

# Memo on Best Practices for Property Valuation in Vermont

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In Consultation with:

The Vermont Assessors and Listers Association

This document is a companion to the **2017 Lister Handbook**, designed to determine whether a municipality is eligible for a recalculation of its education property tax liability when its grand list loses value because of an appeal under Chapter 131 of Title 32, a declaratory judgment action, or an approved settlement. [See 32 V.S.A. §5412](#). It also includes a Best Practices Checklist to assist the municipality in requesting the recalculation from the Director.

In order for the state to reimburse a municipality, there must be evidence that a municipality followed best practices in establishing fair market value of the parcel(s) in question.

A determination of best practices for purposes of Section 5412 does not bind PVR for purposes of the Equalization Study or for any other purpose.

As always, please reach out to a PVR District Advisor if you have any questions relating to the application of best practices at [tax.pvr@vermont.gov](mailto:tax.pvr@vermont.gov) or 802-828-5860.

Valuation approaches are also explained in the Vermont Listers' Handbook, by the International Association of Assessing Officers (IAAO) and the Appraisal Institute.

## How to Request an Adjustment

A municipality may request an adjustment any time its education grand list value is reduced due to an appeal under chapter 131 of Title 32, a declaratory judgment action, or a settlement (if the Director of PVR determines the settlement is the fair market value of the parcel). The reduction in value due to an appeal or court action must have no further appeal available.

All requests must be made by January 15 for the previous year. Starting in 2018, municipalities have until January 15, 2018 to submit requests for any property valuation appeals resolved in the previous year.

Municipalities must use **PVR's online form** to file a request before the January 15 deadline.

PVR may ask for documentation in addition to the form, such as a copy of the decision or agreement, data underlying a valuation, and other supporting documentation.

Municipalities have the burden of showing that their actions were consistent with best practices in Vermont assessment of real property. A municipality may appeal PVR's determination to the Commissioner of Taxes. The appeal must be requested in writing within 30 days of PVR's determination. A municipality may further appeal to Superior Court. The court

will use the record that was before the Commissioner and the review is limited to a review for abuse of discretion.

### **Requesting a Certification of Best Practices Prior to a Final Judgment or Settlement**

Before the appeals process is concluded on a matter, a municipality may request that PVR certify in advance whether best practices were followed. This option is available to help municipalities determine whether to proceed in litigation. Because of the time-sensitive nature of deciding whether to continue with litigation, a municipality wishing to request this certification should contact PVR directly at [tax.pvr@vermont.gov](mailto:tax.pvr@vermont.gov) or 802-828-5860.

PVR will consider the potential impact to the Education Fund, the unique character of the property, and any extraordinary circumstances when deciding whether to grant a certification. A municipality should be prepared to provide all the supporting documentation necessary for PVR to make a decision.

Note that PVR may grant certification, deny certification, or refrain from making a decision until the matter is fully resolved.

### **Limitation on Reductions Due to Amount of Appropriation**

There is an annual limit of \$100,000 for the total reductions to municipal grand lists across all towns. This means if PVR approves reductions with a financial impact totaling more than \$100,000 to the State, PVR will have to pro rate adjustments across all municipalities eligible for a reduction. This may mean that all approved municipalities receive an adjustment of less than the full reduction in grand list value.

### **Settlement Agreements**

PVR will review each settlement for proof that the settlement resulted in a parcel valuation that is the fair market value. A municipality should be sure to follow the best practices described in this document when determining a value for a settlement, and also be prepared to show that best practices were followed when submitting a request for an adjustment. We advise that municipalities include the full valuation process, with supporting information and a description of the process used, directly in a settlement when possible. If that is not practical, the municipality should be prepared to provide detailed documentation showing how best practices were followed when it applies for an adjustment.

Please note that agreeing to anything factually or legally incorrect in a settlement will result in PVR denying a request.

