

Supplement To

# Vermont Property Owners Report

## A Special Report On Property Tax Appeals

---

The property tax is a subject of perpetual interest and importance for many Vermont property owners. There are several reasons for this.

One is that Vermont property owners bear a higher average property tax burden than in most other states. In Vermont, the total annual revenue from property taxes is more than the state personal income, sales and use, and rooms and meals taxes combined.

Another reason the property tax attracts attention is that it is the only Vermont tax — except for the estate tax — which attempts to tax wealth, as opposed to income or consumption (although for the majority of Vermonters, the school property tax on their primary home is actually based on household income).

The property tax only taxes theoretical wealth, however. If property has appreciated a great deal, the owner is taxed as a wealthy individual, even if he or she has little money and no desire to sell or mortgage the property. This aspect of the tax does not sit well with some long-time Vermont property owners.

Furthermore, the tax is based on an educated guess about how much a particular property is worth (the only certain way to establish value is to put the property on the market and see what it sells for). When a reappraisal takes place, property owners can find themselves in serious disagreement with their city or town over the value of their properties. Assessment disputes can also arise when property values are flat or declining, as is the case in Vermont now.

This special report is designed to provide an introduction to the property tax appeal process, particularly as it is applied to real estate (personal property such as furniture is not taxable, unless it is owned by a business). The appeals process is concerned with the *value* which the town has assigned to a particular piece of property, not how much the owner pays in property taxes. Of course, if your tax assessment is reduced, your tax bill will usually drop, too.

Under Vermont law, you can appeal your property tax assessment in any year, not just when a reappraisal takes place. However, you will have to let your city or town know before the appeal process begins in late spring that you are interested in appealing. Property owners only receive notice of these hearings when there is a reappraisal, or their assessment is changed for some other reason.

If you are thinking of appealing your property tax assessment this year or in the future, we hope this report helps you understand what can at times be a confusing and intimidating tax appeal process. ■

February 2009

## Step 1 In Property Tax Appeals: Obtain Free State Tax Appeal Guide

The state of Vermont publishes a 47-page "Property Tax Assessment Appeal Handbook" that is available for free. We recommend that those appealing their property tax assessment, or considering doing so, obtain a copy of this publication.

The handbook is a joint project of the office of Secretary of State and the Property Valuation and Review Division of the Tax Department.

The latest edition was updated in 2007 by Secretary of State Deb Markowitz and attorney Charles Merriman, Esq., who once worked for the Tax Department and now is a partner with Tarrant, Marks & Gillies in Montpelier. An earlier edition was prepared by Paul Gillies, Esq., a former Deputy Secretary of State who is now in private practice with Tarrant, Marks & Gillies.

The Handbook is available both in electronic format, as a PDF, and in printed form. To download a PDF version, go to the following web page, then click on "Appeal Handbook" on the right side of the page: [www.state.vt.us/tax/pvr.shtml](http://www.state.vt.us/tax/pvr.shtml)

To obtain a written copy, call (802) 828-2148, or write to: Vermont Secretary of State, 26 Terrace St., Montpelier, VT 05609.

## Is Your Assessment Too High?

You will not succeed in the property tax appeal process with arguments that the tax rate is too high or that you cannot afford to pay. The only basis for appeal is that your town's appraisal of your property, a.k.a. its assessment, is too high.

You probably have a gut feeling as to whether your appraisal reflects market value, or is fair compared to other appraised values.

To check your gut feeling, you can compare your listed value to the listed value of other similar properties, and look at the overall accuracy of the town's grand list. But if you go forward with an appeal, you will probably have to present evidence on the fair market value of your own property, as discussed later in this special report.

## Comparing Listed Values

To accurately compare your listed value to that of other properties in town, you should obtain the details about these other properties — the number of bathrooms, condition of the foundation, etc. — by looking at the listers' cards for the properties, which are available to inspect at your town office.

By making comparisons with other appraisals, adjusted up or down to reflect the differences, you can get a pretty clear idea of whether you are being treated fairly.

This sort of comparison may be enlightening, but will not be accepted as evidence at most levels of the property tax appeal process. However, it does give you a good handle for judging whether you are being treated fairly.

