

BOARD OF ASSESSMENT REVIEW
SUSSEX COUNTY, RULES OF PROCEDURE

Article I. Authorization

The Board of Assessment Review of Sussex County (hereinafter referred to as "the Board") is established and authorized under 9 Del. C. § 7004.

Article II. Functions

Section 1. The Board shall hear timely and properly filed appeals from any property owner who alleges that their property has been improperly assessed for the purposes of taxation. The Board, on the basis of the evidence presented at the appeal hearing, shall determine whether the assessment is correct. If the Board finds that the assessment is greater than it should be, the Board shall order the Sussex County Department of Assessment (hereinafter "Assessment") to reduce the assessment as directed by the Board.

Article III. Duties of Assessment

Assessment shall, at the direction of the Board, receive and docket all appeals, prepare and mail all official correspondence of the Board, send out all notices required by law and by these Rules, keep records of all official actions of the Board, and perform all duties required by law and these Rules.

Article IV. Board Members

Section 1. The Board shall consist of five regular members and three alternate members, appointed in accordance with and serving terms as established by 9 Del. C. § 7004.

Article V. Chairperson

Section 1. The Chairperson shall preside at all meetings of the Board, decide all points of order or procedure, and perform all duties required by law or these Rules.

Section 2. In the absence of the Chairperson, those members of the Board who are present shall designate a member to serve as Acting Chairperson, who shall preside and who may exercise all powers with which the Chairperson is vested by law or these Rules.

Section 3. The Chairperson shall be permitted to vote on any motion pending before the Board or a panel thereof.

Article VI. Meetings and Hearings

Section 1. The Board shall meet at some public and convenient place in Sussex County from March 1 to May 31 of each year or until all appeals have been heard and acted upon during a year of reassessment to hear assessment appeals and to perform any other functions required by law or to conduct any administrative business. The Board and Assessment, in conjunction, may schedule additional meetings as needed. If there are no appeals or no other business before the Board for any designated month, the Board and Assessment, in conjunction, may cancel meetings for that month. The Board's hearing schedule may be modified as necessary to respond to scheduling conflicts or exigencies.

Section 2. A quorum of the Board is necessary to transact business at any meeting or hearing. A quorum shall consist of three (3) members appointed to the Board.

Section 3. The vote of a majority of the members present at any meeting or hearing of the Board shall be necessary to carry a motion.

Section 4. Any person desiring to take an appeal before the Board shall, within the periods established by law or Assessment, file written notice thereof with the Board on such forms as the Board may prescribe. Appeals of separate tax parcels shall be submitted on separate appeal forms. Appeals for separate tax parcels set forth on a single appeal form will not be considered.

Section 5.

- a. Each appellant and counsel or representative of record shall be notified of the date, place, and time that the hearing will be held.
- b. In addition to the notice to appellants required under subsection (a) of this section, Assessment shall, on behalf of the Board, give sufficient public notice of all meetings by the Board to comply with the provisions of the State Freedom of Information Act (29 Del. C. Ch. 100).

Section 6. The procedure for hearing before the Board shall be as follows:

- a. The Chairperson will read into the record a statement identifying the appellant, their property, and the amount of the assessment being appealed. The Chairperson shall also advise all parties of any time limitation applicable to the appeal hearing, in accordance with Section 8 of this Article.
- b. All witnesses who wish to testify before the Board shall testify under oath. Any form of attestation by which a witness signifies that they are bound in conscience to testify truthfully shall be sufficient. The Chairperson shall administer oaths for any, and all, witnesses.
- c. The appellant shall present testimony, including any legally admissible documentation or other evidence, in support of a lower assessment, so long as such evidence was disclosed in the appellant's appeal form.
- d. An Assessment representative may then cross-examine the appellant concerning the testimony and evidence presented.
- e. Board members may question the appellant on appellant's evidence.
- f. If the appellant has not presented any competent evidence of substantial overvaluation, the Board may, either on the motion of Assessment or a board member, deny the appeal without receiving further testimony.
- g. If the appellant has presented competent evidence of substantial overvaluation, an Assessment representative will present evidence in support of the assessment of record or any lower value they believe accurately reflects the fair market value of the property in issue as of the County's base date of July 1, 2023. Assessment shall not present any document not previously provided to any appellant who timely requests the production of Assessment's documents as provided for in these rules.
- h. If an Assessment representative has presented evidence, the appellant shall have the opportunity to cross-examine them concerning that evidence.
- i. After cross-examination by the appellant, Board members may question the Assessment

representative on Assessment's evidence.