### **Property Tax Appeals**

Listers and/or assessors appraise property and hear grievances from taxpayers. Listers/Assessors should have the knowledge and training to understand how property is appraised. The Board of Civil Authority (BCA) hears appeals from taxpayers who are aggrieved

by the listers' decision. It is important to remember that the BCA is quasi-judicial board, meaning that they hear and weigh the evidence presented to them. Both taxpayers and listers/assessors should bear in mind that the adequacy of the BCA's decision will depend on the evidence presented at the hearing by the parties.

The municipality must provide relevant evidence of Fair Market Value in terms of market, sales or cost analysis. The municipality should explain which valuation approach is most appropriate and how that applies, with specific, relevant property information. This analysis should be considered at every level of the appeal process.

Appeals involving exemptions, homestead housesite or Current Use must be defended with reference and according to the statutes and definitions in state law, with Fair Market Value evidence where applicable.

### **What is the fair market value of the property?**

The law defines fair market value as follows:

*The estimated fair market value of a property is the price that 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 property a market value. Those elements shall include the effect of any State or local law or regulation affecting the use of land, including 10 V.S.A. chapter 151 or any land capability plan established in furtherance or implementation thereof, rules adopted by the State Board of Health and any local or regional zoning ordinances or development plans. In determining estimated fair market value, the sale price of the property in question is one element to consider, but is not solely determinative. (32 V.S.A. § 3481(1)(A).)*

In other words, fair market value is "price that the property will bring when offered for sale by one desiring, but not obliged, to sell; and purchased by one desiring to purchase but under no necessity of buying. It is the price which a piece of 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, potential or prospective, and all other elements which combine to give a piece of property a market value." *In re Mallary*, 127 Vt. 412, 418-19 (1969).

The starting point for determining market value usually requires identifying the "highest and best use" of the property. The highest and best use of a property is that use which is (1) legally permissible, (2) physically possible, (3) maximally profitable and (4) financially feasible. In many appeals, the property's highest and best use is obvious. For example, the highest and best use of most (although not all) residential property is as residential property. Undeveloped land and property that is in a changing market, however, may well have a highest and best use that

differs from the property's actual use.

There are three approaches to determining the fair market value of a property: *cost approach*, *market data approach (sales comparison approach)*, and *income approach*. Depending on the characteristics of the property (and the characteristics of the market), one or two of the approaches usually render a more reliable estimate of fair market value. For example, the cost and market approach are often good approaches for appraising residential property. The income approach *may* prove less effective simply because the highest and best use of residential property usually does not include an income use. On the other hand, the cost approach *may* prove less reliable in determining the value of income-producing commercial properties than the market. The emphasis, though, is on "may." The decision-maker must weigh the relative merits of the approaches used by each party as those approaches apply to the property under appeal. Determining value requires critical thinking. Both parties should be prepared to present the reasoning behind the approach to value(s) they used or did not use on the subject property in question.

Refer to the [Vermont Lister's Handbook](#) published by PVR for further discussion of determining fair market value, including the three approaches of *cost*, *market data*, and *income*.

### **Levels of Appeal**

Refer to the [Vermont Lister's Handbook](#) published by PVR for further information on the levels of Grievances and Appeals.

### **Property Tax Exemptions**

All tax exemption statutes must be strictly construed against the party claiming the exemption. This means that it must be clear that an exemption applies. If it is doubtful, you should determine that the property is subject to tax. The law assumes that the default state for all properties is that they are subject to tax. That assumption should only be overridden by a clear intent in the law to exempt the property from tax.

One reason that exemptions are interpreted this way is to help prevent a small exception from expanding through interpretation to become the general rule. For education property taxes in Vermont, a property removed from the grand list means that other property owners are required to make up the difference in tax revenue.

*Role of Assessing Officials:* Listers and assessors make the initial determination of whether a parcel is eligible for an exemption. Before making any determination, the official should review the applicable statute(s). One of the first steps is to work with property owners to gather the documents and information necessary to make an exemption determination. The early stages present the best opportunity to gather as much information relating to the use of the property and the activities of the property owner, which sometimes determine a property's eligibility. A well-developed record at this stage can be instrumental in a municipality coming to a correct

legal conclusion. An official should consult with an attorney approved by the municipality whenever possible.