## Grand List Accuracy

There are two ways to judge how accurate your town's grand list is as a whole: the common level of appraisal (CLA) and the coefficient of dispersion (COD). See our table on pages 6 and 7 to see the COD and CLA for each town in Vermont.

When real estate prices rise or fall, reappraisals gradually get out of date and property valuations deviate further and further from the goal of 100% of fair market value. The percentage of fair market value at which the average property is listed in a town is called CLA. Sometimes a CLA is above 100%. This can occur in a declining market, and may be a tip-off you should appeal (see p. 8).

Here's how to make some rough judgments about your appraisal, based on the CLA:

If your property is listed at \$200,000, and the CLA in your town is 75%, then you are actually being taxed as if your property had a fair market value of \$266,666 (listed value divided by appraisal level equals fair market value; in this case,  $200,000 \div .75 = 266,666$ ).

The state tax department also calculates these appraisal levels by category for each town. You should be able to get a copy from your town listers, the town clerk, or the state tax department (telephone: 802-828-5860).

The COD, in contrast, is a statistical measure of the fairness of a town's grand list. It reflects the

**Vermont Property Owners Report** (ISSN 0895-0938) is published 6 times a year in February, April, June, August, October, and December by Vermont Property Publishing, Inc., P.O. Box 1564, Montpelier, VT 05601 (physical address: 29 Main St., Suite 6, Montpelier, VT 05602). Telephone: (802) 229-2433. Fax: (802) 229-0194. E-mail: [phildodd@vermontproperty.com](mailto:phildodd@vermontproperty.com). Web site: <http://www.VermontRealEstateToday.com>. Subscriptions are \$49.95 (US) per year. Add 6% sales tax if mailed to a VT address. Add \$5 if being mailed to Canada, or \$15 for delivery to other countries. To subscribe, send check made out to "VPOR" to address below or call with credit card. Periodicals Postage Paid at Montpelier, VT and additional office.

**POSTMASTER: Send address changes to Vermont Property Owners Report, P.O. Box 1564, Montpelier, VT 05601.**

© Copyright 2009 by Vermont Property Publishing, Inc. Reproduction or copying of *Vermont Property Owners Report* is not permitted without written consent of the publisher. All rights reserved.

**This publication is designed to provide accurate and authoritative information on the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional services. If legal or other expert assistance is required, the services of a competent professional should be sought.**

deviation of the individual ratios (of listed values to fair market values) from the average ratio in the town, expressed as a percent of the average ratio.

A relatively high COD indicates that the ratio of listed value to fair market value is inconsistent among taxpayers and therefore that the grand list shows a high degree of inequality. A low COD indicates that the taxpayers are being treated equitably and that the ratios are very consistent.

If your town has a high COD, this means there are many properties that are inaccurately listed and many that might benefit from an appeal. It also means there may be properties that are being taxed less than they should be.

Remember that your property may be accurately appraised in a town with a generally unequal grand list, or it may be inaccurately appraised in a town with a fairly solid grand list. Just as each property is unique, so is each assessment.

## The Tax Appeal Process

There are four levels to which a taxpayer can appeal his or her property tax appraisal. In chronological order they are: 1) the town listers or city assessor at grievance hearings, usually held in May or June, 2) the local Board of Civil Authority (BCA), 3) the State Appraiser or Superior Court, and 4) the Vermont Supreme Court. Most taxpayers who appeal never get beyond the first two town-level appeal forums, and very few go all the way to the Supreme Court.

Whether you want to hire an attorney or other agent to represent you at the hearings is up to you. Attorneys are most often hired when expensive properties are involved or an appeal reaches court.

Remember there is always a chance you will not win on appeal, and that your appraisal value will remain unchanged or could be raised.

In any event, do not assume that the appeal process excuses you from taxes or suspends collection. You are required to pay your taxes while your appeal is pending. If you win, you will get a credit against property taxes owed in future years.

### Listers' Grievance Hearings

Once the listers or assessors have completed their work each year, they are required to "lodge" the grand list book in the office of the town clerk. Depending on the size of the town, this generally occurs in May or June.

Listers and assessors are required to notify by mail those who own property on which the appraised value has changed from the preceding grand list. The notice describes the change and provides details about the grievance hearings.

