

Introduced by:	Mayor
Date:	02/01/00
Shortened Hearing:	02/15/00
Action:	Enacted as Amended
Vote:	8 Yes, 0 No, 1 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2000-05**

**AN ORDINANCE REVISING BOARD OF EQUALIZATION PROCEDURES
SO THAT (1) THE CLERK RATHER THAN THE ASSESSOR HANDLES
MINISTERIAL APPEAL FUNCTIONS, (2) HEARINGS CAN BE HELD
AFTER JUNE 1 OF THE SUBJECT YEAR, AND (3) THE TIMING AND
SCOPE OF DIRECT AND CROSS EXAMINATION IS DEFINED**

WHEREAS, a shortened hearing is requested to ensure that the procedures for filing an appeal, including filing it with the clerk, are in place prior to the date assessment notices will be mailed for the year 2000; and

WHEREAS, oftentimes board of equalization hearings cannot be concluded before June 1 of each subject year; and

WHEREAS, to avoid any appearance of impropriety through having the assessor, a party to a board of equalization appeal, schedule the hearings and distribute evidence, the clerk should perform these functions on behalf of the assessor; and

WHEREAS, occasionally board of equalization hearings are needlessly scheduled when the notice of appeal does not present grounds that can be considered by the board of equalization; and

WHEREAS, there has been confusion about whether the parties to a board of equalization hearing can call each other as witnesses, cross-examine each other's witnesses, and what the scope of questioning can be in each situation; and

WHEREAS, additional time is occasionally needed by the parties to obtain evidence and prepare documents for submission to the clerk and to review the material submitted by the opposing party;

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

SECTION 1. That KPB 5.12.040 is hereby amended as follows:

5.12.040. Corrections—Valuation and tax exemption disputes—Administrative adjustment meeting.

- A. A person receiving an assessment notice must advise the assessor of errors or omissions in the assessment of the person's property, in the determination of ownership or classification of property subject to a flat tax, or of disputes in the assessed value or taxable status of the property, within 30 days after the date of mailing a notice of assessment.
- B. The assessor may adjust the roll to correct errors or omissions in the roll, or to make changes in valuation or taxable status of property on the roll, and shall mail a [CORRECTED] notice of assessment, reflecting the assessor's decision, allowing 30 days to appeal to the board of equalization or superior court [IF SUCH ADJUSTMENTS ARE MADE TO THE ROLL]. Under no circumstances shall the assessor make changes to the roll after June 1, except for those resulting from board of equalization decisions, supplementary assessments, clerical errors, or court ordered changes.
- C. The assessor shall provide, upon request, an informal adjustment meeting between the assessor and the person receiving an assessment notice, for the purpose of resolving a valuation or tax exemption dispute. The meeting shall be requested within 30 days of the mailing of the notice of assessment, and shall be held prior to board of equalization hearings.

SECTION 2. That KPB 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. [, SPECIFYING] The appeal must state the name of the owner, a legal description of the property, and the grounds for the appeal. [THE APPEAL] It must be [RECEIVED BY] submitted to the [ASSESSOR] 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. 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.
- D. 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 notify [THE] each appellant by mail of the time and place of hearing[,] and board of equalization procedures[, IN TIME TO ALLOW THE APPELLANT TO SUBMIT DOCUMENTS TO THE BOARD AS SET OUT IN THIS CHAPTER.] at least 10 days before the evidence or documents required by KPB 5.12.055(A) and (B) must be provided to the borough clerk. 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) as determined by the BOE chair. When a hearing is not to be scheduled, the borough clerk shall notify the person who submitted the notice that a hearing will not be scheduled.
- E. 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 3. That the Kenai Peninsula Borough Code of Ordinances section 5.12.055 is hereby amended as follows:

5.12.055. Record—Written presentation—On appeal.

- A. Upon receipt of a written appeal, the assessor shall provide documents or evidence relating to each assessment that is appealed, including a summary of assessment data, to the borough clerk, for the board of equalization, no later than [7] 10 days before the board hearing on the appealed assessment. Pages shall be marked as assessor's exhibits and numbered. The [ASSESSOR] borough clerk shall [ALSO] mail a copy of the documents or evidence to the appellant[, IN TIME TO ARRIVE BEFORE THE HEARING] by first class mail within one business day of receipt.
- B. The appellant shall provide a copy of any documents or evidence relating to the assessment being appealed to the borough clerk, for the board of equalization, no later than [7] 10 days before the board hearing on the appealed assessment. Pages shall be marked as appellant's exhibits and numbered. The clerk shall provide a copy of the appellant's documents to the assessor.
- C. The appellant's case may be made by written presentation. If the appellant so elects, the pages shall be marked as appellant's brief and numbered. The written presentation, along with any documents and evidence referred to in 5.12.055(B), must be provided to the

borough clerk, for the board of equalization, no later than [7] 10 days before the board hearing on the appealed assessment. The clerk shall provide a copy of the appellant's filings to the assessor upon receipt.

