A Handbook on Property Tax Assessment Appeals

Revised 2007

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 Merriman, Esq. and
Secretary of State Deb Markowitz
2007

A Handbook on Property Tax Assessment Appeals

Revised 2007

It has been nearly twenty years since the first Handbook on Property Tax Assessment Appeals was published. In that time, tax assessment law and the of property tax appeals has changed considerably. While much remains the same, court cases, as well as new laws, have filled in our knowledge of how to review the property appraisal process. In this newly revised version of the handbook we address both types of changes.

I want to thank attorney **Charles Merriman** for his assistance in revising this handbook which was written initially by his partner, **Paul Gillies**. Thanks also to the staff from the Division of Property Valuation and Review for their review of this version of the Property Tax Assessment Appeal Handbook.

I know that you will find this handbook to be a useful tool in your work for the town. Never forget that the property tax law never stops changing. Double-check the citations. What is good law today is not necessarily something to rely on tomorrow. Please let me know if there are ways that we can improve future editions.

Deborah Markowitz
Secretary of State

Table of Contents

I. Introduction…….. 1

II. First Principle of Tax Appeals…… 2

III. Listers' Grievances…….18

IV. Appeals to the Board of Civil Authority……...……23

V. Appeals Beyond the Board of Civil Authority…….…… 37

VI. When the Appeal Process is Done……..……. . 40

Division of Property Valuation and Review – Rule 84-1……41

Division of Property Valuation and Review – Rule 82-1……44

For more information, please contact

Property Valuation and Review Division
Vermont Tax Department
109 State Street
Montpelier, VT 05609-1401
802-828-5860

Vermont Secretary of State's Office
Redstone Building
26 Terrace Street – Drawer 09
Montpelier, VT 05609-1101
802-828-2363

A Handbook on Property Tax Assessment Appeals

I. Introduction

Tax appeals arise when a taxpayer disagrees with the listers on the assessment of real or personal property on the grand list of the town. Appeals are also taken when taxpayers object to decisions by listers or the Division of Property Valuation and Review involving the current use program (32 V.S.A. § 3758) or local farmland and forest land tax stabilization contracts (32 V.S.A. § 3846(d)). Taxpayers may also appeal the penalty imposed for failing to file, or late-filing, a homestead declaration (32 V.S.A. § 5410(j)). In each case, the same procedural steps, timetables, and appeal schedules apply.

Listers appraise property and hear grievances from taxpayers. Listers have the knowledge and training to understand how property is appraised. The BCA hears appeals from the listers. It is important to remember, however, that the level of judicial and appraisal experience among BCA members varies widely. Both taxpayers and appraisers should bear in mind that the adequacy of the BCA's decision will depend on the evidence presented at the hearing by the parties. *Listers and appellants are clearly disadvantaged when they fail to provide the BCA with a comprehensive and articulate case.*

The integrity of the grand list, and of local government as an institution, depends on a functional, constitutionally appropriate tax appeal process. BCA decisions that lower appraisals simply to make the appellant happy unfairly shift the appellant's tax liability onto the other taxpayers in the town. Similarly, decisions that "split the baby" or uphold the listers' value despite persuasive evidence that the appellant's property is over-assessed work an unfairness on the appellant.

The tax appeal process takes time and energy. While the standards described in this handbook may seem high in some cases, they are based on the authority of law and the experience of other towns and other decision-makers in similar situations. We must learn from the mistakes of others to avoid unnecessary penalties and reversals and to ensure equity and justice in the appeal process.

II. First Principles of Tax Appeals

A. Precision

The design of the property tax appeal system in Vermont relies on strict procedural compliance by all its participants. One wrong move by an appellant-taxpayer, a board, or even a board member, may result in the loss of the appeal. Order must be respected. Deadlines and timetables are critical. Decisions must be carefully drafted.

The law assumes you know what you are doing, and penalizes you when you fail. It intends the appeal process to be articulate and disciplined, with little room for pure discretion on the part of any decision-maker. It requires each stage of the appeal to be fully realized on paper, through written notices, transcripts of hearings (held before the superior court or the state appraiser, principally, although a tape recording for the BCA and the listers is recommended), decisions, and minutes of each meeting. This is to ensure that you have done your job and that the decision-makers who come next in the process have a clear idea of what happened before. The more articulate you can be, the more the taxpayer-appellant will appreciate the effort and impartiality of the decision.

B. Constitutional Authority

The foundation of legal authority for taxation in Vermont, and by corollary, the tax appeal process, is Chapter I, Article 9th of the Vermont Constitution.

> *" 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, and yield personal service, when necessary, or an equivalent thereto, but no part of any person's property can be justly taken, or applied to public uses, without the person's own consent, or that of the Representative Body, nor can any person who is conscientiously scrupulous of bearing arms, be justly compelled thereto, if such person will pay such equivalent; nor are the people bound by any law but such as they have in like manner assented to, for their common good: and previous to any law being made to raise a tax, the purpose for which it is to be raised ought to appear evident to the Legislature to be of more service to community than the money would be if not collected."*

This is called the proportional contribution clause of our constitution, and is the basis for concluding that all property in a town must be assessed on a uniform basis. The proportional contribution clause has been implemented in statute by 32 V.S.A. § 4601, which provides that "[t]axes shall be uniformly assessed on the lists of the persons taxed, unless otherwise provided by law." It is also embodied in the oath listers take to appraise property at fair market value and ". . . list the same without discrimination on a proportionate basis of such value for the grand list . . ." 32 V.S.A. § 3431.

In the 1980s, Burlington's charter was amended to allow nonresidential property to be listed and taxed at 120 percent of fair market value. This scheme – known as "tax classification" – was promptly challenged by affected taxpayers claiming it violated the common benefits clause and

the proportional contribution clause of the Vermont Constitution. Both arguments were rejected by the court. As long as property classification has a reasonable relationship to its purpose and is equitably applied to like classes of taxpayers, the scheme will survive constitutional review. *In re Property of One Church Street*, 152 Vt. 260, 266 (1989), a challenge to Rutland's efforts to establish a special assessment district on procedural grounds succeeded, however, because the scheme was never put to a vote of the electorate. "[T]he authority delegated by the Legislature to a municipality to levy special assessments is strictly construed, and . . . reasonable doubts regarding such authority will be resolved in favor of the taxpayer." *Downtown Rutland Sp. Tax. Chall. v. City of Rutland*, 159 Vt. 218, 220 (1992).

In 2003, the Vermont Legislature enacted Act 68, legislation that significantly changed Vermont's statewide education funding law. Act 68 is tax classification legislation that establishes two separate education tax rates: one for "homestead" property and another for "non-residential" property. Act 68 has some limited bearing on the appeals process – for instance, it imposes a penalty, that can be appealed to the listers and then to the BCA, on individuals who file their homestead forms late – but, fundamentally, it left the assessment appeals process unchanged.

C. Determining Listed Value

Assuming the taxpayer challenges the fair market value of her property, determining the property's listed value requires a two-step process. First, the decision-maker must determine the fair market value of the property. Next, the value must be *equalized* so that the listed-value-to-market-value of the appealed property corresponds to the listed-value-to-fair-market-value of comparable properties: *Kachadorian v. Town of Woodstock,* 149 Vt. 446, 447 (1988). This second step is demanded by the proportional contribution clause of Vermont's constitution; it would be very unfair for an appealing taxpayer to be taxed at 100 percent of fair market value if the rest of the properties in town are taxed at, say, 90 percent of fair market value.[1]

Determining listed value therefore requires answering two questions: what is the fair market value of the property and what is a fair equalization ratio to apply to that value?

1. What is the fair market value of the property?

The law defines fair market value this way (32 V.S.A. § 3481(1)):

The estimated fair market value of a property is the price which the property will bring in the market when offered for sale and purchased by another, taking into consideration all the elements of the availability of the property, its use both potential and prospective, any functional deficiencies, and all other elements such as age and condition which combine to

[1] Note that if the taxpayer only challenges the fairness of her listing in comparison to other properties – the second step in this procedure – the first step is very simple; the BCA and state appraiser simply accept and use the fair market value established by the listers. *Harris v. Town of Waltham, 158 Vt. 477 (1992)* . "Taxpayers were correct that property valuation involves a two step process: determination of fair market value and equalization. Taxpayers conceded fair market value before the board and based their claims solely on equalization. Having done so, they are in no position here to attack the board's finding of fair market value of their property."

give property a market value. Those elements shall include a consideration of a decrease in value in non-rental residential property due to a housing subsidy covenant as defined in section 610 of Title 27, or the effect of any state or local law or regulation affecting the use of land, including but not limited to chapter 151 of Title 10 or any land capability plan established in furtherance or implementation thereof, rules adopted by the state board of health and any local or regional zoning ordinances or development plans. In determining estimated fair market value, the sale price of the property in question is one element to consider, but is not solely determinative. . . [2]

Put succinctly, fair market value is **"the price which a piece of property will bring in the market when offered for sale and purchased by another, taking into consideration all the elements of the availability of the property, its use, potential and prospective, and all other elements which combine to give a piece of property a market value."** *Petition of Mallary*, 127 Vt. 412 (1968).

The starting point for determining market value usually requires identifying the "highest and best use" of the property. The highest and best use of a property is that use which is (1) legally permissible, (2) physically possible, (3) maximally profitable and (4) financially feasible. In many appeals, the property's highest and best use is obvious. For example, the highest and best use of most (although not all) residential property is as residential property. Undeveloped land and property that is in a changing market, however, may well have a highest and best use that differs from the property's actual use.

This point was underscored in a case involving 148 acres of farmland on Lake Memphremagog in Newport City. The city calculated development and legal costs, and how much the property would bring if subdivided and sold in separate parcels, even though the tract was essentially one large farm at the time of appraisal. On challenge by the property owner, the court affirmed the city's approach, noting that the city's assumptions were credible and stating that the phrase "potential and prospective" means highest and best use, *Scott Construction, Inc. v. City of Newport*, 165 Vt. 232 (1996). While this idea was always inherent in the definition of fair market value, this was the first time the court recognized just how dynamic property values can be when potential highest and best use is applied to undeveloped property.

There are three approaches to determining the fair market value of a property—cost approach, market data approach, and income approach. Depending on the characteristics of the property (and the characteristics of the market), one or two of the approaches usually render a more reliable estimate of fair market value. For example, the cost and market approach are often good approaches for appraising residential property. The income approach *may* prove less effective simply because the highest and best use of residential property usually does not include an income use. On the other hand, the cost approach *may* prove less reliable in determining the value of income-producing commercial properties than the market. The emphasis, though, is on "may." The decision-maker must weigh the relative merits of the approaches used by each party as those approaches apply to the property under appeal. Determining value requires critical thinking. There is no hard and fast rule regarding the three approaches.

---

[2] Residential rental properties that are subject to certain housing covenants are appraised using a specified income approach to value that considers the impact of subsidized rental rates. 32 V.S.A. § 3481(2).

a. Cost Approach to Value. This is sometimes called the summation approach, the theory being that the value of a property can be estimated by summing the land value and the depreciated value of any improvements. It is the land value, plus the cost to reconstruct any improvements, less the depreciation on those improvements. The value of the improvements is sometimes abbreviated to **RCNLD—R**eproduction **C**ost **N**ew **L**ess **D**epreciation, or **R**eplacement **C**ost **N**ew **L**ess **D**eprecation. Reproduction refers to reproducing an exact replica. Replacement cost refers to the cost of building a house or other improvement which has the same utility, but using modern design, workmanship and materials. The Marshall Swift version of Vermont's CAPTAP system is designed to produce an estimated *replacement* cost which is then adjusted to market value.

In most instances, when the cost approach is involved, the overall methodology used is a hybrid of the cost and market data approaches. For instance, while the cost to construct a building can be determined by adding the labor and materials costs together, land values and depreciation must be derived from an analysis of the market data.

