

Introduced by: Mayor, Navarre at the Request of the Borough Clerk
Date: 04/16/02
Hearing: 05/21/02
Action: Enacted
Vote: 9 Yes, 0 No

**KENAI PENINSULA BOROUGH
ORDINANCE 2002-12**

AN ORDINANCE REVISING BOARD OF EQUALIZATION PROCEDURES (1) SO THAT THE CHAIR RATHER THAN THE BOARD HANDLES THE MINISTERIAL FUNCTION OF EVALUATING WHETHER A PROPERTY OWNER OR AGENT OR ASSIGN HAS PROVIDED A VALID REQUEST FOR A FINDING OF INABILITY TO COMPLY WITH THE REQUIREMENT TO FILE A TIMELY APPEAL, AND (2) TO ESTABLISH A PROCEDURE FOR THE BOARD TO EVALUATE THE REQUEST AND TO SCHEDULE A REQUIRED HEARING

WHEREAS, the Kenai Peninsula Borough Assembly sits as the Board of Equalization (BOE) and hears appeals of property owners concerning alleged errors in valuation of real property, or in the case of property subject to a flat tax, alleged errors in ownership or classification of property; and

WHEREAS, there are rare occasions where a taxpayer is unable to timely submit an appeal under KP.B 5.12.050(B), and the right of appeal ceases unless the board finds that a taxpayer was unable to comply with the requirement for filing a timely appeal; and

WHEREAS, a procedure should be established to request and consider such a finding; and

WHEREAS, guidelines as to what constitutes an inability to comply with the time requirements of KP.B 5.12.050(B) should be established; and

WHEREAS, it would be a waste of resources to convene a board meeting when such a request does not include the required information; and

WHEREAS, a review of the sufficiency of the completion of such a request can be accomplished ministerially; and

WHEREAS, procedures to request a finding of inability to comply with the time requirement of KP.B 5.12.050(B) and for evaluating that request should be established;

NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That KP.B 5.12.050 is hereby amended as follows:

5.12.050. Valuation and flat tax appeal procedure.

- A. A property owner or agent or assign of the property owner may appeal to the borough assembly sitting as a board of equalization for relief from an alleged error in valuation not adjusted by the assessor to the property owner's satisfaction, or, in the case of property subject to a flat tax, an alleged error in ownership or classification of property.
- B. An appellant must, within 30 days after the mailing of the notice of assessment, submit to the assessor, by delivery to the borough clerk, a written appeal. The appeal must state the name of the owner, a legal description of the property, and the grounds for the appeal. It must be submitted to the borough clerk within 30 days after the mailing of the notice of assessment, or the right to appeal ceases unless the board of equalization finds that the taxpayer was unable to comply. For purposes of this section, the appeal is submitted on the date it is received in the office of the clerk or, if delivered by first class mail, the date it is postmarked by the U.S. Postal Service. Appeal forms shall be available from the borough assessor's office, borough clerk's office, or city offices within the borough. The borough clerk will provide to the assessor each appeal within two days of receipt.
- C. Taxpayer request for a finding that the taxpayer was unable to comply with the timely filing requirement of KPB 5.12.050(B).
 - 1. A property owner or agent or assign of the property owner may request a finding that the taxpayer was unable to comply with the requirement to timely file an appeal as required in paragraph B of this section by filing a written request with the borough clerk within 14 days after the inability to comply ceased or within 14 days after the taxpayer should have become aware of the reason for filing the appeal, whichever is earlier.
 - 2. The request for a finding of inability to comply must be based upon a serious condition or event beyond the taxpayer's control that resulted in the inability to timely file the appeal. For purposes of this subsection, a serious condition or event may include a serious medical condition or other similar serious condition or event that prevented the taxpayer from timely filing the appeal. Absent extraordinary circumstances, a failure to pick up or read mail or to make arrangements for an appropriate and responsible person to pick up or read mail or a failure to timely provide a current address to the Department of Assessing will not be deemed to result in an inability to comply.
 - 3. A request for a finding of inability to comply is limited to an appeal of the notice of assessment for the current assessment year.
 - 4. The written request must be submitted on a request form supplied by the borough clerk and must include the following:
 - a. Name of the property owner or agent or assign of the property owner;
 - b. The parcel number of the property;

