Property Tax Abatements & Appeals – A Primer

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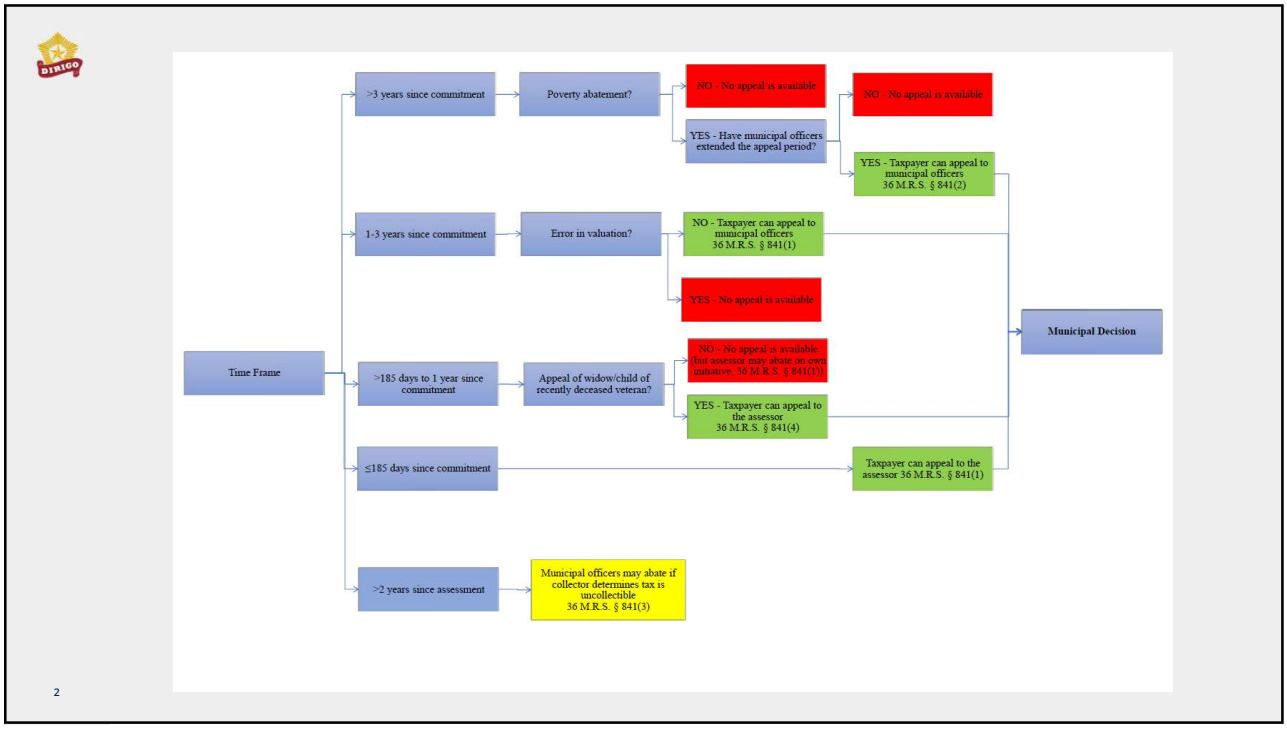