While the cost approach may offer some marginal help in justifying or assailing an appraisal, particularly in dealing with improvements to property, remember that cost and value are not equivalent terms, and that the proper application of the cost approach is its use in determining the value. Construction cost alone, for instance, may provide some objective data on which to base a decision of value, but the value may be greater or lesser than cost, when the entire property is taken into consideration. *Smith v. State Highway Board*, 125 Vt. 54 (1965). In *Bookstaver v. Town of Westminster, 131 Vt. 133 (1973)* the court noted:

> [T]he value of the buildings are proper factors to be considered in arriving at the true market worth of the entire property. The extent to which the improvements contribute to the total value depends on how much they add to the overall market value of the property as a unit. And while material to the market value, the independent replacement or construction costs are not the sole basis for determining the fair market value. This is not to say that construction costs are not admissible as a circumstance to be considered with all other factors.

b. Market Data Approach (Sales Comparison Approach) to Value. The best evidence of the market value of a property is the price paid for it in a **bona fide** sale. *Royal Parke Corp. v Town of Essex,* 145 Vt. 376 (1985). The Vermont Supreme Court upheld a summary judgment issued in favor of the taxpayer where taxpayer offered evidence of an actual sale price pursuant to a contract signed within days of the listing date, and the town offered no specific evidence that under the circumstances of the sale, the sale price was an inadequate indication of fair market value. *Wilde v. Town of Norwich* (1989) 152 Vt. 327. Absent a recent arms-length sale of the subject, the best evidence is the sale price of properties similar to the subject (comparable sales). Simply put, the sales of properties similar to the subject are analyzed and the sale prices adjusted to account for differences in the comparables to the subject to determine the fair market value of the subject. Evidence presented to you might look something like this:

	SUBJECT	SALE 1	SALE 2	SALE 3
Sale Price	-	$96,300	$82,400	$83,400
Date of Sale	-	5/12/97	11/1/97	11/15/97
Age of Improvements	10 years	10 years	12 years	8 years
Condition	Good	Average	Good	Average
Lot size	50’ x 100’	70’ x 200’	50’ x 100’	60’ x 175’
Floor Area (square feet)	1,500	1,700	1,600	1,500
Garage	Attached	Attached	Detached	Attached
Quality	Good	Good	Good	Average

In order to make the proper adjustments to the above, a detailed analysis of all sales data would have to have been conducted and some determination as to the impact of differences in various attributes be obtained. This is the most difficult part of the sales comparison approach. The sales comparison model must be calibrated using one or more methods. The methods most often used are paired sales (sometimes called matched pairs), multiple regression analysis, and cost.

The next step is to adjust the sales based on this data. This can be done using lump sum adjustments, cumulative percentage adjustments, multiplicative percentage adjustments or a hybrid methodology. This will depend on the appraisal assignment and the preference of the user. An example of multiplicative percentage adjustments appears below.

	SUBJECT	SALE 1	SALE 2	SALE 3
Sale Price	-	$96,300	$82,400	$83,400
Time Adjustment	-	1.12	1.09	1.09
Time Adjusted Sale Price		$107,856	$87,636	$90,906
Age	10 years	0	1.04	.95
Condition	Good	1.05	0	1.05
Lot size	50’ x 100’	.90	0	.95
Floor Area (square feet)	1,500	.90	.95	0
Garage	Attached	0	1.03	0
Quality	Good	0	0	1.05
Net Adjustment		.851	1.018	1.005
Adjusted Sale Price		$91,800	$89,200	$91,400

Adjustments		
Time	0.5% per month	
Age	2.0% per year	
Condition	5% between average and good	**EXAMPLE ONLY**
Lot size	5% between each rating	Determine proper
Floor area	5% per 100 square feet	adjustments based
Garage	3% less for detached	on market data.
Quality	5% between average and good.	

In the example above, you have a range of value estimates from $89,200 to $91,800. The fair market value of your subject lies within that range. As noted in the grey box above, the adjustments cannot be mere guesses, they must have a reasoned basis grounded on market data.

A note on land valuation tables/land schedules. Many towns and cities use land valuation tables, often called "land schedules." Land schedules are acceptable, mass appraisal tools, but deserve some scrutiny to ensure that, as applied to the appealed property, they don't produce "arbitrary valuations." *Scott Construction, Inc. v. City of Newport*, 165 Vt. 232 (1996). The tables must be derived from market data and must take into account factors (such as topography, road access/frontage, views, land cover, etc.) that "combine to give property a market value." 32 V.S.A. §3481(1). The courts will reject "sliding scale" land schedules that base values solely on acreage.. *Bloomer v. Town of Danby,* 135 Vt. 56 (1977).

c. Income Approach to Value (Income Capitalization). This method is most often used in the appraisal of income producing properties—commercial, industrial and rental properties. The present worth of future benefits (sometimes referred to as the net present value) is determined. To do this, the income stream is analyzed in terms of quantity, quality and duration. It is then converted to market value by means of the application of an appropriate capitalization rate.

This approach has received some judicial attention over the past few years. In 1994, the court recognized that "on a purely theoretical basis, income capitalization is probably the most accurate way to establish value, at least as to commercial properties, because it values property on the basis of what income it will yield to the purchaser—and income is the very reason for the purchaser to acquire the property." *Beach Properties Inc. v. Town of Ferrisburgh*, 161 Vt. 368 (1994). The court, however, rejected the income approach in the *Beach Properties case*, noting ". . .the methodology used to calculate the capitalization rate in this case was so flawed that it rendered the taxpayer's evidence on this point meaningless." In short, the use of one year's income in determining the capitalization rate made the court uncertain enough to deny its applicability.

To conduct an income approach appraisal on an apartment building, you would need such data as:

1. potential gross income from the market,
2. vacancy rate and collection loss from the market,
3. operating expenses (including, perhaps, a reserve fund for extraordinary expenditures such as roof and HVAC replacement/repair); and
4. capitalization rate

Simply put, expenses are deducted from gross income. The resulting net operating income is capitalized to determine value. In *Beach Properties, Inc., supra,* 161 Vt. at 373 the court describes this approach:

The income approach is based on the proposition that a rational investor would pay the fair market value for a piece of property, which is the price (P) that, when multiplied by the rate of return available from alternative investments of comparable risk (the capitalization rate or R), is equal to the property's expected net income (I). In other words, if the known factors are capitalization rate and net income, the price of the property may be calculated by dividing the net income by the capitalization rate: P = I/R.

For example, if the appropriate capitalization rate for an investment is eight percent and the net income is $100,000, the fair market value of the property is $100,000 divided by .08 or $1,250,000. For a general discussion of the income approach to property valuation, including calculation of the capitalization rate and analysis of expenses, see International Ass'n of Assessing Officers, Assessment Valuation 203-75 (1977). While our description here is an oversimplification of a complicated process, it is sufficient to illustrate taxpayer's analysis.

It is important to note that the income and expense figures should come from the market, not simply from the subject. If, for instance, the subject property has a high vacancy rate, it does not necessarily translate into a lower value. Other factors, such as how property is being managed, may be adversely affecting the income. The income figure should be the potential income, which can be significantly different than the actual income.

A note on the Gross Income Multiplier (GIM). A figure called the Gross Income Multiplier (GIM) is sometimes used to test the accuracy of income models used to derive values for rental property. The GIM expresses the relationship between gross annual income and property value. It is derived by dividing the property value (selling price) by the annual gross income at the time of sale. For example, if an apartment building sells for $250,000 and its annual gross income was $28,300, the GIM is 8.7.

The use of the GIM is limited. It requires the assumptions that the highest and best use of the property is constant, that the income will be constant and there is no expectation of a change in the vacancy rate, that the property being appraised and the comparables are similar and subject to the same market influences. Unless the differences between the

comparables and the subject are reflected in the difference in the rent, the GIM is not a very effective tool.

Provided the assumptions are met, the mechanics of its use are simple. You estimate the value of the subject by multiplying the annual economic rental of the subject by the GIM. The GIM is not very reliable unless there is substantial reliable data to compute the ratio.

2. What is a fair equalization rate to apply to the property's fair market value?

Once the fair market value of the property is established, it must be equalized to ensure that the subject property is being equitably assessed.

You again turn to the market to determine whether the fair market value now established must be adjusted to bring it into line with the rest of the property in town. For example, if other properties in town are assessed at 80 percent of fair market value, the subject property shouldn't be listed at 100 percent of fair market value. Instead, the property's fair market value should be multiplied by .80 to derive the correct listed value.

In doing a market analysis to determine fair market value, sale properties which are similar to the subject are used. In calculating an equalization ratio, however, a wider population of sales usually should be used.

As noted in a frequently-cited concurring opinion written by Justice Dooley, this is because the narrow pool of comparable sales used to determine fair market value usually doesn't provide enough data to determine the level of assessment at which all other properties are listed. *Bowen v. Town of Burke,* 153 Vt. 131 (1989). For example, one might reasonably use only four sales of comparable properties to derive a fair market value for a certain property. The average ratio of listed value divided by fair market value of the four sales, however, may be quite different from the average ratio of listed value divided by fair market value existing in the town. If the appealed property is listed at the average assessment ratio of the four sales, it is very likely that the appealed property will either be under-listed relative to the town as a whole (thereby giving a windfall to the property owner in the form of an inequitably low tax liability) or over-listed relative to the town as a whole (thereby burdening the property owner with more of her fair share of the town's tax burden).

The parties to the appeal have the right to argue for any group of comparables they believe leads to equity. As a general rule, however, the ratio of all arms-length sales occurring within the town during a market period will produce the most equitable ratio for equalization purposes. As noted in *Bowen,* ". . . in determining uniformity the ratios of assessed values to market values of all properties are relevant, and hence, in that sense all properties are 'comparable.'" *Id.* at 135 (quoting Pennsylvania case).

As a practical matter, this often means using sales derived from Property Valuation and Review's annual equalization study. In comparison to data provided by the parties, the advantage to PVR's study is that ". . .(1) the [sales] data are objectively determined by an

independent third party; (2) they are based on the largest sample possible and thus are as accurate as possible; (3) and don't vary from case to case." *Id.* at 137.

In 1997, the court affirmed the state appraisers' use of a town's average equalization ratio as a whole, as established by PVR, in deriving the listed values of appealed properties. *Knollwood Blg Condos. v Town of Rutland*, 166 Vt. 529 (1997). Since *Bowen* and *Knollwood*, state appraisers and superior courts have relied heavily on PVR's "CLA" (common level of appraisal) to determine equalization ratios.[3]

D. Date of Appraisal

Imagine the listers taking photographs of all taxable property in town on April 1. This picture then becomes their reference for assessing the fair market value of that property on that day in the name of its record owner. Many things may change before the grand list book is lodged, or the tax bills are sent out, but the people involved in the tax system of a town, from listers to the BCA to the treasurer and tax collector will continue to act throughout the following months as though, for fair market value and collection purposes, it's still April 1 on that property.[4]

E. Burdens

There are two evidentiary burdens in property tax appeals, the burden of production and the burden of persuasion. The taxpayer always retains the burden of persuasion, that is, the burden to persuade the trier of fact that the totality of evidence presented favors the taxpayer's position. The taxpayer also bears the burden of production which means the taxpayer must initially produce sufficient evidence to overcome a legal presumption in favor of the listed value. Once the taxpayer meets the burden of production, the presumption that the listed value is correct disappears. However, the taxpayer continues to bear the burden of persuasion.

These two burdens often confuse participants in the appeals process. People ask, "If the burden of persuasion always lies with the taxpayer, what is the point of even mentioning the burden of production?" In a nutshell, the burden of production recognizes that elected officials are, by law, presumed to have performed their duties properly and, therefore, requires the appealing taxpayer to produce some evidence greater than her general belief that her property is listed too high. Simple, though heartfelt, statements such as "I know I can't sell it for that amount" or "if anyone wants to buy it for that amount, they can have it" do not meet the taxpayer's burden of production.

---

[3] Some caution in using the CLA, however, is in order. First, the CLA is not usually the average equalization ratio of the town, although it usually closely approximates townwide ratios. The CLA is actually a byproduct of the methodology used by PVR to derive the aggregate value of the town as a whole. The actual townwide ratios (average, mean and median) derived from PVR's sales data can be found at the back of PVR's annual equalization study, sent to the towns every year. Second, PVR's study spans a three year period. In a rapidly appreciating market, it may be unfair to the property owner to apply an equalization ratio that represents a three year average if the subject property itself was valued based on just the most recent year's sales.

[4] But note *Mesa Leasing Limited v. City of Burlington*, 169 Vt. 93 (1999) In *Mesa Leasing* the Court held that a cruise ship, which was docked outside of Burlington during the winter months and through April 1, but operated out of Burlington during the cruise season, was "situated" for tax purposes in Burlington as of April 1.

If the taxpayer does not present any credible evidence[5] assailing the list, the presumption remains intact, the taxpayer fails to meet the burden of production, and the town wins. However, if the taxpayer introduces ". . . credible evidence fairly and reasonably tending to show that the property was assessed at more than fair market value or that the listed value exceeds the percentage of listed value actually applied to the general mass of property in the community. . . . the presumption in favor of the listers 'disappears and goes for naught." *New England Power Co. v. Town of Barnet*, 134 Vt. 498, 507 (1976). Then ". . . if the town is to prevail, it must meet its burden of justifying the appraisal by producing evidence demonstrating substantial compliance with constitutional and statutory provisions relative to uniformity as well as fair market value." *Id.*

In short, once the taxpayer puts on some credible evidence, the listers must be prepared to defend their appraisal. They cannot rest on a defense based on the grand list alone. *City of Barre v. Town of Orange*, 152 Vt. 442, 444 (1989).

