

PROPERTY TAX ABATEMENT AND APPEALS



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MAINE REVENUE SERVICES

- The Property Tax Division of Maine Revenue Services is the state supervisory agency for property tax administration in Maine (32 MRSA § 306(6))
- Municipal tax assessors are agents of the State (Dillon V. Johnson*); their actions and decisions are governed by Maine's constitution and by state statutes.

MAINE REVENUE SERVICES

The Property Tax Divisions primary responsibilities consist of:

- Administering the annual State Valuation program
- Performing the property tax administration function for the unorganized territory
- Providing technical support and training services for assessors, collectors, taxpayers, legislators and other governmental agencies

PROPERTY TAXES - BY THE NUMBERS

For the 2017 tax year, Maine's 487 municipalities assessed over \$2.5 billion in total property taxes. The total taxable value of all property was over \$159 billion.

Real Estate Tax	\$2,430,000,000
Personal Property Tax	\$117,000,000

Commercial and industrial properties account for approximately \$800,000,000 of the total tax collected

THE CONSTITUTIONAL BASIS FOR PROPERTY TAX

- Maine became the 23rd State to join the Union when it was admitted by Congress on March 15, 1820
- The Act of Separation between Maine and Massachusetts provided that the laws then in force in Maine remain in force until altered or repealed by Maine's legislature
- Thus Maine embarked on its property tax administrative life with a body of Massachusetts law and two constitutional provisions regarding taxation

THE CONSTITUTIONAL BASIS FOR PROPERTY TAX

- Article IX Section 7 states:
- **“While the public expenses shall be assessed on estates, a general valuation shall be taken at least once in 10 years”**
- Frequently misconstrued to mean a municipality must engage the services of a professional revaluation company at least every ten years, this section does direct the municipal assessor to conduct a periodic, general valuation to assure all property subject to taxation is equitably assessed.

THE CONSTITUTIONAL BASIS FOR PROPERTY TAX

- Article IX Section 8 states:
- **“All taxes upon real estate, assessed by authority of this State, shall be apportions and assessed equally according to just value”**
- Referred to as the “just value clause”, this section is considered the legal foundation for the administration of property taxes in Maine. The meaning of this section is more fully understood in the reviewing its component parts.

THE CONSTITUTIONAL BASIS FOR PROPERTY TAX

“All taxes upon real and personal estate....”

This is commonly taken to mean “All property taxes.” A property tax can generally be distinguished from other taxes in the following manner:

1. The tax is levied on the ownership of property
2. Enforcement of the tax through a direct lien on the property (Eastler v. State Tax Assessor)
3. The total amount of tax to be assessed is a predetermined amount appropriated as part of a budgetary process. This amount is then divided by the total Taxable property value to determine the tax rate.

THE CONSTITUTIONAL BASIS FOR PROPERTY TAX

“... Assessed by authority of this state...”

- Municipalities administer the property tax completely absent of the power to tax. All the legal power of taxation in Maine is vested exclusively in the Legislature. Thus municipalities are prohibited from adopting policies which would infringe in any way upon the Legislature’s power to tax or its complimentary power to exempt from taxation.

THE CONSTITUTIONAL BASIS FOR PROPERTY TAX

- **“...Shall be apportioned and assessed equally...”**

Mandates that all classes of taxable property (land, buildings, personal) and all classifications of property (agricultural, residential, commercial, industrial, etc.) be subject to the same tax rate and valued at the same ratio to full value. This is in contrast to other states that allow personal property to be subject to a different tax rate than real estate.

THE CONSTITUTIONAL BASIS FOR PROPERTY TAX

- **“...according to the just value thereof.”**

The courts have consistently maintained that just value is market value; that is, the price that a property will bring on the open market between a willing seller and a knowledgeable buyer under normal conditions.

THE CONSTITUTIONAL BASIS FOR PROPERTY TAX

- The concept of “just value is the key to the primary goal of property taxation: equity.
- Equity is achieved when all taxable property is properly assessed, and no property owner is obligated to pay more or allowed to pay less than a fair share of the property tax burden.
- Because property appraisal is an “inexact science”, the achievement of complete equity remains an elusive challenge

THE CONSTITUTIONAL BASIS FOR PROPERTY TAX

- Just value is statutorily defined as that value arising out of presently possible land use alternatives, taking into account several factors including:
 - Current use
 - Physical depreciation
 - Functional and economic obsolescence
 - Any enforceable restrictions limiting the property such as
 - Zoning laws
 - Subdivision regulations
 - Any recorded contractual provisions such as conservation easements

THE ROLE OF THE MUNICIPAL ASSESSOR

- To Discover and inventory all real and personal property which is subject to property taxation
- To establish a 'just value' for all taxable property
- To assess a tax on each property by applying the same rate of taxation against the "just value" of each estate

THE ROLE OF THE MUNICIPAL ASSESSOR

- The municipal assessor possesses no legal authority to ‘raise and appropriate taxes’
- Taxes are raised by a vote of the voters at the annual town meeting
- The assessor’s responsibility is to determine each property owner’s proportionate share of the total tax burden.

