

Appeals to the Director of Property Valuation and Review

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This document focuses on appeals of the Board of Civil Authority (BCA) decision to the director of Property Valuation and Review (PVR), under 32 V.S.A. § 4461. August 15, 2019.

32 V.S.A. § 4461. Time and manner of appeal.

April 1 is the statutory date for determining ownership and value of parcels. 32 V.S.A. § 3651. See *Mesa Leasing Ltd. v. City of Burlington*, 169 Vt. 93 (1999). Thus, it is the owner as of April 1, not a subsequent owner, who has the right to appeal the April 1 assessment. That right to appeal may be assigned to the new owner, but the owner as of April 1 is ultimately responsible for the consequence of any property value change.

Both the property owner and the town selectboard have the right to appeal a BCA decision within 30 days of the BCA decision entry date (the date the decision is mailed). The appellant, those filing the appeal, may choose whether the appeal will be filed with the director of PVR or county Superior Court. The appellant should send the notice of appeal and filing fee to the town clerk, indicating which venue the appeal is to be heard and copy the other party. The date the notice of appeal is received by the town clerk is considered the date of appeal and should be noted on the appellant's appeal notice.

Sometimes property owners mistakenly appeal directly to PVR or the court, bypassing the requirement under Rule 74(b) of the Vermont Rules of Civil Procedure (V.R.C.P.) to file the notice of appeal with the town, the administrative body who issued the decision under appeal. In these instances, the docket clerk sends a docketing letter to the parties, noting the date the notice of appeal was received by PVR, which becomes the date of appeal.

When the town receives a notice of appeal, the following are the steps in the process:

1. For appeals to the director of PVR - Under town cover letter, forward the appeal notice, filing fee, BCA decision, and inspection report. Please reference V.R.C.P. Rule 74 when filing with the superior court, as the entire appeal record must be submitted. If no filing fee was included in the appeal notice, please indicate that in your cover letter. Copy the property owner and/or the owner's representative and the town and/or its representative in all correspondence.

Why a town cover letter? It's helpful. The docket clerk will know the town received the appeal, and the date it was received by the town establishes the date of appeal. Without any indication the town has received the appeal first, the docket clerk will likely contact the town to find out the true date of appeal - whether it's the date the town received the notice of appeal or the date the docket clerk received it. Please also indicate whether counsel will represent the town for this appeal.

2. After the docket clerk has received the appeal notice, they will send a PVR docketing letter to all parties acknowledging receipt of the appeal and issue a PVR docket number.

If the notice of appeal was sent directly to PVR, the docketing letter will indicate that the appeal notice is required to be sent to the town clerk per Rule 74, set the appeal date as of the date the notice of appeal was received by PVR, and issue a docket number.

If no filing fee was included, the appellant will be given a time period to forward the fee, or the appeal will be dismissed.

3. The appeal must be forwarded to the next deciding body in a timely manner, typically within five business days, whether to PVR or superior court. If the town has objections to the appeal being accepted by PVR for hearing, they may refer to 32 V.S.A. § 4463. Objection to appeal.

32 V.S.A. § 4463. Objection to appeal

Within 14 days of the docketing letter being mailed to the parties, the taxpayer, town agent, or selectboard may claim that the appeal is defective or not lawfully taken, pursuant to 32 V.S.A. § 4463.

The objection must be filed in writing with the director of PVR, and a copy of the objection provided to the appellant. The director will schedule a hearing only upon written request; otherwise, a decision on the objection will be issued based on the limited record.

A jurisdictional decision is delivered by a Department of Taxes hearing officer and approved by the director of PVR. The order will either affirm the objections, therefore dismissing the appeal, or deny the objections, in which case the appeal will go forward and be assigned to a PVR appointed hearing officer.

When considering objections due to the timeliness, statute provides that the date a BCA notice is mailed to the property owner is considered the date of entry of the BCA decision. Under PVR's duly adopted rules, the 30 days begins to run the day *after* the BCA notice is mailed, meaning the day of mailing is not counted:

The notice of appeal and the [\$70] filing fee must be received... before the close of business on the [30th] day *after* the Town Clerk mails notice of the Board of Civil Authority's decision to the taxpayer. However, if the [30th] day falls on a Saturday, Sunday or legal holiday, it shall be sufficient if the notice of appeal is received on the next business day.

Property Valuation and Review Division, Rule 84-1, Section 5, Time for Appeal.

32 V.S.A. § 4464. Withdrawal of appeal.

Only the appellant, by written request to the director of PVR, may request to withdraw the appeal. Withdrawal requests are freely granted at any time before the scheduled hearing date.

Upon receipt of the withdrawal request, the director issues a letter to the appellant and town clerk certifying the withdrawal. The town clerk shall record the certificate of withdrawal in the land records, and the property's appraised value shall remain as determined by the BCA.

If the parties agree on an assessment value other than that set by the BCA, they should not submit a withdrawal. Instead, they must complete a settlement agreement. Please see Stipulations/Settlement Agreements.

