Minutes of the Board of Civil Authority

Town of Marlboro, Vermont ; 510 South Road
September 8, 2026 4pm Marlboro Town Office

Board members present were:

Select Board members Molly Welch, & Kate Kirkwood ; Justices of the Peace T. Hunter Wilson, Marcia Hamilton, David Holzapfel, and Andy Reichsman; Town Clerk Forrest Holzapfel and Town Attorney Bob Fisher. On ZOOM Rod Williams, Vermont Assistant Attorney General & Brian Fogg, Appraiser for Vermont CALAP program.

Also present were Listers Eric Matt and Evan Wyse (Chair) and as well as appellants Potash Hill Inc. & Marlboro School of Music, Inc. represented by Board President Christopher Serkin, Attorney Conor McKenzie, Appraiser Michael Keller.

BCA Chairman T. Hunter Wilson called the meeting to order at 4:01 pm and the BCA Chair reviewed the procedure and format of the hearing, unchanged from the last BCA tax appeal hearing.

BCA members, Listers, and appellants all took the oath and signed their names. No conflict of interest was noted across all parties.

T. Wilson laid the ground rules of the meeting and that a BCA tax appeal hearing is a quasi-judicial proceeding: the Board hears evidence from both the Listers and the appellant, each side may question the other's evidence, and the Board then deliberates and issues a written decision.

The BCA identified four related matters to be heard together, then addressed separately: (1) valuation of the Potash Hill parcels (former Marlboro College campus); (2) the charitable tax exemption claimed for the Potash Hill parcels; (3) the charitable tax exemption claimed for the Musician's Way housing parcel; and (4) valuation of the Musicians Way parcel, reserved by the appellant pending the exemption decision.

Potash Hill Inc.

Lister Chair Evan Wyse presented the properties under consideration:

1) Potash Hill Inc. : Forty campus buildings on 438.05 acres located on South Road.

He submitted the following documents as evidence:

- L-1 : Potash Hill grievance appeal & Lister response
- L-2 : Listers card for Potash Hill properties NOT covered by appraisal
- L-3 : Brian Fogg Appraisal
- L-4 : Tax Map of all parcels included
- L-5 : Listers overview of Potash Hill & Marlboro School of Music appraisal process

Evan Wyse explained each of the above exhibits, which were shared with the BCA. He stated that the Listers lack the in-house capacity to appraise a property of this scale and complexity and applied to the State of Vermont Property Valuation & Review's CALAP program who in turn engaged appraiser Brian Fogg to perform the valuation for the 2026 Grand List. Brian Fogg, participating on zoom, explained his process:

- Three approaches to value were considered:

- Sales Comparison approach: considered but ultimately not relied upon, because comparable closed college-campus sales identified elsewhere in Vermont were found not to be arm's-length (distressed) transactions, and the subject property's more recently built facilities (including Reich Hall and a new residence hall, built at a combined cost in excess of $13 million) made adjustment to available comparables unreliable.
- Income Capitalization approach: based on researched market rental rates for comparable industrial/commercial spaces and an annualized value derived from the existing ground lease, indicating a value of approximately $8 million. Mr. Fogg testified that the lease was not treated as fully arm's-length given the related-party relationship between the property owner (Potash Hill) and the lessee (Marlboro Music), but that it nonetheless provided a market indicator.
- Cost approach: valued each of the roughly 40 buildings individually on a "redeveloper's" theory — i.e., what a hypothetical buyer would pay for the foundational infrastructure of a building suitable for repurposing, generally 20–25% of replacement cost new, with several outbuildings valued near zero — indicating a value of approximately $14 million.
- Reconciling the income ($8 million valuation) and cost (+/- $14 million valuation) indications, Mr. Fogg concluded a market value of $11.8 million, including $726,500 in land value derived from the Town's Lister's Land Value Schedule (used, he testified, to keep the parcel's land value proportional to other land in Town rather than performing a separate land study).
- Mr. Fogg stated that his scope of work did not include an opinion on the parcel's exempt or Current Use program status. Consistent with professional appraisal standards and the potential for litigation, he had not reviewed the appellant's appraisal by Michael Keller in detail and deferred questions about it to the Listers or the Town's attorney.

After a few minutes of reviewing materials, the appellant spoke.