F. Judicial Capacity

BCA members sitting in tax appeals act in a quasi-judicial capacity. This means that appellants must be given certain due process protections, including notice of the hearing, an opportunity to be heard and a right to insist that the BCA hear the evidence before coming to any conclusion about the nature of the appeal. *Godfrey, Collec'r v. Bennington Water Co. & Tr.,* 75 Vt. 350, 355 (1903). *Howes v. Bassett*, 56 Vt. 141, 143 (1883).

The quasi-judicial role carries with it the consolation of immunity for actions taken. As a general rule, town officials enjoy sovereign immunity in the discharge of discretionary (as contrasted to purely ministerial) acts, when those acts are done following the procedural steps established by statute. (See 32 V.S.A. § 4404, PVR Rule 84-1 and Section IV of this Handbook.) The court will assume proper conduct, will presume that you did not intend what you had no authority to do, and will respect your findings of fact unless they are clearly erroneous or unsupported by the evidence.

Sovereign immunity provides its protections to BCA members because discretionary "acts and omissions . . .are not deemed to be the acts and omissions of the municipality, but rather those of the officers having charge of the matter, who are considered as acting in behalf of the State in the performance of governmental functions." *Latulippe v. City of Burlington*, 93 Vt. 434, 436 (1920). This is so because "towns are mere creatures of the Legislature constituted for governmental purposes, possessing only such powers as are expressly granted or implied because necessary to carry into effect such as are expressly granted. Like all corporations, both public and private, they necessarily act through agents; but municipal officers derive their authority largely, if not wholly, from the law and not the municipality, and all persons dealing with them are bound to know the extent and limitations thereof." *New Haven v. Weston*, 87 Vt. 7, 13 (1914).

---

[5] In determining whether the evidence is credible ask yourself this: could the offered evidence serve as a basis for rationally inferring that the taxpayer could be right – not that taxpayer is right, but that taxpayer *could be* right. *Rutland Country Club Inc. v. City of Rutland*, 143 Vt. 142, 146 (1981).

In addition to your statutory and constitutional duties, when you sit in a quasi-judicial capacity, you incur certain judicial responsibilities of conduct and decorum. To understand these responsibilities, you ought to consult the Code of Judicial Conduct, which is found in the supplementary pamphlet accompanying the volume containing rules of the Probate Court. The code is not directly applicable to boards of civil authority, but it is a good source of advice on how to act. *In re Crushed Rock, Inc*., 150 Vt. 613 (1989). The code requires you to avoid impropriety and the appearance of impropriety and to perform your duties impartially and diligently.

To state it negatively, a board member exposes the town and himself to unnecessary risk of liability if he acts without authority or with malice or ill will. Before you act, make sure the law gives you the authority to act and stay within the bounds of your statutory duties. If you cannot keep your personal feelings about the appellant to yourself and out of the decision, don't sit for that hearing. A taxpayer has a right to an impartial decision-maker.

BCA members who grieve their assessments to the listers can sit to hear appeals to the BCA. However, if a BCA member (or the member's spouse/civil union partner or fellow property owner) appeals to the BCA, the BCA member must recuse himself from ALL tax appeals heard by the BCA that year. 32 V.S.A. § 4404(d). As a matter of good practice (and in keeping with the notion of avoiding even the appearance of impropriety), if any close relative – or close friend – appeals to your BCA, you should probably recuse yourself from that appeal, although you needn't recuse yourself from all other appeals that year.

G. Timing of Appeal

The statutes governing the process for lodging grand lists and hearing and deciding appeals can be very confusing to the first-time reader. That is because certain statutes establish specific dates by which certain acts must be completed, while another section of law, 32 V.S.A. § 4341, automatically extends these deadlines based on the size of the town. For example, read 32 V.S.A. sections 4111 and 4341 together. Section 4111 requires the abstract of the individual lists be lodged by May 5th – but that date is automatically extended, under section 4341, by 30 days for towns with a population of less than 5,000 and 50 days for towns with a population of 5,000 and over. May 5th plus 30 days is June 4th. May 5th plus 50 days is June 24th.

Below is a table which lists the dates by which key acts must be performed, taking into consideration the automatic extensions contained in § 4341.

Population Of:	< 5,000	5,000 and over	Governing Statutes
Assessment Date	April 1	April 1	§3651
Latest Abstract of Individual Lists Can Be Lodged	June 4	June 24	§§ 4111(a), 4341
Latest Change of Appraisal Notices Can Be Sent	June 4	June 24	§§ 4111(e), 4341
Latest Date to Commence Grievances	June 19	July 9	§§ 4111(c), 4221, 4341
Latest Date to file Grievances (same as above)	June 19	July 9	§§ 4111(g), 4341
Grievance Hearings End	July 2	July 22	§§ 4221, 4341
Result of Grievances Mailed	July 9	July 29	§§ 4224, 4341
Latest Date Grand List Can Be Lodged	July 25	August 14	§§ 4151, 4341
Deadline for Filing Appeal to BCA	14 days from date of mailing grievance result		§§ 4224, 4404(a)
BCA Hearings Begin	14 days after appeal deadline to BCA		§ 4404(b)

☞ **These are the last dates to meet statutory requirements without requesting an extension of time from the Director of PVR. 32 V.S.A. § 4342. Filing, however, may occur anytime after April 1 and prior to these dates.**

A word about the deadlines

Taxpayer's deadlines. The law contemplates "the grievance meeting" to be a one-day affair, 32 V.S.A. §4111(g), while also recognizing that grievances often spill over into additional days. The statutes therefore provide that a grievance meeting continues until all grievances are heard. 32 V.S.A. §§ 4221-22. The continuance of the grievance meeting, however, does not change the deadline by which grievances must be lodged. Taxpayers who wish to grieve must get a written notice of appeal to the board of listers on or before the grievance date stated in the change of appraisal notice. Any grievance notice received after that day – even if received while the listers are hearing grievances due to continuances – does not meet the requirement of being filed "at or prior to the time fixed for hearing appeals," 32 V.S.A. §4222, is untimely and should not be heard.

Listers deadlines. If the listers perform their duties on the deadlines listed above, they have only 13 days to hear grievances and seven days to mail out all grievance results. In a normal year with just a few grievances, this is probably enough time. In a reappraisal year, these deadlines can prove stressful. Listers in towns that are undertaking reappraisal should consider starting the process earlier to allow adequate time to fairly hear and decide grievances.

☞ **Occasionally, especially in reappraisal years when the listers or contract reappraisal firm falls behind schedule and/or there is large public reaction to the changes proposed, the deadlines become impossible. In these cases, the listers need to ask for an extension. These extensions may be granted by the Director of Property Valuation and Review, to whom a written request should be directed, signed by the listers and approved by the selectmen or the mayor of a city. 32 V.S.A. § 4342. If an extension is granted, it must be recorded in the office of the town clerk.**

Taxpayers may not be aware of the deadlines, especially if an extension is granted. For everyone's benefit, the town clerk should consider posting a notice in the town office listing the various deadlines for the appeal process, so that no one is misled about them.

A word about mailing the grievance results

Grievance results must be sent certified mail, registered mail, or certificate of mailing. 32 V.S.A. § 4224. If they aren't and a dispute arises as to whether or when they were sent, it is presumed the notice(s) were not sent on time and the taxpayer may have the right to appeal to the BCA even though the time for appeal has passed.

H. Listers' Records

Listers' records are critical to each stage of the appeal process. Listers' cards (including listing sheets and cost reports in those towns with computer-assisted mass appraisal – CAMA – services), as well as the grand list book and property transfer returns of recent vintage, are the basic documents appellants and listers will use in making their cases at grievance, before the BCA, and beyond. For that reason, listers should know that their records are public and may be reviewed and copied by any member of the public.[6] Listers, assessing contractors and assessors should bear in mind that retention of these records must conform to the *Retention Time Table for Municipal Records* established pursuant to 3 V.S.A § 218 and 22 V.S.A. § 453. Willful destruction of these records in violation of the applicable retention schedule can result in fines for each offense. 22 V.S.A §455.[7]

[6] Note, however, that certain "inventory forms" (that is to say, assessment questionnaires that may seek such information as income and expense data from commercial property owners, 32 V.S.A. § 4001) are exempt from inspection by the general public. 32 V.S.A. § 4009.

[7] When changes occur to a property (for example a porch or garage is added), listers or contract assessors will generate a new CAMA sheet reflecting the changes. In one instance, a contract assessor purportedly followed a policy of destroying the earlier pre-addition CAMA sheet upon generation of the new CAMA sheet. This is a poor policy. First, it significantly limits the ability of appealing property owners in the town to compare the new listed value with the old pre-addition value in preparation for their appeal. Second, the policy violates Disposition Order 7757.001, requiring that appraisal cards be retained "until superseded and all appeals settled." *Retention Time Table for Municipal Records, page 17.*

Listers wonder how public access to these records can be ensured, without exposing the records to loss or damage. The answer is a well-developed policy on public records.

- Listers may choose to deliver their records to the town clerk's custody, to ensure that the public has access to these records at times when the listers are not present in the town office.

- Listers may prefer to retain custody, which will mean remaining willing to meet the public at the town office or other location to show them the records and arrange for copies.

☞ **Some listers' records are still maintained in pencil. In such cases, it may be advisable to make copies of relevant records first, for the public to review, to avoid the risk of loss or unofficial amendment of these records.**

I. Exemptions

The Vermont statutes contain many exemptions from the property tax, peppered throughout the "green books." In general, exemptions fall into one of two categories: those properties that are exempt by operation of law and those properties that can be voted exempt by the town. A comprehensive list of exemptions, grouped into these two categories, can be found in PVR's *Listers Handbook* beginning on page 53.

The question whether a property is tax exempt is a question of law. BCA assessment appeals are fundamentally concerned with determining the *value* not the *taxability* of the property, see 32 V.S.A. § 4404. Although the question has not been directly answered by the Vermont Supreme Court, there is support for concluding that BCAs do not have the jurisdiction to rule on the exemption issue and should – as the Barnard BCA did in 1997 – decline to rule on the issue of taxability. See *Subud of Woodstock, Inc. v. Town of Barnard,* 169 Vt. 582 (1999) (mem.)[8]; *Our Lady of Ephesus House of Prayer v. Jamaica*, 205 VT 16 ¶ 34.

As a practical matter, however, most exemption cases make their way to superior court via a BCA hearing. In addition, exemption cases often include a dispute over value which is clearly within the jurisdiction of the BCA and must be addressed. For these reasons, an overview of some basic principals of property tax exemption law may prove helpful to BCA members.

The broadest-reaching exemption is contained in 32 V.S.A. § 3802(4). Commonly known as the "public use" exemption, it exempts real or personal property that is "granted sequestered or used for public, pious or charitable uses." In order to be exempt as a public use, the *actual use* of the property must meet the following three criteria:

[8] *Subud* appealed its taxation to the BCA, which declined to rule. Subud then appealed to the State Appraiser. The State Appraiser found Subud exempt and Barnard appealed to the Vermont Supreme Court. The Court reversed the State Appraiser, finding that ". . .it had no statutory authority, and therefore lacked subject matter jurisdiction, to determine the tax-exempt status of the property. . . . As to that issue, Subud's proper recourse was to file an action for declaratory judgment in superior court."

(1) the property must be dedicated unconditionally to public use;
(2) the primary use must directly benefit an indefinite class of persons who are part of the public, and must also confer a benefit on society as a result of the benefit conferred on the persons directly served; and
(3) the property must be owned and operated on a not-for-profit basis.

American Museum of Fly Fishing Inc. v. Town of Manchester, 151 Vt. 104, 110 (1989).

Since these three criteria contain the philosophy supporting tax exemptions, it makes sense to look at them a bit more closely.

The first criterion – dedicated unconditionally to a public use – has received the least attention in the case law to date. Shortly after *American Museum of Fly Fishing*, however, the court noted that "[t]he first criterion . . . assures that the use directly benefits the public without requiring the onerous burden of showing that the use in question assumes an essential municipal function." *Kingsland Bay School, Inc. v. Town of Middlebury,* 153 Vt. 201, 205 (1989). Recently, the court indicated that there must be an "incontrovertible dedication" of the property to a public use. See *Herrick v. Town of Marlboro,* 173 Vt. 170 (2001). This concept of incontrovertible dedication or relinquishment of personal control over the use of and/or profits from the property, it would seem, aligns most closely to the idea of "unconditional" dedication to a public use.