THE ROLE OF THE MUNICIPAL ASSESSOR

- The tax rate is determined by dividing the total amount of property taxes by the total valuation of all property subject to taxation.
- This rate is then applied to the value of each property to determine each property owner's proportionate share of the overall tax burden

PROPERTY TAX ABATEMENTS

- Abatement is the process by which assessed taxes that are determined to be excessive may be reduced.
- Abatements may not be granted arbitrarily - Requests must be properly classified to determine who has authority to decide the issue and under what conditions.
- Tax assessments are always presumed to be valid and the burden of proving eligibility for abatement falls on the taxpayer.

PROPERTY TAX ABATEMENTS

- Impeachment of the Municipal assessment alone is not sufficient to support a finding of substantial overvaluation. The taxpayer must also provide credible, affirmative evidence of the just value.
- Any relief granted to the taxpayer must be supported by evidence in the record in order for a reviewing court to uphold the decision.
- When it is impossible to secure both the standards of just value and equity required by the constitution, the duty to assess at just value yields to the duty to avoid discrimination. (Equity trumps just value)

PAYMENT REQUIREMENTS FOR APPEALS

- In order to appeal the assessment for property with a value of at least \$500,000, the taxpayer must pay an amount equal to the taxes in the current tax year not in dispute or an amount of taxes paid in the preceding tax year, whichever is greater.

TAXPAYERS TRUE AND PERFECT LIST OF PROPERTY

- The taxpayer is barred of their right to appeal if he failed to furnish a list of his taxable estates at the request of the Assessor, UNLESS...he files the list with the abatement application and satisfies the Assessor that he was unable to furnish it at the appropriate time. (36 M.R.S. §706-A)

PROPERTY TAX ABATEMENTS

- Types of Abatement Appeals:
 - Valuation Error
 - Illegal Assessment
 - Poverty/Hardship
 - Uncollectable

VALUATION ERROR

When a property owner believes that their assessment is greater than it should be, then they must provide such evidence that their valuation is manifestly wrong or that unjust discrimination has occurred.

VALUATION ERROR

Step 1. The taxpayer files an abatement application within 185 days to the local assessor.

Step 2. The assessor must give written notice within 10 days after they take action and the notice must state that the applicant has 60 days from the date they receive the notice, to apply to the next agency or;

If the Assessors fail to give notice within 60 days from the application date, then the appeal is deemed denied. However, the taxpayer may consent in writing to delay the deadline.

VALUATION ERROR

Step 3. The taxpayer may then appeal the assessor(s) determination within 60 days from the notice of the decision or; within 60 days from the “deemed denied” date.

Step 4. Next appeal is to one of the following:

- a. Local Board of Assessment Review – if adopted
- b. State Board of Property Tax review – if the property is classified as tree growth, farm or open space or for Nonresidential property of \$1,000,000 value or greater and the municipality does not have a B.A.R.
- c. County Commissioners – if not B.A.R or S.B.P.T.R.

VALUATION ERROR

Step 5. The B.A.R., County Commissioners or S.B.P.T.R. must give written notice within 10 days from the date they take action or;

If the agency fails to give notice within 60 days from the application date, then the appeal is deemed denied. The taxpayer may consent in writing to delay the deadline.