Appellant Potash Hill submitted a packet with their information for the BCA, entitled PH-1

Appellant Attorney Conor McKenzie spoke:

- Both Potash Hill, Inc. & Marlboro School of Music, Inc. are 501 c3 non-profits
- Potash Hill, Inc. is the supporting organization for the campus and the tax payer
- The campus currently operates at an annual operating deficit of approximately $1.6 million (covering utilities, insurance, and a minimal maintenance crew, and not including a realistic capital-reserve budget), and efforts to generate outside rental income from the property has thus far not proven financially sustainable.
- Marlboro School of Music values it's relationship to the town and that they might be willing to negotiate on taxable value.
- College closures are increasingly prevalent, and repurposing the campus has proved difficult.

The appellant's Appraiser Michael Keller, submitted a valuation for the campus of $3.5 million. His methodology relies exclusively on the Sales Comparison approach dismissing the cost and income approaches as inapplicable to the current market. Further, Keller did not incorporate the Marlboro Music ground lease, explaining that he valued the physical real estate independent of any particular lease arrangement. His core arguments for the valuation:

- Market Realities of College Sales: Keller cited the sales of other Vermont college campuses which have closed (e.g., Goddard, Green Mountain, and Sterling) as the only true indicators of value. He argued these properties sell at deep discounts regardless of their aesthetic appeal.
- Remote/Rural Location: Keller contended that the Marlboro campus suffers from a lack of market demand for commercial repurposing compared to campuses near urban centers.
- Highest and Best Use**:** Unlike the Town appraisal, the Appellant argued that the highest and best use of the property is by the Music School, as the remote location and specialized build-outs (such as the expensive acoustics specific to music in Reich Hall) make commercial repurposing financially unfeasible.
- Unit Valuation: Keller criticized the Town's "theoretical subdivision" or building-by-building analysis, arguing the property must be valued as a single, non-subdivided unit.

T. Wilson asked if the Listers wanted to rebut information from Keller, who chose instead to defer to appraiser Brian Fogg. Brian Fogg stated for work in the CALAP program, he won't read other appraisals or respond to them.

Town Attorney Bob Fisher verified with Michael Keller that his campus appraisal did not include a cost or income approach, nor did he did not look into the lease between the parties. Keller responded affirmatively.

Molly Welch asked a question about redeveloping a campus and wondered why a campus close to a urban center is better versus a rural setting.

Michael Keller responded that it's hard to justify a different type of business in a rural area, but easier in a urban setting.

Kate Kirkwood asked about the lease between parties. Does the lease bind? A 99 year lease between Marlboro College and Marlboro School of Music does exist but one of the two parties no longer exists.

Conor McKenzie spoke about use of campus for other educational opportunities.

Chris Serkin spoke about generating income and they discovered charging rent to make campus self-sustaining with outside organizations was not financially viable and they have lost $1.6 million per year.

Brief discussion of the Lease, as Chris Serkin asked if it could be discussed.

- T. Wilson question: assumption that the lease is not arms-length, can Brian Fogg elucidate?
- Brian Fogg says the lease is a valuation conflict for the two nested owners and property rental for a 12 month lease is not possible due to the use by the Marlboro Music Festival but this can't be discounted and short-term rentals could be a component of income, annualization of rent could be used to figure out income.
- Forrest Holzapfel asked if lease could be rescinded, and that he assumes there are legal remedies.
- T. Wilson asked about discounting of sales approach by Brian Fogg, is because defunct college sales are distress sales? Yes Brian replied, these are never arms length sales.

Appellant presents tax exemption appeal to the BCA, after being denied an exemption by the Board of Listers.

Bob Fisher asks the appellant for their rationale for their appeal.

Conor McKenzie responds with highlights of their appeal, supplemented by a written brief submitted at the hearing (part of PH-1):

- Discussion of Vermont's three-part public-use exemption test 1) that the property be dedicated unconditionally to public use, 2) that its primary use benefit an indefinite class of persons who are the object of the charity, and 3) that it be owned and operated on a nonprofit basis — and cited Vermont Supreme Court precedent (including a case involving a research/demonstration dairy farm in the Town of Norwich, Siegler Case cited in 9.8.26 Supplemental Brief) as analogous support for exemption, arguing that Marlboro Music's mission of promoting music for broad public benefit, its open rehearsals, public concerts, and general public access to the campus support exemption.
- The BCA raised questions concerning incidental non-exempt uses of the property, in particular limited-term rentals of certain housing units to seasonal Mount Snow resort workers during the winter off-season.
    - The appellant's representatives replied that this use has generated little net income relative to the associated tax liability, and that Potash Hill would be willing to discontinue it if the Board considered it an impediment to exemption.
- Conor McKenzie explained that under Vermont law, incidental or secondary uses do not defeat an exemption so long as the primary use of the property qualifies, and that, alternatively, the Board could allocate value between exempt and non-exempt uses (e.g., by season) rather than denying the exemption for the property as a whole.

