

ROLE OF THE BOARD OF CIVIL AUTHORITY IN TAX ASSESSMENT APPEALS (2022)

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VLCT MUNICIPAL ASSISTANCE CENTER

<https://www.vlct.org/>



**Vermont League
of Cities & Towns**

NOTE ON COVID-19 TEMPORARY LAW

- Act 78: [Open Meeting Law COVID-19 FAQs](#), Expires Jan. 15, 2023.
 - a public body may meet electronically or other means without designating a physical location
 - public bodies may post notice and agenda of special meetings in two designated electronic locations in lieu of physical locations
 - [Hybrid Meeting Toolkit](#)
 - [Remote Only Meeting Toolkit](#)

BCA: Composition & Appeals

Notice, Deadlines, & Extensions

Hearing & Site Inspection

The Decision

Appeals Beyond the BCA

WHERE WE
ARE,
WHERE WE'RE
GOING

BOARD OF CIVIL AUTHORITY: COMPOSITION & APPEALS: WHAT IS THE BCA?

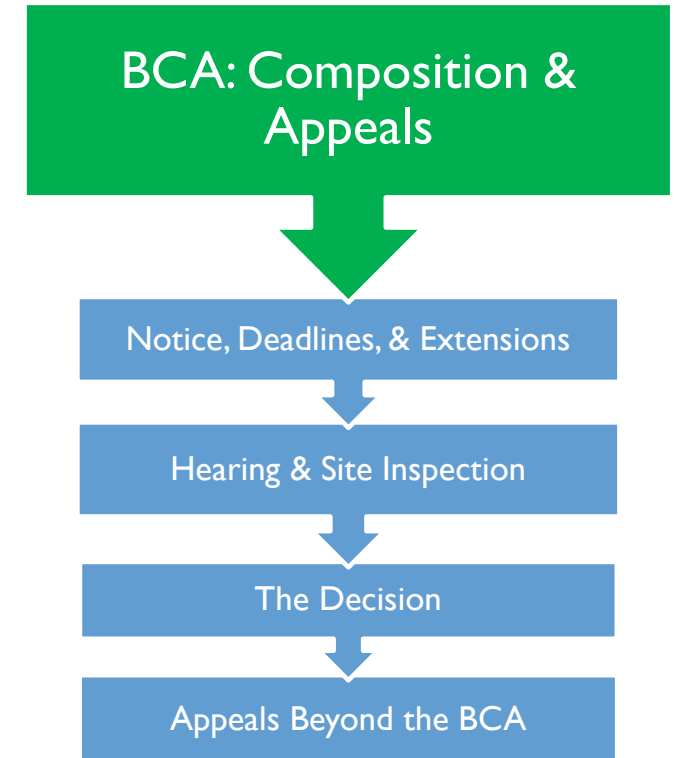
The BCA is the group of municipal officers
who:

- perform election matters and determine voter eligibility; and
- hear appeals of Lister grievance decisions (conduct tax assessment appeals)

In the context of tax assessment appeals:

- Selectboard members
- + Justices of the Peace
- + Town Clerk.

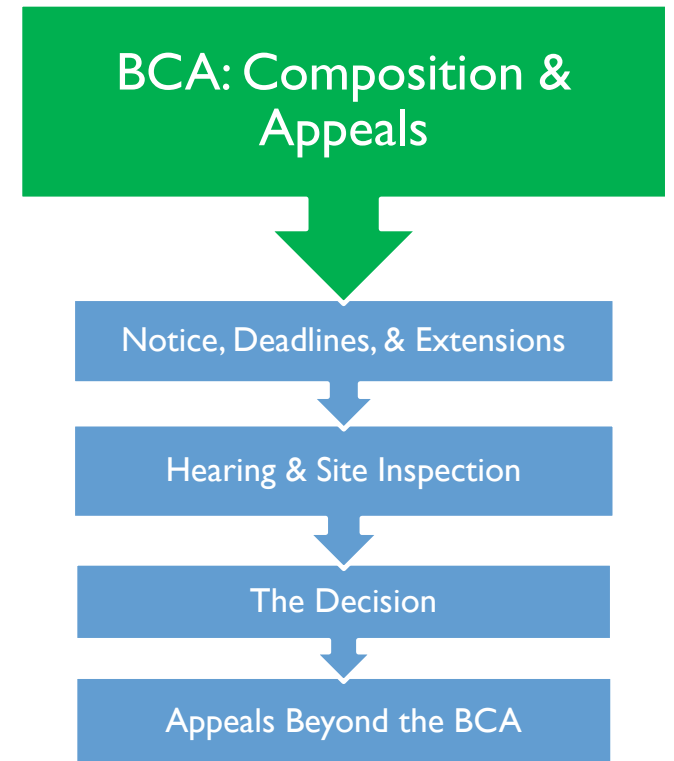
24 V.S.A. § 801



BCA: COMPOSITION & APPEALS: APPEALS TO THE BCA

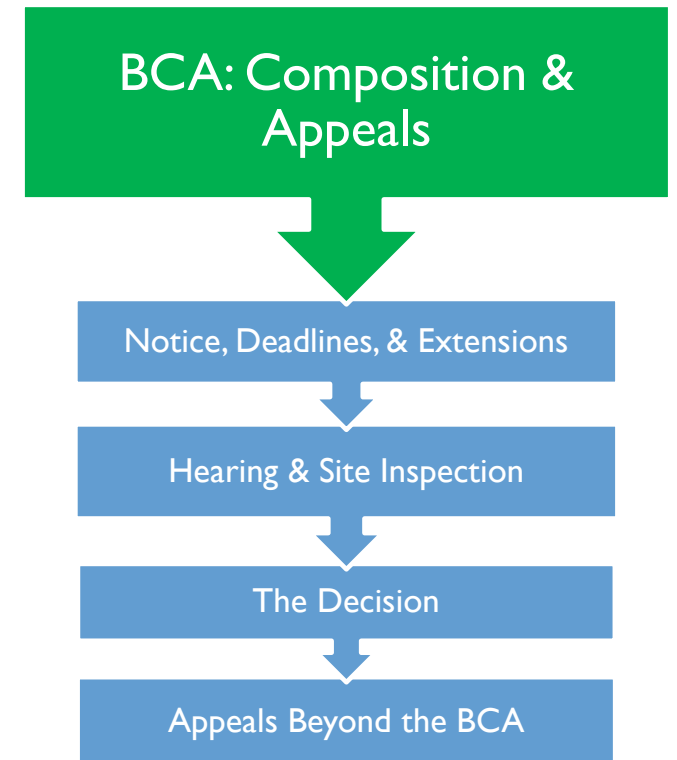
A person not satisfied with the Lister's grievance decision must appeal in writing to the BCA (delivery to Town Clerk) **within 14 days from the date the notice of Lister's decision was mailed.** The written appeal must briefly state the grounds for the appeal.