The second criterion – that the primary use directly serve an indefinite class of persons and, in so doing, confer a benefit on society as a whole – receives the lion's share of attention in the case law. Typically, the cases turn on the meaning of "indefinite class of persons." In general, an indefinite class is an amorphous group of people where one need not join the group in order to be part of the group and where the public at large is not excluded from the group or from participating in the actual and primary use of the property. See *Sigler Foundation v. Town of Norwich,* 174 Vt. 129 (2002). Theater and museum goers are probably an indefinite class of persons. Rod and gun club members are not.

Don't be fooled into thinking that if a group is definable, it cannot be indefinite. Discretely identifiable groups of people still constitute an indefinite class if the identifying characteristic is not a characteristic of choice. Blind children, for example, constitute a discrete sector of our population, but they also constitute an "indefinite class" for purposes of property taxation and an educational summer camp that served blind children met this criterion. *N.Y. Institute of the Blind v. Town of Wolcott,* 128 Vt. 280, 286 (1970) (defining "definite class" as ". . . a group determined by choice or selection and impl[ying] some kind of voluntary action or judgment."). Similarly, troubled youth are an indefinite class and a residential school that works to assimilate them into society meets this criterion. *Kingsland Bay School v. Town of Middlebury*, 153 Vt. 201 (1989).

In the end, it is "the character of the organization's decision-making criteria" that determines whether the organization's property directly benefits an indefinite class of persons. "The broader the scope of an organization's beneficiaries, and less restrictive its criteria, the greater the

likelihood it is engaged in providing uses for an indefinite class of persons." *Sigler Foundation v. Town of Norwich,* 174 Vt. 129 (2002).

The third criterion – that the property be owned and operated on a not for profit basis –requires a concurrence of nonprofit ownership and use:

> [T]he rule to be followed in Vermont in respect to real property. . . is that there can be no freedom from taxation unless the property is both owned by a qualified body and used by such a body in pursuit of one of its exempt purposes.

Brougthon v. Town of Charlotte, 134 Vt. 270 (1976).

Under this criterion, a home owned by private individuals but leased to a nonprofit organization that used the home to provide residential services to the mentally disabled was taxable because there was no "concurrence of nonprofit ownership and use." *Lincoln Street, Inc. v. Town of Springfield*, 159 Vt. 181 (1992) .

Finally, bear in mind that certain uses that meet the "public use" text are still taxable by legislative decree. Thus, properties that principally serve a health or recreational purpose – even though devoted to a "public use" – are taxable unless voted exempt by the town. 32 V.S.A. § 3832(7). Similarly, religious buildings that do not meet one of eight listed uses (and the land associated with their use) are taxable. 32 V.S.A. §3832(2)

III. LISTERS' GRIEVANCES

A. Notice

Once the listers have completed their work on the abstract of individual lists (often called "the abstract"), they are required to "lodge" this book in the office of the town clerk for the inspection of the taxpayers. 32 V.S.A. § 4111(d). The statute specifies May 5 as the deadline for lodging the "abstract." That deadline, however, is adjusted in accordance with 32 V.S.A. § 4341, as discussed in the tax appeal timetable contained in the previous section.

The listers are required to notify property owners whose appraised value or homestead value has changed from the last grand list. This notice must be sent by registered or certified mail, or by certificate of mail, to the last known address of the owner. If it isn't, and there arises a dispute regarding its mailing, the law presumes the certificate was not sent. 32 V.S.A. § 4111(e). The notice must identify the overall change in the appraised value of the property and the specific change in the allocation and value of the homestead and/or housesite. The notice must also state the time and place grievances will be heard by the listers. The notice must be mailed at least 14 days before the time fixed for the hearing. 32 V.S.A. § 4111(e), 32 V.S.A. § 3756 (d).

The listers must also post notices in the town clerk's office and in at least four public places around town stating they have lodged the grand list and giving the time, date, place of the grievance meeting. The postings must be made at least 14 days before the date fixed for the grievance meeting. 32 V.S.A. § 4111(e).

B. Taxpayer's Appeal

Taxpayers must file their appeals to the listers in writing according to 32 V.S.A. §§ 4111 and 4222. However, if a taxpayer arrives at the grievance hearing without having filed anything, the listers should hear the grievance. Written notes taken by the chair of the listers at grievance suffice to qualify as "objections in writing." *Gionet v. Town of Goshen*, 152 Vt. 451, 456 (1989).

C. Open Meetings

Grievances are public meetings. While the listers are listening to the grievance of a taxpayer, any member of the public may attend the hearing. The listers may enter deliberative session at the end of the fact-finding portion of the hearing or at a later time, in order to deliberate on the decision they must make. 1 V.S.A. § 312(f). A deliberative session does not require public notice or minutes, and need not include public attendance, since it is outside the open meeting law. 1 V.S.A. § 312(e).

The listers may enter executive session to consider documents exempted from the access to public records law. Since the only exempt document listers have in their possession are property inventories submitted by the taxpayer, 32 V.S.A. § 4001, and electric utility inventories submitted by public utility companies, 32 V.S.A. § 4452, listers must limit their use of the

executive session to appeals challenging information contained on these inventories. 1 V.S.A. § 313(a). 32 V.S.A. § 4009.

To enter executive session, there must be a motion explaining the purpose of the executive session ("to consider a document exempt from the public records law," for example) and a vote supported by at least two of the three members of the board of listers. This vote should be recorded in the minutes of this meeting.

D. Special Cases

1. Corrections to the Abstract. Listers have control of, and can make changes to, the abstract up until the close of grievance. The affected taxpayer must be notified of these changes. 32 V.S.A. §4111(f). The board of listers must determine the appeal of any person who objects in writing within a reasonable time to such change PVR Rule 82-1, (32)4222-1.

2. Pending Appeal. Even if the assessment of a property for a prior year is still under appeal at the superior court or state appraiser level, listers should proceed to hear the current year grievance. In most cases, the outcome of the earlier appeal will fix the value for that year and the next two ensuing years 32 V.S.A. §4468. It is possible, however, that the appeal could be withdrawn, or that the new appeal involves an addition or change to the property that did not exist at the time of the first appeal, in which case the current appeal is necessary to set the value for the current year.

3. Property Sold After April 1. Sometimes property changes hands after April 1 and the new owner wishes to appeal or to continue a pending appeal. Since all values are established as of April 1, and the tax bills are issued to the April 1 owner, only the owner of record on April 1 can appeal. The previous owner can make the new owner an agent, however. In that way, the buyer can participate by acting on behalf of the owner.

E. The Hearing

On or before June 19th for towns with fewer than 5,000 inhabitants, or July 9th for towns with 5,000 or more inhabitants, "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[9]

Property owners must file their objections in writing with the listers on or before the day set for the grievance meeting. They may appear on that day to argue their grievance, or they may choose to have their grievance heard entirely on the basis of their written filing. If they do appear at the hearing, they may submit documentary or sworn evidence that is pertinent to their grievance. 32 V.S.A. §4111(g) and 4223. They may bring in professional appraisers, for instance, who can testify under oath to their opinion of the fair market value of the subject property. They may offer comparable properties to demonstrate lack of fairness or uniformity.

[9] As discussed above, 32 V.S.A. § 4341 includes automatic extensions that set the deadlines noted here.

☞ **All listers should appear at the grievance, rather than leaving the work to a single member. Since the listers sit in a quasi-judicial capacity, all members must hear all of the evidence in order to make a supportable decision following the grievance hearing. At least two members of the board of listers must agree in order to issue a grievance decision which will be respected by the courts.**

The primary purpose of the grievance meeting is the discovery of possible error or omission in an abstract. Taxpayers may grieve the appraisal of their own property, but not that of other taxpayers. They may explain to the listers' satisfaction that the acreage used in the parcel is too great, that they are not the true owners of the property, that errors were made in the conduct of the appraisal, or that the value is incorrect. Listers may decide to change the abstract in accord with the taxpayer's argument, or to leave the grand list entry as it was when lodged with the town clerk, or make other changes discovered during the time of the grievance process.

Taxpayers may be represented by attorneys or agents who may appear in their place to argue their grievances. 32 V.S.A.§ 4222. All grievances filed in writing with the listers prior to or at the time of grievances must be determined, even if the taxpayer fails to appear.

If the listers discover an error or omission in the abstract, they ought to correct it. If they do, they must notify the taxpayer in writing and either mail it to the taxpayer or personally deliver it. 32 V.S.A. §§ 4111(f) and 4221.

Hearings must be concluded by July 2 or July 22, depending on the population of the town, and notices of the listers' decision must be sent out no later than July 9th or July 29th. See Section II G above.. The notices must be sent by registered or certified mail or by official certificate of mailing and must inform the taxpayer that he/she has 14 days to appeal the decision to the BCA. 32 V.S.A. § 4224.

F. Grievance Decision

Although listers can deliberate and reach consensus in a closed meeting the decision is officially made in an open session. 1 V.S.A. § 312(a). A majority of the board must be present and must vote in favor of an action to change or affirm the grand list of the grievant 1 V.S.A. § 172. Full description of the actions taken as a result of grievances must be entered in the minutes of the board.

☞ **Remember, this notice, like the change of appraisal notice before it, must be sent registered, certified, or certificate of mail, or the law will regard it as unsent. 32 V.S.A. § 4224,**

G. Lodging the Grand List

Once grievance decisions are completed, notices mailed and the changes are made to the abstracts, the listers lodge the completed book, under oath, with the town clerk, who certifies the time at which the oath is taken, and the book becomes the official grand list of the town (subject to appeals or corrections permitted under law) 32 V.S.A. § 4151. Once lodged, the grand list is

no longer under the control of the listers, except to make some minor corrections as explained below.

The taking of this oath, which transforms the abstracts into the town's grand list, must occur by July 25th for towns with fewer than 5,000 inhabitants or by August 14th for towns with 5,000 or more inhabitants. Interestingly, the final lodging of the grand list by the listers can occur a few days after the deadline for appealing listers' decisions to the BCA.

H. Corrections to the Grand List after Lodging

When listers mistakenly leave out property from the grand list or when they discover they made an obvious error, this oversight may be remedied before December 31 by the listers, with the approval of the selectmen. 32 V.S.A. § 4261. The listers, after correcting the list, must "make a certificate thereon of the fact."

When listers fail to meet the deadline for lodging the abstracts with the town clerk, or when they fail to give proper notice to appellants of the grievance meeting, or when a defective abstract is discovered, the listers may lodge a proper grand list or abstract with the town clerk and make it valid, as long as this is done before February 1 of the next ensuing year. 32 V.S.A. § 4112.

If the listers fail to take the grand list oath or attach it to the grand list, or fail to lodge the grand list with the town clerk, or if the lodged grand list is other defective, the listers may remedy the situation and make the grand list valid provided the defect is corrected by February 15th of the next year 32 V.S.A. § 4262.

If, on the first Tuesday of February of the next ensuing year, no tax appeals are pending and there are no suits pending to recover taxes paid under protest, listers and selectboard members together are required to endorse a certificate to that effect and add it to the grand list. The town clerk must attest to this filing as of this date 32 V.S.A. § 4155. If there are outstanding suits as of the first Tuesday of February, the listers and selectboard members make the certification as soon as the suits are finally determined. 32 V.S.A. § 4156. Once the certificate is made, the validity of the grand list cannot be challenged in court. 32 V.S.A. § 4157.

I. Minutes

Listers are required to keep minutes of all public meetings, including grievance meetings. The minutes must include the names of the members present, as well as those of all active participants; all motions, proposals, and resolutions made, offered and considered, and an indication of how these have been resolved; and the result of all votes, with a record of the individual vote of each member if a roll call vote is taken. 1 V.S.A. § 312(b).

Minutes must be completed, even though unapproved by the board, within five days of each meeting, and should be filed with the town clerk, so that members of the public have access to them. The listers work long hours preparing the grand list and visiting properties to aid in the appraisal process. Site inspections for tax assessment purposes and days spent purely on clerical

work are exempt from the open meeting law. 1 V.S.A. § 312(g) No public notice or minutes are required for these sessions, nor is the public entitled to attend.

