

# Property Tax Appeals and Valuation Principles

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*Many procedures and legal standards for the appeal of property taxes are similar in most jurisdictions. However, local variations in rules, procedures, or the law can lead to a series of potential traps for the unwary. This discussion will provide an overview of the property tax appeal process from a legal perspective, with a focus on jurisdictions in New England.*

*This discussion (1) covers the basics of procedure and jurisdiction for commencing a tax appeal, or for further appeal of an unfavorable decision; (2) addresses the legal standards to be applied in evaluating such appeals or estimating value; and (3) summarizes specific potential traps in each jurisdiction with illustrations of the types of issues taxpayers may face that could require specialized knowledge of the local property tax laws.*

## INTRODUCTION

The appeal of a disputed property tax assessment ordinarily begins with an abatement request process. A failure to adhere to procedural requirements early in the process can be fatal to the taxpayer's ability to maintain an appeal.

## PROPERTY TAX APPEAL PROCEDURES

For instance, in Massachusetts, a request for abatement must be submitted to the assessor's office on or before the due date for payment of the first installment of the actual tax bill. A taxpayer who fails to timely file the abatement application has lost the right to an abatement. The requirement to timely file may not be waived by the assessors and the Massachusetts Appellate Tax Board has no jurisdiction to hear a case if the abatement application was not timely filed.

The request for abatement must be submitted on an approved form. The assessors then have three months to review the request for abatement and issue their decision.

If the abatement request is denied, the taxpayer then has the option of filing an appeal of the denial.

If the abatement request is not acted upon by the assessors within three months of filing, the application is "deemed denied" and the taxpayer may take the appeal.

An appeal in Massachusetts is to the Appellate Tax Board (ATB), and it must be filed within three months of the assessor's decision on the abatement request or within three months of the request being deemed denied.

The ATB is a quasi-judicial administrative body that hears and decides tax appeals. Appeals may be either formal or informal. To be entitled to discovery, a right of appeal, and written findings and report of the ATB's decision, the formal process should be used.

The rules of the ATB allow for obtaining written discovery, including interrogatories and document requests, and the exchange of expert reports which are usually prepared by appraisers. Depositions may only be taken with leave of the ATB.

The rules of evidence are generally applicable. The practice and procedure before the ATB conforms to that for equity cases in the state courts, but the ATB also has the right "to make hearings and proceedings as informal as possible, to the end that substance and not form shall govern, and that a final determination . . . may be promptly reached."<sup>1</sup>

This approach to evidentiary issues is typical of that found in many jurisdictions. For example, in Connecticut, hearings are informal and there are no rules of evidence. In Maine, evidence may be given in unsworn statements under some circumstances.

Also, in Maine, the Board of Tax Appeals need not observe the rules of evidence, yet the rules applicable to attorney-client privilege and work product are adhered to.

The underlying goal in most appeals is to establish the fair market value of the property in order to determine whether the property has been overvalued by the assessor. Although this goal—or standard of value—may be discussed using alternative terms, such as “fair cash value” or “market price,” the ultimate meanings of these terms are largely, if not entirely, synonymous.

In Connecticut, for example, “[t]he terms actual valuation, actual value, market value, fair market value, market price and fair value are synonymous in the determination of the valuation of property for assessment purposes, but the term ‘fair value’ is the preferable one.”<sup>2</sup>

In Massachusetts, the ATB is charged with determining the “fair cash valuation” of the property, which is taken to be synonymous with “fair market value” for ad valorem purposes.<sup>3</sup>

The language used to define fair market value may vary from one jurisdiction to another. However, the meaning of the term is generally consistent with the price an owner willing but not under compulsion to sell would receive from a buyer willing but not under compulsion to buy.

Fair market value is ordinarily estimated using generally accepted unit valuation methods and generally accepted real estate appraisal methods. This process includes consideration of the three generally accepted property valuation approaches: the cost approach, the comparable sales approach, and the income approach. “As a rule, however, [n]o one method is controlling; consideration should be given to them all, if they have been utilized, in arriving at the value of the property.”<sup>4</sup>

Using the cost approach, the analyst may determine either a replacement cost new less depreciation or a reproduction cost new less depreciation. The reproduction cost examines the cost to produce an exact replica of the existing property.

Alternatively, replacement cost seeks to measure the cost of a property capable of the same function using current technology, even if not resulting in an exact replica of the property at issue.

For example, a replacement cost estimate for a system of gas utility property built a hundred years ago using cast iron piping may seek to price out a system capable of the same function of delivering and distrib-

uting gas using plastic pipes rather than cast iron.

