

ORDINANCE TO ESTABLISH THE JAY BOARD OF ASSESSMENT REVIEW

PART I

GENERAL PROVISIONS

§101 SHORT TITLE

This Ordinance shall be known and may be cited as the "Ordinance to Establish the Jay Board of Assessment Review".

§102 PURPOSES AND POLICIES

The Town of Jay has enacted this Ordinance to establish a Board of Assessment Review and to establish administrative procedures to review decisions on property tax abatements made by the Jay Board of Assessors. This Ordinance shall be liberally construed to effectuate its purposes and policies.

§103 AUTHORITY

This Ordinance is enacted pursuant to Article VIII Part Second of the Constitution of the State of Maine and the Laws of the State of Maine, including, without limitation: 30-A M.R.S.A. Section 2526(6) and Section 2691 and 36 M.R.S.A. Section 843.

§104 APPLICATION OF THIS ORDINANCE

This Ordinance applies only to appeals from decisions made by the Jay Board of Assessors on requests for property tax abatements and other determinations that are necessary with respect to tax assessments according with the general laws of the State of Maine.

The Board of Assessment Review has no jurisdiction or authority over any other decisions of the Municipal Officers, the Code Enforcement Officer or the Planning Board, including without limiting, any decisions made by the Code Enforcement Officer or Planning Board under the Jay Environmental Control and Improvement Ordinance.

The Board of Assessment Review has no jurisdiction or authority over any requests to the Municipal Officers for tax abatements based on infirmity or poverty.

§105 PAYMENT REQUIREMENTS FOR TAXPAYER

This section does not apply to property with a valuation of less than \$500,000.

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If the taxpayer has filed an appeal under this Ordinance without having paid an amount of current taxes equal to the amount of taxes paid in the next preceding tax year, provided that amount does not exceed the amount of taxes due in the current tax year, or the amount of taxes in the current tax year not in dispute, whichever is greater, by or after the due date, the appeal process shall be suspended until the taxes, together with any accrued interest and costs, have been paid. If an appeal is in process upon expiration of a due date for payment of taxes without the appropriate amount of taxes having been paid, the appeal process shall be suspended until the

appropriate amount of taxes described in this subsection, together with any accrued interest and costs, has been paid.

§106 TIME REQUIREMENTS FOR TAXPAYER

Any taxpayer whose request for a property tax abatement has been denied or granted only in part by the Jay Board of Assessors must file an application for review of the decision with the Board of Assessment Review pursuant to this Ordinance within sixty (60) days of the date of the decision of the Jay Board of Assessors. If no application for review is filed within the sixty (60) day period, the taxpayer shall have no further rights of appeal.

In accordance with 36 M.R.S.A. §842, if the Jay Board of Assessors before whom an application for abatement for property tax is pending fails to give written notice of its decision within sixty (60) days of the date of filing of the application for abatement, the application is deemed to have been denied and the taxpayer may proceed pursuant to this Ordinance for review of that denial.

§107 TAXPAYER TO LIST PROPERTY

Any taxpayer who fails to furnish to the Jay Board of Assessors a true and perfect list of all of his estates, not by law exempt from taxation, of which he was possessed on the first day of April of the tax year that he is requesting an abatement shall be barred from an abatement or an appeal under this Ordinance.

Notwithstanding this provision, a Veteran's widow or a minor child may proceed with an abatement request to the Municipal Officers.

§108 SEVERABILITY

If any provision or section of this Ordinance, or the application thereof to any person or circumstance, is held void or invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given effect in whole or in part without the invalid provision or application, and to this end each provision of this Ordinance is declared to be severable and independent. It is the intent of the Town of Jay that each and every part, clause, paragraph, section and subsection of this Ordinance be given effect to the degree possible.

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§109 EFFECTIVE DATE

This Ordinance shall be effective upon enactment by a Town meeting of the Town of Jay

PART 2

§201 ESTABLISHMENT

The Town of Jay hereby establishes the Jay Board of Assessment Review.

The Jay Board of Assessment Review is sometimes referred to herein as the Board.

§202 COMPOSITION

The Board shall consist of five (5) members and two (2) alternate members. Members of the Board and alternate members shall be residents of the State of Maine, at least eighteen (18) years of age and citizens of the United States at all times during their terms, and shall neither be municipal officers or a spouse of a municipal officer or employees of the Town of Jay or any of its boards, agencies or departments.

