
ROLE OF THE BOARD OF CIVIL AUTHORITY IN TAX ASSESSMENT APPEALS – 2023

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VLCT MUNICIPAL ASSISTANCE CENTER



BCA: Composition & Appeals

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graph TD; A[BCA: Composition & Appeals] --> B[Notice, Deadlines, & Extensions]; B --> C[Hearing & Site Inspection]; C --> D[The Decision]; D --> E[Appeals Beyond the BCA];
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Notice, Deadlines, & Extensions

Hearing & Site Inspection

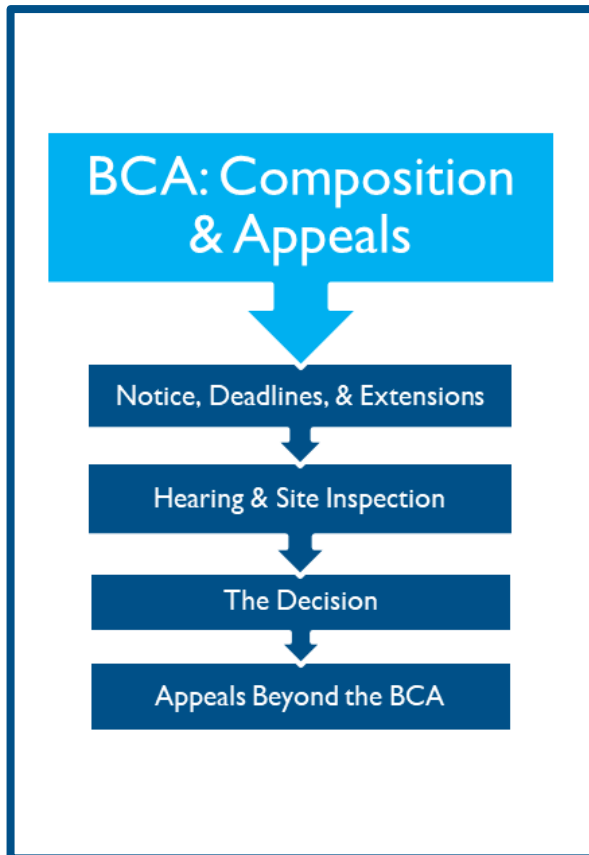
The Decision

Appeals Beyond the BCA

WHERE WE ARE,
WHERE WE'RE
GOING

BCA: COMPOSITION & APPEALS

WHAT IS THE BCA?



The BCA is the group of municipal officers who:

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

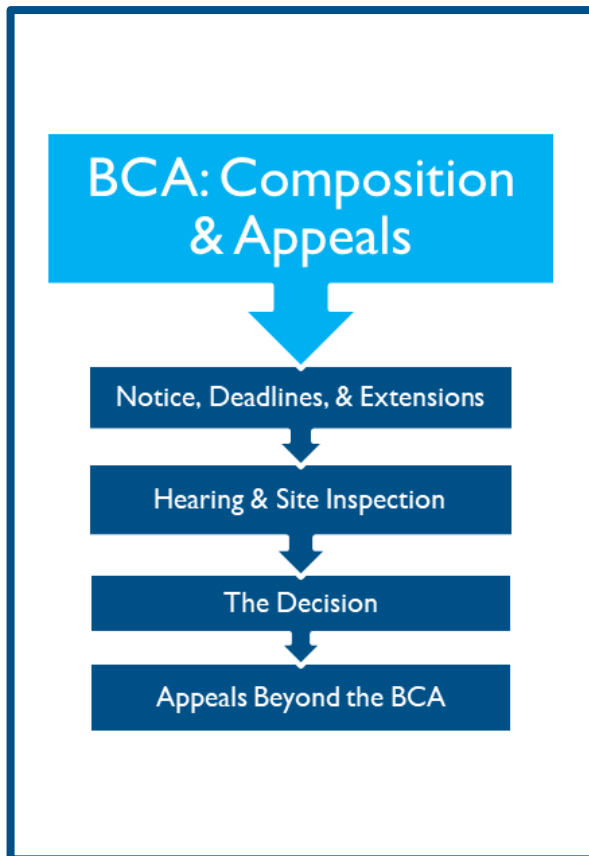
In the context of tax assessment appeals:

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

[24 V.S.A. § 801](#)

BCA: COMPOSITION & APPEALS

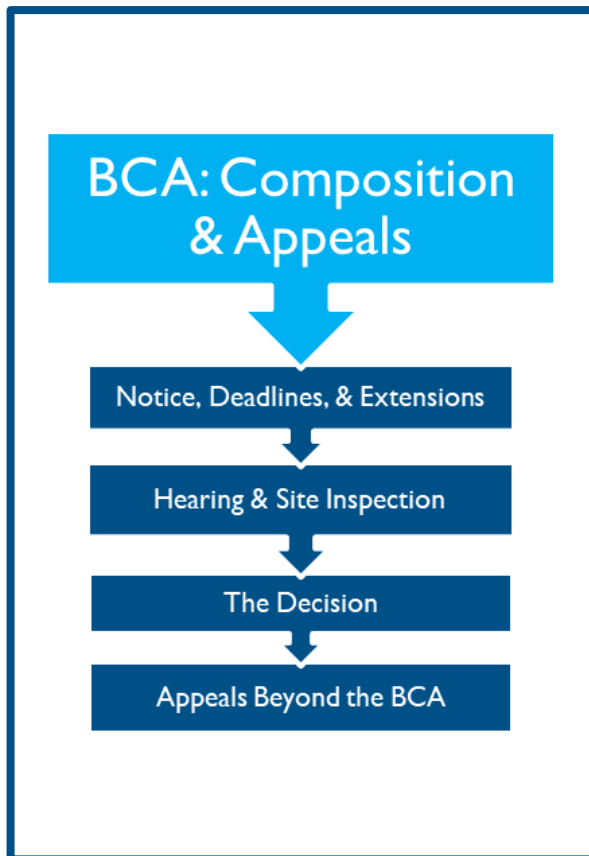
ORGANIZATIONAL BUSINESS



- BCA must elect a chairperson. [24 V.S.A. § 801](#)
- BCA members must take their BCA oaths. [24 V.S.A. § 831](#)
- “I do solemnly swear (or affirm) that I will well and truly hear and determine all matters at issue between taxpayers and listers submitted for my decision, so help me God.” [or “under the pains and penalties of perjury.”]
 - BCA Oaths are distinct from officer oaths. [32 V.S.A. § 4405](#)

