

Effective Property Tax Appeals Workshop

CONDUCTING EFFECTIVE LISTER GRIEVANCES

Sarah Jarvis, Staff Attorney II
Vermont League of Cities and Towns
Municipal Assistance Center



TAX APPEAL WORKSHOP MAY 2016

TOPICS

- **Goals of the Grievance Process**
- **Procedural Requirements and Timing**
- **Managing the Hearings**
 - **Conflicts of Interest**
 - **Bias**
 - **Ex Parte Communication**
- **Role of the Contracted Professional**



GOALS for the Grievance Process

- Make sure that each property subject to appeal has been listed at the correct value.
- Comply with statutory deadlines and requirements.
- Think strategically and manage the process effectively.
- Minimize subsequent appeals by treating people fairly and professionally.



Listing at the Correct Value

VT Constitution, Chapter 1, Article 9:

“...every member of society hath a right to be protected in the enjoyment of life, liberty, and property, and therefore is bound to contribute the member’s proportion towards the expense of that protection...”

32 VSA 4601:

“...taxes shall be uniformly assessed on the lists of the persons taxed...”



Listing at the Correct Value

Listers' Oath (32 VSA 3431):

"I, _____, do solemnly swear (or affirm) that I will appraise all the personal and real property subject to taxation in the town (or city) of _____, so far as required by law, at its fair market value, will list the same without discrimination on a proportionate basis of such value for the grand list of such town (or city), will set the same in the grand list of such town (or city) at one per cent of the listed value and will faithfully discharge all the duties imposed upon me by law. So help me God." (or, "under the pains and penalties of perjury.")



Compliance with Statutory Process and Deadlines

Failure to follow any part of the process or any single deadline that is described in statute is:

- Grounds for appeal; and
- Grounds for a Court or the State Appraiser to find for the taxpayer

WHY?



Compliance with Statutory Process and Deadlines

**Tax appeal process affects property rights and
therefore taxpayers must be afforded
Constitutional protections:**

**EQUAL PROTECTION and
DUE PROCESS OF LAW**



Extension of Deadlines

32 V.S.A. § 4341 Extensions of time; Generally

“The several dates fixed by law, on or before which: (1) abstracts of individual lists shall be completed and lodged in the town clerk's office; (2) meetings of listers may be held to hear grievances; (3) hearings upon such grievances shall be closed; (4) meetings of the Board of Civil Authority shall be held to consider the same; (5) hearings upon such appeal shall be closed; (6) the grand list shall be completed and deposited in the town clerk's office; (7) listers shall lodge inventories of taxpayers with the town clerk; and (8) abstracts of the grand list shall be filed with the town clerk...”



Extension of Deadlines

32 V.S.A. § 4341 (cont'd)

“... shall be extended as follows: In towns of fewer than 5,000 inhabitants, 30 days; in towns of 5,000 or more inhabitants, 50 days. Nothing contained in this section shall in any manner change the date fixed in a municipal charter whereon any of the aforesaid acts or things are therein required to be done or performed.”



Extension of Deadlines

32 V.S.A. § 3004. Sunday; time extended

“When an act under this subtitle is required to be done on or before a date which falls on Sunday, such act shall be valid if done on the following Monday.”



Extension of Deadlines

The Listers, with approval of the Selectboard, can request an extension from the Director of Property Valuation and Review.

32 V.S.A. § 4342.



Deadlines (as extended)

Action	Population <5,000	Population ≤ 5,000
Lodge Abstract Post public notices Mail individual notices	June 4	June 24
Grievances must start	June 20	July 9
Grievances must be completed	July 2	July 22
Results of grievances mailed	July 9	July 29
Grand List lodged	July 25	August 15

STEP 1 – File Grand List

(Steps 1 – 3 are done simultaneously)

File a preliminary grand list (“lodge the abstract of individual lists”) with the Town Clerk

On or before May 5th. 32 V.S.A. § 4111(a)

+ Automatic extension in 32 V.S.A. § 4341

**= Last date: by June 4 for towns < 5,000
by June 24 for towns ≥ 5,000**



STEP 2 – Public Notice

(Steps 1 – 3 are done simultaneously)

Provide public notice that the abstract has been filed

- Time: When abstract is filed
- Places: Grand List;
Town Clerk's office; and
Four other public places in town
- Contents of notice:
 - Listers have completed and lodged the grand list; and
 - The (preliminary) schedule for and place of the Lister grievance hearings.