32 V.S.A. § 4404(a)



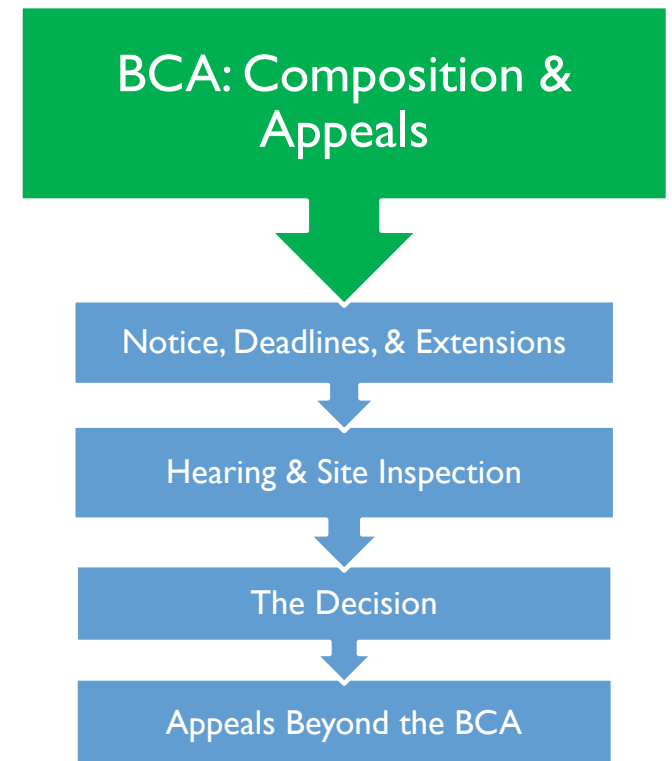
BCA: COMPOSITION & APPEALS: ORGANIZATIONAL BUSINESS

- BCA must elect a chairperson. 24 V.S.A. § 801
- BCA members must take their BCA oaths. 24 V.S.A. § 831
 - BCA Oaths are distinct from officer oaths. 32 V.S.A. § 4405
- Town clerk must serve as BCA clerk. 24 V.S.A. § 801



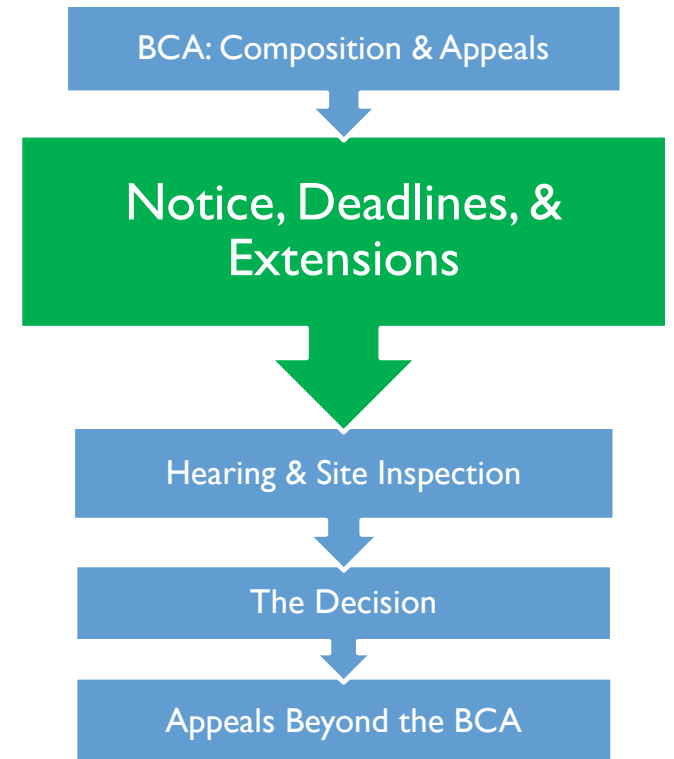
BCA: COMPOSITION & APPEALS: ORGANIZATIONAL BUSINESS

- The BCA may adopt rules of procedure, see our: [Model Rules of Procedure for BCA](#)
- VLCT Model Informational Handout: [Model Informational Handout for BCA Hearings](#)



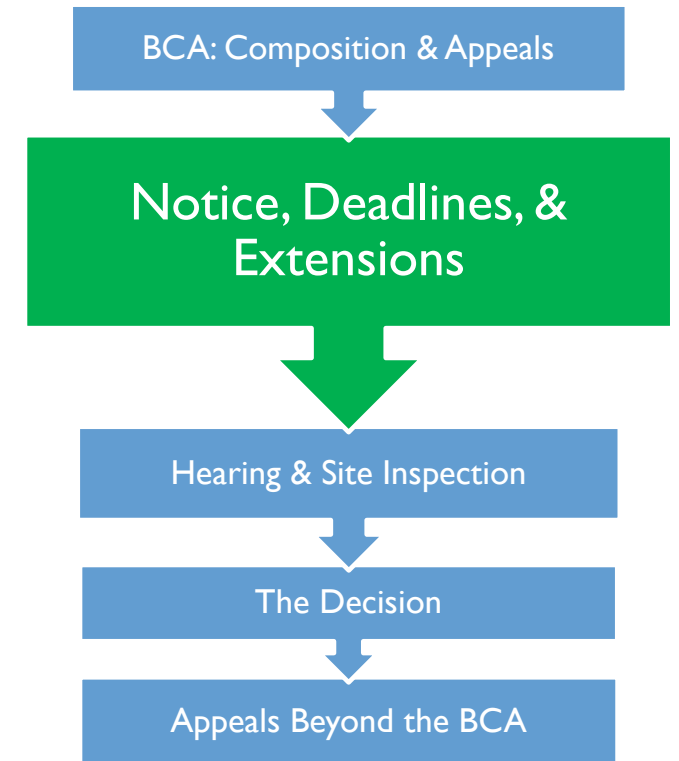
NOTICE, DEADLINES, & EXTENSIONS

- Once an appeal is received, “the town clerk forthwith shall call a meeting of the board to hear and determine such appeals.”
32 V.S.A. § 4404(b)
- BCA tax appeals “shall be held ... not later than 14 days after the last date allowed for notice of appeal...”
32 V.S.A. § 4404(b)
- BUT... 32 V.S.A. § 4341 --Deadline for BCA hearings ***extended!***



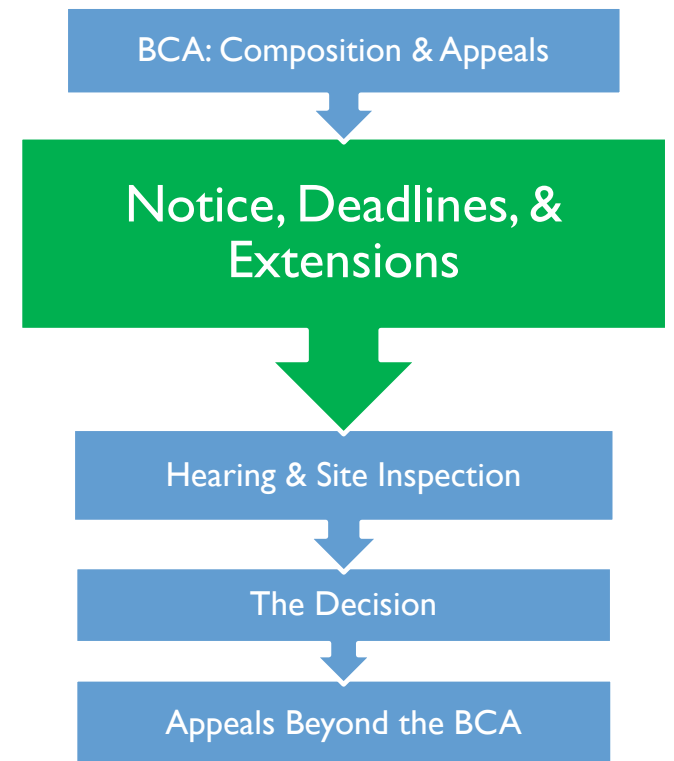
NOTICE, DEADLINES, & EXTENSIONS

- The 14-day deadline in 32 V.S.A. § 4404(b)
+ automatic extension in 32 V.S.A. § 4341 =
 - 44 days for hearings if population of < 5,000
 - 64 days for hearings if population of \geq 5,000



NOTICE, DEADLINES, & EXTENSIONS

- The BCA must **initiate** a hearing on **each and every** one of the appeal hearings within this 44 or 64-day timeframe.
- “...the BCA has a total of forty-four days [fourteen days under § 4341(4)] to initiate hearings in each appeal.”
 - Rhodes v. Town of Georgia*,
166 VT 153 (1997)



NOTICE, DEADLINES, & EXTENSIONS: NOTICE OF HEARINGS

- Hearings are called by the Town Clerk.
- **Notice** of a hearing (time and place) is given by:
 1. posting in three or more public places in town;
 2. mailing to each member of the BCA, an agent designated by the Selectboard, the chair of the board of listers; and
 3. mailing to all persons appealing.



