

# Q&A FMV & Lister Roles & Responsibilities Webinar

April 14, 2022

## **SESSION I: FAIR MARKET VALUE**

Respondents: Department of Taxes, Property Valuation & Review staff

- 1. We have experienced a large drop in our CLA due to the rush to buy rural properties during the pandemic. Since the CLA is a 3-year rolling average, we are looking at another 1 to 2 years of a dropping CLA. That means it will be 2025 or later before our revaluation may be completed. and another 2 years before the CLA may return to the 100 level. Is there any consideration to suspending or freezing the CLA to the 2020 or 2021 levels? A continued decline in the CLA will mean our education tax will rise each year even if we have no spending increases. We continue to see sales of property selling for 200% to 250% of their 2015 assessed values.**

This change in the market is not unheard of and is typical of the real estate market. Real estate is affected by changes in the economy, politics, and financial changes throughout our country. This type of dramatic shift was also seen after 9-11 and other events.

So, because it is a market reaction and part of what the real estate market does, we have no plans to freeze or change the way the CLA/COD are calculated and applied for equalization. In the meantime, you should be vigilant about qualifying your sales and researching your sales to make sure all sales used in the study are reflecting the current market.

The CLA affects the tax rate. That is correct and if your sales are increasing and your CLA is dropping then the adjustment to the tax rate is equalizing the rates to account for that. That is exactly what should be happening. This does not always mean a huge increase will occur in the overall Education rate since the rates are set based on the total equalized value statewide and if those values increase then the rate will not necessarily need to increase to collect the same amount of money.

- 2. Would it be unfair to equalize FMV from appeal at 100% if everyone else is at 104% due to the CLA when we are to equalize FMV if the CLA is below 100%? I completely understand 100% FMV, just wondered about the fairness.**

Court cases have ruled you may only knowingly assess at 100% and not higher. This does not mean your CLA will not end up over 100% based on your system but you cannot knowingly assess above 100%. So, when you are equalizing at levels after listers grievance you should only equalize up to 100% if the town CLA is above 100%. If the CLA is below you

should equalize down to that level. That is what the courts have determine to be fair and equitable.

**3. Regarding applied CLA ratio town vs LOA, is it suggested that: If the sales are not representative for category, then use Town CLA? If the category sales are representative than use LOA? Is that correct?**

The BCA should apply the CLA unless either party makes an argument, and the BCA concurs, that using a Level of Assessment is more appropriate.

**4. What is LOA?**

Level of Assessment – a group of sales used to determine a ratio compared to listed value, typically within a category or group of categories deemed relevant.

**5. So, are you saying the ratio used can be (1) the town wide CLA, the category CLA (R1), or (3) a 3rd LOA arrived at by the listers or owner if successfully proven to be appropriate?**

That is correct. If the category the parcel is assigned does not reflect its highest-and-best use, then another category's ratio may be more appropriate. For instance, if a camp has been erroneously categorized as an R1 then it may be more appropriate to apply the S1 ratio. Another example would be for a subset of sales in a particular neighborhood.

**6. Why would the listers look to category adjustment?**

If the town wide CLA were, for example, 80 but the ratio for R1 was 98 then it may be appropriate for the listers to recommend the BCA utilizing the R1 ratio.

**7. Why would you have to do a spreadsheet if it is shown in the category that makes sense?**

It may be appropriate to only use a portion of the 3 years of sales depending on the property, market, and other factors. In this case the listers or appellant would have to justify their opinion by providing a spreadsheet of the relevant sales to quantify an alternate Level of Appraisal (LOA).

**8. From personal experience with the BCA (4years), I was never asked about CLA. The whole hearing is spent on questions on value rather than ratio.**

Agreed. This is a great example of why it is very important to have all officials attend trainings to learn what their roles and responsibilities are. The BCA and levels beyond should find FMV (based on evidence presented) and apply a ratio, be it CLA or LOA, for

equity. If the CLA is appropriate, then the listers would not need to present an alternative ratio or discuss it during the hearing.