An alternate member shall attend all meetings of the Board and participate in its proceedings, but may vote only when designated by the Chairman to sit for a member. If any member or alternate member misses three (3) or more consecutive meetings of the Board then such lack of attendance may be cause for removal of such member or alternate.

When a member is unable to act because of interest, physical incapacity, absence, vacancy in the position or any other reason satisfactory to the Chairman, the chairman shall designate an alternate member to sit and vote in his or her stead.

§203 APPOINTMENT

The members of the Board and alternate members shall be appointed by the Municipal Officers. The Town Manager or any individual selectman shall have the authority and power to nominate one or more individuals for consideration by the Municipal Officers for appointment to the Board of Assessment Review.

§204 TERMS OF OFFICE

Except for Initial Appointees as specified below, the terms of each member and alternate member shall be five (5) years. Members shall serve until their successors are duly appointed, qualified and assume their duties.

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Initial Appointees. Initially, one member shall serve for 1 year, one member for 2 years, one member for 3 years, one member for 4 years and one member for 5 years. The Initial Appointees for alternates shall be one alternate for 2 years and one alternate for 3 years.

§205 VACANCIES

The Municipal Officers may declare a vacancy on the Board upon the nonacceptance, resignation, death, removal, permanent disability or incompetency of any member or alternate, relocation of a member's or associate's place of residence outside the State of Maine, or failure of any person to qualify for office. In such circumstances, the Municipal Officers shall fill all positions of members or alternate members to complete the vacated term.

§206 REMOVAL

After notice and hearing, the Municipal Officers may remove or dismiss any member or alternate member for cause before the member or alternate member's term expires. The term "cause" shall mean conduct or conflict affecting the ability and fitness of the member or alternate member to perform his duties including failure to attend meetings.

The notice provided hereunder shall be in writing and shall state the reasons for the proposed removal and inform the member or alternate member of his right to a hearing before the Municipal Officers within thirty (30) days of receipt of the notice. This hearing may be held in executive session if the requirements of 1 M.R.S.A. 405 are met or, upon request by the member or alternate member to be removed, an open meeting may be held in accordance with 1 M.R.S.A. 401 et seq. and this Ordinance.

§207 COMPENSATION

All members of the Board and alternate members shall receive compensation at the rate of \$20 for each meeting attended.

§208 OFFICERS

A. Election of Officers.

The Board of Assessment Review shall, by majority vote, elect a Chairman, Vice-Chairman and Secretary at an annual organizational meeting held in September or upon the resignation, removal or cessation of service of any of the officers, as soon thereafter as practical for the purpose of filling any vacancies. The Chairman, Vice Chairman and Secretary shall each serve a term of one year or until his or her successor is duly elected by the Board. The Chairman, Vice Chairman and Secretary may serve successive terms, if so elected.

B. Chairman.

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The Chairman shall preside at all meetings, if present, shall prepare the agenda as provided in Section 209 herein, shall call special meetings and workshops when necessary, shall transmit reports, plans and recommendations of the Board to the appropriate governing authority and shall fulfill all the customary functions of his or her office. The Chairman may also administer oaths. The Chairman shall be the official spokesman of the Board.

C. Vice-Chairman.

In the absence of the Chairman, the Vice-chairman shall act as chairman and shall have all the powers of the Chairman.

D. Secretary.

The Secretary shall assist the Chairman in preparing the agenda for Board meetings and proceedings, send out notice for meetings, public hearings and other proceedings of the Board, record, maintain and show the vote of each member on every question in which a formal recorded vote is made under the procedure of the Board or his or her absence or failure to vote, and shall maintain a permanent record of all correspondence, findings, resolutions and determinations of the Board. All records shall be deemed public and may be inspected at reasonable times unless covered by confidentiality order under Section 302. The records shall be filed in the Town Clerk's Office. The Secretary shall also make such certifications of Board action as may be required from time to time.

§209 MEETINGS, QUORUM, VOTING, AGENDA

A. Meetings.

The number of meetings of the Board shall be as provided by the rules of the Board unless a particular meeting is excused by the Chairman. The Board shall meet at least once a year in September for organizational purposes.