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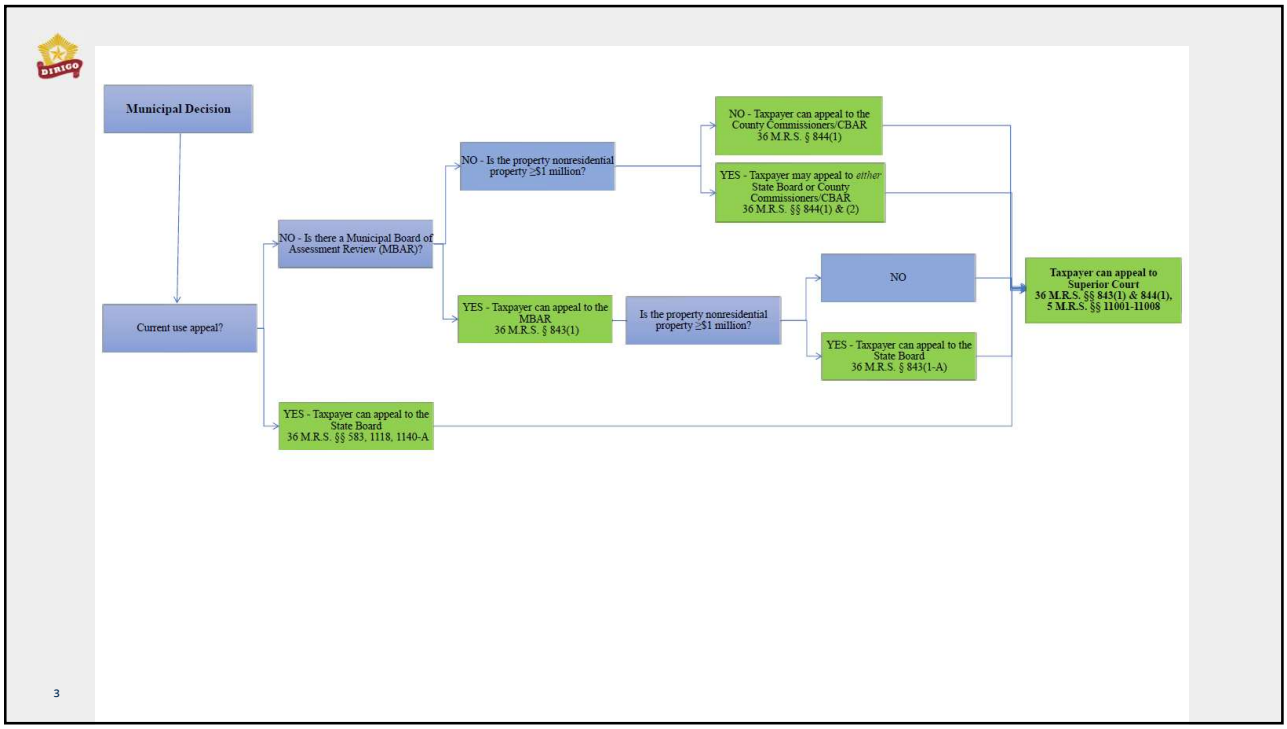

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Foundational Terms & Concepts

- Assessment
- Commitment
- Tax Year
- Just Value
- Current Use

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Foundational Terms & Concepts

Maine Constitution

- Just Value Clause
  - **Article IX, section 8:** ***"All taxes upon real or personal estate, assessed by authority of this State, shall be apportioned and assessed equally according to the just value thereof."***

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Foundational Terms & Concepts

Maine Constitution

- Just Value Clause
  - **Applies to *property* taxes only**
  - **Just value = market value**
    - Highest and best use
    - Assessor discretion
    - *Somewhat* stable

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Foundational Terms & Concepts

Maine Constitution

- Just Value Clause
  - **"…in accordance with just value…"**
    - Not AT market value (certified ratio)

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Foundational Terms & Concepts

Maine Constitution

- Just Value Clause
  - **"…apportioned and assessed equally…"**
    - Same tax rate
    - For values, *Equal ≠ Equal*

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Foundational Terms & Concepts

Current Use Programs

1. Tree Growth
2. Open Space
3. Farmland
4. Working Waterfront

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Foundational Terms & Concepts

Current Use Programs

Article IX, section 8

Assessment of certain lands based on current use; penalty on change to higher use. *The Legislature shall have power to provide for the assessment of the following types of real estate whenever situated in accordance with a valuation based upon the current use thereof and in accordance with such conditions as the Legislature may enact:*

