

TOWN OF EAST LYME  
BOARD OF ASSESSMENT APPEALS  
SEPTEMBER 10, 2011

Members Present:  
William Weber, Chairman  
Joan Schwartz  
Holly Cheeseman  
Paul Dagle

Members Absent:  
Sue Graham

FILED IN EAST LYME TOWN  
CLERK'S OFFICE

*Sept 13* 20 *11* at *8:35* <sup>AM</sup> ~~PM~~

*Esther B Williams*  
EAST LYME TOWN CLERK

MEETING MINUTES

Chairman Weber called the meeting to order at 10:30 a.m.

The approval of the previous meeting's minutes was tabled until the next meeting.

David Godbout – List # 516950

2001 Honda Insight (Property Owner – Ming Zeng):

Mr. Godbout presented the members of the Board with copies of Exhibit A (attached) and the document entitled "Petition Regarding 2001 Honda Insight" (attached.) There was discussion about the documents that were presented to the Board.

Mr. Godbout estimates the value of the vehicle to be \$3935.00 or \$494.00.

Mr. Godbout did not bring the vehicle to the meeting for the Board to view it.

Elizabeth Kimble – List # 507967

1993 GMC Sierra (Property Owner – Scott A Kimble):

Ms. Kimble stated it was a farm vehicle, and has a lot of wear and tear, the interior electronics do not work, and it has 98,000 miles.

Ms. Kimble estimates the value of the vehicle to be approximately \$1500.00

The members of the Board did view the vehicle.

**Motion (1) Ms. Schwartz moved to adjourn the meeting at 12:00 p.m.**

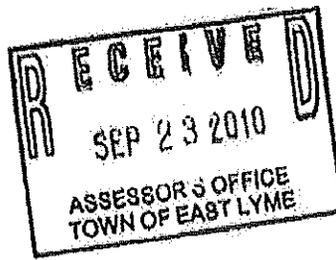
**Seconded by Ms. Cheeseman.**

**Motion Passed 4-0.**

**Respectfully Submitted,**

A handwritten signature in cursive script that reads "Karen Miller Galbo".

**Karen Miller Galbo  
Recording Secretary**



Original

To: East Lyme Assessor  
From: David Godbout

23 SEP 10

Ref: 1 OCT 2010 Vehicle Assessment of 2001 Honda Insight, Grand List # 516763; determination of vehicle value of 23 SEP 10 for the 1 OCT 10 Grand List.

**AFFIDAVIT IN SUPPORT OF VEHICLE'S TRUE MARKET VALUE & PROPER ASSESSMENT VALUE**

**2001 HONDA INSIGHT VALUATION**

The subject vehicle is a vehicle in "average" condition. This is due to the following facts regarding the automobile ~~(See Exhibit B for photos)~~

- 1- deep scratches on body of vehicle
- 2- glaring defect on body of front passenger bumper plate
- 3- cracked rear bumper cover
- 4- missing undercarriage protective plate
- 5- missing part in undercarriage with alternate string fastener
- 6- defective passenger electric window (does not function in cold weather)
- 7- mileage of 135,000 miles

Utilizing the Edmonds Used Car Guide that gives the following definitions:

