ARE YOU APPEALING?

AN INTRODUCTORY GUIDE TO PROPERTY TAX ASSESSMENT APPEALS

How to Tell Whether You Ought to Appeal

So you don't like the size of your property tax bill. The budget went up and so did your tax bill, and now you're wondering if there's anything you can do about it. Maybe there is. Maybe your appraisal is higher than it should be.

Have you ever looked at your property appraisal? It's a public document, and it contains a good deal of information about your property. It's used by the listers to set the value on your property. Ask to see it. Check it over for errors. See if you agree that your property is worth as much as the town claims it is.

Maybe you don't know what your property is worth. In that case, you need a benchmark. Perhaps you had your property appraised as part of refinancing recently. If so, you might compare the bank appraisal with the listing and see how the two compare. Perhaps there is another property in town that is similar to yours that recently sold. If so, you could compare the property transfer return on that sale that is on file at the town clerk's office to see how it compares with your listed value. While neither of these sources alone is reliable in reflecting the fair market value of your property, they are good evidence on which to base a decision to appeal your assessment.

Another reason to appeal your assessment (or "grieve" them to the board of listers) is the discovery that the listers are relying on incomplete or incorrect information about your property. Does the appraisal card show that you have two bathrooms and you don't? Does it say that your roof is in good condition, although you know it isn't because you get wet when it rains? Is the acreage correct? Everybody makes mistakes. The key is what you do after you discover they have been made.

The time might be right for you to consider an appeal.

An Overview of the Process

Most people call the process by the name, "tax appeal," but you really won't be appealing your taxes. You will be appealing your tax assessment or grand list, which is the value the board of listers of your town has placed on your property, a value which forms the basis of your tax bill. If you look in the current town grand list, you will find your property listed next to your name with a value assigned to it. This value, divided by one hundred, results in your personal grand list, which is then multiplied by the tax rate to calculate the taxes you owe during the current fiscal year.

The tax appeal process (forgive us, but we're going to use the common name for it) actually begins with a grievance before the town board of listers. This is a mandatory first step. If you don't grieve, you can't appeal. It's as simple as that. To grieve, you need to know the date of grievance day, which is usually held in May or June in most towns. Call the listers or town clerk to learn this important date, and make sure you make an appearance before the board of listers on that date, either in person or by letter, to ensure that your grievance is heard.

If your town has been reappraised this year, you will receive a notice if your appraisal has changed. Even without a reappraisal, if your appraisal is changed by the listers, they will send you a change of appraisal notice. You may grieve your assessment, however, even without a change of appraisal. Just because you did nothing about your appraisal in previous years does not foreclose your ability to grieve and appeal this year, as long as you meet the deadlines.

The listers may answer your every concern, and if so the process ends at that stage. On the other hand, except for obvious errors in listing, the listers are more likely to conclude that they know more about appraising than you do or that your own opinion is not as impartial as their own. Don't expect to succeed at the grievance stage, but use it to your own best advantage--to gather evidence and information, to hone your arguments, to organize your thinking about the case you will make to the board of civil authority.

You will receive a written notice after the grievance. Within fourteen days after receiving the notice, if you want to follow through to the next stage of the process, you need to write a letter to the town clerk, outlining your arguments and asking to be placed on the agenda of the board of civil authority to appeal the decision of the listers. Local deadlines may vary, but if you're late you lose your standing and will have to wait until next year.

The board of civil authority will hold a hearing, giving you notice of the time and place. It will then appoint a three-person inspection committee to view the property. The inspection committee must report back to the whole board within thirty days of the end of the hearing, and the board must make its decision within fifteen days of the day the committee made its report.

If you are still unsatisfied with the result of the process, you then have thirty days to appeal the decision of the board of civil authority to the state appraiser or the superior court of your county.

Dates and deadlines are a critical part of this process. If you're going to appeal, do it right.

An Introduction to the Players

You should know who the listers and the members of the board of civil authority are before you begin this process. Knowing something about the offices they hold is also important.

The board of listers: Most towns have three listers, although some have four or five, if the town has voted to elect that many. They serve terms of three years, and their job is to complete the grand list. Some work all through the year, but the most important period for listers is the spring, beginning shortly after town meeting and reaching the apogee in mid-summer, after the grand list is lodged with the town clerk, as the appeals before the board of civil authority end.

The work is clerical, although it involves some inspection work. The listers don't start over each year in building the grand list, but they do make corrections, using the zoning permits issued throughout the year and the deeds and property transfer returns on recently-sold property.

The listers are as much of a board as the select board, and as such are responsible for warning meetings and writing minutes. When they work at purely clerical chores, they may skip formal notice of meetings, but when it comes to finalizing the grand list and hearing grievances they must meet in executive session.

All of their paperwork is public, except for inventory forms for personal property, and a member of the public may view and make copies of anything, including work in progress, that the listers receive or create. The charge for copies of documents within the custody of the listers may vary slightly among towns, but it is based on the actual cost of reproduction.

