

Assessment Review Board

RULES OF PRACTICE AND PROCEDURE

(made under section 25.1 of the *Statutory Powers Procedure Act*)

Effective July 2, 2014

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Note: Whenever possible, use the Board's forms. For the most up-to-date version of the forms in current use, please check with the Board directly or on the Board's website.

RULES OF THE ASSESSMENT REVIEW BOARD

GENERAL

1. Application of Rules

The Rules apply to all proceedings with the Assessment Review Board on or after April 2, 2013. The forms referred to herein are available on the Board's website and may be changed administratively from time to time.

All Statements, Notices, Orders and Decisions apply to deemed appeals unless otherwise ordered by the Board or requested by the parties.

2. Interpretation and Directions

These Rules shall be liberally interpreted to ensure the just, most expeditious and least expensive determination of every proceeding on its merits. In applying these Rules, the Board shall make orders and give directions that are proportionate to the importance and complexity of the issues.

The Board may issue practice directions from time to time which may be posted on the Board's website and available on request.

3. Exercise of Powers and Matters Not Dealt With in these Rules

The Board may exercise any of its powers under these Rules or applicable laws on its own initiative or at the request of any party.

If these Rules do not provide for a matter of procedure, the Board may do whatever is necessary and permitted by law to enable it to effectively and completely adjudicate on any matter before it including applying the *Rules of Civil Procedure*.

The Board may grant all necessary exceptions from these Rules or a Procedural Order, or other relief as it considers appropriate, to ensure that the real questions in issue are determined in a just manner.

4. Technical Objections

Substantial compliance with requirements respecting the content of forms notices or documents under these Rules or any Act is sufficient.

5. Consent for Exceptions from Procedural Requirements in Statutes or Regulations

The parties must consent before the Board can permit exceptions from procedural requirements contained in statutes or regulations.

6. Definitions

“affidavit” means evidence provided in writing and made under oath or affirmation;

“appeal” includes an application or appeal to the Board;

“appellant” means a person who makes an appeal to the Board;

“bilingual proceeding” means a proceeding involving a party who speaks French who requests that it be conducted in French and in English as a bilingual proceeding;

“Board” means the Assessment Review Board;

“commencement of hearing” means once a party makes an opening statement and/or introduces evidence;

“deliver” includes sending by ordinary mail, leaving with the Board or a party, and depositing in a mailbox or receptacle at the residence or place of business, and includes facsimile transmission or e-mail to the residence or place of business;

“Direct Hearing Stream” means the stream in which appeals proceed directly to a hearing without the exchange of Statements of Issues and Responses. Pre-hearing procedures are very limited and there is generally no need for pre-hearing conferences or examinations for discovery;

“document” means written and visual material, and includes written, audio and visual evidence in a hearing event;

“electronic hearing” means a hearing event held by telephone conference or some other form of electronic technology allowing all the parties to hear one another;

“expert report” or “expert evidence” means evidence expressing an opinion based on education, training or professional experience;

“file” means to send to the Registrar of the Board, and requires that the material is either deemed to be or has actually been received by the Board;

“hearing event” means a procedure held by the Board at any stage of a proceeding, and includes a hearing, pre-hearing conference, motion, and mediation event, whether these are held in the form of an oral hearing, electronic hearing or written hearing;

(NOTE: Holidays for municipalities may be different from those below.)

“holiday” means a Saturday or Sunday or other days that the Board offices are closed, such as the statutory holidays of New Year’s Day, Family Day, Good Friday, Easter Monday, Victoria Day, Canada Day, Civic Holiday, Labour Day, Thanksgiving Day, Remembrance Day, Christmas Day, Boxing Day, and any special holiday proclaimed by the Governor General or the Lieutenant Governor in Council. Where New Year’s Day, Canada Day or Remembrance Day falls on a Saturday or Sunday, the following Monday is a holiday; where Christmas Day falls on a Saturday or Sunday, the following Monday and Tuesday are holidays, and where Christmas Day falls on a Friday, the following Monday is a holiday;

“mediation” means a meeting with the parties in which a Board Member acts as (1) a neutral third party in meeting separately with the parties and suggesting to each their likelihood of success; or (2) a facilitator in meeting with all the parties together and identifying the interests of each and encouraging resolution of the matter, or (3) some combination of these methods;

“Minister” means the Minister of Finance or delegate;

“motion” means a request by a person that the Board make a decision or issue an order;

“moving party” means the person who makes the motion;

“MPAC” means the Municipal Property Assessment Corporation. MPAC may be referred to as the assessment corporation and is a statutory party;

“notice” means any notice required by these Rules or a Board Order to be given in writing personally or by mail, fax or email;

“oral hearing” means a hearing at which the parties or their representatives attend before the Board Member(s) in person;

“participant” means a person who may not wish to take part fully in the hearing, but who wishes to make a statement to the Board; (Note: Persons to whom the Board has granted participant status whether for themselves or as a representative of an unincorporated group will be allowed to make statements to the Board only at such time as the Board may set, are not entitled to receive notice of a mediation or conference calls on procedural matters and cannot ask for a review of the decision.);

“party” includes a person entitled by the governing statute to be a party, and also those persons whom the Board accepts as parties, and who take part fully in the hearing by such activities as exchanging documents, providing testimony, presenting and cross-examining witnesses, and making submissions to the Board;

“person” includes a corporation, partnership, bridge authority, agent or trustee, and the heirs, executors, administrators or other legal representatives of a person to whom the context can apply according to law; (Note: An unincorporated group is not a person within the meaning of these Rules and must act through an identified individual who shall act as the representative of the group.);

"practice direction" means a direction, notice, guide or similar publication for the purpose of governing, subject to these Rules, the practice for proceedings;

"Procedural Order" means an order of pre-hearing procedure that is mandatory in the Standard Stream and possible in the Direct Hearing Stream. In the Standard Stream, a Procedural Order will, at minimum, set out dates for procedural steps to be taken prior to the hearing; it must also include a hearing date and consequences for non-compliance. A sample Procedural Order can be found at the back of these Rules;

"proceeding" means a matter before the Board;

"representative" means a person licensed by the Law Society of Upper Canada or other person who is legally authorized to represent a person in the proceedings;

"request for reconsideration" means an application under section 39.1 of the *Assessment Act*;

"responding party" means a person, other than the Board Registrar, who is served with a notice of motion by the moving party;

"*Rules of Civil Procedure*" means the Rules in effect for the Court of Appeal and the Superior Court of Justice;

"serve" means delivery of any document contemplated by these Rules;

"settlement conference" means a conference held to attempt to resolve all or part of a matter by discussion, and includes any part of a pre-hearing conference in which such discussions take place;

"Standard Stream" means the stream in which parties are required to exchange statements of issues, responses, and reports prior to hearing. Generally, proceedings will follow a timetable set out in a Procedural Order and finalized at a pre-hearing conference. Time-limited examinations for discovery may be conducted where needed;

"stream" means the type of hearing process by which an application or appeal is to be resolved and may be either the Direct Hearing Stream or the Standard Stream;

"visual evidence" means images intended to be introduced into evidence at a hearing event, and includes computer-generated images, photographs, maps, videos, plans, surveys, models and overlays;

"witness statement" means a short written outline of the person's background, experience and interest in the matter; a list of issues, which he or she will discuss, and the witness' opinions (if an expert) on those issues; and a list of reports that the witness will rely on at the hearing;

"written evidence" means material intended to be introduced into evidence at a hearing event, and includes reports, studies, documents, photographs, maps, overlays, letters,

charts, graphs, books of account and information recorded or stored by means of any device;

“written hearing” means a proceeding held in the nature of a hearing by means of the exchange of documents whether in written form (hard copy) or by electronic means.

NON-COMPLIANCE WITH RULES AND ORDERS

Comments on Non-Compliance

If a party fails to comply with any Rule, order, direction, undertaking or request of the Board; causes undue delay; does not attend a scheduled hearing event for which notice was issued or does not provide to the Board or a party materials required as part of the proceeding, the Board may make an order granting relief against the failure.

Where there has been a failure to comply, the aggrieved party should make a motion to the Board in accordance with Rule 9. When considering motions for non-compliance, including motions to dismiss, the Board will usually consider:

- *the reasons provided for the failure;*
- *the prejudice to the parties resulting from the failure;*
- *whether the failure was part of a repeated pattern of conduct (abuse of process);*
- *whether the failure could reasonably have been avoided;*
- *evidence that the failing party made reasonable efforts to avoid the failure;*
- *whether the failure could be cured or addressed by any other appropriate direction or by awarding costs; and*
- *any other relevant factors.*

On motions to dismiss, the Board may provide the defaulting party an opportunity to cure the default and where the default is cured before the return of the motion to dismiss, the Board may choose to dismiss the motion.

7. Failure to Comply With Rules and Orders

The Board expects compliance with the Rules and Board Orders. If a party or participant has not complied with a requirement of these Rules or a Board Order such as a Procedural Order and any requirement therein, then the Board will determine the consequences of non-compliance and may grant the necessary relief or exercise any of its powers authorized by legislation.

8. Reporting Failure to Comply/Motions for Non-Compliance

- (1) It is the parties' responsibility to report a failure to comply to the Board, and to request a motion to seek relief against the failure. The moving party should specify the relief sought; however, the Board may grant whatever relief it deems appropriate.
- (2) In the Direct Hearing Stream, a failure to comply should be brought to the attention of the panel at the hearing. The party that did not comply with the Rule

or order should be prepared to identify for the Board what efforts were made to comply with the obligation.

- (3) In the Standard Stream, where a party does not report a failure to comply and does not bring a motion to seek relief against the failure in a timely way, the Board may refuse to consider the failure to comply, and may refuse to allow a party to raise issues of non-compliance at a later date.