32 V.S.A. § 4465. Appointment of property valuation hearing officer; oath; pay

The director of PVR seeks qualified candidates for appointment as property valuation hearing officers, and has the right to remove a hearing officer for inefficiency, malfeasance in office, or other just cause.

The role of the hearing officer is to collect evidence from the parties involved in the appeal, weigh the evidence to find the essential facts relevant to the questions on appeal, and use those facts to prepare written findings. The hearing officer does not conduct an independent appraisal to determine a value of the property.

Adequate knowledge of property valuation methods is required for the hearing officer to determine the relevance and usefulness of evidence presented by the parties. A hearing officer must have the skills to apply the law related to property value appeals (burden of proof, presumption of validity, and similar procedural matters), as well as an understanding of the concepts of property law. A hearing officer also must be able to analyze the evidence and present an analysis in a factual, well-written discussion, and supportable conclusion.

Under this section, hearing officers are afforded the power to subpoena witnesses, records and documents, and administer oaths to witnesses.

Ex Parte Communication

Hearing officers are not allowed to discuss any issues of law or fact with any person, party, or their representative, when the other party is not given notice or opportunity to participate. 3 V.S.A. § 813. Doing so is known as *ex parte* communication.

In limited circumstances, the hearing officer may communicate directly with a party regarding purely administrative matters, such as scheduling the hearing.

Any party alleging *ex parte* communication should send their written assertions to the hearing officer, and provide a copy to all parties.

Pre-Hearing Conference

A pre-hearing conference may be scheduled by the hearing officer, or at the written request of a party, to resolve preliminary issues and, when appropriate, to make informal dispositions. PVR Rule 84-1, Sec. 13.

Discovery & Subpoenas

Prior to the hearing, both appellant and appellee are entitled to reasonable discovery in connection with an appeal. Discovery is a pre-trial procedure in which each party may obtain relevant documents and records from the other party by means of written request. Discovery requests should be sent in writing between the parties.

If the discovery process is not proceeding due to one party not supplying the requested documentation or testimony, a Motion to Compel or Motion for a Subpoena may be submitted by the requesting party. Requests for subpoenas must be made in writing to the hearing officer, copying the non-compliant party.

After review, the hearing officer may issue a subpoena to compel the appearance of individuals to testify or the production of documents. If the hearing officer issues a subpoena, it will be sent to the requesting party, who must then serve it in the manner provided by law. PVR Rule 84-1, Sec. 14.

The hearing officer is also granted the authority to enforce the subpoena by issuing appropriate sanctions, including dismissal of the appeal, under PVR Rule 84-1, Sec. 12, and 3 V.S.A. § 809a.

An aggrieved party may request a proceeding in the superior court in the county in which the petitioner resides or in which the hearing will be held to modify or vacate the subpoena under 3 V.S.A. § 809b.

Stipulations/Settlement Agreements

If the parties reach an agreement for a property value other than that decided by the BCA, the terms of the agreement must be stipulated and signed by both parties. Any stipulation must be signed by the selectboard or city council members *unless* express permission is given to authorize an agent to act on their behalf and sign the stipulated agreement.

If the selectboard or council authorizes the listers or the town manager to act on its behalf, a certificate of authority signed by the selectboard/council, or a copy of the selectboard/council's meeting minutes, must be included with the signed agreement.

The agreement must be sent to the hearing officer, who will review the stipulation to ensure that it is complete, unambiguous, and represents the correct valuation of the property. The hearing officer will then issue an order either approving or denying the agreement. No findings or conclusions are necessary, but if it is denied the hearing will typically be held as scheduled.

Settlements should be offered to the hearing officer at least a week in advance of the scheduled hearing date, if possible.

Continuances

PVR Rule 84-1, Sec. 11, allows the hearing officer to grant continuances for good cause. Requests for continuances should be made at least two weeks prior to the hearing unless it is an emergency request, either orally or in writing, and a copy must be submitted to the opposing party.

32 V.S.A. § 4466. Conduct of appeal before hearing officer

Notice of Hearing

The hearing officer will send written notification to all parties, or their representatives, of the time and place of the hearing. The appeal must be heard in the town in which the property is located. The notice should contain a statement of the time, place, and nature of the hearing. It should state the legal authority and jurisdiction under which the hearing is being held, including the section(s) of the statutes and the rules involved. The notice should have a short and plain statement of the matters at issue.

3 V.S.A. § 809; 32 V.S.A. § 4466; PVR Rule 84-1, Sec. 10.

Oaths

All oral testimony shall be presented under oath. PVR Rule 84-1, Sec. 15.

Representation

The parties may be represented by counsel, but legal representation is not required. PVR Rule 84-1, Sec. 16. Please be sure to copy the party's accepted representative in all correspondence, including discovery, motions, and final decision. This is considered best practice for all property valuation hearings, through the formal grievance process and BCA appeal.

Evidence and Exhibits

The hearing officer will accept evidence that is relevant and commonly relied upon by reasonably prudent people in the conduct of their affairs. Evidence that is irrelevant or unduly repetitious may be excluded by the hearing officer. PVR Rule 84-1, Sec. 18

Hearing Recordings

All hearings are recorded. PVR Rule 84-1, Sec. 20. Transcripts may be obtained by written request to the docket clerk after paying reasonable costs.