BCA: COMPOSITION & APPEALS

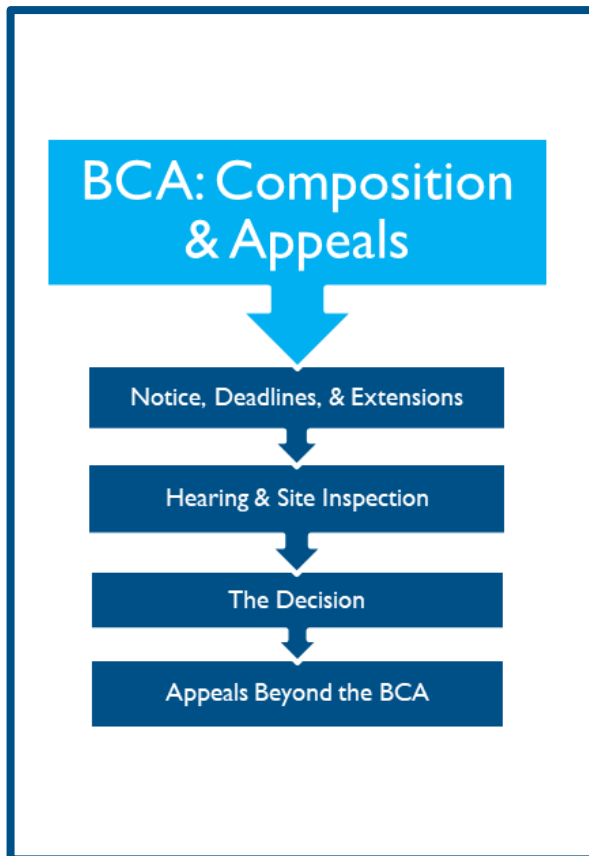
ORGANIZATIONAL BUSINESS



- Town clerk must serve as BCA clerk. [24 V.S.A. § 801](#)
- The BCA may adopt rules of procedure:
 - VLCT Model Rules of Procedure BCA Hearings
 - We do not recommend Roberts Rules of Order

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\(a\)](#)

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...** Remember [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



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- 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.
- [32 V.S.A. § 4404\(b\)](#)

PVR has a model notice form - [PVR 4404 PN](#)

NOTICE, DEADLINES, & EXTENSIONS: NOTICE OF HEARINGS



Agenda (part of notice) must be posted at least 24 hours prior to hearings:

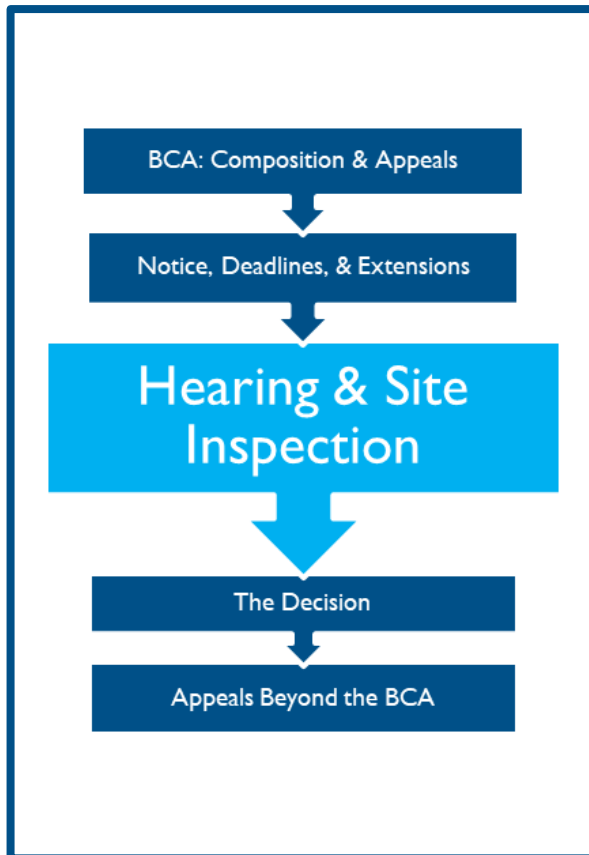
- (1) in or near the town office;
- (2) in at least two other designated public places in town; and
- (3) to a website, if one exists, that the body either maintains or designates as its official website;
- (4) made available to any person prior to the meeting upon specific request.

[1 V.S.A. § 312\(d\)\(1\)](#)

QUESTIONS?



HEARING & SITE INSPECTION: PARTICIPATION



Participation of Taxpayer:

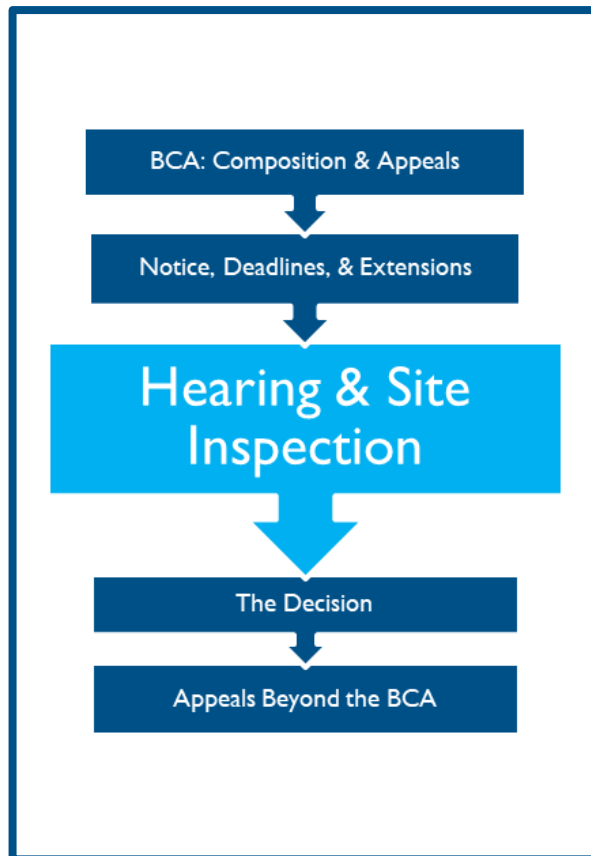
- A taxpayer's presence is **NOT** required at their hearing;
- Taxpayer **MAY** be represented by counsel or other person and/or may submit evidence/arguments in writing.



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HEARING & SITE INSPECTION: PARTICIPATION

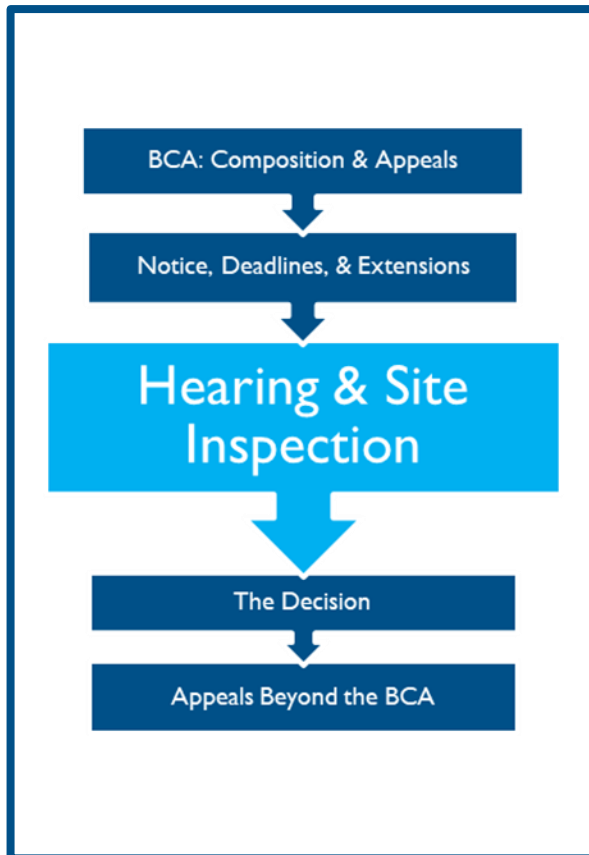


Participation of the Public:

- 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 on the BCA or all appeal hearing in a given year, if they are:
 1. Listers;
 2. Agent designated by the Selectboard;
 3. Members of the BCA that appeal their own assessment to the BCA (or act as attorney or agent for appellant).