*Exhibit A*

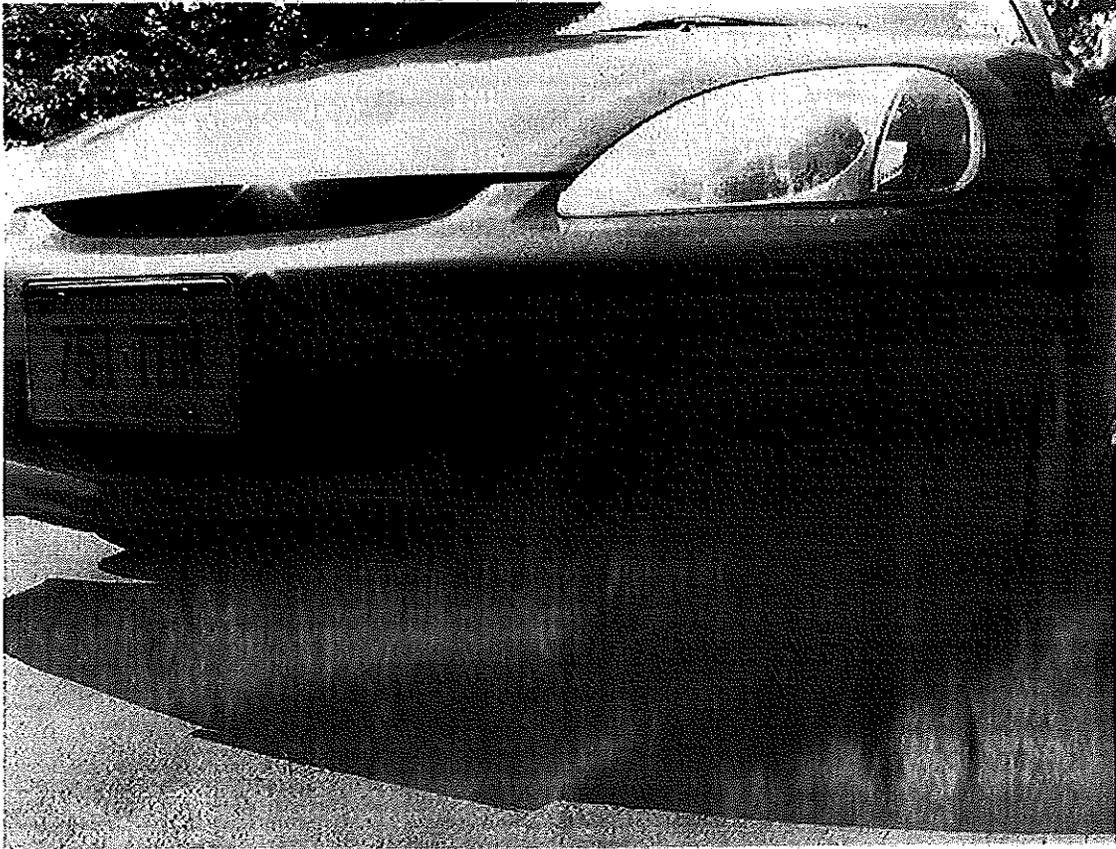
1. **Outstanding**  Exceptional mechanical, exterior and interior condition; requires no reconditioning.
2. **Clean**  Some normal wear but no major mechanical or cosmetic problems; may require limited reconditioning.
3. **Average**  May have a few mechanical and/or cosmetic problems and may require a considerable amount of reconditioning.
4. **Rough**  Several mechanical and/or cosmetic problems requiring significant repairs.
5. **Damaged**  Major mechanical and/or body damage that may render it in non-safe running condition.

The vehicle's condition is properly assigned an "average" condition. Given this condition and mileage, Edmunds car's true average fair market value is shown in the Dealer Retail price shown in the following pages the amount of \$3,935.00.

The proper assessment for the vehicle would then be 70% of \$3,935.00, which equals \$2754.50.