The comparable sales approach is familiar to most home owners. It seeks to estimate the price at which comparable properties were sold, which serves as a basis for valuing the subject property. For this to be a viable valuation method, there must be an active market in such properties, and any differences between them must be amenable to mathematical adjustments by the appraiser.

The income approach is particularly applicable to income-generating properties. This is because an investor, concerned only with the expected return on investment, would not be willing to pay any more for the subject property than the value of the income it can be expected to generate.

A property that generates a consistent stream of income with consistent expenses can generally be valued using a direct capitalization method. In the direct capitalization method, a capitalization rate (or an income multiplier) is applied to a single year’s income.

A property with a variable income stream or varying expenses from year to year may be better valued using a discounted cash flow method. That method estimates cash flow for each year of a discrete projection period, discounts the cash flow to present value, and adds a reversionary value.

Depending on the characteristics of the property, it is likely that one or two valuation methods may be more reliable to estimate the fair market value of the subject property.

The analyst should consider all viable methods of valuation and then reconcile them to a final conclusion of value. This reconciliation is based upon the analyst’s judgment about the relative reliability of the various valuation methods.

Although the value of property in a tax appeal is generally the subject of valuation analyst testimony, it is typical that the appellate body is not constrained to accept or reject the specific opinions of any analyst.

Rather, in the quest for fair market value, the appellate board is typically permitted to accept or reject whichever parts of the expert testimony it finds credible (or not). The appellate board may arrive at its own determination of value, which may not agree with the opinions of either the municipality experts or the taxpayer experts.

For example, in Massachusetts, the ATB “is not required to adopt any particular method of valuation,” and if the Board has “objectively adequate reasons” for disregarding an opinion of value offered into evidence, the Board’s decision will be upheld on appeal.”<sup>5</sup>

In Connecticut, “[t]he trier of fact must arrive at his own conclusions as to the value of [the taxpayer’s property] by weighing the opinion of the

appraisers, the claims of the parties in light of all the circumstances in evidence bearing on value, and his own general knowledge of the elements going to establish value.”<sup>6</sup>

In a jurisdiction where assessments are based on a fraction (or multiple) of market value, the appellate body may be concerned with whether the taxpayer’s adjusted assessment exceeds market value, rather than whether the assessment itself exceeds market value.

For example, in New Hampshire, the Board of Tax and Land Appeals will focus on whether the “equalized assessment” exceeds the property’s fair market value. The equalized assessment is the dollar amount of the assessment divided by the applicable equalization ratio, which is available from the municipality.

Therefore, for an assessment of \$120,000 with an equalization ratio of 1.20, the focus of the Board would be whether the property was worth \$100,000 on the assessment date ( $\$120,000 / 1.2 = \$100,000$ ).

The taxpayer will ordinarily have the burden of proof in a property tax appeal. The burden in Massachusetts to show overvaluation may be accomplished in two ways:

1. By demonstrating flaws or errors in the assessor’s methods of valuation
2. By introducing its own affirmative evidence of value, which undermines the assessor’s valuation.<sup>7</sup>

In Vermont, the taxpayer must demonstrate that the “equalized” fair market value is below the assessment. This is a two-step process, in which the fair market value of the property is first estimated; then the ratio of the listed (assessed) value to fair market value is compared to the ratio for corresponding properties in the town.

This process recognizes that it is not feasible for a town to list all property at precisely its fair market value, every year, particularly where the market is changing.<sup>8</sup>

In Connecticut, the taxpayer has the burden to show that the property was over-assessed. There is no judicial presumption that the assessor’s valuation is valid.<sup>9</sup> In contrast, in other jurisdictions, the taxpayer has an initial burden to overcome a presumption of validity of the assessment.<sup>10</sup>

If the taxpayer is dissatisfied with the decision of the initial appellate body, such decisions are usually subject to further appellate review. However, review of such decisions may be limited to questions of law or be subject to a standard that requires showing the initial decision was “clearly erroneous” in light of the evidence in the record.

## SURVEY OF NEW ENGLAND JURISDICTIONS

The following survey of the procedures and standards applied in various New England jurisdictions will provide the reader a sense of the types of variation that can be expected. The laws of each jurisdiction are unique.

And, taxpayers are well advised to seek legal counsel in order to properly navigate the rules, timing requirements, and legal standards of the applicable jurisdiction.

### Connecticut

Initial appeal of an assessment in Connecticut is made in writing to a Board of Assessment Appeals (BAA), and must be filed on or before February 20 in the year following the assessment.

Hearings before a BAA are informal, and the rules of evidence do not apply. To appeal action taken by the BAA, the taxpayer must file an appeal with the Tax and Administrative Appeals Session of the Superior Court within two months of the date of mailing of the notice of action by the BAA.