Bob Fisher asks questions to the appellant regarding:

- The Marlboro School of Music audition process for attending musicians
    - 60-80 musicians must complete the application process adjudicated by staff. None are paid but receive aid (Chris Serkin stated junior members attend for free and senior musicians get a stipend)
- Is the campus land open unconditionally?
    - Chris Serkin stated no during summer season, but in winter the ski trails given to Marlboro Nordic (501c3 also) for members' use
- Bob Fisher brought up the VT Studio Center in Johnson, Vermont and the Supreme Court case in which their artistic selection process was proved to not further benefit for <u>all</u> the public. Furthermore, Marlboro School of Music is not an accredited educational facility.
- Conor McKenzie and Chris Serkin described how the appellant's mission is the development of music into art for the public benefit and that the organization is devoted to music in an idealistic purpose, not about audience only and devoted to a specific art form.
- Lister Eric Matt said the whole property is NOT exempt form taxation and open to everyone, which was the primary reason that Listers denied their exemption request. He questioned the public benefit for all people.

T. Wilson closes the Potash Hill section. An inspection committee needs to visit all buildings on campus.

The campus inspection committee volunteered: Kate Kirkwood, Molly Welch, T. Wilson.
Chair T. Hunter Wilson stated that the appellant will be contacted to set up an inspection of the property on September __ at _____AM. The decision will follow no later than 15 days after the inspection report is received.

Marlboro School of Music, Inc.

2) Marlboro School of Music, Inc. (MSM) : 5 dwellings and 20.3 acres located on Musician's Way.

L-1 : MSM grievance appeal & Lister response
L-2 : Listers card
L-3 : Tax Map of two parcels included
L-4 : Listers overview of Potash Hill & Marlboro School of Music appraisal process
L-5 : Price per Square Foot information grid
- Evan Wyse submits packet of above items to BCA

Conor McKenzie summarized the exemption request on the Musician's Way property owned by Marlboro School of Music. Housing is a key piece to their operations:

- MSM has not commissioned an independent appraisal of the Musician's Way parcel and is not presently contesting valuation on the merits, but is preserving its right to challenge the Town's revised valuation should the exemption be denied.
- For the BCA's future reference, the appellant's representative noted several market factors relevant to valuing the units if a valuation dispute proceeds: the units, while architecturally attractive, were purpose-built to house musicians (e.g., non-standard kitchens), are clustered and situated immediately adjacent to the campus, and would likely appeal to a narrower pool of buyers than a comparable freestanding residential property.
- Bob Fisher said his previous questions from before are relevant to this appeal as well.

Forrest Holzapfel will email Conor McKenzie, Chris Serkin, Bob Fisher and all BCA all submitted Lister items.

The BCA arranged the Campus inspection committee: Kate Kirkwood, Molly Welch, & T. Wilson

The BCA arranged the Musicians Way inspection committee: David Holzapfel, Andy Reichsman, & Marica Hamilton

Chair T. Hunter Wilson stated that the appellant will be contacted to set up an inspection of the property on September __ at _____AM (within 30 days). The decision will follow no later than 15 days after the inspection report is received.

The Appellant left the meeting at 6:16 P.M.

Moved by David Holzapfel and seconded by Andy Reichsman to recess the hearing until September __, 2026 at 4 PM, at which time the Board will make decisions on the above.

Respectfully submitted,

Forrest Holzapfel, Town Clerk

Note: These minutes are generated with the assistance of a ZOOM-generated transcript and Claude.ai. Because host-account labeling in the source transcript did not reliably distinguish individual speakers, remarks are summarized by topic and party rather than attributed to specific individuals except where the transcript clearly identified the speaker. Minutes are reviewed for accuracy and completeness prior to adoption.