REPRESENTATIVES

9. Appearance in Person or by Authorized Representative

A party may attend a proceeding in person or by a representative. Representatives who are not licensed by the Law Society of Upper Canada must obtain written authorization and may be asked to provide this authorization to the Board at any time. If representation changes, the party and the representative shall immediately notify the Board and the other parties.

10. Notices of Proceedings Provided to Representatives

Any notice given to a representative is deemed to have been given to the party for whom the representative acts.

11. Witness and/or Advocate

- (1) In the Direct Hearing Stream, unless the Board orders otherwise, at any hearing event, a party and/or a representative, excluding a lawyer appearing as counsel, may be both an advocate and witness.
- (2) In the Standard Stream, no representative may be both advocate and witness, unless the Board orders otherwise, and the representative is not a lawyer appearing as counsel. If a representative (except a lawyer appearing as counsel) is applying to be both a witness and an advocate notice in writing must be given to the other parties no later than the time at which witness statements are exchanged.

TIME

Comments on Time Requirements

Note: Time limits in legislation may provide for different rules than these Rules. The Board cannot extend a time given in a statute such as the Assessment Act except as set out in the Rules for late appeals. Therefore applications must be filed with the Board at the latest on the day established in the appeals sections of the applicable legislation as the last day for appealing.

*Here is an example of how the Board would compute a period of, for example, 30 days. (This method of counting is based on the Rules of Civil Procedure and legislation.) The Board would consider the day **after** the decision or action as **day one**. The following days, including Saturdays, Sundays and holidays would be counted, up to the 30th day. Documents could be filed or delivered up to **5:00 p.m.** on the 30th day. Where this day falls*

on a Saturday, Sunday or holiday, documents may be filed **up to 5:00 p.m.** on the next day that is not a Saturday, Sunday or holiday. The Board's offices are open until 5:00 p.m. **Please note that no matter what the legal rule may be for the time that a day ends, it is advisable to file or serve documents within office hours to ensure receipt on the required day.**

12. Time

Time is computed under these Rules or in a Board Order under the applicable law, unless it is stated to be computed differently.

13. Extension/Reduction of Time (including Reconsideration)

- 1) The Board may extend or reduce any time required in these Rules or in a Board Order, with any terms or conditions. A request for a change in time requirements may be made by bringing a motion, or the Board may change a time requirement on its own initiative, with or without a hearing, either before or after the time period expires.
- 2) The Board may extend the time for filing a request for reconsideration with MPAC if in the Board's view, the circumstances set out in the request by the appellant, provide sufficient reasons.

14. Time for Delivery of Documents

Time for delivery of a document may be extended or reduced if all those who must be served consent to this in writing.

15. No Proceeding for Period if Party is Absent and Non-Attendance

- (1) At an in-person hearing event the Board will not proceed for at least 30 minutes after the time given for the commencement of a hearing event if one or more of the parties have not yet appeared, unless they have given notice that they will not appear at that time.
- (2) At a hearing event by Teleconference or Videoconference the Board will not proceed for at least 10 minutes after the time given for the commencement of a hearing event if one or more of the parties have not yet appeared, unless they have given notice that they will not appear at that time.
- (3) In cases of non-attendance by a party, without reasonable excuse, the Board may proceed to determine the matter or, where it deems appropriate, take steps to dismiss.

INITIATING PROCEEDINGS

16. Form of Appeal

Unless any Act or these Rules provide for other methods or the Board otherwise directs, an appeal may be commenced by letter or an Appeal Form and shall:

- (a) be addressed to the Board Registrar;
- (b) provide the appellant's name, telephone, fax and e-mail address (if any) numbers and street address, and postal code;
- (c) identify the property at issue by roll number;
- (d) state the nature of the appeal and the reasons for it;
- (e) include the appropriate fee for the appeal or other matter;
- (f) inform the Board of a request for a bilingual or French proceeding or a sign language interpreter;
- (g) be signed by the appellant or his/her representative, unless filed electronically;
- (h) if an appellant is represented other than by a person licensed by the Law Society of Upper Canada, a declaration the person has received written confirmation of authorization to act for the appellant, signed by the appellant;
- (i) include a copy of the request for reconsideration decision if applicable or date of release of decision; and
- (j) for third party appeals, confirmation of service of the Notice of Appeal on the assessed person.

Note: A similar Appeal Form from the Board's website can be filed electronically.

17. Exceptions to Rule 16

- (a) Persons filing appeals for many persons and/or many properties must file them in accordance with the directions of the Board.
- (b) Appeals under the *Municipal Act, 2001*, *City of Toronto Act, 2006* and *Provincial Land Tax Act, 2006*:
 - i. must be filed with the Board by the legislated filing deadline;
 - ii. one copy of the appeal must be served by the legislated filing deadline on the municipality or Minister if the property owner is the appellant or on the property owner if the municipality or the Minister is the appellant;
 - iii. must be accompanied by the requisite supporting documentation depending on the sections of the legislation;
 - iv. must be accompanied by the requisite filing fee as determined by the Board; and
 - v. must identify the section in the *Municipal Act, 2001*, *City of Toronto Act, 2006* and *Provincial Land Tax Act, 2006* pursuant to which the appeal is filed.

18. Where No Fee Paid

Unless the Board directs otherwise, the Board will not consider a matter or schedule a hearing event unless the appropriate fee has been paid.

SCREENING OF APPEALS

Comments on Screening of Appeals

Screening of appeals by the Board can be administrative (by staff) and adjudicative (by Board Members). Administrative screening is the process in which staff may decide to stop processing because the information submitted is not complete, until the technical defect is corrected. Adjudicative screening is the process for dismissing an appeal without a full hearing.

19. Administrative Screening

The Board shall conduct administrative screening of appeals submitted to the Board to determine whether:

- (a) the required fees have been paid;
- (b) grounds for the appeal are set out in writing;
- (c) the appeal has been E Filed or signed;
- (d) the appellant has responded to a request for further information within the time specified by the Board;
- (e) an appeal has been filed within the statutory deadline; or
- (f) if the appeal concerns the assessment of another person that the appellant has mailed or delivered to the person a copy of the appeal within the time prescribed by the *Assessment Act* or any other legislated deadline.

20. Incomplete Information

The Board will stop processing an appeal if the information submitted is not complete. Once the application is considered complete according to the Board's established requirements, staff will continue to process it. Discretionary judgments and legal interpretations shall be referred to a Board Member.

21. Notice Before Rejecting

Before rejecting an incomplete application, the Board will notify the appellant or the appellant's representative, and provide an opportunity to respond within the time stated in the Board's notification. If no response is received in that time, the Board may reject the application.

22. Board May Dispense with Requirement

At the request of the appellant, the Board may cancel a request for further information where it is satisfied that there is good reason.

23. Appellant to Serve Additional Materials Requested

If a Notice of Appeal was provided to the other parties before the Board notifies the appellant of an incomplete appeal the appellant shall provide a copy of the amended appeal and further materials required to all other parties as well as to the Board.

24. Completed Matter Deemed Filed on Original Date

If the defect set out in a notice of incomplete appeal is resolved within the time stated in the Board's letter, the appeal is deemed to have been properly filed on the day it was first received, rather than the day the amendment was received.

25. Adjudicative Screening by Board Member and Dismissal

- (1) A Board Member may screen matters and may dismiss them without holding a hearing event, or after a hearing event, if:
 - (a) the Board is satisfied that it is without jurisdiction to hear the appeal;
 - (b) the Board is of the opinion that the proceeding is frivolous or vexatious, is commenced in bad faith or only for the purpose of delay;
 - (c) the Board is of the opinion that the reasons set out in the appeal do not disclose any apparent statutory ground on which the Board can make a decision; or
 - (d) the appellant has not responded to a request by the Board for further information within the time specified by the Board.

26. Notice before Dismissal

Before dismissing a matter, the Board will notify the appellant and provide the appellant with an opportunity to respond within the time stated in the Board's notification. If no response is received in that time, the matter will be dismissed without a hearing.

LATE APPEALS

27. Circumstances where Late Appeals May Be Considered

The Board may accept an appeal received after the time set out in any statute or regulation provided that:

- i. the appellant provides the Board with an affidavit satisfying the Board that: the appeal was mailed within the time set out;
 - ii. in the case of an appeal under the *Assessment Act*, the applicant did not receive the required notice and filed the appeal with the Board within 30 days after the applicant became aware of the assessment or classification or designation of school support that is the subject of the appeal; or
 - iii. in the case of an appeal under the *Municipal Act, 2001*, *City of Toronto Act, 2006* or *Provincial Land Tax Act, 2006* the applicant did not receive the required notice of the decision of council or the Minister and filed the appeal with the Board within 30 days after the applicant became aware of council's or the Minister's decision;
- (b) the affidavit states, in the case of paragraph 27(a)(ii) or (iii), above, that the notice was not received and provides the date on which the applicant or the applicant's representative became aware of the assessment, classification, designation or decision, as the case may be.

NOTICE

28. Notices

Any notices required by these Rules or a Board Order shall be given in writing, unless otherwise directed by the Board.

29. Notice of Hearing or Other Proceeding

The Board may direct a party to give notice of a hearing event or other proceeding to any person or class of persons, and may direct the method of providing the notice. An affidavit must be filed at the beginning of the proceeding to prove that notice was properly given.

SPECIAL NOTICES

30. Special Notice by Party of Request for Higher Assessment and/or Higher Tax Rate Property Class

- (1) If a party intends to request a change in property class to a class with a higher tax rate or an assessment that would result in a higher assessment than that fixed by the Municipal Property Assessment Corporation, it must give notice in writing of its intention to all other parties and the Board. This notice must include the amount of the assessment and the class requested. This notice must be given at least 50 days before the hearing of the matter, unless otherwise directed by the Board. If this notice of higher assessment is not served, the Board may refuse to consider the request.
- (2) Where a municipality objects to a settlement under section 39.1 of the *Assessment Act* it is not required to give notice of higher assessment unless it is

seeking an assessment higher than that originally returned by the Municipal Property Assessment Corporation or a class that produces a higher tax rate.

