

**RULES OF PROCEDURE  
FOR  
SHELBURNE BOARD OF CIVIL AUTHORITY  
PROPERTY TAX ASSESSMENT APPEAL HEARINGS**

**A. Purpose.** The Board of Civil Authority (“BCA”) of the Town of Shelburne is required to conduct hearings on taxpayer appeals (“tax appeal hearings”) from the Town Assessor’s property valuation grievance decisions in accordance with Chapter 131 of Title 32, Vermont Statutes Annotated. The purpose of these rules is to establish uniform procedures for conducting the tax appeal hearings and to ensure compliance with other applicable laws, including Vermont’s Open Meeting Law. Following a tax appeal hearing, the BCA may decrease, increase, or make no change to the value of the property set by the Assessor. 32 V.S.A. §§ 4409, 4404(c). The taxpayer has the burden of overcoming the legal presumption that the value set by the Assessor is correct (see more on the burden of proof below in Section G).

**B. Application of These Rules.**

These Rules of Procedure apply to all tax appeal hearings conducted by the BCA. A copy of these Rules shall be posted on the Town’s website; hard copies shall be available at no charge at the Town Clerk’s office. In addition, the Town Assessor’s “Notice” of grievance decision delivered to taxpayers pursuant to 32 V.S.A. § 4224 shall include a references to these Rules, a link to the Vermont Secretary of State “Handbook on Property Tax Assessment Appeals” and a link to the Vermont League of Cities and Towns’ Model Informational Handout for Board of Civil Authority Property Tax Assessment Appeals, with the caveat that these Handouts are only advisory and not controlling on issues of the interpretation of the law. The current links to the Handouts are here:

[https://www.sec.state.vt.us/media/258674/tax\\_appeal\\_handbook\\_2007.pdf](https://www.sec.state.vt.us/media/258674/tax_appeal_handbook_2007.pdf)

<https://www.vlct.org/resource/model-informational-handout-bca-hearings>

**C. Filing a Property Tax Appeal.**

1. The deadline for filing a Notice of Appeal is 14 days after the date the Town mails the notice of the Assessor’s grievance decision to the property owner. 32 V.S.A. § 4403.

2. Upon receipt of a Notice of Appeal, the Town Clerk shall record the filing in the book containing the abstract of individual property assessment lists, and notify the BCA chair who, provided the Notice of Appeal was timely filed, shall set a date for the tax appeal hearing, which date shall be not later than 64 days after the last date allowed for Appellants to file Notices of Appeal. The Town Clerk shall post a copy of the hearing Notice in three public places in the Town and at least five days prior to the hearing shall mail a copy of the hearing Notice, postage prepaid, to the Appellant, the Town Assessor and the members of the Board of Civil Authority.. The Town Clerk’s Hearing Notice to the Appellant shall include the Shelburne BCA’s Informational Handout and Timeline for Property Tax Appeal Hearings. The statutes pertinent to this section are 32 V.S.A. §§ 4403, 4404(b), 4341, and 24 V.S.A. § 801.

#### **D. The Tax Appeal Hearing.**

1. The chair of the BCA, or in the chair's absence or recusal, the vice-chair, shall preside at all tax appeal hearings. If a hearing panel is held pursuant to Section G. of these Rules, the chair of the hearing panel will have the same authority for that hearing as the chair of the BCA. If both the chair and the vice-chair are absent or are recused or not present for any reason, a member elected by the BCA shall chair 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. While a larger number of BCA members is clearly desirable, under the law a quorum of the BCA shall be at least three 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. 17 V.S.A. § 2103(5); 24 V.S.A. § 801.
3. A BCA member shall be disqualified from all tax appeal hearings in any year in which the member appeals the Assessor's decision on his or her own tax assessments or has an ownership interest in a property under appeal beyond the Assessor. 32 V.S.A. § 4404(d).
4. BCA members are subject to the Town Ethics and Conflict of Interest Ordinance. They are expected to be familiar with that Ordinance and abide by it. The Ordinance is posted on the Town website: <https://www.shelburnevt.org/DocumentCenter/View/4023/Ethics-Ordinance>. Decisions to recuse on account of a conflict of interest or other reason should be made at the earliest possible time and wherever possible prior to the BCA taking evidence in a tax appeal hearing.
5. Each BCA tax appeal hearing shall have an agenda prepared by the chair. Since tax appeal hearings are quasi-judicial proceedings under Vermont law, the agenda for a tax appeal hearing will not include an opportunity for public comment. Generally, 30 minutes shall be allotted for each hearing, with the time divided evenly between the Appellant and the Assessor. The chair may, for good cause, allow additional time for a hearing. All hearings shall be conducted in the same order as they appear on the agenda, except that the chair may alter the order to accommodate the needs of one or more Appellants.
6. All hearings shall be audio- or video-recorded. The Chair will announce at the hearing who is recording the proceedings and how the recordings can be accessed by the parties, BCA members and the public.
7. The Town Clerk shall determine and notify the Appellants and the Assessor of the number of copies of all documentary evidence that must be submitted to the Town Clerk at least seven days prior to the hearing, so that the BCA members can be prepared for the hearing. Appellants and the Assessor may submit additional materials at the hearing. The Town Clerk shall mark all original documents submitted to the BCA with appropriate identifying information and shall note on them the results of any BCA action on objections to their admissibility.
8. For good cause, the BCA may permit the Appellant, the Assessor and/or any witness to appear at the hearing by telephone or other electronic means, provided that each party in the hearing has

