

Town of Windham

BOARD OF ASSESSMENT REVIEW

Guidelines on Procedures and Standards

Adopted: February 15, 2007

Authority of Board

The Town of Windham Board of Assessment Review (hereinafter “Board”) receives its authority to decide property tax abatement appeals pursuant to state law. The Board establishes the following Rules and Regulations for the conduct of hearings pursuant to Article VI of the Town Charter.

Organization of Board

1. **Establishment of Board:** The Board shall consist of five (5) members, who shall be appointed by the Town Council for a term of three (3) years, except that of those first appointed, one shall be for a term of two (2) years and one for a term of one (1) year. (Charter of the Town of Windham, Article VI – Tax Administration, Section 2.)
2. **Board Qualifications:** Board members shall be selected upon the basis of their knowledge of taxation and property values. Each Board member shall be a resident of the Town. If a Board member terminates his/her residence in the Town, his/her position shall become vacant.
3. **Chairman/Secretary:** The Board shall annually choose a chairman and a secretary. The chairman shall preside at all meetings and hearings and fulfill the customary functions of that office. The chairman may administer oaths. The secretary shall provide for the keeping of minutes of the proceedings of the Board, showing the vote of each member on every question, or his/her absence or failure to vote, and shall maintain the permanent records and decisions of correspondence of the Board.
4. **Board Official Duties:** The members of the Board in carrying out their official duties shall act in a quasi-judicial capacity, acting fairly, independently, and impartially. The Board’s findings of fact and determinations of each case shall be based only upon evidence presented to the Board in its public proceedings which shall become the record in the case.
5. **Vacancies:** Vacancies shall be filled by appointment of the town Council for the unexpired term.

6. Removal of Members: Any member of the Board may be removed for cause by the Town Council at any time; provided however, that before any such removal, such member shall be given prior notice and an opportunity to be heard in his/her own defense at a public hearing.

Procedures

1. Meetings/Quorum: The chairman shall call all meetings of the Board as required. A quorum of the Board necessary to conduct an official Board meeting shall consist of three (3) members. The chairman shall preside at all meetings of the Board and be the official spokesman of the Board. When not inconsistent with applicable state law, local ordinance or these rules, Robert's Rules of Order shall govern the Board's deliberations. The Board shall give reasonable notice of all meetings, and its meetings shall be open to the public except as otherwise provided by law. The meetings will proceed as follows:
 - a.) The Chair will call the meeting to order.
 - b.) The Chair asks for a roll call of the members.
 - c.) The Chair requests the Board to complete any old business, approval of minutes, etc.
 - d.) The Chair asks Board members to introduce themselves, the parties to introduce themselves and states the reason for hearing.
 - e.) The Chair swears in the parties and any person who is to give testimony.
 - f.) The Chair reviews standards, procedures and summarizes the legal standards under which the Board operates (see below).
 - g.) If the applicant is to be represented by legal counsel in proceedings before the Board, the Board may also seek legal representation.
 - h.) The Chair explains to parties the order of presentation in the hearing:
 - 1) The Assessor(s) or Assessor's Agent (hereafter collectively "Assessor") will explain the assessment; valuation methods he or she relied on, background etc., and then may call his or her witnesses. The applicant or applicant's representative may question and cross-examine witnesses. The Board members may question the Assessor or the Assessor's witnesses as needed.
 - 2) The applicant or applicant's representative presents his/her claim and calls witnesses, if needed. The Assessor may question and cross-examine the applicant and the applicant's witnesses. The Board members may question the applicant, applicant's representative or witnesses as needed.

- 3) The Assessor will then summarize his or her position.
 - 4) The applicant or his or her representative will then summarize the applicant's position.
 - 5) The Board members may then pursue any follow-up questions to the Assessor, the applicant or any witness.
- i.) After the Assessor and applicant have finished their presentations, the Chair will close the hearing and the Board shall commence deliberations. Deliberations shall be conducted in public and no further testimony or evidence is to be offered or admitted unless the hearing is reopened. The Board's charge in the deliberative process is to review the evidence presented under the applicable legal standards, (see below for standards).