When the board of listers intends to take action, however, including the formal adoption of the grand list (or parts of it) and hearing grievances, the open meeting law applies. The best insurance against accusations of impropriety relating to the open meeting law for listers is to maintain a journal, covering each meeting of the listers and each action taken by them in the course of the tax appraisal and appeal processes. For example:

Listers' Journal: Minutes

Note: Each meeting below was held at the town office, unless otherwise specified in the minutes. Meetings began at 8 a.m., ended by 4 p.m. unless specifically mentioned.

Date	Members present	Action taken
3-10-06	Washington, Lincoln, Roosevelt	Organized board. Elected Roosevelt chair. Discussed methods of appraisal.
3-20-06	Washington, Lincoln	Worked with Listers' Handbook. Reviewed forms, allocated workload after 4-1.
4-1-06	Lincoln, Roosevelt	Began work on abstracts. Visited properties and worked on listers' cards.
5-20-06	All listers present.	On Lincoln's motion, voted unanimously to set values on property as they appear in 5- 20-06 abstracts and to lodge same with the town clerk on this date. Prepared notices to taxpayers assessments and/or homesteads had changed. Mailed same. Posted notices of grievances.
6-3-06	All listers present	Heard grievance of Joseph Taxpayer. Voted to deny grievance. Sent Taxpayer due notice.

Attitude is everything at grievance

Most appellants appeal because they do not understand how their appraisal has been made. They may suspect that they have been singled out for special attention (retributive reappraisal). Anything that listers can do to demonstrate to appellants how the appraisal process works will help the tax appeal process. Many taxpayers will not pursue an appeal beyond grievance if they are convinced that their appraisal has been made fairly, in accord with established principles of appraising. Even when taxpayers decide to pursue their appeal to the BCA, the lessons learned by appellants at grievance can make the board's hearing easier and more reliable by giving taxpayers an idea of how fair market value is found. Listers can make a big contribution to the tax appeal process by remaining open and receptive to the questions of taxpayers at grievance.

IV. APPEALS TO THE BOARD OF CIVIL AUTHORITY

The BCA hears appeals from taxpayers who are still unhappy after receiving a determination from the listers in their grievance. A taxpayer may not skip the grievance process and go right to the BCA for an appeal.

A. Notices of Appeal

An appeal from the listers to the BCA begins with a written appeal from the taxpayer, filed with the town clerk, listing the grounds for the appeal. 32 V.S.A. § 4404(a). This notice must be filed within 14 days of the date of mailing of the result of grievance notice. Note, however, that if an action of the listers has prevented the taxpayer from filing a timely appeal, a taxpayer may still appeal "within a reasonable time" to the BCA. PVR Rule 82-1 § (32)4404(a) 1.

Some towns have adopted a form for this notice, entitled "Notice to Board of Civil Authority." The notice will begin as follows: "I, _____, hereby appeal the decision of the listers at grievance of my property located at _____for the following reasons: . . . ." There is a place at the bottom of the page for the appellant to list the reasons for his or her appeal, and then to sign and date the document. This listed reasons help focus the appellants on the explanations and arguments that they will have to make during the appeal.

In some unusual cases, such as when the listers discover individual lists they have forgotten to include in the grand list after its lodging with the town clerk, or when the grievance schedule is delayed, the law provides alternative schedules for appeals on those properties. In these cases, the notice of appeal must be filed with the town clerk within 14 days of the date of the listers' notice of grievance decision. The first hearing before the BCA must be held not later than 14 days following the date of the notice of appeal. 32 V.S.A. § 4407.

B. Setting the Hearing

After notice is given to the town clerk by the taxpayer, the town clerk schedules a meeting of the BCA, giving each member written notice at least five days in advance of the meeting. 24 V.S.A. § 801.

- Public notice must be given by posting a warning of the meeting in at least three public places in town.
- Written notice of the meeting must also be provided to the town agent, the chairman of the board of listers, and all persons appealing. 32 V.S.A. § 4404(b). Use form 4404PN for this purpose.
- It is recommended that notices to the appellants be sent by registered, certified, or certificate of mail.
- A copy of the notice should also be kept in the grand list book.

☞ **The BCA meetings must begin no later than 14 days after the last date allowed for the notice of appeal, at some place within the town. 32 V.S.A. § 4404(b).**

32 V.S.A. §4404(c) provides "The board shall meet at the time and place so designated, and on that day and from day to day thereafter shall hear and determine such appeals until all questions and objections are heard and decided." When there are more appeals than can be heard at a single meeting, the board will convene all of the appeals at one meeting and then will set a schedule for individual hearings; in effect "continuing" those individual hearings on the scheduled dates.

C. Attendance at the Hearing

While the BCA should try to accommodate the reasonable scheduling requests of the appellants, it does not have to reschedule a hearing because it is inconvenient for the appellant. However, if a hearing is postponed at the request of the appellant the board should be sure to ask the appellant to waive, in writing, the 14-day requirement if appropriate.

The appellant may choose to be represented by another person, or it may submit an appeal in writing, and not appear at the hearing. Whether the appellant personally appears or does not, the board is still obligated to hold a hearing on the case, make its inspection, and render its decision under the timetable. The only situations in which an appeal will be considered withdrawn is if the taxpayer asks in writing to withdraw the appeal or if, after notice, the appellant refuses to allow an inspection of the property, including the interior and exterior of any structure on the property. 32 V.S.A. §4404(c).

Note that although the town agent is given notice of tax appeals by the clerk, the agent is not required to attend the hearings. The notice of the hearing is required so that the agent can be ready to defend or prosecute any appeals taken from a decision of the BCA to the state appraiser or Superior Court. If the town agent cannot attend the appeal, he or she can still complete the responsibilities of the office with the information available from the record.

D. The Board of Civil Authority

1. **Quorum.** A quorum of the board of civil authority as well as the number needed to make a decision (or take action) is set by specific authority in 24 V.S.A. § 801 where it states that "the act of a majority of the board present at the meeting shall be treated as the act of the board…" (except in election issues when 17 V.S.A. § 2103 controls). This means that any number of board members (although never less than three, as three are needed for the inspection committee) that attend a duly warned meeting for a tax appeal can take action and make a decision. When towns have a great number of appeals filed the BCA will sometimes split into smaller groups of 3-5 members to hear individual appeals so that every board member does not have to hear every appeal. Note that only those board members who have heard the appeal and who have heard the report of the inspection committee (or is part of the inspection committee) can participate in the decision on an appeal.

2. **Disqualifications.** Some members of the board may not be eligible to serve on tax appeals. Members who appeal their taxes or who have any interest in property under

appeal are prohibited from serving on the board for tax appeal purposes during the year the property is under appeal. 32 V.S.A. § 4404(d). BCA members who have grieved to the listers and decided not to the appeal to the board are not disqualified from hearing tax appeals.

If a board member is an attorney and represents an appellant, that member is similarly disqualified, as is the town agent who might also be a board member in some circumstances. Listers may not sit on the board for tax appeals. While the law does not address the situation in which a lister appeals, the listers should limit his or her appeal appearance during the year to that appeal, sitting as appellant, rather than risk the appearance of inconsistent interests later on.

Board members must step down from any appeal that involves a relative, by blood or marriage, who is a first cousin, niece, nephew, aunt, uncle, parent, grandparent, or sibling. 12 V.S.A. § 61. In addition, BCA members should avoid the appearance of a conflict by stepping aside when former business partners, friends or enemies appeal their taxes, or any situation in which the member might not be able to render a decision squarely on the evidence and the merits, leaving all personal considerations aside.

3. **The Chair's Role.** In many towns, the chair of the BCA plays a neutral role in hearings. This is because the board may believe that the chair only votes to make or break a tie, and does not participate in discussions, make motions, or serve as other than a presiding officer. This is not necessarily the case.

   Ideally at the board's organizational meeting, some standard rules should be adopted. If *Robert's Rules of Order, Newly Revised* is adopted, the traditional non-participatory role of the chair may be rejected for a more active role. General Robert tells us that in boards of 12 or fewer members, the chair should be able to make motions, participate in debate, and vote on any issue at any time without disability, at least on the basis of being chair. This makes sense since the BCA, while sitting in tax appeals, may well be smaller in number than the board as a whole. The chair's participation may well be required in order for the board to take action.

   When a board consists of more than 12 persons present at an appeal, the board may prefer to return to the traditional role of a chair. In any case, how the board works should be discussed before hearing any appeal.

4. **BCA oaths.** Each year, before the members of the BCA begin to hear tax appeals, they must take, sign and file an oath with the town clerk, as follows:

   > I do solemnly swear (or affirm) that I will well and truly hear and determine all matters at issue between taxpayers and listers submitted for my decision. So help me God. (or, under the pains and penalties of perjury). 32 V.S.A. § 4405.

   This should be done prior to the first tax appeal or as part of the organizational meeting of the BCA.

E. Conducting the Hearing

1. **Due Process.** A tax appeal is less formal than a court proceeding, but because the BCA is making decisions that affect a person's property interests, the United States' Constitution requires the property owner to be given due process. This means certain formalities must apply. At a minimum, due process requires a fair hearing where the property owner is given an opportunity to be heard by decision makers who are unbiased (see below for more information about what may constitute bias) and who will base their decisions on a determination of what the relevant facts are in a particular case, and the application of those facts to the rules or laws that apply. Some of the formalities are as follows:

2. **Recording the hearing.** The chair of the board should open the hearing by asking the clerk of the board to turn on the audiotape recorder or other recording device. The chair should then begin each hearing by identifying on tape, the date, time, place and purpose of the hearing, the name of the appellant, and the names of all people who will participate in the hearing.

   ☞ **All tax appeals should be recorded on audiotape to assist those who will write the decision, as well as for possible preparation on appeal.**

3. **Giving and taking oaths.** Before each hearing gets started the chair of the BCA should ask anyone who will be presenting evidence in the hearing, including the listers and the appellant, to stand and take the witness's oath or affirmation. The oath may be administered by a justice of the peace or a notary. Attorneys serving as counsel to parties do not have to be sworn unless they will be giving evidence. Some people do not like to "swear" so it is good to state that the witnesses may either swear or affirm the following:

   Do you solemnly swear (or affirm) that the evidence you shall give relative to the cause now under consideration shall be the whole truth and nothing but the truth so help you God? (or, under the pains and penalties of perjury). 12 V.S.A. § 5810.

   ☞ **Listers should be sworn before each tax appeal.**

4. **Hearing from the evidence.**

   a) **Listers give brief introduction.** The chair of the BCA should ask the listers to begin by briefly describing the parcel and how the listers established the assessment. This should be a cursory explanation aimed at simply establishing how the listers determined the value for the property, and providing the necessary background for the case.

   b) **Appellant presents case.** After the listers introduce the property, the chair should then ask the appellant (or the appellant's attorney) to explain the basis for the appeal. The appellant can submit written testimony or written evidence. The appellant (and the listers) may call expert witnesses to testify on their behalf.

c) **Listers respond to appellant.** Once all of the board's questions are answered the chair should ask the listers if they would like a chance to rebut any of the testimony given by the appellant.

d) **Board members can ask questions.** After the listers finish their testimony the board chair should ask board members if they have any questions for the appellant, the witnesses (if any), or the listers.

e) **Clerk of the board collects written evidence.** The clerk of the board should collect copies of all written evidence, including copies of comparables so that the board has everything it needs to make a decision. Because the board hears tax appeals de novo (anew), parties may introduce any relevant and material evidence at the hearing, whether it was submitted to the listers at grievance or not. *Phillips v. Bancroft & City of Montpelier*, 75 Vt. 357, 359 (1903).

☞ **While most administrative bodies, including the State Appraiser appointed by the Director of Property Valuation and Review, will allow the introduction of "any relevant evidence which is commonly relied upon by reasonably prudent people in the conduct of their affairs," the board should ensure that all documents that are presented are properly marked and identified on the record.**

Appellant's Exhibit 1, for example, should be labeled as such, reviewed by the listers first for any objections they would make to its admissibility, then formally moved by the appellant for introduction, and acknowledged as introduced by the chairman. A formal vote on the question should not be required, unless a dispute arises between the parties. Remember to include all exhibits as part of the file of the appeal. These will be needed if the board's decision is appealed.

f) **Chair appoints inspection committee.** The chair should appoint the inspection committee and he or she must set the time for reconvening the hearing to hear the report from the inspection committee. The inspection committee should work with the appellant to find a mutually convenient time for them to come to view the property.

g) **Chair adjourns hearing.** The chair must adjourn the hearing to the date set to hear from the inspection committee. The hearing is NOT closed, and if it feels it needs to, the BCA can take additional testimony when the hearing reconvenes for the report from the inspection committee.