Meetings shall be called by the Chairman as required or any three members of the Board or by the municipal officers.

The Initial Appointees shall hold an initial organizational meeting within thirty (30) days after five members have been duly appointed to the Board. At the initial organizational meeting

the Board shall elect officers who shall hold office until the September, 1997 organizational meeting.

The Board may hold executive sessions as provided in the Maine Freedom of Access Act 1 M.R.S.A. 401 et seq. otherwise all meetings, hearings, proceedings and deliberations of the Board shall be open to the public in accordance with the Maine Freedom of Access Act, 1 M.R.S.A. 401 et seq.

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Workshops may be called by the Chairman or members designated by the Chairman for the presentation of information. Workshops shall be informational only, shall not be used by the Board for the weighing of positions or reasons for or against a proposition, and shall not be used by the Board for the formulation of formal decisions on any matter.

Any member of the Board may voluntarily disqualify himself or herself from voting on a particular matter for any reason, including conflict. In addition, a member shall be disqualified from voting on a particular matter for any reason by a majority vote of the members present and voting, except the member whose disqualification is at issue shall not vote on his or her own disqualification.

If there are two alternate members, the chairman shall designate which will serve in the place of the absent or abstaining member or any member who is disqualified on a particular matter.

B. Quorum and Voting.

No business shall be transacted by the Board without a quorum. A quorum shall consist of three members or alternate members authorized to vote. The Board shall act by a majority vote, calculated on the basis of the number of members present, and a meeting may be adjourned for a period not exceeding three (3) weeks at any one time. A tie vote or favorable vote by a lesser number than the required majority shall be considered a rejection of the matter under consideration. If a member has a conflict of interest, the member shall not be counted by the Board in establishing the quorum for such matter.

C. Agenda.

No item of business or plan shall be placed on the Board agenda for any meeting unless such item or plan shall have been submitted to the Board not less than ten (10) days prior to the date of a meeting or other proceeding, provided, however, that the Board may, upon request or on its own motion, waive the 10 day advance submissions requirement. The Chairman shall determine the agenda in such a manner as to facilitate the execution of the duties of the Board.

D. Rules and Regulations.

The Board may provide, by regulations which shall be recorded by the Secretary, for any matter relating to the conduct of any hearing, provided that the Chairman may waive any regulations upon good cause shown and the Board may make such orders as are provided for under Section 304.

§210 POWER AND DUTIES

The Board shall have the following powers and duties:

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A. To exercise such powers as are provided to the Board by this Ordinance and the Constitution and laws of the State of Maine.

B. The Board may make such reasonable abatements as they consider proper to correct any illegality, error or irregularity in the assessment and grant or deny in whole or in part;

the request for property tax abatement in accordance with the provisions and standards contained in this Ordinance.

C. To act fairly, independently, impartially and shall avoid ex parte communications unless otherwise subject to a confidentiality order issued by the court or duly authorized by this Ordinance, the Board shall conduct all of its proceedings, hearings, deliberations in a public forum.

D. To obtain such goods and services, and employ or contract with such staff, including but not limited to appraisers, attorneys, engineers, accountants and other professionals as may be necessary to carry out its duties hereunder and to pay for such expenses within the limits of appropriations made for the purpose.

E. To issue such orders as necessary to properly administer and to ensure compliance with the ordinance.

F. To administer oaths, take testimony and hold hearings.

PART 3 ADMINISTRATIVE

§301 APPLICATION PROCEDURE

A. To initiate an appeal to the Board, the applicant must file a timely written application. The application shall set forth the following:

1. Name and address of applicant.
2. A general description of the property which is the subject of the appeal. If the property includes real estate, the description shall include the Assessors' Map and Lot Number.
3. Year of disputed assessment.
4. Assessed value for the property as originally determined by the Jay Board of Assessors.
5. Amount of any abatement(s) previously granted by the Jay Board of Assessors for the assessment in question.

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6. The valuation applicant alleges should have been placed on the property.

7. A brief statement of all proceedings before the Jay Board of Assessors concerning the disputed assessment.

8. A brief statement of the factual basis for the Applicant's tax abatement appeal.

9. A brief statement of the legal grounds for the applicant's tax abatement appeal.

B. The fee to accompany applications for appeal shall be twenty-five (\$25) dollars. Checks are to be made payable to the Town of Jay.

