2010-016, at 1(open space)

*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2012-009, at 16, 21

Appeals in farmland and open space cases are directly to the Board, 36 M.R.S. § 1118

*Filaroska v. Town of Dresden*, No. 91-88, at 2 (appeal process described fully)  
*Harbor Island Trust v. Town of Friendship*, No. 91-93, at 1  
*Wesson v. Town of Bremen*, No. 92-52, at 3  
*Tidebrook Conservation Trust v. Town of Freeport*, No. 93-52, at 3 (Decision I)  
*Eastler v. Town of Farmington*, No. 93-62, at 3  
*Eastler v. Town of Farmington*, No. 95-138, at 1  
*Haskell v. Town of Phippsburg*, No. 96-004, at 1  
*Forbes v. Town of Southwest Harbor*, No. 96-045, at 1  
*Keene v. City of Auburn*, No. 98-023, at 1-2  
*Smith v. Town of Surry*, No. 2005-015, at 2 (order on jurisdiction; quoting section 1118)  
*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2012-009, at 7, 16, 20-21, 25-26  
*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2013-026, at 4  
*Roque Island Gardner Homestead Corp. v. Town of Jonesport*, No. 2018-001, at 2

Timely filing of appeal to the Board does not confer jurisdiction on the Board

*Burt v. Town of Denmark*, No. 2014-007, at 5 (order on jurisdiction)

The appealable municipal decision in an open space case is the denial of a request for abatement after commitment, not the preliminary denial for classification under 36 M.R.S. § 1109(4)(1<sup>st</sup> ¶)

*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2012-009, at 20-21, 24

Appeal period in farmland and open space cases is 60 days

*Eastler v. Town of Farmington*, No. 93-62, at 2-3 (reading 36 M.R.S. §§ 841 and 843 with section 1118)  
*Phillips v. Town of Rangeley*, No. 95-137, at 3  
*Keene v. City of Auburn*, No. 98-023, at 2 (*semble*)  
*Sayer v. Town of Canton*, No. 99-022, at 2 (from either denial of classification or, if granted, the valuation)

*Carroll v. Town of Cornish*, No. 2001-02, at 3-4 (Decision I)  
*Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2013-026, at 3

When town changed from calendar to fiscal year, and changed mil rate, application for open space classification had to be filed by April 1<sup>st</sup> of calendar year preceding the one-time six-month tax period before new tax year took effect thereafter because it was on that preceding April 1<sup>st</sup> that taxes were fixed

*Haskell v. Town of Phippsburg*, No. 96-004, at 2 (interpreting 36 M.R.S. § 502)

What constitutes a farm

*Eastler v. Town of Farmington*, No. 95-138, at 2 (entire acreage, including acreage of house and barn and regardless of road across land, should be classified as farmland)

Farmland defined, 36 M.R.S. §§ 1102(4), 1109(1)

*Sayer v. Town of Canton*, No. 99-022, at 4

*Carroll v. Town of Cornish*, No. 2001-02, at 2 (Decision I), at 6 (noting five-contiguous acre and income requirements, which are to be strictly enforced, as well as additional factors of use, productivity, and equipment used); at 10-11 (Decision II) (taxpayer satisfied statutory requirements)

*Roque Island Gardner Homestead Corp. v. Town of Jonesport*, No. 2016-003, at 3-4, 5 (question whether island parcels, traversable at low tide, are contiguous as farmland in common ownership, where farming does not take place on all parcels, and parcels may be aggregated to meet the definition of farmland); at 6-7 (farmland may include woodland and wasteland so long as tracts that produce farm income, alone or together, meet definition of farmland)

*Roque Island Gardner Homestead Corp. v. Town of Jonesport*, No. 2018-001, at 3 n.2 (farmland may include woodland and wasteland so long as tracts that produce farm income, alone or together, meet definition of farmland)

There is no limit on acreage for farmland, only a contiguous five-acre minimum requirement

*Roque Island Gardner Homestead Corp. v. Town of Jonesport*,  
No. 2016-003, at 5

A tract as required by 36 M.R.S. 1102(4) is not defined as a parcel of land as described by a deed or as designated by a municipal map and lot

*Roque Island Gardner Homestead Corp. v. Town of Jonesport*,  
No. 2016-003, at 7

Acreage requirement does not mean actual cultivation

*Mary R. Schellens & Co. v. Town of St. George*, No. 87-01, at 3

Taxpayer can combine incomes for five years preceding application for classification, 36 M.R.S. § 1102(4)

*Carroll v. Town of Cornish*, No. 2001-02, at 6, 8, 9 (Decision II)

Obligation of taxpayer to notify town of his gross income derived from farmland under 36 M.R.S. § 1109(5)

*Needham v. Town of Brooklin*, No. 92-17, at 2-3

Criterion for meeting law is based on gross income derived from retail value of products

*Mary R. Schellens & Co. v. Town of St. George*, No. 87-01, at 4  
(no requirement that land be more than “marginal”)

Three subcategories of farmland: cropland, farm woodland, and pastureland, 36 M.R.S. § 1102(3), (5), (8)

*Carroll v. Town of Cornish*, No. 2001-02, at 7 (Decision II)

Assessors erred in treating corn silage as non-qualifying, and as a product of cropland rather than pastureland

*Carroll v. Town of Cornish*, No. 2001-02, at 9-10 (Decision II)

Valuing farmland, 36 M.R.S. §§ 1105, and open space, § 1106-A

*Mary R. Schellens & Co. v. Town of St. George*, No. 87-01, at 2-3  
(valuation may not consider development and market values)

*Harbor Island Trust v. Town of Friendship*, No. 91-93, at 3  
(valuation not to reflect frontage on road or shore)

*Forbes v. Town of Southwest Harbor*, No. 96-045, at 3-5, 6-7  
(Board found section 1106-A(2)(A) and (B) to apply)