NOTE: that if a member only grieves to the Listers (and not to BCA) they **MAY** still serve on the BCA.

HEARING & SITE INSPECTION: PARTICIPATION



Participation of BCA Members:

- **MUST** have a **QUORUM** of the BCA present.
- BUT there is a different quorum standard for tax appeals than election matters.

HEARING & SITE INSPECTION: PARTICIPATION – GENERAL QUORUM RULE

TOTAL BCA
membership.



5-member
board

Number of members
required to be present to
hold meeting/hearing **and**
make decision



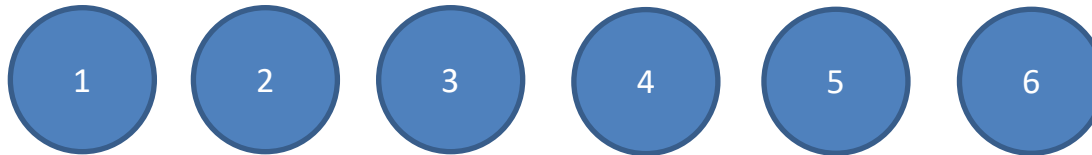
3 members =
a quorum
and required
to make a
decision

Quorum = Majority of the Total Membership
I V.S.A. § 172

HEARING & SITE INSPECTION: PARTICIPATION – MAJORITY OF THOSE PRESENT

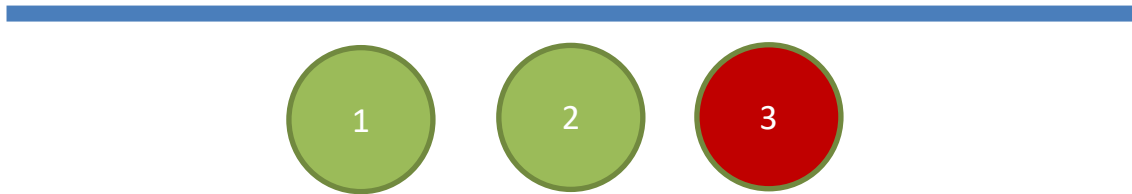
Board of Civil Authority

BCA members
present at
hearing



6-member board

BCA members'
decisions/votes



3 members =
a quorum but only
2 members =
required to make a
decision

“ . . . 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](#)

HEARING & SITE INSPECTION: VLCT MODEL RULES OF PROCEDURE

TOWN OF _____ BOARD OF CIVIL AUTHORITY
RULES OF PROCEDURE FOR
PROPERTY TAX ASSESSMENT APPEAL HEARINGS

- A. **PURPOSE.** The Board of Civil Authority ("BCA") of the Town of _____ is required by 32 V.S.A. Chapter 131 to conduct appeal hearings of lister property valuation decisions. The purpose of these rules is to establish uniform procedures for conducting such appeal hearings and to ensure compliance with Vermont's Open Meeting Law.
- B. **APPLICATION.** These rules of procedure shall apply to all property tax assessment appeal hearings conducted by the Town of _____ Board of Civil Authority. A copy of these rules shall be provided to the Town of _____ Board of Listers and to each party bringing an appeal before the BCA.
- C. **PROCEDURE.**
1. The Chair of the BCA, or in the Chair's absence, the Vice-Chair, shall preside over all tax appeal hearings. If both the Chair and the Vice-Chair are absent, a member selected by the BCA shall preside over the hearing. The Chair may make motions and may vote on all questions before the BCA. The Chair shall rule on all questions of order and procedure.
 2. Pursuant to 24 V.S.A. § 801, a quorum of the BCA shall be any three or more members for a tax appeal hearing. The act or decision of a majority of that quorum shall be treated as the act or decision of the full BCA.
 3. Each BCA meeting shall have an agenda prepared by the Town Clerk, with _____ minutes allotted for each hearing. All hearings shall be conducted in the same order as they appear on the agenda, except that by [insert "unanimous," "two-third," or "majority"] vote of the BCA, the order of hearings may be modified.
 4. [If applicable, insert the following: "All hearings shall be tape-recorded."] Appellants shall submit three copies of all documentary evidence to the BCA. The Clerk shall mark all documents submitted to the BCA with appropriate identifying information.
 5. The Chair may exclude any irrelevant, unreliable or unnecessarily repetitive evidence. Relevant evidence is any verbal testimony or document that tends to demonstrate the value of the property subject to appeal. Reliable evidence is any relevant evidence commonly relied upon by reasonably prudent people in the conduct of their affairs.
 6. The Chair shall conduct all tax appeal hearings in the following sequence:
 - a. Open the hearing, stating the name of the appellant, property location and parcel ID number.

Rules of Procedure, excerpts:

- a. "Open the hearing, stating the name of the appellant, property location and parcel ID number.
- b. Ask the appellant and listers to take oaths.
- c. Ask the appellant if they have received a copy of these rules of procedure and whether they have any questions about how the hearing will proceed.
- d. Request BCA members to disclose any conflict of interest and/or *ex parte* communication."

MODEL RULES OF PROCEDURE FOR BOARDS OF CIVIL AUTHORITY



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HEARING & SITE INSPECTION: RULES OF PROCEDURE

Answer to first 4 parts of the question

1) ERICKSON REAL ESTATE APPRAISAL Income Statement For the Year Ended June 30, 2018		2) ERICKSON REAL ESTATE APPRAISAL Statement of Retained Earnings For the Year Ended June 30, 2018	
Revenues:		Retained Earnings - Beginning Balance	\$59,500
Service Revenue	\$48,100	Less: Net Loss	(9,500) (Net Income Statement)
Expenses:		Less: Dividends	(57,300)
Salaries Expense	\$33,500	Net decrease in retained earnings	(5,800)
Insurance Expense	\$4,400	Retained Earnings - Ending Balance	\$4,700
Supplies Expense	\$300		
Dep. Expense-Building	\$8,200		
Utilities Expense	\$2,700		
Interest Expense	\$8,500		
Total Expenses	\$57,600		
Net Income (Loss)	\$9,500		

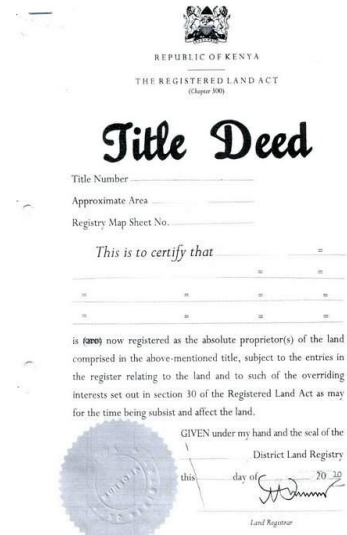
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HEARING & SITE INSPECTION: EVIDENCE

HEARING & SITE INSPECTION: EVIDENCE



Relevant evidence:

- Information that will help establish the fair market value of the property:
 - Comparables
 - Market studies
 - Condition of property, etc.