During deliberations, Board members should discuss their views of the facts and express their opinions about the evidence presented. Based on the evidence and testimony presented, the Board shall then summarize its findings and conclusions as Findings of Fact and Conclusions of Law and vote to render its decision by one of two means:

1. By motion and vote, the Board will vote to accept (or reject) the proposed Findings of Fact and Conclusions of Law as orally listed by the Chair, another Board member or assistant to the board, and to grant or deny the appeal. The Chair may seek authority from the Board to authorize the Chair, another member that participated in all of the appeal proceedings or the Board's secretary to prepare the Board's written decision, and for the Chair or other Board member who participated in the appeal proceeding, to sign and issue the final written decision on behalf of the Board; or
 2. The Board may vote to defer making a decision on the appeal and either on its own or with the assistance from its attorneys, draft written Findings of Fact and a Decision for the Board's consideration and vote at a later date.
- j.) The Chair will then entertain any other business and as necessary schedule the next meeting. After conducting other business and scheduling the next meeting, the Chair will request a motion to adjourn.
- k.) Adjournment.
- l.) The Board Secretary is responsible for archiving and maintaining all materials submitted during Board proceedings, the Board minutes, the Findings of Fact, and the Decision. These materials shall be maintained as part of the public record. The Secretary is also responsible to make sure that the Board's Findings of Fact and Decision are timely sent to the parties. The Board's written Decision must be sent within ten (10) days of the date of the Board's vote and decision. The Decision must also include a statement advising the parties of their appeal rights in accordance with state law.

2. Board Records: The record shall consist of the minutes of the secretary, the transcript if one is made, all applications, exhibits or stipulations filed in any proceeding before the board, any summaries prepared of an inspection of the property, and the decision of the Board. Such records shall be public records open to inspection during regular town Office hours upon reasonable notice.
3. Application: To initiate an abatement appeal, the applicant must have filed a written application to the Assessor, must have received a written denial from him/her (or expiration of sixty (60) days from the date of filing if no written denial was given, unless the applicant shall have in writing consented to further delay), and must then file a written appeal to the Board. The applicant shall set forth in the application the name and address of the appealing party, a description of the property involved, the amount assessed by the Assessor, and the amount the applicant feels constitutes the proper assessment and the reasons therefore. Application forms shall be available in the Assessor's Office.
4. Time for filing: The application must be filed in writing to the Board within sixty (60) days after the notice of decision from which such appeal is being taken or after the application to the Assessor is deemed to have been denied. The application shall be filed with the Assessor, who shall present the same to the Board, and the Board shall schedule a hearing on the appeal within a reasonable time.
5. Evidence: The Board may receive any oral or documentary evidence, but shall exclude irrelevant, immaterial, or unduly repetitious evidence. Each party shall have the right to present his/her case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of facts. All lengthy documentary evidence that can reasonably be anticipated as part of the record (e.g., appraisal reports) shall be submitted seven (7) days in advance of the Board's initial hearing on the application; provided, however, that such documentary evidence that cannot reasonably be anticipated as part of the record, such as rebuttal evidence, need not be submitted in advance. Notwithstanding the above, the Board may permit the submission of additional information at any time prior to its decision for good cause shown.
6. View of the Property: If a majority of the Board deems it necessary, the Board may view or inspect the property at issue. At any inspection of the property, both parties and their representatives shall have the right to be present. The purpose of any such view is to enable the Board to more intelligently apply and comprehend testimony presented at the hearing, not to receive evidence or testimony. No evidence or testimony shall be offered at the inspection, but both parties may nevertheless call to the attention of the Board, without further comment, those characteristics of the property which they wish the Board to observe. A summary of the inspection shall be made by the Board on the record at the next scheduled meeting of the Board, and either party may at that time offer his/her own summary of the inspection for the record.

