

NOVA SCOTIA UTILITY AND REVIEW BOARD

RULES OF PRACTICE AND PROCEDURE

RESPECTING APPEALS UNDER THE ASSESSMENT ACT

- 1 These Rules are made pursuant to Section 12 of the *Utility and Review Board Act* and apply to any appeals to the Board under the *Assessment Act*.

Short title and object

- 2 (1) These Rules may be cited as the *Assessment Appeal Rules*.
- (2) The object of these Rules is to secure the just, speedy and economic determination of every appeal.

Definitions

- 3 In these Rules:
- (a) "Act" means the Assessment Act;
 - (b) "agent" means a person who has been lawfully authorized to act on behalf of an Appellant;
 - (c) "appeal" means an appeal pursuant to Section 86 of the Assessment Act;
 - (d) "Appellant" means the person who is appealing to the Board under the Act;
 - (e) "Board" means the Nova Scotia Utility and Review Board;
 - (f) "Clerk" means the Clerk of the Board;
 - (g) "holiday" means Saturday or a holiday as defined in the Interpretation Act, s. 7 (1)(j);
 - (h) "written evidence" includes reports, documents, letters, appraisals, hard copies of overhead projection sheets, calculations and other data which a party intends to present as evidence at the hearing or pre-hearing;
 - (i) "visual evidence" includes photographs, maps, audio tapes, videos, charts, models, overlays and computer generated images which a party intends to present as evidence at the hearing or pre-hearing.

General

- 4 (1) Where procedures are not provided for in these Rules or in an enactment, the Board may do whatever is necessary and permitted by law to enable it to effectively and completely adjudicate on the matter before it.

- (2) The Board may dispense with, amend, vary or supplement, with or without a hearing, all or part of these Rules at any time by making a procedural order, if it is satisfied that the special circumstances of the appeal so require, or it is in the public interest to do so.
- (3) The Board may make directions on procedure and procedural orders which shall govern the conduct of a specific appeal.
- (4) The Board may extend or abridge the time fixed by these Rules or otherwise fixed by the Board, and may do so of its own initiative or in response to a motion by any party whether or not the motion to extend or abridge the time is made after the time so fixed has expired.
- (5) Unless otherwise specified, where these Rules or a Board order make reference to the number of days between two events, not expressed to be clear days, the number of days shall be calculated by excluding the day on which the first event happens and including the day on which the second event happens. If the last day falls on a day the Board offices are closed, the time shall automatically be extended to the next business day.
- (6) No appeal before the Board shall be defeated or affected by any technical objection or by any objection based upon defects in form or procedure.

Filing of notice of appeal or other documents

- 5 (1) Any Notice of Appeal or other document to be filed with the Board shall be filed with the Clerk.
- (2) A Notice of Appeal shall be in writing and shall be signed by the Appellant, or the agent or solicitor acting on behalf of the Appellant.
- (3) Any document to be filed with the Board, including a Notice of Appeal pursuant to s. 86(2) of the Act, shall be filed with the Clerk by any of the following methods:
 - (a) delivering a copy to the Clerk at the Board's office;
 - (b) mailing a copy to the Clerk;
 - (c) transmitting a copy to the Clerk via fax or e-mail; or
 - (d) such other manner as the Board may determine.
- (4) A Notice of Appeal under the Act must be filed with the Board within 30 days from the date the decision was mailed by the recorder of the regional assessment appeal court, except when the 30th day falls on a holiday, in which case the Notice of Appeal must be filed with the Board on the next day that is not a holiday. (The date of filing of a Notice of Appeal has been interpreted as the date, up to midnight, that the document is actually received by the Board [not the date it is sent], and that the Board has no power to grant extensions).
- (5) All documents filed shall be date stamped by the Board and any document, other than a Notice of Appeal or other document the filing of which is required by the Act,

filed with the Board after 2:00 p.m. or on a holiday shall be considered to have been filed on the next working day.

- (6) In all cases where documentary evidence is offered, the Board, in lieu of requiring the originals thereof to be filed, may accept true copies of such evidence or such parts of the same as may be relevant, or may require such evidence to be transcribed as part of the record.
- (7) When a document is filed with or served on the Board by e-mail transmission, a hard copy or fax of the document shall be provided to the Board within one day thereafter.
- (8) When a document is filed with or served on the Board by e-mail transmission or fax, the sender shall obtain an acknowledgement from the Clerk of its receipt.

