

Effective Property Tax Appeals

Conducting Effective Board of Civil Authority (BCA) Hearings

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Who Is The BCA?

For tax appeal matters: 9-21 members:

- **Selectboard: 3 to 5 members.**
17 V.S.A. § 2650(b).
- **Clerk: 1** **17 V.S.A. § 2646(2).**
- **Justices of the Peace: 5 to 15 members**
(depending on population of the town).

VT Constitution, Chapter II, § 52



What Is The BCA?

The BCA is the group of town officers who:

- **determine voter eligibility; and**
- **hear appeals of lister grievance decisions.**



Appeals to the BCA When?

A taxpayer not satisfied with the Listers' grievance decision must appeal in writing to the BCA (delivery to Town Clerk) within 14 days from the date the notice of Lister's decision was mailed. The written appeal must briefly state the grounds for the appeal.

32 V.S.A. § 4404(a)



Appeals to the BCA

When?

- **BCA tax appeal hearings “shall be held ... not later than 14 days after the last date allowed for notice of appeal...”**
32 V.S.A. § 4404(b).
- The 14 day deadline is automatically extended by:
 - 30 days for a town with a population of $< 5,000$.
 - 50 days for a town with a population of $\geq 5,000$.**32 V.S.A. §§ 4341.**



Appeals to the BCA

When?

- The BCA must hold a hearing on EACH and every one of the properties appealed within this 44 or 64 day timeframe.
- “The Town therefore argues, and we agree, that the BCA has a total of forty-four days (fourteen days under § 4404(b) plus thirty days under § 4341(4)) to initiate hearings in each appeal.”

Rhodes v. Town of Georgia, 166 VT 153 (1997).



Hold An Organizational Meeting

- **Organizational meeting is suggested but not legally required.**
- **Before hearings begin, the BCA members must take their BCA oaths and elect a chair.**
 - BCA Oaths (32 V.S.A. § 4405) are distinct from officer oaths.
 - BCA must elect a chairperson. 24 V.S.A. § 801.
 - Town clerk is BCA clerk. 24 V.S.A. § 801.



Hold An Organizational Meeting

The BCA may adopt rules of procedure.

Rules of procedure

- Help in managing hearings;
- Provide a script for the hearing; they instruct the BCA and inform the appellant (appealing taxpayers) about what to do next;
- Give appellants a sense that they will be treated fairly and objectively.



Hold An Organizational Meeting

- This is the time to schedule all the hearings (quasi-judicial hearings on appeals of lister grievances) for which you've received a notice of appeal.
- Work with the appellants to set a different hearing day than originally scheduled, if requested.
- Appellants are not required to be present at hearing.

Schedule strategically!



What Is A Quasi-Judicial Hearing?

“[A] case in which the legal rights of one or more persons who are granted party status are adjudicated, which is conducted in such a way that all parties have opportunity to present evidence and to cross-examine witnesses presented by other parties, which results in a written decision, and the result of which is appealable by a party to a higher authority.”

1 V.S.A. § 310(5)(B).



Conducting Effective Quasi-Judicial Hearings

- **The 14th Amendment to the U.S. Constitution provides that no state may deprive a person of life, liberty or property without due process of law (Due Process Clause).**
- **Conducting quasi-judicial hearings requires that your BCA be respectful of parties' due process rights.**



Conducting Effective Quasi-Judicial Hearings

- **Due Process** refers to the process that is constitutionally required before an individual is deprived of life, liberty or property.
 - **Notice** – the government is taking an action that may effect your property;
 - **Hearing (opportunity to be heard)** – before the government takes this action, it will hear what you have to say.