Irrelevant evidence:

- Ability to pay
- Why it is unfair that taxes will increase
- Constitutionality of taxation, etc.



HEARING & SITE INSPECTION: EVIDENCE

HEARING & SITE INSPECTION: EVIDENCE



The only evidence you may consider is that which is presented to you during a hearing.

DON'T INVESTIGATE ON YOUR OWN!

HEARING & SITE INSPECTION: SITE INSPECTION

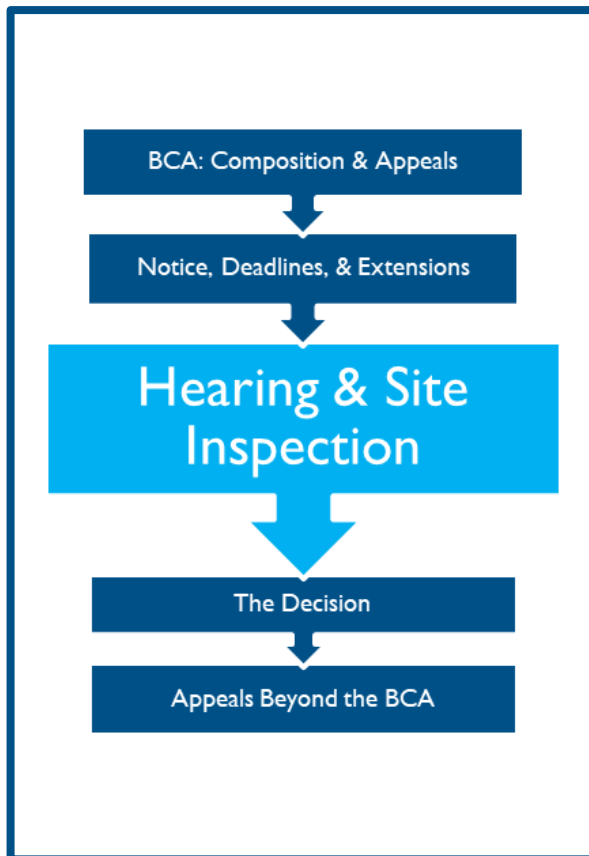


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Requirements:

- Each property **MUST** be inspected (refusal = deemed withdrawal).
- The inspection committee must be comprised of at least **3** BCA members.
- All inspection committee members must view the property but are not required to do so at the same time.

HEARING & SITE INSPECTION: SITE INSPECTION



Inspection committee CAN request to see other parts of the property not addressed at the hearing:

- 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



**NO
PUBLIC
ACCESS**

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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
Listeners 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

VLCT's Advice:

- If you can't avoid ex parte communications, disclose them.
 - Documents should be provided to all parties and included in the record with other evidence;
 - Oral communications should be captured in a memo and shared with all the parties or disclosed during the hearing and captured in the hearing minutes.

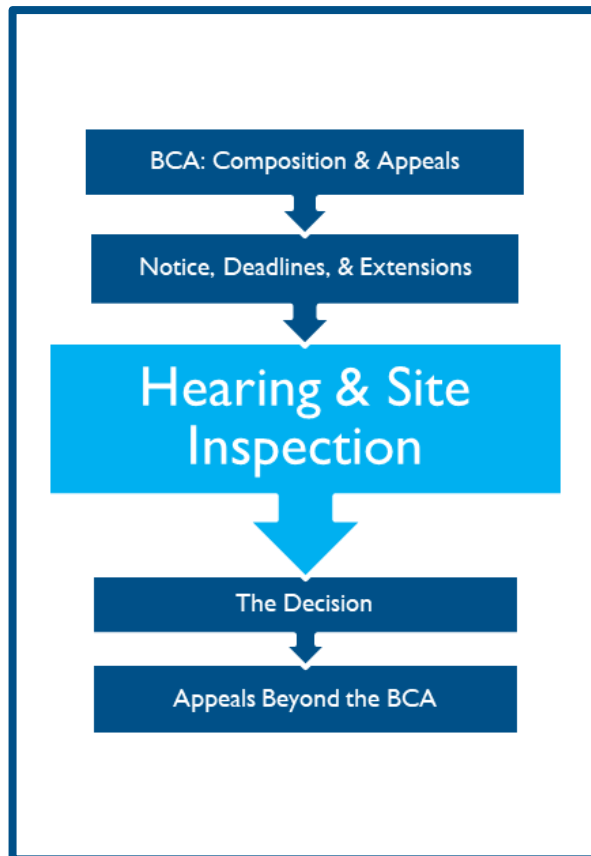
HEARING & SITE INSPECTION: SITE INSPECTION



VLCT Process Recommendation (if you conduct a site inspection):

1. Hold hearing;
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.);
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.

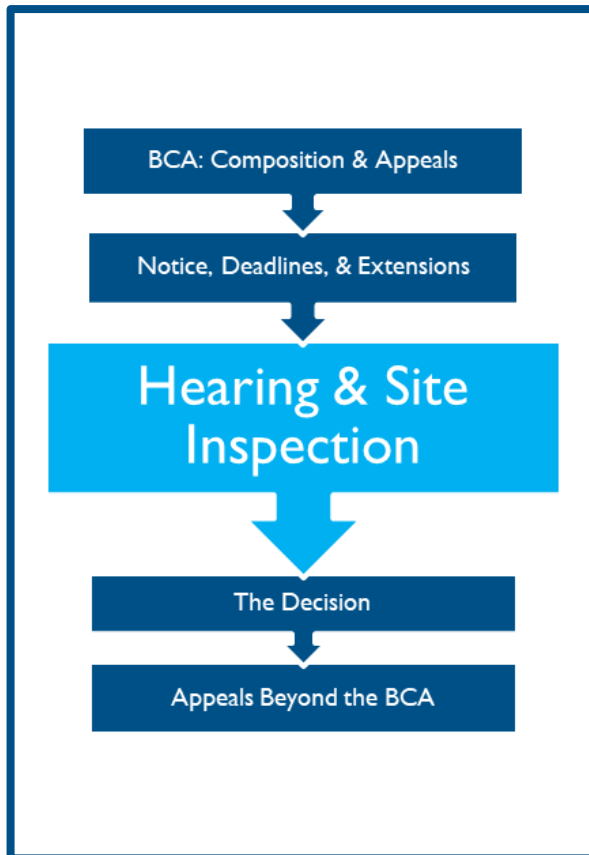
HEARING & SITE INSPECTION: SITE INSPECTION



- 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.
- The inspection committee must report back to the BCA within **30 days from the hearing.**

[32 V.S.A. § 4404\(c\)](#)

HEARING & SITE INSPECTION: MINUTES



WHEN? Available for inspection and posted to website (if there is one) after five calendar days from the date of any hearing.