Contents of notice of appeal

- 6 (1) In addition to the requirements of s. 86(2) of the Act (including the civic address, property identification number or assessment account number), the Notice of Appeal shall include:
 - (a) the name of the Appellant;
 - (b) the name of the owner of the property which is the subject of the appeal;
 - (c) the location of the property which is the subject of the appeal;
 - (d) the Regional Assessment Appeal Court which made the decision;
 - (e) the date of the decision;
 - (f) the date that the decision was received by the Appellant;
 - (g) a brief summary of the decision or a copy of the decision;
 - (h) the grounds of appeal;
 - (i) the address of the Appellant or the name and address of an individual upon whom documents or notices relating to the appeal may be served;
 - (j) a phone number, if available, at which the Appellant or the individual referred to in clause (i) may be reached during normal business hours.
- (2) A Notice of Appeal shall be signed by the Appellant or the agent or solicitor acting on behalf of the Appellant.
- (3) A Notice of Appeal may be in Form A.

Service of documents

- 7 (1) Where any document is required to be served on another person, service shall be effected by any of the following methods:
 - (a) personal service upon the person;

- (b) delivering a copy to the person's proper address;
 - (c) sending a copy by ordinary mail addressed to the person at his or her proper address;
 - (d) transmitting a copy to the person via fax or e-mail, where the person has provided a fax number or e-mail address; or
 - (e) such other manner as the Board may determine.
- (2) Where a person has indicated that he or she shall be represented by an agent or counsel, service of a document, including a Notice of Appeal, shall be effected upon that person's agent or counsel by any of the methods listed in subsection (1).
 - (3) Service of any document, including a Notice of Appeal, may be proved by affidavit, oral testimony, or both.
 - (4) When a document is served on a person by e-mail transmission, a hard copy or fax of the document shall be provided to the Board one day thereafter.

Confidential documents

- 8 (1) Subject to subsection (2), all documents filed in respect of an appeal shall be placed on the public record.
- (2) A party may request that all or any part of the document be held in confidence by the Board, which request shall be placed on the public record.
- (3) The burden of satisfying the Board that a document should be held in confidence is on the party claiming confidentiality.
- (4) Any request for confidentiality shall:
 - (a) include a summary of the nature of the information in the document;
 - (b) state:
 - (i) the reasons for the request, including the details of the nature and extent of the specific harm that would result if the document were publicly disclosed, and
 - (ii) any objection to placing an abridged version of the document on the public record, and the reasons for such an objection; and
 - (c) be filed with the Board and served on the parties.
- (5) Where a party has made a request under subsection (2), the document shall be held in confidence unless the Board orders otherwise.
- (6) A party may object to a request for confidentiality by filing an objection and serving the objection on the parties.

- (7) An objection shall state the reasons:
 - (a) why the party requires disclosure of the document; and
 - (b) why disclosure would be in the public interest.
- (8) The party claiming confidentiality will have an opportunity to reply to any objection.
- (9) The Board may decide the issue with or without a hearing. Where the Board holds a hearing, the Board may direct that the hearing be held in the absence of the public.
- (10) In ruling on a request for confidentiality the Board shall consider:
 - (a) whether the document may disclose matters involving public security;
 - (b) whether the document may disclose sensitive financial, commercial or personal matters in relation to which the desirability of avoiding disclosure in the interest of any person affected outweighs the desirability of adhering to the principle that documents be available to the public; or
 - (c) such other matters as the Board deems appropriate.
- (11) The Board may:
 - (a) order that the document be held in confidence by the Board;
 - (b) order that the document be placed on the public record;
 - (c) order that an abridged version of the document be placed on the public record;
 - (d) order that the document be made available to a party to the proceeding, who has a good faith interest in accessing the confidential information and who would not otherwise be in conflict of interest, on such terms as the Board considers appropriate, including the signing of a confidentiality undertaking in a form approved by the Board;
 - (e) order that the document be withdrawn; and
 - (f) make any other order the Board may deem to be in the public interest.
- (12) Where the Board rejects a claim for confidentiality, the party claiming confidentiality may, within seven (7) days of receiving the Board's decision, or such other time as the Board may allow, notify the Board in writing that:
 - (a) if the party has filed an appeal, the appeal is withdrawn; or
 - (b) if the party is an intervenor, the intervention is withdrawn.
- (13) Where a party provides written notice to the Board pursuant to subsection (12), if the document is on file with the Board, the Board shall immediately return the documents for which confidentiality was claimed.

