

Last month, we discussed the need for a board of civil authority (BCA) member who grieves and then appeals her tax assessment to recuse herself from the BCA for the rest of the tax appeal season.

What about a lister who grieves her taxes to the board of listers, and then to the BCA? Must a lister who grieves her own taxes recuse herself from appearing at grievance hearings on behalf of the board of listers for the rest of that tax year?

No. A lister who has grieved her own taxes must certainly recuse herself from deciding her own grievance (you can't be a judge in your own case), but does not have to recuse herself from other grievance hearings before the board.

In fact, the appearance of a lister grieving her own taxes could add credibility to the process: in theory, appraisal decisions are agreed upon by the board of listers. Such an agreement must be made by a quorum of that board (See 1 V.S.A. § 172). For a three-member board such as the board of listers, that decision could be made in the form of a 2-1, or 2-0 vote. A lister who disagrees with her tax assessment could then grieve that appraisal figure to the board of listers, presenting evidence as to why she disagrees with the assessed value. Such a procedure would give credence to the doctrine that reasonable people can disagree on matters, and would show the public that the listers can, and do, provide a check and balance on each other's decisions.

If the board of listers rejects her arguments, the case could be appealed to the BCA, where the appealing lister would appear in her personal capacity, and the remaining two listers would appear to defend their appraisals. VLCT does not see a conflict of interest for a lister to then return to the board of listers to hear other grievances, and to subsequently appear in front of the BCA to justify appraisal decisions. In contrast, the BCA member who grieves and then appeals his own taxes up to the BCA level should then recuse himself, because it would be difficult, if not impossible, to continue to administer the process fairly. Additionally, "listers and agents to prosecute and defend such 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 . . ." 32 V.S.A. § 4404 (d). Most legal commentators have construed this statute to apply only to the BCA, and not to the board of listers.

VLCT's opinion on this issue turns on the fact that the lister acts as a party before the BCA, and not as a tribunal with decisionmaking authority. That lister who grieved her own taxes should be able to appear at appeals before the BCA to defend decisions of the board of listers, because at that level of the proceedings, she has no authority to decide the outcome of the matter (only to present evidence), thus the specter of a conflict of interest becomes moot.

- Brian Monaghan, Attorney, VLCT Municipal Assistance Center

VLCT News, June 2003