



**JENSEN BAIRD**  
ATTORNEYS AT LAW

## **Section 706-A – the Power and the Glory: Use of 36 M.R.S. § 706-A by Assessors**

**Maine Chapter of IAAO  
March 9, 2023  
Augusta, ME**

**Presented By:  
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**§706-A. Taxpayers to list property; notice; penalty; verification**

**1. Taxpayers to list property; inquiries.** Before making an assessment, the assessor may give timely notice in writing to all persons liable to taxation or qualifying for an exemption subject to full or partial reimbursement by the State to furnish to the assessor true and perfect lists of all the property the taxpayer possessed on the first day of April of the same year and may at the time of the notice or thereafter require the taxpayer to answer in writing all proper inquiries as to the nature, situation and value of the taxpayer's property liable to be taxed in the State or subject to an exemption subject to full or partial reimbursement by the State. The list and answers are not conclusive upon the assessor.

As may be reasonably necessary to ascertain the value of property according to the income approach to value pursuant to the requirements of section 208-A or generally accepted assessing practices, these inquiries may seek information about income and expense, manufacturing or operational efficiencies, manufactured or generated sales price trends or other related information.

A taxpayer has 30 days from receipt of a request for a true and perfect list or of proper inquiries to respond to the request or inquiries. Upon written request to the assessor, a taxpayer is entitled to a 30-day extension to respond to the request for a true and perfect list or proper inquiries, and the assessor may at any time grant additional extensions upon written request. Information provided by the taxpayer in response to an inquiry that is proprietary information, and is clearly labeled by the taxpayer as proprietary and confidential information, is confidential and is not a public record for purposes of Title 1, chapter 13.

A notice to or inquiry of a taxpayer made under this section may be by mail directed to the last known address of the taxpayer or by any other method that provides reasonable notice to the taxpayer.

If notice is given by mail and the taxpayer does not furnish the list and answers to all proper inquiries, the taxpayer may not apply to the assessor for an abatement or appeal an application for abatement of those taxes unless the taxpayer furnishes the list and answers with the application and satisfies the assessing authority or authority to whom an appeal is made that the taxpayer was unable to furnish the list and answers in the time required. The list and answers are not conclusive upon the assessor.

If the assessor fails to give notice by mail, the taxpayer is not prohibited from applying for an abatement; however, upon demand, the taxpayer shall furnish the list and answer in writing all proper inquiries as to the nature, situation and value of the taxpayer's property liable to be taxed in the State. A taxpayer's refusal or neglect to answer the inquiries bars an appeal, but the list and answers are not conclusive upon the assessor.

The assessor may require the person furnishing the list and answers to all proper inquiries to subscribe under oath to the truth of the list and answers.

[PL 2021, c. 630, Pt. B, §3 (AMD).]

**2. Penalty.** It is unlawful for any public official or any employee, agent, attorney or consultant of the taxing jurisdiction to willfully disclose any taxpayer information made confidential by this section or examine information made confidential by this section for any purpose other than the conduct of official duties pertaining to property tax administration. Information made confidential by this section may be disclosed:

- A. To the State Tax Assessor, who shall treat such information as confidential for purposes of section 191, subsection 2, paragraph I; [PL 2017, c. 367, §5 (NEW).]
- B. To a mediator retained pursuant to section 271, subsection 5-A; [PL 2017, c. 367, §5 (NEW).]
- C. In a judicial proceeding in camera; [PL 2017, c. 367, §5 (NEW).]
- D. In an administrative proceeding, in executive session, pursuant to Title 1, section 405, subsection 6, paragraph F; [PL 2017, c. 367, §5 (NEW).]

- E. To the person who filed the confidential information or that person's representative authorized by the person in writing to receive the information; [PL 2017, c. 367, §5 (NEW).]
- F. To a public official or any employee, agent, attorney or consultant of the taxing jurisdiction; and [PL 2017, c. 367, §5 (NEW).]
- G. To any other person with the taxpayer's written consent. [PL 2017, c. 367, §5 (NEW).]

A person who knowingly violates the confidentiality provisions of this subsection commits a Class E crime.

[PL 2017, c. 367, §5 (NEW).]

**3. Proprietary information.** For the purposes of this section, "proprietary information" means information that is a trade secret or production, commercial or financial information the disclosure of which would impair the competitive position of the person submitting the information and would make available information not otherwise publicly available and information protected from disclosure by federal or state law, rules or regulations.

[PL 2017, c. 367, §5 (NEW).]

#### SECTION HISTORY

PL 2017, c. 367, §5 (NEW). PL 2021, c. 630, Pt. B, §3 (AMD).

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# MAINE REVENUE SERVICES PROPERTY TAX DIVISION PROPERTY TAX BULLETIN NO. 2

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## TRUE AND PERFECT LISTS

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REFERENCE: 36 M.R.S. § 706-A

October 16, 2020; replaces February 14, 2019 revision

### 1. General

Maine law allows an assessor to request a list of property possessed by a taxpayer as of April 1 of the taxable year, called a true and perfect list, and to request additional information about property that may be taxable to the owner and property that may be eligible for a tax exemption under the Business Equipment Tax Exemption (BETE) program, called a supplementary schedule. See 36 M.R.S. § 706-A(1). This bulletin explains the process for requesting and responding to a request for a true and perfect list or supplementary schedule. Attached to this bulletin are sample forms for the true and perfect list as well as supplementary schedules for obtaining additional information regarding commercial, industrial, and other properties.

### 2. Definitions

The following definitions apply to this bulletin.

- A. Assessor. “Assessor” means a sworn municipal assessing authority whether an individual assessor, a board of assessors, or a chief assessor of a primary assessing area. With respect to the unorganized territory, “assessor” means the State Tax Assessor.
- B. Supplementary schedule. “Supplementary schedule” means written information about the nature, situation, and value of a taxpayer’s property liable to be taxed in Maine or subject to exemption under the BETE program.
- C. True and perfect list. “True and perfect list” means a list of all property a taxpayer possesses on April 1 of the calendar year for which the request is made.

### 3. True and Perfect List

An assessor may request a true and perfect list or a supplementary schedule from a taxpayer at any time before assessment. A request for a true and perfect list and a request for supplementary schedule may be made together or separately. If an assessor does not send a request before assessment, but a taxpayer requests an abatement of the assessed tax, the assessor may request a true and perfect list or supplementary schedule from the taxpayer at that time. An assessor may require a taxpayer to

make a notarized oath attesting to the truthfulness of a true and perfect list or a supplementary schedule.

If not included with the initial request for a true and perfect list, a supplementary schedule may be sought by an assessor after reviewing the true and perfect list. In many cases, an assessor can obtain the necessary additional information through cost schedules or cost manuals covering commercial, industrial, and other properties. When a cost schedule or manual is not adequate, an assessor may seek additional information through a subsequent request to the taxpayer. The request for additional information should be accompanied by a supplementary schedule for the taxpayer to sign and complete. The supplementary schedule should include questions designed to obtain information from the taxpayer necessary to establish the property value.

Proprietary information provided by the taxpayer is confidential and is not a public record for purposes of the freedom of access statute, Title 1, chapter 13. To be considered proprietary, information must be either (a) a trade secret, (b) production, commercial, or financial information, the disclosure of which would impair the competitive position of the taxpayer and would make available information not otherwise publicly available, or (c) information protected from disclosure by federal or state law, rules, or regulations. To be protected, the information, when first submitted, must be physically labeled as “proprietary and confidential” by the taxpayer. Taxpayers should clearly label the information prior to providing it to an assessor. Failure to properly label proprietary information will result in the information in question being treated as nonconfidential, i.e. being treated as public information. See 36 M.R.S. § 706-A(1).

An assessor may request a true and perfect list and/or supplementary schedule by regular mail directed to the last known address of the taxpayer. However, because proof that a mailed request was delivered may be important, the State Tax Assessor encourages assessors to use certified or registered mail to show evidence that a request for a true and perfect list/supplementary schedule is received by the taxpayer. Assessors may also use any other method that provides reasonable notice to the taxpayer of the request.

#### 4. Taxpayer Response

A taxpayer who has been asked to submit a true and perfect list and/or a supplementary schedule has 30 days from the date of receipt to respond to the request. On written request, a taxpayer is entitled to a 30-day extension to provide the true and perfect list and/or supplementary schedule. An assessor may grant additional extensions if the taxpayer requests such extensions in writing.

If an assessor has mailed a request to a taxpayer, the refusal or neglect to provide a true and perfect list or supplementary schedule bars the taxpayer from requesting an abatement of the assessed tax from the assessor or appealing an abatement decision by the assessor, unless one of the following conditions are met:

- A. If a taxpayer submits the requested true and perfect list and/or supplementary schedule with an abatement request and satisfactorily explains to the assessor why the taxpayer was unable to furnish the information by the requested date, the assessor may consider the abatement of value request.
- B. If a taxpayer submits the requested true and perfect list and/or supplementary schedule with the

primary appeal of an abatement decision by the assessor and satisfactorily explains to the entity hearing the appeal why the taxpayer was unable to furnish the information by the requested date, the entity may consider the appeal.

Misunderstanding a request or inconvenience of filing are not satisfactory explanations for failing to respond to a request for a true and perfect list/supplementary schedule. If the taxpayer fails to provide the requested true and perfect list and/or supplementary schedule to the entity of first appeal, the taxpayer is barred from further appeal. However, if an assessor failed to mail the request for a true and perfect list and/or supplementary schedule, the taxpayer is not barred from requesting abatement of the assessed tax or appealing an abatement decision by the assessor as long as the taxpayer provides the requested true and perfect list and/or supplementary schedule on demand.

## 5. Effect of Filing

Filing a true and perfect list and any requested supplementary schedule may provide an assessor helpful information when the information is accurate and complete. An assessor, however, is not bound by the true and perfect list or by a supplementary schedule, which does not replace the exercise of initiative and judgement on the part of the assessor. Even though a taxpayer provides information as to the nature, situation, and value of property, an assessor has the right and the obligation to determine value, based on all available information.

## 6. Standard Forms

Attached is a suggested standard form for a true and perfect list, as well as suggested forms for supplementary schedules.

NOTE: This bulletin is intended solely as advice to assist persons in determining, exercising or complying with their legal rights, duties or privileges. If further information is needed, contact the Property Tax Division of Maine Revenue Services.

MAINE REVENUE SERVICES  
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(Published under Appropriation No. 1037.1)

**REQUEST FOR TRUE AND PERFECT LIST OF TAXABLE PROPERTY**

(Taxable property includes property subject to exemption under the Business Equipment Tax Exemption program)

Filed Pursuant to 36 M.R.S. § 706-A

To the assessor of the Municipality of \_\_\_\_\_

1. I am a legal resident of \_\_\_\_\_, \_\_\_\_\_  
(Municipality) (State)

2. Real Estate:

List briefly each separate parcel owned on April 1 of the year for which this list is filed, and located in the municipality in which this return is filed:

Location (Street and number, or other Brief description)	Area of Land (Lot dimensions in square feet or acres)	Buildings (Dwellings, farmstead, store, garage, etc.)
a. _____	_____	_____
b. _____	_____	_____
c. _____	_____	_____
d. _____	_____	_____

(If additional space is required, use and attach a separate sheet.)

Have any of the buildings listed been constructed or altered since the previous April 1?

- Yes
- No

If "Yes," identify the building and give a brief description of the construction or alteration.

Is your land subject to any enforceable restrictions that limit its use?

- Yes
- No

If "Yes," what is the nature of the restriction: (Check all appropriate boxes)

- Zoning ordinance
- Recorded contractual provisions
- Subdivision restrictions
- Other (Please explain)

3. Structures on land you do not own:

List property in this municipality you own on April 1 located on leased land or land you do not own, including dwelling houses, house trailers, camps, stores, storehouses, or any other structures. Identify the landowner and location in each case.

Location (Street and number or other brief description)	Buildings (Dwellings, farmstead, store, garage, etc.)	Owner of Land
a. _____	_____	_____
b. _____	_____	_____
c. _____	_____	_____
d. _____	_____	_____

(If additional space is required, attach a separate sheet.)

4. Business Personal Property:

List items you own or possess in this municipality. If additional space is required attach a separate sheet.

- a. Machinery and equipment (industrial, mercantile, farm, etc.).
- b. Furniture and fixtures - store, office, commercial.
- c. Other - identify briefly.

\_\_\_\_\_

\_\_\_\_\_

The foregoing is submitted in compliance with 36 M.R.S. § 706-A, and is true, correct, and complete to the best of my belief as of April 1 of the current year.

