

**Town of Kennebunk, Maine  
Board of Assessment Review  
Minutes of January 31, 2017**

**1. Call to Order**

Richard Smith calls the meeting to order.

**2. Roll Call**

Board members are introduced: Carol Doucette, Administrative Assistant to the Board; Ralph Austin, Attorney for the Board; Caroline Parker, Member of the Board; Richard Smith, Member of the Board; and Mel Uchenick, Member of the Board.

**3. Format of Hearing**

Mr. Smith states the applicant will have the opportunity to present his application. He states that there is no one to present from the Assessor's office, but that the Board has received the written notes and minutes in their packets. He states that after Mr. Kormendy makes his presentation, the Board can start the Findings of Fact.

**4. Appeal from Board of Selectmen Decision Letter 12/16/16**

FY- 2014, FY – 2015 and FY 2016

Applicant Name: Tibor & Ibolya Kormendy

Parcel Location: 17 Tideview Terrace

Parcel ID: Map 70, Lot 4

Mr. Smith states that before they proceed, he would like to comment that this meeting is one that the Board has never had before. He states that they have never had to discuss an appeal from the Board of Selectmen. He states that it is the Board's request that Attorney Austin advise them as to the ground rules and what they, as a Board, would need to accomplish.

Mr. Austin states that this meeting is different than a typical abatement request. It is a request for appeal for the decision from the Board of Selectmen. He states that typically the appeal is based on the applicant's belief that the assessment is too high, and that they will present materials to prove that.

In this case, Mr. Austin states, the applicant (Mr. Kormendy) is appealing a decision by the Board of Selectmen on his application to the Selectmen for an abatement. State law, section 841 of Title 36 allows property owners two avenues to seek an abatement: the Assessor's office and the Board of Selectmen. He states that his application was not an appeal of a decision. He was making a new application to the Board of Selectmen seeking an abatement.

Mr. Austin states that there are two significant differences between an abatement application to the Assessor and an abatement application to the Board of Selectmen. First, is that the Assessor

can only look at and act upon an abatement for one fiscal year. The Board of Selectmen can look at three fiscal years.

Second, both the Board of Selectmen and the Assessor need to determine if there was any illegality, error, or irregularity in the assessment, but the Board of Selectmen can not look at valuation as one of its considerations. He states that is typically reserved for the Assessor and the Board of Assessment Review. He states that it is not appropriate to challenge the valuation in one's appeal before the Board of Selectmen.

Because this is not an appeal before the Assessor, the Assessor's office is not required to be present. He states that the Selectmen had the option of attending, but chose to allow their written decision and the minutes of their meeting to suffice.

As with any application before the Board of Assessment Review, the applicant is charged with the burden of proving that there was an illegality, an error, or an irregularity in the assessment.

Mr. Austin states that his role is neither to oppose nor support the applicant, but rather to provide legal advice to the Board. He states that he is also not a fact finder.

Mr. Kormendy states that his appearance before the Board is to raise a legal issue. He states that in 2013 an illegality took place. He refers to his first appearance before the Board where he received some very helpful advice from Mr. Uchenick. He provides copies of the minutes from the BAR meeting dated June 9, 2015 in which Mr. Uchenick is reported to have stated that the abatement request must satisfy specific criteria.

Mr. Kormendy states that he believes he met the third requirement, i.e. the applicant must prove that the assessment was fraudulent, dishonest or illegal. Mr. Kormendy references a letter he sent to the Assessor on March 2, 2015, where he attempted to address the illegality of the assessment. In the letter, he states that because he was not notified prior to the increase in his property values, it was an illegal procedure.

Mr. Kormendy states that, because he was unable to get any resolution from the Assessor's office, he appeared before the Board of Selectmen. He states that the Board of Selectmen also did not understand his point, that the Assessment, because the Town failed to notify him prior to its increase, was illegal. He states that, as a result, he has returned to the Board of Assessment Review.

Mr. Kormendy states that in his packet, he has included copies of the pertinent laws: the Maine statute referenced by Mr. Austin previously; the 14<sup>th</sup> Amendment to the US Constitution; and Article 1 #6A of the Maine Constitution. He states that he also included commentary from the Internet that defines due process. He states that "the Constitution guarantees fair process." He states that he raised this fairness in his first BAR hearing, but that he failed to make specific reference to due process. He states that due process requires that "no government agency should

be allowed to take an action against someone without prior notice and a prior opportunity to be heard.” He states that the assessment in 2013 was illegal, because the Town made the change without prior notice, and without a prior opportunity to be heard. The action violated his Constitutional rights. He states that he did not have a hearing, and he did not have an opportunity to be heard. He states that they acted illegally and violated his Constitutional rights with this illegal act. Therefore, the valuation is also illegal, and the solution to that problem is to vacate the decision of the Assessor’s office.

