



KENAI PENINSULA BOROUGH

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**DAVE CAREY
BOROUGH MAYOR**

MEMORANDUM

TO: Milli Martin, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: David R. Carey, Borough Mayor

THRU: Colette Thompson, Borough Attorney

FROM: Scott Bloom, Assistant Borough Attorney

DATE: December 23, 2008

SUBJECT: Ordinance 2009-01, amending KPB 5.12.050 and 5.12.055 regarding board of equalization procedures and repealing the sunset date of the appointed board of equalization extended by Ordinance 2006-37

KPB Chapter 5.12 provides the procedure for property owners to appeal alleged errors in assessments to the Board of Equalization (“BOE”). It is recommended that two of the code provisions be cleaned up to improve clarity in the procedure.

KPB 5.12.050(B) requires a filing fee for appeals and provides for a return of the filing fee if the taxpayer is successful in having the assessor’s recommended valuation changed by the BOE. Taxpayers are also entitled to a return of the filing fee if they withdraw their appeal prior to the time their evidence is due. The assessor may recommend a reduced or higher valuation upon review of the file, and, once the revised valuation is presented to the property owner, the property owner may accept the valuation and withdraw the appeal or decline the offer and proceed. If the revised recommended valuation is presented to the property owner prior to the time evidence is due and is upheld by the BOE, then no refund of the filing fee is due even though the recommended value is different from the valuation on the original assessment notice. The current code language may be perceived as requiring the BOE to make a finding as to whether a revised recommended valuation was presented to the property owner prior to the time evidence was due. This is not the intent of the code provision, and it is recommended that the code section be revised to clarify that a finding by the BOE is not required on this matter.

KPB 5.12.055(A) provides the procedures for discovery in appeals to the BOE. The code provision requires responses to discovery to be due no later than 10 days after service of the discovery request. However, the code provision also requires that in any event responses be provided no later than 20 days before the BOE hearing. The requirement that all responses be provided no later than 20 days before the BOE hearing has, in the past, cut the time to respond to less than 10 days. Because the assessor must prepare for so many appeals each year, having less than 10 days to respond to discovery requests is impractical if not impossible for the assessor to comply with. Over 57 appeals were heard by the BOE in 2008, most within a one-week time period, and numerous other appeals were filed and withdrawn. It is recommended that requests for discovery be required within 20 days after filing an appeal instead of 30 days to ensure the assessor has at least the intended 10 days to respond to discovery requests.

Ordinance 2005-29 established an appointed BOE in place of the assembly sitting as the BOE and provided that the ordinance would automatically expire on December 31, 2006, unless the assembly by ordinance had altered or extended that date. Ordinance 2006-37 extended the expiration date of Ordinance 2005-29 to December 31, 2008. The appointed board has been well received, and it is in the best interest of the borough to eliminate the sunset provision.

Your consideration of this ordinance is appreciated.