*Board of Civil Authority's Role:* An appeal from an assessing officials' decision goes to the Board of Civil Authority. The BCA considers evidence presented by an aggrieved taxpayer or agent and the assessing official or municipal agent. The BCA also appoints an inspection committee. It issues a written decision after considering the evidence and reviewing the inspection committee report. In a final written decision relating to a property tax exemption, the Board should be sure to clearly connect the statutory language and requirements of the exemption to the facts it found in the evidence and inspection report. Because exemptions should be strictly construed, the Board should only determine that an exemption applies if it believes the law clearly intended to exempt the subject property and the owner's use of the property. 32 V.S.A. § 4404, et seq.

Refer to the [Vermont Lister's Handbook](#) published by PVR for guidance relating to some of the more complicated property tax exemptions allowed by the State of Vermont.

### **Insurance Replacement Cost**

Vermont law requires owners of property exempt from taxation to provide assessing officials with the insurance replacement cost of exempt property. If an exempt property is not insured, the owner of the property must provide a written explanation of why the property is not insured. 32 V.S.A. § 3802a. It is the best practice for a town to collect Form CR-001 Insurance Replacement Cost Reporting Form for every exempt property in the municipality.

**See the following page for a Checklist which will assist PVR in determining if a municipality is eligible for reimbursement under 32 VSA §5412.**

# Best Practices Checklist

This checklist will assist PVR in determining whether the municipalities' actions are consistent with PVR Best Practices and therefore whether a municipality is eligible for a recalculation of its education property tax liability . Once the municipality has submitted the webform to apply for Best Practices compensation, the municipality should be ready to immediately discuss with PVR the items on the following checklist.

## General Information:

Town:

Year of Appeal:

Date of Settlement:

Beginning value of the property:

Court or Settlement Value:

What is the last year of reappraisal?:

What was the methodology of the current assessed value for the property (Data Collection, Approach(es) to Value (Income, Cost, Market), Land Schedule application, Cost Table application)?

Is this methodology in keeping with IAAO Standards, GAP and PVR Recommendations?

What evidence did the municipality present at appeals levels?

What documentation was provided by the municipality?

Were comparable sales presented to represent the current fair market value of the property?

Was a current market analysis performed by the municipality? (if so, municipality shall provide sales grid and data)

Did the town view the property at all appeals levels possible?

Were adjustments to the value made at any level or notes and documentation as to why no adjustment was needed?

Was appellants evidence considered and weighed appropriately by the listers?

## If appeal is Homestead Value related:

Did town comply with the definition of Homestead/Housesite?

Did town use declaration information to help form their value or correct when necessary?

Does town have information to support their value?

**If appeal is Current Use Value Related:**

Did town value excluded land in accordance with statute?

Did town value consider the fair market value of the excluded land?

Can town defend the fair market value of the excluded land?

Is the excluded value comparable to other similar parcels in town?

**Examples that could qualify as Ineligible for Education Property Tax Liability**

**Recalculation:**

- Town represented only the listed value and comparable listings
- Town provided no current comparable sales
- Town was unable to explain how the methodology used relates to fair market value
- Town made no attempt to view the property other than as required
- Town made no notes of current conditions of the property in comparison to time of reappraisal
- Town is unable to show methodology for valuing excluded land in current use
- Town is unable to show that methodology for valuing excluded land is representative of fair market value or equitable
- Town did not consider homestead declarations as a basis for homestead and housesite value adjustments
- Town is not able to demonstrate how the statute was applied regarding excluded land.

**Examples that could qualify as Eligible for Education Property Tax Liability**

**Recalculation:**

- Town heard appeal, visited the property and made notes of changes (may or may not have resulted in change)
- Town provided comparable sales, an independent appraisal or a market grid
- Town clearly explains and documents how the value methodology was used and documents that in comparison to current market
- Town clearly demonstrates valuation method for excluded land
- Town clearly demonstrates excluded land values in correlation with current market

- Town clearly demonstrates knowledge of homestead and housesite value and has reasonable basis for the value used.