F. The Inspection Committee

1. **At least three board members must visit each property.** A critical phase of the appeal is the appointment and report of the inspection committee. The BCA appoints not less than three of its members to inspect the property under appeal, "who shall report to the board within thirty days from the hearing on the appeal and before the final decision pertaining to the property is given." 32 V.S.A. § 4404(c). Occasionally, when the subject property represents a significant portion of the grand list, all members of the BCA ought to make the

inspection, so that each member can contribute to the decision based on full, personal knowledge of the property. *Rhodes v. Town of Georgia,* 166 Vt. 153 (1997).

In *Devoid v. Town of Middlebury*, 134 Vt. 69 (1975), the Vermont Supreme Court commented on the importance of the inspection process. The court said,

> [T]he Legislature obviously intended that at least some members of the board ... should examine the property and report their observations to the board. The committee, as inspectors, do not determine the fair market value of the property, but only view it for the board's information when that body, including the inspectors, makes its decision. The board is essentially a statutory fact finder which takes into consideration the view taken by a subcommittee along with all of the other evidence before it. This is borne out by the fact that the board is nowhere required by statute to accept the report of its committee or base its decision on fair market value upon the opinions of the inspectors. Id. at 72.

2. **The inspection committee must report back within 30 days of the hearing.** The inspection committee must report back to the full BCA within 30 days of the tax appeal hearing. This schedule is strictly enforced by the courts. All three members must inspect the property, although they need not make the inspection together, as long as the 30-day period is satisfied. *Devoid,* 134 Vt. 69, 73 (1975). It is best to inspect together, whenever possible since it both minimizes the inconvenience to the appellant, and it also reduces the chance that there will be ex parte communications.

    - **Note that the 30 day deadline begins to run after the particular tax appeal hearing and not after the final hearing on all appeals. Each one must stand on its own schedule**.

Inspection is not public meeting. When members of the inspection committee go to view the property that is subject to the appeal, this is not considered a public meeting of the BCA. 1 V.S.A. § 312(g). That being said, it is appropriate to give written notice of the time and date of the inspection to the town agent and listers. However, because the inspection involves going on to the private property of the appellant, the listers and agent do not have the right to be present during the site inspection without the appellant's permission.

3. **Refusal to permit inspection results in a withdrawal of the appeal.** An appeal will be considered withdrawn if, after notice, the appellant refuses to allow an inspection of the property including the interior and exterior of any structure on the property. 32 V.S.A. §4404(c). This, of course, only applies to members of the BCA serving on the inspection committee. If the appellant does not permit other members of the BCA, or the listers or town agent to tour the property this will not result in a withdrawal of the appeal. The inspection committee must view both the interior and exterior of any buildings even if the appeal relates only to the exterior.

4. **Inspection committee report should describe what was seen.** The inspection committee must provide a report to the BCA members hearing the appeal. The report should adequately describe what the inspection committee has seen, including location, and condition of the

property, the time of the inspection, and the people present; and the date of the report to the BCA. For example:

Report of the Inspection Committee
Chipman, Vermont

To: The Board of Civil Authority
From: Mary Justice, Robert Fairness, June Equity; inspection committee
Date: July 24, 2006
RE: Inspection of property at Box 130, Grommet Road, owned by Joseph Taxpayer

Inspection was made on July 14, 2006 at 6:00 p.m. Mr. Taxpayer was present and accompanied the inspection committee, along with Mr. Tom Nixon, Lister.

The residence is located on Grommet Drive. It is well-maintained and is set into the hillside of a sloping lot. The house is of modular design, and its condition appears to support the testimony that it was constructed about 16 years ago. It is in good condition. About two thirds of the land is forested, with a small stream passing through the interior. The remainder is lawn with occasional shrubbery.

The highest and best use of the property is residential, as currently used. The condition of the house is good. There has been some water damage to the two outside walls in the cellar and by the back kitchen door, but when taken as a whole the overall condition is good. The owner has installed two asphalt drainage ditches at the rear and front of the house to catch the runoff from the roof.

The house contains four bedrooms, a living room, a family room, a large kitchen area with breakfast bar and an area for dining, and a modest bathroom. A 10' by 10' wooden porch is attached to the back of the house. The full basement is unfinished, except for an enclosed room, apparently used as a spare bedroom, and a work area.

The value under appeal is $205,000.00. There are several properties which were offered as comparables in the area. The property of Rebecca Neighbor at Box 150 Grommet Road is identical in size and condition to the subject property. Hearing testimony was that it sold in 2005 for $195,000 and is appraised at $196,000.

The property of Marcus Abutter is at Box 160, Grommet Road, and is identical to the Taxpayer property except that it contains four acres, and has an attached carport. The Abutter property reportedly sold in 2006 for $202,000 and is appraised at $204,000.

_____
_____
_____

5. **BCA decision must be issued within 15 days of receiving the report.** The BCA must issue its decision within 15 days from the time of it has received the report from the inspection committee. The inspection committee participates in the board's decision, as full voting members, once they have made their report to the board.

G. Avoiding Conflicts

1. **BCA members should not comment on appeal until after written decision is issued.** Comments on the board's disposition toward an appeal before hearing all the evidence could

be interpreted as bias and should be avoided. The Supreme Court has addressed such statements:

> "This statement was made when nearly two-thirds of the evidence was in, and is in the nature of a hunch. Whatever place hunches may have in horse racing, they do not belong in the quasi-judicial arena. What a Board member speaks of as possible, a litigant will think as inevitable. Thus, innocent conjecture is mistakenly converted into suspicious circumstance. In this case we consider the Chairman's statement a premature prognostication, not a demonstration of prejudice that would warrant setting aside the Board's decision." *International Assoc. of Firefighters and Town of Hartford Fire Department v. Hartford*, 146 Vt. 371, 375 (1985).

2. **BCA members must avoid ex parte communications.** A conversation between a board member and a party to an appeal outside the hearing on matters related to the appeal before the decision is made is ex parte communication. Such communications violate the due process rights of the absent party to an impartial decision and will taint an appeal beyond the BCA.

   Try to avoid conversations with the parties when you visit the property as a member of the inspection committee. Ask the appellant to show you the property, but recommend that any additional evidence be offered before the entire board when it reconvenes to hear the inspection report and to close the hearing. Avoid telephone calls or other conversations with listers or appellants when they want to talk about tax appeals.

   While it is sometimes challenging to avoid ex parte communication when the inspection committee makes a site visit to a property, inspections are not for the taking of testimony. The court addressed this as follows:

   > "The interview of witnesses out of court and the examination of documents outside the evidence, made the trier of facts in effect an unsworn witness. This action deprived the defendant of any opportunity to cross-examine or to understand what evidence it was called upon to meet or upon what consideration the findings would rest. However well intentioned, the resort to such procedure is inherently prejudicial." *Brookline v. Newfane*, 126 Vt. 179, 183 (1967).

   BCA members may not, on their own, look at the listers cards or investigate comparables to help them decide a matter. Even using evidence supplied in previous appeals conducted on the same day is prohibited. The parties must have an opportunity to cross-examine all witnesses and test all documentary evidence considered by the board. *Giorgetti v. City of Rutland*, 154 Vt. 9, 14 (1990).

3. **Latecomers.** BCA members who do not hear the evidence may not participate in the decision. The state's administrative procedure act does allow decision-makers the opportunity to participate in decisions when they have not heard the case or even read the record of the case, providing that all parties are served with a proposal for decision and given

an opportunity to file exceptions and present briefs and oral arguments to the body prior to the decision. However, this law does not expressly apply to local boards and commissions, so it is not clear whether the courts would permit a BCA member to participate if he or she was not present to hear the evidence. 3 V.S.A. § 811.

H. The Decision

1. **Decision must be made within 15 days of inspection report.** From the date of the meeting at which the inspection committee report is made, the board has only 15 days to certify its notice of decision, with reasons, in writing and to file this notice with the town clerk to be added to the grand list book. PVR has developed Form 4404A for the purpose of reminding BCAs about the necessary steps in the appeal process.

2. **The decision is made in a deliberative session of the board.** The decision need not be made in open session. The open meeting law authorizes that, "[a] written decision issued by a public body in connection with a quasi-judicial proceeding need not be adopted at an open meeting if the decision will be a public record." 1 V.S.A. § 312(f). Tax appeals are quasi-judicial proceedings, and the board's decision is public record.

   Generally, after the board has heard all the evidence, it may enter deliberative session. 1 V.S.A. § 312(e). A deliberative session does not have to be publicly noticed. The board may simply adjourn the meeting if the public part of the appeal is completed, or recess it if other cases are being taken up after deliberation. The room should be cleared, and the public excused, so that the board can conduct its deliberations in confidence. The board does not have to issue its decision in a open session, since the decision is a written decision that is a public record.

3. **The board may increase, reduce or sustain an appraisal.** "The board of civil authority may increase, reduce, or sustain an appraisal made by the listers." 32 V.S.A. § 4409. Once the decision is made, it must be certified to the town clerk who records it in the grand list book and then notifies the appellant in writing by certified mail. 32 V.S.A. §4404(c).

4. **The written decision.** The law requires the BCA to report its decision, with "reasons," in writing within 15 days of the report of the inspection committee. A thorough job in writing findings is essential so that the taxpayer, the listers, and the public can appreciate why the BCA decided the case that way.

   The decision must be more than merely a "bare statement[s] of result, without stated reason," that do not "meet the underlying purpose of indicating to the parties, and to an appellate court, what was decided and upon what considerations." *Hojaboom v. Town of Swanton*, 141 Vt. 43, 48 (1982). Findings should explicitly state the material facts, and indicate how the ultimate conclusion was reached. *Punderson v. Town of Chittenden,* 141 Vt. 43 (1978). They cannot be "merely conclusory and provide no guidance for evaluating the land assessment procedures." *Rutland Country Club v. City of Rutland*, 140 Vt. 142, 146 (1981). The court requires boards to "sift the evidence and make a clear statement ... of what was decided and

how the decision was reached. A recitation of the testimony is not a finding of fact, and such a recitation will not support a judgment." *Corrette v. St. Johnsbury*, 140 Vt. 315, 316 (1981).

For example, findings should be made of both the town's comparables and the taxpayer's comparables. If the property is unique, that should be stated. Typically, listed value cannot be determined until fair market value is found. "The listed value of a comparable is not to be used in determining a subject property's fair market value, and listed value alone, in the absence of fair market value, is useless in arriving at a ratio for equalization purposes." Id. at 352.

The findings should also address each of the applicable statutory qualities of fair market value, as set out in 32 V.S.A. § 3481(1), including, "the availability of the property, its use both potential and prospective, any functional deficiencies, and all other elements such as age and condition which combine to give property a market value. Those elements shall include a consideration of a decrease in value due to a housing subsidy covenant as defined in section 610 of Title 27, or the effect of any state or local law or regulation affecting the use of the land. .. ." Subdivision or zoning regulations, for instance, may be factors in assessing fair market value.

The findings should be set forth in numbered paragraphs, proceeding from the general to the specific, giving all necessary information in terms that the reader will understand. The report of the inspection committee and all exhibits and testimony should be considered when making the decision. See the sample decision below.

☞ **The findings should not merely repeat testimony presented.** It should indicate the evidence the board found compelling when reaching its decision.

5. **Signing the decision.** The decision may be signed by the chairman or vice-chairman, on behalf of the BCA, so long as a majority of the board members who have heard the case agree with the decision. 24 V.S.A. § 1141. The inspection committee participates in the board's decision, as full voting members, once they have made their report to the board.

Board of Civil Authority
Tax Appeal Decision
No. 06-5

To: Joseph Taxpayer, Appellant
From: Board of Civil Authority
Date: August 2, 2006

This is the decision, with reasons, of the Board of Civil Authority of the Town of Chipman, after hearing and evidence, in an appeal brought by you on your property at Box 130, Grommet Road.

1. We find that Joseph Taxpayer is the owner of a six acre lot and a house at Box 130, Grommet Road, Chipman, Vermont. The house contains four bedrooms, a living room, a family room, a large kitchen area with breakfast bar and an area for dining, and a modest bathroom. A wooden porch is attached to the back door of the house. The full basement is unfinished, except for an enclosed room, apparently used as a spare bedroom, and a work area. The house is a modular design, and was constructed about 16 years ago. It is in good condition. Four acres of the land is forested, with a small stream passing through the interior. The remaining two acres are lawn, with occasional shrubbery.

2. Although the listers valued the property using a cost approach, based on the availability of closely comparable properties, we find the market sales approach the most reliable methodology for purposes of this appeal.

3. The subject property was last sold six years ago for $140,000. We find this sale too remote in time to the appraisal date of April 1, 2006 and do not ascribe any significance to the sale value.