C. A fee of fifty cents (\$.50) per page shall be charged for all copies of documents filed with the Board. Checks are to be made payable to the Town of Jay.

§302 CONFIDENTIALITY

The Board shall keep confidential those documents which may remain confidential pursuant to the Maine Freedom of Access Law 1 M.R.S.A. Section 401 et seq. The Board shall also keep confidential information demonstrated by the person submitting it to be a trade secret or production, commercial or financial information the disclosure of which would impair the competitive position of that person and would make available information not otherwise publicly available. The Board shall make determinations of confidentiality and any person aggrieved by such determination may appeal to court in accordance with state law. The Board shall withhold disclosure of such information pending a final judicial determination on any claim of confidentiality.

§303 BOARD DECISIONS

A. Acceptable for Processing. The Board shall, within 10 days of receipt of an application, notify the applicant in writing either that the application is acceptable for processing or, if the application is not acceptable for processing, the specific additional information needed to make an acceptable application.

B. Requests for Further Information. The fact that an application is deemed acceptable for processing does not prohibit the Board from requesting further information and data deemed necessary to evaluate the application. At any time during the review of an application, the Board or staff may request any additional information that is reasonably necessary to make any finding or determinations required by this Ordinance or any other provision of law.

C. Public Hearing. Within 10 days after an application has been determined acceptable for processing, the Board shall notify the applicant in writing of the date, time and location of a public hearing, if the Board decides to hold one. The Board shall also provide

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public notice of the public hearing in a manner designed to inform interested and potentially interested persons.

If the Board decides to hold a public hearing, the public hearing shall take place within 20 days of the date the Board mails written notice to the applicant that an application is acceptable for processing.

D. Board Action. Within 30 days of the close of the public hearing, or any continuance hearing thereto, on an application, or within 60 days of acceptance for processing of the application if no hearing is held, or within such other time limits as the Board may establish by order, either with the applicant's consent or for good cause after giving the applicant notice and an opportunity to be heard, the Board shall make decision in accordance with this Ordinance, in particular Section 311:

E. Written Decisions. Every decision of the Board on an application shall be in writing and shall include findings of fact, conclusions of law, a plain statement of the appropriate rights of administrative and judicial review, and the time within which those rights must be exercised.

§304 BOARD ACTIONS PRIOR TO HEARING OR FINAL DECISION

The following procedures may apply to any application pending before the Board.

A. Procedure and Scheduling Orders. In its discretion, the Board may issue scheduling orders governing all proceedings occurring between acceptance of the application for processing and final decision by the Board. Such orders may but need not necessarily include provisions directing or authorizing:

1. presentation of evidence or argument by the applicant or by members of the public;
2. opportunities for the Board or staff to seek or provide amplification or clarification of any matter under consideration by the Board;
3. particular methods or formats for the submission of information such as pre-filed testimony or affidavit;
4. procedures for participation by members of the public that have a direct and substantial interest which may be affected by the proceedings including but not limited to adequate notice of the hearing or related Board deliberations, opportunities for discovery, and manner of presentation of evidence; and
5. such other mechanisms as may in the discretion of the Board facilitate orderly consideration of the issues presented during consideration of the application.

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§305 COMPUTATION AND ENLARGEMENT OF TIME

In computing any period of time provided by this Ordinance, the day of the act, event or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday.

When, by this Ordinance or by order of the Board, an act is required to be done at or within a specified time, the Board may within its discretion at any time order the period enlarged for a reasonable period for good cause shown.

§306 HEARINGS

A. The Board may schedule a public hearing on an application after the application is deemed acceptable for processing.

B. In the event the Board elects not to hold a public hearing the Board shall decide the matter as expeditiously as possible giving due regard to the applicant and the Jay Board of Assessors and within the time limits contained in this Ordinance.

C. At a reasonable time prior to the public hearing, the Board shall cause notice of the date, time and place of such hearing, the location of the building or lot, and the general nature of the question involved, to be given to the person making the application and to be published in a newspaper of general circulation in Jay. The Board shall also cause notice of the hearing to be given to the Jay Board of Assessors and the applicant.

