Hartford Assessors Office sent a request for Income/Expense info to a property owner that finished a commercial apartment building in August 2021. Because we received no response (over 2 months now), we decide to not allow an appeal to BCA based on the 32 V.S.A. § 4006. Can you please expand on this statute? What rights do the taxpayer have to move forward? Can they appeal the decision to not allow an appeal to superior court?"

There is no accompanying caselaw for this statute, so we’re just left with the plain meaning of the statutory language itself for its understanding. The statute reads, in its entirety:

"(f)ailure of a taxpayer to make and return a signed, sworn to, or affirmed inventory within 45 days after the mailing of such inventory by the town listers shall bar the taxpayer from any statutory appeal under this chapter or chapter 131 of this title, unless such failure is due to factors beyond the taxpayer's control. In addition, a taxpayer who fails to submit an inventory within the time and in the form prescribed may be fined not more than $100.00 for each violation."

There is an exception to the law's application for refusing an appeal if the owner shows the failure to meet the deadline is due to factors beyond their control. So, if this occurs, then we would recommend holding the hearing. The taxpayer/owner should seek legal counsel regarding their rights. The town should not advise property owners. Additionally, before asserting such a prohibition in regard to a high value property (where there is likely to be a court appeal), we would highly recommend consulting with the town attorney. We also recommend contacting your PVR District Advisor on this issue:

Can you clarify the Town Clerk's role when taxpayers come to the town office to look for comparables? It is very difficult to interact with appellants without allowing them to plead their case. Sometimes they will ask for help in finding comparables. I often know of comparable properties - should I point them out?

We do not recommend investigating or submitting evidence as a member as this could constitute an ex parte communication. Also, the burden is on the taxpayer appellant, not the town, to produce and submit evidence for the board’s consideration. You can help them use the index and locating files, but we recommend refraining from providing them with evidence to help their case against the interest, potentially, of the town.

If a taxpayer doesn't meet the 14-day deadline, does the BCA have the option to take the appeal?
It can if it wants, but it would be under no legal obligation to do so. Keep in mind, however, that if such an allowance is made for one it would have to be extended to all who are similarly situated for that tax appeal year. Ultimately, it’s not something we would recommend as the deadline is firmly established by State law and extending it could shift expectations both in the near and long term and prove troublesome to implement.

Mail is only delivered a couple of times a week in our town, due to staffing shortages at the post office, so it may take over a week for the taxpayer to receive their notice. Do we have any leeway to extend the appeal period?
See answer above. Additionally, since the deadline to appeal runs from the date the notice of the Listers’ decision was mailed, the town could take additional efforts to supplement the notice their required to provide taxpayers under law including, for example, posting the mailing date on its website if it has one.

When are tax assessments mailed to property owners?
The deadline for sending notices of changes of appraisals depends on the size of the town. Listers must send change of appraisal notice by June 4\textsuperscript{th} for towns with a population of less than 5,000 inhabitants and June 24\textsuperscript{th} for towns with a population equal to or over 5,000. We have developed a chart of property tax assessment appeal deadlines at [Lister & BCA Deadlines](#).

If the Town Clerk appeals to the BCA and is disqualified from participating in other appeals, does the BCA appoint a new clerk? Or is it still the Clerk’s responsibility to do the decisions?
The Town Clerk is the Clerk of the BCA by operation of law. “The board shall choose a chair, and the town clerk shall be its clerk.” 24 V.S.A. § 801. If the Town Clerk is disqualified from serving as a member of the board while convened to hear and determine any appeals, they can still serve in an administrative capacity to fulfil their statutory obligations, but they should not sit as a member of the board during the hearing or participate as a member during any hearings or during the board’s its deliberations.

What is a quorum for tax appeals?
A quorum of the BCA for the purpose of tax assessment appeals is whatever number of members appear at a hearing (but never less than the 3, as 3 is the minimum number required to conduct a site inspection). “The act of a majority of the board present at the meeting shall be treated as an act of the board . . . “ 24 V.S.A. § 801. Of those, a majority will need to be in agreement in order to make a decision.

If a member is disqualified, do they still count as members when deciding a quorum?
Ordinarily, they would as a quorum is determined based on the number of seats on a board, not the number of people occupying those seats. In that instance, the quorum threshold would apply regardless of how many members abstain from voting, recuse themselves, or the number of vacancies on the board. However, as was previously stated, the BCA (for purposes of tax assessment appeals) follows a different rule where all it takes to make a decision is for a majority of those present at a hearing to agree.
How do vacant positions affect the quorum rules?
Vacancies in this context (tax assessment appeals) only affect the quorum in the sense that the BCA will have a smaller pool of members to draw from for attendance purposes, but otherwise it won’t have any effect as what matters are the number of members present. (“The act of a majority of the board present at the meeting shall be treated as an act of the board...” 24 V.S.A. § 801.) The board will have a quorum so long as three members (the minimum required to conduct the site inspection) are present.

