

Introduced by: Borough Assembly
Requested by: Board of Equalization
Drafted by: Borough Clerk and Assessor
Introduced: 03/03/2011
Public Hearing: 03/17/2011
Adopted: 03/17/2011

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**KODIAK ISLAND BOROUGH
ORDINANCE NO. FY2011-12**

**AN ORDINANCE OF THE ASSEMBLY OF THE KODIAK ISLAND BOROUGH
AMENDING TITLE 3 REVENUE AND FINANCE CHAPTER 3.35 REAL PROPERTY TAX
SECTION 3.35.050 BOARD OF EQUALIZATION**

WHEREAS, KIBC Section 3.35.050 has not been updated since 1978 except for a minor revision in 1998 which dealt with member appointments; and

WHEREAS, it is in the best interests of the Kodiak Island Borough to amend this section to provide clear and better guidance for appellants regarding the BOE appeals; and

WHEREAS, the proposed changes also set better standards and establishes better process for the Board of Equalization hearings.

NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KODIAK ISLAND BOROUGH THAT:

Section 1: This ordinance is of a general and permanent nature and shall become a part of the Kodiak Island Borough Code of Ordinances;

Section 2: Kodiak Island Borough Code of Ordinances Title 3 *Revenue and Finance* Chapter 3.35 *Real Property Tax* Section 3.35.050 *Board of Equalization* is hereby amended as follows:

3.35.050 Board of equalization.

A. Membership, Qualification, Duties, Terms.

1. Members. The board of equalization shall be composed of five persons, not assembly members, appointed by the assembly. **At least one alternate member shall be appointed.**

~~2. Alternate Members. The assembly shall appoint alternate members. The alternate members shall be named by the assembly, as the need arises, to serve as board members during the absence or disability of regular members.~~

39 2. Qualifications. Members and alternate members should be appointed on the basis of
40 their expertise in real and personal property appraisal, the real estate market, the
41 personal property market, and other fields related to their functions as board members.
42 **Each member shall be a qualified voter of the borough and shall remain a resident**
43 **of the borough while in office.**

44 3. Duties. The board may determine equalizations on properties brought before the
45 board by appellants. **It shall only hear appeals for relief from an alleged error in**
46 **valuation on properties before the board by an appellant.**

47 4. Terms of Office. Upon confirmation, members and alternate members shall serve for
48 three years or until their successors are appointed and confirmed. Of the members
49 initially appointed, two shall serve three-year terms, two shall serve two-year terms, and
50 one shall serve a one-year term.

51 5. Hearing Dates. **The board shall commence hearings on the first Monday in May,**
52 **unless otherwise changed by resolution. Hearings will continue from day to day**
53 **as established by the board and the borough clerk until all properly filed appeals**
54 **have been heard.**

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56 B. Chairperson. The board annually shall elect a member to serve as its chairperson. The
57 chairperson may call meetings of the board, shall exercise such control over meetings as to
58 ensure the fair and orderly resolution of appeals, shall make rulings on the admissibility of
59 evidence, and shall conduct the proceedings of the board in conformity with this chapter. **A**
60 **vice-chairperson shall also be selected to serve in the chairperson's absence. If both**
61 **are absent, the members present shall select a person to preside.**

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63 C. Appeals to the Board.

64 1. A person whose name appears on the assessment roll, or ~~his agent or assigns~~ **the**
65 **authorized representative of that person,** may appeal to the board for relief for an
66 alleged error in valuation not adjusted by the assessor to the taxpayer's satisfaction. **The**
67 **authorized representative shall be named by the property owner in writing to the**
68 **assessor and board of equalization at the time of filing or no later than three days**
69 **in advance of hearing. The time requirement for providing a representative in**
70 **writing may be waived at the determination of the board during the hearing, if**
71 **good cause is shown that may include, but not limited to, the following: stranded**
72 **from Kodiak due to inclement weather, serious medical condition, serious family**
73 **emergency, or death in the family,**

74 2. ~~No appeal may be taken unless the applicant files with the board written notice of~~
75 ~~appeal specifying grounds for such appeal within 30 days from the date the assessment~~
76 ~~notice was mailed. The board shall prescribe the form in which written notices of appeal~~
77 ~~shall be made.~~

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82 The appellant shall, within 30 calendar days after the date of mailing of notice of
83 assessment, submit to the assessor a written appeal specifying grounds for such
84 appeal. The board shall prescribe the form in which written notices of appeal shall
85 be made. Otherwise, the right of appeal ceases unless the board of equalization
86 finds that the taxpayer was unable to comply within the 30 day appeal period and
87 grants a hearing to the appellant.

88 3. The assessor shall notify the appellant by mail, and email if provided, of the time
89 and place for the hearing and assign a docket number of appeal.

90 4. Parties to whom notice was mailed as provided herein fail to appear, the board may
91 proceed with the hearing in their absence. All parties, their authorized
92 representatives, and witnesses must appear in person at the hearing.