The court will review the appeal *de novo*, without regard to the evidence presented (or not presented) to the BAA. The trier of fact will determine the value of the taxpayer’s property by weighing all the evidence in light of all the circumstances.

Therefore, the trier of fact will consider the opinions of the appraisers, all of the facts or circumstances bearing on value, and his or her own general knowledge of the elements that establish value.

The taxpayer’s burden, stated in various ways, is to establish that the value of his property is less than what the assessor set it at—that is, that the assessed value is “unjust” or “overvalued” or “excessive.” Only after such a showing has been made may the court grant the relief that “justice and equity” require.

Decisions of the Tax and Administrative Appeals Session may be appealed. However, the appellate courts will apply a deferential “clearly erroneous” standard on the factual question of overvaluation. Therefore, the lower court’s decision will only be overturned if there is no evidence in the record to support the decision.

There are a couple possible traps for the unwary to be conscious of in Connecticut. First, if the BAA does adjust the assessment, the same adjustment will be applied in all future years until the next revaluation, and the taxpayer is not entitled to appeals in those subsequent years.

Accordingly, a small victory in one year could preclude larger adjustments on appeal in subsequent years, until a revaluation occurs.

Second, the taxpayer in Connecticut may have the option to withhold as much as 25 percent of the assessed value while appealing. However, if the taxpayer does not prevail, interest on the balance accrues at 18 percent per annum.

Finally, it is possible that the parties (assessor and taxpayer) may agree that only the value of a portion of the property is in dispute. However, this stipulation does not bind the court's ultimate determination of the value of the taxpayer's entire property.

## Maine

In Maine, the state Constitution requires that property be valued at "just value," which is generally considered to be synonymous with fair market value. Assessments are based upon a ratio (percentage) of just value, and that ratio is reported to the state.

If the taxpayer believes the assessment of its property is excessive, an abatement may be applied for within 185 days of the tax being committed to the tax collector (shortly before bills are sent out).

If the abatement is denied, the taxpayer may appeal to the county commissioners within 60 days, or to the Superior Court within 30 days of the denial.

An abatement application is "deemed" denied if it is not acted upon within 60 days. If the municipality has adopted a local board of assessment review (LBAR), the appeal is to the LBAR. Further appeal to the Superior Court of the LBAR decision may be taken within 30 days.

The standard applied in evaluating the assessment is whether it "is accurate within reasonable limits of practicality." The assessment and assessor's judgment are presumed valid. Therefore, to overcome that presumption, it falls to the taxpayer to prove (absent a fraudulent or illegal assessment or unwarranted discrimination) that the assessor's judgment was so irrational or unreasonable that it resulted in the property being substantially overvalued.

This procedure requires a two-part showing. First, the taxpayer must present credible evidence to impeach the validity of the assessment itself.

Second, the taxpayer must also prove the actual fair market value of the property with credible evidence. An abatement is warranted only if the taxpayer satisfies both of these burdens.

Because mass valuation is recognized to be an inexact science, assessments will be deemed valid if they are accurate within reasonable limits of practicality. Accordingly, values that fall within 10 percent of the town's assessment ratio will likely not result in an abatement.

## Massachusetts

In Massachusetts the taxpayer must timely pay the actual tax assessed on real property in order to

maintain an appeal. The taxpayer may withhold a portion of the assessed taxes on personal property. However, if the taxpayer does not prevail, interest accrues at the rate of 14 percent.

Conversely, if the tax is paid and the taxpayer does prevail, it is only entitled to recover interest from the municipality at the rate of 8 percent on the overpayment.

As with many jurisdictions, Massachusetts enforces certain procedural and timing requirements by depriving the ATB of jurisdiction over the appeal if those requirements are not met. Therefore, taxpayers must be careful to comply with all procedural and timing requirements for requesting abatement and filing the appeal.

## New Hampshire

In New Hampshire, the key filing dates for most tax appeals are established by specified dates, rather than measured periods of time. Therefore, an abatement application in most cases should be filed by March 1st of the year following the assessment.

Until a decision is issued, no further appeal is permitted, unless a decision has still not been issued by July 1st. Once an abatement is denied (or, in essence, deemed denied), the taxpayer may choose to file an appeal either with the Board of Tax and Land Appeals, or with the Superior Court. The appeal must be filed by September 1st.

For an appeal to succeed, the taxpayer must prove that the assessment resulted in an "unfair, illegal or disproportionate share of taxes" being paid by that taxpayer. A particular issue may be the impact of a decision in favor of abatements.