Due Process: Notice

- **The Town Clerk calls a meeting of the BCA.**
- **Notice of the meeting (time and place) is posted in three or more public places in the Town. A copy of the notice is mailed to each member of the BCA, the Town Agent, the Town Assessor, and to all persons so appealing.**

32 V.S.A. § 4404(b)

Use PVR Form 4404PN-06 or VLCT Model



Due Process: Fair Hearing

- **Due Process also requires that hearings be fair.**
 - **Maintaining order;**
 - **Managing evidence;**
 - **Avoiding/Managing ethical dilemmas:**
 - **Conflicts of interest;**
 - **Ex parte communications;**
 - **Bias.**



Fair Hearing: Maintaining Order

- **The BCA should adopt rules of procedure:**
 - **Rules of procedure:**
 - **will help you manage your hearings;**
 - **provide a script for the hearing-instructs and informs what to do next.**
 - **The greater the appellant's perception of order and fairness, the less likely the appellant is to appeal.**
 - **Make copies of your rules of procedure available to appellants.**



See model rules in handout.

Fair Hearing

Sequence of Events

- **Open hearing, stating the appellant's name, property location and parcel ID number;**
- **Ask appellant and listers to take oaths;**
- **Ask appellant if he/she has received a copy of your rules of procedure and whether he/she has any questions about how the hearing will proceed;**
- **Request BCA members to disclose any ethical dilemmas (follow curative process if necessary)**



Fair Hearing

Sequence of Events

- **Ask Listers to introduce the property on appeal (description and valuation);**
- **Ask appellant to present his/her valuation and supporting evidence;**
- **Ask listers to respond to appellant's information;**
- **Invite questions from the BCA;**



Fair Hearing Sequence of Events

- **Ask Listers to present their valuation and supporting evidence;**
- **Ask appellant to respond to Listers' information;**
- **Invite questions from the BCA;**



Fair Hearing Sequence of Events

- **Appoint inspection committee of three to inspect the property at a date and time (set by the chair) and to report its findings back to the BCA;**
- **Recess (or adjourn) to a date & time not more than 30 days from the hearing to accept the inspection committee's report;**
- **Reconvene hearing at the date & time specified;**
- **Invite the inspection committee to present its report;**
- **Invite final questions from the BCA;**



Fair Hearing Sequence of Events

- Invite final comments from the appellant;
- Invite final comments from the Listers;
- Close the hearing and explain that BCA will enter deliberative session and issue a written decision in writing within 15 days.



Fair Hearing: Managing Evidence

Managing Evidence

- “Evidence” is testimony, documents, and tangible objects that prove or disprove the existence of an alleged fact.

Black’s Law Dictionary 8th Edition

- “Evidence is substantial if it is relevant and a reasonable person might accept it as adequate to support a conclusion.”

In re Halnon, 174 Vt. 514 (2002)



Fair Hearing: Managing Evidence

Managing Evidence:

- The only evidence you may consider is what is presented to you. DO NOT investigate on your own.
- There are two basic types of evidence received by the BCA:
 - Documents; and
 - Oral testimony.



Fair Hearing: Managing Evidence

Managing Documentary Evidence:

- Mark each document
- Include basic information such as:
 - Appellant's Exhibit No.
 - Lister's Exhibit No.
 - Name or Number of Appeal
- Keep it organized



Fair Hearing: Managing Evidence

Managing Oral Testimony:

- Record the hearings (suggested, not required);
- Keep hearings orderly (follow your rules of procedure);
- Keep the discussion relevant.



Fair Hearing: Managing Evidence

Relevant evidence:

- Information that will help establish the fair market value of the property:
- Comparables, market studies, condition of property, etc.

Irrelevant evidence:

- Ability to pay;
- Why it is unfair that taxes will increase.



Fair Hearing: Managing Evidence

Three Questions That Must Be Answered by Each Appellant:

1. What is the appellant's opinion of the fair market value of the property?
2. Why does the appellant believe this to be the value - what are his/her reasons?
3. What evidence supports his/her opinion?



Fair Hearing: Managing Evidence

The Balancing Act:

- BCA must balance expediency against inclusion.
- Appellants who feel they have been heard are less likely to appeal.
- **Err on the side of listening** - just because you listened to it doesn't mean that you have to consider it.