- (3) Where a municipality has not had notice of an appeal in time to allow for 50 days' notice and where it wishes to seek a higher assessment or class change, the Board shall abridge the time for service of the notice of higher assessment or class change. At the request of any of the other parties, the Board may adjourn the matter.

31. Notice after Statement(s)

Where a party has already delivered a Statement of Issues or a Statement of Response in a proceeding, the Rule regarding amendment of documents shall be deemed to apply to its notice of intention to request a higher assessment as if the notice were an amendment of document in the Standard Stream.

32. Special Notice by MPAC to Shift Burden of Proof (Reverse Onus)

If MPAC requests that the Board make a finding to have the burden of proof rest with the appellant as to the correctness of the current value of the land pursuant to section 40(18) of the *Assessment Act*, it must give notice:

- (a) in the Direct Hearing Stream, in writing to the other parties and this notice must be filed with the Board at least 21 days prior to the hearing;
- (b) in the Standard Stream, in the Response to the Statement of Issues.

Absent such notice, MPAC may not make such a request at a later date.

Comments on Issue Estoppel

Issue estoppel may bar a party from re-arguing an issue determined in an earlier hearing. It sometimes arises in assessment appeals because one valuation day is used for more than one year; the issue(s) remain(s) the same; the parties to the proceedings remain the same; and the Board's decision for a previous taxation year which applies the same valuation day is final.

33. Special Notice by Party of Issue Estoppel

If a party intends to raise issue estoppel at a hearing it must give notice:

- (a) in the Direct Hearing Stream in writing to the other parties at least 21 days prior to the hearing;
- (b) in the Standard Stream, in the Response to the Statement of Issues.

Absent such notice, the party may not rely on issue estoppel at the hearing.

SERVICE

34. Permitted Methods of Service

A party may serve a notice or document on another party or person by any of the following methods with their corresponding effective dates:

- (a) by mail (effective on posting and deemed received on the fifth day after mailing);
- (b) by courier (effective on the second business day after the day given to the courier);
- (c) by fax (effective the date imprinted on fax unless after 5:00 p.m.);
- (d) by e-mail only on the consent of the party being served;
- (e) by personal service; and
- (f) personal service is required when serving a non-party with a motion unless otherwise ordered by the Board.

35. Service

Where any document is required to be served, delivered or filed, including one commencing a proceeding or a motion or providing notice, it shall be sent to:

- (a) the party's representative, if any;
- (b) where the party is an individual and is not represented by a representative, that party directly;
- (c) where that party is a corporation and is not represented by a representative, the corporation's head office directly to the attention of an individual with apparent authority to receive the document;
- (d) where served on or filed with the Board, a local board or commission, or any department, ministry or agency of the federal, provincial or municipal government, an individual with apparent authority to receive the document;
- (e) where the party is the Municipal Property Assessment Corporation, its manager of case management;
- (f) where the party is a municipality, its municipal clerk;
- (g) where the party is the Minister, the Minister or delegate;
- (h) under the *Municipal Act, 2001* and the *City of Toronto Act, 2006*, the treasurer.

36. Proof of Service

Where proof of service is required in the first instance it may be by correspondence to the Board indicating the method and date of service. The Board may require a formal affidavit of service in appropriate circumstances.

*The Rules of Civil Procedure allow service by fax, as do the Board's Rules. The Rules of Civil Procedure deem service made BY FAX **after 5:00 p.m.** to be made on the next day. The Board's Rules deem it to be made on the next **business** day.*

37. If Faxed or E-mailed After 5:00 p.m.

Any document served by fax or e-mail after 5p.m. is deemed to have been served on the next business day.

38. Permission to Fax if More Than 12 Pages

If a document is more than 12 pages including the cover page, it must not be served by fax unless the person receiving the document has given permission in advance.

DOCUMENTS – FILING AND AMENDMENT

39. Amendment of Documents

- (1) On motion at any stage of a proceeding, the Board shall grant leave to amend a document on such terms as are just, unless prejudice would result that could not be compensated for by costs or an adjournment.
- (2) A party may amend the party's document:
 - (a) without leave, before the close of pleadings;
 - (b) on filing the consent of all parties and, where a person is to be added or substituted as a party, the person's consent; or
 - (c) with leave of the Board.

40. Motions for Amendment of Documents

A party seeking an order under Rule 39(2)(c) shall do so by way of a motion, with notice to all other parties, where:

- (a) the matter is in the Direct Hearing Stream and the Board has required the party to do so by way of an order; or
- (b) the matter is in the Standard Stream.

41. Prerequisites to Orders for Amendment of Documents

In determining whether to grant an order under Rule 39(2)(c), with or without such conditions as the Board considers just in the circumstances, the Board shall take into consideration the degree, if any, to which any party would be prejudiced by such an order.

42. Filing of Documents (Copies)

In addition to all other requirements, 2 copies of each document must be filed with the Board at the hearing unless the Board directs otherwise.

43. Timeframes for Filing of Statements

In the Standard Stream, where a party has served a Statement of Issues, a Statement of Response, or an amended Statement of Issues or of Response, the party must file that document with the Board either at least 60 days prior to the pre-hearing conference or no later than 16 months after filing the appeal.

44. Exchange or Filing of Documents

In addition to the requirements of any other Rule, the Board may direct the parties to exchange and file documents or submissions at any time, either at a party's request or on its own initiative.

DISCLOSURE, EVIDENCE, EXPERTS AND DISCOVERY

45. Disclosure Prior to a Hearing

- (1) In the Direct Hearing Stream, within 90 days of filing of an appeal of the assessment, MPAC shall disclose to the appellant and the municipality any assessment data together with the basis or analysis that supports the assessment that has been appealed.
- (2) In the Direct Hearing Stream, unless the Board orders otherwise, if a party intends to present documentary evidence at a hearing, at least 21 days before the hearing, the party must provide one copy of each document to each party.
 - (a) If documentary evidence is not exchanged at least 21 days before the hearing, the Board may refuse to accept the documents at the hearing.
 - (b) Material in response must be exchanged 14 days prior to the hearing and other parties may respond 7 days prior to the hearing.
- (3) In the Standard Stream, timeframes for disclosure of information will be set by Procedural Order and in accordance with the Board's guidelines (see also Rule 86).

46. Request to Admit Fact or Document

- (1) In the Standard Stream, a party may, at any time, by serving a request to admit, request any other party to admit for the purposes of the proceeding only, the truth of a fact or the authenticity of a document.
- (2) A copy of any document mentioned in the request shall, where practicable, be served with the request, unless a copy is already in the possession of the other party.

47. Response to Request to Admit

- (1) A party on whom a request to admit is served shall respond to it within 21 days after it is served by serving on the requesting party a response to the request to admit.
- (2) Where the party on whom the request is served fails to serve a response, the party shall be deemed for the purpose of the proceeding only, to admit the truth of facts or the authenticity of the documents identified.
- (3) A party shall also be deemed, for the purposes of the proceeding only, to admit the truth of the facts or the authenticity of the documents mentioned in the request, unless the party's response:
 - (a) specifically denies the truth of a fact or the authenticity of a document mentioned in the request; or,
 - (b) refuses to admit the truth of a fact or the authenticity of a document and sets out the reason for the refusal.

48. Expert Reports

In the Standard Stream, at least 60 days before the hearing, unless the Board orders otherwise, the parties must provide one copy of any expert report to every other party. If a party intends to call an expert witness without a report, the party must provide a written statement of the opinion to be given, the facts upon which the opinion is based and the qualifications of the expert witness at least 60 days before the hearing.

49. Duty of Expert Witness

It is the duty of every expert engaged by or on behalf of a party who is to provide opinion evidence at a proceeding under these Rules to acknowledge either prior to (by executing the acknowledgment form attached to the Rules) or at the proceeding, that they are to:

- (a) provide opinion evidence that is fair, objective and non-partisan;
- (b) provide opinion evidence that is related only to the matters that are within the expert's area of expertise; and
- (c) provide such additional assistance as the Board may reasonably require to determine a matter in issue.

These duties prevail over any obligation owed by the expert to the party by whom or on whose behalf he or she is engaged.

50. Reply Reports

In the Standard Stream, at least 30 days before the hearing, unless the Board orders otherwise, a party who intends to provide a Reply report must provide one copy of any reply report to every other party.

51. Supplemental Reports

In the Standard Stream, at least 15 days before the hearing, unless the Board orders otherwise, a party who intends to provide a supplemental report must provide one copy of any supplemental report to every other party.

52. Written Argument

Unless the Board orders otherwise, if a party presents argument in writing at an in person hearing, the party must provide one copy of the written argument for each panel member, and one copy for each other party.

53. Examination and Copying of Board Documents

A person may examine and make copies of any document filed with the Board, and may view any visual evidence, unless an Act or a court or Board order provides otherwise. There is a fee for copying documents.

54. Confidential Documents

The Board may order that any document filed with an application or at a hearing be treated as confidential, be sealed and not form part of the public record.