Vehicle Pictures

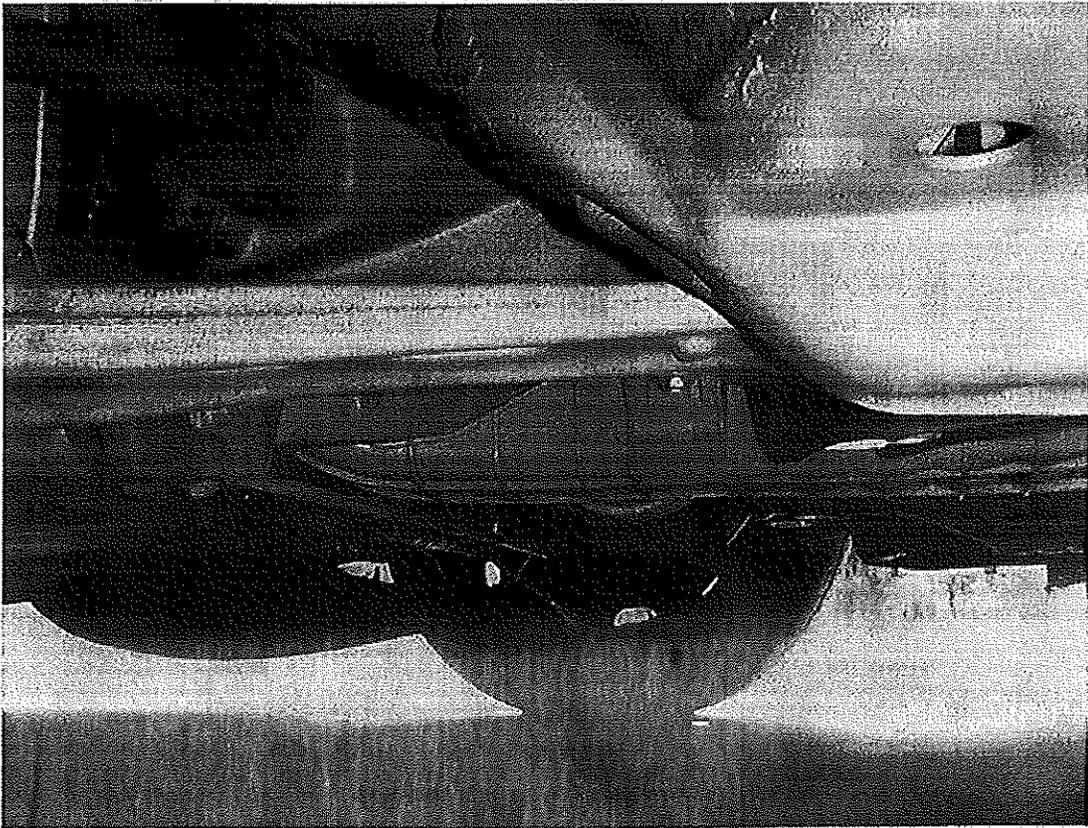
Glaring defect on front undercarriage of bumper, picture #1:



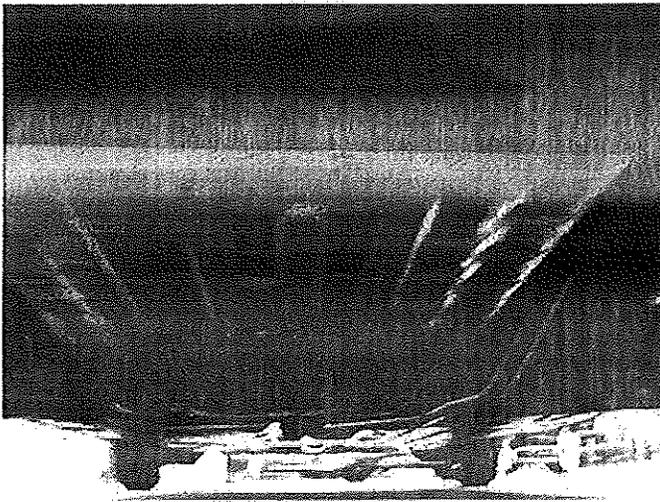
Glaring mechanical defect (missing part necessitating string fastener as opposed to standard bolt fastener), picture #2:



Glaring mechanical defect (missing protective undercarriage plate), picture #3:



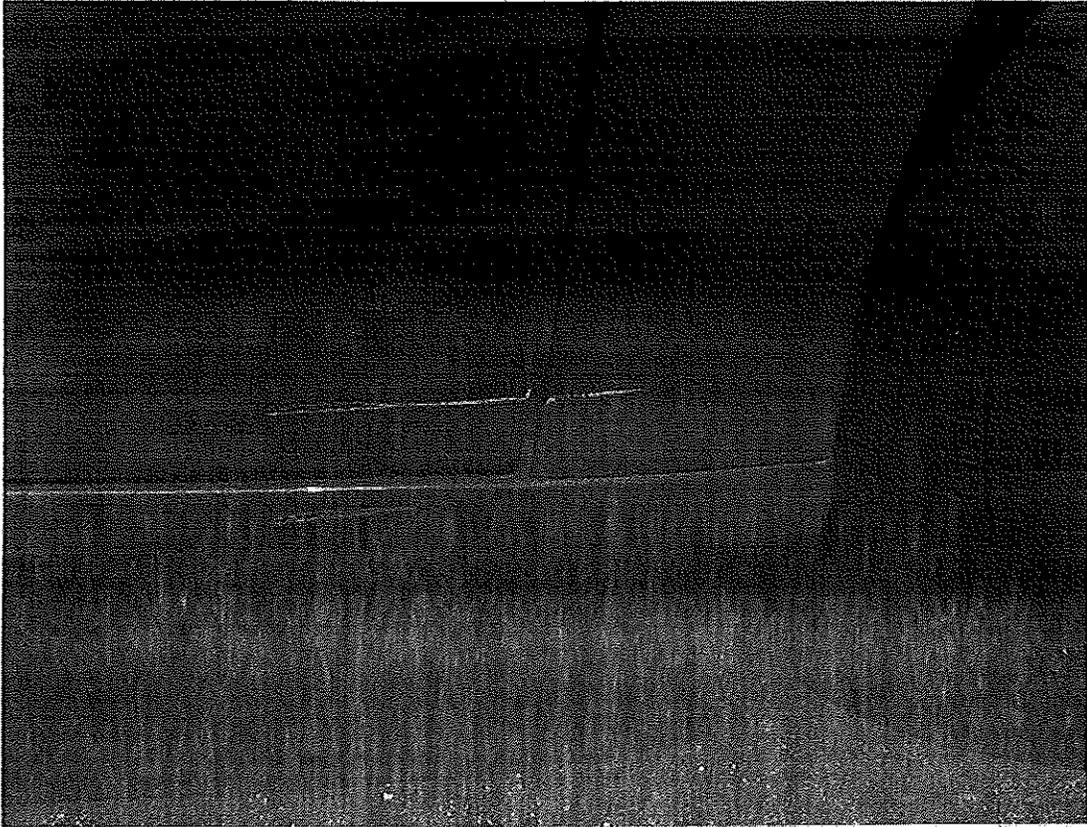
Undercarriage as it should be with plate attached, from a Honda website, picture #4:



Glaring defect with cracked rear bumper cover, picture #5:



Glaring defect with paint and coating (very deep & large scratches), picture #6:



The passenger side electric door window does not function in cold weather and very poorly in hot weather; it needs replacement. Photo not available.

These defects will not be fixed, repaired, or made better by 1 OCT 10; in fact, no effort will be made to correct these glaring defects that have been part of the car for many years. Therefore, the valuations given here are as accurate as they can be made.

The Edmonds breakdown of the Edmonds Used Car Guide is contained within the next page with the attestation to follow.

[Read the Model Review](#)

9.2

[Consumer Rating](#)

27 Reviews | [Write a Review](#)



[Fuel Economy](#)

47 mpg

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**STEP 5 Review Edmunds.com Pricing Report**



2001 Honda Insight 2dr Hatchback w/Air Conditioning, CVT

**TMV** True Market Value™ Pricing

	Trade-In	Private Party	Dealer Retail
<b>National Base Price</b>	\$4,463	\$5,579	\$6,740
<b>Optional Equipment</b>	\$0	\$0	\$0
<b>Color Adjustment</b> Red	\$14	\$18	\$22
<b>Regional Adjustment</b> for Zip Code 06333	\$-48	\$-60	\$-72
<b>Mileage Adjustment</b> 135,000 miles	\$-731	\$-731	\$-731
<b>Condition Adjustment</b> Average	\$-1,371	\$-1,697	\$-2,024
<b>Total</b>	\$2,327	\$3,109	\$3,935

[Certified Used Vehicle](#)

N/A

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Select a Model

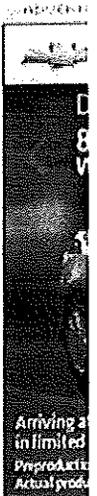
ZIP: 06333

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**Helpful Tools**



Attestation

I, David Godbout, swear, under penalties of perjury, that the above information contained within is true and accurate to my knowledge and belief.

Sworn to, on this 23rd Day of September, 2010

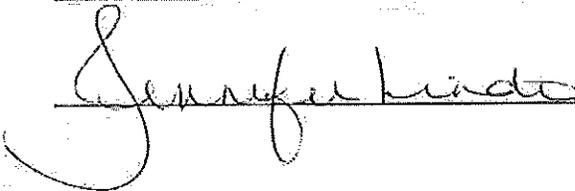


David Godbout  
15 Cardinal Rd.  
East Lyme, CT 06333  
(860) 691-8053

Witnessed by:

**JENNIFER LINDO**  
**NOTARY PUBLIC**  
MY COMMISSION EXPIRES OCT. 31, 2010

\_\_\_\_\_ printed name



\_\_\_\_\_ signature & date

9/23/10

PETITIONER	)	East Lyme Board Of
David Godbout	)	Assessment Appeals
v.	)	
	)	BOAA
RESPONDANT	)	At East Lyme, Connecticut
Town of East Lyme	)	

*10 SEP 11*

**PETITION REGARDING 2001 HONDA INSIGHT**

Introduction

The parties involved include the two following parties:

- |   |  |
|---|--|
| <p>1. Respondant</p> <p style="padding-left: 40px;">Town of East Lyme</p> <p style="padding-left: 40px;">108 Pennsylvania Avenue</p> <p style="padding-left: 40px;">Niantic, CT 06357</p> | <p>2. Petitioner</p> <p style="padding-left: 40px;">David Godbout</p> <p style="padding-left: 40px;">15 Cardinal Road</p> <p style="padding-left: 40px;">East Lyme, CT 06333</p> |
|---|--|

The petitioner owns a 2001 Honda Insight, VIN # JHMZE14781T002681, and has owned the vehicle since it was a new vehicle, from about 2001 to the present. The petitioner is best equipped to discuss this vehicle and its condition. It is this vehicle that is the subject matter of this complaint.

This vehicle was previously the subject matter of a BOAA review in SEP 2010 that resulted in a lowering of the assessment. No work has been done on the vehicle to correct issues with the vehicle that were present during the SEP 2010 review by this board.

The petitioner would request that the board come to a similar conclusion: that the assessor over assessed the subject vehicle and make a finding that the vehicle's value has been over assessed.

## Pre-BOAA Actions

Prior to filing this complaint the petitioner attempted to resolve the issue of the over-assessment of the subject vehicle.

On 23 SEP 10, prior to the 1 OCT 2010 grand list that included the assessment of the subject vehicle that is being considered in this complaint, the petitioner filed an affidavit that communicated to the assessor that the subject vehicle is not in a state that would be considered NADA "Clean" which the petitioner believed would have been the designation by the assessor of the subject vehicle. This affidavit is included as EXHIBIT A and is attached to these pleadings and will simply be referred to as affidavit or EXHIBIT A. The affidavit included a proper assessment from the Edmunds guide that has been recognized by many courts.

Upon receiving information that the subject vehicle was improperly assessed as a NADA "Clean" vehicle the petitioner visited the assessor's office on about 15 JUN 2011. Petitioner spoke with the assessor and discussed the improper assessment. The assessor noted that the process is automatic and did not contest the facts stated in affidavit. The petitioner then requested that the assessment be changed to reflect the true retail value of the vehicle as noted in the affidavit. The assessor refused and recommended that I bring this petition.

## Law concerning vehicle assessment

Sec. 12-62a. Uniform assessment date and rate. (a) Each municipality, as defined in section 7-381, shall establish a uniform assessment date of October first.

(b) Each such municipality shall assess all property for purposes of the local property tax at a uniform rate of seventy per cent of present true and actual value, as determined under section 12-63.

The legal requirement for a proper assessment is that it represents an actual value based upon the subject vehicle, not a general price for any particular model; other statutes should be examined in this context; to examine other statutes without recognizing the goal of the assessment is to determine the subject property actual value may lead to an improper assessment. Vehicle assessments are used to extract a property tax upon the taxpayer. All property taxes are based on actual value.

The "actual value" is an average retail (i.e. merchant price) price for the subject vehicle as opposed to a private or wholesale price.

Sec. ~~12-71d~~. Schedule of motor vehicle values. On or before the first day of October each year, the Secretary of the Office of Policy and Management shall recommend a schedule of motor vehicle values which shall be used by assessors in each municipality in determining the assessed value of motor vehicles for purposes of property taxation. For every vehicle not listed in the schedule the determination of the assessed value of any motor vehicle for purposes of the property tax assessment list in any municipality shall continue to be the responsibility of the assessor in such municipality, provided the legislative body of the municipality may, by resolution, approve any change in the assessor's method of valuing motor vehicles. Any appeal from the findings of assessors concerning motor vehicle values shall be made in accordance with provisions related to such appeals under this chapter. Such schedule of values shall include, to the extent that information for such purpose is available, the value for assessment purposes of any motor vehicle currently in use. The value for each motor vehicle as listed shall represent one hundred per cent of the average retail price applicable to such motor vehicle in this state as of the first day of October in such year as determined by said secretary in cooperation with the Connecticut Association of Assessing Officers.