I understand that the assessor may require me to make an oath of the foregoing, and that the assessor may require me to answer, in writing, questions as to the nature, situation, and value of any property liable to be taxed in the State of Maine or subject to exemption pursuant to 36 M.R.S. chapter 105(4-C); and that my refusal or neglect to answer and attest to such questions may result in forfeiture of my right to appeal.

\_\_\_\_\_  
Name of Taxpayer – Please Print

\_\_\_\_\_  
Taxpayer Signature (if signed on behalf of corporation, state your official capacity such as president or treasurer)

\_\_\_\_\_  
Date



**SUPPLEMENTARY SCHEDULE - TAXPAYER'S LIST FILED UNDER 36 M.R.S. § 706-A.**

**BUSINESS MACHINERY AND EQUIPMENT**

To the assessor of the Municipality of \_\_\_\_\_

The following information covers all business machinery and equipment owned or controlled by my business as of April 1 in this municipality.

1. Industrial machinery and equipment:

a. Type of industrial activity \_\_\_\_\_

b. Location of machinery and equipment \_\_\_\_\_

c. List each item and appropriate classification, giving age, condition, original cost, and present value. Indicate whether each item is owned or leased. Attach additional pages as necessary.

2. Agricultural machinery and equipment:

a. Location of machinery and equipment \_\_\_\_\_

b. List each item, giving make, model, year of model (or if none, age), condition, original cost, and present value of all farm machinery used exclusively in production of hay and field crops, except for self-propelled vehicles. Indicate whether each item is owned or leased. Attach additional pages as necessary. (This property is entitled to an exemption in the aggregate value of up to \$10,000).

c. List below all other agricultural machinery and equipment. Indicate whether each item is owned or leased. Do not list motor vehicles registered for use on public roads for which an excise tax has been paid.

3. Other machinery and equipment:

a. State type of use (as contracting, cleaning and dyeing, repairing, etc.)

\_\_\_\_\_

b. Location of machinery and equipment \_\_\_\_\_

c. List each item and appropriate classification, giving age, condition, original cost, and present value. Indicate whether each item is owned or leased. Attach additional pages as necessary.

4. Comments. (Enter here any additional facts which you believe are necessary to explain the machinery and equipment included in this schedule, or which you believe should be considered in arriving at assessed value).

The foregoing is submitted in compliance with 36 M.R.S. § 706-A, and is true, correct, and complete to the best of my belief as of April 1 of the current year.

\_\_\_\_\_

Date

\_\_\_\_\_

Name of Taxpayer – Please Print

\_\_\_\_\_  
Taxpayer Signature (if signed on behalf of a corporation, state your official capacity such as president or treasurer)

Please keep one copy of this schedule in your files for future reference.



**USE OF THE “SECTION 706-A” REQUEST BY THE ASSESSOR  
POST-INITIAL TAX ABATEMENT APPLICATION TO ASSESSOR**

TYPE OF PROPERTY	INFORMATION TO POSSIBLY REQUEST *
Non-Income Producing Residential	<ul style="list-style-type: none"> <li>--Any recent appraisal of the property</li> <li>--Casualty loss insurance certificate</li> </ul>
Income Producing Residential	<ul style="list-style-type: none"> <li>--Any recent appraisal of the property</li> <li>--Casualty loss insurance certificate</li> <li>--Current rent roll</li> <li>--Income and expense report</li> <li>--IRS Form 8825 Schedule C or E as filed for federal income tax purposes, whichever is appropriate</li> </ul>
Income Producing Non-Residential	<ul style="list-style-type: none"> <li>--Any appraisal of the property within the last 3 years</li> <li>--Casualty loss insurance certificate</li> <li>--Current rent roll</li> <li>--Unredacted copies of all leases in place as of April 1</li> <li>--Income and expense report (audited if available)</li> <li>--Detailed list of expenses related to the property, clearly indicating which party (landlord or tenant) is responsible for which expense or pro-rata share of expense</li> <li>--Vacancy and loss collection report</li> <li>--IRS Form 8825 Schedule C or E/IRS Form 1065 (or other appropriate form based on the nature of the entity that owns the property) as filed for federal income tax purposes</li> </ul>
Industrial	<ul style="list-style-type: none"> <li>--Any appraisal of the property within the last 5 years</li> <li>--Casualty loss insurance certificate</li> <li>--All engineering reports, studies or analyses for the plant</li> <li>--Any engineering surveys of the plant</li> <li>--All load bearing reports covering structural elements</li> </ul>
Property for Sale or Lease	<ul style="list-style-type: none"> <li>--All real estate listing agreements for the property</li> <li>--All advertisements and marketing materials related to the property</li> </ul>

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\* Every property is different so there is no “one size fits all” 36 M.R.S.A. § 706-A request. Every situation presents a variety of options based on what the Assessor may already know about the property or s/he can learn by independent inquiry.



*Assessor's Office*  
*James H. Thomas, Assessor*

VIA E-MAIL & FIRST CLASS MAIL

January 22, 2020

GGP-Maine Mall, LLC  
c/o John Evans  
Duff & Phelps, LLC  
311 South Wacker Drive, Suite 4200  
Chicago, IL 60606

Re: **GGP-Maine Mall, LLC Tax Abatement Applications, South Portland, Maine**  
**(4/1/19 Assessment Date-Section 706-A Request)**

Dear Mr. Evans,

I am in receipt of the tax abatement applications filed on behalf of GGP-Maine Mall, LLC ("GGP") received by me on January 15, 2020 for 6 real estate parcels (collectively, the "Property") of GGP located in South Portland, Maine. The six parcels are located at 7 Philbrook Avenue, 250 Philbrook Avenue, 350 Philbrook Avenue, 415 Philbrook Avenue, 269 Maine Mall Road and 364 Maine Mall Road (the "Six Parcels").

The purpose of this letter is to request further information relating to the applications pursuant to 36 M.R.S.A. § 706-A. I am seeking information about the nature, situation and value of the Property. For the purpose of this request, "GGP" or "you" or "your" includes GGP-Maine Mall, LLC, its agents, affiliates, attorneys, assignees and all persons retained or acting on its behalf. Please provide me with the following information:

1. The name or names of all persons responding to these requests for information on behalf of GGP.
2. Copies of any and all appraisals of the Property (and any portion thereof) conducted within the past five years.
3. Copies of any and all draft appraisals of the Property (and any portion thereof) conducted within the past five years.
4. If any appraisal or draft appraisal of the Property (and any portion thereof) conducted within the past five years is a "summary appraisal report" or a "restricted

*Susan Nadeau, Deputy Assessor* ✦ *Andrew Kriger, Appraiser* ✦ *Dean Prindle, Appraiser*  
*Lena Reichardt, Appraiser* ✦ *Nanette Cobbett, Assistant to Assessor*

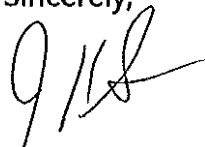
- use appraisal report," copies of any and all supporting data, notes, analysis and conclusions.
5. Please state whether any appraisal or draft appraisal as described in Paragraphs 2 through 4 are in the custody, control or possession of GGP Inc., Brookfield Property REIT Inc., Brookfield Property L.P., Brookfield Property Partners L.P., or Brookfield Asset Management Inc. rather than in the custody, control or possession of GGP, and, if so, please identify with specificity the nature, preparer and date of any such appraisal or draft appraisal and provide me with copies.
  6. Evidence of insurance of the Property (and any portion thereof), to include the amount of coverage in the event of loss and the casualty loss certificates for each of the past three calendar years.
  7. A list of all income and expenses for the Property (and any portion thereof) for each of the past three calendar years.
  8. A copy of the most recent site or other plan(s) that identify the type and location of all Property improvements.
  9. Rent roll by tenant for each of the past three calendar years.
  10. Gross retail sales by tenant for each of the past three calendar years.
  11. Report detailing common area maintenance (CAM) and other reimbursements by tenant for each of the past three calendar years.
  12. Fit-up costs for any tenant space for each of the past three calendar years.
  13. April 1, 2017, April 1, 2018 and April 1, 2019 vacancy rate.
  14. Any change in GGP's accounting practices to include a recognition of "business value" for Internal Revenue Service purposes or otherwise.
  15. Copies of maintenance records for each of the past three calendar years.
  16. Copies of all GGP financial statements (audited, if available) for each of the past three calendar years.
  17. An itemized list of the costs of any improvements made to the Property (and any portion thereof) since January 1, 2017, including any supporting documentation of such costs.
  18. Copies of any and all offers to sell the Property, in full or in part, solicited or unsolicited, within the past five years.
  19. Copies of any and all offers to buy the Property, in full or in part, solicited or unsolicited, within the past five years.
  20. Please state whether any interests in the Property have transferred, in whole or in part, within the past five years and, if so, please provide the details.
  21. A copy of your most recent capital plan.
  22. A list of anticipated capital expenditures by GGP within the next three years.
  23. Copies of any and all reproduction cost new less depreciation approach to value analyses and studies of the Property (and any portion thereof) that have been conducted by you or any other authorized agent within the past five years.
  24. Copies of any and all income capitalization approach to value analyses and studies of the Property (and any portion thereof) that have been conducted by you or any other authorized agent within the past five years.

25. Copies of any and all sales comparison approach to value analyses and studies of the Property (and any portion thereof) that have been conducted by you or any other authorized agent within the past five years.
26. Copies of any and all debt or financing arrangements that the Property (and any portion thereof) secures as collateral, including, without limitation, mortgages, UCC financing statements, and leases.
27. Copies of any and all analyses and market studies that have been conducted by you or any other authorized agent to suggest the Property (and any portion thereof) is overvalued.
28. Copies of any and all analyses and market studies that have been conducted by you or any other authorized agent to suggest the Property (and any portion thereof) is undervalued.
29. Please state the basis for GGP's assertion that each of the Six Parcels is not "preforming [sic] at a level equal to the current assessment" and provide copies of any information that supports each assertion.
30. Please state the basis for GGP's assertion that each of the 250 Philbrook Avenue, 350 Philbrook Avenue, 415 Philbrook Avenue and 269 Maine Mall Road parcels should have an assessed value of \$0 and provide copies of any information that supports each assertion.
31. For each of the Six Parcels, please provide copies of any and all information that supports GGP's opinion of the value of each parcel.
32. For each of the Six Parcels, please state how GGP derived the requested abatement amount for each parcel and provide copies of any information that supports this requested amount.

Please provide this information to me **no later than Thursday, February 21, 2020**. Failure to provide this information may bar this application and any appeal pursuant to 36 M.R.S.A. § 706-A.

Thank you.

Sincerely,



James H. Thomas, CMA  
Assessor

cc: Greg L'Heureux

# Town of Kennebunk, Maine



Assessor's Office  
Daniel J. Robinson, CMA  
207-985-4852

February 28, 2019

Vincent J. Christinziano  
Vice President  
Kennebunk Fish and Game Club  
853 Littlefield Road  
Wells, ME 04090

Re: ***Kennebunk Fish and Game Club/Tax Exemption Application  
(Tax Map 11, Lot 45)***

Dear Mr. Christinziano:

This office is in receipt of the application for tax exemption filed on behalf of the Kennebunk Fish and Game Club ("FGC"). This filing is sufficient to satisfy the requirement of filing by April 1; however, there is additional information I need in order to be able to determine whether FGC's property in Kennebunk ("the Property") qualifies to be exempt from property taxes. Therefore, pursuant to 36 M.R.S.A. § 706-A and applicable Maine law, I request that you furnish me with the following information:

1. Please provide me with copies of audited (if available) and unaudited financial statements relating to the operation or management of FGC and the Property for the period 2017 to the present.
2. Please state whether FGC has qualified as a Section 501(c)(3) corporation under the Internal Revenue Code and, if so, please provide me with a copy of the IRS' letter determination.
3. Please provide me with a copy of FGC's last IRS filing of Form 990.
4. Please provide me with a copy of FGC's deed for the Property.

Mailing Address: 1 Summer Street, Kennebunk, ME 04043

Website Address: <http://www.kennebunk.maine.org>

E-Mail: [asr@kennebunk.maine.org](mailto:asr@kennebunk.maine.org)





5. Please identify and provide copies of any regulatory licenses, approvals or authorizations that have been issued to FGC which authorize occupation or use of the Property.

6. Please describe the actual use or occupation of the Property. Please describe in detail all activities taking place thereon from 2017 to present.