32 V.S.A. § 4111(e)



STEP 2 – Public Notice

(Steps 1 – 3 are done simultaneously)

Vermont Department of Taxes provides a model Notice to Taxpayers form, 4111.PN.05, which fills the requirements of 32 V.S.A. § § 4111(c),(e):

<http://tax.vermont.gov/sites/tax/files/documents/4111PN%2005.pdf>



STEP 3 – Private Notice

(Steps 1 – 3 are done simultaneously)

Mail Change of Appraisal Notice to Taxpayers:

Listers mail notice to taxpayers of changes in appraised value or change in allocation of value.

On or before May 5th. 32 V.S.A. § § 4111(e)

+ Automatic extension in 32 V.S.A. § 4341

= **Last date: by June 4 for towns < 5,000**
by June 24 for towns ≥ 5,000



STEP 3 – Private Notice

(Steps 1 – 3 are done simultaneously)

Change of Appraisal Notices must include:

- Any change in appraised value or the change in the allocation of value to homestead or house site;
- The amount of the change; and
- The (tentative) schedule (time, date and place) of the Lister grievance meeting(s).

32 V.S.A. § § 4111(e)



STEP 3 – Private Notice

(Steps 1 – 3 are done simultaneously)

Change of Appraisal Notices must be:

- (1) Mailed at least 14 days before the time fixed for grievance hearings; and**
- (2) Sent by registered or certified mail. Certificate of mailing also suffices.**

If not sent by one of these methods and a dispute arises, the law will presume that the notice was not sent.

32 V.S.A. § 4111(e)





Certificate of Mailing — Firm (Domestic)

Name and Address of Sender

TOTAL NO.
of Pieces Listed by Sender

TOTAL NO.
of Pieces Received at Post Office™

Affix Stamp Here
Postmark with Date of Receipt.

Postmaster, per *(name of receiving employee)*

USPS® Tracking Number Firm-specific Identifier	Address (Name, Street, City, State, and ZIP Code™)	Postage	Fee	Special Handling
1				
2				
3				
4				
5				
6				

STEP 4 – Receive Grievances

GRIEVANCES:

- Taxpayers initiate the grievance process by filing their “objections” with the Listers
- The bar to enter the process is very low.
 - Objections must be in writing
 - Written notes to the Chair of the Listers suffice to qualify as “objections in writing.” *Gionet v. Town of Goshen*, 152 Vt. 451, 456 (1989).



STEP 4 – Receive Grievances

DEADLINE for filing grievance:

- “A person who feels aggrieved by the action of the listers and desires to be heard by them, shall, on or before the date of the grievance meeting, file with them his or her objections in writing and may appear at such grievance meeting in person or by his of her agents or attorneys.” 32 V.S.A. § § 4111(g)
- Listers “shall meet at the place so designated by them and on that day and from day to day thereafter shall hear persons aggrieved by their appraisals or by any of their acts until all questions and objections are heard and decided.” 32 V.S.A. § § 4221



STEP 4 – Receive Grievances

OPINIONS ABOUT DEADLINE:

- **VLCT:** Any written objection filed with the listers before the conclusion of all the grievance hearings should be accepted.
- **TAX DEPT:** If someone walks into the office on grievance day, listers are “obliged to schedule a time to hear them.”
<http://tax.vermont.gov/municipal-officials/listers-and-assessors/faqs-grievance-and-appeals>
- **SEC OF STATE:** Grievances should not be heard if they are received after the grievance date stated in the change of appraisal notice. *Handbook on Property Tax Assessment Appeals, 2009 Edition*



STEP 4 – Receive Grievances

Change of Appraisal Notice is not a prerequisite to the grievance process:

- **A taxpayer may file grievance regardless of whether there has been any change in the property assessment that year.**