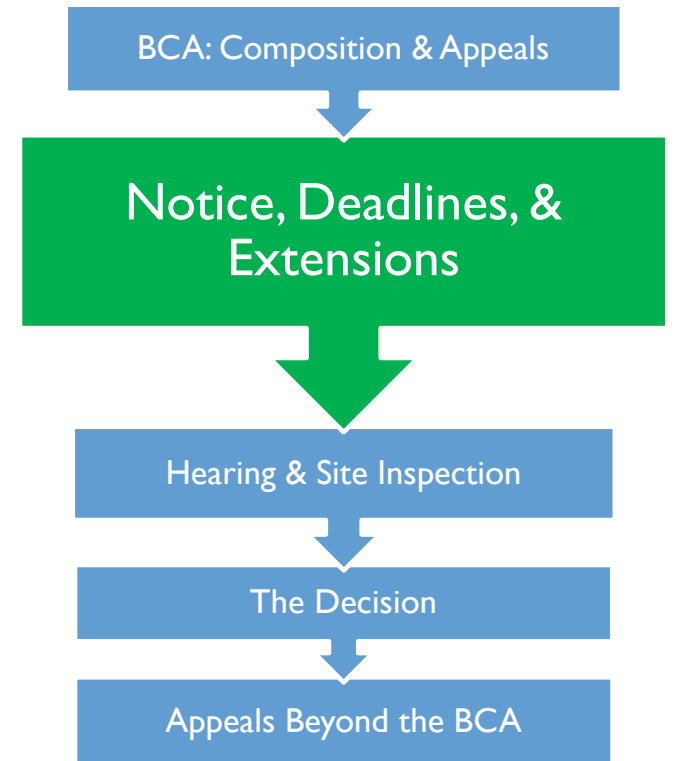
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32 V.S.A. § 4404(b)

NOTICE, DEADLINES, & EXTENSIONS: AGENDA OF HEARINGS

- **Agenda** (part of notice) must be posted at least 24 hours prior to hearings:
 - (1) in or near the town office;
 - (2) in at least two other designated public places in town; and
 - (3) to a website, if one exists, that the body either maintains or designates as its official website;
 - (4) made available to any person prior to the meeting upon specific request.

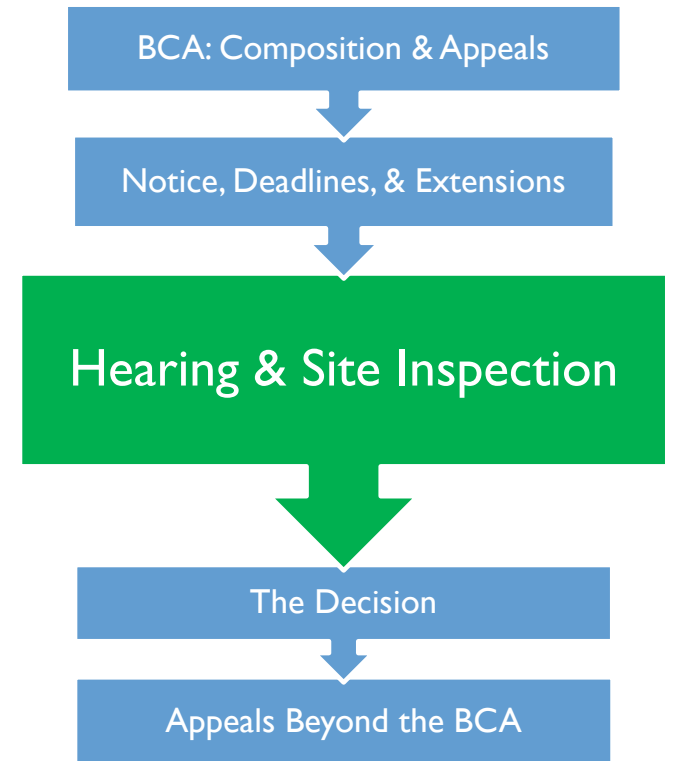
1 V.S.A. § 312(d)(1)



HEARING & SITE INSPECTION: PARTICIPATION

Participation of Taxpayer:

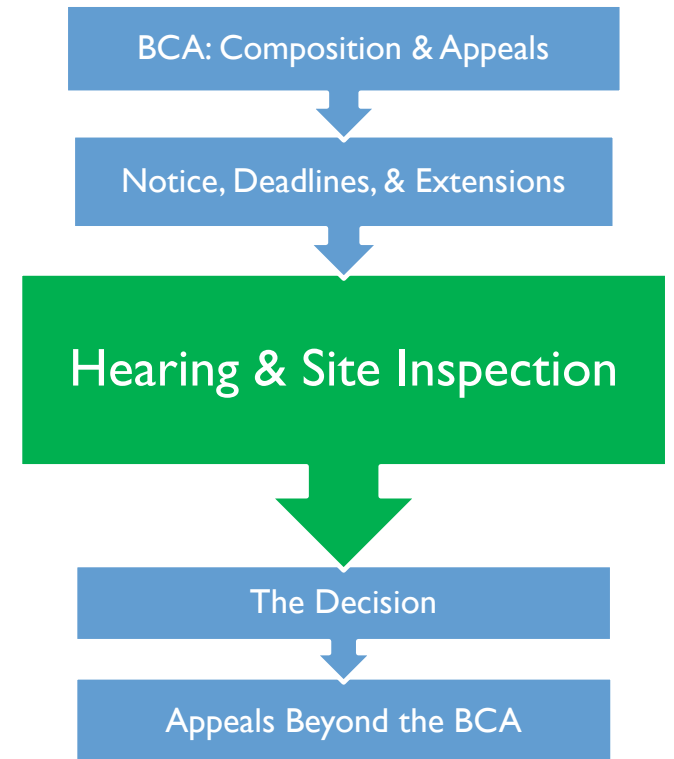
- A taxpayer's presence is **NOT** required at their hearing;
- Taxpayer **MAY** be represented by counsel or other person and/or may submit evidence/arguments in writing.



HEARING & SITE INSPECTION: PARTICIPATION

Participation of the Public:

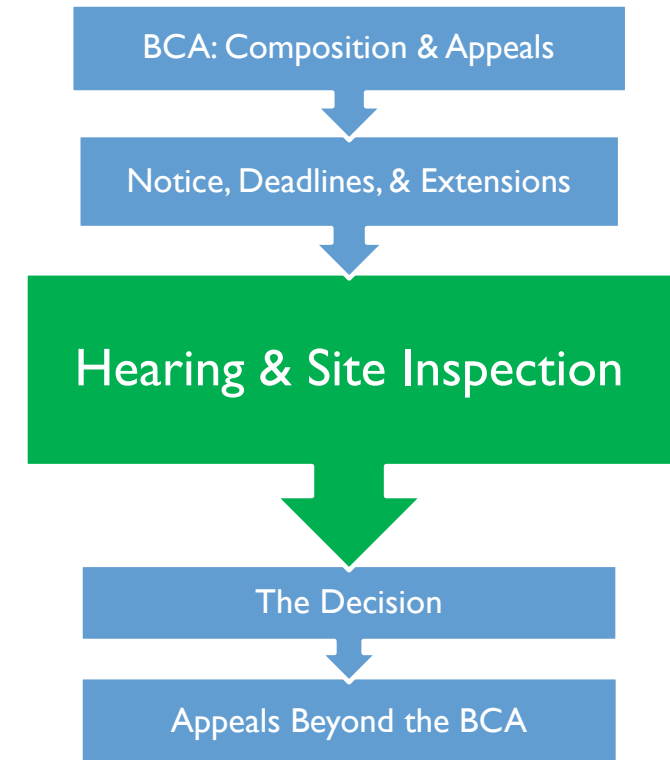
- Hearings must be open to the public (i.e. public must be allowed to attend);
- **BUT** there is no right under VT's Open Meeting Law for the public to participate in tax appeal hearings.