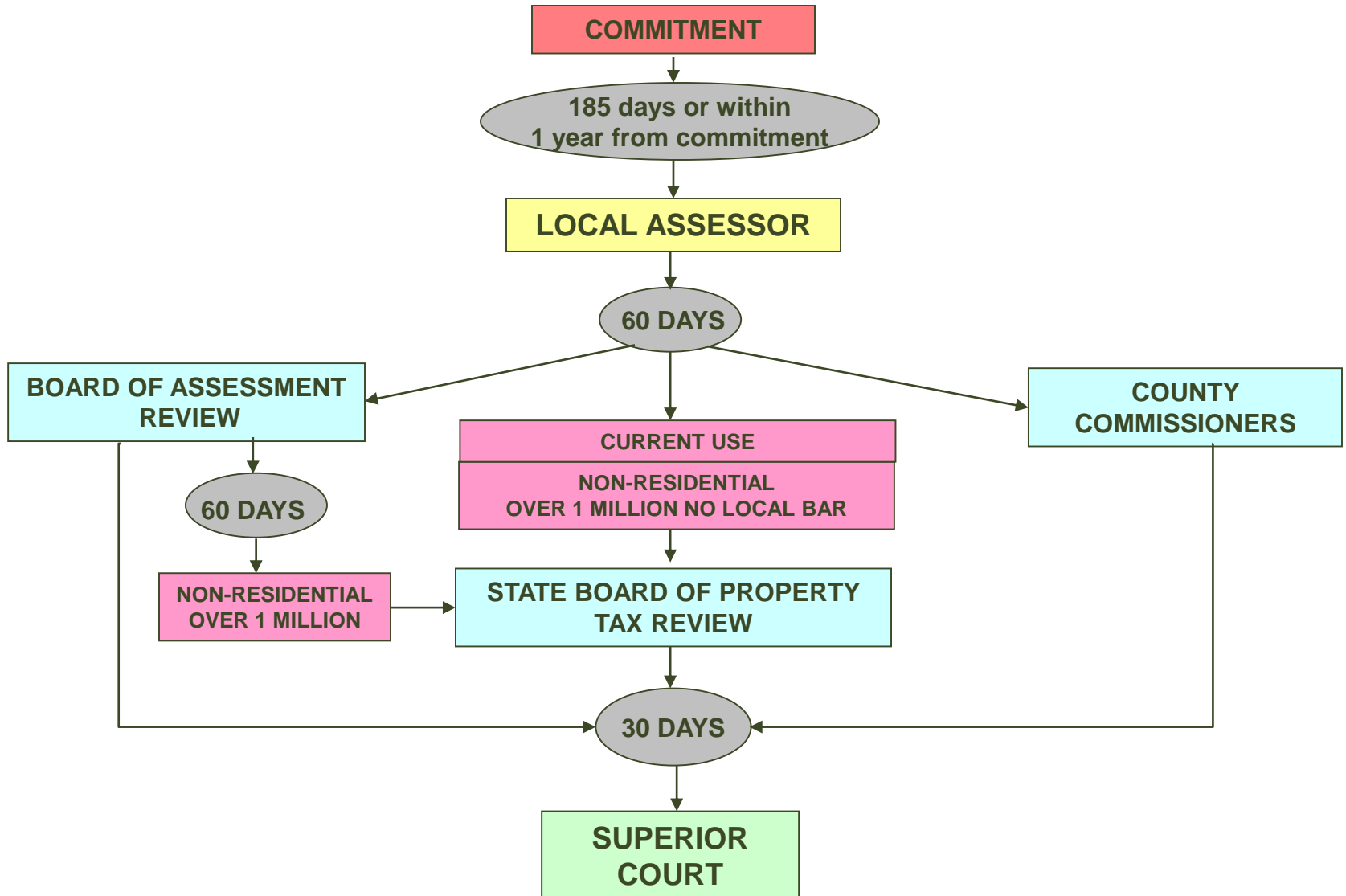
Step 5.5. For denials of The B.A.R. for nonresidential property with a value of greater than \$1,000,000, the next appeal would be to the S.B.P.T.R.

VALUATION ERROR

Step 6. A denial from step 5 results in the taxpayer's ability to appeal to Superior Court within 30 days from the notice or "deemed denied" date.