55. Return of Exhibits

Parties are encouraged to file true copies of exhibits rather than originals. Exhibits (*written or visual evidence*) of all types introduced at a hearing will be kept for 180 days after the Board decision is issued or is mailed, provided that the exhibits are not required for appellate review. The person introducing an exhibit may ask for its return after this time, and it may be given back if the Board agrees. If no such request is made, it becomes the property of the Board and may be archived. **Exhibits will not be returned on the day of the hearing under any circumstances.**

56. Order for Discovery

- (1) The Board may grant an order for discovery where needed for a party to obtain necessary information from another party. This will only be granted where the party has requested the information and it has been refused, or no answer was received. This order must be requested by notice of motion, together with an

affidavit, which sets out the efforts made to obtain the desired information, and the reasons why the requested information is needed. The Board may make an order for:

- (a) any person (*usually only a party*) to provide an affidavit containing a list of relevant documents which that person possesses;
 - (b) the delivery of documents;
 - (c) the examination for discovery of any party;
 - (d) an examination for discovery by written questions;
 - (e) the inspection, photographing and testing of property;
 - (f) the examination of a witness before the commencement of a proceeding (under the *Rules of Civil Procedure*); or
 - (g) any other form of discovery.
- (2) The Board may impose conditions concerning the timing, manner and scope of discovery; no party shall, in conducting oral examinations for discovery exceed a total of 2 hours of examination, regardless of the number of parties or other persons to be examined except with leave of the Board. If an order for discovery is obtained, the *Rules of Civil Procedure* concerning discovery will guide Board proceedings unless the Board orders otherwise.

NOTE: *Inspection in paragraph (e) above is different from inspection in sections 10 and 11 of the Assessment Act, which refer to an inspection for preparation of the assessment roll.*

MOTIONS

57. Date for Motion and Notice of Motion

A person making a motion must first obtain from the Board's Case Coordinator a hearing date, if an oral or electronic motion. Once a date or permission is obtained, a notice of motion must be provided to the other parties. The notice of motion must be submitted with an affidavit setting out a clear and brief statement of the facts by a person with either first-hand knowledge or information and belief about the facts. A party may cross-examine on an affidavit filed on a motion provided the party proceeds with reasonable diligence.

58. Serving the Notice of Motion

Unless the Board agrees to a lesser time, the notice of motion and all supporting documents must be served at least 10 days before the date for the hearing of the motion. A notice of motion must be served on all parties, the Board Registrar, and any other person as directed by the Board. An affidavit stating that this was done must be filed with the Board before or at the hearing of the motion.

59. Notice by Responding Party

A responding party must serve a notice of response if that party intends:

- (a) to rely on any grounds (*reasons*) or documents not provided by the moving party;
or
- (b) to use an affidavit as evidence (in which case the affidavit must be attached to the notice of response and include a clear and brief statement of the facts, by a person with either first-hand knowledge or information and belief about the facts).

60. Service of the Notice of Response for Hearings

Unless the Board agrees to a shorter time, the notice of response shall be served at least 5 days before the hearing of the motion; and shall be served on all parties, any other person directed by the Board and on the Board Registrar. An affidavit proving service and 2 copies of the notice of response shall be provided to the Board Member at the hearing in addition to serving the Registrar.

61. Oral Evidence

Generally, oral evidence is not required at a motion. If oral evidence is required, permission must be requested from the Board upon filing the motion or response. The Board will make a determination prior to the motion.

62. Oral Submissions

A party bringing a motion and those responding to it may make oral submissions at the hearing of a motion, whether the hearing is held in person or by electronic hearing.

63. Motions Made at Oral Hearing

A motion may be made at an oral hearing only if the need for the motion arises out of events at the hearing. The motion will be heard or decided in accordance with any procedures ordered by the presiding Member. If the moving party is aware of the need for a motion before the hearing, the moving party should respect the other parties' right to notice and serve a notice of motion under the Rules and request that the Board reduce the time required for service of the notice, if necessary.

64. Parties and Participants

Any person, other than the applicant and any person made a party by statute, who wishes to take part in a proceeding either as a party or a participant must:

- (a) bring a motion to be added as a party or a participant, as the case may be;
- (b) give written notice to the Board and every party of that person's intention to bring the motion; and
- (c) where required to do so by the Board, provide proof of having given such notice.

SETTLEMENT BEFORE BOARD PROCEEDINGS

65. Procedure if Settlement Before Board Hearing Event

Where the parties reach a settlement before any hearing event is held, the Board may hold a brief hearing into the terms of the settlement. If all statutory requirements are satisfied, the Board may issue a decision approving the settlement, with any necessary amendments. The Board at an electronic hearing may not accept recommendations or settlements and require the parties to appear at an in person hearing or in the alternative submit Minutes of Settlement to the Board.

66. Minutes of Settlement

Minutes of Settlement must be signed by all participating parties including statutory parties, unless submitted at a hearing of which notice was given to all parties and a party failed to appear. In this case it is not necessary to obtain the signature of the party who did not appear. Minutes of Settlement must indicate the decision to be recorded for each appeal number. Minutes of Settlement must contain the following, if applicable:

- (a) name of assessed person;
- (b) roll number(s);
- (c) appeal number(s);

- (d) municipal address(es);
- (e) taxation year(s), including commencement dates for appeals of notices of assessment under sections 32, 33 or 34 of the *Assessment Act*;
- (f) assessment for each roll number and taxation year dealt with in the settlement;
- (g) if a supplementary assessment, the total assessment and a breakdown (if necessary) of the property class change and improvement increase;
- (h) changes (other than the amount) which the parties wish the Board to order;
- (i) a statement that the parties certify that the contents relate wholly to matters that are properly before the Board, and contain all the information that should be in the Board's order; and
- (j) the property's class(es).

WITHDRAWAL OF APPEALS

67. Withdrawal of Appeal

An appellant may, by notice of withdrawal to the Board and the other parties, withdraw the appeal, as follows:

- (a) in the case of an appeal under the *Assessment Act* where another party has given notice of its intention to request a higher assessment and/or higher tax rate property class with leave of the Board;
- (b) in all other cases, including when an applicant has filed an appeal, as of right until a hearing has commenced. Once a hearing has commenced an appeal cannot be withdrawn without leave of the Board.

68. Disposition of Motion to Withdraw

On hearing a motion to withdraw under these Rules, the Board may:

- (a) grant the request to withdraw, with or without conditions;
- (b) refuse the request to withdraw and proceed immediately to hear the appeal; or
- (c) adjourn the matter and set a new hearing date.

COMPELLING ATTENDANCE OF WITNESS BY SUMMONS

69. Summons from Board

A party who wishes to require a witness in Ontario to attend an oral or electronic hearing may serve a summons in a form available from the Board Registrar, for the fee set by the Board. The party should obtain a request for summons form from the Board, and return the completed form. The summons will be signed and issued by the Chair or delegate. However, the Board may refuse to issue a summons unless an affidavit is provided indicating how the witness' evidence is relevant to the matter. If the Board is not satisfied from the affidavit that the evidence is relevant, it will hold a motion to determine the question. It may cancel a summons for valid reasons. Board Members may also issue a

summons without the witness' name in urgent cases. The party or representative must then complete the form and insert the name(s) of the witnesses required.

(A summons may be refused if, after hearing a motion, the Board decides that witness' testimony is not material to the matter, or admissible in evidence at a hearing. Once issued, the summons will require the witness to attend the hearing at a time and place stated in the summons, or as arranged with the person issuing the summons, and may require the witness to bring relevant documents and other items set out in the summons.)

70. Delivering the Summons

A summons must be delivered to the witness **personally** at least 5 days before the time for attendance. At the same time, the attendance money that is paid for attendance before the Superior Court of Justice shall be paid or tendered to the witness.

LANGUAGE OF PROCEEDINGS

71. Use of English, French and Sign Language

The Board may conduct proceedings in English, in French or bilingually or where requested, with sign language interpretation.

72. Where French or Sign Language is Used

A person who wishes a proceeding be conducted in French or bilingually or requiring sign language interpretation must notify the Registrar at least 25 days before the hearing.

73. Where Interpreter is Required

A person who requires interpretation services in a language other than English, French, or a recognized sign language in order to participate in a hearing must provide a qualified interpreter at his or her own expense. Similarly, if an interpreter is required for a witness whose language is not English, French or a recognized sign language, the party calling the witness must provide a qualified interpreter at his or her own expense.

74. Presiding Member or Panel

French language or bilingual proceedings shall be presided over by a Member or panel who speaks English and French.

75. Documents in English or French

A party may file pleadings and other documents in French or English. Where written evidence or a submission is provided in either English or French, the Board shall provide translation into English or French if a party requests it and the Board considers it necessary for the fair determination of the matter.

76. Decisions

Written reasons (if requested) and decisions of the Board for French language or bilingual proceedings will be issued in English and French.

STREAMING

Comments on Streaming

There are two types of streams: 1) Direct Hearing Stream and 2) Standard Stream.

*In the **Direct Hearing Stream** appeals proceed directly to a hearing without the exchange of Statements of Issues and Responses. Pre-hearing procedures are very limited and there is generally no need for pre-hearing conferences or examinations for discovery. A party and/or representative (other than a lawyer appearing as counsel) may act as both an advocate and a witness during proceedings. Most residential matters will be heard through the Direct Hearing Stream. Generally, appeals in this stream will be completed within one year of filing of the appeal.*

*The **Standard Stream** is intended for higher value appeals and more complex issues that require greater disclosure prior to the hearing. In the Standard Stream parties are required to exchange pleadings (Statements of Issues, Responses and Replies) prior to the hearing. It also includes procedural requirements for disclosure and/or discovery, early exchange of expert reports, benchmarks for the achievement of process steps and time limits on processes before and during the hearing. Time-limited examinations for discovery may be conducted where required. Representatives may not act as both an advocate and a witness unless the Board orders otherwise and the representative is not a lawyer appearing as counsel. Appeals in this stream will generally be completed within 2 to 3 years of filing the appeal.*

In choosing the appropriate stream for a matter, or when deciding whether to transfer a matter from one stream to another, the Board will consider which stream provides the just, most expeditious and least expensive determination of the matter and the following relevant factors:

- *value of the property and nature of the dispute;*
- *property classification and code;*
- *complexity and novelty of the issues;*
- *the nature of facts and evidence;*
- *complexity and quality of the documents;*
- *likelihood of settlement; number of parties involved;*
- *likely number of witnesses and/or expert witnesses;*
- *number of procedural steps that may be needed to narrow the issues and expedite resolution;*
- *estimated duration of the hearing;*
- *applicant representation;*
- *remedies requested;*

- *parties' preferences for a particular stream;*
- *potential for any jurisdictional challenges.*

Generally, proceedings in the Standard Stream will follow a timetable of dates set out in a draft Procedural Order to be finalized at a pre-hearing conference. The Board expects the parties to apply for a pre-hearing conference after the exchange of pleadings and to file a draft Procedural Order in accordance with the Board's requirements, including setting a hearing date on consent within certain time limits. The draft Procedural Order and the dates and timelines contained therein will be finalized and approved by the Board at a pre-hearing conference.

