

Chapter 1 RULES OF PRACTICE AND PROCEDURE IN APPEALS BEFORE THE STATE BOARD OF PROPERTY TAX REVIEW

1. DEFINITIONS

- A. Assessing Authority. The assessors, municipal officer(s), chief assessor, or the State Tax Assessor, in the case of the unorganized territory, who renders, or fails to render a decision as required by statute which decision or failure is appealable to this Board.
- B. Board. "Board" means the State Board of Property Tax Review as established under 36 M.R.S.A. §§ 271-273.
- C. Party. A party is any person participating in an appeal before the Board, as either a petitioner or a respondent, as those terms are defined below:
 - (1) Petitioner. Any person who has filed an appeal with the Board relating to those provisions of law enumerated at 36 M.R.S.A. 5 271(2)(A).
 - (2) Respondent. The municipal tax assessor, chief assessor or the State Tax Assessor, as appropriate. In all tax abatement proceedings the Petitioner shall designate as Respondents both the appropriate assessing authority and the municipality, where applicable, in which the subject property is located.
- D. Person. "Person" means any individual, partnership, corporation, governmental entity, association, or public or private organization of any character.
- E. Secretary. "Secretary" means the Secretary of the State Board of Property Tax Review.
- F. Tax Abatement Appeal. An appeal to the Board relating to those provisions of law enumerated in 36 M.R.S.A. § 271(2)(A)(1)-(4) & (6).
- G. Municipal Valuation Appeal. An appeal to the Board relating to cases arising under 36 M.R.S.A. § 272.

2. SCOPE AND CONSTRUCTION OF RULES

- A. Procedure Governed. These Rules shall govern all practice and procedure before the Board under applicable laws of the State of Maine,

except as otherwise provided by statute or rule. When the circumstances of a particular proceeding requires more detailed procedures than those set forth in these rules, additional procedures may be specified by the Board by order applicable to that particular proceeding.

- B. Liberal Construction. These Rules shall be liberally construed to secure just, speedy, and economic determination of all appeals presented to the Board.
- C. Deviation from Rules. In special cases, where good cause appears, the Board may permit or order deviation from these Rules insofar as it may find compliance therewith to be impracticable, inexpedient, or unnecessary. Nothing in this section shall permit the Board to deviate from any procedural requirement or deadline that is expressly set forth in statute without provision for waiver or modification.

3. GENERAL PROVISIONS

- A. Office. The Office of the Board is located at 49 State House Station, 4th Floor, State Office Building, Augusta, Maine 04333.
- B. Communications. All written communications with the Board shall be sent to the Secretary of the Board at the following address 49 State House Station, Augusta, Maine 04333.
- C. Time Calculations. Computation of any period of time prescribed or allowed by these Rules, by order of the Board, or by any applicable statute, shall be determined in accordance with 1 M.R.S.A. § 71(12).
- D. Enlargement of Time. When by these rules or by order issued by the Board, an act is required or allowed to be done at, before, or within a specific time, the Board for cause shown may at any time, in its discretion, with or without request, motion or notice, order the period enlarged before the expiration of the period originally prescribed or as previously extended; time limits or periods that apply to other persons affected by the resulting change or delay will also be adjusted appropriately. Requests for enlargement of time which are filed after expiration of the period prescribed or as extended by previous order will be granted only in exceptional circumstances.
- E. Size of Documents. All documents filed with the Board shall be printed or typewritten and, so far as practicable, shall be upon paper 8 1/2 x 11 inches in size.
- F. Filings. In filing papers with the Board as required or permitted by applicable statute, these rules or an order of the Board, the papers shall

be deemed to be officially filed or received only when received at the office of the Board during hours that it is open. All written communications or documents relating to a proceeding to be brought or pending before the Board shall be addressed to the Secretary of the Board except as provided in Section 4. Acceptance of a document for filing does not constitute a determination that the contents of the document are sufficient for the purpose for which it is filed.

- G. Service. Unless otherwise ordered, whenever a document is filed with the Board relating to a matter appealed to the Board, it shall at the same time be served on all parties in the matter.
- H. Charges for Copies of Documents. A certified copy of the decision in a proceeding will be furnished by the Secretary free of charge to each party of record and the counsel of each party represented by counsel. Additional copies of a decision, or copies of other materials, will be furnished at fees reflecting copying costs as may be established by the Secretary.

4. APPEALS

- A. Tax Abatement Appeals. If the appropriate assessing authority refuses to make an abatement asked for, the applicant may apply in writing to the Board in accordance with 36 M.R.S.A. §§ 583, 843, 844, 1118 or 2865 within sixty (60) days after receipt of the Assessor's decision, or after the abatement application is deemed to have been denied.
 - (1) Petition. All tax abatement appeals to the Board shall be initiated by the filing of a written petition at the office of the Board. Said petition shall be directed to the Chairman of the Board of Property Tax Review, and shall set forth the following:
 - (a) Name(s) and addresses of Petitioner(s)
 - (b) Name(s) and addresses of Respondent(s)
 - (c) A general description of the property which is the subject of the appeal. If the property includes real estate, the description shall include the Assessor's Map and Lot Number.
 - (d) Year of disputed assessment.
 - (e) Assessed value for the property as originally determined by the assessing authority.
 - (f) Amount of any abatements previously granted by the assessing authority for the assessment in question.