4. The Listers appraised the property at a value of $180,000 for the 2006 Grand List. Mr. Taxpayer grieved within the proper time and the Listers did not change their appraisal on the basis of the grievance. Mr. Taxpayer appealed to this Board on June 27, and the Board heard his appeal on June 30, at 9:30 p.m. in the town office. An Inspection Committee of Mary Justice, Robert Fairness, and June Equity visited the property on July 14, and made their report to the Board on July 24. A copy of their report is attached to this decision.

5. In support of their appraised value of $180,000, the Listers presented two properties – the Neighbor and Abutter properties – from the general area that were built around the same time (15-16 years ago) and that we find to be closely comparable to Mr. Taxpayer's property. In support of an appraised value of $150,000, Mr. Taxpayer presented six comparables. The comparables offered by Mr. Taxpayer, however, were older dwellings in poorer condition located on smaller lots than Taxpayer property. We do not find these properties to be as comparable as the Neighbor and Abutter properties.

   The property of Rebecca Neighbor is located at Box 150, Grommet Road and closely approximates Mr. Taxpayer's property in size and condition. Ms. Neighbor has five acres. Her property sold in 2005 for $172,000. The property of Marcus Abutter is at Box 160,

Hillsdale Road. The Abutter house is closely similar to Taxpayer's house except that the Abutter house includes an attached woodshed. The Abutter property contains four acres and sold in 2003 for $152,000.

6. The listers presented evidence, based on PVR's annual equalization study for the 2005 grand list, showing a market appreciation rate of approximately 8 percent per year for residential properties in our town. The board finds this rate reasonable and adjusted the two comparable properties by an annual rate of 8 percent to derive a fair market value range for Mr. Taxpayer's property of $185,000 to $190,000, rounded. Based on these two comparables, we find fair market value of the subject property is $187,500.

7. The equalization ratio study of the Town's 2005 grand list, performed by PVR, shows that over the three year period from April 2003 to April 2005, properties were listed at an average of 97 percent of fair market value. Mr. Taxpayer provided a list of 25 sales that sold within one year of April 1, 2006. Mr. Taxpayer testified that the sales represented all transactions within the last year for which a sale price was recorded on the property transfer return. The listers agreed that the majority of these sales were arms-length transactions. The average listed value to sale price of the 25 sales is 90 percent. We find Mr. Taxpayer's 25 sales to be the most reliable indicator of the appraisal ratio of properties in the town as of April 1, 2006.

8. We apply the equalization ratio of 90 percent to our determination of the fair market value of $187,500 and find that the listed value of Mr. Taxpayer's property for the 2006 grand list is $168,750. The taxpayer did not contest the lister's land schedule for acreage beyond the initial, two-acre lot site. We therefore find that the lister's fair market value assessment of $1,500/acre for the first ten acres beyond the initial two-acre lot site to be valid and set Mr. Taxpayer's housesite at a fair market value of $181,500 ($187,500 minus $6,000 for the additional four acres) and equalize that value by 90 percent to a value of $163,350.

9. The appellant has a right to appeal this decision to the Director of Property Valuation and Review or the Superior Court of this county by filing a written notice of appeal within 30 days after the date of mailing of the notice by the town clerk. The fee for the appeal to the Director is $70; the fee for an appeal to the Court is $225.

BOARD OF CIVIL AUTHORITY:

_____

_____

_____

_____

_____

Decision Checklist

1. Have the subject property and any comparables used been adequately described and identified?
2. Have you included descriptions of present and potential uses, location and condition, among other factors?
3. Have you clearly indicated the facts reported by the inspection committee?
4. Have you described the method of appraisal used by the board? Have you stated why other methods are inappropriate?
5. Have you shown that the comparables used are truly comparable to the subject property, explaining why properties are similar in value?
6. Have you found the fair market value of the subject property and of any comparables?
7. Have you equalized the fair market value of subject property using a statistically significant, unbiased group of sale properties from your town?
8. Have you determined the homestead, nonresidential and housesite value required?
9. Have you resolved any other issues presented for decision to the board?

☞ **The decision may be signed by the chairman or vice-chairman, on behalf of the BCA, so long as a majority of the board members who have heard the case agree with the decision. Make sure you have at least three in this majority. 24 V.S.A. § 1141.**

I. Minutes

Beyond the actual decision, the board is also responsible for preparing minutes of each meeting. 1 V.S.A. § 312(b). The clerk must include the names of the members present, as well as those of all active participants; all motions, proposals, and resolutions made, offered and considered, and an indication of how these have been resolved; and the result of all votes, with a record of the individual vote of each member if a roll call vote is taken. Minutes must be completed, even though unapproved by the board, within five days of each meeting, and should be filed with the town clerk, so that members of the public have access to them. No minutes must be taken of a deliberative session.

J. The Decision is Recorded in the Grand List Book

The town clerk records the decision in, or attaches it to the grand list book. The value established by the BCA becomes the listed value for the year under appeal. 32 V.S.A. §4404(c).

- ☞ **Unlike the result when the court or the state appraiser decides the value, the value established by the BCA does not remain intact necessarily for the ensuing two years. Listers may reappraise the property in the following year, assuming they find a change of value in the interim.**

K. The BCA Must Follow the Statutory Requirements!

The penalty for failing to follow the steps set out in 32 V.S.A. § 4404 is serious. "If the board does not substantially comply with the requirements of this subsection, the grand list of the appellant for the year for which appeal is being made shall remain at the amount set before the appealed change was made by the listers . . .." If there has been a complete reappraisal, however, the grand list of the appellant must be set at a value that will produce a tax liability equal to the tax liability for the preceding year. The impact of timing failures and other procedural defects by the BCA is limited to one year, rather than the statutory three years for other determinations of the state appraiser or superior court.

Although time limitations are strictly enforced, the court has given BCA decisions more latitude on appeal. *Beault v. Town of Jericho*, 155 Vt. 565, 568 (1991) (precise mathematics not required in exercise of discretion), and it has broadly interpreted 32 V.S.A. § 4404(c) in favor of less than formal decisions, as long as some reason is articulated for the decision. *Harris v. Town of Waltham*, 158 Vt. 477, 482 (1992); *Miller v. Town of West Windsor*, 167 Vt. 588 (1997).

V. APPEALS BEYOND THE BOARD OF CIVIL AUTHORITY

A. Avenues on Appeal

A decision of the board of civil authority may be appealed to the state appraiser or to superior court.

- ☞ **An appeal to either forum must be filed no later than 30 days after the day of mailing of the notice of decision by the town clerk. 32 V.S.A. § 4461.**

- ☞ **For purposes of computing these time limits, the first day is the next day after the mailing of the notice of the decision of the BCA.**

Selectboards may also appeal within the same time constraints. Another appeal is available to one or more taxpayers of the town whose combined grand list represents at least three percent of the total grand list of the town. This appeal is to superior court only, and is an appeal from any action of the BCA not involving appeals of the applying taxpayers. In this case, the town agent, having received notice in writing from these taxpayers, takes the appeal to court. The 30 day deadline may be extended in these cases to allow the town agent to have at least six days after receiving the taxpayers' notice. For each separate parcel appealed, there is a $70.00 filing fee, to be paid by the taxpayers. 32 V.S.A. § 4461.

- ☞ **The filing fee for an appeal to the State Appraiser is $70 per parcel. Make the check payable to Vermont Department of Taxes. The fee for an appeal to superior court is $225.**

Choosing which avenue of appeal to follow is not always easy. Appeals to the state appraiser are apt to be speedier and less costly than appeals to Superior Court, depending on the appraiser's workload and the complexity of the appeal itself. Whether you need an attorney is a question you should decide early, well before any scheduled hearing date, and should be based on the complexity of the appeal, your own resources and the potential benefit or detriment of the case.

B. Burdens on Appeal

Parties introduce evidence, and the decision-maker finds the current listed value, making its own factual determination from the evidence presented.

There is a presumption of validity that attaches to the value set by the listers. That means the taxpayer must present some evidence for rationally inferring that the listed value is incorrect. Once the taxpayer meets this initial burden, the presumption of validity disappears. The burden of persuasion, however, remains with the taxpayer as to all contested issues. *N.E. Power Co. v. Town of Barnet,* 134 Vt. 498 (1976). According to the court in *Heindel v. Town of Grafton*, 145 Vt. 147, 149 (1981), in an appeal to the court or the state appraiser,

> . . . a presumption of validity and legality attaches to the actions of the board of listers. Once the town introduces the appraisal of the taxpayer's property into evidence the

burden is on the taxpayer to overcome this presumption. The burden can be satisfied by the introduction of credible evidence fairly and reasonably tending to show that the property is assessed at more than fair market value, or that the assessment is at a higher percentage of fair market value than comparable properties.

C. Appeals to the State Appraiser

Notices of appeal from the BCA must be filed with the town clerk in accord with Rule 74 of the Vermont Rules of Civil Procedure. 32 V.S.A. §4461. If the deadline for receipt of the appeal falls on a Saturday, Sunday or legal holiday, then the deadline is extended to the next business day.

The town clerk then must notify the town agent and the chairman 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 (133 State St. Montpelier VT 05609-1401).

Objections to an appeal to the director, citing reasons to dismiss or other requests, must be filed with the Director of Property Valuation no less than 10 days after the date the appeal is filed 32 V.S.A. § 4463. On request of any party, the director will call a hearing to take evidence and hear arguments on objections, but in any case the director's decision must be in writing.

The appraiser appointed by the Director of Property Valuation and Review has the authority under the law to issue subpoenas for witnesses, documents and records and to administer oaths. 32 V.S.A. § 4465. The hearing on the appeal is conducted in the town where the property is located. Ten days notice is required prior to the hearing. The appraiser is obligated to inspect the property and to issue a decision in writing. The decision must be issued not later than 30 days from the date of the hearing.

D. Appeals to Superior Court

When an appeal is taken to Superior Court, the appellant must file a notice of appeal with the town clerk. The appellant then serves notice on all interested parties and transmits a copy to the clerk of the Superior Court to which the appeal is taken.

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.

E. Settlements

Even though the selectboard may have participated in the appeal to the BCA as members of the board, the selectboard has the right to appeal decisions of the board to the court or the state appraiser. 32 V.S.A. § 4461. In appeals of this sort, the selectboard may also settle the appeal before it reaches a hearing by stipulating to a result in writing with the taxpayer. Such stipulations must be offered to the state appraiser or court for approval and the issuance of an order.

In some towns, the town agent is the local authority in charge of the litigation, hiring the attorney to represent the town, and serving as the town's representative in the conduct of the appeal. If a settlement offer is made, the town agent has the authority to commit the town to a particular result, although courtesy and tradition would encourage the agent to consult with the selectmen and the listers before making any commitment.

There are certainly times when the high cost of legal services will lead a town agent or selectboard to settle a tax appeal. But 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.

F. Appeals to the Vermont Supreme Court

Whether the appellant has chosen to appeal to Superior Court or to the state appraiser, a further appeal on legal questions is available to the Vermont Supreme Court. This appeal is made by filing a notice of appeal with the Superior Court clerk or the Director of Property Valuation, depending on which route the appellant has taken, within 30 days of the date of the decision. These appeals are governed by the Vermont Rules of Appellate Procedure.

At the Supreme Court, the "determination of fair market value for the purposes of . . . uniformity will not be disturbed unless some error of law appears." *International Paper Co. v. Town of Winhall*, 133 Vt. 385, 386 (1975). See 128 Vt. 519 as well.

VI. WHEN THE APPEAL PROCESS IS DONE

When the appeal process is done, the board or court issuing the final decision on appeal files a certified copy of that decision with the town clerk for recording in the grand list book. The taxpayer also receives a copy. 32 V.S.A. § 4468.

When the appraised value of property on appeal has been reduced, a taxpayer is entitled to a credit against the tax for the next ensuing tax year and for succeeding years if required to use up the amount of the credit 32 V.S.A. § 4469. If the town has voted to collect interest on overdue taxes, a taxpayer will also become entitled to interest at that rate on his or her overpayment 32 V.S.A. § 5136(b).

If the appraisal value of the property under appeal is reduced by the court or the state appraiser by more than 20 percent of the original appraisal value, the appeal fee paid by the taxpayer-appellant must be returned to the taxpayer 32 V.S.A. § 1752.