Exception when value has been set by the State or by Court Order. In that case the value is fixed “for the year in which the appeal is taken and the next two ensuing years.” 32 V.S.A. § 4468



STEP 4

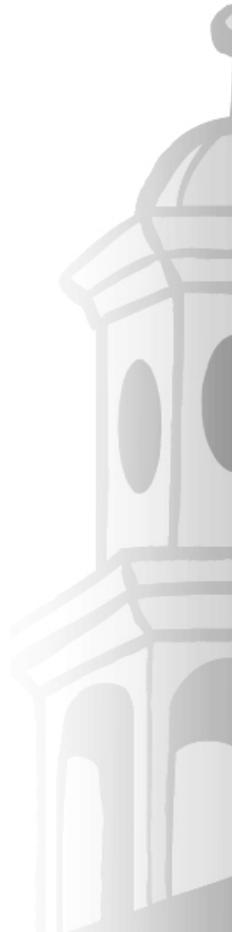
Change of Appraisal Notice is not a prerequisite to the grievance process:

- “If the listers discover any error or omission in such abstract, they shall correct the same and shall forthwith give notice thereof in writing by mail, postage prepaid, or by personal delivery to the taxpayer whose list is thus changed, unless such change was made in his or her presence.”

32 V.S.A. § 4111(f)



Questions



Step 5 - Prepare for Grievances

BEFORE:

Educate taxpayers:

- Explain why a town-wide reappraisal was conducted.
- Outline the reappraisal process and how property values are determined.
- Explain the appeal process and what is required from taxpayers at each step.
- Explain where taxpayers can get information on property values (lister cards, etc.).



Step 5 - Prepare for Grievances

BEFORE:

Provide links to information compiled by others:

- **A Handbook on Property Tax Assessment Appeals by Sec of State and Dept. of Taxes**

https://www.sec.state.vt.us/media/258674/tax_appeal_handbook_2007.pdf

- **Are You Appealing? VT Institute for Gov't.**

<https://www.sec.state.vt.us/media/258632/Appealing.pdf>



Step 5 - Prepare for Grievances

BEFORE:

Make yourselves available to answer questions and scheduling grievances



Step 6 - Hold Grievance Hearings

“...the listers shall meet at the place so designated by them and on that day and from day to day thereafter shall hear persons aggrieved by their appraisals or by any of their acts until all questions and objections are heard and decided..”

32 V.S.A. §4221



Step 6 - Hold Grievance Hearings

- Public vetting process for the Grand List.
- Primary purpose is to discover and address any errors or omissions in the abstract of individual lists.
- Although grievance hearings are required by law, they tend to be conducted rather informally.



Step 6 - Hold Grievance Hearings

Open Meeting Law Requirements:

- Public notice of hearings
- Open to the public
- Minutes must be taken
- Must be an agenda

OML allows Listers to use deliberative session at the end of the fact-finding portion of the hearing to reach their decision. 1 V.S.A. § § 312(f) .



Step 6 - Hold Grievance Hearings

ATTENDANCE:

- All three Listers should participate
- At least two Listers must be present and at least two Listers must agree in order to change an appraisal or correct an error
 - 2 out of 3 creates “quorum”
 - 2 is the “concurrence of the majority,” as required by 1 V.S.A. § 172



Step 6 - Hold Grievance Hearings

ATTENDANCE:

- **Taxpayer does not have to attend.** If a written grievance is filed, the Listers must make a determination even if the taxpayer does not appear at the grievance hearing.
- **A taxpayer may be represented by an attorney or other person. 32 V.S.A. § § 4222**



Step 6 - Hold Grievance Hearings

PROCESS:

- Try to allow sufficient time
- OK to impose time limitations
- Explain assessment; Answer questions; Listen
- Thank the property owner
- Make appointment for site inspection if necessary
- Do not announce decision but state when the decision should be expected



Step 6 - Hold Grievance Hearings

ATTITUDE

Listers should maintain an open and receptive attitude during grievances.