Even if there has been no change in your appraisal, you still have the right to attend the grie-

vance hearings and appeal your appraisal. However, you will get no notice of the dates of the hearings. Either find out the dates, or write the listers by April and let them know you want to grieve. You must file an objection to your appraisal in writing prior to or at the time of the hearing.

### Appeals to the Board of Civil Authority

If you are not satisfied after the listers mail their decision, you may appeal to the Board of Civil Authority (BCA). The board consists of the town clerk, the selectboard and the justices of the peace.

You begin your appeal to the board by filing a written appeal with the town clerk within a specified period of time after the grievance decision was mailed. You will be told by mail when your hearing before the BCA is scheduled. The appeal is *de novo*, or heard anew.

After the hearing, an inspection committee is appointed to look at your property. Listers or other town representatives have a right to observe.

After making a decision, the BCA must prepare a written decision. If you decide not to appeal the decision of the board, the value established by the board will be applied to the current grand list.

### Appeals to State Appraiser/Superior Court

Once the BCA has made a decision, the taxpayer or town may appeal that decision to either the State Appraiser or to the Superior Court by filing a notice of appeal.

The State Appraiser is an individual appointed by the state Tax Department to hear the appeal. Appeals to the State Appraiser are apt to be faster and less costly than appeals to the Superior Court, and most people choose this route. Others believe that they will get a fairer hearing in court. There are filing fees for both, but they are higher at Superior Court. In both cases, the case is heard *de novo*.

Appeals to the Superior Court usually take longer because of the backlog of trials. You may also find you have a greater need for an attorney in court, where procedures are more formal.

Even after an appeal is filed, you may enter into settlement discussions with the town. Sometimes it is to the advantage of both parties to reach a compromise valuation rather than continue litigation and appeals.

What are your odds of success with the State Appraiser? According to figures compiled by the state Tax Department, in 2006 72 appeals to the State Appraiser resulted in a reduction, and 42 were raised or unchanged. But in 2007, 69 were reduced and 71 were raised or unchanged.

### Appeals to the Vermont Supreme Court

Whether you proceed through Superior Court or through the State Appraiser, a further appeal is available to the Vermont Supreme Court. At this appeal level, the case is not heard again but is only

reviewed based on the transcript and evidence submitted in the previous hearing. You are not allowed to present additional factual evidence.

This appeal is made by filing a notice of appeal and a fee with the Superior Court or through the State Appraiser, depending on which route you have taken, within a specified time period after the date of the decision.

If you have not already hired a lawyer, you will probably want to employ one for this level of appeal (though you may represent yourself).

When you succeed in having the appraised value of your property reduced on appeal by the appraiser or court, you are entitled to a credit for over-payments; the credit is applied against future tax payments. You cannot get credit for taxes paid in years prior to the one in which you appealed.

Unlike listers' or BCA decisions, a decision by the Superior Court, the State Appraiser, or the Supreme Court sets a real estate appraisal value for your property that becomes the basis for the grand list for the year in which the appeal is taken *and* for the next two succeeding years.

This appraisal may only be changed in the ensuing two years if your property is "materially altered, changed, or damaged," or if the municipality in which it is located has undergone a reappraisal.

## Making Your Case

In general, there are four possible arguments you can make during your tax appeal: the facts are wrong; procedural or legal mistakes were made; the assessment is too high; or the assessment is unfair.

### Mistakes on the Listers' Card

If you discover that there are errors on the listers' card which would contribute to an over-appraisal of your property, be sure to point them out and ask for corrections.

Obvious mistakes, such as a note on the listers' card showing your house has four bedrooms instead of three, can be fairly easy to find. Others may require more work to discover, such as measuring the square footage of your home or building and see if your total matches town records.

Look at listers' cards and computer print-outs for other properties and compare them to yours. For instance, the card for your property may show the roof is "above average." If you can find cards for other properties with roofs of similar age or condition to yours that refer to the roof as "average," you may have a good case for reducing your appraisal.

In a 1989 case, the Vermont Supreme Court noted that while the most persuasive method of appraising residential property in Vermont is to establish fair market value from valid sale transactions (a method discussed below), other methods of es-

tablishing fair market value are acceptable – and they may actually be more persuasive with listers.