**9. It appears that the court has ruled we shouldn't assess a property over 100% of fair market value given case law. Why then would a 104% CLA be used at all? Shouldn't a 100% CLA be applied on all properties like the way utilities are valued in towns with 104% CLA?**

In the event of an appeal, it is something to consider as you must look at that value relative to today's market and not the market at the time of reappraisal. Short of an appeal or change to the property, to maintain equity, the FMV found at the time of reappraisal should remain.

You cannot purposely assess over 100% but your schedules and equity might result in exactly that. Also, if your utility was deemed to be higher it might impact your overall CLA. You would always stay with your system for equity until reappraisal, but grievance is an individual process during which we must consider FMV as of April 1 of the year grieved.

## **SESSION II: LISTERS' ROLES & RESPONSIBILITIES**

Respondents:

VLCT = VLCT Municipal Assistance Center Staff Attorneys

TAX = Department of Taxes, Property Valuation and Review staff

**10. Can we use a Town's Facebook to post public notices?**

**VLCT:** Yes, but only to supplement that notice otherwise required by law. Public notice for grievance hearings must be posted per 32 V.S.A. § 4111(e): in the Grand List, the town clerk's office, and four other public places in town. We interpret this as physical locations. You can use Facebook, Front Porch Forum, or the town's own website as additional places to provide more notice than is required, but it won't negate your responsibility to post notice in those physical public places prescribed by statute. In short, you can use it to supplement legal notice, but not to replace it.

**11. If a Town has a website, do notices have to be posted there?**

**VLCT:** No. The public notice for grievance hearings prescribed by law must be posted in the Grand List, town clerk's office, and four other public places in town. If the town has an official website, the AGENDA for the grievance hearings, which is required under the Open Meeting Law, must be posted to the town's website per 1 V.S.A. § 312(d)(1). The notice for the hearing, however, may be posted to the website (and must be if it's a combined

notice/agenda) to provide additional notice but it won't replace the statutory posting requirement.

**12. Does the town website qualify as one of the other four posting locations for notices?**

**VLCT:** No. Notice must be posted in four physical public locations. When the law allows electronic postings, it does so explicitly. Here, the controlling law, 32 V.S.A. § 4111(e), doesn't allow for electronic postings. Rather, it states “. . . the listers shall post notices in the town clerk's office and in at least four other public places in the town or, in the case of a city, in such other manner and places as the city charter shall provide, setting forth that they have completed and filed such book as an abstract and the time and place of the meeting for hearing grievances and making corrections.” Providing supplemental notice by also posting to your town website is certainly a best practice as it generates more exposure.

**13. Can grievance hearings be held earlier than June 4<sup>th</sup>?**

**VLCT:** Yes. The abstract must be lodged "on or before" June 4 and grievance hearings must start by June 20 (because June 19 is a Sunday the deadline is extended to Monday by 32 V.S.A. § 3004) at the latest for smaller towns (those with less than 5,000 inhabitants). The law provides ranges and deadlines, which means grievances may be commenced prior to June 20 so long as the abstract is lodged properly and with enough time to provide proper notice.

**14. Last year no one showed up for grievance, can we do it by appointment only?**

**VLCT:** No. You can do it by appointment, but you also must have a period of time designated for people to come in and grieve. The law on this matter states that the listers must give notice of the “time and place of the meeting for hearing grievances and making corrections.” 32 V.S.A. § 4111(g). Remember, the bar is set low for “filing” a written objection as the courts have held that even notes of the chair of the board of listers taken during a hearing will constitute an objection in writing, so there will likely be a hearing once a person arrives at the location designated to grieve their assessment.

**TAX:** There must be a time and date set so that a taxpayer may walk in and grieve. If your warning included a period of time in which you intended to hold hearings, but no one grieved then it would be prudent to stay for the entire time. If you regularly receive few or no grievances, then you may want to set a shorter period of time. If more time is needed, then you would just keep the hearings open until completed. Legislature has also extended the COVID-19 period protocols available to you, via S.222, which allows fully remote meetings and hearing through January 15<sup>th</sup>, 2023.