Fair Hearing: Statutory Disqualifications

Disqualification from the BCA for All Tax Appeals

- Listers and town agents cannot serve on BCA;
- Members of the BCA (or their agents or attorneys) that appeal to the BCA cannot serve on BCA for any tax appeal hearing that year;
- But if any of the above grieves to the listers and decides not to appeal to BCA, they may still serve on the BCA.

32 V.S.A. § 4404(d).



Fair Hearing: Conflicts of Interest

A BCA member may need to recuse him/herself when there is a conflict of interest/bias.



Questions



TAX APPEAL WORKSHOP MAY 2016

Site Inspection

Requirements:

- Each property must be inspected.
- The inspection committee must be comprised of at least three BCA members.
- The inspection committee must report to the BCA within 30 days from the hearing.



32 V.S.A. § 4404(c).

Site Inspection

Refusal to allow inspection:

“If, after notice, the appellant refuses to allow an inspection of the property as required under this subsection, including the interior and exterior of any structure on the property, the appeal shall be deemed withdrawn.”

32 V.S.A. § 4404(c).



Site Inspection

What is the purpose of the site inspection?

“[T]he BCA acts as a ‘statutory factfinder which takes into consideration the view taken by a subcommittee along with all of the other evidence before it,’ including evidence derived from an inspection of the property in question...[A]n inspection entails a careful examination of the property, **which would necessarily have to include an inspection of the interior of any dwelling.**”

Garbitelli v. Town of Brookfield, 2009 VT 109.



Site Inspection

Inspection committee can request to see other parts of the property not addressed at the hearing.

- Inspection includes “interior and exterior of any structure on the property.”
- If the request is refused you may have to exercise some discretion.

32 V.S.A. § 4404(c).



Site Inspection

Ex Parte Communication

- ***Ex Parte* Communication:** A direct or indirect communication between a board member and any party, party's representative, party's counsel or any person interested in the outcome of any quasi-judicial proceeding before the board that occurs outside the proceeding and concerns the substance or merits of the proceeding.



Site Inspection

Ex Parte Communication

How to avoid *ex parte* communications during the site inspection:

- Remind property owner of the obligation to avoid *ex parte* communications;
- Remind property owner of the opportunity to provide further testimony / information when BCA reconvenes to receive inspection report;
- Be polite yet firm, patient yet persistent;
- Less of a temptation when multiple members of inspection team are present.



Site Inspection

Ex Parte Communication

If you can't avoid an *ex parte communication*, you should manage it through **DISCLOSURE**:

- All **oral** *ex parte* communication received by a BCA member should be disclosed through a memorandum and/or included in the minutes of the proceeding.
- All **written** *ex parte* communications received by a BCA member should be included in the record and provided to all parties to the proceeding.



Site Inspection

Requirements:

- **All inspection committee members must view the property, but are not required to do so at the same time.**
- **Site inspections are not subject to VT's Open Meeting Law.**



Site Inspection

- Is it better to conclude the hearing and conduct the site visit (with no opportunity for further comment or testimony) . . .

OR

- Recess the hearing to a date and time certain, conduct the site visit, and then reconvene the hearing at that date and time to receive additional comment or evidence on the inspection committee report?

**It has been done both ways.
The second is the preferred method.**



Site Inspection

Inspection Report:

The inspection report should include what the committee saw including the location and condition of the property as well as the time of the inspection, those present and the date.



Site Inspection

Best Practices:

- **Get started right away (remember the 30 day deadline).**
- **Give notice to the Listers so they can attend (if property owner allows).**
- **Be firm about setting time for inspection (failure to allow inspection = deemed withdrawn).**



Questions



TAX APPEAL WORKSHOP MAY 2016

Making a Decision When?

- The inspection report must be filed within 30 days of the BCA hearing on that property.
- The BCA must reconvene to make a decision based on the evidence from the hearing and the report of the inspection committee.
- The BCA must issue its decision, with reasons, within 15 days of the report of the inspection committee.

32 V.S.A. § 4404(c).



Making a Decision How?