HEARING & SITE INSPECTION: PARTICIPATION

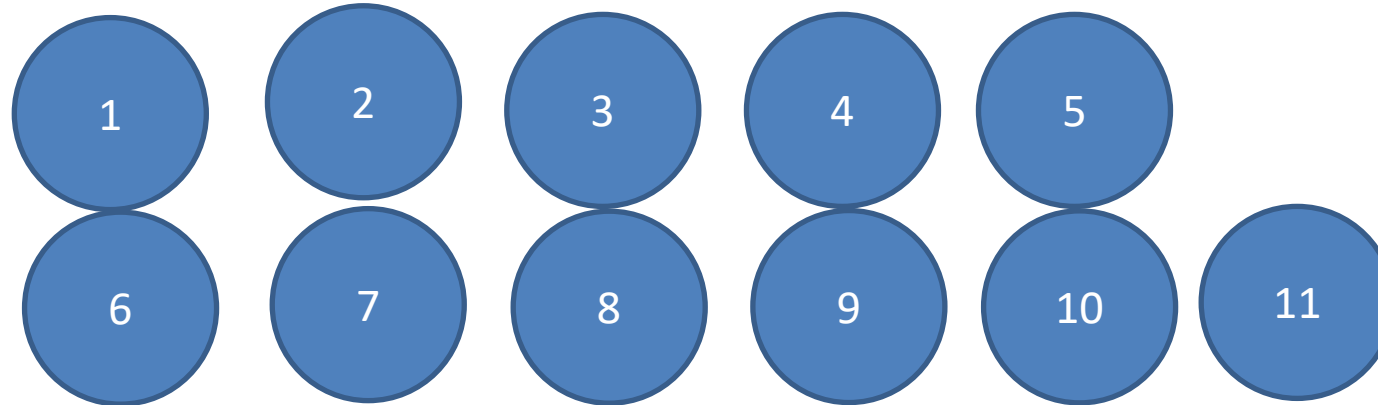
Participation of BCA Members:

- BCA members are *disqualified* from serving as member during appeals if they are:
 - Listers
 - Certain agents designated by the selectboard; or
 - If they appealed their own assessment to the BCA (or acted on someone's behalf to appeal to the BCA)
- **MUST** have a QUORUM of the BCA present.



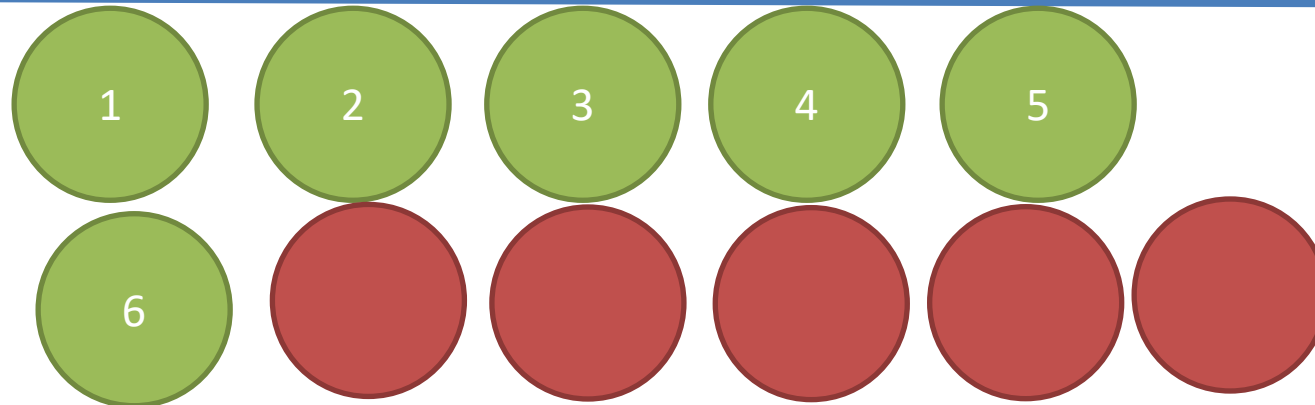
HEARING & SITE INSPECTION: PARTICIPATION – GENERAL QUORUM RULE

TOTAL BCA
membership.



11-member
board (clerk,
selectboard,
JoPs)

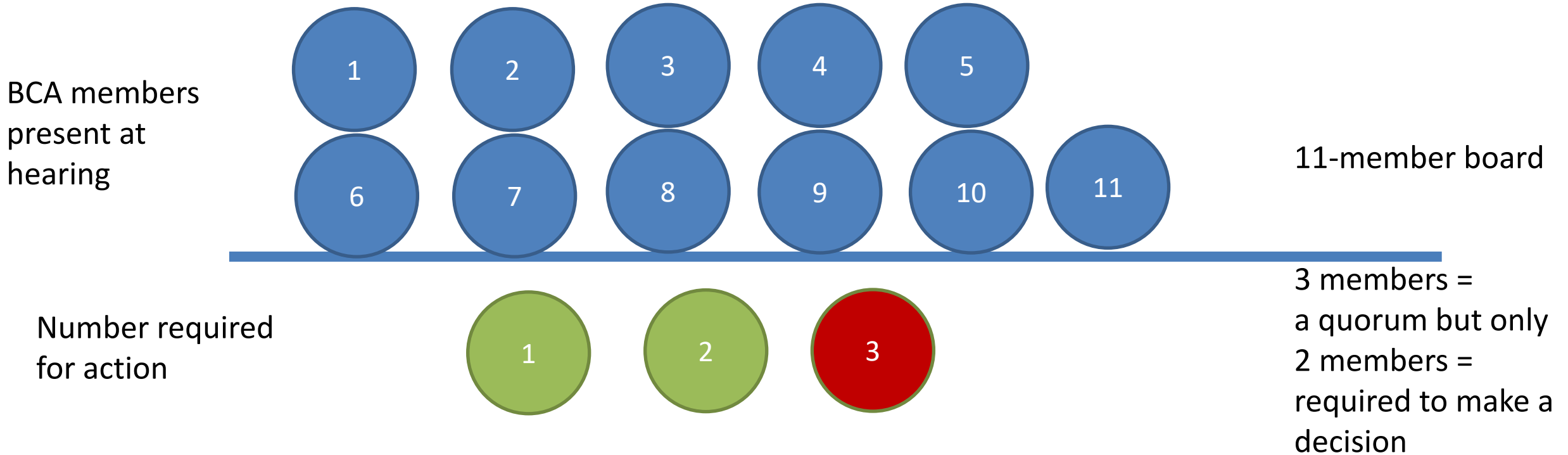
Number of members
required to hold
meeting and/or take
action



6 members =
a quorum and
required to
make a
decision

Quorum = majority of TOTAL membership

HEARING & SITE INSPECTION: PARTICIPATION – MAJORITY OF THOSE PRESENT



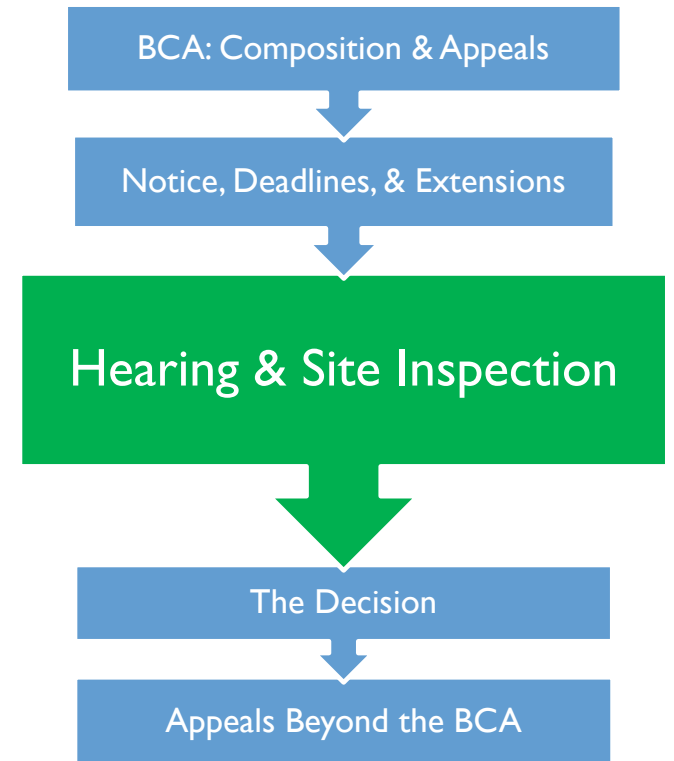
“... The act of a majority of the board **present** at the meeting shall be treated as the act of the board . . .”
24 V.S.A. § 801

“Each property, the appraisal of which is being appealed, shall be inspected by a committee of not less than three members of the board.”
32 V.S.A. § 4404(c).