7. Please state whether the Property is used or occupied solely by FGC for its corporate purposes. If not, identify other users or occupiers of the Property and describe in detail their use of the Property and identify whether they qualify as charitable and benevolent institutions under 36 M.R.S.A. § 652(1)(A).

8. Please list and describe the duties of all personnel employed in connection with operations taking place at the Property, and for each employee please describe the terms of their employment and of his or her compensation.

9. Please describe in detail the “public benefit” derived from the activities conducted by FGC.

10. Please describe in detail how the government is relieved of a burden, if at all, by virtue of the activities conducted by FGC.

11. Please describe in detail the sources of revenues and funds used by FGC to operate the Property to conduct the business and operations of FGC.

12. Please identify the directors, trustees and officers of FGC and for each person identified, describe in detail the compensation or remuneration received by each individual for his or her services to FGC.

13. Please describe in detail what type of use, if any, nonmembers are allowed to make of each of the Property and describe the extent of any such use of the Property by nonmembers.

14. Please explain why FGC is a charitable and benevolent organization within the meaning of 36 M.R.S.A. § 651(1)(A).



I ask that you provide this information to me no later than **Thursday, March 31, 2019**. Thank you.

Sincerely,

Daniel J. Robinson, CMA  
Town Assessor

cc: Joseph G. Carleton, Jr., Esq.





**Cumberland County Regional Assessing**  
25 Pearl Street, Portland, ME 04101  
207-699-2475 • cumberlandcounty.org  
**Benjamin Thompson, Director**



VIA EMAIL AND FIRST CLASS MAIL

December 9, 2021

Stavitsky & Associates  
c/o Bruce Stavitsky, Esq.  
350 Passaic Avenue  
Fairfield, NJ 07004

RE: Tax Abatement Application, Falmouth, Maine, Tax Map U52, Lot 2/206 US Route 1  
(April 1, 2021 Assessment Date)

Dear Mr. Stavitsky,

I am in receipt of the tax abatement application filed on behalf of Foreside Place LLC and Walmart Stores East, LP dated December 1, 2021 and received by my office on December 6, 2021 for property located at 206 US Route 1 in Falmouth, Maine and further identified as Tax Map U52, Lot 2 (the "Property") for the April 1, 2021 assessment date (fiscal year 2021-22).

The purpose of this letter is to request further information relating to the application pursuant to 36 M.R.S. § 706-A. I am seeking information about the nature, situation and value of the Property. For the purpose of this request, "Taxpayer" or "you" or "your" includes Foreside Place LLC, its agents, affiliates, attorneys, assignees and all persons retained or acting on its behalf, *and* Walmart Stores East, LP, its agents, affiliates, attorneys, assignees and all persons retained or acting on its behalf. Please provide me with the following information:

1. The name or names of all persons responding to these requests for information on behalf of Taxpayer.
2. A letter of authorization naming Stavitsky & Associates and Bruce Stavitsky as agents authorized to act on matters related to tax abatements on behalf of Foreside Place LLC.
3. A letter of authorization naming Stavitsky & Associates and Bruce Stavitsky as agents authorized to act on matters related to tax abatements on behalf of Walmart Stores East, LP.
4. Copies of the income and operating expense statements (audited if available) for the Property for the three prior years.
5. Copies of the gross sales and operating expense statements (audited if available) for the Walmart store located at 206 US Route 1 in Falmouth for the three prior years.
6. Copies of the gross sales and operating expense statements (audited if available) for the Verizon Cellular Sales store located at 206 US Route 1 in Falmouth for the three prior years.
7. Copies of the gross sales and operating expense statements (audited if available) for the Flagship Premium Cinemas located at 206 US Route 1 in Falmouth for the three prior years.
8. Copies of sales projections for the Walmart store located at 206 US Route 1 in Falmouth for calendar years 2022 and 2023.
9. Copies of sales projections for the Verizon Cellular Sales store located at 206 US Route 1 in Falmouth for calendar years 2022 and 2023.



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10. Copies of sales projections for the Flagship Premium Cinemas located at 206 US Route 1 in Falmouth for calendar years 2022 and 2023.
11. Evidence of insurance of the Property, to include the amount of coverage in the event of loss and casualty loss certificates for the past three years.
12. Copies of current leases (land, building or land and building) documenting lease price per square foot and terms of the lease for any portion of the Property.
13. Copies of any unedited lease agreements and amendments for all tenants as most recently provided to TD BANK, N.A. according to Section 5.11 of the "Assignment of Leases and Rents" recorded in the Cumberland County Registry of Deeds in Book 32896, Page 96, as may have been subsequently amended.
14. Copy of the signed IRS Schedule Form C, E or 8825 for years 2018, 2019, 2020 (and 2021, if available), submitted to the IRS on behalf of Foreside Place, LLC specific to the Property. Please attach a detail of any descriptions under "other" in the expense category.
15. Unredacted copies of any and all appraisals, opinions of value or like documents prepared for the Property within the past five years.
16. Copies of all analyses and market studies that have been conducted by you or any other authorized agent to suggest the Property is overvalued.
17. Copies of all analyses and market studies that have been conducted by you or any other authorized agent to suggest the Property is undervalued.
18. An itemized list of the costs of any improvements made to the Property since January 1, 2016, including any supporting documentation of such costs.
19. A list of the addresses of all Walmart stores sold in Maine over the past five years, with sale prices and a statement as to whether these were dark stores or operating stores at the time of sale.
20. Copies of the purchase and sales agreements, deeds, restrictions imposed on the property by the seller, unredacted lease agreements, assessed values at the time of sale, and assessment to sales ratios at the time of sale for all of the Walmart stores sold in Maine in the past five years.
21. Copies of any side agreements that might have been made in the sale of all Walmart stores sold in Maine in the past five years.
22. A list by name and location of all operating Walmart stores in Maine. Please specify whether these stores are owned or leased and the square footage of each store.
23. Copies of current leases (land, building or land and building) documenting lease price per square foot and terms of the lease for all currently leased Walmart stores (or portions thereof) in Maine other than the Property.
24. Any and all other information that indicates the fair market value of the Property as of April 1, 2021, including any information indicating that the Property is worth less than its assessed value.
25. Please provide audited profit and loss statements for the Property for the past three years.
26. Copies of any and all offers to sell the Property, in full or in part, solicited or unsolicited, within the past five years. If so, please provide any and all listing agreements, understandings or contracts with brokers or authorized agents.
27. Copies of any and all offers to buy the Property, in full or in part, solicited or unsolicited, within the past five years.
28. Please state whether any interests in the Property have transferred, in whole or in part, within the past five years and, if so, please provide the details.
29. Copies of any and all reproduction cost new less depreciation approach to value analyses and/or studies of the Property (and any portion thereof) that have been conducted by you or any other authorized agent within the past five years.



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30. Copies of any and all debt or financing arrangements that the Property (and any portion thereof) secures as collateral, including, without limitation, mortgages, UCC financing statements, and leases.

Please provide this information to me **no later than Wednesday, January 12, 2022**. Failure to provide this information may bar this application and any appeal pursuant to 36 M.R.S.A. § 706-A.

In addition, I ask that you please provide me by Wednesday, December 22, 2021 contact information for your Property manager so that I may schedule a full interior/exterior inspection of the Property, including the Walmart store and the Verizon store. Thank you.

Sincerely,

Benjamin Thompson, CMA  
Assessor, Town of Falmouth



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25 Pearl Street, Portland, ME 04101  
207-699-2475 • cumberlandcounty.org  
**Benjamin Thompson, Director**

*Maine*  
**Cumberland County**

VIA EMAIL AND FIRST CLASS MAIL

February 18, 2022

Stavitsky & Associates  
c/o Bruce Stavitsky, Esq.  
350 Passaic Avenue  
Fairfield, NJ 07004

RE: Tax Abatement Application, Falmouth, Maine, Tax Map U52, Lot 2/206 US Route 1  
(April 1, 2021 Assessment Date)

Dear Mr. Stavitsky,

I am in receipt of your letter dated February 11, 2022 on behalf of Foreside Place LLC and Walmart Stores East, LP (collectively, the "Taxpayer") in response to my December 9, 2022 request, pursuant to 36 M.R.S. § 706-A, for further information relating to the Taxpayer's 4/1/2021 tax abatement application.

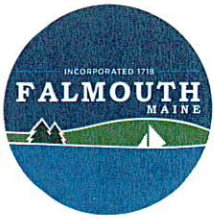
I have carefully reviewed the information provided in response to my requests pursuant to 36 M.R.S. § 706-A. As detailed below, I find many of the Taxpayer's responses to my Section 706A requests to be incomplete and/or non-responsive. Failure of the Taxpayer to fully respond to my Section 706-A requests may bar this application and any appeal pursuant to 36 M.R.S. § 706A. In light of the incompleteness/non-responsiveness of the Taxpayer's February 11, 2022 submittal to my office, I am providing the Taxpayer with ten (10) days to supplement its February 11, 2022 submittal before I make my decision on its application, i.e., **until Monday, February 28, 2022.**

With regard to Response #4, please provide the requested income information for the Property for the prior three years.

With regard to Responses #5, #6, and #7, I do not agree that the requests relating to gross sales are not relevant to the nature, situation and value of the Property, and I am providing the Taxpayer another chance to respond to these requests.

With regard to Responses #8, #9, and #10, I do not agree that the requests are not relevant to the nature, situation and value of the Property, and I am providing the Taxpayer another chance to respond to these requests.

With regard to Response #12, please provide any and all amendments to the November 9, 2010 lease agreement between Falmouth Plaza LLC and Walmart, including, without limitation, the



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**Benjamin Thompson, Director**



First Amendment dated March 29, 2011, the Letter Agreement dated October 2, 2012, and the Second Amendment dated February 19, 2014 (as referenced in the Assignment and Assumption of Leases dated February 2, 2016).

With regard to Response #13, please review the request again and, to the extent not already provided (see above regarding Response #12), please provide any and all amendments to the Walmart sublease with Falmouth Premium Cinemas, LLC dated March 21, 2016 and any and all amendments to the Foreside Place, LLC lease with Cellular Sales of Maine, LLC dated May 4, 2017.

With regard to Response #14, please review the request again and please provide the requested IRS Schedule for the referenced dates.

With regard to Response #18, please review the request again and please provide the requested costs of improvements for the Verizon space at the Property.

With regard to Response #23, I do not agree that the request is not relevant to the nature, situation and value of the Property, and I am providing the Taxpayer another chance to respond to this request.

With regard to Response #24, please provide further information with regard to the date an appraisal report will be provided to me. The Taxpayer is also invited to submit additional information in support of the one-page *pro forma* analysis submitted on February 11, 2022; as is, it is simply conclusory and lacks supporting details.

With regard to Response #25, please review the request again and please provide the requested profit and loss statements for the Property for the past three years.

With regard to Response #30, please review the request again and please provide the requested information, including, without limitation, a copy of the mortgage on the Property.

Please provide any supplemental information to me **no later than Monday, February 28, 2022**. Failure to provide fully respond to my December 9, 2021 request for information may bar this application and any appeal pursuant to 36 M.R.S. § 706-A. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Benjamin Thompson".

Benjamin Thompson, CMA  
Assessor, Town of Falmouth

Ms. Karen Scammon, CMA-4  
Assessor / City of Auburn  
60 Court Street  
Auburn, ME 04210

February 25, 2021

Re: Brookfield White Pine Hydro LLC - Gulf Island Hydro Facility Tax Abatement Appeal, Auburn, ME

Dear Ms. Scammon:

Pursuant to 36 M.R.S.A. § 706-A (1), which states:

*“Upon written request to the assessor or assessors, chief assessor of a primary assessing area or State Tax Assessor in the case of the unorganized territory, a taxpayer is **entitled to a 30-day extension to respond to the request for a true and perfect list or proper inquiries**, and the assessor may at any time grant additional extensions upon written request.”*

Brookfield White Pine Hydro, LLC is requesting an extension to respond to the 706-A Request dated February 3, 2021.

If you have any questions regarding this request, please contact me at (508) 395-0942 or e-mail me at [paul.brenton@brookfieldrenewable.com](mailto:paul.brenton@brookfieldrenewable.com).

