

Laws, Standards, and Ethics for BOE Members

Kate Adams


Assistant Attorney General
Revenue and Finance Division

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I am not providing legal advice. This presentation is intended for educational purposes only. It does not replace independent professional judgment or advice from your county prosecuting attorney.

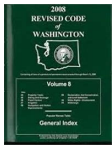
Laws and Rules



Sources of Law			
Source of Law	AKA	Origin	Interesting Examples
Washington Statutes	Revised Code of Washington RCW (Title, Chapter, Section)	Legislature	RCW Title 84
Washington Rules	Washington Administrative Code WAC (Title, Chapter, Section) Administrative law	Created by state agencies like DOR or DOH. Public process set by statute	WAC Title 458 (Department of Revenue); WAC Title 456 (Board of Tax Appeals).
Court Decisions	Case Law Precedent Common law	State Appellate Courts Supreme Court Court of Appeals Trial Court level generally are the "triers of fact."	Weyerhaeuser Co. v. Easter, 126 Wn.2d 370, 894 P.2d 1290 (1995); University Village Ltd. Partners v. King County, 106 Wn. App. 321,23 P.3d 1090 (2001).
Washington State Constitution	Washington's Constitution The State Constitution	The People	"Due Process" Clauses "Uniformity" Clause in Article VII, §§ 1 & 9.
County Ordinances (or other local government)	County Code Municipal Ordinances Municipal Law	Local Government (created by State Legislature) has delegated legislative powers.	Zoning

1

Washington Statutes



The RCW (Revised Code of Washington) is arranged by:

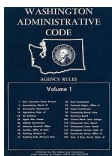
- Title
- Chapter
- Section

- Title 84 -- Property Taxes
- Chapter 48 -- Equalization of Assessments
- Section 010 - Formation of County Board of Equalization

- Title 84 RCW / RCW Title 84
- RCW 84.48 / Chapter 84.48 RCW
- RCW 84.48.010



Washington Rules



The WAC (Washington Administrative Code) is arranged by:

- Title
- Chapter
- Section

- Title 458 -- Dept. of Revenue Rules
- Chapter 14 -- Boards of Equalization
- Section 001 - Introduction

- Title 458 WAC / WAC Title 458
- WAC 458-14 / Chapter 458-14 WAC
- WAC 458-14-001

Case Law

- ▶ Only Washington State appellate court decisions are “controlling” or “precedential” (Supreme Court, Court of Appeals (any division)).
- ▶ Other judicial or administrative decisions are not controlling, but may be persuasive.
 - ▶ Your prior decisions
 - ▶ Trial court decisions
 - ▶ Board of Tax Appeals decisions
 - ▶ Department of Revenue appeal “determinations”
 - ▶ Attorney General Opinions
 - ▶ Appellate court, trial, or administrative decisions from other state tribunals
 - ▶ Appellate, trial, or administrative decisions from federal tribunals
 - ▶ Note that no federal issues should ever be before you. If you are trying to evaluate an issue of federal law, you have wandered out of your jurisdiction

Constitutional Law

Frolic and detour. . .

Remember that Constitutional questions are not within your authority. But there are two important constitutional issues that you will encounter every day.

1. Due Process ("notice and opportunity to be heard" before deprivation)

- ▶ Notice of the government action
- ▶ Opportunity to know the reasons
- ▶ The opportunity to appear and present evidence
- ▶ Reasonable time to prepare one's case
- ▶ An orderly proceeding with the ability to cross examine witnesses and present rebuttal evidence
- ▶ An impartial, qualified tribunal
- ▶ A reasoned decision (not arbitrary/capricious)

Constitutional Law

Frolic and detour. . .

2. Uniformity of Taxes

The Washington Constitution requires "Uniformity"

- ▶ **Uniform tax rate** (all real property in the jurisdiction shall be taxed by that jurisdiction at the same rate).
- ▶ **Uniformity in assessed valuation** (all property shall be assessed at the same percentage of its market value).

What does that mean for you?