HEARING & SITE INSPECTION: OVERALL FLOW

VLCT Process Recommendation :

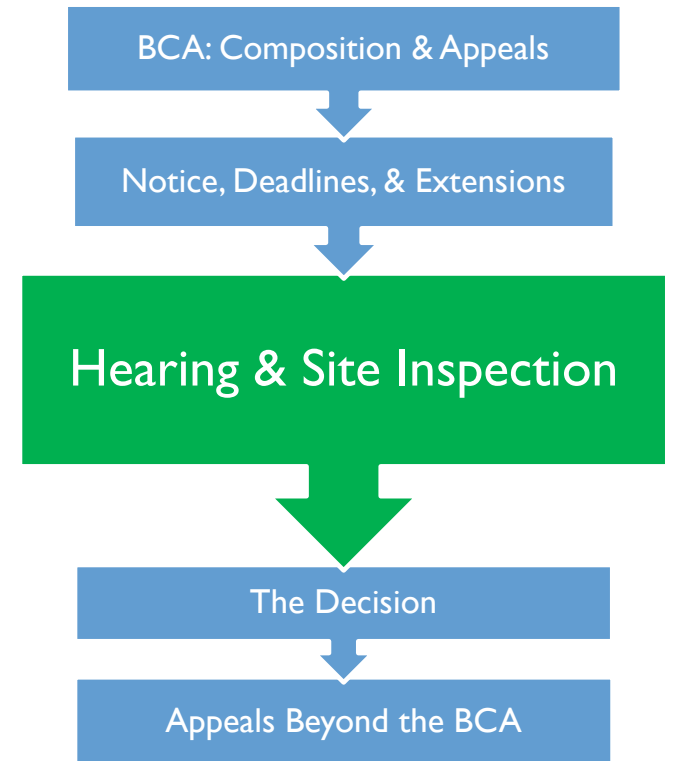
1. Notice and Hold hearing (follow rules of procedure);
2. Recess the hearing to a date and time certain (announce that this portion of the public hearing is over, and that the BCA will reconvene to continue the hearing at a specified date, time, and place, no more than 30 days out);
3. Conduct the site visit;
4. Reconvene the hearing at the previously announced date and time to receive the inspection committee report and any additional comment or evidence.
5. Close the hearing and enter deliberative session.
6. Mail written decision, within 15 days of inspection report.



HEARING & SITE INSPECTION: SITE INSPECTION

- The inspection committee must be comprised of at least 3 BCA members;
 - Inspection includes “interior and exterior of any structure on the property.”
 - “If, after notice, the appellant refuses to allow an inspection of the property as required under this subsection, including the interior and exterior of any structure on the property, the appeal **shall be deemed withdrawn.**” 32 V.S.A. § 4404(c)

Rasmussen v. Town of Fair Haven,
2016 VT 1 (2016)



HEARING & SITE INSPECTION: SITE INSPECTION



- **Site inspections are not subject to VT's Open Meeting Law:**

- “The provisions of this subchapter shall not apply to site inspections for the purpose of assessing damage or making tax assessments or abatements.”

1 V.S.A. § 312(g)

- *Taxpayer does not have to allow Listers to attend.*

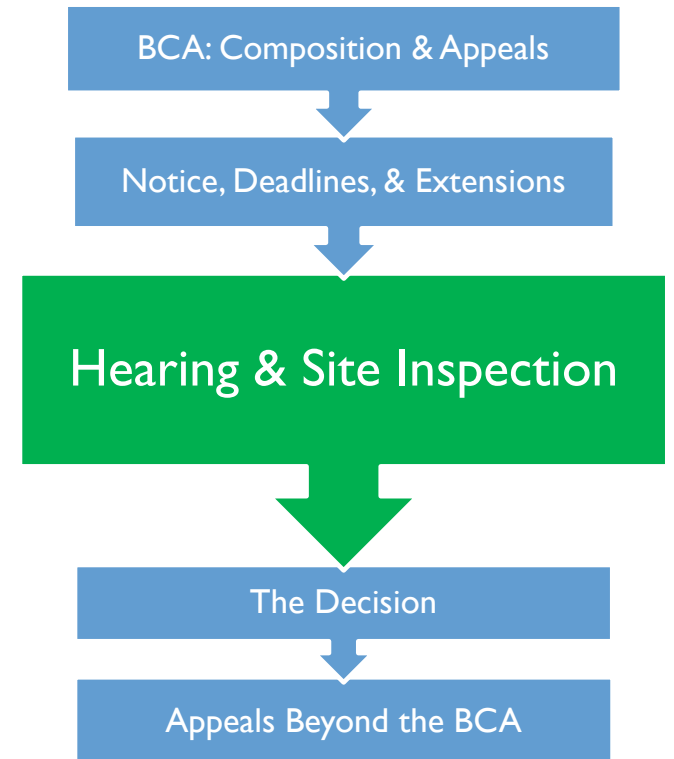
HEARING & SITE INSPECTION: EX PARTE COMMUNICATIONS

- Ex Parte Communication: A 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.



HEARING & SITE INSPECTION: SITE INSPECTION COMMITTEE REPORT

- The inspection committee must report back to the BCA within **30 days from the hearing**. 32 V.S.A. § 4404(c)
 - The inspection report should include what the committee saw including the location and condition of the property as well as the time of the inspection, those present and the date.
 - Report **MAY** (not must) include a recommendation.
- Don't forget your meeting minutes! 1 V.S.A. § 312(b)



THE DECISION

WHEN?

- The BCA **MUST** issue its decision within 15 days of the report of the inspection committee. 32 V.S.A. § 4404(c)

HOW?

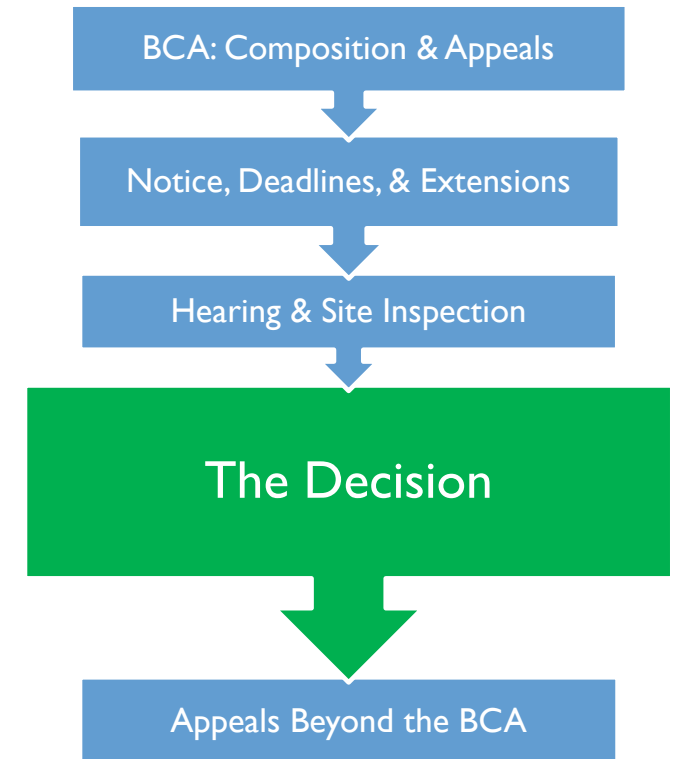
- BCA's job is to find fair market value (FMV)
- The BCA decision is "de novo" (the case starts over);
 - **BUT...**the Listers' assessment enjoys a presumption of validity!