*Keene v. City of Auburn*, No. 98-023, at 3-4 (city submitted waste land should not be assigned zero value)

*Sayer v. Town of Canton*, No. 99-022, at 5-7 (woodland within farmland must be valued according to tree growth; assessors admittedly were unfamiliar with requirements and overvalued property)

*Carroll v. Town of Cornish*, No. 2001-02, at 2 n.4 (Decision II)  
(valuations suggested by Property Tax Bulletin #18, Farmland and Open Space), 3-4 (assessors' use of bulletin to understand what products qualify land as farmland); at 6 (bulletin requires valuation according to current use, not potential fair market value)

*Francis Small Heritage Trust, Inc. v. Town of Limington*, Nos. 2009-032 & 2010-016, at 7-9 (use of alternative valuation of open space under section 1106-A(2), cumulatively as much as 95%, and the last paragraph of which sets an upper and lower (tree growth value) limit); at 9 (Board interpreted statute consistently with Maine Revenue Services' interpretation); at 9-10 (trust's opinion of value as nominal was not credible)

Use of recommended state guidelines for agricultural valuations and state valuation acreage study, 36 M.R.S. § 1119

*LeMaistre v. Town of Freeport*, No. 93-56, at 2

*Brant-Meyer v. Town of Freeport*, No. 93-99, at 1-2

*Keene v. City of Auburn*, No. 98-023, at 3

*Sayer v. Town of Canton*, No. 99-022, at 5

*Carroll v. Town of Cornish*, No. 2001-02, at 2 n.4, 3-4, 6  
(Decision II)

Parties' differing in valuation by 10% or less is insufficient to prove overvaluation

*Keene v. City of Auburn*, No. 98-023, at 4-5

Each municipal assessor must determine the most appropriate value for classified farmland in his community

*LeMaistre v. Town of Freeport*, No. 93-56, at 3 (factors include length of growing season and proximity to markets)  
*Brant-Meyer v. Town of Freeport*, No. 93-99, at 2 (same)

The smaller the parcel of land, the more unique it has to be to qualify for classification

*Gile v. Town of Lebanon*, No. 91-32, at 2

Commercial use of land is troublesome for purposes of open space classification

*Wentworth and Goodyear v. Town of Lebanon*, No. 90-13, at 7

Economic pressures (charging admission to cover insurance costs) of running a beach are not due to high property taxes that can be alleviated under this law

*Wentworth and Goodyear v. Town of Lebanon*, No. 90-13, at 7-8

Classification cannot be granted simply to lower overhead on commercial enterprise

*Wentworth and Goodyear v. Town of Lebanon*, No. 90-13, at 8

Use of other farmland or open spaces as comparables

*Brant-Meyer v. Town of Freeport*, No. 93-99, at 2  
*Forbes v. Town of Southwest Harbor*, No. 96-045, at 2-3, 5-6

(comparables not meaningful when, like taxpayer's property, they have conservation easements, but unlike it, they are not on islands, one has sewer and electricity, and both are of disparate acreage)

Transfer of ownership of land does not change qualification for classification under law

*Mary R. Schellens & Co. v. Town of St. George*, No. 87-01, at 5

Reliance on Property Tax Bulletin #18, Farmland and Open Space

*LeMaistre v. Town of Freeport*, No. 93-56, at 1, 3 (sets forth only recommended farmland values)

*Kendall v. Town of Perry*, No. 93-60, at 2 (after reading it, taxpayers decided they did not meet the public benefits requirements of the law)

*Keene v. City of Auburn*, No. 98-023, at 3 (valuation according to soils, topography, and use options)

*Sayer v. Town of Canton*, No. 99-022, at 5 (valuation according to use, sales, yield, classification of land, soils, topography, drainage, and rocks)

*Carroll v. Town of Cornish*, No. 2001-02, at 2 n.4 (Decision II) (suggested valuations according to soil types and quality); at 3-4 (assessors' use of bulletin to understand what products qualify land as farmland); at 6 (valuation according to current use, not fair market value); at 7 (three kinds of farmland)

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*Roque Island Gardner Homestead Corp. v. Town of Jonesport*, No. 2018-001, at 2 n.1 (five types of farmland)

Use of USDA Soil Conservation Survey

*Keene v. City of Auburn*, No. 98-023, at 2

### **Working Waterfront Land**

Constitutional authority to provide for working waterfront land based on current use, Me. Const. art. IX, § 8, ¶ 2

*Brackett v. Town of Bristol*, Nos. 2007-010 & -011, at 1

Purposes of the working waterfront law, 36 M.R.S. § 1131

*Brackett v. Town of Bristol*, Nos. 2007-010 & -011, at 3

Definitions under statute

*Brackett v. Town of Bristol*, Nos. 2007-010 & -011, at 3-8

Working waterfront program is voluntary

*Brackett v. Town of Bristol*, Nos. 2007-010 & -011, at 3

Appeals in working waterfront cases are directly to the Board, 36 M.R.S. §§ 271(2)(A)(7), 1140-A

*Brackett v. Town of Bristol*, Nos. 2007-010 & -011, at 2 & n.3

Assessment is presumed correct, and burden is on taxpayer to show that the assessor is manifestly wrong

*Brackett v. Town of Bristol*, Nos. 2007-010 & -011, at 12

Means for assessors examining land and information submitted by taxpayer, 36 M.R.S. § 1137(5)

*Brackett v. Town of Bristol*, Nos. 2007-010 & -011, at 8

Requirements of an application (schedule) for classification, 36 M.R.S. § 1137(1)

*Brackett v. Town of Bristol*, Nos. 2007-010 & -011, at 3

Application for classification as working waterfront must be filed by April 1<sup>st</sup> of the first tax year in which classification is sought, 36 M.R.S. § 1137(1)