- The BCA decision is “de novo” but the Listers’ assessment enjoys a presumption of validity
- The appellant’s job is to convince the BCA that the Listers were wrong
- The BCA never has to prove anything –simply hear the evidence presented and make a decision.



Making a Decision How?

- **Become familiar with common real estate appraisal methods: cost approach, sales comparison approach, income approach.**
- **Review the VT Secretary of State's publication: *A Handbook on Property Tax Assessment Appeals.***



A Handbook on Property Tax Assessment Appeals



Revised 2009

A joint project of the Office of the Secretary Of State
and the Division of Property Valuation and Review
of the Vermont Department Of Taxes

Revised by Charles Merriam, Esq. and
Secretary of State Deb Markowitz
2009

Making a Decision: Duty to be Convinced

- The appellant always has the burden to persuade the BCA that the appraisal exceeds fair market value. *Kruse v. Town of Westford*, 145 Vt. 368 (1985).
- This burden never shifts from the appellant.

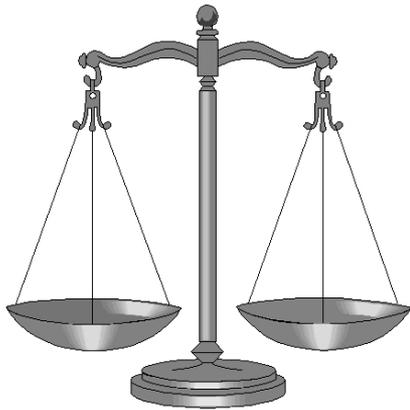


Making a Decision

Duty to be Convinced

HOW?

The bottom line is that the appellant's evidence must outweigh Lister's evidence to win appeal.



**Preponderance of
Evidence Standard**

Making a Decision

Deliberating

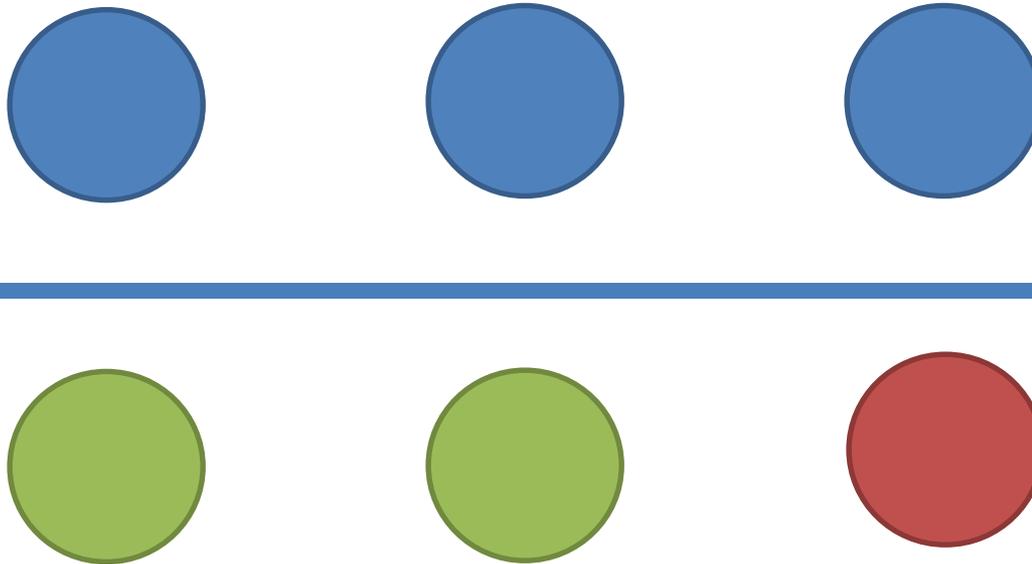
HOW?

Two methods of deliberating:

- Private deliberative session and
 - Public deliberative session.
-
- Use this time to develop a thoughtful decision that explains to the appellant and others what your decision is and how that decision was made.



Making a Decision How Many?