**15. Can grievance hearings be done by appointment?**

**VLCT:** Yes, but as discussed above, not by appointment alone. There also must be a block of time set aside for people to walk in and grieve. The notice must be specific enough to provide meaningful notice to the public but you can use a signup sheet for the day(s) of grievance hearings in 15-minute slots so folks can sign up for a specific time. Try to keep to that schedule but allow for as much time as needed; you can always continue discrete hearings on specific properties or allot more time if you anticipate it will be needed.

**16. Can a BCA member sit in on lister grievances as part of the public?**

**VLCT:** Yes. Merely observing a lister grievance hearing does not warrant a member of the Board of Civil Authority's recusal from sitting in judgment of that appeal. Vermont courts presume that public officials act with honesty and integrity and this presumption can't be overcome by a bare allegation of bias. Instead, it requires a showing that a town official is incapable of judging a case fairly based on its own circumstances.

**TAX:** Yes, anyone can attend any meeting or hearing as a member of the public. That being said, there should be no commentary or evidence provided by anyone but the taxpayer and/or their representative in the matter. In the event that this attendance at grievance might present a conflict of interest then either party may request the BCA consider and give the member the opportunity to recuse themselves.

**17. What is the feeling about conducting grievance hearings by Zoom?**

**VLCT:** We can only say what is legally permissible or not, so pros and cons of a remote hearing may be best posed to your colleagues/fellow listers. Ultimately, how you conduct grievance hearings within the parameters of the law is up to your board. The legal requirements and process will be the same as in person hearings, but the practical and technical aspects will be different. We have a Remote Public Meetings Toolkit that contains some helpful resources on software and procedures that you can review. Additionally, given the persistence of the COVID-19 pandemic, consideration should be paid to both the comfort level of individual board members and that of the public. Having a fully remote or at least hybrid option may provide the flexibility necessary to obtain greater accessibility to the grievance process.

**TAX:** It is up to the Board of Listers to determine how taxpayers and the public may attend. If you are allowing calls or video conferencing, then you will want to make sure that others may also attend in the same manner at the same time. Legislature has also extended the COVID-19 period protocols available to you, via S.222, which allows fully remote meetings and hearing through January 15<sup>th</sup>, 2023.

**18. If a taxpayer is correct during the process, should the listers research similar properties to ensure the grand list is correct across the board?**

**VLCT:** Not necessarily, unless the grievance hearing reveals some systemic issue with the listers' appraisal mythologies before it becomes the grand list. In that case, they should correct it by sending written notice to any affected taxpayers and allow them to grieve.

**TAX:** Each property should be considered based on the system established during reappraisal until such time that they appeal. Any appeal should bring the parcel to current Fair Market Value (FMV). This means the only way to bring like properties into line with grieved parcels would have to be the result of a grievance by the other taxpayers. If, however, something systemic is discovered it could be considered by the Lister for future grand lists but would still not necessarily bring these properties to current FMV until such time that the owner grieves due to the use of the system established at the time of reappraisal.

**19. Regarding hiring of Professional assessors. How about when an elected lister is absent for an extended period due to health reasons? We have a 3-person board of listers. Another Lister works full time and is limited by family commitments (FMLA).**

**VLCT:** Elected officials can't be removed, though they can resign voluntarily. The hired assessor could assist the listers but they wouldn't replace an elected lister absent a resignation.

**TAX:** If the board of listers falls below a majority and the selectboard is unable to find a person or persons to appoint as lister(s), it can appoint an assessor to perform the lister's duties until the next annual meeting per Title 17 VSA 2651c(a).

**20. If a town votes to eliminate the office of the elected listers and hires a professional assessor, does the hired assessor need to take the same oath as the listers do?**

**VLCT:** Yes. If the office of the elected lister is eliminated, the professional appraiser the town hires will essentially stand in the shoes of the listers they replace, meaning that they will have to perform all the statutory roles and exercise all the statutory responsibilities, including oath taking, previously undertaken by the elected listers.

