

DUE PROCESS

TRANSPARENCY: OPEN MEETING LAW & REMOTE MEETINGS

- Act 78 temporarily relaxes some Open Meeting Law provisions *until January 15, 2023.*
- Allow remote only meetings & hearings; waives requirement to designate physical location

***BCA MOCK TAX ASSESSMENT APPEAL HEARING
RELEVANT STATUTES & DUE PROCESS***

VLCT MUNICIPAL ASSISTANCE CENTER

TOWN CLERK: CARL ANDEER, STAFF ATTORNEY II

BCA CHAIR: SUSAN SENNING, STAFF ATTORNEY II

BCA MEMBER: GARRETT BAXTER, SENIOR STAFF ATTORNEY

LISTER: KAIL ROMANOFF, STAFF ATTORNEY I

APPELLANT: ABBY FRIEDMAN, DIRECTOR



ORGANIZATIONAL BUSINESS

- Board of Civil Authority (BCA) must elect a chairperson.
- Town clerk is BCA clerk.

24 V.S.A. § 801

YOU ARE THE GOVERNMENT! DUE PROCESS



Conduct FAIR Hearings

- Be TRANSPARENT;
- Give DUE PROCESS and EQUAL PROTECTION;
- Ensure you are not receiving personal benefits and remain IMPARTIAL by avoiding/managing CONFLICTS

DUE PROCESS AND EQUAL PROTECTION

DUE PROCESS refers to the process that is constitutionally required before an individual is deprived of life, liberty or property.

Key elements:

- *Advance Notice*
- *Orderly and Managed Hearing*
- *Impartial decision maker*

DUE PROCESS

TRANSPARENCY: OPEN MEETING LAW & REMOTE MEETINGS

VLCT.org resources:

Hybrid Meeting Toolkit

- Model notice/agenda/informational handout
- Model script for opening a remote public meeting

DUE PROCESS
FAIR HEARINGS:
IMPARTIALITY

- BCA members must take their BCA oaths. 24 V.S.A. § 831
- BCA oaths are distinct from officer oaths; must be recorded in town clerk's office.

32 V.S.A. § 4405

ELECTRONIC SIGNATURES ALLOWED

Under the VT Uniform Electronic Transactions Act, if a law requires a signature, an electronic signature will suffice.

An “electronic signature” is defined under the law as “an electronic sound, symbol, or process attached to or logically associated with a record, and executed or adopted by a person with the intent to sign the record.” The full law may be accessed here:

<http://legislature.vermont.gov/statutes/cchapter/09/020>.

DUE PROCESS

ORDERLY HEARINGS: RULES OF PROCEDURE

While not required by State law, rules of procedure are considered a best practice for managing hearings and safeguarding the due process rights of parties.

VLCT.org resources:

- VLCT Model Rules of Procedure
- VLCT Model Rules of Procedure for BCA Hearings

DUE PROCESS FAIR HEARINGS: IMPARTIALITY

Conflict of interest policies are required by law as of July 1, 2019.
The town policy applies to BCAs. 24 V.S.A. § 1984.

VLCT.org resources:

- VLCT Model Conflict of Interest Policy

DUE PROCESS

FAIR HEARINGS: LEGAL INCOMPATIBILITIES

A person may not serve on the BCA for any tax appeals that year if that person:

- Is a Lister;
- Is a selectboard agent designated to prosecute and defend suits;
- Brings an appeal (through self, agent, or attorney) except if they grieve to the Listers and decide not to appeal to the BCA, in which case they may still serve on the BCA.

32 V.S.A. § 4404(d)

DUE PROCESS FAIR HEARINGS: IMPARTIALITY

AVOID ex parte communications:

“A direct or indirect communication between a member of the BCA and any party, party’s representative, party’s counsel, or any person interested in the outcome of a proceeding, that occurs outside the proceeding and concerns the substance or merits of the proceeding.”