The choice by OPM was the NADA book. The NADA book however only lists a retail price for a vehicle in a "Clean" condition. NADA has published their statistics regarding the % of vehicles that fall within the "Clean" condition and the information shows that only 15% of the vehicles are contained within the "Clean" condition. About 80% of the vehicles are of lower quality (source:

<http://www.nada.org/MediaCenter/News+Releases/2008/NADA+Used+Car+Guide+Adds+Rough+and++Average+Trade-In+Values.htm>) and hence would have a lower retail value. **OPM has epically failed in their required duty** to recommend a guide for the assessor to utilize. Choosing a guide where 80% of the vehicles are of a lower value than those listed in the NADA guidebook (and the guidebook does direct a user to determine vehicle quality prior to determining a value ~ yet the NADA book only gives a retail price for a vehicle in a "Clean condition").

How epic a fail was the OPM recommendation? A federal judge has noted this error in the AYRES case, No. 09-56695 ASW, US Bankruptcy Court, N.D. California where the judge noted that using the "Retail" column of the NADA guidebook is a grave error. The court wrote in its opinion *"The types of sale considered by the NADA guide and Edmunds.com range from "trade-in" to "private sale" to "dealer retail" or "clean retail". While it might be tempting to equate "dealer retail" or "clean retail" with "the price a merchant would charge" under Bankruptcy Code Section 506(a)(2), it would be a mistake to do so...KBB defines "retail" as a price for a vehicle that is in "excellent condition" with the proviso that less than 5% of the vehicles for sale qualify as "excellent"...Clearly these two are not equivalent and the [the creditor's] reliance on the KBB retail value is misplaced."* Judge Weissbrodt

The bankruptcy code is looking to determine the same value as Connecticut law requires: the subject vehicle's actual retail value.

The NADA "Retail" or "Clean" or "Clean Retail" column (the last column in the guidebook's title has changed but its meaning has not: it is for a vehicle in clean condition). NADA is similar to KBB wherein only a small percentage of vehicles actually fall within the clean or excellent condition required for the value to be considered to be accurate.

Is it mandatory for the assessor or BOAA to utilize the NADA guidebook?

No, it is not and for the following reasons:

1) The assessor KNEW THE PETITIONER'S VEHICLE WAS NOT A CLEAN VEHICLE and knows that the NADA book does not list a value for the petitioner's vehicle. See Exhibit A.

2) The OPM actually does make a recommendation to utilize the NADA book with the proviso that any vehicle not contained within the guide be assessed via a different method. This petitioner does not see this "disclaimer" to absolve OPM regarding their epic fail in the performance of their duties to choose a proper guide (there are guides available that are better suited) but it does show that #1 above is valid.

3) The 12-71d statute must be read for its actual goal, which is also listed in 12-71d itself:....Such schedule of values shall include, to the extent that information for such purpose is available, the value for assessment purposes of any motor vehicle currently in use.... 12-71d.

The goal of the assessment process is to determine the retail value of the subject vehicle (12-62a) and the NADA guidebook does not meet this requirement for the petitioner's subject vehicle nor about 80% of other vehicles that the assessor performed an assessment upon.

4) The statute is not a mandatory one upon the assessor. This can be seen by the wording in the 12-71d statute itself that states "...the Secretary of the Office of Policy and Management shall recommend.." The word "recommend" is not a mandatory word but a directory one.

5) The word "shall" in this statute is clearly not mandatory. The goal of the assessment process is to determine an actual retail value for subject vehicles; if OPM recommends a guide that does not achieve this goal, then the statute is not a mandatory one and the assessor and BOAA should reject the guide recommended. The word "shall" is determined to be mandatory on a case by case bases; it is well settled in Connecticut that the examination of the word "shall" in context of if it is mandatory or not is **"..whether the prescribed mode of action is of the essence of the thing to be accomplished.."***Gallup v. Smith*, 59 Conn. 354, 358 [22 A. 334]...

Clearly, 12-71d is not mandatory. OPM could recommend a 2008 guidebook be utilized for next year's grand list, 2011; would this then be mandatory---clearly not.