In that case, the Court approved a process followed by the State Board of Appraisers by which it "first identified the comparable properties and proceeded to recite in detail the categories in the subject property it considered misgraded in relation to the same categories in the comparables." *Gionet v. Town of Goshen*, 152 Vt. 451, 453 (1989).

### Legal Objections

While unusual, it is possible to argue that the town's appraisal method is illegal. In *Bloomer v. Town of Danby*, 135 Vt. 56 (1977), for instance, the taxpayer reduced his appraisal by arguing that the town used an illegal "sliding-scale method" to appraise land. This method involved setting a value on land depending on the amount of acreage, without making adjustments for location, type of land, accessibility or sales of comparables.

Or, you might find legal defects in the handling of your particular case. If you are considering challenging a decision on legal grounds, confer with a lawyer. Note that constitutional issues may only be raised in a court, not before an administrative tribunal such as the State Appraiser.

### Incorrect or Unfair Appraisals

This approach is the one most often used in property tax appeals. The two possible arguments you can make are these: 1) your property is appraised higher than fair market value, or 2) your property is appraised closer to fair market value than other properties in town (i.e., yours is appraised at 80% of fair market value, when comparable properties are only appraised at 60%).

In general, it is not sufficient simply to compare your appraised value to the appraised value of comparable properties. This sort of comparison seems logical and may be helpful when arguing before the listers or the board of civil authority, but you will not succeed with this line of reasoning with the State Appraiser or in Superior Court.

Instead, first provide evidence establishing the fair market value of your property. If you bought your property recently in an arm's length transaction, the sale price is the best possible evidence.

But if you did not buy your property recently, you will need to provide evidence of recent sales of comparable properties. Information about recent sales, including price, is available at your town clerk's office. Ask for the property transfer returns.

If you prefer, for a fee you can order a special report showing all sales in a town over a certain period of time from us at VPOR (call 802-229-2433 for more information on these custom reports).

Ideally, the comparables you choose will be similar in size, age, use, condition and surround-

ings. Sales within several months either side of the April 1 appraisal date are best, though you can go two or three years back if you wish. Sales between relatives or friends are not acceptable.

Especially in small towns, it may be impossible to find sales that are very similar to yours. You can include properties with some differences. And if you cannot find similar properties in your town, you can look for sales of comparable properties in nearby towns to get an idea of market values.

Make notes about the comparable sales you come across and photocopies of the most relevant property transfer returns and listers' cards; the information will be needed if you decide to appeal.

If you would rather not do the research into recent sales, you can hire someone else to do it. The job would probably be easiest for a professional appraiser. Other possible alternatives are to use an appraisal you have had done recently for a home-equity loan or refinancing of your mortgage, or even a real estate agent's written opinion.

The purpose of all of this evidence is to discover the fair market value, which the Legislature has defined as "the price which the property will bring ... when offered for sale and purchased by another, taking into consideration all the elements of 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. Those elements shall include a consideration of ... the effect of any state or local law or regulation affecting the use of land ..." 32 V.S.A. §3481 (1).

If your only complaint is that your property is appraised above fair market value, then the information above is all the evidence you need to present. This would usually be the case if you are appealing the results of a townwide reappraisal.

If, however, you believe other properties in town are listed below fair market value, additional evidence must be presented. This situation would usually occur when you are appealing an older appraisal in a town where the CLA is less than 100%.

The goal of gathering this additional evidence is to establish an equalization ratio (a concept similar to the CLA) that can be applied to the fair market value of your property. In other words, if the ratio arrived at is 70%, and your property's fair market value was determined to be \$200,000, then your property should be set in the grand list at \$140,000 and your tax calculated on that basis.

Vermont Supreme Court cases indicate you may be able to use one of two equalization ratios calculated by the state: the common level of appraisal for the entire town or the level for the appropriate category of property — such as timberland — within the town.

One drawback of using state figures is that when the state performs a study, it does not publish the appraisal levels for an April 1 valuation date until the following January, so the appropriate ratio may not be available during the early stages of the appeals process (though you could try relying on figures from the previous year).