THE DECISION: BURDENS OF PRODUCTION & PERSUASION

HOW?

- The taxpayer's job is to convince the BCA that the Listers were wrong;
- Taxpayer must meet the burden of production and the burden of persuasion

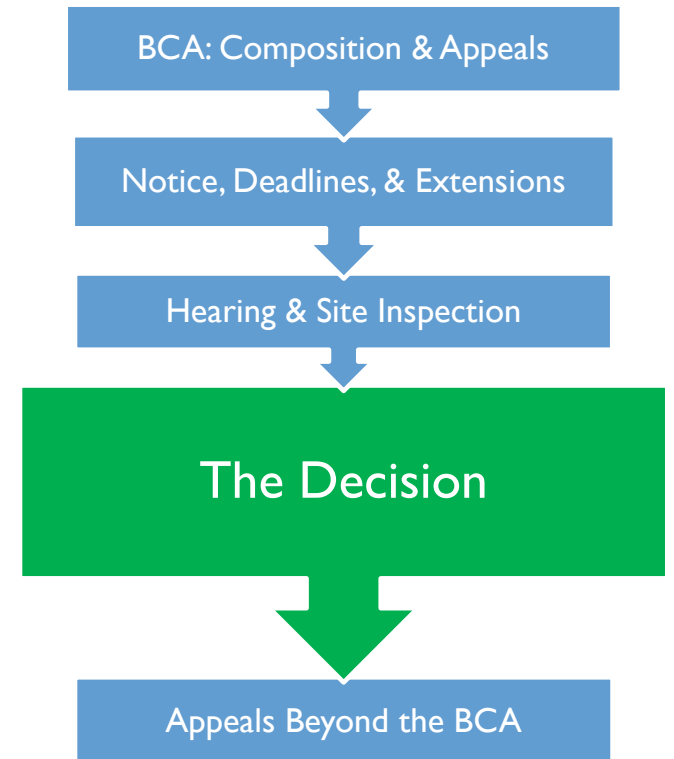


THE DECISION: BURDEN OF PRODUCTION & PERSUASION

- The appellant always has the burden to persuade the BCA that the appraisal exceeds fair market value.

Kruse v. Town of Westford, 145 Vt. 368 (1985).

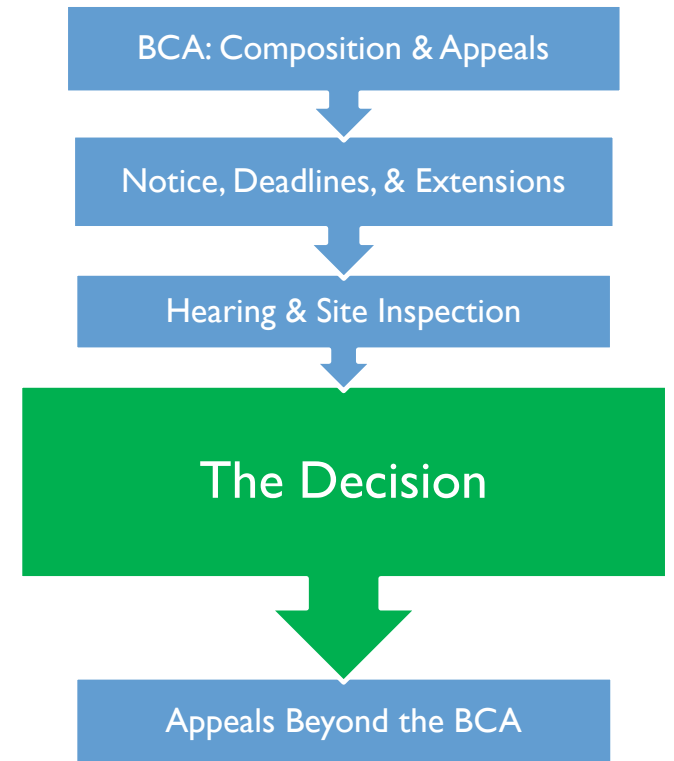
- In the end, the BCA does not have to prove anything. The BCA's duty is to be convinced;
 - The bottom line is that the taxpayer's evidence must outweigh the Listers' evidence to win the appeal



THE DECISION: BURDEN OF PRODUCTION & PERSUASION

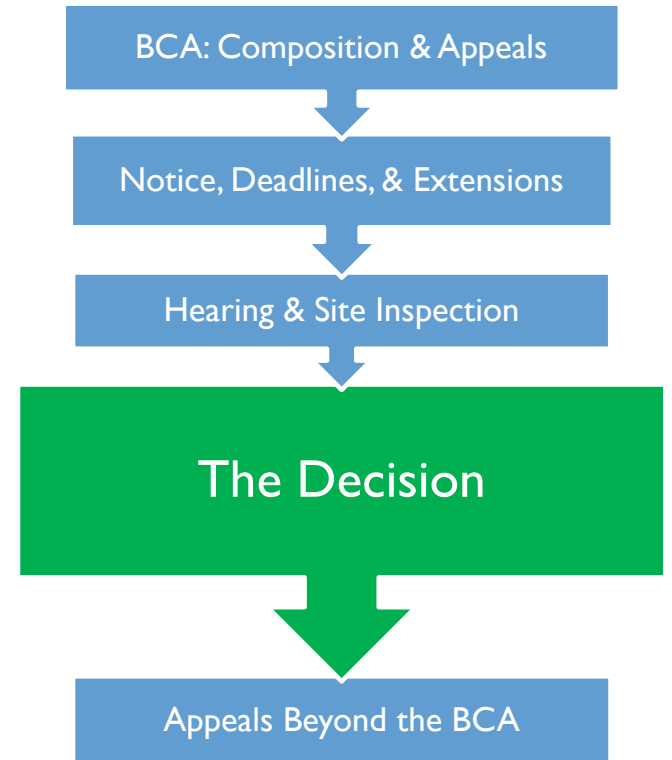
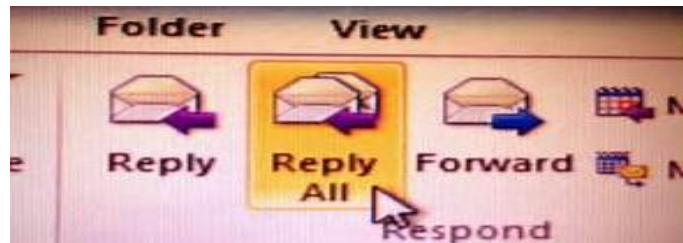
Taxpayer only wins if they prove the case by a **preponderance of the evidence**.

Preponderance is based on the more convincing evidence and its probable truth or accuracy, and not on the amount of evidence.



THE DECISION: DELIBERATIVE SESSION – PUBLIC OR PRIVATE

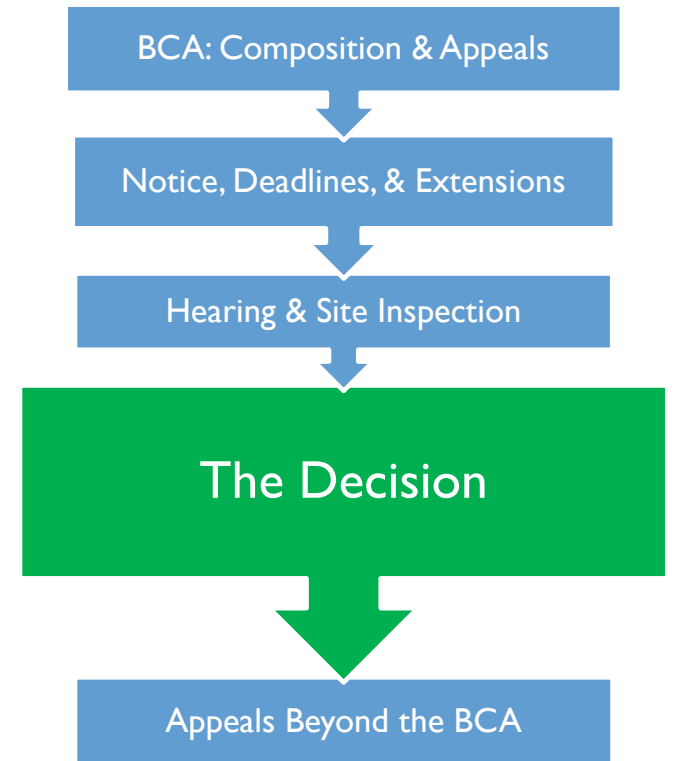
Private deliberations **ARE** allowed because a BCA hearing is a “quasi-judicial hearing” which is **NOT** subject to VT’s Open Meeting Law. 1 V.S.A. § 312(f)



THE DECISION

WHO?