an opportunity to participate in, hear, and, if technically feasible, to see the entire hearing as it is taking place.

9. The chair may caution an Appellant, the Assessor, or any other witness that they may not present any irrelevant or unnecessarily repetitive evidence; if necessary, the chair may order any witness that they may not present such evidence, and may order any such evidence stricken from the record.

10. The chair shall conduct all tax appeal hearings in the following sequence and manner:

- a. Convene the hearing and assure that the proper recording of the hearing has started.
- b. State the name of the Appellant, property location and parcel ID number.
- c. Ask the Appellant and Assessor, and any persons expected to be called as witnesses, to take the following oath or affirmation:

*Under the pains and penalties of perjury, do you solemnly swear or affirm that the evidence you give in the cause under consideration shall be the whole truth and nothing but the truth?*

- d. Ask whether the Appellant has received a copy of these Rules of Procedure and has any questions about how the hearing will proceed.
- e. Request BCA members to disclose any conflict of interest, *ex parte* communications or public displays of pre-judgment about the appeal and take whatever action (e.g., possibly recusal) may be required by the Town Ethics and Conflict of Interest Ordinance.
- f. Ask the Assessor to introduce the property on appeal by identifying the property and stating its fair market value as determined by the Assessor as of the date of most recent Town assessment (typically, the most recent April 1).
- g. Ask the Appellant to present the Appellant's evidence and testimony on the property's fair market value as of the date of the most recent Town assessment, through the Appellant's testimony and the testimony of other witnesses.
- h. Permit the Assessor to respond to the Appellant's evidence and ask questions of the Appellant and the Appellant's witnesses.
- i. Invite questions from BCA members of the Appellant and the Appellant's witnesses.
- j. Ask the Assessor to present his or her rebuttal evidence and testimony on the property's fair market value.
- k. Permit the Appellant to respond to the Assessor's evidence and ask questions of the Assessor and the Assessor's witnesses.
- l. Invite questions from BCA members of the Assessor and the Assessor's witnesses.
- m. Time permitting, the chair may ask the Appellant and Assessor to give closing statements.
- n. The chair then will appoint a committee of three or more BCA members to inspect the property and set a date and time for the inspection at a time reasonably convenient to the property owner and the inspection committee members. The inspection must be done in time for the BCA to meet its deliberation and decision-making deadlines under the law.
- o. The chair will recess the hearing to a date and time not more than 25 days from the hearing, where the BCA will hear the inspection committee's report, discuss it and, where the BCA so chooses, hear additional testimony on the appeal. The BCA then shall deliberate, which it may do in a private deliberative session, and decide the appeal within 15 days of the closing of the recessed hearing.

### **E. The Site Inspection Committee.**

1. As required by state statute and noted above, each property shall be inspected by a site inspection committee of three or more BCA members appointed by the chair. The site inspection committee shall visit and inspect each property, including the interior and exterior of all structures, on the date and time set at the conclusion of the initial hearing on the appeal.
2. The chair may request that the inspection committee prepare a report for the BCA's review prior to the date for the follow-up hearing for delivery to the BCA prior to the recessed hearing date. The draft may include a proposed decision supported by specific reasons and facts. When this report is completed, the inspection committee shall deliver it to the Town Clerk; the Town Clerk shall promptly deliver it to the remaining BCA members.
3. If, after notice of the date of the inspection, the Appellant refuses to allow an inspection of the property as required under 32 V.S.A. § 4404(c), including the interior and exterior of the structures on the property, the appeal shall be deemed withdrawn. The inspection of the property, and meetings of the inspection committee to discuss the inspection, are not subject to the Open Meetings Law. 1 V.S.A. § 312(g), and the public has no right to be present.