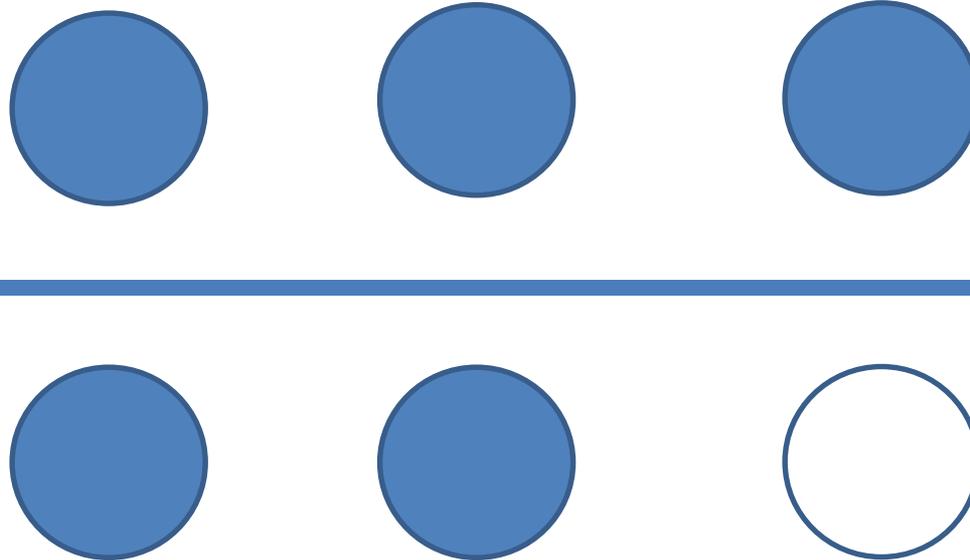


When joint authority is given to three or more, the concurrence of a majority of such number shall be sufficient and shall be required in its exercise.

1 V.S.A. § 172



Making a Decision How Many?



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1 V.S.A. § 172



Making a Decision How Many?

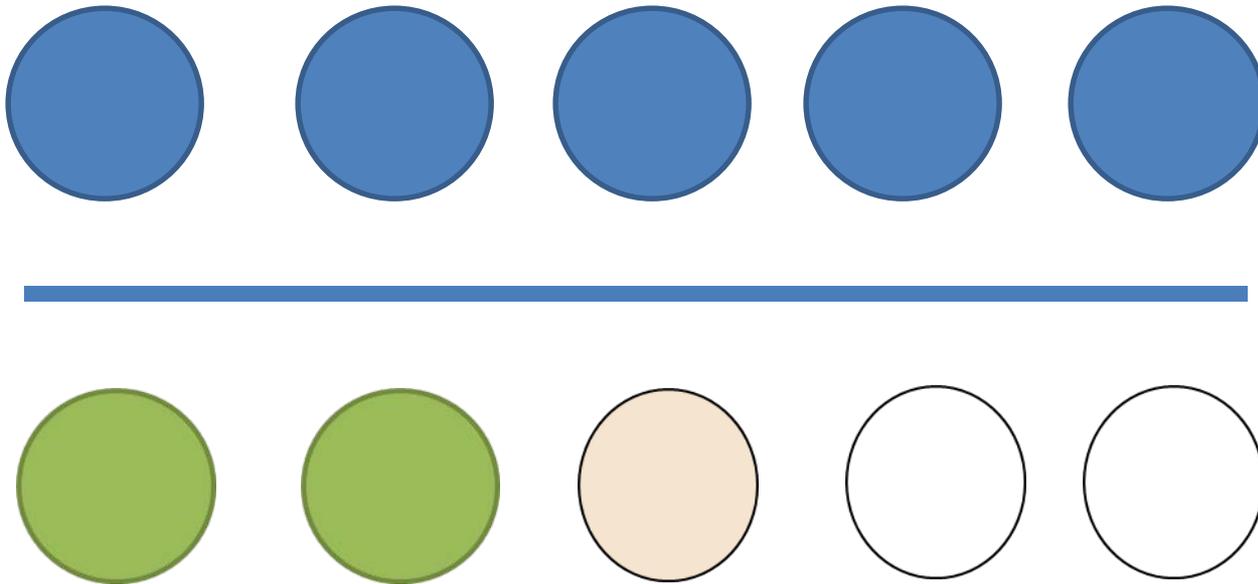
Quorum Exceptions Board of Civil Authority

- **“... The act of a majority of the board present at the meeting shall be treated as the act of the board, except that when the board is dealing with election issues, subdivision 2103(5) of Title 17 shall control.”**

24 V.S.A. § 801.



Making a Decision How Many?