93 5. The Assessor shall prepare for use by the board of equalization a summary of
94 assessment data relating to each assessment that is appealed. This summary
95 shall be provided to the board and made available to the appellant at least ten
96 calendar days before the hearing. Summary of assessment data for late-filed
97 appeals granted by the board will be provided as soon as practicable.

98 6. A city in the borough may appeal an assessment to the borough board of
99 equalization the same manner as a taxpayer. Within five days after receipt of the
100 appeal, the assessor shall notify the person whose property assessment is being
101 appealed by the city.

102 7. A property owner who seeks to appeal the assessor's valuation, after the 30 day
103 filing period has closed, shall file a letter with the assessor stating the reasons
104 why the property owner was unable to comply with the 30 day appeal period. The
105 deadline to file a late-file request is on April 15 of the current assessment year.
106 Should April 15 fall on a Saturday or Sunday, late filers shall have until 4:30 p.m.
107 on the first Monday following to file their request.

108 On the next business day following the deadline to file a late-file request or as
109 soon as is practicable, the board shall consider each letter and shall only consider
110 reasons the appellant was unable to comply with the 30 day appeal period. It shall
111 not consider evidence regarding property valuation. The appellant may not make
112 an oral presentation at the hearing. The determination shall be based on the letter
113 and supporting documents. The board shall interpret the term "unable to comply"
114 as meaning that a property owner must demonstrate compelling reasons or
115 circumstances which would prevent a reasonable person under the
116 circumstances from filing an appeal in a timely manner during the 30 day appeal
117 period.

118 If the late-file request is granted, the property owner shall have five calendar days
119 from the decision of the board to file an appeal and submit to the assessor's office
120 all documentary evidence in their possession which they wish to be considered
121 and which is relevant to the resolution of the appeal. If the late-file request is
122 denied, the assessor shall notify the property owner of the board's decision in
123 writing.

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126 D. Quorum and Voting.

127 1. Quorum. A quorum shall consist of four members.

128 2. Voting. The granting of any appeal or part thereof shall require the concurring vote of
129 at least three board members. Any appeal or part thereof which is not granted by the
130 board shall be considered denied.

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132 E. Hearings, Procedures.

133 1. Record. The clerk is the ex officio clerk of the board **and shall prepare the board's**
134 **minutes.** ~~The clerk shall record in the minutes of each meeting all proceedings before~~
135 ~~the board, the names of persons protesting assessments, and all changes, revisions,~~
136 ~~corrections, and orders relating to claims or adjustments.~~ **The clerk shall keep**
137 **electronic recordings of the board's hearings per the borough retention schedule.**
138 **The board of equalization summary certification will constitute the board's**
139 **minutes.**

140 2. Counsel. All parties may be represented by counsel during hearings before the board.
141 **On procedural matters,** the borough attorney may offer legal counsel to the board in
142 the course of its proceedings. **Upon the recommendation of the borough attorney,**
143 **the board may retain legal counsel from another attorney for a particular matter.**

144 3. Appeal Number. Every appeal shall be assigned a docket number which, along with
145 the name of the appellant, shall be read into the record before the hearings on the
146 appeal may commence.

147 4. Burden of Proof. The burden of proof rests with the appellant who must convince the
148 board by clear and convincing evidence that the assessment was unequal, excessive, or
149 improper, **or undervalued based on the facts stated in a written appeal or proven at**
150 **the appeal hearing in accordance with subsections E5 and E7 of this section. If**
151 **the valuation is found to be too low, the board may raise the assessment.** The
152 borough shall make available to the appellant all reasonably pertinent documents
153 requested for presentation of the appeal, **including but not limited to, documents**
154 **presented or requested by the board of equalization for presentation of the appeal**
155 **in accordance with KIBC 3.35.050 C5.**

156 5. Rules of Evidence. **Evidence shall only be presented by the appellant and the**
157 **assessor or their authorized representative.** The board shall not be restricted by the
158 formal rules of evidence; however, the chairperson may exclude evidence irrelevant to
159 the issues appealed. Hearsay evidence may be considered provided there are adequate
160 guarantees of its trustworthiness and that it is more probative on the point for which it is
161 offered than any other evidence which the proponent can procure by reasonable efforts.
162 **The appellant must submit to the assessor's office by April 15 all documentary**
163 **evidence in their possession which they wish to be considered and which is**
164 **relevant to the resolution of the appeal. Should April 15 fall on a Saturday or**
165 **Sunday, appellants shall have until 4:30 p.m. on the first Monday following to**
166 **submit their evidence.**

167 **This evidence includes but is not limited to purchase and closing documents,**
168 **appraisal reports, brokers opinion of value, engineers' reports, estimates to repair,**

169 rent rolls, leases, and income and expense information. The board of equalization
170 may in its discretion decline to accept documents offered at the hearing which
171 should have been provided by April 15. In exercising this discretion, the board
172 shall consider the relevance and probative value of the documents which are
173 under consideration accepting those documents which in all fairness are
174 necessary to a fair resolution of the appeal. Prior to the board meeting, the
175 appellant and assessor may agree to an extension of time for the production of
176 evidence.