Amendment of documents

- 9 (1) Subject to subsection (2), a Notice of Appeal may be amended at any time with leave of the Board.
- (2) A Notice of Appeal may not be amended for the purpose of adding Appellants.

Preliminary hearings

- 10 (1) In any appeal, the Board may, on its own initiative or at the request of any party, hold a preliminary hearing to deal with any matter that may aid in the disposition of the hearing, including to:
 - (a) consider any preliminary motion for an order dismissing the appeal on the grounds that the Board lacks jurisdiction to hear the appeal, including but not limited to, by reason of s. 86 of the Act;
 - (b) determine any question as to the admissibility of any evidence;
 - (c) clarify or simplify the issues;
 - (d) consider the necessity or desirability of an amendment to the Notice of Appeal or any other document;
 - (e) consider a request for access to information in the custody or control of any party;
 - (f) consider the possibility of obtaining agreements to facts and to documents that will avoid unnecessary proof;
 - (g) fix dates for the hearing and for any procedural steps to be completed by the parties;
 - (h) make any directions for the pre-filing of witness lists or expert witness statements and reports (except as otherwise provided for in these Rules), or direct further disclosure where necessary;
 - (i) determine issues of confidentiality, including any need to hold a part of the hearing in the absence of the public, or to seal documents.
- (2) Following the preliminary hearing, the Board may make an order giving such directions as the Board deems advisable.
- (3) The Board member who presides at a preliminary hearing shall not be deemed to be seized of the appeal, and any subsequent hearing related to the appeal may be heard by that member or any other member.
- (4) Where a party intends to request dismissal of an appeal for lack of jurisdiction pursuant to subsection (1)(a) herein, the party shall seek a preliminary hearing to deal with the issue.

- (5) Where a party ("the Applicant") requests a preliminary hearing to seek an order, including an order relating to subsection (1)(a), and intends to present written or visual evidence at that preliminary hearing in support of the granting of that order, the Applicant shall provide a copy of such evidence to any other party and to the Board, not less than five business days before the preliminary hearing. Any party other than the Applicant, who intends to present written or visual evidence at the preliminary hearing, shall provide a copy of such evidence to the Applicant, to any other party, and to the Board, not less than one business day prior to the preliminary hearing.

Disclosure of evidence before hearing

11 Subject to Rule 12,

- (1) An Appellant who intends to present written or visual evidence at a hearing shall provide a copy of such evidence to all other parties and to the Board, as directed by the Hearing Order referred to in Rule 13(4).
- (2) Any other party who intends to present written or visual evidence at a hearing shall provide a copy of such evidence to all other parties and to the Board, as directed by the Hearing Order referred to in Rule 13(4).
- (3) Where market value of the property is at issue, the parties shall disclose to each other, and to the Board, pursuant to subsection (1) and (2) herein, any sales data and replacement cost calculations (including depreciation) intended to be tendered or relied upon at the hearing.
- (4) Evidence so disclosed will be considered to be evidence before the Board, unless a party objects.

Disclosure of expert reports

12 Notwithstanding Rule 11,

- (1) Unless a copy of a report containing the full opinion of an expert, including the essential facts on which the opinion is based, a summary of the expert's qualifications, and a summary of the grounds for each opinion expressed, has been served on each party and filed with the Board, as directed by the Hearing Order referred to in Rule 13(4), the evidence of the expert shall not be admissible at the hearing without leave of the Board.
- (2) If the report of an expert does not comply with the requirements of subsection (1), the Board may, on the application of another party, make an order requiring the party providing the report to comply with that subsection.
- (3) Where a copy of the report has been filed and delivered as provided in subsection (1), the expert shall be required to attend at the hearing unless all other parties give notice that they do not require the attendance of the expert at the hearing, which notice shall be given as soon as is reasonably possible.