Majority-of-a quorum-rule

Making a Decision How Many?

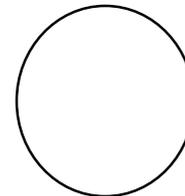
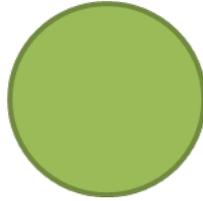
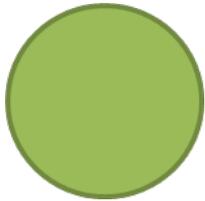
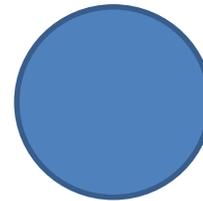
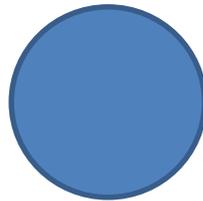
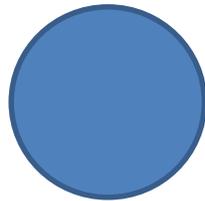
Quorum Exceptions Board of Civil Authority

- **Each property, the appraisal of which is being appealed, shall be inspected by a committee of not less than three members of the board . . .**

32 V.S.A. § 4404(c).



Making a Decision How Many?



Making a Decision

Writing the Decision

- **MUST be in writing.**
- **MUST include reasons.** **32 V.S.A. § 4404(c).**
A brief explanation will satisfy this requirement.
Miller v. Town of West Windsor, 167 Vt. 588 (1997).
- **May increase, reduce, or sustain an appraisal made by the Listers.** **32 V.S.A. § 4409.**

Use PVR Form 4404A



Making a Decision

Writing the Decision

Three Questions that Must be Answered in Every BCA Decision

1. What is the correct value of the property?
2. Why do we believe this to be so (i.e., what are our reasons)?
3. What evidence supports our conclusion?



Making a Decision

Writing the Decision

- **BCA needs not to be perfect.**
- Reasoning must simply be “within the range of rationality” to comport with the law.

Breault v. Town of Jericho, 155 Vt. 565 (1991).
- **The Town Clerk must record the decision or attach it to the grand list book and notify the appellant in writing by certified mail.**
 - This value, unless changed on appeal, will become the listed value for the year under appeal.

32 V.S.A. § 4404(c).



Making a Decision Timelines

If the BCA does not substantially comply with timelines:

- Appellants' value for that year will be reset to prior year's value; or
- Court can set appellant's value to a value that will produce a tax liability equal to the preceding year.

32 V.S.A. § 4404(c).



Questions



TAX APPEAL WORKSHOP MAY 2016

State Appraiser vs. Superior Court

Appeal may be to State Appraiser OR to Superior Court

State Appraiser – Generally less expensive, less formal process, with generally less involvement by attorneys.

Superior Court – Better suited to addressing legal issues that arise in the context of a tax appeal – taxability, exemptions, and constitutional issues.

Appeals in both forums are *de novo*, and their decisions may be appealed to the VT Supreme Court.



Appeals from BCA

Appeal may be taken by:

- An individual appellant;
- The Selectboard; or
- The town agent, in the name of the town, on application of taxpayers whose combined property exceeds 3% of the town grand list.

32 V.S.A. § 4461.



Appeals from BCA

Notice of appeal must be filed with the town clerk within 30 days the date of mailing of notice of the BCA's decision by the town clerk to the appellant.

The town clerk forwards a copy of the notice to the Superior Court or to PVR and files a copy in the grand list. The appellant pays the filing fee.