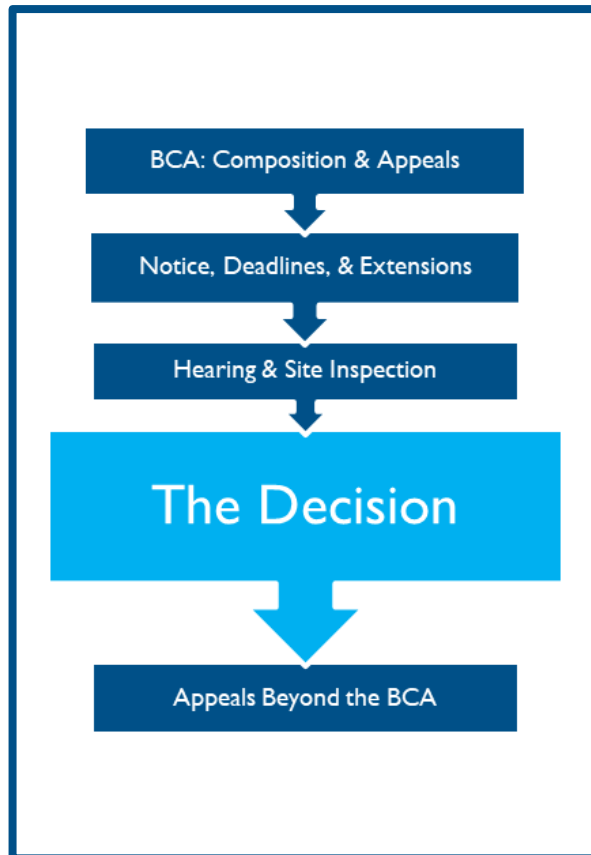
WHAT? MUST give a “true indication of the business of the meeting” and **MUST** include **at least**:

- (1) the members present;
- (2) active participants;
- (3) motions, proposals, resolutions offered;
- (4) votes or decisions made; and
- (5) record of individual votes if roll call is taken.

QUESTIONS?



THE DECISION



WHEN?

- The BCA **MUST** reconvene to make a decision based on the evidence from the hearing and the report of the inspection committee.
- The BCA **MUST** issue its decision within 15 days of the report of the inspection committee.

[32 V.S.A. § 4404\(c\)](#)

THE DECISION

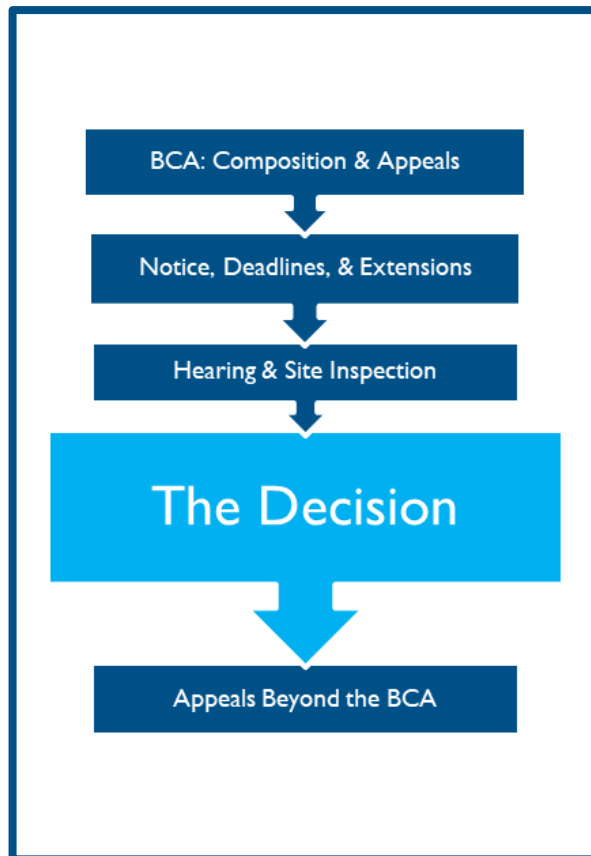
HOW?

The BCA decision is “de novo” (the case starts over).

BUT...the Listers’ assessment enjoys a presumption of validity!



THE DECISION: BURDEN OF PROOF

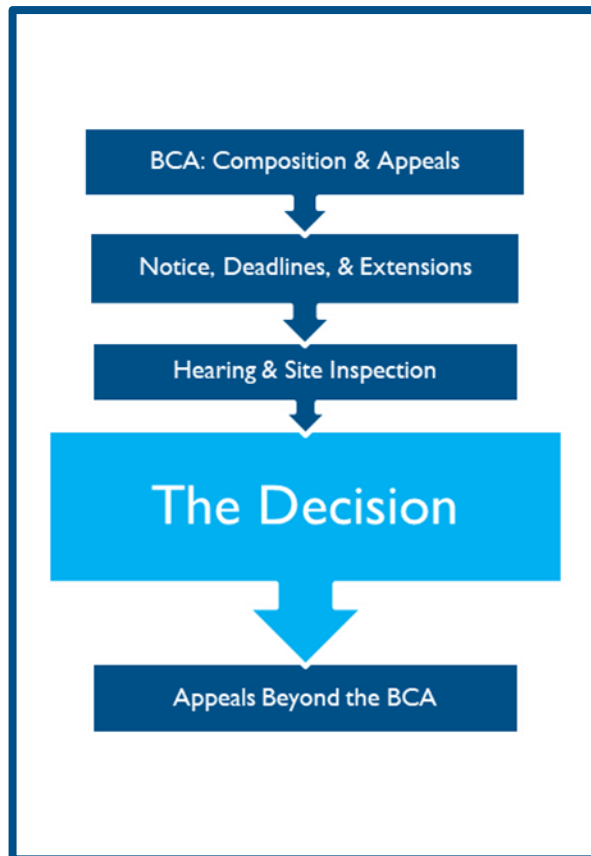


HOW?

- 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 BCA does not have to prove anything. The BCA's duty is to be convinced;

The bottom line: the taxpayer's evidence must outweigh the Listers' evidence to win.

THE DECISION: BURDEN OF PROOF



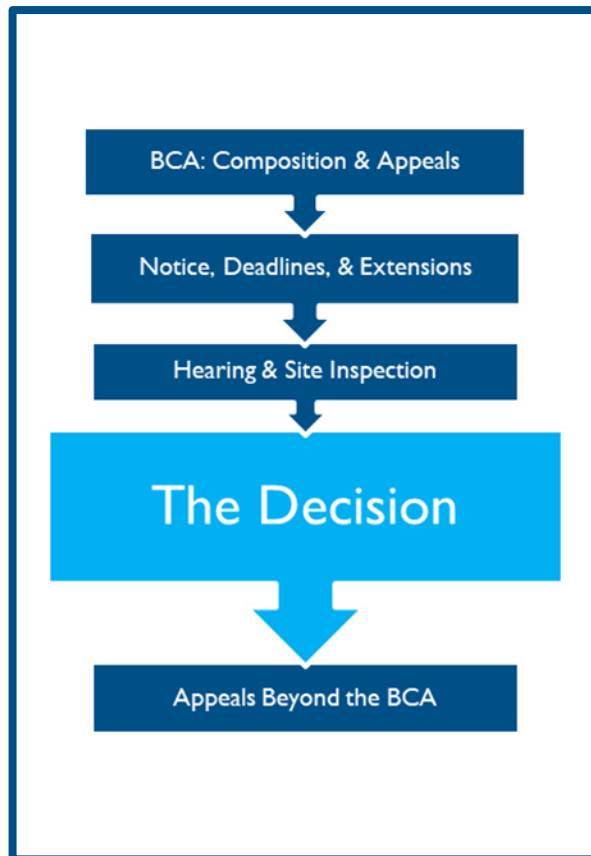
- The appellant always has the burden to persuade the BCA that the appraisal exceeds fair market value.