DUE PROCESS FAIR HEARINGS: IMPARTIALITY

- Disclose *ex parte* communication if you cannot avoid it:
 - Documents should be provided to all parties and included in the record with other evidence
 - Oral communication should be disclosed during the hearing and noted in the minutes
- Re-open the hearing if necessary

DUE PROCESS BURDENS OF PROOF

The listers assessment enjoys a presumption of validity. During the hearing, the appellant has the burden of proof to convince the BCA that the Listers were wrong.

The burden of proof involves two evidentiary burdens:

1. The burden of production and
2. The burden of persuasion.

The appellant must meet both burdens in order to prevail.

DUE PROCESS BURDENS OF PROOF

“A taxpayer may burst the bubble and defeat this presumption by presenting credible evidence fairly and reasonably tending to show that his property was appraised at more than its fair market value.” *In re Bilmar Team Cleaners*, 2015 VT 10.

Once the taxpayer presents credible evidence that the listers' appraisal exceeds fair market value, the listers presumption disappears and the listers must defend their appraisal. Submittal of a PTTR is relevant enough to satisfy this modest standard.

DUE PROCESS BURDENS OF PROOF

When conducting a tax assessment appeal hearing virtually and in-person (hybrid), it is recommended that all documentary evidence be sent to the Town Clerk prior to the hearing so that it may be distributed to the appellant, Listers, and BCA members prior to the hearing so as not to delay the proceedings.

DUE PROCESS BURDENS OF PROOF

Once the taxpayer presents credible evidence that the listers' appraisal exceeds fair market value, the listers presumption disappears and the listers must defend their appraisal.

DUE PROCESS BURDENS OF PROOF

Listers must defend their appraisals by “producing evidence demonstrating substantial compliance with constitutional and statutory provisions relative to uniformity as well as fair market value.”

New England Power Co. v. Town of Barnet, 134 Vt. 498 (1976)

DUE PROCESS MANAGING THE EVIDENCE

“Evidence” is testimony, documents, and tangible objects that prove or disprove the existence of an alleged fact. Black’s Law Dictionary 8th Edition.

Evidence, according to the Vermont Supreme Court, “is substantial if it is relevant and a reasonable person might accept it as adequate to support a conclusion.” *In re Halnon*, 174 Vt. 514 (2002).

The **ONLY EVIDENCE** you may consider is evidence that is presented to you during an open hearing.

If evidence is submitted and distributed prior to a remote hearing, address it on the record.

DUE PROCESS

MANAGING THE EVIDENCE: MARK, RETAIN, AND ORGANIZE

Documentary Evidence:

- Mark each document with:
 - Appellant's Exhibit #
 - Lister's Exhibit #
 - Name or Number of Grievance/Appeal
- Keep it organized.

Oral Testimony:

- Record the hearings (suggested, not required)
- Keep hearings orderly (follow your rules of procedure)
- Direct the discussion by asking relevant questions about value.

DUE PROCESS BURDENS OF PROOF

The taxpayer still has the burden to persuade the BCA that the listers' appraisal exceeds fair market value.

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

The burden of persuading the BCA that their property is over-assessed remains with the taxpayer throughout the entire proceeding. Despite introducing sufficient evidence to burst the listers' bubble, that evidence still has to carry the day over the listers' countervailing evidence.

DUE PROCESS MANAGING THE EVIDENCE

The BCA is looking for relevant and reliable evidence.

Relevant evidence is any information that will establish the fair market value of the subject property, such as comparables, market studies, the condition of the property.

Irrelevant evidence includes the taxpayer's ability to pay.

BE HELPFUL OFFER EXPLANATIONS AND ALTERNATIVES

Tax assessment appeals are challenges to the value of property set by the listers.

Tax abatement is the process by which taxpayers may request to have their tax burden lessened, moderated, or diminished without respect to their properties' assessed value.