Burden of Proof

At the hearing, the town will be called upon first to introduce the appraisal of the subject property into evidence. The town may call witnesses and provide evidence to substantiate the values. There is a presumption of validity attached to the value set by the BCA.

It is for the appellant to overcome the presumption of validity by presenting admissible evidence of value. This is known as the burden of production. The appellant has the burden of introducing credible evidence to reasonably show that the property was not assessed at its fair market value, or not listed equitably compared to the rest of the neighborhood or municipality.

When such evidence is presented, the presumption in favor of the listers disappears, and the town must defend the appraisal by introducing evidence that it substantially complies with constitutional and statutory provisions of uniformity and fair market value. *See New England Power Co. v. Town of Barnet, 134 Vt. 507-08 (1976).*

The taxpayer retains the burden of persuasion for all contested issues.

Defaults

Under PVR 84-1, Sec. 22, a default hearing may occur if one party doesn't attend the hearing. In those instances, the party that does attend may present their evidence and the decision will be based on that evidence alone.

32 V.S.A. § 4467. Determination of appeal

***De Novo* Hearing**

The hearing officer shall proceed *de novo* and determine the correct valuation of the property, meaning the appeal begins anew, and the issues will be decided based on the evidence presented at the hearing before the hearing officer.

Inspections

Recent changes to § 4467 states that the subject property *may* be inspected by the hearing officer, unless one of the parties requests an inspection, in which case the property *shall* be inspected prior to making a determination.

Hearing officers may choose to inspect the parcel or comparable properties submitted into evidence. The subject property should be inspected in its entirety, while comparables would be viewed as drive-by only. These inspections are generally done after hearing all testimony on the appeal.

All parties have the right to have a property inspection conducted, and the right to accompany the hearing officer on inspections of comparable properties. If you wish to have a property inspection conducted, let the hearing officer know before or at the beginning of the hearing.

Decisions

If the hearing officer finds the listed value of the subject property does not correspond to the listed value of comparable properties within the town, the value of the subject property must be set in the grand list at the value set by the hearing officer. Within 30 days of the hearing, a written decision should be filed with the docket clerk in either digital or hard copy format. PVR Rule 84-1, Sec. 24.

32 V.S.A. § 4468. Transmission and record of determination

Upon PVR's receipt and review of a signed copy of the decision, the PVR docket clerk will enter an order date and send the decision via certified mail to the appellant and town clerk. The town clerk shall record the decision in the land records.

The appraisal value fixed by the director shall become the basis for the grand list for the year the appeal was taken, and the next two ensuing years. However, the appraisal value may change if the property is materially altered, changed, damaged, if the municipality undergoes a complete revaluation. The homestead and current use values may change if the homestead declaration of business use percentage or the current use enrollment has changed.

Reconsideration Requests

Appeals from the BCA are governed by the Vermont Administrative Procedures Act (VAPA), which does not specifically provide for motions for reconsideration. However, as with other procedural issues that arise, if VAPA does not cover the issue, we look to the Vermont Rules of Civil Procedure for guidance.

V.R.C.P. Rule 59(e) gives the court (in this case the hearing officer) broad authority to alter or amend a judgment if a motion is made within 28 days of the decision. This rule allows the hearing officer to reexamine their decision for correctness and make amendments if an error is found.

The party believing errors were made should submit a Motion for Reconsideration to the hearing officer, detailing the substantive errors, within 28 days of the decision date of entry.

Within 14 days after the motion has been filed, the other party may submit a response to the motion, either supporting or rejecting the reasons for the motion. If the other party does not object within 14 days, any such objection is considered waived.

A timely motion for a reconsideration under Rule 59(e) terminates the running of the time for appeal. Once the hearing officer either grants the Motion for Reconsideration and issues a new decision or issues an order denying the motion, the full time for appeal begins again.

The Department has no authority to overturn the decision of a hearing officer.

32 V.S.A. § 4469. Tax credit upon successful appeal

When a decision has reduced the value of the owner's property, the town is obligated to credit any taxes paid on the original appraisal that was appealed. This statute provides that the credit will be used against taxes for succeeding years until depleted.

Often towns will wish to avoid paying the interest on the overpayment that accrues under 32 V.S.A. § 5136(b), and tend to promptly refund the overpayment to the property owner.

Appeals to the Supreme Court

Any person aggrieved by the final decision of the property valuation hearing officer may send a written notice of appeal to the PVR docket clerk in accordance with 3 V.S.A. § 815.

Best Practices

- If the town listers and BCA accept an appeal party's representative, it should include that representative in all correspondence to the taxpayer, including notices and disbursement of the BCA decision.
- Include the property owner's appeal rights and supporting statutes in decision and/or cover letters containing decisions. For instance, aggrieved parties may appeal the BCA's decision under 32 V.S.A. § 4461; appeals of fair market value used to calculate Land Use Change Tax fall under 32 V.S.A. § 3758(b).
- Any written requests, notices, memoranda, etc., sent to the hearing officer must be sent to the other party.