Mr. Uchenick asks Mr. Kormendy to repeat what the violation was.

Mr. Kormendy states that the violation was that there was no prior notice given to him that the Town was going to increase the property valuation, and that there was no opportunity to be heard, and he did not even discover the increase until a year later, because of no notice.

Mr. Smith asks if Mr. Kormendy’s entire argument is that, because he did not receive prior notice, it renders the assessment illegal.

Mr. Uchenick states that in reviewing the minutes with the Selectmen, the Town’s Attorney stated that in this case, with respect to the Assessor, due process does not apply, and therefore, he does not have to give taxpayers prior notification to an assessment.

Mr. Austin states that due process does apply, but the question is whether the taxpayer was afforded due process. Mr. Austin states that Maine Statutes do not require towns to give prior notice to taxpayers when the valuation is changed. That said, both the US Constitution and the Maine Constitution require that for any government action, the affected party be given due process of law. For example, it is true, in most instances, that before the government can take one’s property or take action, like that, they must give prior notice, and an opportunity to be heard. He states that there are some exceptions to that, in which, after the action is taken, there is still an opportunity to still be heard about that action and have that action reviewed. He states that Attorney Dale’s opinion to the Board of Selectmen was that there was a post-action opportunity to be heard through the abatement appeal process through the Board of Assessment Review.

Mr. Austin states that there is no specific case law in Maine regarding the prior notice issue. In analyzing it, he states that he agrees with the Town Attorney, that unlike some governmental actions, where, if it happens, there is no way of turning it back, and there was never an opportunity to be heard about that action. In this case, the Statute allows the property owner to file an abatement application, which allows the taxpayer an opportunity to be heard through the appeal process. He states that, it is his legal opinion that not giving the property owner prior notice did not deny him of due process, because due process can take place during the abatement process.

Mr. Smith asks Mr. Austin that, since there is a formal review process after the fact, which includes the ability of the taxpayer to appeal directly to the assessor; and if that is not satisfactory, the ability to appeal to the Board of Assessment Review; and if that proves unsatisfactory, the ability to appeal to a Court, that this after-the-fact process satisfies the Statute.

Mr. Austin states that, yes, the formal review process does satisfy the Constitutional requirement of due process.

Mr. Kormendy states that, with respect, he disagrees with the opinion, because due process is supposed to be an advance opportunity to deal with it. He states that the fact that they have opportunity to appeal is due process, but that it does not correct the initial violation. He states that if one walks down the street and is arrested, but doesn't know why, one may make the case that one's civil rights were violated. He states that this is the same thing.

Mr. Kormendy states that there was a case in 2003, where they did it properly.

Mr. Smith asks who "they" is.

Mr. Kormendy states the Assessors.

Mr. Smith asks, "here?"

Mr. Kormendy states here in Kennebunk.

Mr. Smith asks if it was during the town-wide reassessment.

Mr. Kormendy states that yes. He states that he received a letter that extended an invitation to be heard. He states that they know how to do it properly. He states that, for whatever reason, in 2013, they decided to do it with no prior notice and no opportunity to be heard. Even after, he states, that there was no notice that it had taken place. He states he has a constitutional right to due process, and that there is no law that requires them to give prior notice does not absolve the Town from their Constitutional responsibility. If he had been told and given the opportunity to deal with it properly, he could have done it. He states that having the opportunity to appear before the Board is a remedy, but that the violation has still occurred.

Mr. Austin states that from a legal aspect, because there is an opportunity to be heard after the fact, the requirement for due process is satisfied.

Mr. Smith asks Mr. Austin to explain the difference between the 2003 town-wide revaluation and the individual adjustments in 2013.

Mr. Austin states that he does not know the exact answer, but in his opinion, it was that everyone was notified so that taxpayers would have an opportunity meet with the company that performed

the assessment to correct errors, like number of bathrooms (“I only have two bathrooms, not three.”), etc. He states that there was no legal obligation for the town to do that.

Ms. Parker asks if there is a change in the market in a particular area in Kennebunk, and the values have increased dramatically prompting the town to adjust the values, do the home owners need to be notified ahead of time.

Mr. Austin states, in his opinion, no.

Mr. Kormendy states that Mr. Austin states that there was no legal obligation to inform the taxpayers in 2003, but that the letter he received in 2003, of which he failed to bring a copy, started out with saying that “according to Maine law”, they were conducting it. He states he does not know what law, because it was not specified. He states that Mr. Austin says one thing, but the letter says something else.