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

**This burden never shifts
from the appellant.**

THE DECISION: PREPONDERANCE OF THE EVIDENCE



- 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\(f\)](#)



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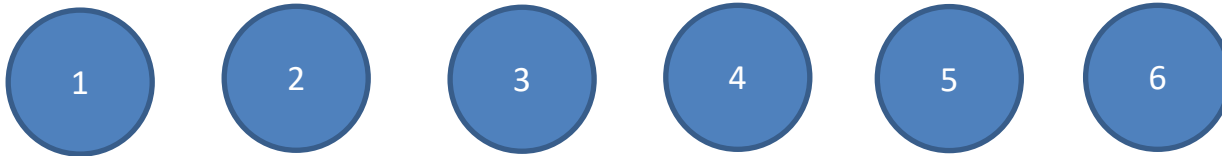


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THE DECISION

Board of Civil Authority

TOTAL BCA membership



6-member board

BCA members present at hearing

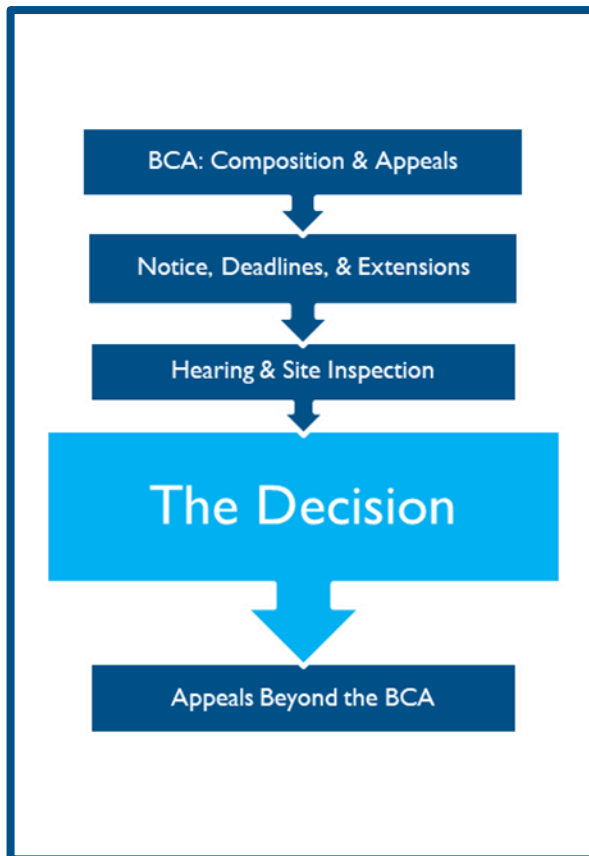


3 members = a quorum

“Each property, the appraisal of which is being appealed, shall be inspected by a committee of not less than three members of the board.”

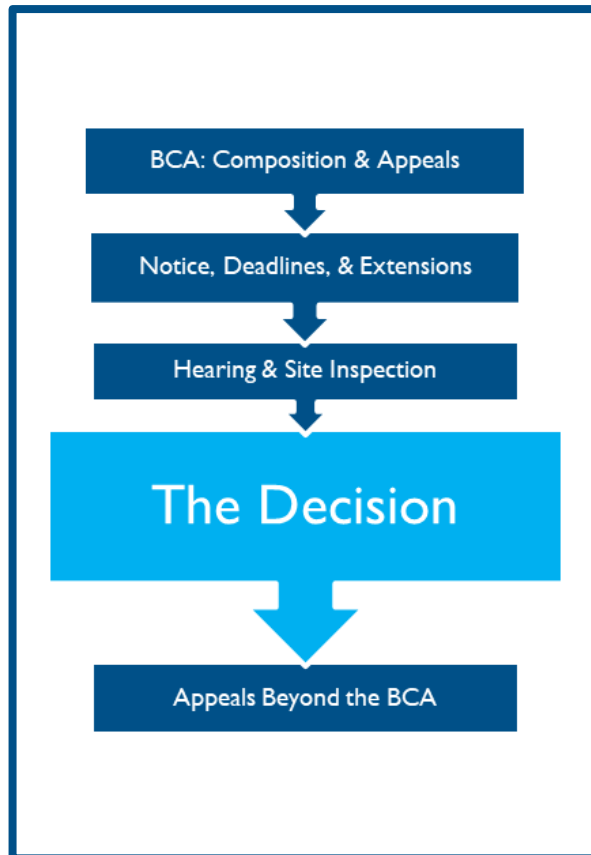
[32 V.S.A. § 4404\(c\)](#)

THE DECISION: LISTED VALUE



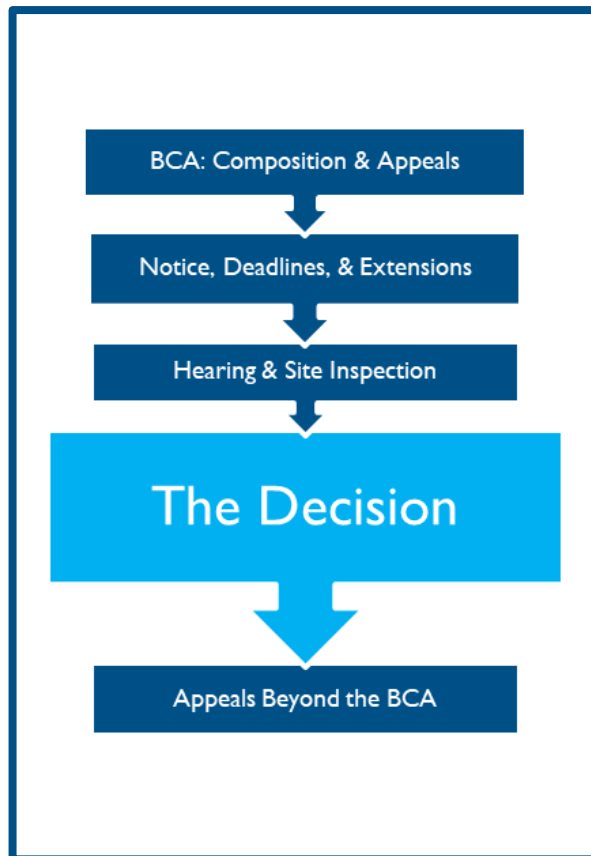
- BCA must establish the “listed value” by:
 - Finding the Fair Market Value of the property under appeal; and
 - Equalizing that value (applying CLA or other equalization ratio).