And OPM has recommended a guide in respect to the subject matter of this complaint that they knew greatly defective when used to perform vehicle assessments in the state. This would include the petitioner's vehicle and most all other vehicles that are being assessed. Is it any surprise that the guide that OPM recommended produced an excessive value for the petitioner's vehicle?

## Assesor's Position on NADA book & Vehicle Assessments

The assessor's position on vehicle assessments in respect to the use of the NADA guide is the same as the Connecticut Association of Assessing Officers, Inc. that stated in an 18 JAN 2011 letter to State Representative Ed Jutila (authored by John Chaponis, Assessor of Colchester & Andover and David Dietsch, Assessor of Waterbury – both members of the CAAO Legislative Committee):

***"..Section 12-71D contains "one hundred percent" intentionally. This is so that assessors are NOT required to consider mileage and condition of each vehicle and attempt to find a market value. The fact that CGS Sec. 12-71d is entitled "schedule of motor vehicle values" confirms that motor vehicles are value based on a "schedule" and not market value. This statue requires assessors to value motor vehicles at "100% of the retail price" with no consideration for mileage, condition, or any other factors that would determine "market value"***

So it is clear what the assessor & CAAO's opinion is in respect to motor vehicle assessments: they are not based upon the true and actual value of the subject vehicles but are derived from a simple schedule without regard to the guidebook's directions of its use (the NADA book does direct the user to determine the condition of the vehicle & to use different methods when the desired condition & desired pricing is not available) nor of the goal of assessing a motor vehicle.

Of course, for a PROPERTY TAX assessment this viewpoint is without merit, recalling the text of 12-62a "... (b) Each such municipality shall assess all property for purposes of the local property tax at a uniform rate of seventy per cent of present true and actual value."

The assessor's and CAAO's opinion is delusional and likely is just a result of the assessor & CAAO membership making up wild & crazy opinions regarding state statues to support their laziness.

This petitioner has spoken and communicated with Mr. Chaponis and Mr. Chaponis stated that he directs his BOAA to ignore pleadings regarding mileage and vehicle condition and to make rulings accordingly.

It is clear that the East Lyme assessor has the same viewpoint as the CAAO as exemplified in this petitioner's vehicle assessment. The assessor was aware prior to the issuance of the assessment that the petitioner's vehicle was not in a "Clean" condition and that the NADA value listed in the guide in the "Retail" column of the NADA guide did not represent the average retail price for the petitioner's vehicle. Additionally, the request by this petitioner on about 15 JUN 2011 to correct the over-assessment was rebutted by the assessor although the assessor did not argue with the assessment/value information provided in Exhibit A.

## Recent Legislative Action

Representative Ed Jutila (representing East Lyme) reviewed all of the arguments concerning the use of the NADA guide as well as CAAO information and concluded that a change in the law was desirable and that the use of the NADA guidebook is resulting in the over assessment of most vehicles.

Representative Jutila introduced House Bill 6102 in the 2011 legislative session. It recommended changing from the NADA guide to the Edmunds guide which actually can provide average retail price for cars in various conditions as opposed to the NADA guide which can only provide a price for a vehicle in a "Clean" condition (the merits of which have been discussed earlier in these pleadings).

The CAAO's position regarding the NADA guidebook and the process of vehicle assessment were found to be without merit by Representative Jutila.

## BOAA Historical Viewpoint of Vehicle Assessment

In September 2010, this petitioner came before the board and argued for a lowering of the same vehicle assessment as is currently before the board & for the same reasons as Exhibit A details.

The BOAA agreed that the assessment was excessive and ordered a lowering of the assessor's valuation, assessor/town did not appeal. So the BOAA ruling of SEP 2010 is a final ruling.

No formal written opinion was authored by the BOAA but the BOAA did produce a summary of actions taken regarding the appeals held during SEP 11. In the case of this petitioner's subject vehicle (same as in this petition), the BOAA noted the reasons for the lowering of the assessment to be **"Reduced Assessment based on NADA high mileage reduction and physical condition...passed unanimously" ...minutes of BOAA meeting, 2010.**

It is clear that the BOAA has historically taken an opposite viewpoint of the assessor and CAO who believes that the "Retail" (aka "Clean" aka "Clean Retail" in the past) cannot be deviate from for ANY reason for cars less than 20 or 25 years of age. The BOAA should continue to support this historical view of the interpretation of Connecticut statues.