- Recall that BCA can act with as few as **3** members:
 - “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
- Only those members who participated in the hearing should be involved in the decision.

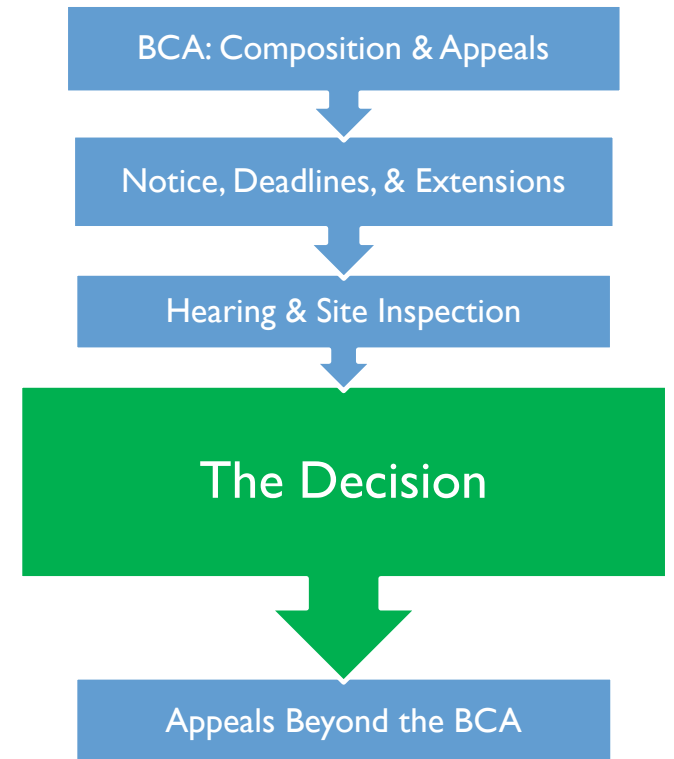


THE DECISION: WRITING THE DECISION

- **Must** be in writing.
- **May** increase, reduce, or sustain the appraisal made by the Listers.
- Decision **must** include reasons. 32 V.S.A. § 4404(c).
 - A brief explanation will satisfy this requirement.

Miller v. Town of West Windsor, 167 Vt. 588 (1997).
 - Boards need not be perfect. Reasoning must simply be “within the range of rationality” to comport with the law.

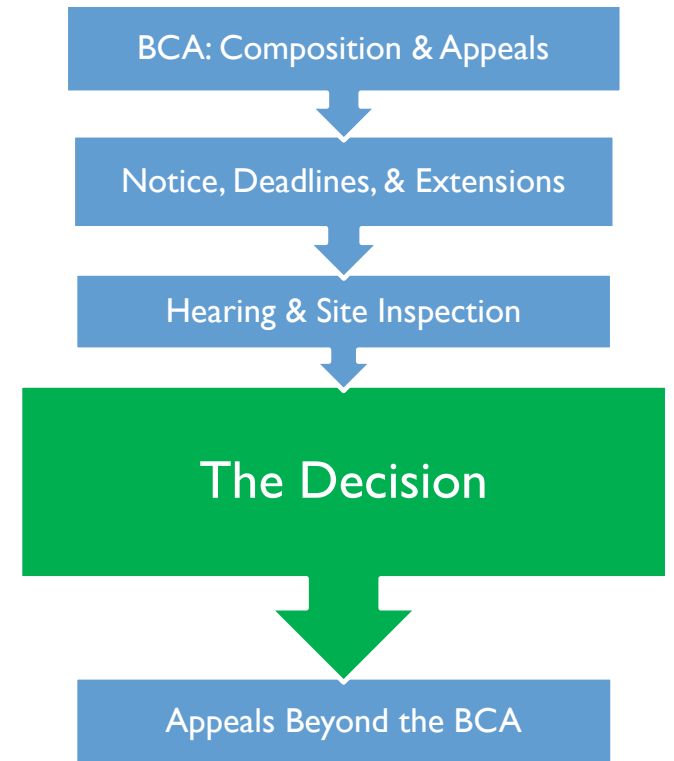
Breault v. Town of Jericho, 155 Vt. 565 (1991).
 - **May** be signed by the BCA Chair or Vice-Chair. 24 V.S.A. § 1141
 - **See:** [PVR Decision Form 4404A](#)



THE DECISION: WRITING THE DECISION

- The town clerk **MUST** record the decision or attach it to the grand list book and **notify the appellant in writing by certified mail.**
- This value, unless changed on appeal, will become the listed value for the year under appeal.

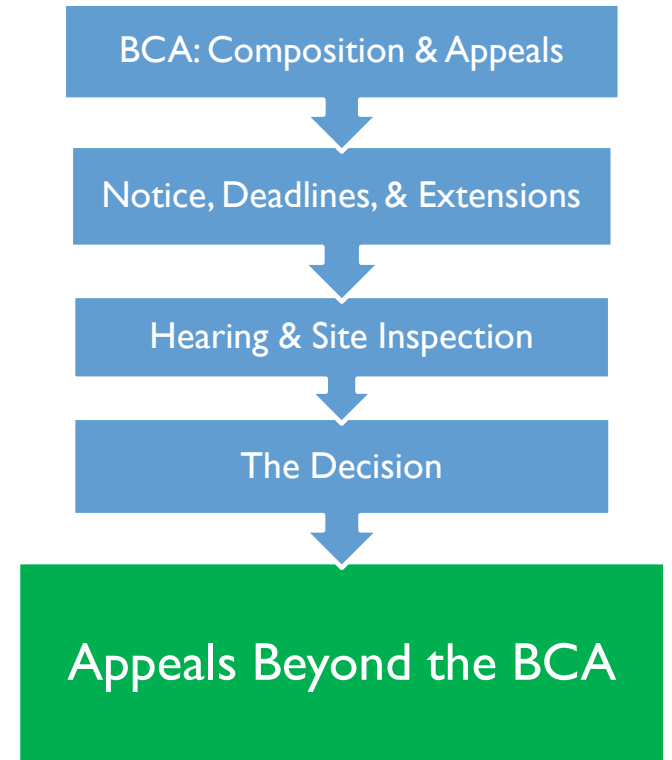
32 V.S.A. § 4409



APPEALS BEYOND THE BCA: STATE APPRAISER VS. SUPERIOR COURT

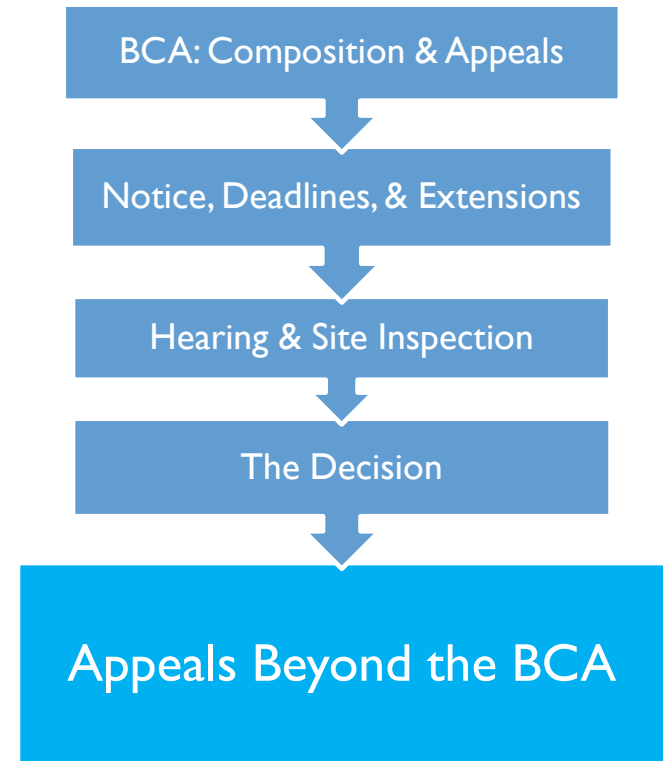
Appeal from BCA decision **MAY** be to State Appraiser **OR** to Superior Court.