☞ **When an appeal is taken from the BCA to the court or the state appraiser, the appraisal established by that process "shall become the basis for the grand list of the taxpayer for the year in which the appeal is taken and, if the appraisal relates to real property, for the two next ensuing years, except that if the real property is enrolled in use value appraisal under chapter 124 of this title, the value of enrolled land, prior to its being equalized, shall be the per acre value set annually by the current use advisory board multiplied by the number of acres enrolled. The appraisal, however, may be changed in the ensuing two years if the taxpayer's property is materially altered, changed, damaged or if the municipality, city or town in which it is located has undergone a complete revaluation of all taxable real estate." 32 V.S.A. § 4468**

Tax appeals are not an exact science. What is required is a fair hearing and a decision based on the application of reason to the evidence, rather than on personal feelings, the flip of a coin or the splitting of the baby. If the papers that accompany the appeal demonstrate that good faith effort, you need not fear the reaction of the courts. When the appeals process is over, what should remain is an appraised value on the property and a memory of how fair the process has been.

PROPERTY VALUATION AND REVIEW DIVISION
RULE 84-1

Section 1: Purpose and Scope This rule is designed to provide a simple, fair and orderly procedure for deciding property tax appeals to the director of property valuation and review. It governs all proceedings pursuant to 32 VSA §§ 4461-4468.

Section 2: Authority This rule is promulgated under the authority granted to property valuation and review division by 32 VSA §3411(3).

Section 3: Manner of Appeal A taxpayer or the selectmen of a town aggrieved by a decision of the board of civil authority respecting a property tax appraisal may appeal that decision either to the superior court or to the director of property valuation and review.

An appeal to the director shall be commenced by mailing or delivering a notice of appeal to the office of the director. The notice must be filed in triplicate and must set forth the grounds upon which the appeal is based and a brief description of the property and its location.

Section 4: Filing Fee The notice of appeal must be accompanied by a fee of $15 (*$30)* with respect to each individual property being appealed.
32 VSA §4461 was amended effective June 30, 1997. The filing fee was changed to $30 per parcel.

Section 5: Time for Appeal The notice of appeal and the $15 (*$30*) filing fee must be received at the office of the director before the close of business on the twenty-first day (*thirtieth day*) after the town clerk mails notice of the board of civil authority's decision to the taxpayer. However, if the twenty-first day (*thirtieth)* falls on a Saturday, Sunday or legal holiday, it shall be sufficient if the notice of appeal is received on the next business day.
32 VSA §4461 was amended effective January 1, 1998. The number of days for filing an appeal changed from 21 days to 30 days.

Section 6. Notice to Town Clerk and Taxpayer When an appeal is filed by a taxpayer, the director shall forward one copy to the town clerk, and shall notify the taxpayer that the appeal has been received. The town clerk shall forthwith notify the town agent and chair of the board of listers of the appeal, and shall record it in or attach it to the grand list book. When an appeal has been filed by the town, the director shall mail one copy of the notice of appeal to the taxpayer, and shall notify the town clerk and chair of the board of listers that the appeal has been received.

Section 7: Objections to Appeal A taxpayer, town agent, or board of selectmen may object to the time or manner of appeal. Objections must be in writing and they must be filed with the director and furnished to the opposing party no later than ten days from the date that the copy of the appeal is filed in the town clerk's office.

The director of property valuation and review shall rule on all objections to an appeal. If a party requests it, the director shall set a time and place for hearing arguments and evidence on objections, and shall notify all parties. Upon making a decision, the director shall issue an order sustaining or denying the objections.

Section 8: Withdrawal of Appeal The taxpayer or town may request leave to withdraw an appeal at any time before it is heard, and such requests shall be freely granted.

Section 9: Appointment of Board (*appointment of appraiser)* When an appeal is neither dismissed upon objection nor withdrawn the director shall appoint three appraisers (*an appraiser)* to act as a board of appeal (*hearing officer*). The appraisers (*appraiser)* shall take and sign the oath of office prescribed in the constitution, which oath shall be filed with the director. The appraisers (*appraiser)* shall not discuss a case with a taxpayer, or a town representative without first giving both the taxpayer and the town the opportunity to participate.
Section 4465 of Title 32 of the Vermont Statutes Annotated was amended effective for appraisals made on or after January 1, 1996. Reference to board of appraisers changed to single appraiser.

Section 10: Notice of Hearing The board of appraisers (*appraiser)* shall set the date, time and place of the hearing and shall notify the parties by mail. The hearing shall be scheduled no sooner than ten days from the date the notice is mailed. The hearing shall be conducted in the town where the property is located. *Section 4465 of Title 32 of the Vermont Statutes Annotated was amended effective for appraisals made on or after January 1, 1996. Reference to board of appraisers changed to single appraiser.*

Section 11: Continuances The board (*appraiser*) may grant continuances for good cause. Requests for continuances may be made orally or in writing. Such requests must be timely.
Section 4465 of Title 32 of the Vermont Statutes Annotated was amended effective for appraisals made on or after January 1, 1996. Reference to board of appraisers changed to single appraiser.

Section 12. Discovery Prior to the hearing the parties shall have reasonable rights to discover all documents and records that are relevant to the issues raised by the appeal. For example, the town must allow the taxpayer to discover and inspect listers' records, and the taxpayer must allow town officials to inspect the property as well as independent appraisal records.

The board (*appraiser*) may enforce this rule by appropriate sanctions, including dismissal of the appeal. *Section 4465 of Title 32 of the Vermont Statutes Annotated was amended effective for appraisals made on or after January 1, 1996. Reference to board of appraisers changed to single appraiser.*

Section 13: Prehearing Conferences The board (*appraiser*) may schedule prehearing conferences on its own motion or at the request of a party. The purpose of these conferences is to resolve preliminary issues and, when appropriate, to make informal dispositions.
Section 4465 of Title 32 of the Vermont Statutes Annotated was amended effective for appraisals made on or after January 1, 1996. Reference to board of appraisers changed to single appraiser.

Section 14: Subpoenas Requests for subpoenas shall be made to the person designated as chair of the board of appraisers (*to the appraiser).* When the chair (*appraiser*) issues a subpoena, it will be returned to the requesting party who must then serve it, in the manner provided by law.
Section 4465 of Title 32 of the Vermont Statutes Annotated was amended effective for appraisals made on or after January 1, 1996. Reference to board of appraisers changed to single appraiser.

Section 15: Conduct of Hearing The board (*appraiser*) shall conduct a de novo hearing on all issues for decision. Each party shall have the opportunity to examine all documents or records used at the hearing; to bring witnesses and cross-examine adverse witnesses; to express all pertinent facts and circumstances through evidence, oral or written, to advance any arguments, oral or written; and to question or refute any testimony or evidence. The board (*appraiser*) may administer oaths to witnesses and all oral testimony shall be presented under oath.
Section 4465 of Title 32 of the Vermont Statutes Annotated was amended effective for appraisals made on or after January 1, 1996. Reference to board of appraisers changed to single appraiser.

Section 16: Right to Counsel The parties to an appeal may be represented by counsel, but legal representation is not required. The parties are responsible for their own legal fees.

Section 17: Order of Evidence In appraisal cases the town shall proceed first by introducing the appraisal of the taxpayer's property into evidence. The taxpayer shall then offer evidence tending to show that the property is assessed at more than its fair market value, or that the assessment is at a higher percentage of fair market value than comparable properties. In all other cases, the party bringing the appeal shall proceed first.

Section 18: Rules of Evidence The board (*appraiser*) shall allow the introduction of any relevant evidence which is commonly relied upon by reasonably prudent people in the conduct of their affairs. The board (*appraiser*) may exclude evidence that is irrelevant or unduly repetitious.
Section 4465 of Title 32 of the Vermont Statutes Annotated was amended effective for appraisals made on or after January 1, 1996. Reference to board of appraisers changed to single appraiser.

Section 19: Record of Decision The evidence and argument presented at the hearing plus any knowledge gained from the inspection of the property shall constitute the exclusive record for decision. Oral proceedings shall be tape recorded.

Section 20: Transcripts Upon request and payment of the reasonable costs of transcription, the director of property valuation and review shall furnish a typewritten transcription of oral proceedings.

Section 21: Decision of the Board (*appraiser*) The members of the board of appraisers constitute the hearing authority, and a majority of the board constitutes a quorum (*The appraiser is the hearing authority*). Upon considering all the facts and arguments in a case, the board (*appraiser*) shall determine whether the listed value of the subject property corresponds to the listed values of comparable properties in the town.

The board (*appraiser*) shall inspect the property prior to making its (*his/her*) determination.
Section 4465 of Title 32 of the Vermont Statutes Annotated was amended effective for appraisals made on or after January 1, 1996. Reference to board of appraisers changed to single appraiser.

Section 22: Decision by Default If one of the parties fails to appear at the time and place scheduled for hearing, the board (*appraiser*) may permit the other party to present evidence, and may then issue a decision on the basis of that evidence alone.
Section 4465 of Title 32 of the Vermont Statutes Annotated was amended effective for appraisals made on or after January 1, 1996. Reference to board of appraisers changed to single appraiser.

Section 23: Findings of Act and Conclusions of Law The board's (*appraiser's*) decision shall be in writing, and shall include findings of fact and conclusions of law. The findings shall include a brief description of the taxpayer's property and of any comparable properties. They shall include a statement of the correct valuation of the property subject to appeal, and a statement of the facts relied upon to determine that valuation. The conclusions shall indicate how the ultimate decision was reached.

Section 24: Notice of Decision The board (*appraiser*) shall report its (*his/her*) decision to the director of property valuation and review not later than thirty days from the date of the hearing. The director shall forward one copy of the decision to the taxpayer, and one copy to the town clerk.
Section 4465 of Title 32 of the Vermont Statutes Annotated was amended effective for appraisals made on or after January 1, 1996. Reference to board of appraisers changed to single appraiser.

DIVISION OF PROPERTY VALUATION AND REVIEW
RULE 82-1

§(32)-1 Municipal Charters Where the charter of a municipality provides for procedures other than those outlined in this rule, the provisions of that charter shall prevail.

§(32)4222-1 Appeals to the Listers Requiring Hearings and Determinations The board of listers must determine the appeals of all persons who have filed their objections in writing prior to or at the time fixed for hearing appeals. The board of listers must also determine the appeal of any person who objects in writing within a reasonable time to any change in an appraisal received by such person after the time appeals were heard.

§(32)4222-2 Proper Notification of the Listers' Determination The listers shall send notice of their determination to taxpayers who have appealed to the listers. In the case of any controversy subsequently arising it shall be presumed that the personal notices were not sent unless they were sent by registered or certified mail, or a certificate of mailing of the same was obtained from the post office.

§(32)4404(a)-1 Appeals Where the Listers have Failed to Determine an Appeal The board of civil authority shall hear an appeal filed within a reasonable time if action of the listers has prevented the taxpayer from filing a timely appeal.

§(32)4404(b)-1 Continued Meetings The board of civil authority shall hold meetings to hear and determine valid appeals received by the Town clerk after May 20. Such meetings shall be held as soon after the receipt of such appeal as is reasonably practicable. Notice of such continued meetings shall be given as provided in 32 VSA §4404(b).

§(32)4461-1 Return of Filing Fee Where an appeal is taken to the Director of Property Valuation and Review from a decision of the Board of Civil Authority under 32 VSA §4461 and the determination of the appeal reduces the appraised value of the entire property by more than ten percent (*twenty percent effective June 30, 1997*), the Director of Property Valuation and Review shall refund the filing fee to the appellant in accordance with 32 VSA §1752.
Section 1752 of Title 32 of the Vermont Statutes Annotated was amended effective June 30, 1997. After that date, the refund applies only in those instances where the reduction in value upon appeal exceeds twenty percent.

§(32)4467-1 Valuation of the Entire Property The Board of Appraisers (*State Appraiser effective January 1, 1996*) shall review the listed valuation of an entire contiguous parcel of land together with all buildings and fixtures thereon. The erroneous valuation of a portion of the property by the board of civil authority or listers shall not be disturbed where the listed value of the property as a whole is correct.
Section 4465 of Title 32 of the Vermont Statutes Annotated was amended effective for all appraisals made after January 1, 1996 changing the state board of appraisers to a single state appraiser.

§(32)4468-1 Date of the Entry of Judgment or Order The date of receipt, for purposes of determining the date of entry for a case appealed to the Supreme Court, shall be the date that the notice of the findings of the State Board of Appraisers (*State Appraiser effective 1997*) are received and officially entered on the docket of the director. After receiving and entering the findings the director shall forthwith mail a copy of said findings to all parties of record.
Section 4465 of Title 32 of the Vermont Statutes Annotated was amended effective for all appraisals made after January 1, 1996 changing the state board of appraisers to a single state appraiser.