- c. If the party making the request is an assign of the record owner, documentation of the assignment must bear a stamp reflecting the book and page number where the assignment is recorded;
 - d. If the party making the request is an agent of the property owner, the property owner's signature granting the authority must be notarized and attached to the request;
 - e. A description of the justification for the request must be subscribed and sworn or affirmed before a notary public or other official with similar authority by the property owner or duly authorized agent or assign;
 - f. Information sufficient to determine whether the request has been submitted within the time stated in KPB 5.12.050(C)(1);
 - g. An attached and properly completed and executed appeal form alleging one or more of the grounds for appeal stated in KPB 5.12.050(E).
5. A request bearing insufficient justification or information for evaluation constitutes a basis for final denial of the request by the BOE.
- D. Determination by the chair whether a request meets the requirements for consideration by the BOE and procedure for board evaluation of the merits of the asserted justification and for scheduling a required hearing.
- 1. With the exception of determining the merits of the justification, the chair is delegated the authority to review the request for compliance with KPB 5.12.050(C)(4). If the chair determines that the request does not meet the requirements for consideration by the board, the chair will so indicate on the request, and that decision shall be final unless the chair refers the question to the full board. If referred to the full board, proper notice must be given. The decision by the chair or the full board shall be final. The taxpayer shall have the right to appeal a negative decision under the rules of appellate procedure governing appeals from administrative agency decisions.
 - 2. If the chair or the full board finds that the request meets the requirements for consideration of the inability to comply question by the BOE, the chair will so indicate on the request. The clerk shall notify the party making the request and shall schedule a time for the BOE to convene to consider merits of the request for a finding of inability to comply. The meeting shall be scheduled by the clerk after consultation with the assessor and at the direction of the BOE chair. The property owner or agent or assign of the property owner and the assessor shall be permitted to present additional evidence or testimony. The board may require additional evidence or testimony. The proceeding shall be recorded and all evidence must be submitted under oath.

3. If the BOE determines that the taxpayer has not proven an inability to comply, an appeal of the assessment to the BOE will not be allowed, and that decision shall be the final decision of the BOE. The clerk shall notify the parties in writing.
4. The taxpayer and borough shall have the right to appeal a decision under KPB 5.12.050(C) and KPB 5.12.050(D) to court under the rules of appellate procedure governing appeals from administrative agency decisions.
5. If the BOE determines that the appellant was unable to comply, the clerk shall schedule a hearing for the appeal and give the notices required by KPB 5.12.050(F). The matter shall proceed as provided in this Chapter.

[C]E. The grounds for appeal are: unequal, excessive, improper or under valuation of the property not adjusted by the assessor to the property owner's satisfaction, or an error in ownership or classification of property. The potential validity or invalidity of asserted errors in assessment shall have no bearing on the determination of whether the taxpayer was unable to timely file an appeal.

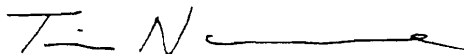
[D]E. After the time for filing valuation appeals has expired and after consultation with the assessor, and at the direction of the chair of the board of equalization, the borough clerk shall schedule meetings of the board of equalization. The clerk on behalf of the assessor shall schedule meetings of the board of equalization. The clerk on behalf of the assessor shall notify each appellant by mail of the time and place of hearing and board of equalization procedures at least 15 days before the evidence or documents required by KPB 5.12.055(A) and (B) must be provided to the borough clerk. A party can request a continuance of hearing only for good cause and the continuance must be requested no later [THAT] than 15 days prior to the hearing date unless the reason for the continuance is a serious condition or event that prevented a timely request or that arose after the deadline. For the purposes of this subsection, a serious condition or event may include a serious medical condition, a serious family emergency requiring the presence of the party, a death in the family, or other similar serious condition or event. Additionally, a continuance shall not be granted if it will cause substantial prejudice to the other party. The chair of the board of equalization is given the discretion to determine whether to grant a request for a continuance. A continuance, however, does not extend the deadline for any party to file any documents or evidence under KPB 5.12.055 (A) or (B), if the application was not filed with the borough clerk before the original deadline for filing such documents or evidence. If the application for a continuance was filed before the original deadline for filing documents and the application is denied, the application for a continuance will not extend the original deadline for filing documents. A hearing shall be scheduled for all notices of appeal unless the notice is clearly not based on one or more of the grounds stated in KPB 5.12.050([C]E) as determined by the BOE chair. When a hearing is not

scheduled, the borough clerk shall notify the person who submitted the notice that a hearing will not be scheduled.

[E]G. A city in the borough may appeal an assessment to the borough board of equalization in the same manner as the property owner. Within 5 days after receipt of the appeal, the assessor shall notify the property owner of the appeal by the city. The property owner may appear and participate in an appeal of an assessment by a city.

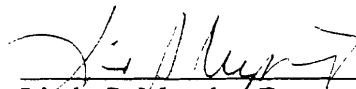
SECTION 2. This ordinance shall take effect immediately upon its adoption.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 21ST DAY OF MAY, 2002.



Timothy Navarre, Assembly President

ATTEST:



Linda S. Murphy, Borough Clerk

