



TOWN OF BAR HARBOR

APPLICATION TO THE BOARD OF ASSESSMENT REVIEW

Case No. _____

Applicant(s)/Taxpayer(s)
(State the full name(s))

vs.

Tax Assessor, Town of Bar Harbor

1. This is an appeal from the denial of the Assessor to abate a tax for the year _____, assessed on the property owned (or occupied) in the Town of Bar Harbor, Maine.
2. On April 1, _____, the Applicant(s) was (were) the owner(s) or (occupier(s)) of such property in Bar Harbor located at:

(Street and number)

and consisting of:

(Tax Map and Lot number, tax bill #, business name, etc.)

3. The Assessor valued the property at \$_____ and assessed a tax thereon at the rate of \$_____ per \$1,000, with a total tax amount of \$_____.
4. The tax was paid on _____, with \$_____ interest.
(If the tax has not been paid, or if partial payment has been made, state that fact, giving the amount and day of any partial payment and the reason for not paying the full amount of the tax assessed.)

5. On _____, the Applicant(s) applied in writing to the Assessor for a tax abatement in the amount of \$_____, and on _____

received written notice from the Assessor of a decision denying the abatement request (or granting an abatement of \$_____). (If the Assessor failed to act on the application prior to the expiration of sixty days from the date of filing, state that fact.)

6. The Applicant(s) is (are) in disagreement with the Assessor’s decision and objects thereto on the ground that the assessment is “**MANIFESTLY WRONG**” for one or more of the following reasons:

- The judgment of the Assessor was irrational or so unreasonable in light of the circumstances that the property is substantially overvalued and an injustice results:
- There was unjust discrimination; or
- The assessment was fraudulent, dishonest or illegal.

Brief Statement of Factual Legal Basis for Appeal

7. The Applicant(s) requests (request) that a hearing be held upon this application and that such portion of the tax, as may be determined to be excessive, be abated.

8. The mailing address and phone number of the Applicant(s) is (are) as follows (include any email address(es):

Name	Address	Email
_____	_____	_____
_____	_____	_____
_____	_____	_____

9. The name, address, and telephone number of the representative(s) for the Applicant(s) are as follows:

Legal counsel, Appraiser, Other: _____

10. Estimated time for presentation at hearing: _____
11. Submit 7 copies of this application and all supporting documents, by the close of business, at least 15 days prior to the scheduled hearing date. The application and all supporting documentation shall be filed with the Town Clerk.
12. The Board of Assessment Review recommends the applicant(s) review the *Hearing and Procedural Guidelines* for the BAR hearing.

To the Town of Bar Harbor Board of Assessment Review: In accordance with the provisions of 36 M.R.S.A. §843, I hereby make written application for an appeal of the assessed value of the property as noted above. The above statements are correct to the best of my knowledge and belief.

Dated _____

Signature (s)

If applicant is a corporation or other business entity, give official office of title of signer.)

Print name and title, if applicable)

Town of Bar Harbor Board of Assessment Review **Hearing and Procedural Guidelines**

The Bar Harbor Board of Assessment Review (the “Board”) hereby adopts the following Hearing and Procedural Guidelines pursuant to state law (36 M.R.S.A. §843(1) and 30-A M.R.S.A. §2526(6) and Bar Harbor Municipal Code Article VII §31-38. These Guidelines are adopted for purposes of assisting the Board, applicants and the Assessor in efficiently and fairly administering appeal proceedings before the Board. These Guidelines are advisory in nature and not intended to be strictly applied or dispositive on any issue or procedure before the Board. The Board may, at its own discretion or on advice of counsel apply, not apply or waive application of any of the Guidelines.

A. Board Procedures for Hearings and Meetings

1. The Board Chair will call the meeting to order and will supervise meetings and hearings. Meetings are public proceedings and will be recorded through the taking of minutes, tape recordings or as otherwise decided on by the Board and parties. Three members of the Board shall constitute a quorum for purposes of conducting hearings and voting.
2. The Chair will request a roll call of the members and introduce them to the public.
3. The Chair will request the Board to complete any old business, approval of minutes, etc.
4. The Chair will ask the parties to introduce themselves and briefly summarize their positions and the reason for the appeal.
5. The Chair will swear in the parties and any person who is to offer testimony in the proceedings.
6. The Chair will summarize for the parties the standards and procedures under which the Board operates (see below).
7. If an applicant is to be represented by legal counsel in proceedings before the Board, the Board may also seek legal representation. This provision shall not be interpreted as preventing the Board from seeking advice of legal counsel at any time the Board deems necessary.
8. The Chair will explain to the parties the order of presentation in the hearing as follows:
 - a. The Assessor will explain the assessment and valuation methods he or she relied on and the background relevant to the valuation. The Assessor may then call his or her witnesses. The Board members may ask questions of the Assessor and the Assessor’s witnesses as needed. The applicant or

applicant's representative will then be allowed to question and cross-examine the Assessor and Assessor's witnesses.