A. Farms and agricultural lands, timberlands and woodlands;

B. Open space lands which are used for recreation or the enjoyment of scenic natural beauty;

C. Lands used for game management or wildlife sanctuaries; and

D. Waterfront land that is used for or that supports commercial fishing activities.

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The Abatement Process

Municipal Level Appeals

Assessor abatements and appeals

- Application must be filed with assessor w/in 185 days of commitment
  - Certain appeals of veteran exemptions may file w/in 1 year
- Assessor may grant on own initiative w/in 1 year of commitment

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The Abatement Process

Municipal Level Appeals

Assessor abatements and appeals

- Limited to correcting "illegality, error, or irregularity in assessment"
- Taxpayer must have complied with 36 M.R.S. § 706-A

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The Abatement Process

Municipal Level Appeals

Municipal officer abatements and appeals—error or mistake

- Application must be filed with municipal officers between 1 year and 3 years of commitment
- Municipal officers may grant on own initiative in same time frame

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The Abatement Process

Municipal Level Appeals

Municipal officer abatements and appeals—error or mistake

- As with assessor appeals, limited to correcting "illegality, error, or irregularity in assessment"
  - However—municipal officers may not grant abatement for error in valuation
- Taxpayer still must have complied with 36 M.R.S. § 706-A

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The Abatement Process

Municipal Level Appeals

Municipal officer abatements and appeals—error or mistake

- Process requirements
  - Written notice w/in 10 days of decision
  - Specific reasons and appeal rights
  - 60 days to appeal from receipt of notice
  - Failure to provide notice w/in 60 days of filing → deemed denied

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The Abatement Process

Municipal Level Appeals

Municipal officer abatements and appeals—hardship or poverty

- Application must be filed with municipal officers w/in 3 years of commitment
  - Officers may extend the time period
- Municipal officers may grant on own initiative in same time frame
- Abatement only available for person's "primary residence"
  - Limited to the home, additional structures necessary to support the home, and acreage up to minimum lot size

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The Abatement Process

Municipal Level Appeals

Municipal officer abatements and appeals—hardship or poverty

- Process requirements
  - Confidentiality
  - Application assistance
  - 30-day decision
  - Specific reasons and appeal rights

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The Abatement Process

Municipal Level Appeals

Initial Municipal Decision

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The Abatement Process

Next Level Appeals

1. Current use appeals
2. Nonresidential property >$1 million
3. All the rest*

**Except tax exemptions, maybe*

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The Abatement Process

Next Level Appeals

Current Use Appeals

Initial Municipal Decision

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State Board of Property Tax Review

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Superior Court

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The Abatement Process

Next Level Appeals

Current Use Appeals

- State Board—15 appointed members
  - Attorneys
  - Real estate brokers/appraisers
  - Engineers
  - Assessors
  - Public
- 5 members hear an appeal
- Mandatory mediation

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The Abatement Process

Next Level Appeals

Nonresidential Property >$1 Million *(municipalities with an MBAR)*

Initial Municipal Decision

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Municipal Board of Assessment Review

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State Board of Property Tax Review

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Superior Court

**Payment requirement for properties valued ≥ $500,000 – greater of LY and TY not in dispute*

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The Abatement Process

Next Level Appeals

Nonresidential Property >$1 Million *(municipalities without an MBAR)*

Initial Municipal Decision

↓ ↓

State Board of Property Tax Review **County Commissioners/County BAR**

↘ ↙

Superior Court

**Cassidy Holdings, LLC v. Aroostook Cnty. Comm'rs, 2023 ME 69, 304 A.3d 259.*

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The Abatement Process

Next Level Appeals

All the rest *(municipalities with an MBAR)*

Initial Municipal Decision

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Municipal Board of Assessment Review

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Superior Court

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The Abatement Process

Next Level Appeals

All the rest *(municipalities without an MBAR)*

Initial Municipal Decision

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County Commissioners/County BAR

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Superior Court

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The Abatement Process

Next Level Appeals

**Exception for tax exemptions*

Taxpayer must generally follow the abatement process ("exhaustion of remedies")

Taxpayers claiming property tax exemption, however, have two options:

1. Follow applicable abatement process
2. Seek a declaratory judgment from Superior Court declaring the property tax exempt

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The Abatement Process

Next Level Appeals

Who is the fact finder (and why does it matter)?