**TAX:** You will find the language regarding elimination of listers in favor of assessor in Title **17 V.S.A. § 2651c**. Subsection 2(c) states "The assessor shall have the same powers, discharge the same duties, proceed in the discharge thereof in the same manner, and be subject to the same liabilities as are prescribed for listers or the board of listers under the provisions of Title 32". We interpret this to mean that an assessor must take the same oath as listers in order to meet all provisions of Title 32.

**21. Am I correct that anyone can grieve, even a non-owner? Relative? New owner after April 1st? Someone thinking about buying?**

**VLCT:** The law says that a grievance may be brought by a person “aggrieved by” an action of the listers. 32 V.S.A. §§ 4111(g), 4221. Our position is that, presumably, this is a larger class of individuals than just the owner of property as of April 1. For example, a person who purchases property after April 1 and has to pay the tax bill for that property (or bear the consequences of not paying the tax bill) is, in our opinion, a “person aggrieved” for purposes of filing a grievance, notwithstanding the fact that they were not the record of owner at the time. If the Legislature had intended to limit those who could grieve to the listers to just the owners of record then the Legislature would said so. Instead, it employed this broader “aggrieved by” language. This, it should be noted however, is a question of first impression as it has not been addressed by Vermont’s courts. It's also one in which there is a difference of opinion between us and the State Department of Taxes. Until such time as there is clarity brought to this question by either the Legislature or the courts, we’ll continue to take the conservative opinion which is that it is better to have people have their day before the listers and potentially the BCA than it is to try to answer the question of standing (i.e. whether someone has the right to grieve) in court at the cost of the taxpayers.

**TAX:** Because values are established as of April 1 and the tax bills are issued to the owner of record as of April 1, only the seller can appeal. However, the seller can designate the new owner as agent to the seller. As agent, the buyer can participate in the grievance by acting on behalf of the owner of record. The seller can submit a signed letter to the Board of Listers stating that he or she wishes to designate the buyer as his or her agent in the grievance process.

**22. What if they have a pending closing just before April 1<sup>st</sup>? Is that considered an interest that they can be grieved to the listers?**

**VLCT:** In our opinion, yes. Again, the Legislature has not imposed upon the board of listers the role of gatekeepers to the tax assessment appeals process beyond ensuring that people have filed their grievances (whatever they may be) in writing. If the board of listers determines that the person who has filed does not in fact have a grievance, they can so rule and that decision may be appealed to the BCA and eventually the courts.

**TAX:** Again, because values are established as of April 1 and the tax bills are issued to the owner of record as of April 1, only the seller can appeal. However, the seller can designate the new owner as agent to the seller. As agent, the buyer can participate in the grievance by acting on behalf of the owner of record. The seller can submit a signed letter to the Board of Listers stating that he or she wishes to designate the buyer as his or her agent in the grievance process.

**23. One tenant of three "tenants in common" is grieving their value. Do you hold three different meetings for each tenant, or can you schedule them for the same time? What happens if the tenants in common do not agree with each other?**

**TAX:** There would be a single hearing because it is about the property value and not the owners themselves. They may all present their own evidence and opinions on which the listers, BCA or beyond will consider when making their final decision.

**24. What if someone shows up on grievance day that is going to grieve for someone else, but they do not have any authorization in writing to do so from that property owner? Shouldn't we have that authorization in writing vs. an actual property owner showing up without anything in writing to grieve? Should we be looking at ID's to verify they are the owner?**

**VLCT:** The law on this point says, "A person who feels aggrieved by the action of the listers and desires to be heard by them shall, on or before the day of the grievance meeting, file with them his or her objections in writing and may appear at such grievance meeting in person or by his or her agents or attorneys." 32 V.S.A. § 4111(g). In such an instance where one person states that they're representing someone else, we would recommend merely asking for some memorialization of that in writing to be added to the file. At the very least, ask them during the hearing so it's part of the record and included in the minutes.

**TAX:** Again, because values are established as of April 1 and the tax bills are issued to the owner of record as of April 1, only the seller can appeal. However, the seller can designate the new owner as agent to the seller. As agent, the buyer can participate in the grievance by acting on behalf of the owner of record. The seller can submit a signed letter to the Board of Listers stating that he or she wishes to designate the buyer as his or her agent in the grievance process.