Mr. Smith states that the 2003 letter did not say that they were sending the letter based on Maine law, but that they were conducting the town-wide revaluation based on Maine law.

Mr. Kormendy asks if Mr. Smith has a copy of the letter.

Mr. Smith states he does not and reminds Mr. Kormendy that the burden of proof is his.

Mr. Kormendy states that he is not arguing 2003. He is arguing 2013.

Mr. Smith states that he remembers the letter, because he was on the Board at that time, and he also received one as a homeowner.

Mr. Kormendy states that 2013, the allegation was that they were correcting an error. He states that they have argued whether that was a just correction. As it turns out there were many errors. If he had had an opportunity at that time, he could have found out about all of the errors. He states that there is an error correction in process. The property, as it is, is substantially overvalued, and the Assessor’s are in the process of making corrections. That process could have taken place in 2013.

Mr. Kormendy states that 2013 damaged him, because he was deprived of his Constitutional right to deal with the errors at that time.

Mr. Smith states that this hearing was not to discuss the valuation or any changes. The purpose of the hearing was to discuss the allegation that the town did not follow the Constitution.

Mr. Kormendy states that his point is that the purpose of the 2013 revaluation, per the Assessor’s office, was to correct an error, but because he was not given an opportunity to be part of the process, his Constitutional rights were violated.

Mr. Smith states that he understands Mr. Kormendy's point.

Mr. Kormendy states that he thinks the Board needs to vote on whether they agree that his Constitutional rights were violated and what action should be taken. He states that the proper action to take is to vacate the increase.

Mr. Austin states that if the Board's decision is that there was a denial of due process and therefore the assessment was illegal, that the remedy would be to send a notification to the Assessor's office that the assessment be vacated and that it would have to be changed back to the value prior to the change. Further, if the Board determined that taxpayers should be notified prior to any increase in value, that the Assessor's office would be required to comply in the future.

Mr. Austin adds that it is his legal opinion that the taxpayer's right to due process was not violated.

Mr. Smith asks if Mr. Kormendy had received a tax bill that showed the increase.

Mr. Kormendy states that he did receive a tax bill, but that his taxes are paid through an Escrow account with the mortgage company, and so the increase evaded his attention until the next year.

Mr. Kormendy states that Mr. Austin summed it up, and that he agrees, that the correction for the illegal act is to vacate the assessment. He stated that is what he is seeking.

Mr. Smith asks Mr. Austin if there are any other procedures that the Board follow deliberations.

Mr. Austin states that it appears to be a legal issue. He states that it is a fact whether or not Mr. Kormendy received notice before the assessments went out, and so that does not appear to be in dispute.

Mr. Smith states that the dispute is whether or not it was necessary to give notice prior to the town increasing property values.

Mr. Uchenick asks if the Board can say with certainty that no statutes were violated.

Mr. Austin stated that it is his legal opinion that neither the Maine Constitution nor the US Constitution due process clauses were violated in the process because of the ability for a hearing after the action was taken, and that the Maine statutes regarding property taxes do not require notice to be given prior to a change in assessed valuation.

Mr. Kormendy asks if he can state his opinion. He states that he is not a lawyer, but that just because there is no law, or requirement, as Mr. Austin says, that can not trump the Constitution

of the United States. If the Constitution requires due process, the fact that no local law or real estate law reinforces that is not necessary. The Constitution stands on its own. We have a right to due process.

Mr. Smith asks if Mr. Kormendy researched whether other towns sent notices to taxpayers prior to making a change.

Mr. Kormendy said that he did not, but that he doesn't feel that it is relevant.

Mr. Smith asks for a decision.

Mr. Uchenick states that it is his belief that neither US Constitution nor the Maine Constitution have been violated and, therefore, the petition to this Board by Mr. Kormendy should be denied.

Mr. Smith adds that the Constitution has not been violated, because there is a provision for a taxpayer to have due process after the fact. He states that the procedure was followed appropriately, and the town and this Board have been given the legal opinion that that is sufficient to establish due process for the taxpayer.

Ms. Parker seconds.

Motion passes all in favor. Vote: 3-0

Mr. Smith tells Mr. Kormendy that his appeal has been denied. He states that the Board will send a letter to Mr. Kormendy with their opinion.

Mr. Austin states that there is no real Findings of Fact. He states that the motion is enough. He states that he will draft a letter.

## **5. Adjournment**

Ms. Parker moves to adjourn.

Mr. Uchenick seconds.

Motion passes all in favor. Vote: 3-0

Respectfully submitted.



Carol A. Doucette,  
Secretary to the Board of Assessment Review

Approved:  \_\_\_\_\_, Chairman

Date: 4/4/17