*Brackett v. Town of Bristol*, Nos. 2007-010 & -011, at 3

Application for working waterfront requires unanimous written consent of all owners, 36 M.R.S. § 1137(1)

*See Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2012-009, at 18 n.8

Application must be signed by all co-owners, 36 M.R.S. § 1137(1)

*See Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2012-009, at 18 n.8

Taxpayer must be given an opportunity to amend a deficient application for classification, 36 M.R.S. § 1137(3)

*See Greenleaf Cove Ass'n v. Town of Westport Island*, No. 2012-009, at 23 n.10

Working waterfront cases are abatement cases, 36 M.R.S. § 1140-A, subject to 36 M.R.S. § 841

*Brackett v. Town of Bristol*, Nos. 2007-010 & -011, at 2 n,3

Working waterfront land is to be considered annually for eligibility in program, 36 M.R.S. § 1137(6)

*Brackett v. Town of Bristol*, Nos. 2007-010 & -011, at 8

Assessors are to begin by determining what area of a parcel is eligible for classification as working waterfront, 36 M.R.S. § 1137(1)(2<sup>nd</sup> ¶)

*Brackett v. Town of Bristol*, Nos. 2007-010 & -011, at 4-5

If the noncommercial fishing part of working waterfront land is 20,000 square feet or more, it cannot in any event be considered a part of working waterfront, 36 M.R.S. 1137(1)(2<sup>nd</sup> ¶)

*Brackett v. Town of Bristol*, Nos. 2007-010 & -011, at 20 (presence of residence)

After determining if land is eligible for classification as working waterfront, assessors determine fair market value of property, 36 M.R.S. § 1135(1)(A), (2)

*Brackett v. Town of Bristol*, Nos. 2007-010 & -011, at 5

Mechanism for accomplishing purposes of working waterfront law is reduced taxes, depending on whether land is used “predominantly” or “primarily” as working waterfront, 36 M.R.S. §§ 1132(9), (10)

*Brackett v. Town of Bristol*, Nos. 2007-010 & -011, at 6

Methods for reducing fair market value to current use value: comparative valuation, 36 M.R.S. § 1135(1); or alternative, percentage-based valuation, 36 M.R.S. § 1135(2)

*Brackett v. Town of Bristol*, Nos. 2007-010 & -011, at 6-8

Working waterfront covenant as a deeded restriction as a means to reduce current use value, 33 M.R.S. §§ 131-136

*Brackett v. Town of Bristol*, Nos. 2007-010 & -011, at 8 n.7

Where deeds do not stipulate a permanent use of properties as working waterfront, taxpayers are not entitled to enhanced reduction in current use value under 36 M.R.S. § 1135(2)(C)

*Brackett v. Town of Bristol*, Nos. 2007-010 & -011, at 15

Use of land that is inconsistent with commercial fishing will not deprive it of working waterfront classification if such use is only minor and purely incidental to commercial fishing

*Brackett v. Town of Bristol*, Nos. 2007-010 & -011, at 21

Residential use of land is both inconsistent with and not purely incidental to commercial fishing activity

*Brackett v. Town of Bristol*, Nos. 2007-010 & -011, at 21-22

“Inconsistent” use does not mean a use that is an “interference”

*Brackett v. Town of Bristol*, Nos. 2007-010 & -011, at 21-22

The presence of a residence on working waterfront land reduces the use of the land from predominantly to primarily working waterfront

*Brackett v. Town of Bristol*, Nos. 2007-010 & -011, at 22

Assessment of mandatory penalty upon withdrawal of property from working waterfront program, except if property is transferred to open space program or taken by eminent domain, 36 M.R.S. § 1138

*Brackett v. Town of Bristol*, Nos. 2007-010 & -011, at 8-9

Reliance on Property Tax Bulletin #24, Effects of Easements on Just Value

*Brackett v. Town of Bristol*, Nos. 2007-010 & -011, at 11 n.9

### **Mine Site**

No cases

## VI. Equalized Municipal Valuation

Duty of state to equalize state and county taxes among the municipalities and unorganized territories on an annual basis, 36 M.R.S. § 208

*Town of Dexter v. Maine Revenue Services*, No. 2001-014, at 1-2

*Town of Liberty v. Maine Revenue Services*, No. 2003-015, at 1

*Town of Abbott v. Maine Revenue Services*, No. 2004-008, at 1

*Town of Palermo v. Maine Revenue Services*, No. 2005-016, at 1  
(MRS must notify town of equalized valuation by certified mail)

*Town of East Millinocket v. Maine Revenue Services*, No. 2014-010, at 2

*Town of Madison v. Maine Revenue Services*, No. 2014-011, at 3

*Town of Skowhegan v. Maine Revenue Services*, No. 2014-012, at 2

The Board's authority to review determinations of valuation, 36 M.R.S. §§ 208, 271(2)(A)(5), 272

*Inhabitants of the Town of Madison v. State Tax Assessor*, No. 86-07, at 5, 9

*Town of Abbott v. Maine Revenue Services*, No. 2004-008, at 2

*Town of Madison v. Maine Revenue Services*, No. 2014-011, at 1

*Town of Skowhegan v. Maine Revenue Services*, No. 2014-012, at 1

The Board has sought to avoid technicalities to permit municipalities to present the merits of their claims, but will dismiss appeals that are substantively deficient in the way in which they are brought

*Town of Abbott v. Maine Revenue Services*, No. 2004-008, at 3-4

*See Town of Mars Hill v. Maine Revenue Services*, No. 2009-030, at 6 n.2 (order on jurisdiction)

*See Down East Hospitality Partners v. Town of Lincolnville*, No. 2012-010, at 5 (dismissal order)