- j. The appellant may then rebut any evidence presented by Assessment.
- k. Assessment will be given an opportunity to cross-examine the appellant on any rebuttal evidence.
- l. Upon the conclusion of the presentation of the evidence, the appellant and the Assessment representative may each make a short closing statement to the Board summarizing their positions but introducing no further evidence.
- m. Following the presentation of evidence by both sides within the time limits established at the outset of the hearing, the Board will consider all evidence submitted. Except in those cases set forth in Section 6 f. above, a member of the Board will make a motion to close the hearing and the Chairman will then take a roll-call Vote on the motion. In those cases disposed of by motion in Section 6 f. above, the passage of a motion of denial will serve as the closure of the public hearing.
- n. Within five business days following the date of the hearing, the Board will issue a written statement of its decision.

Section 7. If the appellant or their representative fails to appear at the appeal hearing within 15 minutes after the time scheduled, unless the appeal hearing has been continued, the appeal shall be deemed abandoned.

Section 8. Unless additional time is requested by the appellant, Assessment or a member of the Board, appellants and Assessment shall each be limited to fifteen (15) minutes to present evidence and argument regarding the assessment of residential property when neither appellant nor Assessment present the opinion of an expert (including an appraiser). In its discretion, the Board may establish time limits for all other appeal hearings. If the Board does establish such a time limit, it shall advise the appellant and Assessment of the limit at the time the appeal is noticed for hearing and shall equally divide the time allocated between the appellant and Assessment. The Board may, in the interests of justice, expand the time allocated to any party.

Section 9. If, as a result of delays experienced by the Board, an appellant's appeal cannot be heard within one-half hour after the time scheduled, the appellant shall be given a choice of waiting until the Board reaches their case or of receiving a continuance to the next available hearing date.

Section 10. All meetings, hearings, and proceedings of the Board, with the exception of executive sessions for the purposes set forth in 29 Del. C. §10004(b), shall be open to the public. A record of all public proceedings shall be maintained.

Article VII. Panel and Referees

Section 1. Whenever Sussex County has chosen under 9 Del. C. 7004 to authorize the appointment of Referees to hear appeals, all hearings shall conform to the procedures outlined in Article VI of these rules, with the following exceptions:

- a. Any referee shall maintain a summary record.
- b. The decision of a referee shall not be final but shall serve merely as a recommendation to the entire Board.
- c. At a meeting called in conformity with all applicable notice requirements of State law, a quorum of the Board shall meet to consider all recommendations by the referees.

d.

Article VIII. Data Requirements

Section 1. An appellant shall file for an assessment appeal on an official application form provided by Assessment. Unless otherwise directed by the Board or agreed by Assessment an appellant shall file one original copy of their application and all supporting documentation with the Board by the Assessment Department at assessmentappeals@sussexcountyde.gov or delivering them to the office of the Department of Assessment, PO Box 589, Georgetown, DE 19947 not later than 4:30PM on March 31st. For the purposes of this Rule, an application shall be considered late if it is not electronically received in Assessment's inbox, or physically received in the offices of Assessment by the aforesaid deadline, regardless of any postmark or other evidence of the date or time of the submission. Late applications shall be received but shall not be docketed, processed, or scheduled for hearing until the next annual appeal period, and any reduction in assessment shall not become effective until the commencement of the next tax year.

Section 2. With respect to any application that Assessment believes is deficient in that it does not contain competent evidence of substantial overvaluation, Assessment shall advise the appellant in writing of the deficiency and provide the appellant a period of no fewer than ten (10) days for its correction, and further advise the appellant that if the deficiency is not corrected, that Assessment shall present that appeal to the Chairperson for designation as a deficient filing. After the expiration of the correction period provided by Assessment, if Assessment believes that the deficiency has not been cured, Assessment may notify the Board Chairperson of its determination that the appeal is deficient. If the Chairperson agrees that the appeal is deficient, the appeal will be scheduled for a hearing solely for the Board to vote on whether the appeal should be dismissed as deficient. If the Chairperson disagrees that the appeal is deficient, the appeal shall be scheduled for a hearing on the merits. If the Board determines the appeal is deficient, the appeal shall be denied.

Section 3.