- **State Appraiser** – Generally less expensive, less formal process, with generally less involvement by attorneys.
- **Superior Court** – Better suited to addressing legal issues that arise in the context of a tax appeal – taxability, exemptions, and constitutional issues.



APPEALS BEYOND THE BCA: APPEAL CONCLUDED

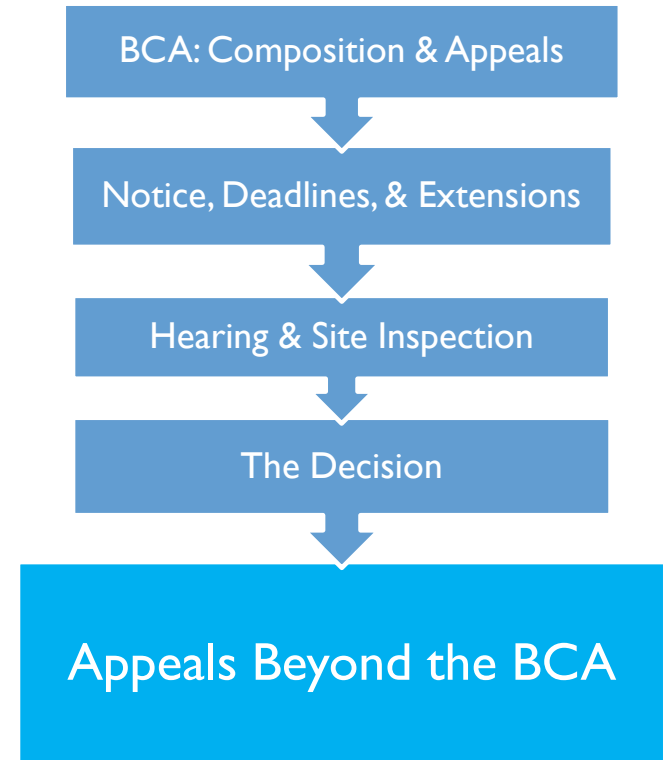
- Appraisal so fixed by Superior Court or State Appraiser becomes a fixed value in the grand list for the year the appeal was taken and for the next two ensuing years.
- If appraisal reduced, taxpayer is entitled to a tax credit for the next ensuing tax year (+interest).



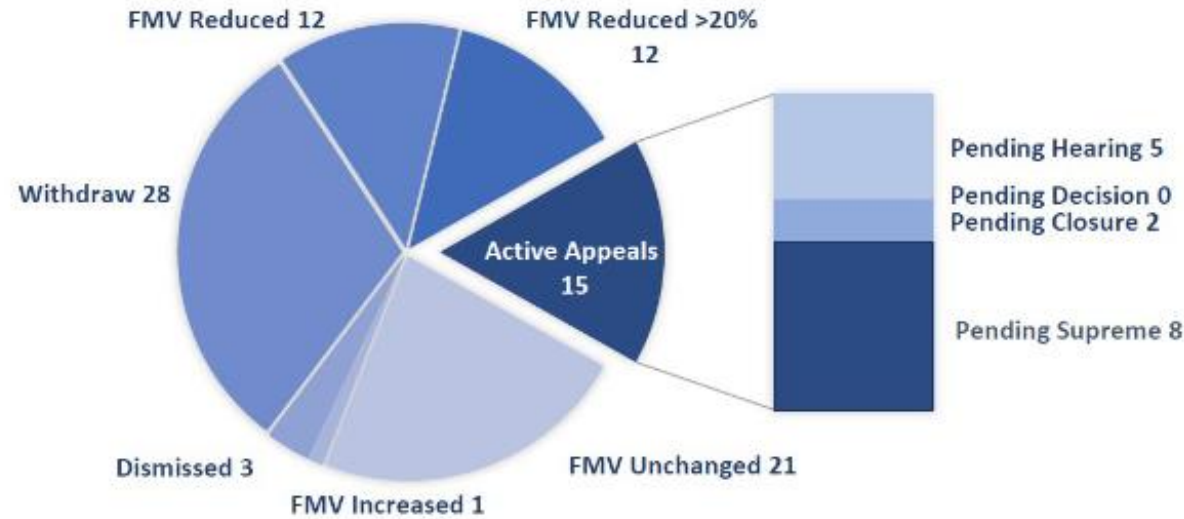
APPEALS BEYOND THE BCA: APPEAL CONCLUDED

- State **MAY** recalculate education grand list liability for education grand list value lost due to determination, declaratory judgment or settlement.
- **MUST** submit request to State (PVR) on or before **January 15** for resolved appeals that occurred within the previous calendar year.

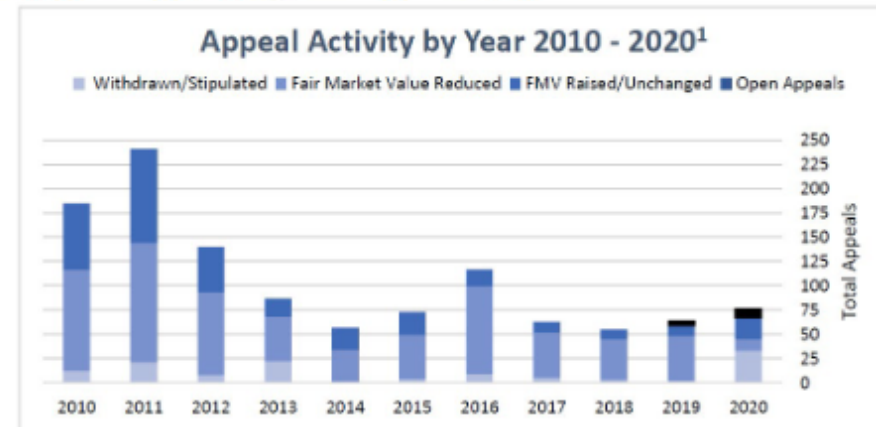
32 V.S.A. § 5412(a)(1)(B)



2021 Activity - 77 Closed Appeals



Of the appeals closed in 2021, 36% of appellants withdrew the appeal; 4% of appeals were dismissed; 29% resulted in the parcel's Fair Market Value (FMV) being raised or unchanged; 15.5% resulted in the FMV being reduced less than 20%; and 15.5% resulted in the FMV being reduced more than 20%. The remaining 15 active cases include (10) 2020 appeals and (5) 2019 appeals.



As of December 2021, PVR has received 35 appeals based on 2021 grand list activity. Currently, one appeal has been withdrawn, one has been dismissed, and 33 are pending assignment.

CLOSING THOUGHTS

YOU CAN DO THIS!



BCA are not expected to be experts.



Seek an accurate and equitable assessment, not a victory.



Focus on an impartial, effective, and efficient process.

RESOURCES

- [VLCT Property Tax Assessment Appeals Homepage](#), includes:
 - Model Rules of Procedure for BCA
 - Model Informational Handout
 - And more...

- [VLCT Open Meeting Law Page](#), with information/guidance on:
 - Hybrid and Remote Meetings
 - Open meeting law requirements – meeting minutes, notice & agenda

- [Secretary of State's Property Tax Assessment Appeals Handbook](#)
- [Lister and Assessor Handbook](#)



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- **802-229-9111**