77. Types of Streams

The Board may schedule a matter into either the Direct Hearing Stream or the Standard Stream.

78. Request for Reconsideration

If there has been a request for reconsideration completed by MPAC, an appeal will be streamed into the Direct Hearing Stream.

79. Transfer to a Different Stream

Parties may transfer from the Standard Stream to the Direct Hearing Stream as of right but must do so no later than 6 months after filing the appeal. Transfer from the Direct Stream to the Standard Stream will require the parties to bring a motion before the Board to argue the matter of transfer no later than 120 days after filing the appeal. After these timeframes, transfer to a different stream is not permitted unless the Board determines that it is appropriate. The Board, on its own initiative, may re-direct a matter at any time into a different stream in order to expedite resolution of the matter.

CONSOLIDATION

80. Consolidated Hearings or Hearing Matters Together

When the Board considers that two or more matters are related to each other by common facts, issues, questions of law or for any other reason, the Board may:

- (a) with the consent of the parties, order that the matters be **consolidated or heard at the same time;**
- (b) order that the matters be heard one after the other; or
- (c) stay or adjourn any matter until the determination of any other matter.

81. Effect of Consolidated Proceedings

- (a) identify the parties and participants and determine the issues raised by the appeal;
- (b) identify facts or evidence the parties may agree upon or on which the Board may make a binding decision;
- (c) obtain admissions that may simplify the hearing;
- (d) provide directions for exchange of witness lists, expert witness statements and reports; for meetings of experts; and for further disclosure where necessary;
- (e) discuss opportunities for settlement, including possible use of mediation or other dispute resolution processes;
- (f) fix a date and place for the hearing and estimate its length, and encourage the parties to agree upon the dates for any procedural steps;
- (g) discuss issues of confidentiality, including any need to hold a part of the hearing in the absence of the public or to seal documents;
- (h) address the production and cost of sharing joint document books; and
- (i) deal with any other matter that may assist in a fair, cost-effective and expeditious resolution of the issues.

82. Pre-hearing Conference – Direct Hearing Stream

One pre-hearing conference may be held in the Direct Hearing Stream if doing so is consistent with the intent of the Direct Hearing Stream, is proportionate to the issues under appeal and assists in an expeditious resolution of the appeal.

83. Pre-hearing Conference and Approval of Procedural Order – Standard Stream

- (1) The purpose of a pre-hearing conference is for the Board to give direction and approve the Procedural Order drafted by the parties. The Board will inquire as to the status of the appeal, give direction and issue a Procedural Order which will set a hearing date.
- (2) Prior to a pre-hearing conference to approve a draft Procedural Order and not more than 6 months after filing the appeal the parties must have done the following:
 - (a) MPAC has released the assessment data requested;
 - (b) the appellant has served a Statement of Issues on all parties; and
 - (c) the other parties have served their respective Statement(s) of Response.

84. Failure to Obtain an Approved Procedural Order

If the parties have not filed a request for a pre-hearing conference and do not have an approved Procedural Order within 18 months after filing the appeal, the Board will set a peremptory pre-hearing date and require that the parties abide by the terms of a Procedural Order which will set benchmarks and processes designed to resolve the appeal(s) within 2 to 3 years.

85. Sample Procedural Order and Meeting Before Pre-hearing Conference

The Board may provide a sample Procedural Order to the parties before the pre-hearing conference. The parties are expected to meet before the pre-hearing conference to consider the matters set out in Rule 84 and present recommendations to the Board for the conduct of the hearing.

86. Serving Notice of a Pre-hearing Conference

The Board will give the applicant a Notice of Pre-hearing Conference which provides the time and place of the pre-hearing conference. The applicant must serve this on those persons entitled to Notice of the Pre-hearing Conference and provide an affidavit to the Board, at the conference, to prove service of the notice.

87. Conversion from One Procedure to Another

The Board Member may, at any time, conduct a procedural discussion or a pre-hearing conference and may convert from one to another. The Board will state in the notice of a pre-hearing conference that the parties are expected to arrive prepared for a procedural and settlement conference, where evidence or formal statements may be heard. Even if no settlement is reached, the Board may proceed to make a final decision on any evidence received during the conference.

88. Board Order Following

The Member conducting the pre-hearing conference will issue an order that may decide any of the matters considered at the conference and provide procedural directions for any subsequent hearing event.

89. Hearing Member Bound

The Member conducting the hearing or any subsequent hearing event is bound by the order resulting from the pre-hearing conference unless the Member is satisfied that there is good reason to vary the order.

FORM OF STATEMENTS***Comments on Form of Statements***

Statements of Issues and of Response are to be used to bring focus to matters in the Standard Stream and are to include the required information. Parties to a hearing are usually the assessed person, MPAC and the municipality, but may also include the Minister and any other parties added by the Board.

90. Statement of Issues and Responses

Statements of Issues and Responses shall contain at least the following information, as applicable:

If the issue is current value:

- (a) the current value requested and how it is calculated;
- (b) a full statement of every issue that the party intends to raise, including identification of similar property to be referred to by the appellant, if any;
- (c) identification of the vicinity claimed by the party; and
- (d) a listing of the information/documentation known at the time of disclosure and to be produced in evidence at the hearing.

If the issue is the equity of the assessment under s. 44(3) of the *Assessment Act*:

- (a) the assessment requested;
- (b) identification of the vicinity claimed by the party; and
- (c) identification of similar property in the vicinity to be relied on by the appellant.

If the issue is the classification of the property:

- (a) the classification requested;
- (b) a full statement of the grounds to support this classification; and
- (c) a listing of the information/documentation known at the time of disclosure and to be produced in evidence at the hearing.

If the issue is the cancellation, reduction or refund of taxes pursuant to the Board's authority under the *Municipal Act*; *Municipal Act, 2001*; *City of Toronto Act, 2006*; or *Provincial Land Tax Act, 2006*:

- (a) the amount of taxes that have been paid or are owing;
- (b) the proposed amount of the refund or reduction;
- (c) a full statement of the grounds to support the cancellation, reduction or refund of taxes; and
- (d) a listing of the information/documentation known at the time of disclosure and to be produced in evidence at the hearing.

91. Filing with the Board

The Board requires Statements of Issues and Responses to be filed with the Board according to Rule 43.

ADJOURNMENTS

Comments on Adjournments

Hearing dates are fixed and will proceed as scheduled unless an adjournment is granted. The Board expects parties to be ready for hearings and attend on time. The Board, parties and participants invest significant resources in preparing for scheduled hearings. Postponements may result in delays in completing hearings, substantial cost to the tribunal and inconvenience to other parties. Adjournments will not be granted automatically, even where parties consent.

92. Hearing Dates Fixed

Hearing events will take place on the date set unless the Board agrees to an adjournment. The main consideration is whether an adjournment is necessary to permit a fair hearing, versus the cost of any delay for all parties. The Board will not grant last minute adjournments, except for unavoidable emergencies such as illnesses so close to the hearing date that another representative or witness cannot be obtained. The Board must be informed of these emergencies as soon as possible.

93. Requests for Adjournment

- (1) A party seeking an adjournment shall provide:
 - (a) notice to the Board and all the parties as soon as practicable; and
 - (b) written submissions and documentary evidence in support of the request that includes:
 - i. whether the request for adjournment is on consent;
 - ii. suggested new dates for the hearing event, that are no longer than 6 months after the date to be adjourned; and
 - iii. reasons for the adjournment.
- (2) Where an adjournment request has been made, the Board may convene an electronic or in-person hearing for the parties to speak to the request. Further, the Board may refuse to consider written requests that arise 10 days or less before the hearing, and may require the parties to attend on the scheduled hearing date to speak to the request. Parties should be prepared to proceed with the hearing in the event that the request is denied.

94. Powers of the Board upon Adjournment Request

The Board may:

- (a) grant the request;
- (b) grant the request and fix a new date; or where appropriate, the Board will schedule a pre-hearing conference about the status of the matter;
- (c) grant a shorter adjournment than requested;
- (d) deny the request, even if all parties have consented;
- (e) direct that the hearing proceed as scheduled but with a different witness, or evidence on another issue;
- (f) convert the scheduled date to a mediation or pre-hearing conference; or
- (g) make any other appropriate order.

MEDIATION

Comments on the Mediation Process

Mediation is a form of consensual dispute resolution in which the parties meet with a Board Member as mediator or neutral third party (rather than as adjudicator). All present try to settle the dispute in an informal way. The Board Member will attempt to identify the interests of each party and explore possible settlement of the issues in an appeal. The Board

expects that negotiations and agreements will reflect the purposes and objectives expressed in the applicable legislation and regulations.

For greater detail, refer to the ARB's Mediation Information Sheet. Provision for mediation may be included in procedural orders. For information about what to do when a matter has settled before a hearing, see Rules 65 and 66.

95. General Process

- (1) Parties may request mediation by writing to the Registrar.
- (2) The Board may direct parties to take part in mediation either of its own accord or at the request of the parties to assist in the resolution of issues in accordance with Rule 99.
- (3) The mediation may be held in person or by electronic conferencing.
- (4) The Board Member who presides at mediation in which one or more of the issues was not resolved shall not preside at the hearing of those issues.