Your other choice is to use the traditional process for calculating a ratio in appeals cases, one which starts by picking some other properties in town of the same general class as your own. They do not have to be exactly the same as yours — the standard here is more liberal than for the comparables needed to establish fair market value — but they must be of the same general type, e.g., vacation homes or primary residences.

The fair market value of these properties must then be established. You can either use properties that have sold recently (including the properties you used to establish the fair market value of your property) or you can use sales of other comparables to establish fair market value for these properties.

The fair market value of the properties is then compared to their listed value to establish an overall equalization ratio. You should present a fairly large number of properties so that a representative equalization ratio can be established (using only two comparables for this purpose leads to "absurd results," one justice has written).

In addition to setting out the evidence needed to prove that an appraisal is incorrect or unfair, the Vermont Supreme Court has declared that the taxpayer always bear the burden of persuasion on all contested issues. To prevail, you must convince the appraiser or court that your position is correct. ■

### Summary Of Typical Appeal Steps

1. Present evidence establishing the fair market value of your property. This usually consists of several recent sales of comparable properties in your town. If you are appealing a new valuation following a townwide reappraisal, or if your town's grand list average level of appraisal is above 100%, this is all you need to do. Otherwise, continue on.

2. Present evidence for the equalization ratio you believe should be applied to your property. Either 1) use the state-calculated common level of appraisal ratio for all properties in town (or just for properties of your type in town) or 2) establish the fair market value of several properties of the same general type as your own, then compare these values to their listed values to calculate an average equalization ratio. Apply the ratio to the fair market value of your property to come up with your correct listed value.

## 2008 Coefficient of Dispersion and Common Level of Appraisal Figures

The Vermont Tax Department conducts an equalization study every year which examines the accuracy of property tax assessments in all cities and towns in the state.

While the study is performed for other purposes, such as determining when a town must conduct a reappraisal and adjusting the statewide school school property tax for each town, the statistics that result from the study can be useful to property owners considering whether or not to appeal their property taxes.

One number the state calculates for each city and town is the Coefficient of Dispersion (COD). According to the state, the COD "is a measure of equity across assessments in a municipality's grand list. It is a much better measure of fairness than the CLA (common level of appraisal)."

The higher the COD, the less fairness in that town. A high COD means there are more properties assessed much too high or too low. Assessment standards generally hold that CODs of 15%

or less are good (10% or lower in homogeneous areas). A high COD may suggest you should investigate your property's assessment (it may be high or low compared to others).

The other number calculated for each municipality is the common level of appraisal (CLA). This is a percentage that compares local assessments to the state's estimate of fair market value. If a town's CLA is 80%, that means that the average property in town was assessed at 80% of fair market on April 1, 2008.

The CLA is good way to estimate the accuracy of your assessment. If your town's CLA is 80%, divide your assessment by .80 and consider whether that seems like the fair market value.

The 2008 figures below were published in the 2009 Annual Report of the Tax Department's Division of Property Valuation and Review. Note that some some towns are reappraising in 2009, which will make the figures below moot for those towns in 2009 tax appeals. ■

| Town                     | COD  | CLA   |
|--------------------------|------|-------|
| <b>ADDISON COUNTY</b>    |      |       |
| Addison                  | 12.2 | 96.5  |
| Bridport                 | 19.7 | 66.5  |
| Bristol                  | 13.6 | 84.0  |
| Cornwall                 | 16.4 | 69.7  |
| Ferrisburgh              | 14.3 | 91.4  |
| Goshen                   | 13.8 | 77.9  |
| Granville                | 17.1 | 98.0  |
| Hancock                  | 32.1 | 46.7  |
| Leicester                | 10.1 | 101.3 |
| Lincoln                  | 21.1 | 68.3  |
| Middlebury               | 13.4 | 85.6  |
| Monkton                  | 16.5 | 79.4  |
| New Haven                | 12.3 | 71.6  |
| Orwell                   | 19.2 | 74.2  |
| Panton                   | 19.2 | 83.9  |
| Ripton                   | 17.3 | 79.0  |
| Salisbury                | 12.9 | 83.6  |
| Shoreham                 | 11.9 | 94.2  |
| Starksboro               | 14.3 | 92.0  |
| Vergennes                | 7.3  | 102.8 |
| Waltham                  | 17.2 | 88.9  |
| Weybridge                | 10.2 | 92.4  |
| Whiting                  | 17.6 | 84.5  |
| <b>BENNINGTON COUNTY</b> |      |       |
| Arlington                | 13.2 | 93.6  |
| Bennington               | 14.5 | 89.7  |
| Dorset                   | 11.4 | 95.5  |
| Glastenbury              | 8.8  | 97.5  |
| Landgrove                | 10.2 | 100.4 |
| Manchester               | 8.4  | 99.1  |
| N. Bennington            | 14.5 | 89.5  |
| Peru                     | 9.3  | 104.4 |
| Pownal                   | 20.4 | 79.1  |
| Readsboro                | 35.3 | 67.8  |