Sincerely,



Paul Brenton  
Senior Director – Land Use  
Brookfield Renewable

cc: Robert Herman (Duff & Phelps – Chicago)



## Sally J. Daggett

---

**From:** Jonathan Block <jblock@PierceAtwood.com>  
**Sent:** Monday, February 27, 2023 3:55 PM  
**To:** Joseph Merry  
**Cc:** Sally J. Daggett  
**Subject:** RE: Brookfield White Pine Hydro v. Standish; 2022 Abatement App

Mr. Merry, I have received the Town's information request under section 706-A dated February 27, 2023, with a due date of March 29, 2023.

Section 706-A (3<sup>rd</sup> paragraph) provides that upon written request, a taxpayer "is entitled to a 30-day extension" to respond. Brookfield hereby requests the 30-day extension to which it "is entitled" under section 706-A. This extension will make our response due April 28, 2023.

In light of this extension, Brookfield hereby extends the deemed denial deadline to June 30, 2023.

Thank you for your assistance, and we look forward to providing the information that you have requested.

<b>Jonathan A. Block</b> PIERCE ATWOOD LLP	Merrill's Wharf 254 Commercial Street Portland, ME 04101	<b>PH</b> 207.791.1173 <b>FAX</b> 207.791.1350
<a href="mailto:jblock@pierceatwood.com">jblock@pierceatwood.com</a>	<a href="#">BIO</a> >	
This e-mail was sent from Pierce Atwood. It may contain information that is privileged and confidential. If you suspect that you were not intended to receive it please delete it and notify us as soon as possible.		

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**From:** Joseph Merry <JMerry@standish.org>  
**Sent:** Monday, February 27, 2023 3:44 PM  
**To:** Jonathan Block <jblock@PierceAtwood.com>  
**Cc:** Sally J. Daggett <SDaggett@jensenbaird.com>  
**Subject:** RE: Brookfield White Pine Hydro v. Standish; 2022 Abatement App

**\*\*\*This message originated outside your organization\*\*\***

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Dear Attorney Block,

Please find attached my response letter re: Brookfield White Pine Hydro LLC, Tax Abatement Appeal for April 1, 2022 Assessment Date.

Respectfully submitted,  
Joe Merry, CMA, CR  
Assessor  
175 Northeast Road  
Standish, ME 04084  
207-642-4572



City of Auburn, Maine

Office of the Assessor

[www.auburnmaine.gov](http://www.auburnmaine.gov) | 60 Court Street

Auburn, Maine 04210

207.333.6601

VIA EMAIL AND FIRST CLASS MAIL  
paul.brenton@brookfieldrenewable.com

March 1, 2022

Brookfield White Pine Hydro LLC  
c/o Paul Brenton  
200 Donald Lynch Blvd, Suite 300  
Marlborough, MA 01752-8050

Re: **Brookfield White Pine Hydro LLC – Deer Rips Hydro Facility  
Tax Abatement Appeal, Auburn, Maine  
(April 1, 2021 Assessment Date)**

Re: **Brookfield White Pine Hydro LLC - Gulf Island Hydro Facility  
Tax Abatement Appeal, Auburn, Maine  
(April 1, 2021 Assessment Date)**

Dear Mr. Brenton,

I am in receipt of your email dated February 28, 2022 requesting a 30-day extension (i.e., to April 13, 2022) to respond to my Section 706-A requests of February 11, 2022. I am pleased to confirm that Brookfield is entitled to a 30-day extension to April 13, 2022 to respond to my Section 706-A requests. Upon receipt of Brookfield's response, I will then need an additional 30 days added to my original decision time, i.e., an extension to July 1, 2022. Please confirm that Brookfield is willing to grant me a similar extension of time. Thank you.

Sincerely,

Karen Scammon, CMA-4  
Assessor/City of Auburn



## MEMORANDUM

TO: Auburn Regulatory Advisory Board

FROM: Sally J. Daggett, Esq., Attorney for Assessor & Deputy Assessor

RE: Brookfield White Pine Hydro LLC – Deer Rips & Gulf Island Hydro Facilities  
Tax Abatement Appeal, Auburn, Maine  
(April 1, 2021 Assessment Date)

DATE: October 5, 2022

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### INTRODUCTION

Brookfield White Pine Hydro LLC (the “Taxpayer” or “Brookfield”) has filed three abatement appeals with the Regulatory Advisory Board (“RAB”) for the April 1, 2021 assessment date (FY 2021-22) relating to the so-called Deer Rips Hydro facility project (the “Deer Rips Project”). The Deer Rips abatement request is specific to the portion of the Deer Rips Project located in Auburn that is further identified as Tax Map 314, Lot 5; Tax Map 315, Lot 1; and Tax Map 326, Lot 7. Brookfield has also filed five abatement appeals relating to the so-called Gulf Island Hydro facility project (the “Gulf Island Project”) for the April 1, 2021 assessment date. The Gulf Island abatement request is specific to the portion of the Gulf Island Project located in Auburn that is further identified as Tax Map 347, Lots 11, 12, & 17; and Tax Map 369, Lots 4 & 5. The properties that comprise the Deer Rips and Gulf Island Projects are collectively referred to herein as the “Property.” Brookfield has failed to comply with the Assessor’s request for information pursuant to 36 M.R.S. § 706-A and, therefore, the appeals are barred. The RAB hearing on October 12th is limited to the § 706-A issue.

### BACKGROUND

The Assessor made a request pursuant to 36 M.R.S. § 706-A dated February 11, 2022 for further information relevant to the April 1, 2021 assessment date (*Exhibit B (Deer Rips) & Exhibit C (Gulf Island)*), and Brookfield did not fully respond to the request despite her notifying Brookfield by letter dated May 12, 2022 of the deficiencies of its April 11, 2022 initial response and despite her providing Brookfield with additional time to cure the deficiencies (*Exhibit I*). The Assessor never received any response to her May 12, 2022 letter, and so all of the items identified therein are either missing or incomplete.

## ARGUMENT

Addressing Brookfield’s substantial overvaluation claims will be left to a future hearing, if there needs to be one. The issue here is whether Brookfield is barred from pursuing its valuation claims because it failed to produce the information identified in the Assessor’s May 12, 2022 letter.

Section 706-A(1) of Title 36 of the Maine Revised Statutes provides that the Assessor may request property valuation information from the property owner, either before the assessment, or after an abatement request is made, and, that upon the property owner’s unreasonable failure to comply, the property owner is then barred from pursuing its abatement claim. In particular, the relevant sections of § 706-A(1) are underlined on the attached.

As can be seen from the text of the statute, the Assessor may ask for production of such materials even after an abatement application has been filed. *See Champion Int’l Corp. v. Town of Bucksport*, 667 A.2d 1376 (Me. 1995) (§ 706<sup>1</sup> of Title 36 affords the assessor the chance to ask for valuation materials either before the assessment is made or after an abatement application is submitted).

Specific items requested but never provided by Brookfield include the following items that the Assessor initially requested by letters dated February 11, 2022:

<b>Initial Request on 2/11/22 (Ex. B) &amp; Follow-Up Request on 5/12/22 (Ex. I)</b>	<b>Summary of Information Requested</b>	<b>Status of Brookfield Response</b>
Requests ##5, 6, 7, 9 & 12	Actual net generation, revenue, or operations and maintenance figures provided for calendar year 2021	Information not provided
Requests ##10, 11 & 13	Detail related to the alleged \$1.75 million planned capital expenditure for Deer Rips or the \$3.5 million planned capital expenditure for Gulf Island	Information not provided
Request #14	Documents and calculations used by Brookfield to determine operations and maintenance costs shown on Slide 6 of the “Additional Detail for Abatement Request” PowerPoint submitted with application	Response incomplete
Request #15	Documents and calculations used by Brookfield to determine weighted average cost of capital (including the debt and equity components, required return and weight figures), growth rate, and capitalization rate shown on Slide 7 of the “Additional Detail for Abatement Request” PowerPoint submitted with application	Information not provided (per Brookfield: “Not Available – Brookfield Does Not Maintain”)
Request #16 (Deer Rips)	Documents and calculations used by Brookfield to determine 2021, 2022, 2023, 2024 and 2025 projections for the Deer Rips facility shown on Slide 8 of the “Additional Detail for Abatement Request” PowerPoint submitted with application	Information not provided

<sup>1</sup> The Legislature repealed and replaced 36 M.R.S. § 706 with § 706-A in 2018, but there are no material changes to the relevant provisions.

Initial Request on 2/11/22 (Ex. B) & Follow-Up Request on 5/12/22 (Ex. I)	Summary of Information Requested	Status of Brookfield Response
Request #17 (Deer Rips)	Documents and calculations used by Brookfield to determine stabilized income and expense amounts for the Deer Rips facility shown on Slide 8 of the “Additional Detail for Abatement Request” PowerPoint submitted with application	Information not provided
Request #18 (Deer Rips)	Documents and calculations used by Brookfield to determine intangible asset value and initial working capital figures for the Deer Rips facility shown on Slide 9 of the “Additional Detail for Abatement Request” PowerPoint submitted with application	Information not provided (per Brookfield: “Not Available – Brookfield Does Not Maintain”)
Request #16 (Gulf Island)	Documents and calculations used by Brookfield to determine 2021, 2022, 2023, 2024 and 2025 projections for the Gulf Island facility shown on Slide 10 of the “Additional Detail for Abatement Request” PowerPoint submitted with application	Information not provided
Request #17 (Gulf Island)	Documents and calculations used by Brookfield to determine stabilized income and expense amounts for the Gulf Island facility shown on Slide 10 of the “Additional Detail for Abatement Request” PowerPoint submitted with application	Information not provided
Request #18 (Gulf Island)	Documents and calculations used by Brookfield to determine intangible asset value and initial working capital figures for the Gulf Island facility shown on Slide 11 of the “Additional Detail for Abatement Request” PowerPoint submitted with application	Information not provided (per Brookfield: “Not Available – Brookfield Does Not Maintain”)

As noted in the table above, when the information wasn’t forthcoming as part of Brookfield’s April 11, 2022 responses (Exhibits D & E), the Assessor followed up with her May 12, 2022 letter notifying Brookfield of the deficiencies and providing Brookfield more time to cure the deficiencies. She received no response to her letter. A comparison of the February 11 and May 12 letters of the Assessor reveals that the requests in the Assessor’s May 12<sup>th</sup> letter were not “new” requests as asserted by Brookfield. Further, to the extent that Brookfield asserts that some of the information is “proprietary” information, Maine law expressly allows a taxpayer to submit such information and mark it as proprietary and confidential information, and then the City is required to keep it confidential under Maine law.<sup>2</sup> See 36 M.R.S. § 706-A(1); *Blue Sky West, LLC v. Maine Revenue Services*, 2019 ME 13, ¶ 28, 215 A.3d 812; *Bangor Publishing Co. v. Town of Bucksport*, 682 A.2d 227, 230 (Me. 1996).

The Assessor’s requests for information are all “proper inquiries” within the meaning of § 706-A. Four specific types of information requests posed by the Assessor illustrate the failure of Brookfield to comply with the Assessor’s valid requests for information on the “nature,

<sup>2</sup> The Assessor must treat that information as confidential and not a public record under the Maine Freedom of Access Act. 36 M.R.S. § 706-A(1). It may be disclosed only as provided in § 706-A(2). Improper disclosure of this information is a Class E crime. *Id.* “Proprietary information” is defined in § 706-A(3) as “information that is a trade secret or production, commercial, or financial information the disclosure of which would impair the competitive position of the person submitting the information and would make available information not otherwise publicly available and information protected from disclosure by federal or state law, rules or regulations.”

situation and value” of the Properties. First, pursuant to Requests ##5, 6, 7, 9 & 12, the Assessor sought actual net generation, revenue, or operations and maintenance figures for calendar year 2021. Brookfield failed to provide this information. Electricity generation is directly related to income and may speak to the demand for electricity. How much electricity is generated and, in turn, how much revenue is generated by the Projects is essential to performing an income approach to value for the Properties. It helps the Assessor to understand if energy production is increasing or decreasing as well as any effect on overall income. It is important to consider not only revenue but also operations and maintenance expenses, since Brookfield asserts that energy prices are dropping. Because the abatement request is for the April 1, 2021 assessment date, the Assessor needs this data for calendar year 2021.

Second, pursuant to Requests ##10, 11 &13, the Assessor sought capital replacement cost information. This information helps the Assessor determine costs for use in an income valuation model. It is in Brookfield’s interest to report these costs, since capital costs input in the income valuation model tend to decrease the overall value conclusion. Hydroelectric facilities are unique and these short and long-term capital costs are usually specific to the project. The Assessor can estimate environmental requirements based on independent research, but actual capital replacement cost information is best to determine the value of the specific property.