*Town of Madison v. Maine Revenue Services*, No. 2014-011, at 2

Where town acknowledges it cannot comply with filing deadline, and requests withdrawal of appeal, the Board will dismiss the appeal

*Town of Freedom v. Maine Revenue Services*, No. 2018-015, at 1 (dismissal order)

Burden is on state to show its determination of equalized valuation is reasonable and the municipality's proposed valuation is unreasonable, 36 M.R.S. § 272(3)

- Inhabitants of the Town of Madison v. State Tax Assessor*, No. 86-07, at 4
- Town of Glenburn v. Bureau of Taxation*, No. 87-13, at 2, 6
- Town of Danforth v. Bureau of Taxation*, No. 92-24, at 2
- Town of Winn v. Bureau of Taxation*, No. 92-36, at 2 (Board holds Bureau did not meet burden by admitting a higher minimum ratio was appropriate)
- Town of Washington v. Bureau of Taxation*, No. 92-37, at 2
- Drew Plantation v. Bureau of Taxation*, No. 92-38, at 1
- Town of Limerick v. Bureau of Taxation*, No. 92-76, at 2
- Town of Montville v. Bureau of Taxation*, No. 92-77, at 2
- Town of Littleton v. Bureau of Taxation*, No. 92-86, at 3
- Town of Limestone v. Bureau of Taxation*, No. 92-89, at 2
- Town of Isleboro v. Bureau of Taxation*, No. 92-91, at 2
- Town of Waldoboro v. Bureau of Taxation*, No. 95-109, at 3 (Board found state had not met its burden where neither its position nor town's position was manifestly superior)
- Town of Abbott v. Maine Revenue Services*, No. 2001-011, at 4
- Town of Dexter v. Maine Revenue Services*, No. 2002-018, at 8-9 (when Board is evenly divided on question of whether municipality is entitled to modified equalized valuation, state has not carried its burden of showing its determination is reasonable, and so municipality is entitled to modification)
- Town of Liberty v. Maine Revenue Services*, No. 2003-015, at 2
- Town of Waldo v. Maine Revenue Services*, No. 2007-001, at 5-8 (MRS was unreasonable not to value waste land separately from undeveloped land on basis town's suggested valuations were not sufficiently disparate)
- Town of East Millinocket v. Maine Revenue Services*, No. 2014-010, at 3 (Board noted town had considered declining in demand for mill's paper product by dramatically declining valuations over five years before year in which data was gathered)
- Town of Madison v. Maine Revenue Services*, No. 2014-011, at 4, 5 & n.2 (same); at 9
- Town of Skowhegan v. Maine Revenue Services*, No. 2014-012, at 2

Arguable or admitted errors in valuations of towns other than the town challenging its state valuation not relevant to equalized valuation of municipality at issue

*Town of East Millinocket v. Maine Revenue Services*, No. 2014-010,  
at 3  
*Town of Madison v. Maine Revenue Services*, No. 2014-011, at 10  
*Town of Skowhegan v. Maine Revenue Services*, No. 2014-012, at 4

Equalized valuations are based on the taxable value of property within each municipality, not the municipality's population

*Town of Frenchville v. State Tax Assessor*, No. 87-12, at 2  
*Town of Abbott v. Maine Revenue Services*, No. 2004-008, at 10 n.6

State is to give notice of equalized valuations by October 1<sup>st</sup>, 36 M.R.S. §§ 208, 208-A(1)

*Town of Dexter v. Maine Revenue Services*, No. 2001-014, at 2 n.1,  
4 n.4, 5  
*Town of Dexter v. Maine Revenue Services*, No. 2002-018, at 4  
*Town of Liberty v. Maine Revenue Services*, No. 2003-015, at 2  
*Town of Skowhegan v. Maine Revenue Services*, No. 2014-012, at 2

Requirements for the Board to have jurisdiction over appeal of municipality, 36 M.R.S. § 272(1): (1) appeal must be filed within 45 days of receipt of Maine Revenue Services' report on valuation; (2) appeal must be in writing and signed by a majority of the municipal officers; (3) appeal must be accompanied by an affidavit stating the grounds of appeal; and (4) copy of notice of appeal and affidavit must be served on MRS

*Town of Palermo v. Maine Revenue Services*, No. 2003-016, at 1-2  
(failure of requirement 2)  
*Town of Easton v. Maine Revenue Services*, No. 2003-017, at 1-2  
(failure of requirement 2)  
*Town of Abbott v. Maine Revenue Services*, No. 2004-008, at 2  
(stating requirements)  
*Town of Waldo v. Maine Revenue Services*, No. 2007-001, at 2 (same)  
*Town of Milbridge v. Maine Revenue Services*, No. 2007-009, at 1  
(same; failure of requirement 3)  
*Town of Mars Hill v. Maine Revenue Services*, No. 2009-030, at 1  
(order on jurisdiction)(same; failure of requirement 3)  
*Town of East Millinocket v. Maine Revenue Services*, No. 2014-010,  
at 2 (Board refers to each requirement in finding jurisdiction)  
*Town of Madison v. Maine Revenue Services*, No. 2014-011, at 1-2

(setting forth the four requirements)  
*Town of Skowhegan v. Maine Revenue Services*, No. 2014-012, at 1  
 (Board refers to each requirement in finding jurisdiction)

The requirements of 36 M.R.S. § 272(1) are mandatory and jurisdictional and a municipality must comply with all of them

*Town of Easton v. Maine Revenue Services*, No. 2003-017, at 1  
*Town of Mars Hill v. Maine Revenue Services*, No. 2009-030, at 2  
 (order on jurisdiction); at 1 (decision on jurisdiction)  
*Town of Madison v. Maine Revenue Services*, No. 2014-011, at 2

Failure of municipality to comply with appeal time deadline in 36 M.R.S. § 272(1) requires dismissal of appeal