- (g) The valuation Petitioner alleges should have been placed on the property.
- (h) A brief statement of all prior proceedings before the assessing authority concerning the disputed assessment.
- (i) A brief statement of the factual basis for the Petitioner's tax abatement appeal.
- (j) A brief statement of the legal grounds for the Petitioner's tax abatement appeal.

(2) Response to Petition. Within twenty (20) days after receiving notice of the filing of the petition with the Secretary, all named Respondents shall file a written response to the petition either affirming or denying the allegations contained therein. The written response shall also contain a brief statement as to the reasons for the denial of the requested abatement.

B. Municipal Valuation Appeals. If any municipality is aggrieved by the Bureau of Taxation's determination of the municipality's equalized valuation or failure to meet minimum assessing standards, the municipality may appeal in accordance with 36 M.R.S.A. S 272(1) by filing a written notice of appeal within forty-five (45) days after receipt of the Bureau's determination. The notice of appeal shall be accompanied by an affidavit.

- (1) Notice of Appeal. The notice of appeal shall identify the municipality, the taxable period involved, the state valuation as determined by the Bureau of Taxation, and the state valuation proposed by the municipality. The notice shall be signed by a majority of the municipal officers.
- (2) Affidavit. The appealing municipality must file with its notice of appeal an affidavit of the municipal officers stating the grounds for the appeal. The affidavit must be meaningful and specific. A mere statement that the state valuation is too high is not sufficient. If a municipality intends to compare its state valuation to neighboring towns or cities, the municipality should list those municipalities in the affidavit. In appeals from assessment quality and ratio decisions of the Bureau of Taxation, the municipality must set forth in specific terms the basis of the challenge to the determination.

C. Discovery. The Board shall have all authority granted under statute to obtain all necessary information available to enable the Board to

conduct a proper hearing and to carry out its responsibilities under the law. Within fifteen (15) days of receipt of a written request for information any party shall file all records, documents and files requested by the Board.

(2) Pre-hearing Conferences. The Board may hold a pre-hearing conference before hearing for the purposes of formulating or simplifying the issues, obtaining admissions of fact and of documents which will avoid unnecessary proof, arranging for the exchange of proposed exhibits or prepared expert testimony, identifying witnesses, limiting the number of witnesses and consolidating the examination of witnesses, providing for the procedure to be followed at the hearing, and for any other purposes that may expedite the orderly conduct and disposition of the proceeding.

(3) In the case of municipal valuation appeals, if the municipality intends to submit evidence at hearing such as sales-ratio studies, maps, etc., such evidence must be filed with the Board and served on the State Tax Assessor at his office in Augusta no later than fifteen (15) days prior to the hearing set by the Board. Such evidence will not be admissible unless the requirements of this rule are met. The State Tax Assessor shall make its complete file available to a municipality at least fifteen (15) days prior to the hearing.

E. Subpoenas. In any proceeding before the Board, to the extent authorized under 36 M.R.S.A. § 486(2)(B) and 5 M.R.S.A. § 9060, any party upon application to the Board shall be entitled as of right to the issuance of subpoenas in the name of the Board to require the attendance and testimony of witnesses and the production of any records, documents or files relating to any issue of fact in the proceeding. Such subpoenas may be signed and issued by the Chairman and/or the Secretary. Subpoenas shall be issued in a form prescribed by the Board. Witnesses shall be subpoenaed only within the territorial limits and in the same manner as witnesses in civil cases before the courts, unless another territory or manner is provided by law. Witnesses subpoenaed shall be paid the same fees for attendance and travel as in civil cases before the courts. Such fees shall be paid by the party requesting the subpoena.

F. Hearings. Upon receipt of an appeal by the Board, the Chairman of the Board shall select five (5) members of the Board to hear the appeal. Three of the five members shall constitute a quorum. The selection of the members shall be based upon geographic convenience and availability. The Chairman, with the assistance of the Secretary, shall take all

necessary action to notify all parties of the time, date and place of the hearing.

- (1) Quorum. Three (3) members of the Board shall constitute a quorum to bear and act on tax abatement appeals.
- (2) Presiding Officer. The Chairman shall designate one member of the Board sitting on the case to serve as Presiding Officer for the appeal hearing.
- (3) Order of Procedure. The Presiding Officer will open the hearing and make a concise statement of its scope and purposes. Appearances then will be entered on the record. The Presiding Officer shall inform the parties of the manner in which an appeal of any decision resulting from the proceeding may be taken. Parties may then make opening statements.
- (4) Party Rights. Unless limited by stipulation or order under Paragraph 4(D), every party shall have the right to present evidence and arguments on all issues, and at any hearing to call and examine witnesses and to make oral cross-examination of any person present and testifying.
- (5) Continuances. Changes in the time and place of the first session of the hearing in any proceeding may be requested in writing of the Presiding Officer reasonably in advance of the time set. The Presiding officer may in his discretion grant or deny the request. The Presiding Officer or Chairman may change the time and place of any previously scheduled hearing. Notice of continuance shall be forwarded to each party by the Secretary.
- (6) Withdrawal of Exhibits. No exhibit received in evidence may be withdrawn except with the approval of the Presiding Officer at the hearing.
- (7) Briefs. The Presiding Officer may require that parties file briefs within such time as he may order. The parties shall indicate on the record at or before the close of testimony whether they desire to file briefs. Briefs which contain a statement of evidence or of facts claimed to be established by evidence shall include a reference to the specific portion of the record in which such evidence or facts may be found. When the transcript of the hearing is available, reference to oral testimony shall be by page number when possible. The Board may allow oral arguments in lieu of or in addition to briefs.