If a Justice of the Peace (JP) is also a Selectboard member, does this reduce the quorum required?
The law governing BCA quorums for the purposes of tax appeals says, "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. So, it doesn't matter how many hats you wear, each member will only be counted once as the quorum is determined by the number of people who actually show up. Also, because a person will only have 1 vote on the BCA even if they hold dual offices (e.g. Selectboard and JP) it rationally follows that they will only count as 1 individual when determining a majority of the board present when it comes time to make a decision.

Our Town Clerk is also a Lister. Does she act as clerk of the BCA in hearing appeals from the Listers' decisions?
The law prevents Listers from serving as members of the BCA while convened to hear and determine appeals. 32 V.S.A. § 4404(d). Consequently, unless the Town Clerk resigns as Lister, they should only be fulfilling their administrative duties as prescribed by law, but should not sit as a member of the BCA during the hearing or participate as a member in its deliberations.

Should a Town Clerk (who is disqualified to serve on the BCA) attend the hearings and take minutes? Should they write the decisions?
Administrative functions, in our opinion, include taking oaths and minutes so we believe they would be appropriate tasks for a disqualified clerk to perform. In contrast, participating as a member in the hearing (by asking questions and sitting with the board), deliberations and crafting decisions should not include recused members, only voting members, to avoid any potential appeal on that basis.

I'm the Town Clerk, but also the Assessor Clerk. We no longer have Listers, we have a hired assessor. I act as the clerk to file the paperwork for our hired assessor, does that exclude me from sitting on the BCA?
You should refer to your conflict-of-interest policy as a first step. If you did not have any role in determining value and just perform clerical or administrative tasks, we don’t think that you would be conflicted out. If you grieve your own value and appeal to BCA, this would be a basis for disqualification, but we don’t think just providing administrative support to the assessor would disqualify you on that basis alone.

Do we let the taxpayer know that they don't have to allow the listers to attend? I feel like they will assume they have to let them attend the inspection.
You’re under no affirmative legal obligation to do so, but surely correcting people of this misperception, if it exists, would be appreciated and you should certainly inform them of it if asked.

**If the appellant has provided comparables, should the inspection committee see those properties as well?**  
No, not only is there no requirement to also conduct a site inspection of comparables, but the owners of those properties are unlikely to allow such an inspection.

**Please define "Fair Market Value".**  
"Fair market value is defined in 32 V.S.A. § 3481 as the following:  
"The estimated fair market value of a property is the price that 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 give property a market value. Those elements shall include the effect of any State or local law or regulation affecting the use of land, including 10 V.S.A. chapter 151 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."

VLCT recently conducted a training on fair market value and the lister roles and responsibilities. You can find information on our website, including the on-demand webinar and materials, on our [Property Taxes] page.

**Who is an agent appointed by the Selectboard?**  
This is in reference to the notice for the BCA hearing provided for in 32 V.S.A. § 4404(b) and the appeal of a BCA decision, 32 V.S.A. § 4461 and it is any person that the selectboard appoints to serve as agent/representative.

**I have a question about ex-parte communications. If the Chair of the BCA gets advice from the Town’s Attorney regarding an appeal, can the attorney’s advice be communicated to other members of the BCA via email?**  
An ex parte communication is any direct or indirect communication between a board member and any party, party’s representative, party’s counsel or any person interested in the outcome of any quasi-judicial proceeding before the board that occurs outside the proceeding and concerns the substance or merits of the proceeding. Conversations between the board and the Town Attorney are not considered ex parte communications nor are they subject to public disclosure, so they can be shared freely with other board members.

**Can photographs be taken at the BCA’s site inspection for benefit of non-present members and/or the Listers?**
The statute contemplates a site inspection being conducted by the BCA’s committee which will then compile a written report. Taking photographs isn't the job of the site inspection committee as the member would essentially be creating and producing evidence, which is the responsibility of the parties (Listers and the appellant). Our advice is that site inspection committee members shouldn't be taking photographs of the property, especially without the permission of the property owner as any records produced would also be considered public records and consequently subject to public disclosure.

Should BCA adjust appraised value by the CLA?
Yes. If the appellant prevails the BCA must establish the listed value of the property by finding its Fair Market Value (FMV) and equalizing it to ensure that the property is listed comparably to similar properties in town. If a town has undergone a town-wide reappraisal, equalization is not an issue because all properties would have been assessed at 100% of Fair Market Value. When a town-wide reappraisal has not occurred, equalization ensures that the listed value of the property corresponds to the listed value of comparable properties in town. Typically, the Common Level of Appraisal (CLA) is used if no other ratio is successfully demonstrated.

