

MINUTES  
FALMOUTH BOARD OF ASSESSMENT REVIEW  
WEDNESDAY, SEPTEMBER 19, 2012, 6:00 PM  
TOWN HALL COUNCIL CHAMBERS

**Members Present:** Chairman Richard Olson, Secretary Lois Lengyel, Michael O'Connor, Tim O'Donovan and Mark Porada.

Assessor Anne Gregory, Attorney Sally Daggett, and Recording Secretary Pam Given also present.

**Members Absent:** None

Chairman Richard Olson first order of business is to approve the minutes for the April 12, 2012 and April 19, 2012 hearings. Motion made by Tim O'Donovan to adopt the April 12, 2012 minutes and seconded by Lois Lengyel; no discussions or changes to the minutes. Motion made by Mark Porada to adopt the April 19, 2012 minutes and seconded by Tim O'Donovan; no discussions or changes to the minutes.

**Motion carried 4-0;** Chairman Olson abstained as he was not present at the hearings.

Next order of business is to discuss the Board of Assessment Review Guidelines on Procedures and the Application for the Board of Assessment Review. Mark Porada made some proposed changes to the Guidelines on Procedures and Attorney Daggett made additional proposed changes (this was discussed in the April 12, 2012 hearing).

Lois Lengyel presented a question regarding (page 2 – 1c) “The Chair swears in the parties and any person who is to give testimony.”

Chairman Olson confirmed that it is different than what the Board is currently doing and he would like to start doing this.

Lois Lengyel had another question regarding “View of the Property”, page 4 #6.

Assessor Gregory informed the Board that it has been done in the past; it has to be a public meeting.

Attorney Daggett confirmed that it has to be a public meeting. She informed the Board that it is rare to go on a site visit; however, the Board has the authority to do this.

Chairman Olson reiterated that the Board has the authority and it does not represent a change to current procedures. He advised the Board that they can not do their own site inspection or a drive by.

Chairman Olson had questions regarding “Rules of Evidence”.

Attorney Daggett referenced page 4, item #5. She confirmed that this language, for the most part, was taken from the Board of Appeal Statute which does apply to this Board. She advised the Board that they can receive any oral or documentary evidence needed to allow for a rebuttal.

What is not in the statute, but the board has complete discretion and control of, is the timing of when the Board wants the submittals from both the Taxpayer and Assessor. Previous discussions were that the Board would like the Taxpayer's submittals 21 days in advance and the Assessor's submittals 7 days in advance.

Attorney Daggett further advised Chairman Olson that it does not apply to Administrative Boards, which is true under the Administrative Procedure Act that applies to State Agencies. Most Boards of Assessment Review, Planning Boards, Zoning Boards would allow everything submitted and the Board would determine how much weight to give it. If someone has an issue in Court you do not have to redo everything because you already allowed it into evidence.

Mark Porada had one comment on page 4, paragraph 7 "Reconsideration" which is new language; he wanted to know if the Board has to allow a taxpayer to move for a reconsideration or is it required by law.

Attorney Daggett advised Mark Porada that State Statute on the Board of Assessment Review has certain rules relating to the Board of Appeals that also applies to Board of Assessment Review and this is one of the cases. There is a ten day submittal requirement for request by statute. The Board can make a decision that they are done with that request and they are not going to meet again, and the courts say that is fine. The statute proposed rule amendment is that you have options; the Board can re-deliberate right then and there or come back at a later date to re-deliberate. The Board can take new evidence or come back at another date. It is the Boards discretion on how to handle this. Typically the reconsideration motion isn't to give someone additional time because they forgot information.

Chairman Olson asked if there were any further questions or changes to be made. No further questions or changes and Chairman Olson moved to adopt the Board of Assessment Review Guidelines on Procedures as modified and Michael O'Connor seconded it.

**Motion carried 5-0.**

Chairman Olson asked if there were any questions or changes to be made to the Board of Assessment Review Application. No further questions or changes and Chairman Olson moved to adopt, as modified, the Board of Assessment Review Application and Mark Porada seconded it. **Motion carried 5-0.**

Chairman Olson informed the Board that on September 17, 2012, the Assessing Department received a letter dated September 12, 2012 from the Taxpayer, King Weinstein, requesting a continuance because he was obtaining an MAI appraisal. Recording Secretary Given emailed a copy of this letter to Chairman Olson, advising that Assessor Gregory was opposed to any continuance since the taxpayer has had sufficient time to obtain/submit this information.