THE DECISION: WRITING THE DECISION



- **Must** be in writing.
- **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** use [PVR Form 4404 ON](#) (2022).
- **May** be signed by the BCA Chair or Vice-Chair. [24 V.S.A. § 1141](#)
- **May** increase, reduce, or sustain the appraisal made by the Listers.

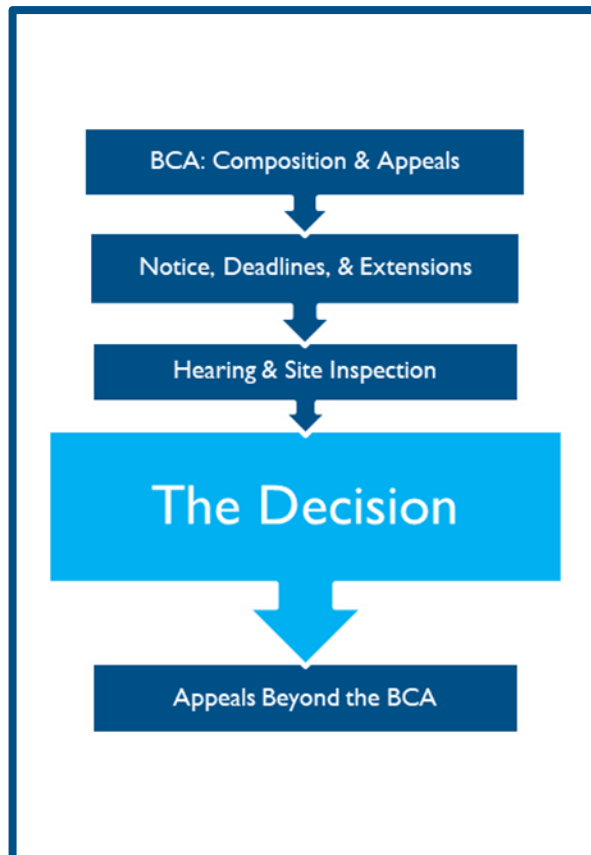
THE DECISION: WRITING THE DECISION



- 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](#)

THE DECISION: CAUTION - TIMELINES



If the BCA does not “substantially comply” with timelines, PVR/Court can:

- Reset appellants’ assessment to prior year’s value;

OR

- Set appellant’s value to one that will produce a tax liability equal to the preceding year.

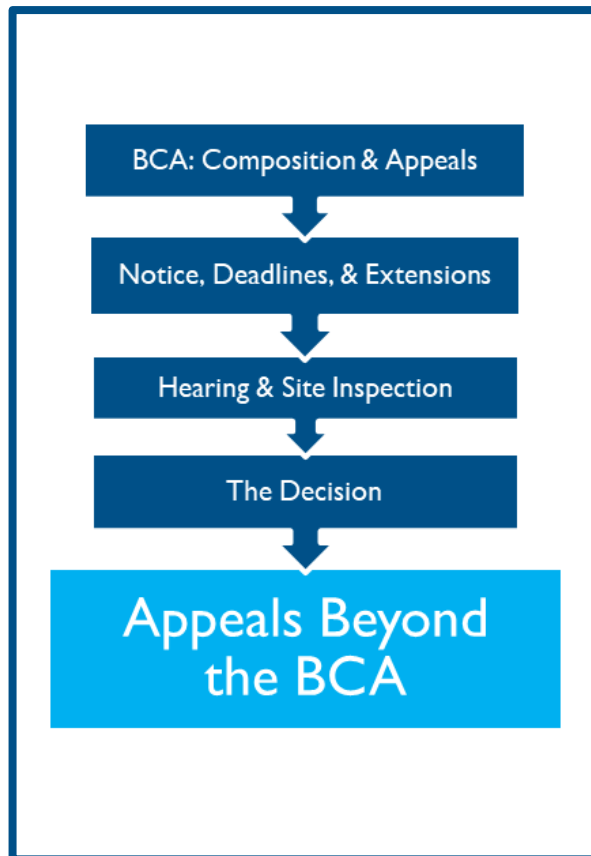


[32 V.S.A. § 4404\(c\)](#)

QUESTIONS?



APPEALS BEYOND THE BCA

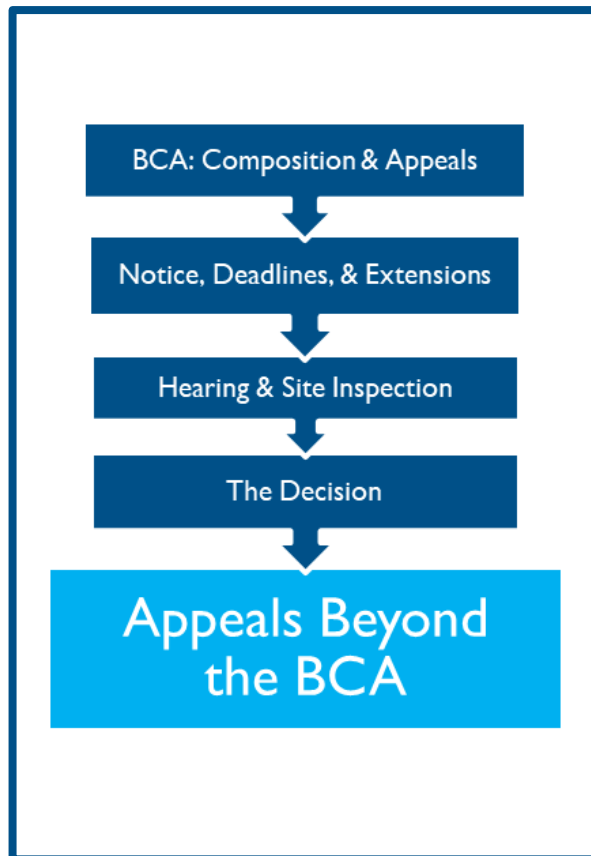


Appeal **MAY** be taken by:

- An individual taxpayer;
- The Selectboard; or
- An agent designated by the Selectboard, in the name of the town, on application of taxpayers whose combined property exceeds 3% of the town grand list.