While one tax year's assessment is pending appeal, the taxpayer is not required to file appeals in subsequent years in order to obtain the benefit of abatement.

If the Board or Court orders an abatement, the same abatement order will apply to subsequent years.

However, the assessor is permitted to make good faith adjustments to each subsequent year's assessment, and the taxpayer has only a limited ability to challenge those adjustments. Appealing each year's assessment may be a better course, to preserve the right to challenge each assessment.

In New Hampshire, the taxpayer must pay the total tax due, even if applying for an abatement or appealing a denial of abatement. Failure to pay the full tax on time could result in being charged 12 percent annual interest, even if an abatement eventually is granted, and other adverse consequences.

If the tax is paid, and the taxpayer is eventually granted an abatement, then the municipality will have to refund the tax—as well as 6 percent annual interest on the overpayment.

## Rhode Island

In Rhode Island, an important preliminary step to preserve all of a taxpayer's rights to appeal the assessment is the filing of a Notice of Intention to File an Account (the "Account"). This procedural step, not seen in other New England jurisdictions, requires that the taxpayer actually file the Account with the local assessor's office in March.

The taxpayer may then file an Application for Appeal with the local assessment office within 90 days of the date the tax is due (usually in September of the year following assessment, but it can vary). A property valuation or other evidence of value is typically required at this stage.

If the local assessor denies the appeal (or if there is no decision within 45 days), the taxpayer has 30 days to appeal further to a local tax appeal board.

An adverse decision by the tax appeal board may be appealed in the Superior Court by filing a petition for relief from the assessment within 30 days. The accounts and appeals for each subsequent year must be filed by the taxpayer until the case is resolved.

To avoid losing appeal rights, and being charged interest, the taxpayer must pay the tax in full. In addition, the filing of a true and full Account is mandatory, and failure to do so "eliminates the right of appeal."

## Vermont

In Vermont, local elected officials known as "listers" serve the function of the assessors, and value the property for inclusion in a "grand list" of the property in the municipality. After an initial list is lodged and notices are sent, taxpayers must file a grievance to contest the listed value of their property.

This grievance consists of a written notice of appeal filed with the board of listers. The various deadlines vary depending upon the population of the municipality. An open, public meeting is then held to hear all grievances filed.

Results of the grievance process are sent by registered or certified mail, and any appeal of this decision must be taken within 14 days by filing a written appeal with the town clerk.

This appeal is to the Board of Civil Authority (BCA). The BCA consists of the town clerk, justices of the peace, select board members, the mayor, alderboard, and/or village trustees (as the case may be) of each town, charged with hearing tax appeals and with overseeing election issues.

The BCA will hold a hearing that is recorded and will receive testimony under oath concerning the appeal, but in a manner less formal than a court.

Following the hearing, at least three members of the BCA must (1) inspect the property and (2) submit a written report back to the BCA within 30 days.

The BCA will issue its written decision, with findings, within 15 days of receiving the inspection report. Further appeals may follow one of two courses:

1. An appeal to the state appraiser
2. An appeal in the Superior Court

Further appeal from those bodies may be had to the Vermont Supreme Court.

## CONCLUSION

Regardless of the terminology used in varying jurisdictions, most taxpayers are familiar with the concept that their property is supposed to be assessed at its fair market value (or equivalent standard of value).

However, most taxpayers are not familiar with the myriad of procedural rules that govern a challenge to an assessment. Making matters worse, the time frames associated with various steps the taxpayer must take to preserve a challenge are often very limited.

Given that a misstep can be fatal to the appeal of an assessment, it is advisable for the taxpayer to consult with counsel early on in the process.

### Notes:

1. ATB Rules, § 1.37.
2. *Bridgeport Gas Co. v. Town of Stratford*, 153 Conn. 333, 335 (1966).
3. *Boston Gas Co. v. Board of Assessors of Boston*, 458 Mass. 715, 717 (2011).
4. *Uniroyal, Inc. v. Board of Tax Review*, 174 Conn. 380, 385-386, 384 A.2d 734 (1978).
5. *Pepsi-Cola Bottling Co. v. Board of Assessors of Boston*, 397 Mass. 447, 449-450 (1986).
6. *Ireland v. Town of Wethersfield*, 242 Conn. 550, 556- 557 (1997).
7. *General Electric Co. v. Assessors of Lynn*, 393 Mass. 591, 600 (1989).
8. *Dewey v. Town of Waitsfield*, 184 Vt. 92 (2008).
9. *National Amusements, Inc. v. Town of East Windsor*, 84 Conn. App. 473 (2004).
10. *Shaffer v. Town of Waitsfield*, 183 Vt. 428 (2008).

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