Hearing date

- 13 (1) The Clerk, in consultation with the parties, shall attempt to set a date for the hearing of the appeal.
- (2) Where the parties cannot reach agreement as to a date, the Chair shall

set a date for the hearing.

- (3) The Clerk shall notify the parties of the date of the hearing.
- (4) The Board may issue a Hearing Order setting the date for the hearing and containing directions on disclosure and procedure.

Hearings

- 14 (1) Hearings may be conducted in an informal manner and need not follow the strict rules of practice and procedure required in a court of law.
- (2) The Board may, at its discretion, conduct a hearing or preliminary hearing in person, in writing or by teleconference, video conference or by any other electronic means.
- (3) At the hearing of an appeal, the Appellant shall present its evidence first, and after the evidence of all other parties is given, shall have the right to reply.
- (4) A party may call and examine witnesses, cross-examine opposing witnesses and present arguments and submissions.
- (5) The Board may receive in evidence any statement, document, information or matter that, in the opinion of the Board, may assist it to deal with the matter before the Board whether or not the statement, document, information or matter is given or produced under oath or would be admissible as evidence in a court of law.
- (6) A party may be represented before the Board by counsel or an agent.
- (7) A hearing may be adjourned from time to time by the Board on reasonable grounds on its own motion or at the request of any party.
- (8) The Board, whenever it deems it desirable, may require briefs to be filed by the parties within such time as the Board may prescribe.

Notice of higher assessment

- 15 (1) A party intending to seek a higher assessment than that fixed by the Regional Assessment Appeal Court shall give notice of its intention to seek an increase in the assessment (and the amount sought) to all other parties and to the Board at least 30 days before the hearing of the appeal.
- (2) Where a party seeking an increase in assessment fails to comply with subsection (1) herein, the Board may refuse to consider the request for a higher assessment.

Informal settlement conference

- 16 (1) The Board may, on its own motion or at the request of any party, hold an Informal Settlement Conference in relation to any appeal.
- (2) An Informal Settlement Conference will be presided over by a Board member (the "Presiding Board Member"), and shall be subject to the following provisions:
 - (a) participation by a party is voluntary;

- (b) the parties may attend the Informal Settlement Conference with, or without, legal counsel; or
 - (c) when a party is represented by legal counsel, however, that legal counsel must, unless the Board otherwise directs, participate in the Informal Settlement Conference.
- (3) In the course of the Informal Settlement Conference, the Presiding Board Member may offer opinions to the parties about the likely outcome, in the view of that member, if the appeal proceeds to a hearing on the merits, and alternative procedures which may be available to the parties.
 - (4) The Informal Settlement Conference will be confidential. Any information or documents provided or exchanged during the Conference, and any suggestion for resolution of the issues, or any offer to settle, made during the Conference, shall remain confidential, and not be disclosed in evidence in the present or any subsequent proceeding, nor be placed in the Board file, unless the party who provided the information or document, or who made the suggestion or offer, consents to such disclosure and to the manner of such disclosure.
 - (5) Any notes made by the Presiding Board Member during the Informal Settlement Conference will remain confidential, and will not be released to any person or admitted into evidence in any proceeding.
 - (6) The Presiding Board Member may not participate in the hearing of the appeal, unless otherwise requested by all parties involved in the Informal Settlement Conference.
 - (7) (a) An agreement between the parties may, depending upon the circumstances of the particular proceeding, and the nature of the proceeding itself, include:
 - (i) withdrawal of an appeal;
 - (ii) withdrawal of opposition to an appeal;
 - (iii) agreement between the parties as to certain facts;
 - (iv) agreement between the parties that certain issues are to be included, or excluded, from the hearing on the merits; or
 - (v) such other agreement between the parties as the Board finds acceptable.
 - (b) If, as a result of the Informal Settlement Conference, the parties are able to reach agreement with respect to certain matters, but not with respect to others, the Presiding Board Member may prepare a statement summarizing the points of agreement and disagreement, which will be distributed to the parties, and thereafter (with the consent of the parties) placed in the Board file for the information of the Board member or members who may eventually conduct a hearing on the merits with respect to the remaining issues.
- (8) If, as a result of the Informal Settlement Conference, an agreement is reached between the parties with respect to all or any of the issues, procedural or

substantive, in the appeal, and the parties agree that an order of the Board may be appropriate in relation to that agreement, then the Presiding Board Member may take appropriate action, including:

- (i) making an order to implement any matter agreed upon between the parties;
- (ii) holding a hearing, with the consent of all parties, immediately or otherwise; or
- (iii) scheduling a hearing, with the consent of all parties, to be held by another Board member, to consider any issues relating to the public interest or requirements of the governing legislation, including notice to possible intervenors, before issuing any order which implements such agreement.