[32 V.S.A. § 4461](#)

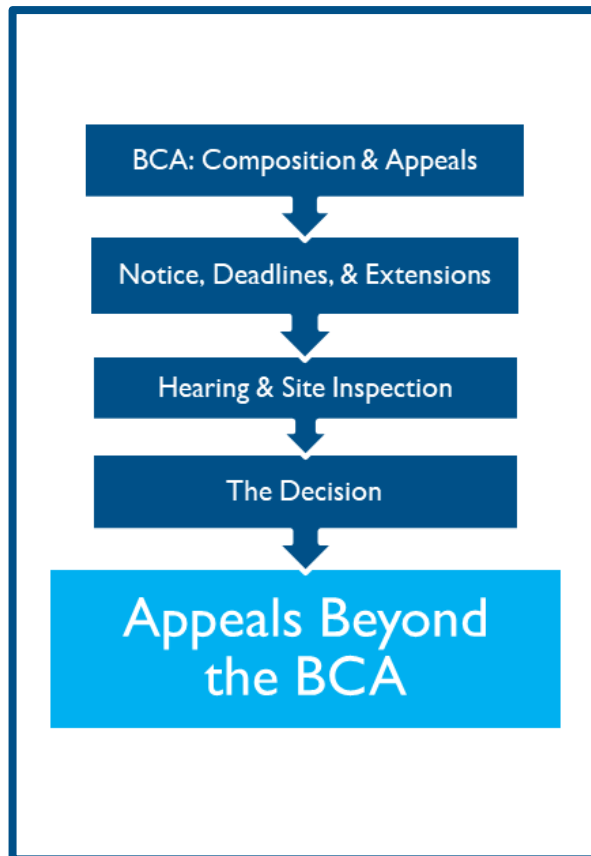
APPEALS BEYOND THE BCA: STATE APPRAISER VS. SUPERIOR COURT



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

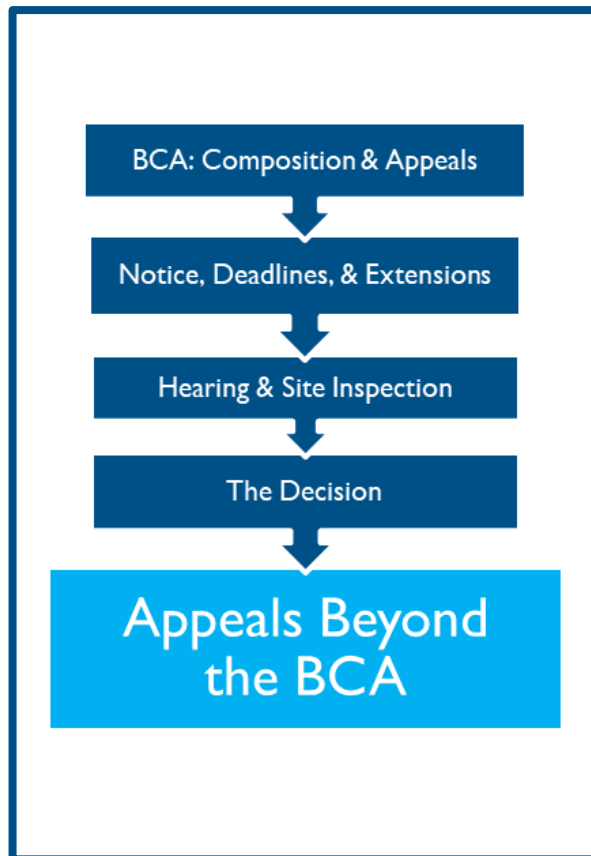
- **State Appraiser** – Generally less expensive, less formal process, with generally less involvement by attorneys.
- **Superior Court** – Better suited to addressing legal issues that arise in the context of a tax appeal – taxability, exemptions, and constitutional issues.

APPEALS BEYOND THE BCA: APPEAL CONCLUDED



- Appraisal 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\(a\)\(1\)\(B\)](#)

Figure 2: PVR Appeal Activity in Calendar Year 2022

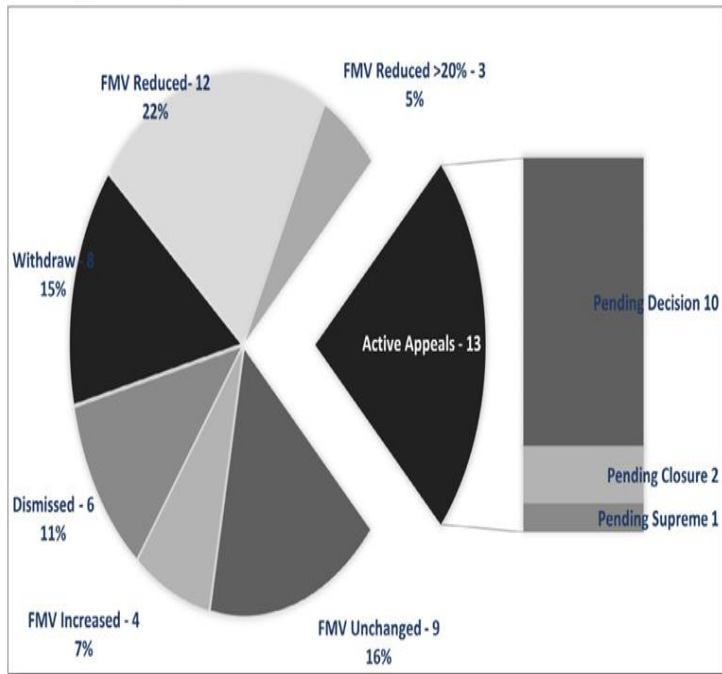
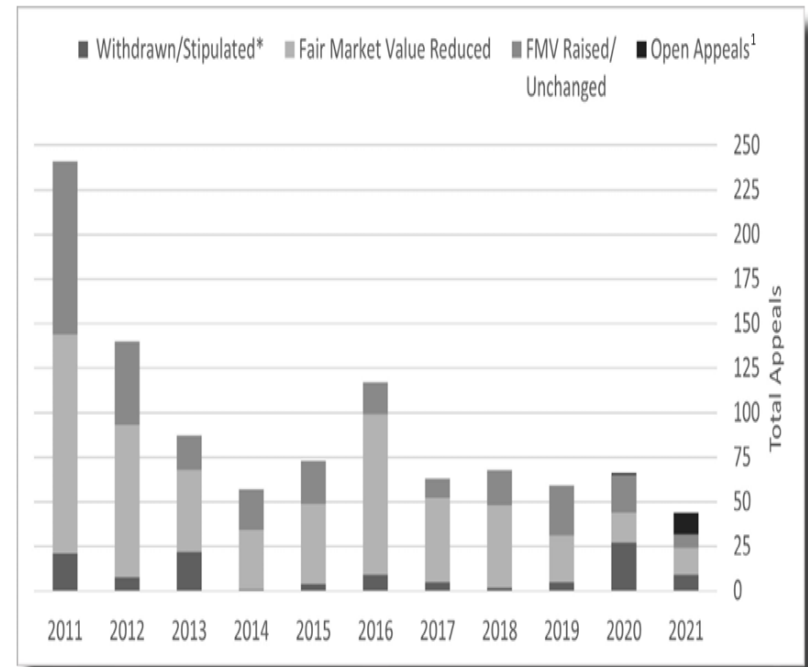


Figure 3: Current Status of Appeals by Year 2011 - 2021



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



[Model Rules of Procedure for BCA Hearings](#)



[2023 Board of Civil Authority Toolkit](#)



[Model informational handout for bca hearings](#)



Let us help!

Municipal Access Portal



Jeremy Weiss

Membership and
Administrative Coordinator



[VLCT.ORG/MAPFAQ](https://vlct.org/MapFAQ)



mailings@vlct.org



Direct 802-262-1960



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MAC MEMBER INQUIRY SERVICE

- “SUBMIT A LEGAL INQUIRY” OR “ASK A QUESTION” TABS ON WEBSITE
- [SEND US A MESSAGE](#)