

BOARD OF REVISION

A Guide for Board Members

The Board's Role

The Board of Revision functions as an appeal body empowered to set assessments when requested to do so by property owners or the assessor. The Board is independent of the municipal Council, though many municipalities use their council as the Board. It is not a committee of Council and must be seen as impartial and not swayed by either the business of Council or by personal interests.

The Board is a “quasi-judicial” body which means that it has many of the powers of a court. The Board holds hearings, listens to evidence presented by parties with an interest in a property, may subpoena testimony and evidence, and makes its decisions in the form of “orders”.

Like any other court, the duty of the Board is to provide a fair hearing and a decision that abides by the applicable legislation. In this case, the legislation is *The Municipal Assessment Act*. It directs the Board of Revision to set assessments that represent market value and are fair and just in relation to other assessments.

Hearing Evidence

The Board of Revision listens to evidence that usually represents two opposing views of the value of a property. Members need to

- be aware that the legislation places the “burden of proof” upon either the assessor or the other party depending on the circumstances,
- gain all the information needed from the parties, and
- maintain a comfortable yet dignified atmosphere.

How the Board Conducts Business

The process that Council and the Board of Revision follow leading up to, during, and following a hearing is set out in Part 8 of *The Municipal Assessment Act*. The Act's provisions along with other directions may be found in *Boards of Revision, a Guide for Board Members and Secretaries* published by Manitoba Municipal Government. Council may approve rules of procedure for the Board of Revision to take into account matters not dealt with in the legislation.

Burden of Proof

The Municipal Assessment Act states that at a hearing of an application that pertains to the *value* of the assessment, the “burden of proof” is on the Assessor. In other words, the assessor must present evidence that proves the value is correct. If the applicant is contesting whether the property should be *liable* for taxes or presenting the argument that it should be in a different *tax class*, the burden is on him/her to show that the usage pertains to a different class.

Order of Presentations and Questions

The introduction of evidence should be orderly and without unnecessary interruption. The party with the burden of proof goes first. The opposite party then has the right to ask questions pertaining to his/her evidence. If, instead of asking questions, the opposite party launches immediately into a presentation of evidence, the Chair should remind him/her that an opportunity will be given for his/her evidence to be heard later. After questioning by the opposite parties is complete, the Chair may ask questions and he/she should ask Board members if they wish to ask any other questions.

When the party with the burden of proof completes his/her presentation and answers all questions, the opposite party presents evidence. This is followed by questions as before. If the party going second presents new evidence (for example, a comparison property not dealt with by the Assessor), the first party has an opportunity to present “rebuttal” evidence. The invitation to rebut extends only to issues raised by the opposite party in his/her initial presentation. If rebuttal includes other matters, the Chairperson should intervene.

Party means, in respect of an application for revision under subsection 42(1), the person whose *property* is the subject of the application, or the authorized agent of the person, or the assessor having jurisdiction over the assessment of property in the municipality in which the property is situated; and in respect of an appeal under section 56, includes the subject municipality.

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Variations in form may be permitted to suit the circumstances. For example, if there is more than one witness, there will be a round of questions for each.

The Chairperson may offer the parties an opportunity to summarize. The presenters, however, may try to take advantage of the invitation to submit totally new evidence. The Chairperson should intervene to indicate that the opportunity to present evidence has passed and that final remarks are to be limited to the issues that have already been covered.

The Chairperson should signal clearly and decisively that the hearing has come to an end by stating that all evidence and argument has been heard, and that the parties are free to leave. Unless the docket has been concluded, the Secretary shall announce the next application to be heard.

Dismissing an Application

Sometimes, an application for revision is received but the property owner (or his/her agent) does not appear at the hearing. In this case, the Board has the option to hear the application or dismiss it without a hearing.

Council may wish to set a procedural rule for the Board that provides guidance in these cases. For instance, Council may wish the Board to hear all such cases or none. Alternatively, Council may wish the Board to hear applications where the letter provides some evidence in support of a different value, classification etc. and not hear any where the letter contains no evidence. Or perhaps, there are types of properties that the Board should hear even if no appellant appears. In setting a policy, Council needs to remember that a dismissal without a hearing means that the appellant has no recourse to The Municipal Board as a second level of appeal. This can result in appellants feeling that a right has been unfairly taken away.

Making a Decision

The Board must make its decision only on the basis of the information presented at the hearing by the interested parties. The Board is like a court and must set aside knowledge other than what has been acquired through the presentation of evidence. This can be difficult when the applicants are well known to the board members, as is typical in many municipalities. Nevertheless, the rules of court proceedings call for this to be done.

To maintain fairness, the Board must not ask the assessor to repeat information or provide additional information after the appellant has left.

In arriving at its decision, the Board must be confident that

- ◆ all evidence has been heard
- ◆ a value has been derived that reflects what a willing buyer would have paid a willing seller in the reference year

- ◆ the value is fair and equitable in relation to other properties.

Maintaining Appropriate Decorum

Applicants at a Board of Revision are there because they disagree with the amount of assessment placed on their property. For some applicants, appealing assessments may be just another matter of business and the disagreement is handled calmly. On the other hand, some property owners may feel that their financial health is at stake and the situation can become heated. Speaking in public can be stressful for many people and this can compound the agitation that they already feel about their assessment. Mismanaging the Board of Revision hearing, particularly in a small municipality, can result in years of bitter feelings that affect the community as a whole.

Consequently, it is best that the Board members strive to maintain an atmosphere that is dignified, as a court should be, while at the same time being courteous and tolerant. Board members should avoid the informality of first names and address those before them by their surnames and the Chairperson as "Mr. Chairperson" or "Madam Chairperson."

Board members can assist in lowering levels of stress at the hearing by asking questions in everyday language and by allowing appellants ample time to make a reply. Interjections during a presentation tend to destroy the train of thought so questions should be reserved until an appellant has completed his or her statement.

The Board must show thoughtful consideration and exercise patience while ensuring good use of time. Every appellant is entitled to courtesy and tolerance and, even if an appellant is excited or abrupt, there is no justification for Board members responding in similar manner. The Chairperson should assert his or her leadership to maintain orderly proceedings and an atmosphere of mutual respect.

Bias and Conflict of Interest

In the course of drawing out the evidence through their questions, Board of Revision members should be careful not to appear biased, be argumentative, or make statements which could be considered evidence for one side or the other. The best course is to ask questions and avoid making statements. Rather than saying, for example "I know about the traffic problems in that neighbourhood!" it would be better to ask "Can you describe in further detail what you see as problems in the neighbourhood which affect the market value of your property?"

Membership on the Board of Revision is a position of public trust. To protect this trust, The Municipal Council Conflict of Interest Act applies when councilors sit as Board of Revision members. As an individual property owner you have the right to file and present an appeal to the Board of Revision for your own property. However the legislation requires you to withdraw from voting or participating in the Board's decision on your appeal.

Municipalities should ensure that a policy is put in place to implement a similar process for citizen appointees on the Board.