Board Standards

1. With exception of setting up hearing dates, scheduling matters or other non-substantive matters, Board members must ensure that all Board business takes place only during meetings of the Board. Board members must avoid ex parte communications with applicants or the assessor on substantive matters related to any proceeding before the Board.
2. Except in cases by directive of Court order or in other matters that are the proper subject of Executive Sessions, all proceedings of the Board are to take place at scheduled meetings of the Board.
3. No member of the Board shall participate in the hearing or disposition of any matter in which he or she has a conflict of interest. Any question as to whether a member has a conflict of interest sufficient to disqualify the member from voting thereon shall be decided by a majority vote of the other members present and voting; where such vote results in a tie, the subject member shall be disqualified.
4. Testimony before the Board shall be under oath. Evidence and testimony shall be admitted unless it is irrelevant or unduly repetitious. Evidence is relevant if it is the kind of evidence on which persons customarily rely in the conduct of serious affairs. Opinion evidence as to valuation issues can be either in the form of the owner's opinion or the opinion of another qualified person. Appraisal evidence offered must be in conformance with standards of professional appraisal practice and Maine law.

Standards of Review

1. The Maine Constitution requires that all property (unless tax-exempt) is to be assessed at its "just value" and that taxpayers are to equally bear their proportionate shares of the tax burden, i.e. similar properties should have similar assessments. Maine courts have determined that "just value" is the same as market value. Market value is generally defined as the price a willing buyer would reasonably pay to a willing seller in an open market transaction, free from unusual conditions or circumstances (bankruptcy, foreclosure, sales to relative, etc.) and where the property has had reasonable exposure to the marketplace and prospective buyers.
2. Assessors have considerable discretion and leeway in the choice of methods or combination of methods they choose to rely on to arrive at an estimate of a property's just value. In the valuation process, however, assessors must at least consider the appropriate professionally accepted assessment and appraisal methodologies to arrive at their estimates of a property's fair market value.
3. The three generally accepted methodologies are the cost approach, the comparative sales or market approach, and the income approach. The income approach is appropriate for valuing business and commercial properties, i.e. where the property is used as part of the related business's production of an income stream. As a result, the income approach is

not considered an appropriate valuation method to use for valuation of individual residential properties; such properties are generally not held for use as income producing properties. Assessments and the assessor's judgment are presumed valid. To overcome these presumptions a taxpayer must prove the assessment is "manifestly wrong". To prove manifest error the taxpayer has the burden of proof to demonstrate one or more of the following:

- That the judgment of the assessor was so irrational or so unreasonable in light of the circumstances that the property was substantially over-valued and an injustice resulted;
 - That there was unjust discrimination; or
 - That the assessment was fraudulent, dishonest or illegal. The first of these three prongs concerns disputes where the taxpayer and assessor have differing opinions related to the fair market value of a property. The second prong concerns disputes about the assessment method or how the assessor applies the method. The concern is with the second constitutional prong that requires equal apportionment of the tax burden, i.e. similar properties should have similar assessments. The third prong addresses improprieties in the assessing process. Illegality in this context means that there is a legal defect in the authority of the assessor or in the assessing or taxation process. Differences of opinion related to a property's valuation do not make an assessment "illegal".
 - That there was an error or mistake in the description, acreage, category of ownership or other irregularity regarding the parcel.
4. Maine law recognizes that mass valuation is not an exact science and that tax assessments and valuations may be valid though not entirely precise. By statute (36 M.R.S.A. section 848-A) assessors are therefore afforded a "margin of error" in their valuations. Thus, assessments are valid if they are "accurate within reasonable limits of practicality". The margin of error allowed assessors is 10% of the Town's assessment ratio or, if contested the ratio that is otherwise proven. Assessment ratios are derived from annual studies comparing assessed values assigned to properties with the reported sales prices of the same properties. Assessors annually report the assessment ratios derived from these studies to the Bureau of Property Tax of Maine Revenue Services. The Bureau of Property Tax then completes its own ratio studies and reports its results.