Audio and video recording of hearings

- 17
- (1) Audio and video recording of an oral or electronic hearing which is open to the public may be permitted on conditions the Board considers appropriate.
 - (2) The Board may refuse to permit the recording of all or any part of an oral or electronic hearing if, in the opinion of the Board, such coverage would inhibit specific witnesses or disrupt the proceeding in any way.
 - (3) Where recording is allowed, the following shall apply unless otherwise directed by the Board:
 - (a) only equipment which does not produce distracting sound or light shall be used;
 - (b) where possible, existing audio systems present in the hearing room shall be used;
 - (c) media personnel shall not move about while the hearing is in progress; and
 - (d) equipment shall be positioned unobtrusively before the hearing begins and shall not be relocated while the hearing is in progress.

Subpeonas

- 18
- (1) At the request of a party, the Board may issue a subpoena, which shall be signed by the Clerk and sealed with the Board's seal.
 - (2) A subpoena issued pursuant to subsection (1) shall be issued in the form prescribed by the Board and may set out the names of any number of persons required to appear before the Board.
 - (3) No person served with a subpoena is required to appear before the Board pursuant to the subpoena unless the person has been paid or tendered conduct money in an amount sufficient to cover the person's reasonable fees and traveling expenses paid in accordance with the Act.
 - (4) A subpoena shall be served personally on the person to whom it is directed at least two clear business days before the date on which the person is to appear.

Destruction of exhibits

- 19 (1) A person who has submitted exhibits to the Board may request that the Board return the exhibits.
- (2) The Board, at the end of six months from the date of the final order in the proceedings, provided no appeal or judicial review has been commenced within that time, may return requested exhibits and may destroy any remaining exhibits.

Costs

20 Any application for costs shall be governed by the Board's *Cost Rules*.

These *Assessment Appeal Rules* were made by the Nova Scotia Utility and Review Board at a Board meeting held on the 28th day of October, 2010 and replace and supercede other outstanding Assessment Appeal Rules.

Signed
Doreen Friis
Clerk of the Board

FORM A

NSUARB-

NOVA SCOTIA UTILITY AND REVIEW BOARD
1601 Lr. Water Street, Suite 300
PO Box 1692, Unit "M"
Halifax, Nova Scotia
B3J 3S3

Tel: 902-424-4448 Fax: 902-424-3919 Email: board@gov.ns.ca

IN THE MATTER OF: An appeal under Section 86 of the ASSESSMENT ACT by:

NOTICE OF APPEAL

TAKE NOTICE the Appellant(s) appeal from a decision of the Nova Scotia Regional Assessment Appeal Court made the _____ day of _____, 20 ____ and mailed by the Recorder to the Appellant(s) on the ____ day of _____, 20____ respecting property owned by _____ and located at _____ In the County of _____ Property Identification No. _____ Assessment Account No. _____ which decision is attached (a copy of the decision must be attached).

AND THAT

- (1) the specific matters of appeal are: [examples: the assessment is too high; or the classification is wrong; or assessed ownership is incorrect; or other - specify]

- (2) the specific component of the assessment being appealed is: [examples: land value too high; or building value too high; or property should be classified as residential, not commercial; or incorrect ownership; or general level of assessment; or other - specify]

(3) the specific reason for the appeal: [examples: Not enough depreciation allowance for a building; or land sales or house sale prices around the base date indicate a lower value; or replacement cost (new) too high; or uniformity (general level of assessment) is wrong; or my activity on the property does not constitute a commercial one and I should be assessed as a residential property and not commercial; or the property sold to another person prior to December 1st preceding the assessment year; or other - specify]

DATED at _____, Nova Scotia, this _____ day of _____ 20____

Appellant, Solicitor or Agent

Mailing Address:

_____	Home Phone No.	_____
_____	Business Phone No.	_____
_____	Fax No.	_____
	Email Address	_____