D. The Board shall provide as a matter of policy for exclusion of irrelevant, immaterial, or unduly repetitious evidence.

E. The order of business at a public hearing shall be as follows:

1. The Chairman calls the hearing to order.
2. The Chairman determines whether there is a quorum.
3. The Chairman gives a statement of the case and submit all correspondence and reports received to the record of the proceeding.
4. The Board determines whether it has jurisdiction over the appeal.
5. The applicant is given the opportunity to present his or her case.
6. The Assessors are given the opportunity to present its case.
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7. The Board may call its own witnesses. .
8. The applicant may ask questions of the all witnesses,
9. The Assessors may ask questions of all witnesses.
10. The Board may ask questions of all witnesses.
11. All parties are given the opportunity to refute or rebut statements made throughout the hearing.
12. The hearing is closed after all parties have been heard. If additional time is needed, the hearing may be continued to a later date. All participants should be notified of the date, time and place of the continued hearing.
13. Written testimony may be accepted by the Board for seven days after the close of the hearing.

F. The Chairman may waive any of the procedures in this Section if good cause is shown.

§307 GENERAL EVIDENCE

A. Admissibility. Evidence which is relevant and material to the subject matter of the hearing and is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible. Evidence which is irrelevant, immaterial or unduly

repetitious shall be excluded. The Board's experience, technical competence and specialized knowledge may be utilized in the evaluation of all evidence submitted to the Board.

B. Official Notice. The Board may take official notice of any facts of which judicial notice could be taken, and in addition may take official notice of general, technical or scientific matters within its specialized knowledge and of statutes, regulations and nonconfidential Board records. Facts officially noticed shall be included and indicated as such in the record.

C. Official Record. An official record or lack thereof may be evidenced in the manner provided in Rule 44 of the Maine Rules of Civil Procedure.

D. Objections. All objections to rulings of the Chairman regarding evidence or procedure and the grounds therefore shall be timely stated during the course of the hearing. If during the course of, or after the close of, the hearing and during its deliberations the Board determines that the ruling of the presiding officer was in error, it may reopen the hearing or take such action as it deems appropriate to correct such error.

E. Offer of Proof. An offer of proof may be made in connection with an objection to a ruling of the presiding officer excluding or rejecting any testimony or question on cross-

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examination. Such offer of proof shall consist of a statement of the substance of the proffered evidence or that which is expected to be shown by the answer of the witness.

§308 DOCUMENTARY AND REAL EVIDENCE

A. Exhibits and Evidence. All documents, materials and objects offered in evidence as exhibits, shall, if accepted, be numbered or otherwise identified. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. The Chairman may require, after prior oral or written reasonable notice, that any person offering any documentary or photographic evidence shall provide the Board with a specified number of copies of such documents or photographs, unless such documents or photographs are determined to be of such form, size or character as not to be reasonably suitable for reproduction.

B. Availability. All written testimony and documents, materials and objects admitted into evidence shall be made available during the course of the hearing for public examination. All such evidence will be available for public examination at the Town Office during normal business hours.

C. Record of Application. In any proceeding involving an application, the application filed with the Board, including exhibits and amendments thereto, shall be placed into evidence.

§309 RECORD

The record upon which any Board decision is to be made shall consist of the application, proposed findings of fact and conclusions, all documentary and real evidence properly submitted and received by the Board, all testimonial evidence whether pre-filed or delivered in person which has been admitted by the Board and, if prepared, the recording or transcript of the proceedings. The record shall remain open for other evidence or testimony for seven (7) days following the close of any public hearing unless otherwise provided by the Board, and if no public hearing is held, then according to Board scheduling order. Once the record has been formally closed, no further evidence of any kind may be placed in the record except by order of the Board and after appropriate notice is given.

§310 STANDARDS OF REVIEW AND BURDEN OF PROOF

A. Standard of Review.

In making the decision, the Board shall follow the following standards and definitions.

1. Constitutional Standard:

All taxes upon real and personal estate, assessed by authority of this State shall be apportioned and assessed equally according to the just value thereof.