Is there a checklist for site inspection?
There’s no specific checklist or a list of things site inspections have to include in state law. The VT Secretary of State has a sample inspection committee report for you to use on page 29 of its “A Handbook on Property Tax Assessment Appeals” at: https://outside.vermont.gov/dept/sos/Municipal%20Division/tax_appeal_handbook_2007.pdf

Are we required to assign values to land vs buildings, or is it up to the listers to adjust values in CAMA to come up with the bottom line value?
Overall, it’s your job to adjudicate the fair market value of the appellant’s property. If a certain appellant is focused on one aspect of their appraisal, such as their land value or a specific building on their property, the board will necessarily have to decide these issues. Remember though, it’s the Listers’ and appellant’s jobs to argue it using evidence they submit to you.

Can we see a Lister’s decision on a property?
Yes. The Listers’ grievance decision is a public record and though it is not binding on the BCA, it may be informative and should be included in the case file prepared for each appeal along with the written appeal and any documentary evidence submitted beforehand by the Listers and the appellant.

If a BCA member is a spouse to a Lister, doesn’t this member need to recuse themselves from the hearings?
This relationship is not a statutory conflict, but could be prohibited by your town’s municipal governance charter (if it has one) or its conflict-of-interest policy as State law leaves it to each town to determine for itself what constitutes a conflict and how it should be addressed.

What could the property owner come up with in an appeal that the Listers did not?
The property owner may not have introduced all the evidence (any information that will help demonstrate the Fair Market Value [FMV] of the property, e.g. comparables, markets studies, etc.) relative to the FMV of their property at their grievance hearing for whatever reason or perhaps did not obtain it until after the close of the hearing.

**Can the inspection committee ask the property owner questions during the inspection or does that count as ex parte communication?**

Generally, the inspection committee should not ask questions during inspection. Really, the only questions the members of the inspection committee should be directing to the appellant during the site inspection are those relative to conducting its inspection such as where things are located. Otherwise, it should steer clear of asking any questions that could solicit the introduction of evidence outside the context of the hearing. This is why we recommend having all three members of the site inspection committee visit the subject property at the same time. Appellants are less likely to engage in ex-parte communications when all three members are in attendance and, if they do, there’s more likely to be a response that prevents further attempts and the committee will be able to present common understanding of the events that took place in its report.

The board does have authority to ask appellant or lister questions and for additional evidence at the hearing.

**Are post-marks accepted in delay of delivery?**

The controlling law provides that “(w)ithin 14 days after the date of notice thereof, a person aggrieved by the final decision of the listers...may appeal in writing the same to the board of civil authority, by lodging his or her appeal with the town clerk...." 32 V.S.A. § 4404(a). Our opinion has been that in light of the fact that the statute requires that the written appeal must be "lodged" with the town clerk, that the BCA is under no legal obligation to hold a hearing wherein the appeal is postmarked before the deadline but physically received after the deadline as the word "lodged" connotes actual delivery.

**BCA meetings for Current Use allocation of Values, or Current Use LV-314 Withdraw Values and BCA meetings for appeals of Homestead Declarations, I feel are similar but not quite the same for statutes and procedures for property tax appeal hearings. Are there other guidelines for those BCA appeals?**

Live Response – see video recording.

**With respect to site inspections by the BCA, must the BCA inspect all structures on the property, interior and exterior? Or can they choose to only inspect some of the buildings and not look at others?**

The BCA’s inspection committee has the right to inspect the exterior and interior of any structure on a property but must inspect the interior of every dwelling. The VT Supreme Court has held that an inspection entails a careful examination of the property, which would necessarily have to include an inspection of the interior of any dwelling." Garbitelli v. Town of Brookfield, 186 Vt. 648 (2009). So, at the very least, the inspection committee must inspect all dwellings on a property to comply with the law. However, if the committee feels that an
interior inspection of a non-dwelling structure, say a tool shed, is not needed then we don't believe a court would find that the committee had failed to comply with its statutory mandate if it chose not to inspect it. In short, the inspection committee must inspect the interior of all dwellings and has the right, but may not have to, inspect the interior of every structure.

In determining the FMV of an appealed property, is it out of line for the BCA to try to tell the Listers or Assessors how much value the individual buildings or features of a building should be? Or should the BCA just be trying to determining the overall total FMV of a property? Should they be allocating that value?