SECTION 4. That KPB 5.12.060 is hereby amended as follows:

5.12.060. Board of equalization procedure.

- A. [AFTER THE CLOSING DATE FOR APPEALS, THE BOROUGH CLERK, AT THE DIRECTION OF THE CHAIR OF THE BOARD OF EQUALIZATION, SHALL SCHEDULE MEETINGS OF THE BOARD.] All appeals must be heard and decided before June 1 [.], unless the board finds a hearing after this date will not prejudice the appellant and the delay is administratively justified or the appellant has requested a later hearing date. The board must also find that the proposed hearing date will enable the assessor to substantially comply with the requirement that the assessment roll be certified by June 1. The meetings of the board may be scheduled either on weekends, during business hours, or during evening hours. In no event may an appeal hearing begin after midnight.
- B. A quorum of the full assembly must be present in order for the board of equalization to convene and take action. Actions of the board shall be by the majority of members present.
- C. The president of the assembly shall preside over the board hearing. In the absence of the president, the vice president shall preside. If both are absent, the members present shall select a person to preside. The borough clerk shall attend the hearings to record the proceedings, record votes, administer the oaths to witnesses, and prepare the decision forms. The borough attorney or designee shall attend the hearing to advise the board.
- D. The president shall open the board session by calling the board to order, reading a summary of procedures for the board, and by calling each appellant's name and asking if the appellant or representative is present. The president shall bring each appeal before the board in the order scheduled by the borough clerk.
- E. If the appellant or representative is not present when called, the board shall consider any written presentation, evidence, and documents presented to it pursuant to KPB 5.12.055 and thereafter proceed according to the remaining applicable provisions of this chapter.
- F. All persons presenting evidence shall do so under oath, administered by the borough clerk.
- G. The hearing shall be conducted informally with respect to the introduction of evidence. Irrelevant evidence may be excluded by the presiding officer. Each side shall have a total of no more than 30 minutes to present their case. Each side shall be responsible for

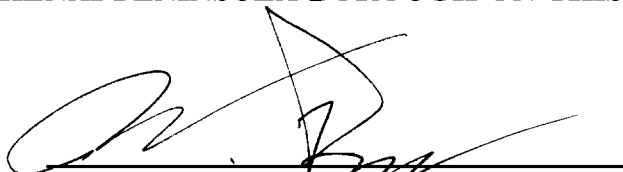
dividing their 30 minutes between oral presentation, argument, testimony (including witness testimony), and rebuttal. The board may expand or limit the length of the hearing depending on its complexity, or take other action to expedite the proceedings. Cross-examination will not be permitted during presentation of the case. If a witness testifies during presentation of either the appellant's or the assessor's case, unless excused by the board with the concurrence of the appellant and the assessor, the witness must remain available in the assembly room to be called to testify during rebuttal by the appellant and the assessor.

- H. The presiding officer shall first present a brief, factual summary of assessment data concerning the appealed property. This summary is not charged against the time allowed the assessor to present his or her case.
- I. The appellant or representative then presents the appellant's case when called by the presiding officer. At this time the appellant may call the assessor or appropriate appraiser or any other witnesses the appellant intends to present as a witness at this time. The scope of direct questioning is limited to the issues in dispute. Should the appellant wish, and prior to beginning the presentation, a portion of the 30 minutes allowed may be reserved for a rebuttal presentation at the end of the assessor's case. At the conclusion of the appellant's presentation, board members may question the appellant or other witnesses[UPON RECOGNITION BY THE PRESIDING OFFICER].
- J. The assessor or designee then presents the borough's case when called by the presiding officer. At this time the assessor may call the appellant or any other witnesses the assessor intends to present as a witness. The scope of direct questioning is limited to the issues in dispute. Should the assessor wish, and prior to beginning the presentation, a portion of the 30 minutes allowed may be reserved for a rebuttal presentation at the end of the appellant's rebuttal. At the conclusion of the assessor's presentation, board members may ask questions of the assessor or other witnesses[UPON RECOGNITION BY THE PRESIDING OFFICER].
- K. The time required to answer questions from the board shall not be charged against either party.
- L. If the appellant or the assessor has reserved a portion of their 30 minutes, each may then present rebuttal evidence, with the appellant proceeding first. The appellant and assessor may call and cross-examine each other's witnesses during rebuttal. The scope of cross-examination is limited to the issues raised in direct questioning.
- M. The assessor may recommend changes to the existing value during the hearing.
- N. After the appellant and assessor have presented their cases, the hearing shall be closed by the presiding officer, and no further evidence shall be offered or considered.

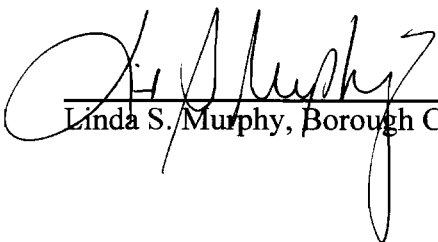
- O. The board may decide the appeal after the presentations, or it may defer a decision until no later than the last hearing date. Final board action shall be taken by motions that set out specific findings of fact, and shall not be reconsidered, amended or rescinded by the board. The motions available to the board are: motion to uphold the assessor's valuation, motion to reduce the assessment, motion to increase the assessment, motion to dismiss the appeal, motion to defer the decision, or any other motion set out in Alaska statutes and regulations governing board of equalization appeals. Only one motion may be on the floor at a time, and the board shall vote on the motions until its findings are established. The vote must be taken and entered into the permanent record of the proceedings.
- P. The burden of proof is on the appellant. The only grounds for the board to adjust the assessment are proof of unequal, excessive, improper, or under valuation, based on facts proven at the appeal hearing. The board may not alter the assessment of a property unless a timely written appeal has been filed concerning the property.
- Q. After the last scheduled appeal is heard, the presiding officer shall adjourn the session.
- R. The borough clerk shall prepare and certify the decisions of the board, and shall keep the decisions on file as part of the public record. The clerk shall promptly mail a copy of the board's decision to each appellant, by certified mail, and deliver a copy to the borough assessor.
- S. Either the appellant or the assessor may appeal the decision of the board to the superior court in the Kenai venue district, within 30 days of the date of mailing of the board's decision, as provided by the rules of appellate procedure governing appeals from administrative agency decisions. The record on appeal is the record established at the board hearing.

SECTION 5. That this ordinance shall take effect immediately upon its adoption.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH ON THIS 15TH DAY OF FEBRUARY, 2000.


 William Popp, Assembly President

ATTEST:


 Linda S. Murphy, Borough Clerk