## Vehicle Actual Retail Value

There are two methods for determining a vehicle's average retail price. The first is to utilize a guidebook that has been recognized as a reputable source; one such guide is the Edmunds Used Car Guide (available in hardcopy or electronically on the internet at [www.edmunds.com](http://www.edmunds.com)). The second method is to use a guide as a starting point and determine the amount of money it would take to get a vehicle up to the condition classification of the guidebook as well as considering any high mileage considerations. One would then simply subtract out the amount of money needed to bring the vehicle up to the classification of the guidebook from the guidebook's price of a vehicle in a specific class or condition as well as the mileage consideration. The courts have recognized both methods.

In vehicle assessment that is done every year, it is burdensome to have to get repair estimates every year; therefore, the use of an appropriate guide is preferred; however, both methods were utilized for the petitioner's vehicle with results shown below.

### METHOD 1 – Use of a guide

The first step is in the selection of a guidebook. The NADA book unfortunately does not allow for pricing of a vehicle in any condition other than a "clean" condition vehicle. Since the petitioner's vehicle is in a lower class than "clean" the petitioner utilized the Edmunds guide since it can provide average retail pricing for the petitioner's vehicle.

The petitioner performed the Edmunds guidebook analysis in late SEP 2010, just days before the grand list was prepared. This result is highlighted in EHXIBIT A attached with a resultant value of \$3,935.

## METHOD 2 – Use of NADA “Clean” value as a starting point

The NADA definition of “Clean”, from the NADA book, is as such:

**Clean: No mechanical defects and passes all necessary inspections with ease; paint, body, and wheels may have minor surface scratching with a high gloss finish; interior reflects minimal soiling and wear, with all equipment in complete working order; vehicle has a clean title history; vehicle will need minimal reconditioning to be made ready for retail sale...NADA Guidebook, 2011**

80% of the vehicles on the road do not meet this condition classification (with 80% of the vehicles being of a lower, less valuable class) and the petitioner's is one of them. The deep scratches and pockmarks are present on all surfaces of the vehicle's exterior. The lack of a properly working power windows, damaged bumper, and damaged undercarriage body parts are also evidence that the vehicle is not in a NADA “Clean” condition.

Petitioner has priced the cost of bring the car to a NADA “Clean” state. Petitioner has visited Cardinal Honda in Groton and Coastal Collision in New London (as Cardinal Honda does not do body work).

The parts cost of the power window was identified by Cardinal Honda as being \$340 with an estimated cost of \$200 to remove the old unit and install the new one. This would total \$540 for the correction of the power window.

The corrective action regarding the bumper was investigated through Cardinal Honda and Coastal Collision . The parts cost was \$422 and the labor cost was estimated at \$263. Therefore for the bumper to be brought up to a clean standard would require \$685.

The cost of bring the vehicle exterior paint and finish was examined at Coastal Collision. To get the vehicle's exterior paint and finish to a NADA clean condition was estimated at \$3000.

Coastal Collision also noted a need to refurbish the plastic headlamp assembly at a cost of \$100.

Coastal Collision also noted a need to detail the interior as oil stains and wear has made the interior into a poor condition. This cost was estimated at \$250.

Mileage is also a consideration and, taking the value from Edmunds.com, this would total \$731.

The total cost of just these corrective actions totals \$5306.

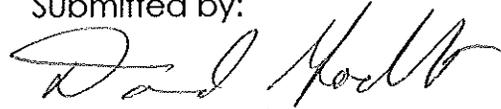
The assessment was about \$5800 from the assessor. It is unknown if this value is an accurate value or if it came from a NADA guide or not but for the sake of these pleadings & this method analysis it is the value that it being utilized.

Subtracting \$5306 from \$5800 leads to a correct vehicle assessment value of \$494 using this method.

Relief Sought

- 1) That the BOAA rule that the assessment of the petitioner's subject vehicle is excessive.
  
- 2) That the BOAA make a finding that a corrected assessment of either:
  - a) \$494 or
  - b) \$3935

Submitted by:



David Godbout

15 Cardinal Road

East Lyme, CT 06333

860-691-8053