| Town                     | COD  | CLA   |
|--------------------------|------|-------|
| Rupert                   | 9.7  | 100.3 |
| Sandgate                 | 15.5 | 100.3 |
| Searsburg                | 33.5 | 56.3  |
| Shaftsbury               | 19.6 | 61.2  |
| Shaftsbury ID            | 19.6 | 61.6  |
| Stamford                 | 21.9 | 85.8  |
| Sunderland               | 21.1 | 87.0  |
| Winhall                  | 25.5 | 61.5  |
| Woodford                 | 6.2  | 108.8 |
| <b>CALEDONIA COUNTY</b>  |      |       |
| Barnet                   | 10.6 | 100.9 |
| Burke                    | 16.6 | 93.5  |
| Danville                 | 12.3 | 94.8  |
| Groton                   | 18.5 | 94.6  |
| Hardwick                 | 16.8 | 94.7  |
| Kirby                    | 7.2  | 100.4 |
| Lyndon                   | 18.3 | 80.0  |
| Newark                   | 10.0 | 102.9 |
| Peacham                  | 22.1 | 66.0  |
| Ryegate                  | 29.3 | 76.1  |
| St. Johnsbury            | 25.6 | 63.8  |
| Sheffield                | 30.0 | 68.2  |
| Stannard                 | 8.0  | 100.9 |
| Sutton                   | 26.4 | 58.8  |
| Walden                   | 15.4 | 95.1  |
| Waterford                | 16.0 | 91.6  |
| Wheelock                 | 13.1 | 104.5 |
| <b>CHITTENDEN COUNTY</b> |      |       |
| Bolton                   | 11.6 | 94.1  |
| Buels Gore               | 14.0 | 70.8  |
| Burlington               | 10.4 | 88.0  |
| Charlotte                | 8.6  | 100.9 |
| Colchester               | 10.5 | 69.4  |
| Essex Jct.               | 5.5  | 98.5  |

| Town                | COD  | CLA   |
|---------------------|------|-------|
| Essex Town          | 5.5  | 98.3  |
| Hinesburg           | 7.0  | 98.3  |
| Huntington          | 12.2 | 88.8  |
| Jericho             | 7.4  | 92.4  |
| Jericho ID          | 7.4  | 93.3  |
| Milton              | 7.7  | 100.9 |
| Richmond            | 6.2  | 100.3 |
| St. George          | 37.2 | 62.6  |
| Shelburne           | 7.4  | 99.3  |
| S. Burlington       | 7.0  | 96.4  |
| Underhill           | 8.1  | 95.0  |
| Underhill ID        | 8.1  | 95.5  |
| Westford            | 14.8 | 71.7  |
| Williston           | 6.2  | 94.1  |
| Winooski            | 7.4  | 99.0  |
| <b>ESSEX COUNTY</b> |      |       |
| Averill             | 28.4 | 110.0 |
| Averys Gore         | 32.5 | 101.5 |
| Bloomfield          | 6.0  | 101.0 |
| Brighton            | 25.5 | 61.6  |
| Brunswick           | 8.8  | 71.0  |
| Canaan              | 7.5  | 99.8  |
| Concord             | 18.8 | 84.9  |
| East Haven          | 24.8 | 57.0  |
| Ferdinand           | 32.5 | 105.7 |
| Granby              | 35.5 | 62.2  |
| Guildhall           | 26.6 | 85.6  |
| Lemington           | 14.8 | 58.4  |
| Lewis               | 32.5 | 101.0 |
| Lunenburg           | 21.5 | 78.6  |
| Maidstone           | 17.8 | 62.5  |
| Norton              | 47.6 | 62.1  |
| Victory             | 12.9 | 71.7  |
| Wmrs. Grant         | 32.5 | 102.1 |
| Warren Gore         | 32.5 | 111.1 |



## Property Tax Assessments Over 100% Of Fair Market Value Not Legal

According to two Vermont Supreme Court decisions issued 25 to 30 years ago and cited in several other decisions since, no property can legally be assessed at more than 100% of fair market value (FMV), even if some other properties in town are assessed above 100%.