Municipal Board of Assessment Review
State Board of Property Tax Review
County Commissioners/County BAR

- Both Superior Court and Law Court review the fact finder's decision
- Fact finder must create a record
- Decisions/determinations must be supported by facts in the record
  - Findings must be adequate to indicate basis of decision and allow meaningful judicial review
- Standard of review: "abuse of discretion, error of law, or findings unsupported by substantial evidence in the record"
- REMAND

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The Abatement Process

Standards of Review and Considerations for the Decision Maker

- Presumption that assessment is correct
  - Burden on the taxpayer to show otherwise

- Taxpayer must demonstrate assessed value is "manifestly wrong" by showing:
  1. Property was substantially overvalued and an injustice resulted from the overvaluation,
  2. That there was unjust discrimination in the valuation of the property, OR
  3. That the assessment was fraudulent, dishonest or illegal.

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The Abatement Process

Standards of Review and Considerations for the Decision Maker

"Manifestly wrong" standard

- "Substantially overvalued"—taxpayer must present credible evidence of asserted value
  - Attacking assessor's methods is generally not sufficient
  - Must prove that the judgment of the assessors was irrational or so unreasonable in light of the circumstances that the property is substantially overvalued

**Roque Island Gardner Homestead Corp. v. Town of Jonesport, 2021 ME 21, 248 A.3d 953.*

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The Abatement Process

Standards of Review and Considerations for the Decision Maker

"Manifestly wrong" standard

- "Unjust discrimination"—taxpayer must show that assessor's system necessarily results in unequal apportionment
  - No requirement to establish value
  - Tied to constitutional requirement for "rough equality in tax treatment of similarly situated property owners" (Equal protection)
  - Provide proof that:
    1. Other parcels are assessed at drastically lower valuations,
    2. No distinctions between parcels to justify the disparity, and
    3. Municipal rationale is unfounded or arbitrary.

**Petrin v. Town of Scarborough, 2016 ME 136, 147 A.3d 842.*

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The Abatement Process

Standards of Review and Considerations for the Decision Maker

"Manifestly wrong" standard

- "Unjust discrimination"—taxpayer must show that assessor's system necessarily results in unequal apportionment
  - Most discrimination cases involve defined methodology that results in unequal treatment
  - Can also include systematic undervaluation if a pattern
  - NOTE—solution to discrimination is always *abatements*, not supplements

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The Abatement Process

Standards of Review and Considerations for the Decision Maker

"Manifestly wrong" standard

- "Fraudulent, dishonest or illegal"
  - Not a lot of guidance on fraudulent/dishonest
  - Illegal assessment is one that exceeds the bounds of the assessor's authority
  - Some impropriety in the manner of assessment, but NOT errors in value
    - Example—taxing exempt property

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The Abatement Process

Standards of Review and Considerations for the Decision Maker

"Manifestly wrong" standard

- Taxpayer meets manifestly wrong standard
  - Fact finder must make its own independent determination of the value of the property based on a consideration of all relevant evidence, then grant appropriate abatement
  - Failure to do so = REMAND
  - "Meaningful judicial review of an agency decision is not possible without findings of fact sufficient to apprise the court of the decision's basis. When the denial of a tax abatement is not supported by factual findings that are adequate to permit meaningful appellate review, we will vacate the decision and remand for findings." *Ram's Head Ptnrs, LLC v. Town of Cape Elizabeth*, 2003 ME 131, 834 A.2d 916.