96. Mediation Assessment

- (1) Prior to scheduling mediation the Board will evaluate the suitability of using mediation to resolve the issues, and will consider the following factors in its assessment:
 - (a) parties' consent to mediation;
 - (b) sufficiency of information disclosed and exchanged;
 - (c) the legal issues raised by the appeal;
 - (d) the results of any prior attempts to negotiate a settlement or resolve the matter;
 - (e) resources available to the parties to participate in a mediation and/or hearing;
 - (f) any public interest issues raised by the appeal; and,
 - (g) any other relevant considerations.
- (2) If the Board determines that mediation should proceed, mediation will be convened with the participation of all or two or more of the parties, should they provide their consent to each other and the Board.
- (3) The Board shall set the date of the mediation and direct how notice of the mediation will be given. The parties may be given short notice of a mediation event.

97. Disclosure in Advance of Mediation

Unless otherwise ordered, at least 21 days before the date set for the mediation, the parties shall prepare and deliver to the Board and to the other parties to the mediation a Mediation Brief that includes the following:

- (a) a list of participants/attendees;
- (b) an agreed statement of issue(s);

- (c) the status of negotiations, including any tentative agreements, if any;
- (d) a summary of positions/relevant facts/expert opinions/analysis and conclusions, including authorities relied upon (if any) in sufficient detail for mediation; and,
- (e) any other relevant materials that will assist in resolution of the dispute.

Parties may provide the Mediation Brief individually or jointly by agreement.

98. Mediation Discussions/Documents are Confidential

- (1) All documents created solely for the mediation or any statements made without prejudice for the purpose of resolving the dispute in mediation and any offer to settle shall be confidential, and cannot be introduced into evidence in the same or other proceeding without the consent of the party who created the document or made the statement or offer, and with the Board's approval.
- (2) Notes made by the Board Member presiding at mediation shall remain confidential and shall not be released to any person or admitted into evidence in any proceeding. The Board Member presiding at mediation is not competent or compellable in any proceeding to give evidence regarding the mediation discussions.

99. Mediation Procedure and Board Control of Process

At all mediations, the following apply:

- (a) the Board Member presiding has the discretion to determine the manner in which the mediation is to be conducted and, without limiting the generality of that discretion, may:
 - (i) make any order that can be made under these Rules;
 - (ii) facilitate discussion between the parties;
 - (iii) direct parties to exchange documents/information on a without prejudice basis;
 - (iv) meet with any party without the other parties present;
 - (v) provide non-binding opinions on any matter at issue;
 - (vi) provide an evaluation on the likelihood of success of a party on any matter at issue either to that party alone or with the consent of the party to another party as well;
 - (vii) cancel the mediation if any person attending as a party or on behalf of a party lacks the authority to enter into a binding resolution on any matter at issue;
 - (viii) adjourn the mediation; or,
 - (ix) refer any matter at issue to be scheduled for a hearing event.
- (b) the mediation is confidential and is to be held *in camera*; and,
- (c) at the conclusion of a mediation the Board Member presiding shall return to the parties any materials provided by them for the purpose of mediation.

100. Partial or No Resolution of Issues

- (1) If the parties do not settle all of the issues in dispute at mediation, the Board Member shall advise the Registrar that the matter has not settled.
- (2) No party who enters the hearing process subsequent to mediation will be allowed to raise issues in respect of which a mediated agreement has been reached without leave of the Board.

101. [Removed]

102. [Removed]

103. [Removed]

104. [Removed]

ELECTRONIC HEARINGS

105. Hearing Events by Teleconference or Videoconference

The Board may hold a hearing event by teleconference or videoconference or other automated means to determine:

- (a) any matter of procedure; and
- (b) any other matter, unless a party objects and the Board decides that holding an electronic hearing event is likely to cause significant prejudice to the party.

106. Factors the Board May Consider

In deciding whether to hold a hearing event by automated means, the Board may consider any relevant factors, such as:

- (a) the fairness and convenience to the parties;
- (b) the likelihood of the process being less costly, faster and more efficient;
- (c) whether it is a fair and accessible process for the parties;
- (d) whether the evidence or legal issues are suitable for an automated format; or
- (e) whether credibility may be an issue.

107. How to Object on Grounds of Significant Prejudice

A party who objects to an electronic hearing shall file and provide a copy to the other parties, a written objection containing a statement of its reasons for claiming significant prejudice and the facts and evidence supporting the objection, at least 10 days before the date of the hearing.

108. Board Decision on Objection

If the Board finds that an electronic hearing will not cause significant prejudice, it may confirm that it will hold an electronic hearing on the original date.

109. Protection for the Process

The Board may direct the arrangements for the electronic hearing to protect the integrity of the hearing process, including the security and confidentiality of evidence.

110. Videoconferences

All participants in videoconferences and all locations connected to the conference shall be in full view of the camera at all times, with minimal visual obstructions.

WRITTEN HEARINGS**111. Power to Hold Hearing Events by Written Submissions**

The Board may conduct the whole or any part of a hearing event in writing, unless a party satisfies the Board that there is good reason for not doing so. The objection must be filed within 10 days of the date of the notice of written hearing event.

112. Factors Board May Consider

In deciding whether to hold a written hearing, the Board may consider any relevant factors, such as:

- (a) the fairness and convenience to the parties;
- (b) the likelihood of the process being less costly, faster and more efficient;
- (c) whether facts and evidence may be agreed upon;
- (d) whether most of the issues are legal issues; and
- (e) whether oral testimony is likely to be necessary.

113. How to Object

A party who objects to a written hearing shall file and provide a copy to the other parties, a written objection providing details of its claim that there is a good reason for not holding the hearing event in written form, within 10 days of the notice of written hearing.

114. Procedure for Exchange of Documents in Written Hearings

If no notice of objection is received, the appellant shall provide to the Board and the other parties copies of its affidavit and submissions within 30 days after the date of the notice of the written hearing. If an objection has been made and rejected, the submissions should be filed 30 days from the date of the Board notice that the hearing would be held in written form. The submissions shall include:

- (a) the reasons for the appeal and the order requested;

- (b) the facts relied on;
- (c) the evidence supporting the facts; and
- (d) any law relied on.

The other parties wishing to respond shall do so by copy to all parties and the Board within 20 days of the date that the appellant's submissions were served, and shall include submissions, its affidavit and evidence. If a party has no submissions or evidence on any of the issues raised, this should be stated.

The appellant may reply to the other parties' responses with a copy to the Board within 10 days after the last date for service of the responses, and the reply shall be limited to submissions on the responses.

115. Requirement for Affidavit Evidence

Evidence in a written hearing must be by affidavit, and any documents filed shall be attached to an affidavit of a person having personal knowledge of the document. The Board may permit evidence to be filed in a different form or in electronic form as approved by the Board upon request.

CONDUCT OF PROCEEDINGS

116. Hearings to be Public

All Board hearing events will be open to the public except where the Board Chair, Vice Chair or Member determines that this is not possible or practical, such as mediations, some electronic or written hearings, or that a matter should be heard in the absence of the public.

117. Procedure at a Hearing

The Board may by order fix the procedure at a hearing event unless these Rules or an Act provides differently.

118. Commencement of Hearings

At the start of a hearing, the Board will confirm the name of the appellant and, for each property and/or assessment that is the subject of the hearing, the parties must confirm:

- (a) the roll number;
- (b) the name of the assessed person;
- (c) the municipal address;
- (d) the amount of the assessment, if applicable;
- (e) the property classes as returned on the roll, if applicable; and
- (f) any other information required by the governing legislation.

119. No Re-opening Without Leave

Once a hearing event has commenced, no party or participant who has been absent or otherwise has not taken part in that hearing event is entitled to have any part of the event re-opened or recommenced without leave of the Board.

120. Media Coverage - Photographic, Audio or Video Recording

Photographic, audio or video recording of a proceeding which is open to the public will be permitted only on conditions which the Board considers appropriate.

121. Request to Record Proceeding

A person wishing to record a proceeding must ask for authorization from the Chair as soon as possible after notice of the proceeding; from the presiding Member at the beginning of the proceeding; or as soon as the issue arises. The parties will be given the opportunity to comment on the request, and if the Board approves it, to make a request to vary the permission at any time. In evaluating the request, the Board will consider, among other issues:

- (a) whether the proceedings will be disturbed or disrupted;
- (b) any undue discomfort for any participant; and
- (c) any public interest in having proceedings accessible to all those affected or interested.

122. Conditions of Approval

The Board may approve recording on conditions, and the following conditions shall always apply to any approval to record:

- (a) only equipment, which does not produce a distracting noise or light, may be used, and it must be placed in one location approved by the Board;
- (b) a person recording shall not move about the hearing room while the proceeding is going on; and
- (c) the activity authorized will occur only within the times and portions of the proceeding determined by the Board.

123. Withdrawal of Approval

The Board may withdraw permission to record temporarily or permanently if the conditions are not met; if any of the conditions above become relevant; or if the Board in the circumstances cannot conduct a full and fair hearing.

124. Qualified Verbatim Reporters and Transcripts

The Board will permit a proceeding to be recorded by a qualified verbatim reporter, subject to the following:

- (a) any party may arrange for the attendance of a qualified verbatim reporter at his or her own expense for the purpose of recording all testimony, but submissions may only be recorded with leave of the Board;
- (b) before a qualified verbatim reporter is permitted to record only part of a proceeding, the party retaining the qualified verbatim reporter must obtain the consent of the Board. The Board may withhold its consent and shall not provide its consent if such a record would unduly prejudice any party;
- (c) if a party intends to make use of a transcript or partial transcript in a proceeding, the party shall notify the Board and the other parties to the proceedings of its intention and furnish a copy to the Board and the other parties free of charge;
- (d) the Board may, at its own expense and on notice to the parties, order a transcript or partial transcript from the qualified verbatim reporter without furnishing a copy of the transcript to the parties. In any such case, the Board will advise the parties that it has ordered the transcript and, where the Board orders a partial transcript, the Board shall notify the parties as to the part of the transcript that the Board has ordered.