- (8) Oral Argument. Oral argument may be given before the Board at the conclusion of the evidence, or at a time and place to be fixed by the Presiding Officer.
- (9) Rules of Evidence. The Maine Rules of Evidence law shall not be followed in hearings before the Board. All questions as to the admission of evidence and rules of privilege shall be determined in accordance with 5 M.R.S.A. § 9057(1) and (2).
- (10) Witnesses. All witnesses shall swear that their testimony is wholly truthful or shall make a solemn affirmation to that effect in lieu thereof.
- (11) Written Evidence; Exception. No sworn written evidence shall be admitted into evidence unless the author is available for cross-examination or subject to subpoena, except for good cause shown.
- (12) Late-filed Exhibits.
 - (a) The Board may in its discretion allow documentary evidence unavailable at the time of hearing to be marked as a late-filed exhibit and offered as evidence after the close of the hearing, if
 - i) the evidence proposed to be submitted is described at the hearing with sufficient particularity to apprise all parties of its content and purpose; and
 - ii) the parties stipulate that the evidence may be offered as a late-filed exhibit, or the Presiding Officer so orders.
 - (b) Unless some other date or dates are specified by the Presiding Officer, late-filed exhibits may be offered no later than ten (10) days after the last day upon which a hearing is held in the proceeding, or five (5) days before the first date upon which briefs must be submitted, whichever is earlier. A copy of each late-filed exhibit must be provided to every party at the same time that it is offered.
 - (c) The stipulation of the parties or order of the Presiding Officer to allow the offering of a late-filed exhibit shall not constitute admission of that exhibit into evidence. Any party may, within five (5) days after the offer of any late-filed exhibit, submit written objections to the late-filed exhibit and may request an opportunity to conduct cross-examination or to

present rebuttal evidence in connection with any late-filed exhibit, unless that party has plainly and specifically waived its rights to do so.

- (d) No less than five (5) days after the offer, the Presiding Officer shall rule on the admissibility of each late-filed exhibit and include his ruling in the record of the proceeding. If a timely and valid request for opportunity to cross-examine or to present rebuttal has been made, the Presiding Officer may, in his discretion, either:
 - i) exclude the exhibits; or
 - ii) schedule a supplementary hearing to receive further evidence and rule on admissibility of the exhibit.

G. Record.

- (1) Record. In any appeal of a decision of the Board, the Secretary shall compile and preserve a record which meet the requirements of 5 M.R.S.A. S 9059 and also consist of:
 - (a) All petitions, responsive pleadings, motions and rulings and orders;
 - (b) Evidence received;
 - (c) The decision of the Board; and
 - (d) All memoranda, including briefs, submitted to the members of the Board in connection with their consideration of the appeal.
- (2) Hearings Recorded. The Board shall record all hearings in a form susceptible to transcription as required by 5 M.R.S.A. 5 9059(2).
- (3) Availability of Record. As required by 5 M.R.S.A. S 9059(3) the Secretary shall make a copy of the record available for inspection by any person during normal business hours; and he shall make copies of the record, including copies of recordings or transcriptions of recordings, available to any person at actual cost. A deposit equal to the approximate cost of transcription shall be paid in advance by the requesting party. Notwithstanding the provisions of this subsection, the Board shall withhold, obliterate, or otherwise prevent the dissemination of any portions of the record which are made confidential by state or federal statute, but shall do so in the least restrictive manner feasible.

- (4) Decision Based on the Record. All material including records, reports, and documents shall be considered in rendering a decision only if such information is in the record as evidence.
- (5) Documentary Evidence. Documentary evidence may be incorporated in the record by reference when the materials so incorporated are made available for examination by the parties before being received in evidence.
- (6) Decision. Every Board decision made at the conclusion of a hearing shall be in accordance with 5 M.R.S.A. § 9061 and shall be in writing or stated in the record, and shall include findings of fact sufficient to apprise the parties and any interested member of the public of the basis for the decision. A copy of the decision shall be delivered or promptly mailed to each party to the proceeding or his representative of record. Written notice of the party's right to appeal from the Board's decision to the Superior Court shall be given to each party with the decision.

EFFECTIVE DATE: December 15, 1986

EFFECTIVE DATE (ELECTRONIC CONVERSION): June 2, 1997