*Carroll Plantation v. Bureau of Taxation*, No. 90-25, at 1-2  
*Town of Whitefield v. Bureau of Taxation*, No. 92-27, at 2  
*Town of Franklin v. Bureau of Taxation*, No. 92-35, at 2  
*Town of Palermo v. Maine Revenue Services*, No. 2005-016, at 1-2

Filing a proper affidavit on appeal to the Board from Chairman's order dismissing appeal cannot substitute for failure to timely file proper affidavit to begin with, or else 36 M.R.S. § 272(1) would be rendered meaningless

*Town of Mars Hill v. Maine Revenue Services*, No. 2009-030, at 1  
 (decision on jurisdiction)

The Board has not resolved whether providing of information to a field representative suffices as service on the State Tax Assessor under 36 M.R.S. § 208-A(1)

*Town of Dexter v. Maine Revenue Services*, No. 2002-018, at 6 n.6

The Board does not have jurisdiction of municipality's appeal where letter of appeal was sent to Maine Revenue Services within specified period for appeal, but did not reach the Board until after appeal period had run

*Town of Stockholm v. Maine Revenue Services*, No. 2002-017, at 1-2  
 (noting that *Town of Washington v. Bureau of Taxation*, No. 92-37, at 1, had held to the contrary but was reversed by the

Superior Court)  
*Town of Palermo v. Maine Revenue Services*, No. 2005-016, at 2  
 (same)

Application of P. & S.L. 1992, ch. 114, extending time for three municipalities to appeal their 1992 equalized valuations

*Town of Mechanic Falls v. Bureau of Taxation*, No. 92-26, at 1  
*Town of Whitefield v. Bureau of Taxation*, No. 92-27, at 1  
*Town of Franklin v. Bureau of Taxation*, No. 92-35, at 1-2

Application of legislative resolves to require Board to hear municipal appeals previously dismissed for lack of jurisdiction

*Town of Palermo v. Maine Revenue Services*, No. 2005-016 (tardy appeal and inadequate affidavit)

The Board accepts appeal although notice did not comply with 36 M.R.S. § 272(1)

*Town of Sherman v. Bureau of Taxation*, No. 90-21, at 1

The Board accepts jurisdiction where the appeal was not signed by a majority of the municipal officers but the accompanying affidavit was

*Town of Abbott v. Maine Revenue Services*, No. 2004-008, at 4-6  
*Town of Madison v. Maine Revenue Services*, No. 2014-011, at 2-3

36 M.R.S. § 272(1) requires that the notice of appeal, not the accompanying affidavit, be signed by majority of municipal officers

*Town of Dexter v. Maine Revenue Services*, No. 2002-018, at 4 n.3  
 (Board notes, however, that signing by municipal officers has been the practice)

*Town of Abbott v. Maine Revenue Services*, No. 2004-008, at 3  
*Town of Mars Hill v. Maine Revenue Services*, No. 2009-030, at 6 n.2  
 (order on jurisdiction)

*Town of Madison v. Maine Revenue Services*, No. 2014-011, at 2; 3 n.1  
 (Board noted instructions from Maine Revenue Services were incorrect)



Affidavit must indicate personal knowledge of basis of appeal

*Town of Danforth v. Maine Revenue Services*, No. 2002-013, at 1-2 n.1

*Town of Shirley v. Maine Revenue Services*, No. 2002-016, at 1-2 n.1

*Town of Dexter v. Maine Revenue Services*, No. 2002-018, at 4 n.3

*Town of Abbott v. Maine Revenue Services*, No. 2004-008, at 7

The grounds for the municipality's appeal are to be stated in the affidavit, not the notice of appeal

*Town of Mars Hill v. Maine Revenue Services*, No. 2009-030, at 5  
(order on jurisdiction)

Although municipality's jurat did not expressly state that signatories intended to swear to the truth of the matters asserted in the affidavit, that is implied from the use of the word "sworn" or "affidavit," but not from merely appearing before a notary

*Town of Danforth v. Maine Revenue Services*, No. 2002-013, at 1-2 & n.1

*Town of Shirley v. Maine Revenue Services*, No. 2002-016, at 1-2 & n.1

*Town of Waldo v. Maine Revenue Services*, No. 2007-001, at 4-5

*Town of Mars Hill v. Maine Revenue Services*, No. 2009-030, at 3-4  
(order on jurisdiction)

An inadequate affidavit, such as with an inadequate jurat, is no affidavit at all

*Town of Mars Hill v. Maine Revenue Services*, No. 2009-030, at 4-5  
& n.1 (order on jurisdiction)

A jurat is more than a certificate of acknowledgment

*Town of Mars Hill v. Maine Revenue Services*, No. 2009-030, at 5  
(order on jurisdiction)

Failure of municipality to file affidavit, or a proper affidavit, as required by 36 M.R.S. § 272(1)(and Board Rule 4(B)(2)), requires dismissal of appeal

*Carroll Plantation v. Bureau of Taxation*, No. 93-126, at 1  
*Town of Monroe v. Bureau of Taxation*, No. 93-131, at 2  
*Town of Weston v. Bureau of Taxation*, No. 95-121, at 2  
*Town of Weston v. Bureau of Taxation*, No. 96-017, at 1  
*Town of St. Agatha v. Bureau of Taxation*, No. 96-025, at 1  
*Town of Solon v. State of Maine, Bureau of Revenue Services*,  
 No. 2000-012, at 2  
*Town of Danforth v. Maine Revenue Services*, No. 2002-013,  
 at 1-2 n.1  
*Town of Shirley v. Maine Revenue Services*, No. 2002-016,  
 at 1-2 n.1  
*Town of Abbott v. Maine Revenue Services*, No. 2004-008, at 6  
*Town of Palermo v. Maine Revenue Services*, No. 2005-016, at 2-3  
*Town of Milbridge v. Maine Revenue Services*, No. 2007-009, at 2  
*Town of Mars Hill v. Maine Revenue Services*, No. 2009-030, at 5-6  
 (order on jurisdiction); at 1 (decision on jurisdiction)