OVERVALUATION ABATEMENTS

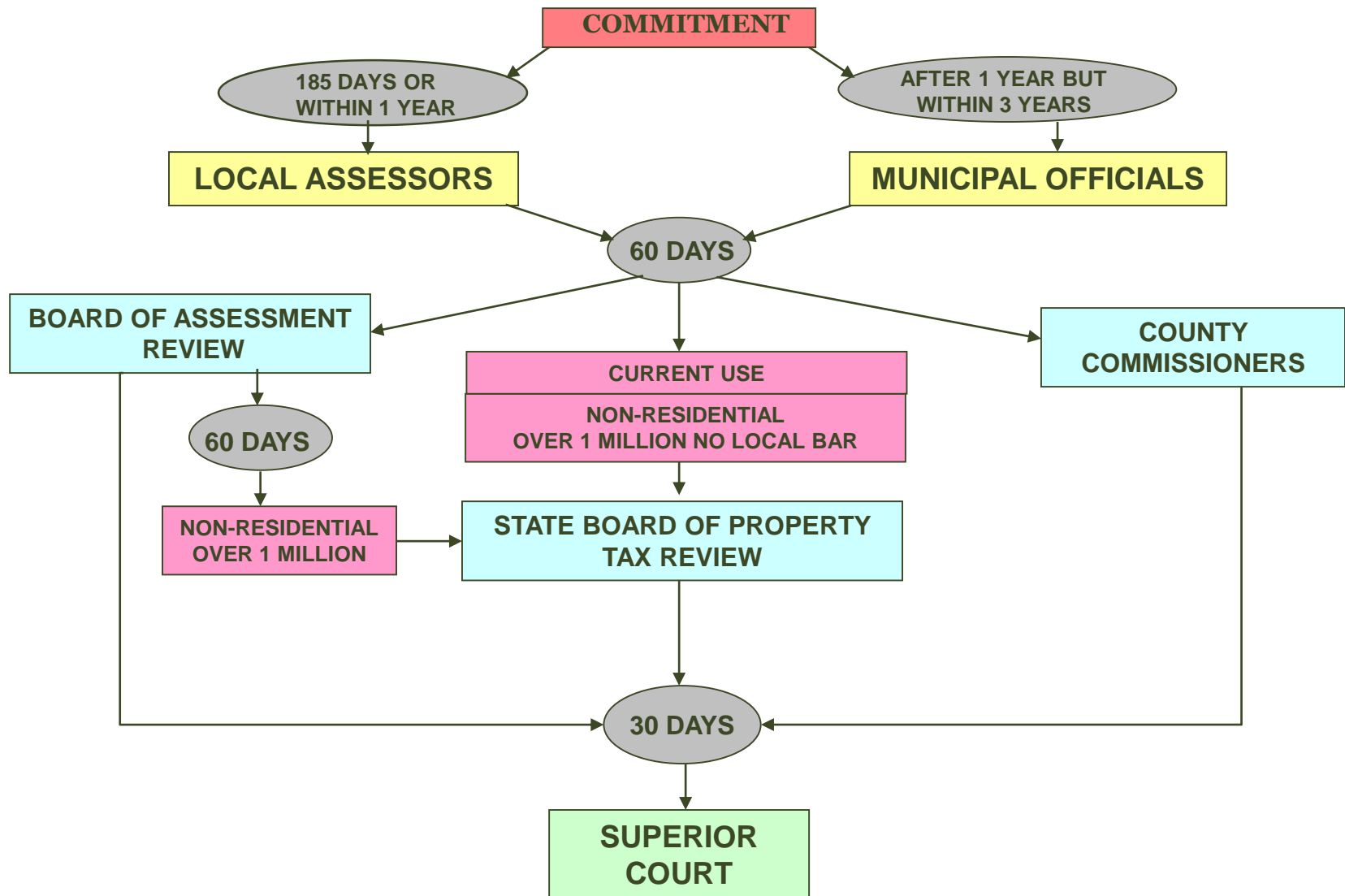


ILLEGAL ASSESSMENT

An illegality has occurred, such as property assessed to the wrong owner

In this case, the assessors within one year from commitment, or the municipal officials thereafter but within three years from the commitment may on their own initiative grant such abatement as they see proper.

ILLEGAL ASSESSMENT



INABILITY TO PAY/HARDSHIP

- Inability to Pay/Hardship abatements occur when the taxpayer is unable to contribute to the public charges through taxes.
- The taxpayer may apply for relief from the municipal officials within three years from the commitment date.
- Relief is only available for real and personal taxes on the primary residence of any taxpayer.