Third, the Assessor’s Request #15 sought: “The documents and calculations used by Brookfield to determine the weighted average cost of capital (including the debt and equity components, required return and weight figures), growth rate and capitalization rate shown on Slide 7 of the ‘Additional Detail for Abatement Request’ PowerPoint submitted with the abatement application.” This information request relates to an exhibit provided by Brookfield as part of its application concerning the method used to arrive at a capitalization rate. Capitalization rates are used in the income approach to value and are needed to arrive at a final value conclusion. Since there are numerous types of income analyses, the Assessor requested the information to verify Brookfield’s requested abatement. The stated “WACC” analysis appears to be a version of an income approach called the Band of Investment Technique using mortgage and equity components. Any income analysis requires supported data from the market and actual data from the subject property. Brookfield did not provide any of this information; therefore, the Assessor cannot check the basic arithmetic, let alone Brookfield’s market conclusions. Furthermore, given that there are other income approach methods, Brookfield’s “WACC” method may not be the most appropriate analysis to use. However, it is hard to determine if Brookfield’s method is an appropriate method without the underlying data to support it. Brookfield asserts that the development of the “WACC” by its outside consultant (Kroll) is proprietary. While any proprietary information submitted by Brookfield to the Assessor must be kept confidential by the Assessor under the provisions of § 706-A, if Brookfield chooses not to provide the information, it must suffer the legal consequence of such a decision.

Finally, Requests ##16, 17 and 18 for both the Deer Rips and the Gulf Island Projects all request further documentation and calculations that support the various numbers that Brookfield uses in its “Additional Detail for Abatement Request” PowerPoint submitted with the abatement applications. This PowerPoint is the core of Brookfield’s abatement request. However, despite the Assessor’s request for the backup data supporting all of the numbers used by Brookfield in

the PowerPoint, none has been supplied. Without any supporting documentation, it appears that Brookfield selected these numbers out of thin air, with no basis in historical fact. Whomever prepared the analysis set forth in the PowerPoint surely had a source for the very specific numbers used; the Assessor was looking for the supporting data and calculations that one can reasonably assume do exist somewhere, yet Brookfield provided no such information to the Assessor.

This failure of Brookfield to produce the information requested in the Assessor's letters of February 11, 2022 (Exhibits B & C) and follow-up letter dated May 12, 2022 (Exhibit I) is fatal under Maine law. The Maine Law Court has said that neither "reasonable excuse" or 'good cause' is sufficient to excuse failure to file the list. The statute requires proof that the applicant 'was unable' to furnish the list." *Maine Lumber Co. v. Inhabitants of Mechanic Falls*, 157 Me. 347, 350, 172 A.2d 638, 640 (1961) (quoting *Edwards Mfg. Co. v. Farrington*, 102 Me. 140, 143, 66 A. 309, 311 (1906)); see also *Dead River Co. v. Assessors of Houlton*, 149 Me. 349, 352-53, 103 A.2d 123, 126 (1953).

Being "unable to furnish" the § 706-A information means precisely that. The Maine Law Court has held that "reasonable excuse" or "good cause" is not the statutory meaning of inability to furnish the list. It is not enough to answer that the information is not available to the taxpayer, or not in the taxpayer's operating files, or that the taxpayer relied on a statement by a consultant that the list was not necessary. See *Maine Lumber Co., Inc.*, 157 Me. at 351, 172 A.2d at 640; *Inhabitants of Levant v. County Commr's of Penobscot County*, 67 Me. 429, 437 (1877) (it was not enough for the taxpayer to have answered certain proper inquiries; the taxpayer must answer all proper inquiries).

Similarly, the State Board of Property Tax Review dismissed a large abatement request from the owner of the Maine Mall shopping center in South Portland where the owner admitted that there was an appraisal of the property in a pending case in federal bankruptcy court in New York City, but the lawyers in the bankruptcy proceedings refused to provide the appraisal report to the City Assessor. *GGP-Maine Mall, LLC v. City of South Portland*, No. 2011-022 (Me. Bd. Prop. Tax Rev. Apr. 26, 2013) (owner of Maine Mall shopping center's appeal barred because it did not present persuasive evidence that it was unable to respond to proper inquiries of the Assessor); see also *MCI International, Inc. v. Town of Andover*, No. 88-20 (Me. Bd. Prop. Tax Rev. Sept. 18, 1989) (MCI barred from appeal to State Board because it did not prove it was unable to respond to proper inquiries of the Assessor).

In short, Brookfield has not and cannot prove that it was unable to produce the requested information; at best, it may have been inconvenient, or not in its business interests to do so, but neither is a satisfactory excuse under Maine law. As a result of Brookfield's failure to provide the requested information to the Assessor, Brookfield has lost its right to pursue further abatement appeals relating to the April 1, 2021 assessment date.

Karen Scammon, Assessor, and Joseph St. Peter, Deputy Assessor, and I will be present at the RAB meeting on October 12th, and we look forward to the opportunity to present this information more fully at that time.

**§ 706-A. Taxpayers to list property; notice; penalty; verification**

**1. Taxpayers to list property; inquiries.** Before making an assessment, the assessor or assessors, chief assessor of a primary assessing area or State Tax Assessor in the case of the unorganized territory may give reasonable notice in writing to all persons liable to taxation or qualifying for exemption pursuant to subchapter 4-C in the municipality, the primary assessing area or the unorganized territory to furnish to the assessor or assessors, chief assessor or State Tax Assessor true and perfect lists of all the property the taxpayer possessed on the first day of April of the same year and may at the time of the notice or thereafter require the taxpayer to answer in writing all proper inquiries as to the nature, situation and value of the taxpayer's property liable to be taxed in the State or subject to exemption pursuant to subchapter 4-C. The list and answers are not conclusive upon the assessor or assessors, chief assessor or State Tax Assessor.

As may be reasonably necessary to ascertain the value of property according to the income approach to value pursuant to the requirements of section 208-A or generally accepted assessing practices, these inquiries may seek information about income and expense, manufacturing or operational efficiencies, manufactured or generated sales price trends or other related information.

A taxpayer has 30 days from receipt of a request for a true and perfect list or of proper inquiries to respond to the request or inquiries. Upon written request to the assessor or assessors, chief assessor of a primary assessing area or State Tax Assessor in the case of the unorganized territory, a taxpayer is entitled to a 30-day extension to respond to the request for a true and perfect list or proper inquiries, and the assessor may at any time grant additional extensions upon written request. Information provided by the taxpayer in response to an inquiry that is proprietary information, and is clearly labeled by the taxpayer as proprietary and confidential information, is confidential and is not a public record for purposes of Title 1, chapter 13.

A notice to or inquiry of a taxpayer made under this section may be by mail directed to the last known address of the taxpayer or by any other method that provides reasonable notice to the taxpayer.

If notice is given by mail and the taxpayer does not furnish the list and answers to all proper inquiries, the taxpayer may not apply to the assessor or assessors, chief assessor of a primary assessing area or State Tax Assessor in the case of the unorganized territory for an abatement or appeal an application for abatement of those taxes unless the taxpayer furnishes the list and answers with the application and satisfies the assessing authority or authority to whom an appeal is made that the taxpayer was unable to furnish the list and answers in the time required. The list and answers are not conclusive upon the assessor or assessors, chief assessor or State Tax Assessor.

If the assessor or assessors, chief assessor of a primary assessing area or State Tax Assessor in the case of the unorganized territory fails to give notice by mail, the taxpayer is not prohibited from applying for an abatement; however, upon demand, the taxpayer shall furnish the list and answer in writing all proper inquiries as to the nature, situation and value of the taxpayer's property liable to be taxed in the State. A taxpayer's refusal or neglect to answer the inquiries bars an appeal, but the list and answers are not conclusive upon the assessor or assessors, chief assessor or State Tax Assessor.

The assessor or assessors, chief assessor of a primary assessing area or State Tax Assessor in the case of the unorganized territory may require the person furnishing the list and answers to all proper inquiries to subscribe under oath to the truth of the list and answers.

[PL 2017, c. 367, §5 (NEW).]

**2. Penalty.** It is unlawful for any public official or any employee, agent, attorney or consultant of the taxing jurisdiction to willfully disclose any taxpayer information made confidential by this section or examine information made confidential by this section for any purpose other than the conduct of official duties pertaining to property tax administration. Information made confidential by this section may be disclosed:



- A. To the State Tax Assessor, who shall treat such information as confidential for purposes of section 191, subsection 2, paragraph I; [PL 2017, c. 367, §5 (NEW).]
- B. To a mediator retained pursuant to section 271, subsection 5-A; [PL 2017, c. 367, §5 (NEW).]
- C. In a judicial proceeding in camera; [PL 2017, c. 367, §5 (NEW).]
- D. In an administrative proceeding, in executive session, pursuant to Title 1, section 405, subsection 6, paragraph F; [PL 2017, c. 367, §5 (NEW).]
- E. To the person who filed the confidential information or that person's representative authorized by the person in writing to receive the information; [PL 2017, c. 367, §5 (NEW).]
- F. To a public official or any employee, agent, attorney or consultant of the taxing jurisdiction; and [PL 2017, c. 367, §5 (NEW).]
- G. To any other person with the taxpayer's written consent. [PL 2017, c. 367, §5 (NEW).]

A person who knowingly violates the confidentiality provisions of this subsection commits a Class E crime.

[PL 2017, c. 367, §5 (NEW).]

**3. Proprietary information.** For the purposes of this section, "proprietary information" means information that is a trade secret or production, commercial or financial information the disclosure of which would impair the competitive position of the person submitting the information and would make available information not otherwise publicly available and information protected from disclosure by federal or state law, rules or regulations.

[PL 2017, c. 367, §5 (NEW).]

#### SECTION HISTORY

PL 2017, c. 367, §5 (NEW).

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## City of Auburn, Maine

Regulatory Advisory Board

60 Court Street | Auburn, Maine 04210

October 17, 2022

Brookfield White Pine Hydro, LLC  
c/o Paul Brenton  
2000 Donald Lynch Blvd. Suite 300  
Marlborough, ME 01752

Re : Tax Abatement Applications for properties located at the following Map-Lot locations: 314-005, 315-001 and 326-007 (“*Deer Rips Hydro Facility*”) and 347-011, 347-012, 347-017, 369-004 and 369-005 (“*Gulf Island Hydro Facility*”) (April 1, 2021 assessment date)

Mr. Brenton:

Appellant Brookfield White Pine Hydro, LLC (hereinafter, “Appellant”) seeks an abatement from the assessments of the Deer Rips Hydro Facility and Gulf Island Hydro Facility as of April 1, 2021. The Assessor valued the Deer Rips Hydro Facility at \$12,124,600, and Appellant seeks an abatement of \$3,015,889, to reduce the assessment to \$9,108,711. The Assessor valued the Gulf Island Hydro Facility at \$14,650,900, and the Appellant seeks an abatement of \$3,939,224 to reduce the assessment to \$10,711,676 (collectively, the “Appeals”).

The Auburn Regulatory Advisory Board, (“the Board”) met on October 12, 2022, for a hearing on the limited issue of whether the Appellant is barred from pursuing the Appeals pursuant to 36 M.R.S. §706-A due to its alleged failure to provide requested information to the City’s Assessor. The parties agreed to bifurcate the hearing on the Appeals and address this issue first. Prior to the commencement of the hearing, the parties agreed that the Appeals would be consolidated for hearing. The testifying parties were then placed under oath.

The record of this hearing included the letters received by the Board prior to the hearing and the recording of the hearing. The exhibits are identified as follows:

- BWPH 1: August 9, 2022 Letter from Emmanuela D’Ambrogio to the Board of Assessment Review [*stet*] attaching Exhibits A—K;
- City 1: October 5, 2022 Memorandum from Sally J. Daggett to the Auburn Regulatory Advisory Board; and
- BWPH 2: October 11, 2022 Letter from Emmanuela D’Ambrogio to the Auburn Regulatory Advisory Board.

The hearing started with opening arguments by Attorney Emmanuela D’Ambrogio for the Appellant. She then called Paul Brenton who is the Vice President for Legal of Appellant.

Appellant engaged Kroll to respond to, *inter alia*, Section 706-A requests from the City of Auburn. Mr. Brenton testified that he received the supplemental requests from the Assessor dated May 12, 2022, and inadvertently did not act on the requests such that a response was sent prior to the deadline or before the instant hearing. Robert Herman, Managing Director Tax Services Leader from Kroll then testified about his firm's engagement to respond to requests for information from the Assessor regarding the subject properties in this tax year and those prior to and subsequent. He testified about information that was provided in response to the Assessor's February 11, 2022 Section 706-A requests from the Assessor and reviewed BWPH 1, Ex. D and E<sup>1</sup>.