- b. The applicant or applicant's representative will then present his or her claim and call the applicant's witnesses. The Board members may ask questions of the applicant or applicant's witnesses as needed. The Assessor or his or her representative will then be allowed to question and cross-examine the applicant and the applicant's witnesses.
 - c. The Board, if it deems it helpful, may schedule a formal inspection of the property in issue. Such inspections shall be completed in accordance with the Board's Standards, below, and state law.
 - d. After completing the presentations and witness testimony, the Assessor will then summarize his or her position to Board.
 - e. The applicant or his or her representative will then summarize the applicant's position to the Board.
 - f. The Board members may then pursue any follow-up questions to the Assessor, the applicant or any witness.
9. After the Assessor and applicant have finished their presentations, the Chair will close the hearing and the Board shall commence deliberations. Deliberations are conducted in public. No further testimony or evidence shall be offered or admitted by the applicant or the Assessor during the deliberations unless the hearing is formally reopened. The Board's charge in the deliberative process is to review the evidence presented under the applicable legal standards (see below for legal standards).

During deliberations, Board members should discuss their views of the facts and express their opinions about the evidence presented. Alternate member(s) that are not sitting as part of the Board's quorum should not participate in the deliberations. Based on the evidence and testimony presented, the Board shall then orally summarize its preliminary findings so they can be drafted to become the Board's Findings of Fact. After arriving at a proposed set of Findings, the Board will vote to render its decision by one of the following means:

- a. By motion and vote, the Board will vote to accept (or reject) each of the preliminary findings as orally summarized by the Chair, another Board member or assistant to the Board, and based thereon, then vote to grant or deny the appeal. The Chair may seek authority from the Board to authorize the Chair, another Board member that participated in all of the appeal proceedings or the Board's secretary to prepare the Board's written final Findings of Fact and Decision based on the orally summarized and voted on preliminary findings, and may seek authority for the Chair or another Board member who participated in hearing and in deciding the

appeal to sign and issue the final written decision on behalf of the Board;
or

- b. By motion and vote, the Board may defer issuance of final Findings of Fact and a Decision on the appeal and either on its own, with the assistance of proposed findings being solicited from the parties, or with the assistance of its counsel, draft proposed written Findings of Fact and a Decision for the Board's consideration and vote at a later date. When voting on the final Findings of Fact and Decision the Board shall individually consider and vote on each finding and the Board's final Decision.
10. 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.
 11. Adjournment.
 12. The Board Secretary is responsible for making sure that all materials submitted during Board proceedings and issued by the Board (exhibits, communications, Board minutes, Findings of Fact, Decisions, etc.) are properly archived and maintained at the Town Office. These materials shall be maintained as part of the public record and in accordance with state standards. The Secretary shall also ensure that the Findings of Fact and Decisions of the Board are timely sent to the parties. The Board's written Decision must be sent to the parties within ten (10) days of the date of the Board's final action on an appeal. The Board's final Decision must also include a statement advising the parties of their appeal rights in accordance with state law.

B. Board Standards

1. With exception of administrative matters such as setting up hearing dates, scheduling matters or other non-substantive matters, Board members must ensure that all Board business takes place only during public meetings of the Board. Board members must avoid ex parte communications with applicants or the Assessor on any substantive matters related to any proceeding before the Board.
2. Except in cases by directive of Court order or in matters that are the proper subject of executive sessions pursuant to 1 M.R.S.A. §405, all proceedings of the Board are to take place in public proceedings at scheduled meetings of the Board.
3. The Board shall conduct the hearing in compliance with Town of Bar Harbor Ethics Ordinance (Town of Bar Harbor Code, Chapter 78 (§78.1-§78.15), Ethics Ordinance).
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's

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 the standards governing professional appraisal practice and Maine law.