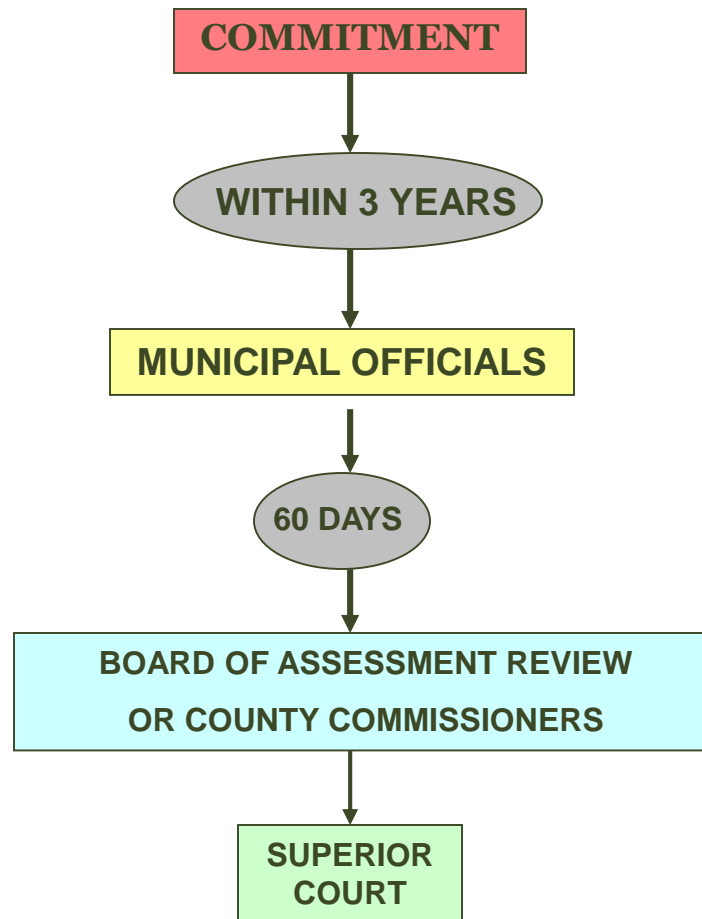
INABILITY TO PAY/HARDSHIP

- Additional Requirements Imposed on Municipal Officials
 - Inform personal indicating an inability to pay of the right to make application under the law
 - Assist Individuals in making application for abatement
 - Make application forms available – forms must contain notice that a written decision will be made within 30 days of application
 - Provide opportunity to apply for abatement during normal business hours

INABILITY TO PAY/HARDSHIP

- Additional Requirements Imposed on Municipal Officials
 - Treat all applications and information submitted, any communications related to and the decision on the application as confidential. Conduct hearings and proceedings in executive session.
 - Provide written notice of decision within 30 days of application
 - Provide notice of appeal rights and procedure for appealing in the written decision

INABILITY TO PAY / HARDSHIP



UNCOLLECTABLE TAX

If after two years from the date of assessment, a **COLLECTOR** is satisfied that a tax upon real or personal property committed can not be collected by reason of death, absence, poverty, insolvency, bankruptcy or other inability, he shall notify the **MUNICIPAL OFFICERS** in writing.

Typical of businesses going bankrupt,
a mobile home moved out of town (without paying the tax required) to an unknown destination.

JURISDICTION TO HEAR AN APPEAL

- Before getting to the merits of an appeal, the appeal board must determine whether they have jurisdiction to hear the appeal. The following questions should be considered:
 - Did the taxpayer file a written request?
 - Was the initial abatement filed with the proper person and within the relevant deadlines?
 - Did the Assessor wait so long to act that the requested resulted in an automatic denial? If so, did the taxpayer file an appeal within the relevant deadline?
 - Did the taxpayer file a timely appeal from the decision of the assessor under §844?
 - Did the proper person file the appeal?

JURISDICTION TO HEAR AN APPEAL

- Did the taxpayer submit a “true and perfect list” to the assessor where a request for such list was made under §706-A?
- Did the taxpayer answer any requests from the assessor for additional information under §706-A?
- Did the taxpayer pay the amount required as a prerequisite to pursuing an abatement under §844(4)?
- If the abatement appeal application claims the property is exempt from property taxation, did the taxpayer file for exemption on or before April 1 or the relevant tax year?
- If the answer to these questions is no, the county commissioners lack jurisdiction to hear the appeal and should deny the abatement for those reasons.

ROLE AS A MEMBER OF AN APPEALS BOARD

- Quasi-Judicial capacity – like a judge.
 - Must be fair and impartial to everyone involved including taxpayers, assessors, the general public and other board members
 - Don't talk or email about an application outside of a meeting
 - Only rely on the information presented at the hearing either orally or in writing. No investigative work is allowed by board members.

GENERAL ORDER OF PRESENTATIONS FOR APPEALS

- Board will confirm with both parties the assessed value of the property and the abatement amount requested, then open the public hearing portion of the meeting
- Applicant will present his/her case
- Questions to the Applicant from the Board
- Questions to the Applicant from the Assessor
- Assessor will present his/her case
- Questions to the Assessor from the Board
- Questions to the Assessor from the Applicant
- Board will allow any member of the public to speak
- Board will close the public hearing and deliberate and make a decision