- a. An appellant relying on the comparable sales approach may cite only comparable sales, not allegedly comparable assessments. Comparable sales to be cited or otherwise relied upon by the appellant at an appeal hearing must be identified with specificity in the appellant's appeal form. The appellant will not be permitted to testify concerning any comparable sale not cited in their appeal form.
- b. An appellant asserting that Assessment must consider any relevant factor affecting the value of a property must identify through a supplemental filing submitted prior to the scheduled hearing all factors the appellant asserts the Board must consider. Factors not so identified shall be deemed waived by the appellant and shall not be considered by the Board.
- c. All appraisals presented by either an appellant or Assessment shall be prepared by an appraiser/assessor licensed or permitted to practice in the State of Delaware by the State Council on Real Estate Appraisers pursuant to 24 Del. C. §§ 4001 et seq.

Section 4. An appellant shall cite at least three but not more than six comparable sales on their appeal form or at the hearing. In the event that an appellant's appeal form cites more than six comparable sales, they will be permitted at the hearing to discuss only the first six listed on the form. This limitation shall not apply to appraisals prepared pursuant to Article VIII, Section 3(c).

Section 5.

- a. If the appellant wishes to rely upon any appraisal report at the appeal hearing, they must provide one copy of that report to Assessment and additional copies upon request by the Board. Upon a showing of good cause, the period for filing an appraisal report may be extended by the Chairperson; in no case, however, will Assessment schedule an appeal for hearing until the appellant has provided the appraisal report if the Chairperson grants an extension. If the appellant does not provide an appraisal report in the time allowed by the Chairperson, the Chairperson may grant an additional extension or direct Assessment to schedule the appeal for hearing.
- b. If Assessment intends to rely upon an appraisal report or other expert opinion (other than that of an employee of Assessment), Assessment shall produce the report and identify such expert to the Board and the appellant before the first scheduled date of the appeal hearing.
- c. The Board shall not permit the introduction of any appraisal report, or the evidence contained therein, unless the report has been previously provided as required under these Rules and the author of the report is present and available for cross-examination.

Section 6. Any appellant who files a timely appeal shall be provided a statement, substantially in the form set forth in Appendix I, outlining the legal standards applicable to assessment, the burdens of proof on assessment appeals, and the procedures followed by the Board.

Section 7.

- a. Any potential witness who may testify on the appellant's behalf shall be identified on the appellant's appeal form. If requested by the appellant either on the appeal form or before the first scheduled date of the appeal hearing, Assessment shall identify all witnesses who may testify on its behalf prior to the hearing. The Board shall not permit any witness to testify at the hearing unless previously identified as required under these Rules.
- b. An appellant may request that Assessment disclose each exhibit that it intends to present in its case-in-chief in support of the assessment. Such requests shall be made on the appeal form by checking a box on the form indicating that appellant seeks the production of Assessment's documents. Upon receipt of an appeal form indicating appellant's request for disclosure, Assessment shall make one copy of each exhibit available to the appellant at the Department of Assessment, during regular business hours, or by e-mail prior to the hearing. The receipt of documents in compliance with these Rules shall not serve as the basis for a continuance. Until the Board has determined that the appellant has presented competent evidence of substantial overvaluation, the Board shall not consider, or permit the appellant to reference, Assessment's exhibits. Assessment shall not be required to disclose any exhibit it may submit as impeachment evidence during the appellant's case-in-chief. Disclosure shall not be required for a hearing on deficiency held under Article VIII, Section 2. Documents not disclosed in compliance with these Rules shall not be considered at any hearing.

Article IX. Formal Decisions

Following each hearing, the Board shall forward to Assessment a brief written statement of its decision and the basis therefor. Assessment shall, in accordance with the provisions of State law, provide a copy of that statement to the appellant or the representative who appeared on their behalf at any hearing.

Article X. Judicial Review of Board Decisions

Section 1. At the conclusion of any hearing, the Chairperson shall advise the appellant of the right to seek judicial review in the Superior Court.

Section 2. In the event of an appeal to the Superior Court, the appellant shall prepare and file with the Prothonotary all required documents such as transcripts and a record of all evidence submitted to the Board.

Article XI. Application and Amendments

Section 1. The purpose of these Rules is to fairly and efficiently administer the appeals process. The Board, upon motion and approval by a majority of the members attending any meeting of the Board, may temporarily suspend any procedural or temporal rule set forth herein for good cause shown on a case-by-case basis.

Section 2. These Rules may be amended upon the motion of a quorum of the Board.

Appendix I

Summary of the Rules and Procedures on Appeals to The Board of Assessment Review of Sussex County

This is to acquaint you with the procedures followed by the Board of Assessment Review (the "Board") in assessment appeals, so that you will better understand the manner in which your case will be handled.