Effect of state's failing to advise town of its appeal rights

*Town of Washington v. Bureau of Taxation*, No. 92-37, at 1

State uses "two-year rule," MRS Reg. 08-125, ch. 201 § (1)(O), whereby in a given year it uses data from the previous year for use in the next year after the appeal in order to equalize valuations according to most recent data, not project future valuations

*Town of Dexter v. Maine Revenue Services*, No. 2001-014, at 2-3  
*Town of Dexter v. Maine Revenue Services*, No. 2002-018, at 2  
*Town of Liberty v. Maine Revenue Services*, No. 2003-015, at 1-2  
*Town of Waldo v. Maine Revenue Services*, No. 2007-001, at 6 n.3  
*Cushing Holdings, LLC v. Town of Cushing and Last Resort Holdings, LLC v. Town of Cushing*, Nos. 2006-017 & -018, at 5 n.5  
*Town of East Millinocket v. Maine Revenue Services*, No. 2014-010,  
 at 2, 7-8 (Board cannot consider reduced assessment of property for year following year of date used in two-year rule, for that would simply violate two-year rule)  
*Town of Madison v. Maine Revenue Services*, No. 2014-011, at 4, 8  
 (same; Board has no authority to ignore two-year rule)  
*Town of Skowhegan v. Maine Revenue Services*, No. 2014-012, at 1-2,  
 4 same)

Town's use of figures for state valuation for the year after that in issue

*Town of Washington v. Bureau of Taxation*, No. 92-37, at 2

Municipality did not abate tax assessment of property but argued it should be considered at lower value for purposes of reviewing equalized valuation

*Town of East Millinocket v. Maine Revenue Services*, No. 2014-010, at 3 (town would not initiate such action because to do so would cause economic distress)

*Town of Madison v. Maine Revenue Services*, No. 2014-011, at 5 (town's not abating assessment on its own was a responsible inaction to avoid financial distress or crisis); at 9 (while both motivations may be understandable, they are inconsistent)

MRS Reg. 08-125, ch. 201 § (2)(B) allows for equitable use of additional procedures for valuation in unique cases

*Town of Dexter v. Maine Revenue Services*, No. 2001-014, at 4-5 & n.5, 7-8 (state cannot use usual procedures mechanically if that causes it not to meet its overriding obligation of equalizing valuations)

Impact of MRS Reg. 08-125, ch. 201 § (2)(B), equity rule permitting use of new, not regularly employed, procedures for equalizing valuations

*Town of Dexter v. Maine Revenue Services*, No. 2002-018, at 1-2, 4, 9 (referring to regulation as an "equity regulation"; modified state valuation is used to calculate distribution of state educational subsidies and municipal revenue sharing)

*Town of East Millinocket v. Maine Revenue Services*, No. 2014-010, at 2 (Maine Revenue Services would use this rule only when it does its own appraisal of property)

*Town of Madison v. Maine Revenue Services*, No. 2014-011, at 6 (Maine Revenue Services testified it would not apply the equity rule when property is certified at 100 per cent and the municipality had not abated the property)

*Town of Skowhegan v. Maine Revenue Services*, No. 2014-012, at 4

The Board has no authority to direct state to use these equitable procedures

*Town of Dexter v. Maine Revenue Services*, No. 2001-014, at 8

Use of the equity rule is for Maine Revenue Services, not the Board, in the first instance; Board reviews for abuse of discretion

*Town of Madison v. Maine Revenue Services*, No. 2014-011, at 6

Impact of 36 M.R.S. § 208-A, offering tax relief to a municipality that suffers a sudden and severe disruption

*Town of Dexter v. Maine Revenue Services*, No. 2001-014,  
at 3-5 & n.5 (purpose is to shorten time within which reported changes in valuations are recognized by state, thus allowing for dramatic economic losses to be accounted for sooner)

36 M.R.S. § 208-A(2) requires that the economic disruption must account for at least a defined percentage of the municipality's valuation, be caused by a single employer, and municipality's equalized tax rate of residential property is above state average

*Town of Dexter v. Maine Revenue Services*, No. 2001-014, at 4 n.4,  
6-7 (5% under statute originally)

*Town of Dexter v. Maine Revenue Services*, No. 2002-018, at 3 n.1  
(2% under amendment to statute)

What constitutes a filing with supporting documentation of a request for consideration of a claim of sudden and severe economic disruption

*Town of Dexter v. Maine Revenue Services*, No. 2002-018, at 5-7

Under 2013 amendments to 36 M.R.S. § 208-A, the Board no longer has a role in claims of sudden and severe disruption

*Town of Madison v. Maine Revenue Services*, No. 2014-011, at 8 n.3  
*Town of Skowhegan v. Maine Revenue Services*, No. 2014-012, at 5

Requirement of municipality's filing its request for consideration of a claim of sudden and severe economic disruption by August 1<sup>st</sup>

*Town of Dexter v. Maine Revenue Services*, No. 2002-018,

at 5 & n.5  
*Town of Abbott v. Maine Revenue Services*, No. 2004-008, at 3

36 M.R.S. § 208-A(1), by imposing an August 1<sup>st</sup> deadline for municipality to notify state of sudden and severe economic disruption, necessarily excludes projected disruptions that are expected to occur after that date

*Town of Dexter v. Maine Revenue Services*, No. 2001-014,  
 at 6 & n.6, 7-9 (plant closing to occur soon thereafter is  
 presently speculative and can be captured in next year's state  
 equalization)