This point of law could gain greater importance as real estate prices flatten or in some cases decline. State studies show there are towns where some properties are assessed over 100% of FMV.

Vermont property owners – particularly those in towns that have just reappraised or have done so in recent years – may want to monitor their listed value compared to their probable fair market value, and consider a tax appeal if warranted.

In any event, an examination of the two cases and the property tax statutes behind them seems timely in today's softer market.

The key case is *Brown v. Town of Windsor*, 139 Vt. 129 (1980), which involved an appeal of the tax assessment of a small shopping center. After the trial court reduced the listed value, the town appealed to the Vermont Supreme Court.

Among other things, the town complained that the court had failed to make findings regarding the fair market value of comparable properties.

In many tax appeals, establishing the proper listed value is a matter of first finding the fair market value of the property, then establishing the percentage of fair market value at which comparable properties in town are listed. Thus, if a property is found to be worth \$100,000, and the average comparable property is listed at 90% of FMV, then the subject property should be listed at \$90,000.

In this case, the trial court stopped after finding fair market value, and apparently the taxpayer presented no evidence of the fair market value of comparable properties. The town felt the second step should be required, but the Court disagreed.

**"This issue is not available to the town in this case," the Supreme Court said. "A court may not list a taxpayer's property higher than fair market value, even if comparable properties are listed above fair market value."**

Thus, even if comparable properties had been listed at higher values, the lower court could not have assessed the property under appeal at a higher value than it did, the Court ruled. The *Brown* decision has been cited in later cases for the proposition that the highest ratio usable for equalization is 100%, *Brown v. Town of Burke*, 153 Vt. 131, 132

(1989), and that in no event may a property be listed at a value higher than FMV. *Gionet v. Town of Goshen* 152 Vt. 451, 455 (1989).

In *Brown*, the Court had cited the earlier case of *Ames v. Town of Danby*, 136 Vt. 79 (1978), in which a taxpayer had appealed his land's assessment after a townwide reappraisal.

The *Ames* case was eventually appealed by the taxpayer to the Vermont Supreme Court, which among other things concluded: "Of course, it is clear from the statutory scheme relating to appraisal that the listed value may not be increased above the fair market value of the subject property." It cited three statutes for this proposition.

The first, 32 V.S.A. §3431, contains the "Lister's oath." It requires town listers to swear that they "will appraise all the personal and real property subject to taxation ... at its fair market value."

The second statute cited, 32 V.S.A. §3481, defines appraisal value as the estimated fair market value, and listed value as equal to 100% of the appraisal value.

Fair market value is defined in part as "the price which the property will bring in the market when offered for sale and purchased by another, taking into consideration all the elements of 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 a property a market value."

The final statute cited is 32 V.S.A. §4467, which establishes the law for tax appeals taken to the state appraiser or to court. Among other things, it requires that the appeal be based on "the requirements of law as to valuation," and the proportional contribution clause of the Vermont Constitution, which is the basis for requiring that all property in a town be assessed on a uniform basis.

In *Brown*, the Court explained that §4467 permits "a taxpayer whose property is assessed at fair market value to show that comparable properties in the town are assessed at a lower percentage of fair market value. If this is the case, the court must list the taxpayer's property at a corresponding value."

But as noted earlier, it specifically said a property cannot be listed higher than fair market value, even if other comparable properties are so listed.

*Brown* seems like a persuasive case for taxpayers involved in tax appeals to cite if they think their property is assessed at more than FMV. But they must be able to establish their own FMV, which is usually done by using either a recent sale of the property under appeal, recent sales of comparable properties, or a private appraiser's report. ■