The Board sits to hear appeals from the assessed values placed on real property in Sussex County. To file an appeal, you must present an appeal form, to the Director of the Department of Assessment ("Assessment") by the deadline established by law. **Your appeal form must be completed fully and you must timely submit all required documentation in accordance with the Board's rules, or the Board may deny your appeal without a hearing on the merits of your appeal.**

You will be notified of the date, time, and place of your hearing.

Hearings are held before the Board, composed of five members, none of whom are Sussex County employees. If warranted, Sussex County may authorize the appointment of Referees to hear appeals; if it does so, the Referees' recommendation will be presented to the full Board,

The Board will provide the opportunity for Public Comment for any members of the public in attendance. For any individual wishing to provide a Public Comment, there shall be three (3) minute time-limit. These comments shall be restricted to matters pertinent to business being handled by the Board

At the beginning of the hearing, the Chairperson of the Board will read into the record a statement identifying you, your property, and the amount of the assessment under appeal. The Chairperson will also advise all parties of any time limitations for the hearing.

After being sworn, you may present to the Board testimony or evidence to support your claim that your assessment should be reduced. To prevail, you must convince the Board that the fair market value of your property, as of the County's base date of July 1, 2023, is less than the amount of your assessment. To do this, you may present evidence of sales of comparable properties. The assessed values of other properties, or the taxes paid by other property owners, are not acceptable as competent evidence of overvaluation. Do not cite the assessed values of other properties in your appeal.

If you are an individual, you may present your case yourself or through an attorney. If you are an entity, you may present your case yourself or through an attorney, or employee, but not through a non-employee third-party. If you wish to discuss sales of comparable properties in your area to demonstrate your claim of overvaluation, you must state specific parcel numbers, owners' names, and exact addresses in your appeal form; you may not testify concerning properties that were not included in your appeal form. You may also present evidence through qualified witnesses, if they have been identified in your appeal form. Written information such as appraisal reports will be considered only if the report has been previously provided to Assessment and the Board and the person who prepared the document is present at the hearing and available for cross-examination. After you have completed your testimony and presented your evidence, the County's representative may cross-examine you on the evidence you presented. Then, the members of the Board may also ask you questions.

If you are appealing the assessment of residential property and you are not presenting the testimony of an appraiser, you and Assessment will each be limited to 15 minutes to present your evidence. Requests for additional time must be made to the Chairperson prior to the hearing and may be granted at the Chairperson's discretion.

You may request that Assessment disclose its witnesses and exhibits to you. Requests for the disclosure of exhibits must be made on the appeal form by checking the appropriate box. Any request for the disclosure of witnesses must be made before the first scheduled date of your appeal hearing.

Under State law, there is a presumption Assessment has correctly valued your property. **YOU HAVE THE BURDEN OF SHOWING THAT YOUR ASSESSMENT IS INCORRECT.** If you fail to meet that initial burden, then Assessment may refuse to present any evidence in support of its assessment. Assessment is required to justify its assessment only after you have presented competent evidence of substantial overvaluation.

After you have presented your evidence and met your initial burden of showing substantial overvaluation, Assessment's representative will be sworn and will present evidence in support of the assessment. After Assessment has presented its evidence, you may cross-examine Assessment's representative about their testimony. Thereafter, the Board may also question Assessment's representative.

You will be given a final opportunity to rebut Assessment's evidence. Should you offer any rebuttal evidence, Assessment will be allowed to cross-examine you on that evidence.

After both sides have fully presented their positions within the time limits established at the outset of the hearing, the Board will consider all the evidence submitted. A member of the Board will make a motion and the Chairperson will then take a roll call vote on the motion to close the hearing. Following the hearing, you will be sent a written statement of the Board's ruling.

After the hearing is closed, the Board may vote to approve, deny, or defer until a later date. All votes of the Board must be taken in public and a written decision will be issued by the Board within five (5) business days.

The Board's decision may be appealed to the Superior Court within thirty (30) days after written notice of the decision has been issued. Superior Court appeals are based on the record presented before the Board. Ordinarily, no new evidence or testimony can be presented. The Board's decision will be upheld on appeal unless the Court is convinced that the Board acted "contrary to law, fraudulently, arbitrarily or capriciously."

The same procedures apply in a quarterly or supplemental tax appeal. The only difference between an annual appeal and a supplemental appeal is the scope of the Board's review. In an annual appeal, you may challenge your entire assessment. In a supplemental appeal, you may challenge only the amount by which your assessment was increased during that quarter.