5. The Board, if it deems it helpful, may schedule a formal inspection of the property. Board members should not engage in individual inspections of the property. The procedure for inspections will be for the Board to set a mutually acceptable time and date for Board members, the applicant and his or her representatives and the Assessor and his or her representatives to meet at the property. The Board and the parties will then complete the inspection together. The applicant and the Assessor may request that certain elements of the property be the subject of the inspection. At the meeting following the inspection, the Board shall summarize on the record the inspection and the Board members' observations. The applicant and the Assessor may then also state on the record any observations or comments concerning the inspection.
6. Unless the Board receives permission in writing from the applicant to enlarge the review period, it shall hold hearings and decide all appeals within sixty (60) days of the date the filing of the application or petition. Matters not acted on by the Board within such period or extended period are deemed denied.
7. The Board must base its Decision and its Findings of Fact on the evidence in the record. The Board shall issue a written Notice of Decision and Findings of Fact within ten (10) days following the date it takes final action on an appeal. Decisions of the Board may be appealed under Rule 80B of the Maine Rules of Civil Procedure to the Hancock County Superior Court, or if the property involves non-residential property with an equalized valuation exceeding \$1,000,000 to the Maine State Board of Property Tax Review.
8. The Board is authorized to rely on Town staff to assist in clerical matters relating to the Board's activities, including scheduling meetings, posting and advertising notices regarding Board proceedings, recording meetings, archiving Board records and otherwise assisting with the drafting and distribution of the Board's Findings of Fact and Decisions.

C. Standards of Review and Burdens of Proof for Property Tax Appeal Hearings

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 reasonable and willing buyer would pay a reasonable and willing seller in a market transaction free from unusual conditions or circumstances (such as subjective preferences,

- bankruptcy, foreclosure, sales to relative, etc.) and where the property sold has had reasonable exposure in the marketplace to 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. The three generally accepted methodologies are the cost approach, the comparative sales or market approach, and the income approach.
 3. 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 value individual residential properties because such properties are generally not held to produce income.
 4. 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 prong 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".

5. To meet the legal threshold of what is required to prove "manifest error" in a property tax appeal concerning overvaluation, i.e. the taxpayer's "burden of proof", a taxpayer must:

- a. present evidence that that Board accepts as credible that impeaches the validity of the assessment and
- b. provide evidence and proof of the actual fair market value of the applicant's property that the Board also deems credible.

Only if the taxpayer satisfies both of these burdens is the Board authorized to engage in an independent determination of the fair market value of the property for the purpose of granting an abatement.

6. To obtain an abatement based on a discrimination claim, a taxpayer does not have to present evidence related to the actual fair market value to have their assessment reduced. Instead, the taxpayer must demonstrate that the assessment system, by its nature "necessarily will result in unequal apportionment" of the tax burden. *Moser v. The Town of Phippsburg*, 553 A.2d 1249 (1989); *Biddeford v. Adams*, 1999 Me. 49.

The rule and remedy for a discrimination claim is that "whenever it can be established indisputably by competent and sufficient evidence that a given assessment upon an aggrieved taxpayer's property has been laid upon a distinctively higher valuation than the assessments upon the property of taxpayers in general and that this discrimination was intentional ... the courts will intervene to reduce or annul the tax to the extent necessary to place the complaining taxpayer on a plane of equality with others in his class." *Shawmut Manufacturing Co. v. Town of Benton*, 123 Me. 121, 129, 122 A.2d (Me. 1952). Even so, sporadic or spot under assessments or errors of judgment on the part of the assessor are not adequate to support a finding of unjust discrimination. *Rams Head Partners, LLC v. Cape Elizabeth*, 2003 Me. 131, ¶ 11. Thus, "mere errors of judgment by officials will not support a claim of discrimination. There must be something more--something which in effect amounts to an intentional violation of the essential principle of practical uniformity." *Id.*

7. 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.¹

An example of the analysis to review the application of section 848-A follows:

¹ 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 back to the Town.

A property has been assessed for \$150,000 and the Town's assessment ratio for the tax year in question is determined to be 70%. Factoring the 70% ratio to the \$150,000 assessment to arrive at a 100% or equalized valuation results in a valuation of \$214,285 for the property.

In the appeal process, the taxpayer convinces the Board that the fair market value for her property as of April 1st for the tax year in question is \$200,000, or approximately \$14,000 less than the 100% or equalized assessment.

The range of deviation afforded to the assessor under section 848-A is a 10% deviation from the ratio of 70%. As applied this would allow as defensible assessments any assessments falling within the range from 63% to 77% of the property's fair market value. As applied, the range of acceptable assessments for the taxpayer's property is from \$126,000 to \$154,000.

In this appeal, even though the taxpayer has proven a value indicating that that she has been over-assessed, under section 848-A she would not be entitled to an abatement because the assessed value is within the range of deviation allowed by the statute.

8. The Board's findings and decision must be thorough and complete. The reason is that the parties impacted by a decision and the reviewing courts both need to be able to understand the rationale behind the decision, what Findings the Board actually made, and whether, based on the record, the Board properly applied the legal standards to the matters it was asked to decide. As a result, the courts remand cases where they determine that the findings of fact are not sufficient to apprise the court of the facts and rationale behind the decision and whether the deciding body properly applied the governing legal standards.

[end]

LEGISLATIVE HISTORY:

Introduced:	
Board Adopted:	5-25-10
Amendment Introduced:	
Revision adopted:	4-15-11