

It is obvious that a member of the board of civil authority (BCA) should recuse herself from hearing an appeal in which she is a party, i.e., in a case where she is appealing her own property tax assessment. What is not so obvious is whether a member of the BCA who has grieved her own taxes should recuse herself from sitting on the BCA for the rest of the appeals season. Are BCA members really disqualified from hearing tax appeals once they have grieved their own taxes?

BCA members who have grieved their own taxes are barred by law from sitting on other tax appeals for the remaining tax year. This is one of those rare instances where a statute addresses the issue: "Listers and agents to prosecute and defend suits wherein a town is interested shall not be eligible to serve as members of the board while convened to hear and determine such appeals nor shall an appellant, his servant, agent or attorney be eligible to serve as a member of the board while convened to hear and determine any appeals." 32 V.S.A. § 4404 (d).

Why, you ask, can I not sit on the BCA when my tax appeal has nothing to do with other peoples' tax appeals? There are a number of different answers, one of which is the appearance of impropriety. If a BCA member is able to have her tax assessment lowered, and then jumps back onto that board, the taxpayers are going to look at that BCA member's appeal as an awfully chummy transaction. Additionally, BCA members could scratch each others' backs by grieving their own taxes and having their values lowered, and then alternately hearing the appeals of other BCA members.

What are the practical consequences of this law? For the purposes of tax appeals, the BCA is subject to relaxed quorum requirements: "The act of a majority of the board present at the meeting shall be treated as the act of the board . . ." 24 V.S.A. § 801. Therefore, if members of the BCA appeal their respective tax assessments, and are removed from the BCA by operation of law, the diminished BCA will not have to deal with the prospect of not having a concurrence of a majority of the entire board (which is the standard required for most other municipal boards and commissions). For example, if five of the twelve BCA members are present, then the concurrence of three of those five would be a valid act of the board.

- Brian Monaghan, Attorney, VLCT Municipal Assistance Center

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