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2. "Just value defined":

In the assessment of property. Board in determining just value is to define this term in a manner which recognizes only that value arising from presently possible land use alternatives to which the particular parcel of land being valued may be put. In determining just value. Board must consider all relevant factors, including without limitation, the effect upon value of any enforceable restrictions to which the use of the land may be subjected, current use, physical depreciation, functional obsolescence, and economic obsolescence. Restrictions shall include but are not limited to zoning restrictions limiting the use of land, subdivision restrictions and any recorded contractual provisions limiting the use of lands. The just value of land is deemed to arise from and is attributable to legally permissible use or uses only.

For the purpose of establishing the valuation of unimproved acreage in excess of an improved house lot, contiguous parcels divided by road, power line or right-of-way may be valued as one parcel when: each parcel is 5 or more acres; the owner gives written consent to the assessors to value the parcels as one parcel; and the owner certifies that the parcel are not held for sale and are not subdivision lots.

3. Just value equals fair market value.

Fair market value for purposes of assessments is defined as: the amount a willing buyer would pay and a willing seller would accept where both have reasonable knowledge of relevant facts and neither is under compulsion to enter into the transaction.

B. Burden of Proof. There is a presumption in favor of the validity of the assessment. In all instances in proceedings before the Board the burden of proof is upon the taxpayer. To obtain an abatement a taxpayer must show the original assessment is manifestly wrong. The taxpayer must prove that:

1. the judgment of the assessors was irrational or so unreasonable in light of the circumstances that the property is substantially overvalued and an injustice results;
2. there was unjust discrimination; or
3. the assessment was fraudulent, dishonest or illegal.

§311 DECISIONS

A. If the Board fails to give written notice of its decision within sixty (60) days of the date the application is filed, unless the applicant agrees in writing to extend the time, the appeal shall be deemed denied.

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B. Decisions by the Board shall be made not later than thirty (30) days from the date of the final hearing unless the Board and the applicant agree to an extension of time.

C. The final decision on any matter before the Board shall be made by written order signed by the chairman and shall include a statement of findings and conclusions, as well as the reasons or basis for the findings and conclusions, upon all the material issues of fact, law or discretion presented and the appropriate order, relief or denial of relief.

D. The Board, in reaching a decision, shall be guided by standards specified in the applicable state laws, this ordinances, and by findings of fact by the Board in each case.

E. The Board may reverse the decision, or failure to act, of the Jay Board of Assessors only upon a finding that the decision, or failure to act, was clearly contrary to specific provisions of this ordinance or unsupported by substantial evidence in the record.

F. Notice of the decision shall be mailed or hand delivered to the applicant or the applicant's representative or agent and Jay Board of Assessors within seven (7) days of the decision. The notice of decision shall state that the applicant has 60 days from the date the decision is received to appeal, in accordance with §313 of this Ordinance.

G. The decision of the Board shall be filed in the office of the Town Clerk and shall be made public record. The date of filing of each decision shall be entered in the official record and minutes of the Board.

§312 RECONSIDERATION

A. The Board may reconsider any decision. The Board must decide to reconsider any decision, notify all interested parties and make any change in its original decision within 30 days of its original decision. A meeting to decide whether to reconsider shall be called by the Chairman. The Board may conduct additional hearings and receive additional evidence and testimony.

B. Reconsideration should be for one of the following reasons:

1. The record contains significant factual errors due to fraud or mistake, regarding facts upon which the decision was based; or

2. The Board misinterpreted the ordinance, followed improper procedures, or acted beyond its jurisdiction.

§313 APPEAL

A. Time Limits

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An appeal from a decision of the Board shall be within sixty (60) days after notice Of decision or after the application is deemed to be denied.

B. Assessors and Nonresidential Property or High Valued Property

"Nonresidential Property" means property that is used primarily for commercial, industrial or business purposes, excluding unimproved land that is not associated with commercial, industrial or business use.

"High Valued Property" means property with an equalized municipal valuation of \$1,000,000 or greater either separately or in the aggregate.

The Assessors or the Nonresidential Property owner or the High Valued Property owner shall appeal from a decision of the Board to the State Board of Property Tax Review.

C. Assessors and All Other Taxpayers

Either the Assessors or any taxpayer except those taxpayers defined in paragraph B above shall appeal from a decision of the Board to the Superior Court in accordance with Rule 80B of the Maine Rules of Civil Procedure.