The board of civil authority: This board is composed of the town clerk, who also serves as its clerk; the select board; and the justices of the peace of the town. All of these offices are elective. The justices are elected for two year terms at the General Election; the town clerk and select board members usually serve for three year terms and are elected at the annual town meeting.

> See the town clerk for basic information about the scheduling of your appeal and about anything else you think you ought to know about the town.

Meetings of the board must be warned with a minimum of five days posted notice, although once the board begins its tax appeal schedule it may adjourn from day to day without the requirement for new notices. Contact the town clerk for information on when the board meets and when your appeal might be heard, although you should receive a five day notice yourself about your hearing.

Board members cannot participate in tax appeals if they are related to the appellants (or listers) by blood or marriage (first cousins or closer) or if they have any interest in the outcome of the appeal. If board members also serve as town agent or lister or as attorney to any party before the board, or have appealed their own appraisals, they cannot serve on the board for tax appeal purposes during the entire year.

The quorum for the board of civil authority in tax appeals is not a majority of the board. As few as three members in agreement may act as the board of civil authority, although usually more are involved in the tax appeal process.

The town clerk: Although the clerk is part of the board of civil authority, it's important to focus on the clerk for the role this officer plays in town government. In most communities, if there is one person who knows everything or who knows where to find it, it's the town clerk.

The town clerk is also the custodian of most town records, including the grand list once the listers are done with it. Grand lists of former years are also within this officer's custody, as well as the minutes and decisions of the board of civil authority from previous years, a resource that shouldn't be overlooked in preparing for a tax appeal.

The town agent: The town agent will not have an obvious role to play in your town until your case goes beyond the board of civil authority. At that point the town agent will take responsibility for the management of the litigation. You may see the town agent at your hearing, but for the most part this official will be a silent witness to the proceedings.

Arguments that don't work in an appeal

The following are arguments that others have tried that simply don't work. Try to avoid them at any cost:

1. My taxes are too high. So what? That tells us nothing about the state of your appraisal. You won't get any sympathy from anyone in the town. Maybe you want to request an abatement, or inquire into the state property tax rebate program, but in an appeal there just isn't any value in complaining about taxes. The subject is appraisal; if it's right, whatever you pay is what you deserve. If it isn't, then even if you're wealthy there's an injustice that should be set right.

2. The listers don't like me. Don't attack personalities, attack their work. Prove that they have made mistakes or appraised your property unfairly in comparison to someone else's property in town. You'll get nowhere blaming others for your situation. You need to concentrate on the facts that will show how your tax appraisal is in error, not on those who may have made the mistake. In fact, remaining on good terms with the listers might be an advantage to you in future years.

3. The property tax is unconstitutional. The listers and the board of civil authority aren't likely to wade into these waters. They want numbers, comparisons, good arguments; they won't consider constitutional arguments.

4. The listers have appraised their own property at less than fair market value. This argument won't work unless you can show that the listers' own property is comparable to your own. If not, the simple inequity isn't going to help you much. Sympathy based on how unfair the system is is too general; you need to bring your property into the equation and show how your own property is overvalued relative to other comparable properties within the town.

5. If my property is worth what the listers say, would the town purchase it for that amount? This timeworn canard inevitably comes out in every tax appeal season. It hasn't worked for others, and if you try to use it you'll probably hear groans from around the table. It's a myth that the town has to buy your property at listed value if you disagree. You need evidence to make a good case.

What will Work:

There are three sound approaches to winning your appeal before the board of civil authority.

1. My property is appraised at fair market value while other, comparable properties are appraised for less than fair market value. First you need to find comparable properties. Start with what you know. Think of other examples of properties that were built about the same time as yours, or are similar in type, number of rooms, acreage, and the like. Read and get copies of the listers' cards on those properties and compare them with your own. Using property transfer returns or some other method, figure out the fair market value of your property and that of the comparables. Then assert the listed value (the value the listers' have listed in the grand list), and demand that your property be appraised at the same percent of fair market value as your comparables.

2. The cost of replacing the buildings on my property would be less than its appraised value. In the preceding paragraph, we illustrated the market value method of appraisal. Here we concentrate on the cost approach. Most listers use this system, often relying on the Marshall-Swift program or reference book to assess how much it would cost to rebuild. You need to produce cost estimates from contractors, bills from people you know who have recently built new homes, or anything else you can think of to show that these cost figures are too high, and then compare these figures to your listed value.

3. A mistake has been made on my card. The card says you have three bedrooms and two full baths, but you have only two bedrooms and one and a half baths. The card says your roof is in excellent condition, but you can show the board that it leaks like a sieve. The card doesn't mention your cracked foundation, the structural flaws in your garage, the moisture problem in your walls. The one advantage you have over the listers is your intimate knowledge of your house. You need to show, by photographs, repair estimates and the like that the appraisal is inflated or plainly wrong.