BOARD DECISIONS AND WRITTEN REASONS

125. Request Required

A party who requires written reasons for a Board decision must make a request for written reasons at the conclusion of the hearing or in writing within 14 days of the end of the hearing. A party intending to ask for a review of the Board's decision **must request written reasons**.

126. Issuing a Board Decision

The Board Registrar will issue a written decision, unless the Board directs otherwise. The decision is effective on the date it is released, unless it states otherwise.

CORRECTING MINOR ERRORS IN DECISIONS

Comments on Minor Changes to Decisions

The Board may correct a minor error in decisions or reasons, such as typing errors, incorrect figures or the language used, if needed. Such a correction does not change the decision reached by the Board Member(s). The Board may make such corrections without notice or on request. Corrections will be sent to all the parties. If a different type of error is claimed, see the Rules pertaining to requests for review.

127. Correcting Minor Errors

The Board may at any time and without prior notice to the parties correct a technical or typographical error, error in calculation or similar minor error made in a decision or order, and may clarify a misstatement, ambiguity or other similar problem. There is no fee if a party requests this type of correction.

128. Processing Request as a Review Request

If a party requests a correction or clarification that in the Board's opinion is a request for a substantive change in the decision, the Board will treat it as a request for review.

129. Prohibition against Unilateral Communications

Following the end of a hearing and before the issuance of a decision or written reasons, where written reasons are requested, whichever is later, no party shall undertake communications directly with the Member presiding in that hearing with respect to that hearing without notice to and consent of all other parties to that hearing.

COSTS

Comments on Costs

The Rules relating to costs came into effect on July 2, 2012 and apply prospectively to all hearing events and conduct on or after that date. Effective April 2, 2013 the Rules of Practice and Procedure were amended; certain provisions relating to costs have been combined and the Rules have been renumbered.

130. Application, Scope of Costs Awards and Procedure for Request for Costs

Where a party believes that another party in the proceeding before the Board has acted unreasonably, frivolously, vexatiously, or in bad faith, that party may make a request to the Board for costs at the end of a hearing event. If the request for costs is not made before or

when the Board renders its decision at the end of the hearing event, the party seeking costs must file the request, with notice to all other parties to the proceeding, no later than 30 days after the written decision or written reasons of the Board are issued.

The Board may also exercise its authority to award costs under these Rules from one party to another or others on its own initiative, after permitting the party against whom costs are proposed to make submissions.

The Board may decide the issues of costs based on the written material or the Board may require brief oral submissions. In its costs decision, the Board may order to whom and by whom the costs are to be paid and fix the amount of the costs.

131. Party Requesting Costs

The party seeking a costs award must demonstrate to the Board's satisfaction that any requested costs are:

- (a) directly and necessarily incurred in relation to the proceeding before the Board;
- (b) reasonable in the circumstances;
- (c) properly documented and verified; and
- (d) consistent with the principles and criteria outlined in these Rules.

132. What to File with a Costs Request

When filing a costs request with the Board, the party seeking a costs award shall provide:

- (a) an explanation of how the requirements in Rules 133, 134 and 137 have been met; and
- (b) a summary statement with a calculation of the amount of costs requested, including particulars of fees and disbursements for lawyers and consultants, supported by time dockets, invoices, receipts and a detailed description of activities; where invoices or receipts are not obtainable for good reasons, the Board may accept a written record of individual disbursements and associated dates.

133. Responses to a Costs Request or Board's Costs Proposal

Where a party makes a costs request, any objection and associated argument by the party against whom costs are sought must be filed with the Board and given to the other parties within 14 days after the filing of the costs request or within such time as directed by the Board. The party seeking the costs then has 5 days or within such time frame as directed by the Board to file a reply.

Where the Board, on its own initiative, proposes to make a costs award, the party against whom costs are proposed must file any objection and associated argument and give them to the other parties within the time directed by the Board.

134. Considerations by the Board

The Board in determining whether a party has acted unreasonably, frivolously, vexatiously, or in bad faith shall consider all of the circumstances, including, without limiting the generality of the foregoing:

- (a) a party failing to attend a hearing before the Board or to send a representative when properly given notice, without contacting the Board and other parties to the hearing;
- (b) a party failing to comply in a timely manner with a Procedural Order, case or appeal(s) management plan or direction of the Board where the result therefrom is undue prejudice or delay to another party or parties in the proceedings before the Board;
- (c) a party failing to comply in a timely manner with the disclosure or discovery requirements set out in the Board's Rules of Practice or order or direction of the Board, including, without limiting the generality of the foregoing, the disclosure requirements respecting documents, particulars, or constitutional issues, provisions of responses to undertakings given on discovery including document disclosure; or
- (d) a party knowingly presenting false or misleading evidence.

135. When Costs may be Awarded

Where the Board finds that a party has acted unreasonably, frivolously, vexatiously, or in bad faith, the Board may order that party to pay the costs of another party or parties to the proceedings subject to Rule 139 respecting the amount of costs that may be ordered.

136. Amount of Costs Awards

Where the Board determines that an order for costs may be made under Rules 133 to 138:

- (a) the Board when determining the appropriate award of costs shall consider all the circumstances, including without limiting the generality of the foregoing, factors such as the seriousness of the misconduct, the amount of costs incurred by the party requesting costs, the conduct of the party requesting costs and offers to settle; and
- (b) the amount of costs shall not exceed the sum of \$1500.00 per day or up to \$750.00 for each half day or less.

RE-HEARING

137. Re-hearing

The Board may order that a matter be re-heard if a Notice of Hearing was not issued or a party failed to attend a scheduled hearing because of circumstances outside of the control of a party.

Note: This provision does not apply to situations in which a party is seeking a re-hearing based on grounds in support of an application to review a decision of the Board. This provision only applies to those rare situations in which a hearing could not take place because of an obvious situation where a party does not receive notice of a hearing or in situations in which a party could not attend a hearing and provide advance notice of their non-attendance because of, for example, a serious medical emergency arising just before the hearing event.

REVIEW OF A BOARD DECISION OR ORDER

Comments on Reviews and Re-hearings

*The Board must be convinced from the written material submitted in an affidavit that it is possible that there was an error in the original decision or process. Review requests will not be successful if they merely attempt to provide the same evidence or reargue the matter. **All parties must be copied on review requests by the requester. However, the other parties may not file material in response except at the request of the Board.***

The Board requires very good reasons for changing a final decision. It will not review a decision if in its view the basic conclusions will not change even though there is an error in the decision.

If the reason for the request is “new evidence,” the evidence must not have been available at the time of the hearing; the evidence must be credible, and material to the original result; the requester must act quickly upon becoming aware of it; and the prejudice to the requester must be far greater than the other parties’ right to a final decision.

138. Decisions Eligible for Review/Board’s Powers on Review

- (1) The Board may review all or part of any final decision at the request of a party or upon its own initiative, and may:
 - (a) confirm, vary, suspend, or cancel the decision; or
 - (b) order a re-hearing before a different Member.

- (2) The Board will not review:
 - (a) interim or interlocutory orders;
 - (b) interlocutory orders of costs awards;
 - (c) decisions on requests for review;
 - (d) decisions arising from re-hearings of matters resulting from a request for review.

139. Requirements to Consider a Request for Review/Refusal to Review

The Board may refuse a request to review an eligible decision if:

- (a) the request is filed later than 30 days after the Board decision and written reasons issue, unless the Board determines that there is good reason to extend this time;
- (b) in an incomplete request, the requester does not supply all of the information and materials required by Rule 145 within 21 days of the Board's notice; or
- (c) it is a second request by the same party raising the same or similar issues.

140. Contents of a Request

A request for review shall be made in writing to the Chair of the Board **within 30 days** of the issue of the Board's decision, shall be copied to all parties, and shall include:

- (a) the requester's full name, address, telephone and fax number (if any) and e-mail address (if any);
- (b) the full name, address, telephone and fax number (if any) and e-mail address (if any) of the requester's representative (if any);
- (c) the requester's or representative's signature;
- (d) brief reasons for the request;
- (e) the desired result;
- (f) any documents which support the request, including copies of the original decision and new evidence that was not available at the hearing ;
- (g) whether the requester has or will submit an application for leave to appeal or for judicial review to the court;
- (h) a filing fee of \$125.00 (cheque or money order payable to the Minister of Finance); and**
- (i) an affidavit stating the facts relied upon in support of the request.**

141. Receipt of Request for Review

- (1) Where a request for review has been received, the Board may:
 - (a) seek written submissions from the parties on the issue raised in the request;
 - (b) grant a motion to argue the question;
 - (c) grant a re-hearing without a motion; or
 - (d) confirm, vary, suspend or cancel the decision.

- (2) The Board will determine initially whether the request has met one or more of the eligible grounds for such a review without providing notice to the other parties. The Board may review or grant a motion request without submissions from other parties.

142. Grounds for Review

- (1) The Board may consider reviewing its decision if the grounds for the request raise a convincing and compelling case that the Board:

- (a) acted outside its jurisdiction;
- (b) violated the rules of natural justice or procedural fairness, including allegations of bias;
- (c) made an error of law or fact such that the Board would likely have reached a different decision;
- (d) should consider new evidence, which was not available at the time of the hearing, but that is credible and could have affected the result; or
- (e) heard false or misleading evidence from a party or witness, which was discovered only after the hearing and could have affected the result.