### **F. The Site Inspection Committee Report Review Hearing.**

1. The BCA chair shall conduct all site inspection committee report review hearings as public sessions and in the following sequence and manner:
  - a. Reconvene the hearing at the date and time specified.
  - b. Invite the inspection committee to present its report.
  - c. Invite comments from the Appellant.
  - d. Invite comments from the Assessor.
  - e. Invite BCA members to make comments, and to ask questions of the inspection committee and, where the Appellant or the Assessor has made comments, to ask questions of them.
  - f. Close the hearing and explain that the BCA will enter deliberative session and issue a written decision.

### **G. The Burden of Proof.**

In a property tax appeal, the law presumes that the Assessor's valuation is correct. If the Appellant presents no testimony or other evidence in an appeal, the Assessor is not required to present any testimony or evidence – and the Appellant loses the appeal. The Appellant can erase this presumption by presenting credible testimony and other evidence in favor of a lower valuation. If the Appellant does this to the BCA's satisfaction, then the presumption in favor of the Assessor's valuation is gone, and the Assessor must present testimony and other evidence, which the Appellant can then try to rebut. The Appellant ultimately has the final burden of proving by a preponderance of all the evidence that the Appellant's valuation should prevail.

## **H. The BCA's Deliberations and Decision.**

1. Under Vermont law, as a quasi-judicial body, the BCA's deliberative sessions are closed to the public. No motion or vote is necessary to enter deliberative session. The BCA may enter a deliberative session right away or may set a later time or times for its deliberations. The BCA may deliberate in a closed session in person, by telephone or video conference, by digital written communications, or any other means convenient to the BCA.

2. Members of the BCA who were not present for all testimony or who have not reviewed all evidence submitted in an appeal hearing shall not participate in the deliberative session and decision. All BCA members present are expected to vote unless they have recused themselves. Recusals and abstentions shall not count towards either the majority or the minority.

3. During BCA deliberations, where a final written decision needs to be prepared, the chair or another member at the chair's direction will prepare a proposed final written decision. The chair shall circulate the written decision for review by the members who participated in the deliberations; if necessary to obtain final agreement on the content of the written decision, the chair may schedule another deliberative session.

4. When the BCA's deliberations have been completed and a consensus for a decision has been reached, the chair or another member at the chair's direction will prepare a proposed written decision. The decision must clearly state the reasons for the BCA's decision, and should address the applicable statutory qualities of fair market value as set out in 32 V.S.A. § 3481(1), including "the availability of the property, its use both potential and prospective, any functional deficiencies, and all other elements such as age and condition which combine to give property a market value." 32 V.S.A. § 3481(1). The decisions shall also state the statutory 30-day deadline for the Appellant to file an appeal of the decision. The chair shall circulate the written decision for review by the members who participated in the deliberations; if necessary to obtain final agreement on the content of the written decision, the chair may schedule another deliberative session.

The decision must be issued within 15 days of the close of the site inspection committee review hearing. The final decision should state how each participating BCA member voted.

5. Upon the signing of the final decision, the Town Clerk shall record the decision in the BCA's Town records, post it on the BCA's website and send a copy to the Appellant by certified mail. The Clerk shall also send a copy to the Appellant and the Assessor by email attachment.

## **I. If the BCA is Faced with a Significant Number of Appeals.**

If faced with a significant number of appeals, the BCA may establish distinct hearing panels of three or more BCA members, and appoint a chair of each panel, to hear and decide appeals in accordance with these Rules and state law.

## **J. Public Records.**

Draft of August 18, 2020

In an appeal, documents and other materials filed with the BCA by a property owner and the Assessor are public records under the Vermont public records laws and are available for inspection or copying at the Town Clerk's office in accordance with those laws. Documents and other records created by the BCA and its members when an inspection committee is conducting its work and when the BCA is deliberating, including digital communications and drafts of decisions, are not public records.

**K. Amending these Rules of Procedure.**

These rules may be amended by a majority vote of those BCA members present at a meeting where a quorum is present and where the proposed amendments are described in the notice of the meeting.

Adopted by the Shelburne Board of Civil Authority at its meeting held \_\_\_\_\_, 2020.

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Thomas A. Little, Chair

Attest: \_\_\_\_\_ Diana Vachon, Town Clerk