The Board has not decided if either the August 1<sup>st</sup> or October 1<sup>st</sup> deadline is mandatory

*Town of Dexter v. Maine Revenue Services*, No. 2001-014, at 6 n.6  
*Town of Dexter v. Maine Revenue Services*, No. 2002-018, at 5 n.5

Claim by town that it did not experience sufficient growth to sustain increase in equalized valuation

*Town of Frenchville v. State Tax Assessor*, No. 87-12, at 1

Claim by town that state failed to take into account economic impact of closure of major employer

*Town of Limestone v. Bureau of Taxation*, No. 92-89, at 2 (this claim  
 relied upon a factor beyond procedures outlined in state's rules)  
*Town of Dexter v. Maine Revenue Services*, No. 2001-014, *passim*  
 (new statute and rule allow for such consideration)  
*Town of Dexter v. Maine Revenue Services*, No. 2002-018, *passim*

Claim by town that an increase in its equalized valuation was unjustified in light of generally depressed economy in town and surrounding area

*Town of Abbott v. Maine Revenue Services*, No. 2001-011, *passim*

Maine Revenue Services' function is not to evaluate income, but to arrive at a practical equality of real and personal property valuation among

municipalities for purposes that equalization serves—assessment by counties of municipal taxes, administration of state revenue sharing, and distribution of state educational subsidies

*Town of Abbott v. Maine Revenue Services*, No. 2004-008, at 9-10

The state when equalizing municipal valuations is, like assessors, required to value real estate, which is a fairly constant fixed asset, according to its just value over a period of time that is measurably stable, not the fleeting or speculative

*Town of Abbott v. Maine Revenue Services*, No. 2001-011, at 4-5

Whether, over time, the general economic conditions of an area may come to redefine the real estate market, and transitory events will have been repeated often enough to create a new economic condition that could support a change in municipal valuation

*Town of Abbott v. Maine Revenue Services*, No. 2001-011, at 5

*Town of Abbott v. Maine Revenue Services*, No. 2004-008, at 12

*Town of East Millinocket v. Maine Revenue Services*, No. 2014-010, at 3 (town assessors had regularly reduced assessed value of mill, but its closure occurred after April 1<sup>st</sup> of relevant year)

*Town of Madison v. Maine Revenue Services*, No. 2014-011, at 5 & n.2 (Board notes largely continual lowering of assessments over five-year period could be evidence of less product demand); at 7-8 (consideration of market trends discovered only after April 1<sup>st</sup> of relevant tax year does not warrant reduction in state valuation)

*Town of Skowhegan v. Maine Revenue Services*, No. 2014-012, at 2-3; at 4 n.5 (Board member found lower assessments to be consistent with depreciation of personalty)

That point has not been reached where sales prices of residential properties are such that not only the affluent have become buyers

*Town of Abbott v. Maine Revenue Services*, No. 2001-011, at 5

Changes in municipal equalization policies are for the Legislature

*Town of Abbott v. Maine Revenue Services*, No. 2004-008, at 11-12

*Town of Madison v. Maine Revenue Services*, No. 2014-011, at 8 n.3  
(lag due to two-year rule caused by change in payment to municipalities of educational funding)

#### Discussion of state sales ratio analysis for valuation

- Town of Glenburn v. Bureau of Taxation*, No. 87-13, at 6  
*Town of Monmouth v. Bureau of Taxation*, No. 90-20, at 2  
*Town of Penobscot v. Bureau of Taxation*, No. 90-23, at 2-3  
*Town of Jefferson v. Bureau of Taxation*, no. 91-80, at 1, 2-3  
 (Rule 08-125, ch. 201-89, Procedure Used to Develop Equalized State Valuation)  
*Town of Lubec v. Bureau of Taxation*, No. 91-85, at 2 (Rule 08-125, ch. 201 § (1)(D))  
*Town of Mechanic Falls v. Bureau of Taxation*, No. 92-26, at 2-3  
*Town of Frenchboro v. Bureau of Taxation*, No. 92-88, at 2-3 (and errors of omission of open space land)  
*Toussaint v. City of Lewiston*, Nos. 93-06–93-11, at 6 (Bureau of Taxation’s methodology eliminates highest and lowest values)  
*Town of Waldoboro v. Bureau of Taxation*, No. 95-109, *passim* (town challenged state’s eliminating three sales from sales ratio analysis as non-arm’s length)  
*Town of Abbott v. Maine Revenue Services*, No. 2001-011, at 3  
 (Board’s careful review led to conclusion that the state’s sales ratio analysis was not flawed); at 4 (sales ratio analysis cannot include personal income or speculation or presumed knowledge of property values)  
*Town of Liberty v. Maine Revenue Services*, No. 2003-015, at 2-4  
 (process of developing sales ratio analysis discussed; MRS improperly excluded one waterfront sale because, while it represented a 100% increase from previous year, which was arguably contrary to town’s methodology of arriving at assessed values, MRS did not exclude other sales as to which town had used same methodology; this increased the waterfront sales ratio, thus reducing town’s overall equalized valuation and its eligibility for state education funds)  
*Town of Abbott v. Maine Revenue Services*, No. 2004-008, at 8-11  
 (same arguments as made in *Town of Abbott v. Maine Revenue Services*, No. 2001-011); at 8 & n.4 (Board defines and describes various aspects of sales ratio studies)

Rule 08-125, ch. 201 § (3)(C), allowing to expanded sales period applies only to residential sales

*Town of Madison v. Maine Revenue Services*, No. 2014-011, at 4, 10  
*Town of Skowhegan v. Maine Revenue Services*, No. 2014-012, at 4

Rule 08-125, ch. 201 § (4)(C) applies to commercial, industrial, and personal property