**25. What do you do with the abstract once the grand list is lodged?**

**VLCT:** The Vermont State Archives and Records Administration (VSARA) can speak to retention of this particular public record. VSARA is charged by the VT Legislature with coming up with the general/specific retention schedules, working with those seeking individual disposition orders of all municipal records, and educating towns on records management best practices. VSARA's contact information can be found at:

<https://sos.vermont.gov/vsara/>.

**26. Homestead declaration received in the fall. Property owner declares 25 % business or rental use. Listers change Homestead and housesite values to reflect the declaration. What is the proper Grievance notice protocol for this situation?**

**VLCT:** Going off the time of year (i.e. "fall") provided in the fact pattern, the grand list would have already been finalized. Typically, selectboard approval is needed to make such a correction and such errors or omissions of individual property listings may be corrected on or before the close of the calendar year. However, since this correction results from the filing of a homestead declaration, the approval of the selectboard would not be needed in this case. "When real or personal estate is omitted from the grand list by mistake or an

obvious error is found, the listers, with the approval of the selectboard, on or before December 31, may supply such omissions or correct such errors and make a certificate thereon of the fact; provided, however, the listers may make a correction resulting from the filing or rescission of a homestead declaration without approval of the selectboard.” 32 V.S.A. § 4261.

**TAX:** Any change to assessed value or the allocation of that value between homestead and non-homestead must be noticed exactly as you would a change of appraisal. The taxpayer shall be given 14 days (not including the day of mailing) to grieve the allocation and the result is appealable as any grievance would be. It is important to note, though, that any grievance of allocation should not consider the value of the property, only the allocation, as the appropriate time to grieve the value would have passed.

**27. Can you entertain questions from taxpayers before grievance day to discuss / explain reasons for change and avoid a formal grievance?**

**[Note from attendee: We have found that hosting an information time previously by appt in person or on the phone has been extremely well received and eliminates full grievances.]**

**VLCT:** Absolutely, and having a public forum dedicated to educating taxpayers as to the basics of how appraisals are made, how the tax assessment appeals process works, and just to answer any questions they may have is a practice we strongly encourage. Listers are more than welcome to meet with whomever they feel necessary in preparation of their duty to set property values in the abstract and doing so can certainly help limit and manage the number of anticipated grievances. Such meetings, however, whether with individual members or with the board in the context of a meeting, would not constitute a grievance hearing. We recommend that the listers remind people to file a written objection if they still have one once the abstract is lodged.

**TAX:** Any corrections to value based on either taxpayer notice or lister inspection should be considered for annual Change of Appraisal (COA) but should still reflect the system established at the time of reappraisal. Therefore, while this may lessen the number of grievances, it will not likely have the same effect of grievance to achieve current Fair Market Value (FMV). That said, once the taxpayer receives their COA for the items, they discussed with you then they can formally grieve. Of course, if there is no change resulting from the discussion, they may still grieve.

**28. Could you create a list of legal notices that cannot be posted to an online billboard?**

**VLCT:** No, as the law doesn't prohibit you from posting notices on-line, whether it's on a town's website or a social media platform such as Facebook or Front Porth Forum. What the law does prohibit is posting notices that are meant to be posted in a physical location, to an on-line forum instead. Again, on-line notices are permitted and encouraged, but only so

long as they serve as a supplement, not a replacement to the statutorily required physical postings in public.

**29. If you set a time, say from 8 to 2, and someone comes in at 2:30, do you have you hear them?**

**VLCT:** Technically no, as the law only obligates the board of listers to hear “(a)ll objections filed in writing with the board of listers *at or prior to the time fixed for hearing appeals...*” 32 V.S.A. § 4222. However, if you’re there to hear grievances and you still haven’t left after the scheduled timeframe and someone walks in, then we’d be inclined to say that you should probably hear them.

**TAX:** If you have not announced your hearings are closed, then you should err on the of caution and hear their grievance.