- ▶ Equalization = The process for ensuring uniformity
- ▶ Uniformity = All properties at market value

Citations

Weyerhaeuser Co. v. Easter, 126 Wn.2d 370, 894 P.2d 1290 (1995)

Weyerhaeuser Co. v. Easter 126 Wn.2d 370, 894 P.2d 1290 (1995)

- Case name
- Names of the parties - can be weirdly abbreviated
- Plaintiff (appellant, petitioner, etc.) first
- Always italicized

- Washington Reporter Identification
- Volume number
- Series (Wash, Wn.2d)
- Page Number

- Regional Reporter
- Volume number
- Series (P, P.2d, P.3d)
- Page Number

Year of Publication

Try this

University Village Ltd. Partners v. King Cty, 106 Wn. App. 321, 23 P.3d 1090 (2001)

The Bluebook: A Uniform System of Citation:

<https://www.legalbluebook.com/bluebook/v21/quick-style-guide>

https://www.courts.wa.gov/appellate_trial_courts/supreme/?fa=atc_supreme.style

Where to find Legal Resources

- ▶ Property Tax Resource Center. <http://propertytax.dor.wa.gov/>
 - ▶ Access to guidance documents, manuals and specific topic information
 - ▶ Catalog of links to Property Tax specific RCWs and WACs.
- ▶ Office of the Code Reviser - <http://leg.wa.gov/CodeReviser>
 - ▶ Official and latest update of Revised Code of Washington (RCW)
 - ▶ Official and latest update of Washington Administrative Code (WAC)
 - ▶ Links to laws and rulemaking which changed RCW and WAC



Where to find Legal Resources (Cont.)

- ▶ Published Court Cases, Law Review Articles, Practice Guides, etc.
 - ▶ Law Library (Courthouses or some local libraries)
 - ▶ Office of Reporter of Decisions: http://www.courts.wa.gov/appellate_trial_courts/supreme/?fa=atc_supreme.reporter
 - ▶ Internet (sometimes can locate on free: FindLaw or Justia; or paid legal research sites like Westlaw or LexisNexis)
 - ▶ County Prosecuting Attorney may be able to help
- ▶ Attorney General Opinions:
 - ▶ <https://www.ago.wa.gov/ago-opinions>
- ▶ Board of Tax Appeal Decisions
 - ▶ <https://bta.wa.gov/index.php/decisions-3/>

BOE
Authority

Who are you?



State Government

Legislative
State House
State Senate

Executive
Governor

Judicial
Supreme Court

State Agencies
Department of . . .
Revenue, Health,
Licensing

State Boards and
Commissions
Board of Tax Appeals

Independent Elected
State Offices
Attorney General
Secretary of State

County Government

Legislative
County Commissioners
(County Council)

Executive
County Commissioners
(County Executive)

Judicial
County Municipal and
Superior Courts

County Departments
County Boards
e.g., Department of
Planning, Health

County Boards and
Commissions
Board of Equalization

Independent Elected
County Offices
Assessor
Treasurer

Powers are delegated by and/or subject to state authority

BOE's Authority - Legal authority comes from the State Legislature

- ▶ BOEs are county-based
- ▶ Counties are subdivisions of the state of Washington, created by the state legislature.
- ▶ Counties have only the powers specifically granted to them by the state. They exercise those powers through the county-level legislative body - County Commissioners or County Council (charter).
- ▶ Counties can only levy the taxes as specifically authorized by the state legislature.
- ▶ Counties are empowered to create Boards of Equalization (RCW 84.48.010), but not to set powers.

BOE's Authority

- ▶ So a BOE has only the powers specifically granted to them by the State Legislature (county cannot grant more than was given to them).
- ▶ Functional control granted to the Department of Revenue (RCW 84.48.046, 84.08.060)
- ▶ Day-to-day operations might be set by county or might be left up to the BOE itself.
- ▶ BOE operates by agreement, within the authority of statute (RCW 84.48), rules (WAC 458-14), and DOR instructions:
 - ▶ By policy or by "meeting by notice" & vote (OPMA)

<https://www.atq.wa.gov/lesson-3-open-public-meetings-act-rcw-4210>

Municipal Research and Services Center
<https://mrsc.org/explore-topics/legal/open-government/open-public-meetings-act>

Jurisdiction

The Legislature sets the BOE's "jurisdiction" to review different kinds of decisions (typically those made by the Assessor) or to take specific actions:

- Valuation Appeals
- Certain Exemptions
- Current Use
- Destroyed Property
- Government Restrictions
- Reconvenes
- Equalization

See WAC 458-14-015 for full list

What can the BOE do?