Attorney Sally J. Daggett then cross-examined Mr. Herman about information provided in BWPH 1 Exhibits D and E, which was provided to the Assessor on April 11, 2022. Neither witness for the Appellant could confirm or deny whether actual data regarding the properties, including actual information about income, expenses or generation, was available in 2022. No actual data from 2021 relating to the subject properties was provided to the Assessor's Office at any time prior to the instant hearing. Mr. Brenton confirmed that it was his address listed as the mailing address of the Appellant for both appeals and confirmed that he received the letters requesting information in February and May, 2022. (BWPH 1, Ex A).

Attorney Daggett inquired about questions #14 through #18 in the Assessor's May 12, 2022 letter, all of which sought underlying data in a PowerPoint presentation that was provided by Appellant in response to the Assessor's initial request for information on February 11, 2022. Mr. Brenton took the position that Appellant does not maintain the information requested, although Kroll does. Mr. Herman testified that Kroll had produced some of the requested data, including the data underlying the WACC calculation, to other municipalities for Appellant.

Attorney D'Ambrogio then examined Karen Scammon. Ms. Scammon testified that she sent the appeal denial letters on June 29, 2022. However, if she had received information after June that supported an abatement, then she would have considered it and potentially made an adjustment. No information was ever sent by the Appellant after May 12, 2022, including up through the subject hearing.

The parties agreed that Appellant bore the burden of proving that it was unable to provide the information requested by the Assessor pursuant to Section 706-A. The Assessor took the position that the Appellant did not meet its burden to prove that it was unable to provide the information requested by the Assessor. The Appellant took the position that it did provide the requested information and that whether it was 'unable' to provide the requested information should be interpreted as only what was known or knowable as of April 1, 2021.

Upon the conclusion of testimony and after hearing closing arguments from the parties, the Board made the following findings:

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<sup>1</sup> Non-public information in Exhibits D and E was deemed proprietary and confidential, and the Board moved into executive session to discuss such information but exited executive session after the discussion of such information had concluded.

1. The City Assessor's letters to Appellant on February 11, 2022 and May 12, 2022, were demands upon the taxpayer, Brookfield White Pine Hydro, LLC, that it provide information to the Assessor, and these demands were made while the taxpayer's request for an abatement was pending.
2. The taxpayer received both letters requesting information.
3. The Assessor's demands for information were all proper inquiries pertaining to the nature, situation and value of the taxpayer's property liable to be taxed in Auburn.
4. Appellant's responses to the Assessor's demands for information on April 11, 2022, were incomplete. Appellant never responded to the May 12, 2022 supplemental request letter.
5. Appellant failed to prove that it was unable to provide the requested information.

Based upon the testimony, exhibits, and arguments at the hearing, and upon the findings made by the Board, the Auburn Regulatory Advisory Board voted unanimously to bar the tax abatement applications for properties located at the following Map-Lot locations: 314-005, 315-001 and 326-007 ("*Deer Rips Hydro Facility*") and 347-011, 347-012, 347-017, 369-004 and 369-005 ("*Gulf Island Hydro Facility*") for the April 1, 2021 assessment date because the Appeals are barred pursuant to 36 M.R.S.A. 706-A on account of the taxpayer's failure to provide complete information to the City Assessor in response to her proper inquiries.

**Pursuant to 36 M.R.S. § 843(1-A), the Appellant may appeal this decision of the Regulatory Advisory Board to the State Board of Property Tax Review within 60 days of notice of this decision.**

REGULATORY ADVISORY BOARD

By: \_\_\_\_\_

Amy Dieterich, Secretary

cc: Karen Scammon, Assessor

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**667 A.2d 1376**  
**CHAMPION INTERNATIONAL CORP.**  
**v.**  
**TOWN OF BUCKSPORT et al.**  
**Supreme Judicial Court of Maine.**  
**Argued Oct. 31, 1995.**  
**Decided Dec. 5, 1995.**

Catherine R. Connors, (orally), Pierce, Atwood, Scribner, Allen Smith & Lancaster, Portland, for Plaintiff.

John H. Montgomery, (orally), Glenn Israel, Bernstein, Shur, Sawyer & Nelson, Portland, for Defendants.

Before WATHEN, C.J., and ROBERTS, GLASSMAN, CLIFFORD, RUDMAN, DANA, and LIPEZ, JJ.

ROBERTS, Justice.

Champion International Corp. appeals from the judgment entered in the Superior Court (Kennebec County, Alexander, J.) dismissing its declaratory judgment action. Champion challenged the Town of Bucksport tax assessor's request for information, pursuant to 36 M.R.S.A. § 706 (1990), on three grounds: (1) section 706 requires that the assessor make a demand for true and perfect lists of all of a taxpayer's taxable estates from all taxpayers; (2) Champion did not receive a demand for such a list; and (3) the information demanded by the assessor was unreasonable, over-broad, and burdensome. <sup>1</sup> Champion also requested, should the court

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find the assessor's inquiries to be proper, that it be given time to answer without losing its right to seek an abatement. We address only Champion's second ground, and conclude that the court should have declared that Champion had not violated section 706.

In March 1994 William J. Mayo, the Town's assessor, sent to Champion a 63-paragraph "Property Tax Information Request," seeking information to assist him in his assessment of Champion's Bucksport mill for the 1994 tax year. The request purported to be pursuant to section 706, which allows an assessor to make "proper inquiries as to the nature, situation and value" of taxable property. The proper inquiries, however, by the plain text of the fourth paragraph of section 706, may be made only of the "person furnishing the list." The list referred to in the fourth paragraph is the "true and perfect list" of all of a taxpayer's taxable property that section 706 allows an assessor to obtain from "all persons liable to taxation in the municipality." The fourth paragraph is clearly directed to the person who has furnished the list required in the first paragraph. Therefore, the list request of the first paragraph is a necessary prerequisite to any request for information. Because the assessor did not request from Champion "true and perfect lists of all their estates, not by law exempt from taxation," its right to seek an abatement is not affected by its failure to answer all of the proffered inquiries.

Likewise, the assessor is not assisted by the last paragraph of section 706 because Champion's challenge to his request preceded its request for an abatement. Therefore, Champion "is not barred of [its] right to make application for abatement." Our reading of section 706 is supported both by the plain language of the statute and our prior decisions. In *Perry v. Town of Lincolnville*, 145 Me. 362, 75 A.2d 851 (1950), we said that "[t]he lists ... are therefore to furnish correct information to the assessors, and if the assessors desire, they have the right to require the individual, who files the list, to make oath to the same and to furnish other and additional information." *Id.* at 365-66, 75 A.2d at 853 (emphasis added).

Although Champion's subsequent abatement request may provide the opportunity for further inquiries by the assessor pursuant to the last paragraph of section 706, Champion was entitled to know whether it had violated section 706. By the terms of that section, Champion has not lost the right to seek an abatement and was entitled to a

judgment declaring its rights pursuant to the Declaratory Judgments Act, 14 M.R.S.A. §§ 5951-5963 (1980).

The entry is:

Judgment vacated.

Remanded for the entry of a declaratory judgment consistent with the opinion herein.

All concurring.

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1 36 M.R.S.A. § 706 (1990) provides in pertinent part:

Before making an assessment, the assessor ... may give seasonable notice in writing to all persons liable to taxation in the municipality ... to furnish to the assessor ... true and perfect lists of all their estates, not by law exempt from taxation, of which they were possessed on the first day of April of the same year.

The notice to owners may be by mail directed to the last known address of the taxpayer or by any other method that provides reasonable notice to the taxpayer.

If notice is given by mail and the taxpayer does not furnish the list, he is barred of his right to make application to the assessor ... for any abatement of his taxes, unless he furnishes the list with his application and satisfies [the assessor] that he was unable to furnish it at the time appointed.

The assessor ... may require the person furnishing the list to make oath to its truth ... and may require him to answer in writing all proper inquiries as to the nature, situation and value of his property liable to be taxed in the State; and a refusal or neglect to answer such inquiries and subscribe the same bars an appeal....

If the assessor ... fail[s] to give notice by mail, the taxpayer is not barred of his right to make application for abatement provided that upon demand the taxpayer shall answer in writing all

proper inquiries as to the nature, situation and value of his property liable to be taxed in the State; and a refusal or neglect to answer the inquiries and subscribe the same bars an appeal....

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**172 A.2d 638**  
**157 Me. 347**  
**MAINE LUMBER CO., Inc., J. W. Penney &**  
**Sons Co.**  
**v.**  
**INHABITANTS OF TOWN OF MECHANIC**  
**FALLS (two cases).**  
**Supreme Judicial Court of Maine.**  
**July 10, 1961.**

Herbert A. Crommett, Robert F. Preti,  
Portland, for appellants.

Frederick G. Taintor, Lewiston, Frank B.  
Foster, Mechanic Falls, for appellees.

Before WILLIAMSON, C. J., and WEBBER,  
TAPLEY, SULLIVAN, DUBORD and SIDDALL,  
JJ.

WILLIAMSON, Chief Justice.

On report. These appeals by taxpayers from abatements of tax by county commissioners to the Superior Court present identical questions of law on like facts. For convenience we will refer to one case. The sole issue raised on report is 'whether or not, on the Record, [157 Me. 348] the County Commissioners had jurisdiction to consider the Appeal from the refusal of the Assessors to make an abatement.' For appeal, see R.S. c. 91-A, §§ 50-55; for report, see Rule 72, Maine Rules of Civil Procedure.

The taxpayer applied to the assessors of the town of Mechanic Falls for an abatement from the 1960 assessment. On the refusal of the assessors to make an abatement, the taxpayer applied to the county commissioners, and then dissatisfied with the small amount of abatement granted, appealed to the Superior Court.

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The dispute arises from the failure of the taxpayer to file with the assessors at or before the

time set therefor the list of property as required under R.S. c. 91-A, § 34, as follows:

'Sec. 34. Taxpayers to list property, notice, penalty, verification.--Before making an assessment, the assessors shall give reasonable notice in writing to all persons, liable to taxation in the municipality, to furnish to the assessors true and perfect lists of their polls and all their estates, not by law exempt from taxation, of which they were possessed on the 1st day of April of the same year.

\* \* \*

\* \* \*

'If any person after such notice does not furnish such list, he is thereby barred of his right to make application to the assessors or the county commissioners for any abatement of his taxes, unless he furnishes such list with his application and satisfies them that he was unable to furnish it at the time appointed.'

A list of property was in fact filed with the assessors at the time of the abatement hearing, and subsequently a copy was furnished to the county commissioners at the time of the application or appeal from the action of the assessors. The county commissioners took jurisdiction of the application and rendered the decision from which the appeal arises.

[157 Me. 349] The reason given for the failure to file the list of property with the assessors is stated in an affidavit to the county commissioners, which reads in part:

'An independent appraiser was hired by said Town, who conferred with the appropriate employee of said Appellant and who was given all of the pertinent information with regard to assets as the Appraiser felt necessary; thus leading the Appellant to believe that said written list would not be necessary.'

The county commissioners granted the prayer of the taxpayer that they receive certain schedules or exhibits 'so that your Appellant (taxpayer) will

not be prejudiced by the question of whether or not prior lists submitted have in fact been submitted within the meaning of the Statutes for the State of Maine.' The parties agree that the assessors gave seasonable notice in writing under Sec. 34, supra. The time appointed for furnishing the list necessarily must have been before the assessment was made from which the abatement was requested. *Perry v. Inhabitants of Town of Lincolnville*, 145 Me. 362, 75 A.2d 851.

Neither the assessors nor the county commissioners had jurisdiction to entertain an application for the abatement of the taxes unless the taxpayer 'satisfies them that he was unable to furnish it at the time appointed.' The taxpayer argues first, that in granting the prayer for relief, the county commissioners found as a matter of fact that the taxpayers had been 'unable' to file a list within the prescribed time, and secondly, that there is nothing in the record to show that the taxpayer failed to file a list in accordance with the requirements of statute or the demands of the assessors. There is no statement of findings bearing out the contentions and no inferences can be drawn from the known facts or from the exercise of jurisdiction by the county commissioners that the failure of the taxpayer to file the list within the time appointed was brought about by its [157 Me. 350] inability to do so. If the county commissioners had so found that the taxpayer was unable to file the list before the abatement by the assessors, such a finding in our opinion would not have been sustainable as a matter of law. The taxpayer was mistaken in the legal effect of what transpired, but that does not change failure to file into inability to file.