15-20% of taxpayers grieve to the lister

15-20% of those will appeal to the BCA

Good attitude and clear explanation may prevent an appeal



Questions



TAX APPEAL WORKSHOP MAY 2016

Ensuring Fair Hearings

A fair hearing (at Lister or BCA level) requires that you effectively manage

1. **Conflicts of Interest;**
2. **Bias; and**
3. ***Ex Parte* Communication**



Conflicts of Interest

What is a **Conflict of Interest**?

- “A real or seeming incompatibility between one’s private interests and one’s public or fiduciary interest.”

Black’s Law Dictionary, 8th Ed.



Conflicts of Interest

- What is a **Conflict of Interest**?

A conflict of interest does not arise in the case of votes or decisions on matters in which the public official has a personal or financial interest in the outcome that is no greater than that of others persons generally affected by the decision.



Conflicts of Interest

- **Four types of conflicts of interest:**

Financial

- **Direct financial interest**
- **Indirect financial interest**

Personal

- **Direct personal interest**
- **Indirect personal interest**



Conflicts of Interest

Direct Financial Interest

A conflict of interest can be present when a local official acts on a matter affording the official a direct financial gain.



Conflicts of Interest

Indirect Financial Interest

A conflict of interest may be present when a local official acts on a matter that financially benefits a person or group closely tied to the official or employee.



Conflicts of Interest

Direct Personal Interest

A conflict may be present when a local official acts on a matter that benefits the official in a non-financial way but in a matter of significant importance to the official.



Conflicts of Interest

Indirect Personal Interest

A conflict may be present when a local official acts on a matter in which the official's judgment may be affected because of a family or personal relationship or membership in some organization and a desire to help that person or organization further its own interests.



Managing Conflicts of Interest

Six Step Process Recommended:

1. **Disclose;**
2. **Discuss;**
3. **Consider Recusal;**
4. **Decide;**
5. **Record; and**
6. **Act Accordingly.**



Bias

Bias: A preference or an inclination that inhibits impartial judgment.



Bias

- **Prior public statements by a board member on a topic of local concern do not alone demonstrate personal bias or prejudice requiring removal.**

In re: Judy Ann's Inc., 143 Vt. 228 (1983).

- **Must be a showing that a board member is not capable of judging a particular controversy fairly**



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.



Ex Parte Communication

Ex parte communication:

- Offends due process by allowing one party to influence the decision maker outside the presence of opposing parties and without opportunity for rebuttal or comment by other parties.
- Undermines transparency in the decision-making process.



Ex Parte Communication

Avoid or manage through disclosure:

- All **oral** *ex parte* communication received by a Lister or 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 Lister or BCA member should be included in the record and provided to all parties to the proceeding.



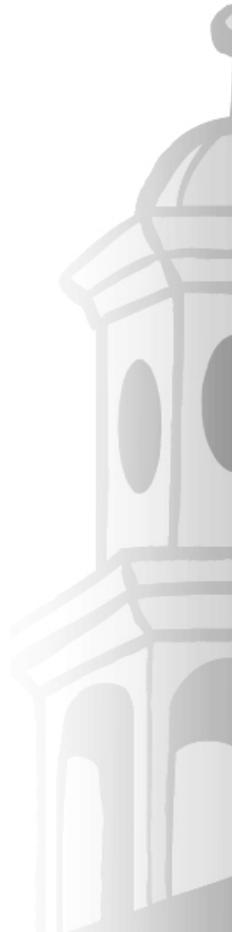
The Importance of Managing Conflicts of Interest, Bias and Ex Parte Communication

The failure to manage conflicts of Interest, bias, and *ex parte* communication:

- Creates impetus for appeal
- Provides grounds to rule for taxpayer
- Undermines decision-making process
- Result in damage to reputations



Questions



Step 7 – Issue Decisions

Requirements of Decisions:

1. In writing;
2. Mailed within 7 days of close of (all) hearings;
3. Sent by registered or certified mail (or certificate of mailing); and
4. Inform the taxpayer of the right to appeal the decision to the Board of Civil Authority by lodging an appeal with the Town Clerk within 14 days of the mailing on the notice.