The BOE has authority ("jurisdiction") to resolve:

- ▶ Claims that the Assessor's determination of market value of property (RCW 84.48.010, 84.40.038) is incorrect. **Most common by far!**
- ▶ Claims that the Assessor incorrectly denied denial of certain exemptions or deferrals (RCW 84.36.385, 84.36.400, RCW 84.37.040)
- ▶ Claims that the Assessor incorrectly removed land from a forest land/current use designation or denied an application for designation (Chapters 84.33 and 84.34 RCW)
- ▶ Claims that the Assessor's determination of reduction in value of destroyed property is incorrect (RCW 84.70.010(6))
- ▶ Claims that the Assessor's determination of the reduction in value due to government restrictions is incorrect (RCW 84.40.039(3))

What the BOE cannot do?

BOE does not have the authority to address:

- Whether the Assessor is doing their job right
- Whether a county official has trespassed on a taxpayer's property
- Whether property taxes are unconstitutional
- Unconstitutional treatment by the Assessor (lack of due process)
- Whether one of the parties should pay for the attorney's fees or other costs
- Waiver of deadlines for appealing to the Board except as expressly authorized by statute
- Equity issues ("fairness" "justice")

Doing the Job



Key questions

1. **What am I deciding?** What is the “relief” requested? Do I have the authority to decide the issue/grant the relief? What is the disagreement?
2. **Who is responsible for providing persuasive evidence and arguments (“burden of proof”)?** What evidence (kind, degree) is necessary? What facts are relevant?
3. **What legal “standard” must be met for me to decide the issue/grant the relief?** What level of certainty is necessary to decide the issue/grant the relief?
4. **How do I weigh the evidence?** What makes evidence credible? Is evidence a “fact?” What facts are necessary to decide an issue?

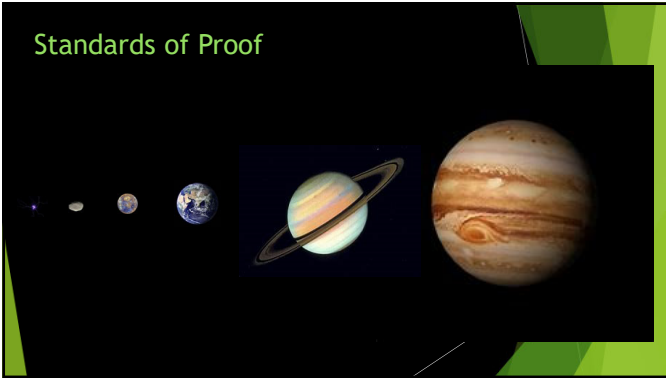
What am I deciding?

- What’s the “relief” requested?
 - What does appellant/petitioner want?
 - Sometimes its hard to figure out. You can ask, “what will solve the petitioner’s problem (or make it better for them)?”
 - Did they ask for that (or get close?)
 - Do you have the authority to do it?
- What are the issues that need resolution/what is the disagreement?
 - Is it about the facts (e.g., What was the color of the stoplight?)
 - Is it about the meaning of the facts (e.g., Did the yellow light provide the driver a warning?)
 - Is it about the law (e.g., Is a driver is required to stop for a yellow light if it’s possible to do so?)

Who has the “burden of proof”?

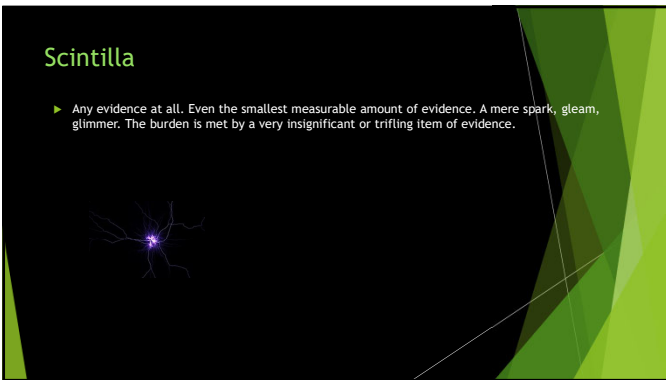
- The party seeking relief has the burden of proof. It’s almost always the taxpayer, with rare exceptions:
 - Assessor reconvene
 - Equalization
- Burden of proof has two elements:
 - **Burden of Production** - Someone has to go through effort of rounding up and presenting evidence. No evidence, no relief.
 - The evidence must be **relevant** - that is, it must tend to make the item at issue more or less likely to be true/accurate.
 - **Burden of Persuasion** - The evidence must tell a story that is sufficiently convincing.
 - How convincing depends on the applicable “standard of proof.”