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. So, it’s not "out-of-line" for the BCA to say in its decision how much property is valued, as ultimately that’s their job. However, it would be out-of-line for them to do so during the hearing as it’s the Listers/Assessors job, along with the appellant, to argue that point based upon the evidence they submit. Furthermore, while your job is to find the overall FMV of the property that calculation may be the summation of multiple structures, the value of each being a point of contention between the Listers/Assessors and the appellant for you to decide.

If there is a remote/hybrid meeting and the appellant brings written evidence, how should we handle that for members who are attending remotely?

We recommend requesting that evidence be submitted to the Town Clerk prior to the hearing so that it can be distributed to the members and all parties concerned. That, however, would not preclude a party from submitting evidence in person. If that happens and if it can’t be sent or distributed to the member(s) participating remotely, then we would recommend continuing the hearing (to a date and time certain) as opposed to prohibiting an appellant from submitting relevant evidence in person.

I was told that an in-ground pool is taxed and an above ground pool is not. Is this true?
“A swimming pool is taxable only if it is considered to be a fixture that is attached to the land and therefore real property. If excavation other than simple landscaping is involved in installing the pool, it is real property, even if most of the pool is above ground.”
Questions regarding the actual appraisal of property should be directed to your PVR District Advisor. A full listing can be found at: https://tax.vermont.gov/municipal-officials/listers-and-assessors/district-advisors

Also, you can view the PVR fair market value webinar training at https://www.vlct.org/municipal-assistance/municipal-topics/property-tax-assessment-appeals.

If the appellant wants a hybrid meeting and the Listers are not offering a hybrid meeting, what do you tell the appellant?
It's up to the BCA (or Board of Listers in the case of a grievance hearing) to decide whether to offer an hybrid option, not the appellant. While there is no legal obligation to offer a hybrid option, if you can do it, why wouldn’t you? If the appellant can’t attend in-person, the BCA would still have to hold the hearing as the law states “(a)ll objections filed in writing with the board of civil authority at or prior to the time fixed for hearing appeals shall be determined by the board, notwithstanding that the person filing the objections fails to appear in person or by agent or attorney.” 32 V.S.A. § 4408.

May a hybrid meeting be necessary as an accommodation?
It could. The requestor must notify you regarding the type of accommodation sought. You must then give primary consideration to their choice of accommodation, but may propose an alternative so it achieves equal success. Otherwise, the accommodation must be provided unless it can be shown that doing so would result in a fundamental alteration in the nature of your services, programs, activities, or in an undue financial and administrative burden. 1 V.S.A. 318(f). If such a situation were to arise, we suggest contacting the Americans with Disabilities Information Line at 1-800-514-0301.

Can a Lister can attend the hearing as long as they’re not a member of the BCA?
Yes. Not only are BCA hearings open to the all members of the public, but in the case of the Listers they should attend as they have a statutory right to defend their assessments. “However, listers and agents to prosecute and defend suits wherein a town is interested shall be given the opportunity to defend the appraisals in question.” 32 V.S.A. § 4404(d).

There was discussion in your deliberative session about how the subject property compared to the properties that were presented as comparables. What if the committee isn't familiar with the comparables - do they just assume that the Lister information is correct? Yes as the Lisers’ assessment enjoys a presumption of validity under the law. However, you should ask the appellant for their response, and ask if they had any evidence to submit as to why the Listers’ comparables wouldn't be suitable.

Do the Listers’ comparables get shared with the BCA and taxpayer BEFORE the hearing? Before or during but raise it during the hearing to formally enter it into the record. To be efficient, can submit evidence beforehand. But need to be addressed during hearing to be considered.

Do you have a sample of the minutes of a BCA Appeal?
We do not. We suggest reaching out to your peers on MuniNet. If you’re not familiar with Muninet, it is a free on-line discussion group for municipal officials. Every day, municipal officials gather on this listserv and provide one another with information, guidance, samples, best practices and shared experiences regarding municipal operations. If you are not already currently a subscriber, you can join at: http://list.uvm.edu/cgi-bin/wa?SUBED1=MUNINET&A=1
If we do not have conference call capabilities, but we do have Zoom. What if the caller does not have computer access?
Zoom offers a phone-in option, so you can give them that phone number.

If we are only doing an in-person hearing, should we still send evidence to the BCA ahead of time?
It’s not legally required, but it can be helpful in terms of effectuating an orderly, efficient, and informed hearing.

And would we send lister evidence to the taxpayer (appellant) ahead of time, and vice-versa?
You’re not required to, but doing so could ensure that they are well prepared for the hearing. If evidence is sent to the appellant, then it should similarly be sent to the Listers ahead of time so that they may be equally prepared.

Does the appellant have the right to see all documents submitted to the BCA before the hearing? (And vice versa?)
No, they do not but they have the right to see and address all evidence at some point during the hearing (see please also see above).