The taxpayer further contends that the investigation by the appraiser employed by the assessors rendered the filing of the

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list unnecessary and that therefore the filing of the list by the taxpayer was not required to justify jurisdiction in the assessors and in the county commissioners. Such, however, is not the effect of the acts of the assessors through their specially

employed appraiser. The statute requires that a property list be filed and without such list being filed there can be no applications to the assessors or the county commissioners. *Perry v. Inhabitants of Town of Lincolnville*, supra.

The case falls within the principles set forth in *Edwards Mfg. Co. v. Farrington*, 102 Me. 140, 66 A. 309, in which a petition for writ of mandamus to compel assessors to take action on an application for abatement of tax was denied. Under the law as it then existed, no list was required from a nonresident. The Court said, 102 Me. at page 143, 66 A. at page 311:

'It has been adjudicated that the petitioning company was and is to be regarded as an inhabitant of Augusta for taxing purposes. The company practically admits that it did not furnish the assessors with the statutory list of its taxable property at the time appointed, though due notice was given. It is therefore barred from its otherwise statutory right to make application for abatement either to the assessors, or to the county commissioners, or to this court, unless it can satisfy the tribunal that it 'was unable to offer it (the list) at the time appointed.'

[157 Me. 351] In this case the argument was made:

'It is practically conceded in the petition itself, including exhibits, that the only excuse the petitioner has to offer to either tribunal for its omission to furnish the list seasonably is that it had supposed it was not an inhabitant of Augusta for taxing purposes, and that the assessors and the city for many years had regarded it as a nonresident, and had so treated it in assessing taxes upon its property, and indeed, did so in the assessment of 1904. The argument is that, beside believing that no list was required by law, the company was led to believe by the assurances and action of the assessors that no list was required by them, hence it should not be held barred from making application for abatement.'

As the Court further pointed out, "reasonable excuse," or "good cause," is not sufficient to excuse



failure to file the list. The 'statute requires proof that the applicant 'was unable' to furnish the list.' See also *Dead River Co. v. Assessors of Houlton*, 149 Me. 349, 355, 103 A.2d 123; *Portland Terminal Company v. City of Portland*, 129 Me. 264, 151 A. 460; *Squire & Co. v. City of Portland*, 106 Me. 234, 76 A. 679, 30 L.R.A.,N.S., 576; *Inhabitants of Orland v. County Commissioners*, 76 Me. 460; *Inhabitants of Fairfield v. County Commissioners*, 66 Me. 385; *Lambard v. Kennebec County Commissioners*, 53 Me. 505.

It follows under the decided cases that the county commissioners had no jurisdiction to entertain the application for abatement of the tax and that the assessment by the assessors for the taxable year 1960 stands.

Under R.S. c. 91-A, § 55, 'if no abatement is granted, judgment shall be rendered in favor of the municipality, and for its costs, to be taxed by the court.' Accordingly the entry in Superior Court in each case will be.

Judgment for the Inhabitants of the Town of Mechanic Falls with costs.

STATE OF MAINE  
KENNEBEC, ss

BOARD OF PROPERTY TAX REVIEW  
DOCKET No.2011-022 to 030

GGP-MAINE MALL, LLC )  
)  
v. )  
)  
CITY OF SOUTH PORTLAND )

DECISION ON MOTION TO DISMISS

This matter is before the State Board of Property Tax Review (hereinafter “the Board”) on appeal of GGP-Maine Mall, LLC (“GGP”) from the decision of the local board of assessment review which denied abatement of GGP’s property taxes for the April 1, 2009 tax year. The taxpayer appealed the assessment in connection with nine (9) parcels situated within the City of South Portland. The assessor valued its property, both real and personal property at \$242,684,000 for that tax year. Prior to GGP’s filing an appeal with the Board, the parties filed a Complaint for a Declaratory Judgment in Superior Court, seeking a Protective Order to keep certain information, submitted to the municipality in connection with the appeal to the local board of assessment review as well as in proceedings before this Board, confidential. The Superior Court issued the Order on February 17, 2011. The Board has complied with its ongoing obligation, pursuant to that Order, to protect certain information as being confidential.

The Board convened on March 21, 2013 to consider a Motion to Dismiss filed by the City of South Portland. Present on behalf of the Board were Chairperson Charles A. Lane, Esq., and members Ronald Blaisdell, Richard Partridge, and Michael MacPherson. The taxpayer was represented by Jonathan L. Goldberg, Esq. The City was represented by William H. Dale, Esq. In its motion, the City claimed that GGP failed to comply with the provisions of 36 M.R.S.A. §706 and consequently is barred from pursuing an appeal. GGP submitted a Response to the City’s motion and the City filed a Reply to GGP’s Response.

ORIGINAL

## Section 706

Section 706 has “defined dual purpose[s]: to assist assessors in making correct and complete assessments, and to prevent property liable to be taxed from escaping taxation.” See Ocean Job Lot of Belfast, LLC v. City of Belfast, Order on Motion to Dismiss, No. 2011-022-A (BPTR May 7, 2012) at page 5, citing Perry v. Inhabitants of Town of Lincolnville, 145 Me. 362, 364-65, 75 A.2d 851, 852 (1950); Dead River Co. v. Assessors of Houlton, 149 Me. 349, 357, 103 A.2d 123, 128 (1953); and Inhabitants of Ellsworth v. Brown, 53 Me. 519, 521 (1866). Section 706 in relevant part provides, as follows:

**“[[T]he assessor] may give ... notice in writing to all persons liable to taxation in the municipality ... to furnish to the assessor... perfect lists of all their estates, not by law exempt from taxation, of which they were possessed on the first day of April of the same year.... If notice is given by mail and the taxpayer does not furnish the list, he is barred of his right to make application to the assessor - unless he furnishes the list with his application and satisfies [the assessor] that he was unable to furnish it at the time appointed.... [furthermore] ... [t]he assessor ... may require the person furnishing the list ... to answer in writing all proper inquiries as to the nature, situation and value of his property liable to be taxed ... and that the refusal or neglect to answer such inquiries ... bars an appeal.... [however] ... if the assessor... fail(s) to give notice by mail [i.e. to provide a list], the taxpayer is not barred of his right to make application for abatement provided that upon demand the taxpayer shall answer in writing all proper inquiries as to the nature, situation and value of his property liable to be taxed ... and a refusal or neglect to answer the inquiries ... bars an appeal.”**

## Background

The City claims that prior to the commitment date, July 15, 2009, the assessor, by letter, dated April 2, 2009, requested, among other things, that GGP provide copies of appraisals performed on the property. (See, Ex. #1 to City’s Motion). GGP did not answer the April 2,

2009 letter. Subsequently, on January 12, 2010, GGP applied for an abatement. After the application for abatement was filed, the assessor by means of a letter, dated **February 3, 2010**, again requested that GGP provide copies of appraisals performed on the property. (City Ex. #2). It responded by means of a letter from Mr. Goldberg, dated **February 10, 2010** (Ex. A to GGP's response to the Motion). In that letter Mr. Goldberg stated that "[t]o the best of my knowledge, there are no appraisal reports pertaining to South Portland properties since the Horstman/Lennhoff appraisal submitted to the State Board of Property Tax Review." The reference to the Horstman/Lennhoff appraisal was to an appraisal submitted to the Board in a previous appeal. Thereafter, on March 3, 2010, the assessor wrote to Mr. Goldberg, informing him that she had been contacted by an appraiser at CB Richard Ellis who had represented to her that he was involved in conducting an appraisal for the Mall in connection with the bankruptcy proceeding for GGP, Inc.<sup>1</sup> The appraiser asked for a copy of the Horstman/Lennhoff appraisal. The assessor did not provide the appraisal, because of a Protective Order issued which had been granted by the Superior Court in the previous appeal which prohibited her from distributing the report.<sup>2</sup> In her letter the assessor further stated that she had subsequently called the appraiser's office and was told that the appraisal had been completed and submitted to the court. The assessor again requested that Mr. Goldberg provide copies of all appraisals in connection with the property. (City Ex. #3). He responded by letter, dated **March 17, 2010** (Ex. B to GGP's response to the motion). In that letter he wrote:

**Our response that "to the best of our knowledge, there are no appraisal reports pertaining to the South Portland properties since the Horstman/Lennhoff appraisal submitted to the State Board of Property Tax Review" is accurate. I personally spoke with GGP's bankruptcy counsel at Weil, Gotshal & Manges in Washington, D.C., to confirm that this is the case. He informed me that GGP has contracted (though not with CB Richard Ellis) to appraise all of its properties in connection with the bankruptcy proceedings, but that (1) those appraisal reports have not been completed, (2) they are not currently available to GGP, and (3) will be held**

<sup>1</sup> GGP, Inc. is "one of the largest shopping center REITs (Real Estate Investment Trusts) in the United States" that includes "approximately 750 wholly owned ... subsidiaries and affiliates" including GGP-Maine Mall, LLC. (See, City Ex. #5, p. 2-3)

<sup>2</sup> The assessor cited a Protective Order issued by the Superior Court in connection with GGP's application for abatement for the tax year April 1, 2006.

**under a claim of privilege by GGP and its bankruptcy counsel. He informed me further that any number of appraisals of GGP property might have been commissioned by creditors, lenders, prospective purchasers, and others. We, of course, have no direct information about any of these, if they exist, and no access to them. This may explain the inquiry from CB Richard Ellis to your office that you mentioned in your letter to me.”**

Thereafter, Mr. Dale e-mailed Mr. Goldberg, requesting that he provide any appraisals performed on the property. Although there is no exhibit associated with that e-mail, Mr. Goldberg responded by letter, dated **May 14, 2010**, in which he referred to Mr. Dale’s request (Ex. C to the GGP’s response to the motion). In that letter he stated:

**With regard to your request for additional information, we have answered your questions to the best of our ability in my March 17, 2010 letter to you. We are aware of no appraisal of the Maine Mall property completed since the Lennhoff/Horstman appraisal that you have already seen. If we had access to a more recent appraisal prepared in connection with the General Growth Properties bankruptcy proceedings in the Southern District of New York, we would hold such under a claim of privilege and decline to produce it for your use in the abatement proceedings. While any number of lenders, creditors, prospective purchasers and others may have commissioned appraisals of the Maine Mall since 2006, we have no knowledge of and no access to any such appraisal.**

The assessor denied GGP’s application for abatement on **July 26, 2010**. GGP appealed to the local board of assessment review on or about **September 22, 2010**. The local board issued a written denial on **August 17, 2011**, and GGP appealed that decision to the Board on **October 11, 2011**. On **December 14, 2012**, Mr. Dale sent an e-mail to Mr. Goldberg again requesting copies of appraisals performed on GGP’s South Portland property (City Ex. # 4). There is no indication that Mr. Goldberg responded to that request.

### Burden of Proof

When a City files a Section 706 motion to dismiss, it initially has the burden to show that the assessor had mailed notice to the taxpayer to file a true and perfect list of its taxable estates. If the assessor has mailed the notice, he/she may request that the taxpayer answer in writing all proper inquiries as to the nature, situation and value of the property liable to be taxed. The burden then rests with the taxpayer to prove that the assessor did not mail notice to provide a list. If the assessor did mail notice to provide a list, however, then the taxpayer must prove that it either answered all proper inquiries prior to commitment, that the inquiries were not proper so that it was not required to answer, or that it was unable to answer the inquiries. If the taxpayer should fail to meet its burden, it is barred from appealing the assessment.

Alternatively, if the assessor did not mail notice to the taxpayer to provide a list of its taxable estates, the assessor may still require (under the last paragraph to section 706), in cases where an application for abatement has been filed by the taxpayer, that the taxpayer answer in writing all proper inquiries as to the nature, situation and value of the property liable to be taxed. The burden then rests with the taxpayer to prove that it either answered all proper inquiries, that the inquiries were not proper so that it was not required to answer, or that it was unable to answer the inquiries. If the taxpayer should fail to meet its burden, then it is barred from appealing the assessment.