The Appeal Hearing:

The hearing is your best and only opportunity to make your case before the board of civil authority. You need to be ready with your exhibits and other evidence. You need to have your arguments organized for presentation in the clearest possible form. A little practice in explaining your case to friends and associates is time well spent in preparation for the hearing. If you can't convince your friends and family, you will have a tough time convincing the board.

continued on page 4

How the Comparables Method Works:

Your property is listed at 100% of fair market value--$100,000. You find three other comparable properties which by property transfer returns or other evidence have a higher fair market value than listed value. Here's how you calculate what your listed value should be:

Property	Fair Market Value	Listed Value	% of FMV
Yours	$100,000	$100,000	100
Comp. A.	$100,000	$75,000	75
Comp. B.	$120,000	$100,000	80
Comp. C.	$110,000	$92,000	84

Calculating precisely what your listed value should be is not an exact science, but you can see from these numbers that you are being unfairly treated by the town by having to pay taxes on 100% of fair market value, while others are paying a smaller percentage. You might try to argue that your property in this example ought to be appraised at 80% of fair market value (or $80,000), assuming you can show that the others are comparable to yours and that the fair market value you have assigned is proper. This information can be found on property transfer returns of recent sales of such property. If you have recently purchased your home, your own sale price (as shown on the property transfer return) is the best evidence there is of its proper fair market value.

Perhaps the best preparation is to observe the board in action in other cases before yours is taken up. From this you can learn what works with this board, which members are likely to be the sharpest, which ones have the toughest standards.

Expect to have about ten to fifteen minutes to make your case. Expect to be sworn in before you begin testifying. Expect that a tape recorder will be running, catching your every word. Expect tough questions from board members.

Make enough copies of all exhibits (listers' cards, other documentation) so that the listers and each member of the board can have their own copies. A cover letter outlining and underscoring the points you'll make orally is a good idea.

Remain polite but insistent that your position is correct. Don't agree to a compromise on the spot; it only shows a lack of confidence on your part. But if the board quickly recognizes the wisdom of your position, know when to stop pressing. An irritated board is not likely to grant you any relief.

Expect the listers to go first, at least to present the listed value of your property and a report of what happened at the grievance. You'll come next. Then, once you're finished, the listers will have an opportunity to rebut your evidence. You may have an opportunity to come back one more time to answer their objections. Then the board will ask its questions. Not all boards follow this schedule, so be ready for anything.

Following your case, thank the board for the time it spent on your case.

Counting the Days:

Remember the timetable for the board's post-hearing responsibilities. If all else fails, if the board does not follow the schedule, you may prevail even if your arguments aren't persuasive.

Following the hearing, the board appoints an inspection committee of three members. Each of the three members has to inspect the property, although all three don't have to come at the same time. Inspection and the committee's report back to the board have to be made within the thirty days following the hearing. Then, once the inspection committee has made its report, the board has to issue its written decision within fifteen days.

Or else what? The law is clear that if these steps and timetables aren't followed, you win. Your grand list for the year you are appealing, is set at the amount listed in the previous year. The only exception to this is if there has been a complete reappraisal in your town. In that case your grand list will be set at a value that will produce the same tax liability as you had last year.

Use a calendar. Mark the thirtieth day following the end of the hearing. Then, when you learn the date of the board's meeting to receive the report of the inspection committee, mark the fifteenth day. Know when the deadlines have passed, and then bring them to the attention of the board. Ask them to read 32 V.S.A. § 4404(c) for the law on default.

Beyond the board of civil authority:

If the board does not give you the relief you feel you deserve (and can prove), you may want to consider an appeal to the state appraiser or superior court. If you choose the superior court, you will probably want to consider hiring an attorney. If you choose the state board, you can try to do the appeal yourself. The appeal to the state appraser is likely to be heard and decided sooner than the court.

The decision you receive from the superior court or state board of appraisers will set your appraisal at a value that will remain in place for this and the two succeeding years. The only exceptions are if the town undergoes a complete reappraisal or you undertake substantial changes in your property during those years.

Remember that the appeal period runs out on the thirtieth day following the date of the decision of the board of civil authority. Don't wait until the last day to put your appeal together. The appeal to the state appraiser is filed with the Director of Property Valuation and Review, 109 State Street, Montpelier, VT 05609. The board has adopted rules you should read and understand before the hearing.

The state appraiser will come to your town for the hearing. It may not happen right away, so you need to keep your arguments fresh. The appraiser will inspect and assess your property on its own.

Decisions of the superior court or state appraiser can be appealed to the Vermont Supreme Court within thirty days of the decision.

Deciding whether to pursue an appeal beyond the board of civil authority ought to begin with an assessment of how much you will gain on your appraisal compared to the costs of further appeal. Sometimes, even though you're right, it may not be worth your time or money to keep fighting.

The Vermont Institute for Government

The Vermont Institute for Government (VIG) is a non-profit corporation dedicated to improving educational opportunities for local officials and the public on how government works. It consists of representatives from each of the major groups in Vermont that offer such training. For more information contact:

Vermont Institute for Government
617 Comstock Road, Suite 5
Berlin, VT 05602-9194
223-2389

12/99