Recording Secretary advised the Board that on Monday, September 17, 2012, she left a v/m message for the Taxpayer advising him that the Board may or may not grant the continuance and it will be decided at the hearing. On Tuesday, September 18, 2012, she spoke with Mr. Weinstein's assistant/secretary and advised her of the same.

Since the taxpayer was not present and the taxpayer had ample time to provide an appraisal, Chairman Olson does not feel a continuance should be granted. Tim O'Donovan and Michael O'Connor agreed with Chairman Olson.

Chairman Olson made a motion to deny the request for the continuance and Tim O'Donovan seconded it. Mark Porada wanted to note that the Assessor did inquire in her letter dated April 5, 2012, if the taxpayer had an appraisal. The taxpayer's letter dated September 12, 2012, there was no explanation as to why he needed more time.

Lois Lengyel confirmed that the primary reason why the Board is denying the request:

- There is no explanation for the delay in obtaining an appraisal
- Taxpayer was not present nor why he was not present

**Motion carried to deny continuance: 5-0.**

Chairman Richard Olson introduced the 2011 appeal for property identified as **Map/Block/Lot U59-9; Tax Sheet 161; located at 367 US Route 1 and owned by LaBoca.**

Chairman Olson advised the Assessor to do an abbreviated summary of her case.

Attorney Daggett agreed with Chairman Olson that the Assessor should do a brief summary of her presentation in case the taxpayer wants to appeal to court.

Assessor Gregory: La Boca Corporation is appealing their office building property at 367 US Route 1 for the assessment year 2011. The assessment is based on the 2008 revaluation. Assessor Gregory uses the three approaches to value the property and then explained each of them. The approaches to value are:

- Sales Comparison Approach = Listed 4 similar sales
- Cost Approach = 18% reduction for physical depreciation & 10% for functional obsolescence
- Income Approach

Based on this information, the Assessor feels the assessment is reasonable. The sales price to assessment ratio average is 98%; that is evidence that our revaluation model works.

Assessor Gregory wants it on record that the tenants in the raised basement area were not used in the calculation of the square footage.

Income Approach to value based on the property's income; you take the gross income and subtract the vacancies, bad debt, and other expenses and you come up with the net operating income; then divide that by the cap rates which consist of the discount rate; the return of the investment over a period of time and the recapture rate. The effective tax rate is included in the cap rate if the rents are not triple net.

The Assessor only received five leases and one of the tenants moved (Bio Met); she then

explained the cost per square footage.

Assessor Gregory then explained Exhibit 12.

Chairman Olson questioned the sales comparison approach as the square footage is at \$102.00 which is at the low end.

Assessor Gregory advised Chairman Olson that it was due to the functional obsolescence and there was a lot of deferred maintenance. The income approach uses market rents vs. contract rents. The Assessor has to use market rents. The rents that the Taxpayer has, supports the Assessor's rents.

There were no other questions for the Assessor.

Chairman Olson advised the Board that he feels the Town has made its case and he understands that the Taxpayer feels the assessment is too much. Without additional testimony and evidence and based on the information in front of him, he supports the Assessor. Chairman Olson moves to deny the appeal; Mike O'Connor seconded it. There were no further questions.

**Motion Carried 5-0.**

The Notice of Decision hearing is scheduled for Wednesday, September 26, 2012 at 8:00 am in the Town Council Chambers. Assessor will not be present at this hearing.

Attorney Daggett will email a "draft" copy of the Notice of Decision to Recording Secretary Given on Monday, September 25, 2012 and she will forward it to all Board members and Taxpayer.

Assessor Gregory informed the Board that this was the last appeal for 2011. The deadline to appeal to the Assessor for 2012 will be March 18, 2013.

Attorney Daggett informed the Board that the Assessor has made it clear that if the Taxpayer wants to provide an appraisal for 2012, Assessor Gregory is more than willing to review it.

Chairman Olson motion to adjourn and seconded by Lois Lengyel.

**Motion carried 5- 0**

Hearing adjourned.

Respectfully submitted,

Pamela Given  
Recording Secretary

*These minutes are not verbatim; CD available to view exact language.*