Standards of Proof



Scintilla

- Any evidence at all. Even the smallest measurable amount of evidence. A mere spark, gleam, glimmer. The burden is met by a very insignificant or trifling item of evidence.



Reasonable Suspicion

- A claim or assertion based on specific or particular articulable facts or reasons. Not based on a hunch or guess.
- The level of certainty or degree of evidence needed for an officer to "frisk" someone.



Probable Cause

- ▶ An reasonable and trustworthy basis for a prudent and ordinary person to believe that something has occurred.
- ▶ The level of certainty or degree of evidence needed for an officer to arrest someone.



Preponderance of Evidence

- ▶ The greater weight or amount of evidence, more likely than not that the person is correct about claim or assertion (i.e., 50% + 1 scintilla)
- ▶ The level of certainty or degree of evidence needed to win an automobile collision case (and most other civil cases).



50/50

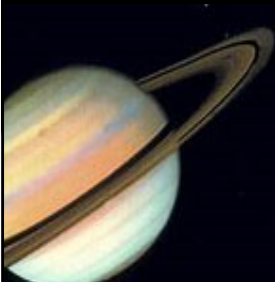


+ 1 scintilla



Clear, Cogent and Convincing

- ▶ A firm belief or conviction that the allegation or claim is true.
- ▶ the level of certainty or degree of evidence for letting the State take a child away from a parent



Beyond a Reasonable Doubt

- ▶ No other logical explanation can be derived from the facts except that the claim or assertion is true. Requires elimination of every reasonable doubt.
- ▶ the level of certainty or degree of evidence needed for the State to convict someone of a crime.

Standard of Proof - The BOE's Two

- Clear, Cogent, and Convincing
 - The totality of the evidence must leave you with the **firm belief or conviction** that the claim is correct.
 - Valuation cases - The law presumes that an assessor's valuation is correct.
 - It is not enough for the taxpayer to provide evidence to show that another value is possible.
 - It is not enough for the evidence to suggest that the assessor could be wrong.
 - The taxpayer has to convince you that the assessor's value is wrong **AND** that the taxpayer's alternative value is right.
 - Usually, the same evidence does both at the same time.
- Preponderance of the Evidence
 - The totality of the evidence suggests that the claim is more probably true than not true.

Weighing the Evidence

- What is evidence?
 - **Testimony** - meaning statements by a person
 - In person testimony
 - Testimony by affidavit or declaration
 - declaration
 - **"Documents"**
 - For example, word documents, pictures, spreadsheets, emails, deposition excerpts, sound recordings
 - **Hearsay**
 - Don't worry about hearsay

Weighing the Evidence, continued

Hearsay

- An out-of-court statement offered to prove the truth of the matter asserted in the statement where the person who made the out-of-court statement is not present.
- Problem with hearsay is that we can't be sure that's what was really said. It was said out of court and the speaker isn't here to verify it.
- You don't need to worry about hearsay and all its exceptions because you are an administrative tribunal. You may consider testimony or documents that include an out-of-court statement.
- For example, the BTA uses this standard: "All relevant evidence, including hearsay, is admissible if, in the opinion of the board, it is the kind of evidence that a reasonably prudent person is accustomed to relying on his or her business affairs." WAC 456-09-755

Weighing the Evidence, continued

- Look at the **Totality of the Evidence**
 - The Taxpayer has the burden of bringing forward evidence to prove their claim.
 - The Assessor is entitled to provide evidence to dispute the evidence presented by the taxpayer.
 - After reviewing the evidence of both parties, considering the assessor's presumption of correctness (if applicable), has the standard of proof been met?
- But Set Aside Evidence That is Not Relevant
 - Relevant evidence is that which tends to prove or disprove the issue(s) you've identified for resolution. If it is not related, it does not play a part in the decision.

Convincing Evidence

- Give Weight to **Factual** Evidence
 - Does the evidence tend to prove or disprove a fact, or is it a disguised (or not-so-disguised) opinion, assumption, or inference?
 - Opinions are (generally) not evidence and not facts. YOU might (or might not) reach the same conclusions as the person opining, but you must base your conclusions on the evidence provided and the facts proved by that evidence.
- Give Weight to **Reliable** Evidence
 - Evidence that due to its type, source, etc. is likely to be accurate and/or true
- Give Weight to **Credible** Evidence
 - **Believable testimony** - Consistent with established facts or other credible evidence? Apparent falsity?
 - **Believable documents** - The document is what it purports to be

Evidence of Value - Admissibility and Weight

(1) In making its decision with respect to the value of property, the board shall use the criteria set forth in RCW 84.40.030.