32 V.S.A. § 4224.



Step 7 – Issue Decisions

Vermont Department of Taxes publishes a Lister Grievance Decision form, PVR 4224.08:

- <http://tax.vermont.gov/sites/tax/files/documents/4224%20Result%20of%20Grievance.pdf>



Step 8 – Lodge Corrected Grand List

- **"...on or before June 25, the listers shall make all corrections in the abstracts and shall lodge such completed book in the office of the town clerk." 32 V.S.A. § 4151**
- **Automatically extended 30 - 50 days, depending on population (as per 32 V.S.A. § 4341) and extended from Sunday to Monday (as per 32 V.S.A. § 3004) to July 25 and August 15**



Step 8 – Lodge Corrected Grand List

Attach listers' oath to Grand List:

"I do solemnly swear (or affirm) that according to my best knowledge, information and belief the foregoing list contains a true statement of the listed valuation of all real estate and taxable personal estate, within the town of

So help me God." (or "under the pains and penalties of perjury.")

32 V.S.A. § 4151



Postscript

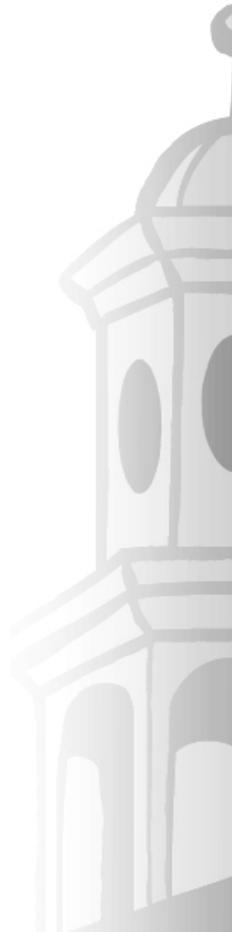
Once lodged, the Grand List is no longer under the control of the listers.

If taxpayer appeals to BCA, listers are required to present their case to the BCA.

In appeals beyond the BCA there is generally no role but Listers *may* be designated by the Selectboard to represent the town at Superior Court, Supreme Court, or before the State Appraiser.



Questions



Contracted Professionals

Authorized by Statute (1):

“When a board of listers are of the opinion that expert advice or assistance is needed in making any appraisal required by law, they may, with approval of selectboard or by vote of the town, employ such assistance.”

32 V.S.A. § 4041



Contracted Professionals

Authorized by Statute (2):

“... in the event the board of listers of a municipality falls below a majority and the selectboard is unable to find a person or persons to appoint as a lister or listers under the provisions of 24 V.S.A. § 963, the selectboard may appoint an assessor to perform the duties of a lister as set forth in 32 V.S.A. chapter 121, subchapter 2 until the next annual meeting. The appointed person need not be a resident of the municipality and shall have the same powers and be subject to the same duties and penalties as a duly elected lister for the municipality.”

17 V.S.A. § 2651c(a)



Contracted Professionals

BEFORE GRIEVANCES:

Contracted appraisers assist the Listers in determining listed value of property but do not replace the Listers.

Listers must review the appraiser's work in order to satisfy themselves that appraisals are accurate.



Contracted Professionals

When the abstract is lodged, the Listers must certify “that according to their best knowledge, information and belief they have therein set down the listed valuation of all taxable real and personal estate of each person therein named.”

32 V.S.A. § 4111(b).



Contracted Professionals

DURING GRIEVANCES

- Whether the appraiser is present at the grievance hearing depends on the appraiser's contract/scope of work.
- **Regardless of whether the appraiser is present, the Listers retain exclusive authority to make decisions.**



Contracted Professionals

Authorized / Required by Statute (3):

“A town may vote by ballot at an annual meeting to eliminate the office of lister. If a town votes to eliminate the office of lister, the selectboard shall contract with or employ a professionally qualified assessor, who need not be a resident of the town. The assessor shall have the same powers, discharge the same duties, proceed in the discharge thereof in the same manner, and be subject to the same liabilities as are prescribed for listers or the board of listers under the provisions of Title 32.”

17 V.S.A. § 2651c(b)(1)



Questions