### City's Position

The City takes the position that the assessor's letter, dated **April 2, 2009**, constituted a pre-abatement request for a list of GGP's taxable property. Because GGP failed to respond to that letter prior to the commitment of taxes for the April 1, 2009 tax year (which does not appear to be disputed), then GGP is barred from appeal. The City further argues that even if the Board

were to conclude that the April 2, 2009 letter were not a request for a list contemplated by section 706, the assessor was nonetheless permitted under the last paragraph of section 706 to make proper inquiries as to the nature, situation and value of the property following GGP's application for an abatement on January 12, 2010. In particular, the assessor had demanded copies of appraisals performed on the property by letters, dated February 10, 2010, and March 3, 2010, and again by means of an undated e-mail from Mr. Dale (which was not submitted as an exhibit) in May 2010. Despite those requests, however, no appraisal was ever forwarded to the assessor<sup>3</sup> who ultimately denied the application on July 26, 2010. In the City's Reply to GGP's Response to the City's Motion to Dismiss, the City asserted that as of June 7, 2010 the appraisal for the GGP property in South Portland had been completed in connection with the bankruptcy proceedings and, therefore, should have been forwarded to the assessor for consideration in connection with the application for abatement (City's Response, p. 2-3). Because GGP failed to do so, in the City's view, GGP is now barred from appealing the assessor's decision to deny the application.

#### GGP's position

In its Response to the City's Motion to Dismiss GGP asserted several defenses:

- 1) the Board has no authority to interpret the provisions of section 706, only the court has that authority;
- 2) the appraisal is a trade secret and therefore privileged and cannot be released;
- 3) the appraisal qualifies as attorney work-product and cannot be released;
- 4) the information sought (appraisal) is over-broad (not a proper inquiry) because GGP supplied other information to the assessor which would allow her to value the property;

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<sup>3</sup> As previously noted, the assessor (as her testimony indicates) believed that an appraisal of the property had been performed on GGP's South Portland property in connection with a recent bankruptcy proceeding in the Southern District of New York, because of a call to her from an appraiser at CB Richard Ellis received prior to her February 10, 2010 letter.

- 5) the City has not shown that the appraisal report that it seeks was produced or made available to GGP;
- 6) the City did not give notice to GGP to furnish a list of its estates such that the assessor cannot make further inquiry for information about the nature, situation and value of the property.

### Discussion

The City presented testimony of the assessor who thoroughly reviewed the City's exhibits. In particular, she discussed her first letter to GGP, dated April 2, 2009, addressed to David J. Swinkle, Director of Tax Services of General Growth Properties, (City Ex. #2), **which** specifically recites that the request was being made pursuant to 36 M.R.S.A., section 706, and quotes that section of 706 containing the requirement that the taxpayer provide a "true and perfect lists of all their estates..." The letter was sent prior to the commitment and, therefore, satisfies the requirement of section 706 which directs the assessor to request a list from the taxpayer before asking for answers in writing to all proper inquires.<sup>4</sup> Even if the April 1, 2009 letter should not be considered a request for a list, the assessor's other letters, seeking any and all appraisals of the property, dated, February 3, 2010 and March 3, 2010, together with the e-mail from the City's attorney, dated December 14, 2012, were authorized under the fifth paragraph of section 706. As has been noted, under that paragraph, even if the assessor had not requested a list, but the taxpayer had applied for an abatement, the assessor may demand that the taxpayer "answer in writing all proper inquires as to the nature, situation and value of his property liable to be taxed." The assessor's request for appraisals made after GGP applied for an abatement is proper, because an appraisal is an opinion of value. If the taxpayer had answered the inquiry, it would not be barred from appeal. See, Champion International Corp. v. Town of Bucksport 667 A.2d 1376 (Me. 1995). The Board concludes that the assessor made timely and proper inquiry as to the value of the property by asking for appraisals performed on the property. The burden rests with the taxpayer to show that it was unable to respond.

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<sup>4</sup> GGP does not dispute that Mr. Swinkle received the letter or that he was not the proper individual to receive notice from the assessor on behalf of GGP.



The Board finds unpersuasive the taxpayer's argument that only the Superior Court has authority to interpret the provisions of section 706. As noted in Ocean State Job Lot of Belfast LLC v. City of Belfast, Order on Motion to Dismiss, No. 2011-022-A (BPTR May 7, 2012, pages 13-14): "[t]here is nothing in the language of section 706 that gives jurisdiction to the courts but *denies* such to the Board." Consistent with the reasoning in that Order, nothing in section 706 precludes the Board, contrary to the argument of Mr. Goldberg, from addressing the motion and interpreting the provisions of section 706. The Board's authority to rule on issues involving section 706 was clearly established in MCI International, Inc. v. Town of Andover No. 88-20 (BPTR Sept. 18, 1989, page 6). (MCI barred from appeal to the Board because it did not prove that it was unable to respond to proper inquiries posed by the City pursuant to section 706.) In fact, the Board has historically decided issues involving section 706. See, Ocean State Job Lot, n.4, and 5.<sup>5</sup>

In connection with the taxpayer's argument that the appraisal is privileged and cannot be released to the City, the Board notes that the parties obtained a Protective Order from the Superior Court, dated February 17, 2011. (Ex. D to GGP's Response to the City's Motion to Dismiss). That order prohibits both the Board as well as the City from publicly releasing information that GGP deems confidential, including information submitted to the City in response to the assessor's request for information under section 706.<sup>6</sup> A similar order of the Superior Court was obtained by the parties in a previous appeal for the tax year April 1, 2006. The Board complied with that order in connection with any information that GGP designated as confidential. The court's recent order and the Board's adherence to that order (as reflected in the record) provides adequate protective measures for the taxpayer against the release of information that it believes to be confidential.<sup>7</sup>

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<sup>5</sup> The Board acknowledges that the Dismissal order issued by Chairman Eric Wright, pursuant to his authority under section 271(5) of Title 36, is currently being appealed to a full Panel of the Board as permitted under that same section. This Panel, however, is not precluded from considering the rationale of his Order.

<sup>6</sup> The Board need not reach the factual issue as to whether an appraisal of the property is a trade secret and therefore privileged,

<sup>7</sup> Pursuant to paragraph 5 of the Protective Order, the City or member of the public may seek release of what the petitioner deems confidential and/or privileged by requesting the Court to modify its order to exempt such documents from protection.

The taxpayer, in addition, argues that the appraisals (if such exist) are attorney work product and therefore confidential. Although the Board is not subject to the Maine Rules of Evidence, it has looked to these rules for guidance. Under Maine Rules of Civil Procedure, Rule 26(b)(3) “[t]he [so-called] work product rule gives qualified protection to unprivileged information prepared in anticipation of trial, which can be overcome by a showing of substantial need.”<sup>8</sup> But section 706 permits the assessor to make proper inquiries as to the nature and value of the subject property “to assist [her] in making correct and complete assessments, and to prevent property liable to be taxed from escaping taxation.” Ocean Job Lot, at 5. Section 706, by its very terms, establishes the need for such information to be provided to the assessor in order to permit her to carry out her statutory duty to assess all property equally according to just value. As noted above, the Protective Order prohibits both the Board and also the City from releasing to the public any information which the petitioner claims as confidential.

GGP also asserts that the information sought (the appraisal) is over-broad and not a proper inquiry because GGP has supplied other information to the assessor which, in GGP’s opinion, would allow her to value the property simply by relying on what information she might glean from such submittals. The taxpayer, however, is required to disclose the kind of information about the nature, situation and value of the property which an appraisal would provide. Section 706 does not authorize the taxpayer to determine, on its own, when the assessor has sufficient information to determine the value of the property. MCI International, Inc., at 6 (“The statute [section 706] requires that answers be given to all [sic] proper inquiries, not merely certain ones. Levant v. County Commissioners, 67 Me. 429, 436 “(1887).” (Emphasis supplied.)

The taxpayer also asserts that there is no evidence either that appraisals in fact exist or that any appraisals were performed on the property. As previously noted, however, if the assessor poses timely and proper inquiries pursuant to section 706, the burden rests with the taxpayer to prove that it answered all such inquiries. Here the petitioner elected not to present a single witness, but chose to rely solely on its cross examination of the assessor and its twelve exhibits.<sup>9</sup> The Board is aware that while at times petitioner’s counsel presented his arguments

<sup>8</sup> See, Field & Murray, Maine Evidence §502 Advisors’ Note at 214 (6<sup>th</sup> ed. 2007).

<sup>9</sup> The twelve exhibits consist of the assessor’s letter to Mr. Swinkle, and correspondence (including e-mails) between Attorney Goldberg and the assessor or Attorney Dale.

and volunteered his opinions under the guise of factual statements, neither his arguments nor his opinions have any evidentiary weight because he was not a sworn witness.

GGP's argument that the bankruptcy documents do not support the conclusion that an appraisal was made is rebutted by the documents themselves. The application for a Bankruptcy Court order stated that GGP, Inc. and its "approximately 750 wholly owned Debtor and non-Debtor subsidiaries and affiliates ... comprise one of the largest shopping center REITs (Real Estate Investment Trusts) in the United States." The application requested an order "[a]uthorizing the employment and retention of Cashman & Wakefield, Inc." to "appraise the market value of certain General Growth Properties," (page 6), and references "the market value of certain General Growth properties." (City Ex. #5 p. 6). That application may reasonably be construed as referring to all GGP properties involved in the bankruptcy petition, including GGP-Maine Mall, LLC. It is not unreasonable, moreover, to conclude that such a highly regarded appraisal firm (City Ex. #5 p.5), when specifically ordered by the Bankruptcy Court to perform the task and thereby become eligible for payment of up to \$3,748,000.00 (City's Ex. # 5 p. 8), would conscientiously perform the work expected of it. That conclusion is supported by City Ex. #8, page 59, an "Invoice", dated May 26, 2010, in the amount of \$519,070.00, the "fee for appraising 291 properties". See also City Ex. #8 at page 71 and 73 which is another "Invoice for Appraisal , Summary Report", dated June 7, 2010 (before the assessor's denial of the application for abatement on July 26, 3010), in the amount of \$200,000 for "Land Value Allocations", which identifies the Maine Mall, South Portland, ME under "land values".<sup>10</sup> See, MCI International at 6. ("It is inconceivable to this Board that MCI did not know or have available to it all necessary facts concerning [the subject property]...")

GGP's principle response to the assessor's section 706 request for information consisted of Mr. Goldberg's letter to the assessor, dated May 14, 2010. His letter, however, is ambiguous, employing phrases such as: "we have answered your questions to the best of our ability ...";

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<sup>10</sup> Panel Member MacPherson also noted that evidence offered by the City shows that an appraisal might have been completed prior to March 3, 2011. In particular, GGP, Inc.'s Form 10-K filed with the Securities and Exchange Commission submitted on March 8, 2011 for the period ending 12-31-2010, when compared with its Form 10-K for the period ending 12-31-09, shows a change in value for the subject property listed as the "Maine Mall". (City Ex.#9 and #10)

and “[w]e are aware of no appraisal ... if we had access to a more recent appraisal ... we would hold such under a claim of privilege and decline to produce it. . . .” In contrast to the ambiguous remarks of the taxpayer’s counsel, the assessors’ testimony is not rebutted. Simply put, her inquiries were proper and required a response. The taxpayer was required to state whether or not an appraisal existed and, if it should decline to produce such an appraisal, it was required to set forth its reasons for being unable to do so. The taxpayer, however, has done neither. Its unpersuasive and inadequate responses to the assessor’s section 706 inquiries is reflected in the City’s several exhibits. The correspondence from Mr. Goldberg, moreover, is ambiguous and offers only the argument and surmises of counsel. The burden on a taxpayer who declines to comply with a section 706 request is onerous. “In order to avoid the absolute bar to an appeal for failure to answer fully, the taxpayer must show that he was unable to so answer. It is not sufficient to allege “good cause” or “reasonable excuse.” MCI International at 6, citing Maine Lumber Co., et al. v. Inhabitants of Mechanic Falls, 157 Me. 347, 351 (1961). By unanimous vote, the Board finds that the assessor’s Section 706 inquiries were legally proper. It further finds that the taxpayer failed to present persuasive evidence that it was unable to respond. Accordingly, the taxpayer’s right to appeal the assessment is barred and the motion to dismiss is granted.

#### Appeal rights

Any party wishing to appeal this decision must file a Petition for Review in the Superior Court within 30 days of receipt of this decision pursuant to 5 M.R.S.A. §§ 11001-11008. If the Decision is not appealed, it will become binding on the parties at the end of the thirty day period.

Dated: 04/26/2013

  
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Charles A. Lane, Esq.  
Chair, Panel C  
State Board of Property Tax Review

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