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The Abatement Process

Standards of Review and Considerations for the Decision Maker

Poverty Abatements

- Little guidance in statute on what constitutes "hardship" or "poverty"
  - "The municipal officers, or the State Tax Assessor for the unorganized territory, within 3 years from commitment, may, on their own knowledge or on written application, make such abatements as they believe reasonable on the real and personal taxes on the primary residence of any person who, by reason of hardship or poverty, is in their judgment unable to contribute to the public charges." 36 M.R.S. § 841(2)

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The Abatement Process

Standards of Review and Considerations for the Decision Maker

Poverty Abatements

- *Macaro v. Town of Windham*, 468 A.2d 604 (Me. 1983)
  - Board found that taxpayer owned a valuable asset, her home, outright and used that fact as partial justification for denying poverty abatement
  - Court overturned Board, noting that taxpayer's expenses exceeded income without considering property taxes.
  - The purpose of the poverty abatement statute is to prevent towns from forcing the sale of property in order to collect taxes from those otherwise unable to pay.
  - Using ownership of home as justification to deny poverty abatement makes the entire poverty abatement provision self-defeating

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The Abatement Process

Standards of Review and Considerations for the Decision Maker

Poverty Abatements

- *Gilmore v. Belfast*, 580 A.2d 698 (Me. 1990)
  - Taxpayer requested abatement of taxes for 1986-1988
  - Board of Assessment review abated 1988 taxes, did not abate 1986 and 1987
  - Taxpayer appealed, arguing that, since the BAR found poverty for 1988 at the time of the hearing, they should also find for 1986/1987
  - Court upheld denial for 1986/1987
    - Broad discretion
    - Determination not required to be made based on status at time of hearing, but all facts and circumstances
  - BAR was not "compelled" to grant the abatements

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The Abatement Process

Standards of Review and Considerations for the Decision Maker

Poverty Abatements

- *Mason v. Town of Readfield*, 1998 ME 201, 715 A.2d 179 (Me. 1998)
  - Taxpayer had land installment agreement to purchase land and mobile home
  - Agreement stated title stated with seller until fully paid
  - Taxpayer filed poverty abatement, county commissioners denied, stating that she did not have standing since she did not owe the taxes
  - Court upheld, noting that municipality has discretion to assess owner or person in possession

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The Abatement Process

Standards of Review and Considerations for the Decision Maker

Poverty Abatements

- *Sager v. Town of Bowdoinham*, 2004 ME 40, 845 A.2d 567
  - Taxpayer received refunds under the (now defunct) Maine Residents Property Tax Program
  - Municipal officers reduced her poverty abatement by amount of the refunds
  - Court upheld, highlighting that the statute allows the municipal officials to "make such abatements as they believe reasonable"—grants them considerable discretion
  - Abuse of discretion standard—taxpayer has to demonstrate that the decisionmaker "exceeded the bounds of reasonable choices" considering the facts and circumstances
    - Not sufficient to show that other choices are available, or even that there are better choices

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The Abatement Process

Standards of Review and Considerations for the Decision Maker

Poverty Abatements

- *Hustus v. Town of Medway*, 2004 ME 41, 845 A.2d 563
  - Taxpayer owned residence and attached commercial building
  - Board found her basic needs expenses exceeded income by $4,800/year
  - Board granted abatement on residence only, citing *Macaro* case
  - Court overturned, noting no language in statute limiting poverty abatement scope

***NOTE: Decision in this case was superseded by 2005 statutory change limiting poverty abatements to "primary residence"**

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The Abatement Process

Standards of Review and Considerations for the Decision Maker

Poverty Abatements

- *Rand v. Town of Falmouth*, 1993 Me. Super. LEXIS 209
  - Taxpayer requested poverty abatement on life estate
  - Board tabled to allow plaintiff to provide documentation to support claimed expenses and to reach out to remaindermen
  - Taxpayer had, but failed to provide, documentation to the Board and Board denied request
  - Mere listing of expenses does not compel a decision that plaintiff was entitled to the abatement—particularly where the documentation supporting the expenses is available but withheld
  - Court noted in footnote that life estate is responsible for taxes, shouldn't condition abatement eligibility on "generosity of third parties"

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The Abatement Process

Final Thoughts

- Factfinders have to find facts—create the record and spell it out
- Know the standard and use it as the measuring stick
- Follow the process

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