(2) Parties may submit and boards may consider any sales of the subject property or similar properties which occurred prior to the hearing date so long as the requirements of RCW 84.40.030, 84.48.150, and WAC 458-14-066 are complied with. Only sales made within five years of the date of the petition shall be considered.

(4) More weight shall be given to similar sales occurring closest to the assessment date which require the fewest adjustments for characteristics.

WAC 458-14-087; see also RCW 84.40.030



Ethics



Prohibited Ex Parte Contact

"From one Party"

- ▶ Your job is to provide a **fair** hearing
 - You must not take actions that favor one party over another. In fact, you should avoid any action *could even appear* to be favoring a party.
 - **Golden Rule:** Don't talk to the parties.
 - ▶ But parties ask you to talk to them, or give them favorable treatment, all the time!
 - Give me more time to file
 - Let me convince you
 - Look at this evidence
 - Please rule in my favor
- Solved** if the other party is present during the communication or has notice of, and an opportunity to be present at, the communication.
- At the hearing: Letter or email to both parties (at the same time).
 - What if ex-parte communication occurs on accident?
 - **Golden Rule:** Disclose the contact
 - Explain. Allow other party to argue prejudice. Evaluate prejudice. Decide.

Independent Research

- ▶ General or educational information that is useful to provide the judge with a better understanding of a subject *unrelated* to a pending/impending case?
Appropriate
- ▶ Background information the subject matter of a pending/impending case?
Not appropriate if the information is of factual consequence in determining the case. * RISK*****
- ▶ Is additional information necessary to decide the case? If so, this type of information generally must be provided by counsel or the parties, or must be subject to proper judicial notice.
Not Appropriate
- ▶ Is the purpose of the judge's inquiry to corroborate facts, discredit facts, or fill a factual gap in the record? If the facts are adjudicative, it is improper for a judge to do so.
Not Appropriate

Judicial Notice

- ▶ You may take official "notice" *essentially indisputable* facts. Such facts are either (1) generally known or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.
 - The courthouse is across the street from Central Park
 - Ice melts in the sun
 - July 12 in 2021 was a Monday
- ▶ BUT, you must allow the parties to challenge anything you take official notice of. You never know, so don't use it if it's not really helpful to the decision.
- ▶ If in doubt, leave it out.

Good Guide for Ethics

- ▶ Uphold the independence, integrity and impartiality of the Board, and avoid impropriety and the appearance of impropriety.
- ▶ Perform the duties of the Board, impartially, competently, and diligently; and
- ▶ Conduct the personal/business activities in a way which minimizes the risk of conflict with the Board obligations

Adapted from the Office of Administrative Hearings -
Code of Ethics for Administrative Law Judges

<https://oah.wa.gov/Portals/0/Content%20Area%20Documents/Code%20of%20Ethics.pdf>

Hearing Tips



Before the Hearing

- ▶ Review the file if possible
- ▶ Review the laws/rules if necessary
- ▶ Make notes about issues/questions
- ▶ OK to discuss (mind the OPMA), but don't pre-judge



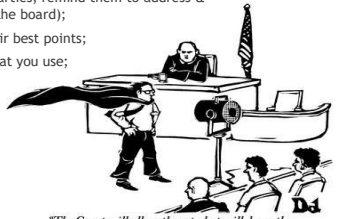
During the Hearing

- ▶ Allow enough time
- ▶ Be flexible whenever you can
- ▶ Expect the unexpected issue
- ▶ Manage the hearing
- ▶ Get enough facts to decide the issue



As the Hearing continues

- ▶ Allow the appellant to express their case, but not to vent to excess;
- ▶ Minimize exchanges between the parties, remind them to address & convince you (i.e., please address the board);
- ▶ Make sure each party has made their best points;
- ▶ Disclose any personal knowledge that you use;
- ▶ Use good body language.



"The Court will allow the cape but will draw the line at the wind machine."

After the Hearing:

- ▶ If more information is needed, call both parties back into the hearing (burden of proof remains on the taxpayer). See WAC 458-14-160(1) (extensions of time).
- ▶ Put your notes in order as soon as possible after the hearing so that you don't forget what you've heard.
- ▶ Write a board order that explains the decisions and how it was made. See also WAC 458-14-116 (form of the order).



Opportunity