177 6. Order of Presentation. ~~The appellant shall present his argument first and may be~~
178 ~~questioned or examined by the board or the assessor. Following the appellant, the~~
179 ~~assessor shall present the borough's argument and must submit to examination and~~
180 ~~questions by the appellant. The appellant may, at the discretion of the chair, make~~
181 ~~rebuttal presentations directed solely to the issues raised by the assessor. The borough~~
182 ~~attorney may question the appellant or the assessor on matters relating to the appeal.~~
183 **The order of presentation is as follows:**

- 184 a. The appellant shall present evidence and argument not to exceed five
185 minutes.
- 186 b. Following the appellant, the assessor shall present the borough's evidence
187 and argument not to exceed five minutes.
- 188 c. The appellant may make a rebuttal presentation directed solely to the
189 issues raised by the assessor not to exceed two minutes.
- 190 d. The assessor may address the rebuttal by the appellant not to exceed two
191 minutes.

192 Each party shall be allowed a total of five minutes to present evidence and make
193 oral argument. The time limits allotted include presentations from either the
194 appellants or assessor's authorized representatives, counsels, or witnesses.
195 Additional time may be permitted by the board depending on the complexity of the
196 case. The members of the board may ask questions, through the chairperson, of
197 either the appellant or the assessor, authorized representatives, counsels, or
198 witnesses at any time during the hearing. After both the appellant and the
199 assessor have made their presentations, each may question the other through the
200 chairperson. The chairperson may end the questioning and call for a motion from
201 the other members.

202 7. Witnesses, exhibits and other evidence. The appellant and the borough assessor
203 may offer the oral testimony of witnesses and documentary evidence during the
204 hearing; ~~provided, however, where either the appellant or the assessor seeks to~~
205 ~~introduce an affidavit in lieu of oral testimony, such affidavit shall be submitted to the~~
206 ~~opposing side no later than 72 hours before the hearing. All testimony before the board~~
207 ~~shall be under oath. Documentary evidence and exhibits may be presented by both~~
208 ~~parties during the hearing. At the request of the appellant, evidence submitted~~
209 **pursuant to subsection E5 of this section relating to the assessed valuation of**
210 **property used in an income-producing commercial enterprise shall be**
211 **confidential. The assessor and the appellant may stipulate to facts to be**

212 presented to the board, provided the assessor has received credible and reliable
213 evidence to establish the facts.

214 The only exhibits that shall be admitted into the record at the hearing are those
215 exhibits provided pursuant to subsection E5 of this section. However, at the
216 hearing, parties may use demonstrative or illustrative exhibits, provided that all
217 such exhibits are duplicates of exhibits or information provided to the board
218 pursuant to subsection E5 of this section. Additionally, witnesses may write on a
219 board while orally testifying to illustrate their testimony. The limitation on the use
220 of exhibits in this section shall not preclude the parties from presenting oral
221 testimony at the hearing.

222 8. Decisions.

223 a. The assessor may recommend changes to the existing value during the
224 hearing.

225 b. After the appellant and assessor have presented their cases, the hearing
226 shall be closed by the chairperson, and no further evidence shall be offered
227 or considered in deliberations unless a member of the board of
228 equalization asks for additional information from either party. Both parties
229 shall be given an equal opportunity to respond to any such requests for
230 additional information.

231 c. The board may decide the appeal after the presentations, or it may defer a
232 decision no later than 30 days after the hearing date. Final board action
233 shall be taken by motions that set out specific findings of fact at the
234 meeting and shall not be reconsidered, amended, or rescinded by the
235 board. Only one motion may be on the floor at a time, and the board shall
236 vote on the motions until its findings are established. The vote must be
237 taken and entered in the permanent record of the proceedings. The
238 motions available for the board are:

- 239 I. Motion to uphold the assessor's valuation
- 240 II. Motion to reduce the assessment
- 241 III. Motion to increase the assessment
- 242 IV. Motion to dismiss the appeal
- 243 V. Motion to defer the decision
- 244 VI. Or any other motion set out in Alaska Statutes and regulations
245 governing board of equalization appeals.

246 d. No later than 30 days following the hearing, the board shall render a written
247 decision which includes findings of fact based on evidence presented at
248 the hearing clearly stating the grounds upon which the panel relied to
249 reach its decision and advising all parties of their right to appeal the
250 decision to superior court.

251 9. Certification. The board shall certify its actions to the assessor within seven days
252 following its adjournment.

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256 F. Further Appeals. Any appeal of a decision of the board shall be made to the superior
257 court. No appeal of a board's decision to the superior court may be taken unless the action
258 is filed and the borough attorney is served with notice of such appeal within 30 days
259 following the board's decision.

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261 **Section 3:** This ordinance shall become effective upon adoption.

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263 **ADOPTED BY THE ASSEMBLY OF THE KODIAK ISLAND BOROUGH**
264 **THIS SEVENTEENTH DAY OF MARCH, 2011**

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KODIAK ISLAND BOROUGH

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Jerome M. Selby, Borough Mayor

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272 ATTEST:


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Nova M. Javier, MMC, Borough Clerk