32 V.S.A. § 4461.



Appeals from BCA

- Notify the Commissioner of Taxes when there is an appeal of a parcel with a significant value:
- ***“Notice of this appeal is given to the Commissioner of the Vermont Department of Taxes pursuant to 32 V.S.A. § 5412(a)(1)(B).”***
- Under that statute, a town may request that Department of Taxes recalculate the town’s education property tax liability (but only if initial notice was filed) if an appeal => 1% reduction in grand list.



Appeals to Superior Court

- **The town clerk prepares the “record on appeal,” consisting of the original papers and exhibits, and transmits this after the filing of the appeal to the clerk of the Superior Court.**

VRCP Rule 74.

- **The town clerk has 30 days to transmit this information.**



Appeals Before the State Appraiser

- **Once notice of appeal to PVR is received,** the town clerk must notify the selectboard, town agent and the chair of the board of listers, record the notice in the grand list book, and send the appeal, check and the record to the Director of Property Valuation and Review.



Appeals Before the State Appraiser

Objection to appeal:

- Within 10 days after the clerk mails the notice of appeal, the selectboard or town agent may file an objection to the appeal with the Director of Property Valuation and Review.
- The basis of the objection would be that the appeal is untimely, procedurally defective or not lawfully taken.
- The Director will call a hearing to take evidence and hear arguments on the objection.

32 V.S.A. § 4463.



Appeals Before the State Appraiser

The Hearing

- Takes place in the town where the property is located.
- Is conducted by a hearing officer, assigned by the Director.
- Is conducted in accordance with the Vermont Administrative Procedure Act (3 V.S.A. § § 809-813) unless all parties to the hearing waive this requirement.

32 V.S.A. §§ 4466, 4467.



Appeals Before the State Appraiser

- All the parties, including the town, have a reasonable right to discovery.
- The appellant must allow the state appraiser to inspect the property.
- Parties cannot withhold information that they will present as evidence at the hearing.

PVR RULE 84-1.



Appeals Before the State Appraiser

- **The appraiser will allow the introduction of any relevant evidence which is commonly relied upon by reasonably prudent person in the conduct of their affairs.**
- **The appraiser may exclude evidence that is irrelevant or unduly repetitious.**



Appeals Before the State Appraiser

- An assessment conducted by the town listers enjoys a “presumption of validity and legality” in the proceeding before the state appraiser.
Shaffer v. Town of Waitsfield, 183 Vt. 428 (2008).
- Town cannot rely on the presumption of validity, but must be prepared to present evidence to the state appraiser to support the town’s assessment.



Appeals Before the State Appraiser

The three key questions you must be prepared to answer:

- 1. What is the town's assessment?**
- 2. Why does the town believe this to be the value – what are its reasons?**
- 3. What evidence supports this assessment?**



Settlement

- **Only the Selectboard has authority to settle on behalf of the town (not listers or BCA).**
- **A settlement agreement must be approved by either the state appraiser or the court.**



Settlement

May want to do a cost-benefit analysis:

Does the risk of losing the appeal, which might result in a reduction of listed value \$ X and taxes paid, justify the outlay of funds \$ Y necessary to prevail?

Consider the big picture:

“...settlements may result in inappropriate appraisals, since fair market value may have little to do with the decision. Settlements may also encourage more taxpayers to appeal in later years, if they come to believe that the town will compromise whenever an appeal is taken.”

~ VT Sec of State *Handbook on Tax Appeals.*



Appeals Before the State Appraiser

2014 Annual Report, Division of Property Valuation and Review

Percent Reduced (# Appeals - # Withdrawn / # Reduced)

2001 – 59%

2002 – 68%

2003 – 60%

2004 – 46%

2005 – 48%

2006 – 63%

2007 – 50%

2008 – 68%

2009 – 75%

2010 – 61%

2011 – 55%

2012 – 57%

2013 – 71%

2014 – 59%



Questions



TAX APPEAL WORKSHOP MAY 2016