24 V.S.A. §§ 1533-1537.

DUE PROCESS

MANAGING THE EVIDENCE: SITE INSPECTION

- Underlying law: at least 3 BCA members must inspect the property.
- The VT Supreme Court has held that an inspection conducted by less than 3 members “was patently defective under the statute, and the remedy of reinstating the old assessment was mandatory.” *City of Winooski v. Barnes*, 142 Vt. 27 (1982).

DUE PROCESS

MANAGING THE EVIDENCE: SITE INSPECTION & DEEMED WITHDRAWAL

Underlying law: 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)

DUE PROCESS MANAGING THE EVIDENCE: SITE INSPECTION

The inspection committee must report to the BCA within 30 days from the hearing on the appeal and before the final decision pertaining to the property is given.

32 V.S.A. § 4404(c).

DUE PROCESS TRANSPARENCY: OPEN MEETING LAW

Any adjourned meeting shall be considered a new meeting, unless the time and place for the adjourned meeting is announced before the meeting adjourns. 1 V.S.A. § 312(c)(4).

DUE PROCESS TRANSPARENCY: OPEN MEETING LAW

No notice requirements for site inspection.

The Open Meeting Law does not apply to site inspections for purposes of making tax assessments. 1 V.S.A. § 312(g).

DUE PROCESS

MANAGING THE EVIDENCE: SITE INSPECTION REMINDERS

- Remind appellant of the obligation to avoid *ex parte* communications;
- Remind appellant of the opportunity to provide further testimony/information when BCA reconvenes to receive inspection report;
- Be polite yet firm, patient yet persistent;
- Less of a temptation when multiple members of inspection team are present.

DUE PROCESS MANAGING THE EVIDENCE: SITE INSPECTION

Inspections require at least 3 BCA members perform the site inspection

DUE PROCESS MANAGING THE EVIDENCE: SITE INSPECTION

[A]n 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, 2009 VT 109.

DUE PROCESS TRANSPARENCY: OPEN MEETING LAW

Recessing and then continuing the hearing after the inspection allows BCA to accept additional testimony.

DUE PROCESS TIMELY DECISION

The board shall, within 15 days from the time of the report, certify in writing its notice of decision, with reasons, in the premises, and shall file such notice with the town clerk who shall thereupon record the same in the book wherein the appeal was recorded and forthwith notify the appellant in writing of the action of such board, by certified mail.

32 V.S.A. § 4404(c)

DUE PROCESS TRANSPARENCY: OPEN MEETING LAW

The requirements of the Open Meeting Law do not apply to deliberations of a public body in connection with a quasi-judicial hearing.

1 V.S.A. § 312(e)

DUE PROCESS MANAGING THE EVIDENCE

Only evidence presented at hearing can be considered.
Do not investigate other evidence on your own.

DECISIONS BY MAJORITY

The act of a majority of the board present at the meeting shall be treated as the act of the board...shall control.

24 V.S.A. § 801

DUE PROCESS

TRANSPARENCY: PUBLIC RECORDS ACT

- Deliberations are exempt from Open Meeting Law: “Nothing in this section . . . shall be construed as extending . . . to the deliberations of any public body in connection with a quasi-judicial proceeding.” 1 V.S.A. §312(e).
- Records of, or internal materials prepared for, the deliberations of any public agency acting in a judicial or quasi-judicial capacity are exempt from public inspection and copying.

1 V.S.A. § 317(c)(24)

DUE PROCESS TRANSPARENCY: OPEN MEETING LAW

A written decision issued by a public body in connection with a quasi-judicial proceeding need not be adopted at an open meeting if the decision will be a public record.

1 V.S.A. § 312(f)

DUE PROCESS TIMELY DECISION

Decisions may be signed by the chair or the vice-chair on behalf of the BCA so long as a majority of the members who have heard the case agree with the decision.

24 V.S.A. § 1141

QUESTIONS



Contact VLCT Municipal Assistance Center:

(800) 649-7915

info@vlct.org