143. Review Motions and Re-hearings Procedure

- (1) Where the Board will hear a motion to argue the question or has granted a re-hearing, unless otherwise directed, the requester must:
 - (a) obtain a motion date or re-hearing date within 90 days of the Board letter granting the motion or re-hearing, or the decision will be nullified. (*This means that the requester must secure a date for the motion or re-hearing within 90 days, not that the motion or re-hearing must be held within 90 days.*) The requester must serve notice of the motion and any supporting material on the other parties who attended the hearing at least 30 days before the date set for the motion, unless the Board directs otherwise. The Rules regarding notices of response also apply to a review motion; and
 - (b) serve Notice of Motion and supporting materials on the other parties who attended the hearing, at least 30 days before the date set for the motion.
- (2) At the motion hearing, the parties will be expected to address whether the request meets the grounds for review.
- (3) Motions will generally be heard by a different Member than the one who made the original decision, unless the request is based on new evidence that was not available at the time of hearing, but is credible and could have affected the result; or is otherwise ordered by the Board.
- (4) Other than as stated in this Rule, the general motions procedure applies to parties to review motions.

APPENDIX A – Expert Duty Form



Assessment Review Board

ACKNOWLEDGMENT OF EXPERT'S DUTY

Hearing Number:

Region Number:

Municipality:

Roll Number:

Property Location:

Appeal Numbers:

1. My name is.....(*name*)

I live at the(*municipality*)

in the.....(*county or region*)

in the(*province*)

2. I have been engaged by or on behalf of.....(*name of party/parties*) to provide evidence in relation to the above-noted Board proceeding.

3. I acknowledge that it is my duty to provide evidence in relation to this proceeding as follows:

a. to provide opinion evidence that is fair, objective and non-partisan;

b. to provide opinion evidence that is related only to matters that are within my area of expertise; and

c. to provide such additional assistance as the Board may reasonably require, to determine a matter in issue.

4. I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

Date.....

Signature

APPENDIX B – ARB Sample Procedural Order



Environment and Land Tribunals Ontario

Tribunaux de l'environnement et de l'aménagement du territoire Ontario

Assessment Review Board

Commission de révision de l'évaluation foncière

Pre-Hearing Number:

Region Number:

Municipality:

Roll Numbers:

Appeal Numbers:

In the matter of section(s) 40 of the *Assessment Act*, R.S.O. 1990, c. A.31, as amended, and in the matter of appeal(s) with respect to taxation year/s with respect to premises known municipally as

BETWEEN:

Assessed Person /
Appellant

- and -

The Municipal Property Assessment Corporation,
Region No. and the (municipality)

Respondents

APPEARING:

- for the Assessed Person /
Appellant

- for the Municipal Property
Assessment Corporation

- for the (Municipality)

PROCEDURAL ORDER

This matter/These matters came before the Assessment Review Board at a pre-hearing event on _____ [*insert date before 30th Sept 2014*].

[*insert any narrative paragraphs as appropriate such as:*] The parties have already submitted and exchanged the:

- (a) GRAD Report and assessment data;
- (b) Statement of Issues;
- (c) Response(s);
- (d) Reply (ies).

The Board orders that:

1. The hearing will begin on _____ **[insert date or on a date to be set by the Board based on availability of hearing room space no later than ____]** at ____ a.m./p.m. at _____ in the municipality of _____. No adjournments or delays will be granted before or during the hearing except for serious hardship or illness. The Board's Rules apply to such requests.
2. The Board may vary or add to this Order at any time, either on request or as it sees fit. It may alter this Order by an oral ruling or by another written Order.
3. Any party requiring a subsequent pre-hearing event or a motion date may contact the Registrar to secure a date and shall serve and file motion materials indicating the nature of the order requested. The motion shall be heard by teleconference call.
4. **[Optional]** The municipality did not serve a Statement of Response, and therefore shall be deemed to have elected not to participate actively in the appeal. The municipality remains a statutory party and shall be entitled to notice of all future events and service of all material, but without leave of the Board shall not be entitled to raise issues or present evidence at the hearing. Limited cross-examination may be permitted.

Discovery and Production

5. The parties are expected to complete the process of discovery and production as necessary not later than *[insert date – 90 days prior to hearing]*. Discovery shall not exceed a total of two hours of examination, regardless of the number of parties or other persons to be examined. Any party may bring a motion in accordance with the Rules. In the absence of such a motion, the process shall be deemed to have been completed to the satisfaction of all parties by the above date and no further motions will be permitted.

Pre-Hearing Requirements: Witnesses, Document Exchange and Expert Evidence

6. Inspections of the subject property are to be completed no later than *[insert date – 6 months prior to hearing]*.
7. The following items are to be exchanged:
 - (a) A list of witnesses, including experts, and the order in which they will be called by *[insert date – 4 months prior to hearing]*;

- (b) Witness statements in the form of affidavits and including the documents that the witnesses will be referring to in their evidence by *[insert date – 4 months prior to hearing]*;
 - (c) Expert witness statements and reports by *[insert date – 2 months prior to hearing]*;
 - (d) An Agreed Statement of Facts will be submitted by *[insert date – 2 months prior to hearing]*; and,
 - (e) All other documentary evidence to be used at the hearing.
8. Any documents not disclosed by the timeframes set out above, may not be used as evidence at the hearing. Where a witness statement or expert report has not been provided by this date, the witness may not give evidence at the hearing.

Expert Witnesses and Evidence

9. Any party who provides a witness statement of expert witness and report must have the witness attend the hearing to give oral evidence, unless the party notifies the Board at least 10 days prior to the hearing that written evidence is not part of their record or unless all parties advise in writing that they do not dispute the contents of the affidavit.
10. **[Optional]** Expert witnesses who are under summons, but not paid to produce a report, do not have to file an expert witness statement; but the party calling them must file a brief outline of the expert's evidence.
11. **[Optional]** An expert witness shall prepare an expert witness statement, which shall list any reports prepared by the expert, or any other reports or documents to be relied on at the hearing. Copies of this must be provided by *[insert same date as in #7]*. Instead of a witness statement, the expert may file his or her entire report if it contains the required information. If this is not done, the Board may refuse to hear the expert's testimony.
12. **[Optional]** Meeting(s) of Expert Witnesses: Expert witnesses in the same field shall have at least one meeting early in the appeal process to try to resolve or reduce the issues for the hearing. The experts must prepare a joint report setting out the conclusions in respect of which they are in agreement, the conclusions in respect of which they are not in agreement and a brief outline of the reasons for their disagreements. ***[ALT: a list of agreed facts and the remaining issues to be addressed at a mediation session or hearing (as the case may be), and provide this joint report/list to all of the parties.]***

Other Evidence

Requests to Admit

13. A party may request any other to admit the truth of a fact or authenticity of a document, for the purposes of this proceeding only, by submitting a request to admit in accordance with the *Rules*

of Practice and Procedure. A copy of the document mentioned in the request shall be served with the request, unless it is already in the other party's possession.

14. A party shall be deemed to admit the truth of the facts or authenticity of the document for the purposes of the proceeding, unless within 21 days from receipt of the request the party submits a response that either specifically denies, or refuses to admit, the truth of a fact or authenticity of the a document mentioned in the request.

Confidentiality of Information

15. **[Optional]** The Board may place certain information related to the business of the parties, or third-parties that provided information, under seal at the request of the party or third-party that provided the information.

Change of Written Evidence, Witness Attendance and Agreed Statement of Facts

16. A party wishing to change written evidence, including witness statements, must make a written motion to the Board, in accordance with the *Rules of Practice and Procedure*.
17. A party who provides a witness's written evidence to the other parties must have the witness attend the hearing to give oral evidence, unless the party notifies the Board at least 7 days before the hearing that the written evidence is not part of their record.

Mediation and Settlement

18. **[Optional]** The parties shall consider a process of mediation as described in the Rules and, if appropriate, request the assistance of the Board not later than [*insert date – 90 days prior to hearing*]. The Board may also direct a process of mediation at any time.
19. **[Optional]** The parties shall participate in a settlement conference no later than [*insert date – 60 days prior to hearing*]. Parties should contact the Board Registrar or Case Coordinator to make appropriate arrangements. If the appeal(s) does not settle at that conference, the hearing shall proceed as scheduled.
20. The Board member who conducts either the mediation or the settlement conference shall not preside at the hearing of the matter, in the event that the matter does not settle.

Filing Materials for Hearing

21. All parties shall file jointly with the Board the following materials at the opening of the hearing:
 - (a) all affidavits that have been served under paragraph ___ above;
 - (b) the experts' joint report made under paragraph ___;
 - (c) a joint brief of documents, each party's written opening statement (not longer than 10 pages each); and
 - (d) the questions from the examinations for discovery of the adverse party, if any, upon which each party intends to rely as "read ins" as part of its case in chief.

Conduct of Hearing/Hearing Procedures

22. The length of the hearing will be about ____ days. The Appellant estimates that he/she/it will call __ witnesses; MPAC estimates that it will call ____ witnesses and the Municipality estimates that it will call __ witnesses.

23. At the hearing, subject to the discretion of the hearing panel:

- a) Each party is entitled to make an oral opening statement not exceeding 10 minutes in length;
- b) In respect of each witness who has sworn an affidavit, there will be a brief examination in chief not exceeding 60 minutes, followed by cross-examination of similar length by any adverse party or parties, and then re-examination subject to direction of the panel;
- c) In respect of any witnesses who have refused to provide an affidavit and are testifying under a summons to witness, testimony will proceed in accordance with the procedures that would otherwise apply provided that the panel may limit testimony if it is satisfied that the refusal creates an undue advantage;
- d) Each party will make an oral closing argument not exceeding 45 minutes and may also provide it in writing (no longer than 15 pages), as directed by the hearing panel.

This Member is not seized.

“ ”

Member

RELEASED ON:

COPIES TO: Parties who appeared/participated

AND TO: MPAC, Attn: Manager of Case Management