*Town of Madison v. Maine Revenue Services*, No. 2014-011, at 4  
*Town of Skowhegan v. Maine Revenue Services*, No. 2014-012, at 2, 4

Methodology for determining municipal valuations must be the same throughout the state

*Town of Penobscot v. Bureau of Taxation*, No. 90-23, at 2 (Board rejects proposal for using five year average to even out peaks and valleys in real estate market)  
*Town of Washington v. Bureau of Taxation*, No. 92-37, at 2-3  
*Town of Limerick v. Bureau of Taxation*, No. 92-76, at 2 (state demonstrated that same standards were used)  
*Town of Montville v. Bureau of Taxation*, No. 92-77, at 2 (same)  
*Town of Littleton v. Bureau of Taxation*, No. 92-86, at 3 (same)  
*Town of Isleboro v. Bureau of Taxation*, No. 92-91, at 2 (same)  
*Town of Abbott v. Maine Revenue Services*, No. 2004-008, at 11-12

State's methodology, based only on practice and not in a rule or statute, is troublesome, but this is outweighed by need for consistency

*Town of Washington v. Bureau of Taxation*, No. 92-37, at 2-3

Argument that state's methodology should not be the same for all communities

*Town of Isleboro v. Bureau of Taxation*, No. 92-91, at 2 (small island town with no commercial enterprises and with many seasonal residences)

Suggestion by the Board that there may be merit in determining different sales ratios for waterfront property with buildings and without buildings

*Town of Lubec v. Bureau of Taxation*, No. 91-85, at 3



Maine Revenue Services Reg. 08-125, ch. 201 § (3)(F) allows for determination that an average sales ratio is invalid for cause, such as changes in assessed values for sold properties which are inconsistent with assessed values for properties that have not recently sold

*Town of Liberty v. Maine Revenue Services*, No. 2003-015, at 2 & n.3

MRS Reg. 08-125 ch. 201, § (4)(H)(5) provides for rounding off of equalized state valuations to nearest \$50,000

*Town of Milo v. Maine Revenue Services*, No. 2002-014, at 2

*Town of Dexter v. Maine Revenue Services*, No. 2002-018, at 4 n.2

*Town of Waldo v. Maine Revenue Services*, No. 2007-001, at 7 & n.4

“Chasing sales”: concept that municipal assessor may have sought to inflate municipal equalized valuation by using what was arguably an excessive sales price

*Town of Liberty v. Maine Revenue Services*, No. 2003-015, at 3

State explained unusually high increase in equalized valuation as making up for mathematical error in assessing town the previous year

*Town of Littleton v. Bureau of Taxation*, No. 92-86, at 2

Maine Revenue Services must certify equalized municipal valuations to Secretary of State by February 1<sup>st</sup> in year in which valuations are to be effective, 36 M.R.S. § 305(1)

*Town of Liberty v. Maine Revenue Services*, No. 2002-015, at 2 n.1

*Town of Abbott v. Maine Revenue Services*, No. 2004-008, at 31

The Board has not addressed whether the February 1<sup>st</sup> deadline is mandatory

*Town of Abbott v. Maine Revenue Services*, No. 2004-008, at 3

Objection to state's testifying because its file was not timely made available to municipality

*Town of Glenburn v. Bureau of Taxation*, No. 87-13, at 2  
(substantial compliance by Bureau with Rule 4(D)(3) sufficient, but failure of town to supply its exhibits to Bureau results in their exclusion)

Claim that state did not comply with minimum assessing standards, 36 M.R.S. § 327

*Town of Danforth v. Bureau of Taxation*, No. 92-24, at 1-2 (Board finds that had state followed standards as suggested by town, the state's valuation would have been *higher* and the assessing ratio *lower*)

*Town of Winn v. Bureau of Taxation*, No. 92-36, at 2

*Town of Washington v. Bureau of Taxation*, No. 92-37, at 2

Effect of Public Utilities Commission regulation of hydroelectric facility

*Inhabitants of the Town of Madison v. State Tax Assessor*, No.86-07,  
*passim*

*Topsham Hydro Partners v. Town of Topsham*, No. 2003-007, at 10

Department of Environmental Protection restriction on use of property creates economic obsolescence

*Schurman v. State of Maine, Bureau of Taxation*, No. 91-62, at 2

Tax increment financing (TIF) district as an economic development tool

*City of Caribou v. Bureau of Taxation*, No. 96-014, at 1

*City of Presque Isle v. Bureau of Taxation*, No. 96-026, at 1

*City of South Portland v. State of Maine, Bureau of Revenue Services*, No. 99-033, at 1

*Town of Bucksport v. Maine Revenue Services*, No. 2001-012, at 2

Homestead exemptions, effective in 2000

*Town of Gilead v. State of Maine, Bureau of Revenue Services,*  
No. 99-035, at 1 (not to be included by municipalities but  
added back in for state's valuation of municipality)

## VII. Poverty Abatements

36 M.R.S. § 841(2) allows for municipal officers to make abatements as they think are just, and to do so beyond the three-year reach of section 841(1)—but only in cases of poverty or infirmity

*Pachowsky v. Town of Clinton*, No. 2001-005, at 9-10

*Fasse v. Town of St. Albans & Town of Ripley*, No. 2002-005, at 14

Purpose of 36 M.R.S. § 841(2) is to prevent municipalities (of the State Tax Assessor) from forcing the sale of property in order to collect taxes from those otherwise unable to pay

*Pachowsky v. Town of Clinton*, No. 2001-005, at 9

*Pierce v. Maine Revenue Services*, No. 2006-007, at 9

The burden is on the taxpayer to prove eligibility for poverty exemption

*Pierce v. Maine Revenue Services*, No. 2006-007, at 10

The poverty exemption applies only to one's primary residence

*Pierce v. Maine Revenue Services*, No. 2006-007, at 10