

September 20, 2017

Norwich Selectboard
Tracy Hall
Main Street
Norwich, VT 05055

RE: Church St. Sidewalk Project
SB Mtg - 9/27/17

Dear Norwich Selectboard,

I am submitting the following timeline in preparation for the Wednesday, September 27, 2017 Selectboard meeting addressing the Church St. Sidewalk Project:

2006 a petition was submitted to the Selectboard for several sidewalk projects around town.

Fall 2008 I first heard about a Church St. sidewalk project from former Town Mgr. Pete Webster as he was walking along the front of my property. He explained a much simpler project. He indicated that my fence would be replaced if it had to be moved.

June 2009 I stopped in to see Pete Webster for an update. On June 23 he forwarded a number of e-mails he received from the State regarding site plans, concerns, questions, etc. as he promised when I stopped in.

May 2010 I received an e-mail from Pete Webster updating Church St. sidewalk project; plans were being re-submitted with my concerns noted for Conceptual Plan development.

December 2012 As a concerned Church St. property owner, I did not receive e-mail notice of Church St. sidewalk public hearing and, consequently, did not attend.

September 25, 2015 Late Friday afternoon e-mail is sent to Church St. property owners informing us of a 4-7 pm meeting on Tuesday, September 29th to review plans/walk site. The meeting started late due to consultant delay; it was difficult to understand the plans on the wall, so it was suggested we walk the site marking location of sidewalk as Corey Mack, project engineer, explained each property involvement/impact.

December 7, 2015 There was no follow-up from the project manager regarding numerous unanswered questions we asked during this meeting, I presented a document (Sidewalk Project Questions & Considerations) at the SB meeting regarding the numerous questions that were left unanswered after our September 25 site walk.

December 2015 After not hearing further about the project, only about signing easements, Corey Mack responded to a document I e-mailed him (as well as the SB, Neil and Phil) with a phone call assuring me he was working on changes addressing residents concerns and there would be another meeting. *No additional property owner meetings were ever scheduled.*

p 2. Project Timeline for September 27,2017 SB
Mtg.

January 13, 2016 I attended the SB meeting requesting the sidewalk project be placed on the SB agenda before seeking easements.

January 27, 2016 DRAFT Minutes of SB Meeting:

6. SRTS – Church Street Sidewalk Project (Discussion/Possible Action Item). Dechert reviewed the history of the project. Several Church Street residents spoke about their concerns with the project. After discussion, Fluton said he would continue meeting with the property owners and would let the Selectboard weigh in before proceeding with the project. *Neither happened.*

I presented each SB member, TM and ZA a packet of information including all collected documentation presented overt time and a Church St. police safety report.

February 2, 2016 I presented a petition requesting the project be discontinued signed by most of the property owners impacted.

March 22, 2017 I attended the 2nd meeting of the new Selectboard to request the Church Street Sidewalk Project be put on a future agenda (purpose of the meeting after other business). I briefly reviewed the neighbors' concerns, Phil again stated the project history, and both new SB members questioned why this project was moving forward if there was opposition.

September 27, 2017 Church St. Sidewalk Project on Selectboard agenda.

Sincerely,

A handwritten signature in cursive script that reads "Elaine B. Waterman". The signature is written in black ink and is positioned below the word "Sincerely,".

Elaine B. Waterman
63 Church Street

September 20, 2017

Norwich Select Board
Tracy Hall
Norwich, VT 05055

In addition to the project time line, this is a synopsis of issues many property owners and concern citizens have discussed over time:

The proposed 5' wide sidewalk w/granite curbing will:

- put pedestrians within a giant step of four property owners steps, porch and/or front door will diminish privacy and perhaps even diminish the value of their property
- require removal of the Norwich Congregational signage and diminish the Church's drop off area
- adversely affect several large and historically prominent trees, traumatizing their root system and putting their sustainability in jeopardy
- the sidewalk will force bikers and runners (teams) to use the traffic lane
- this section of Church Street is listed on the National Historic Preservation. Citifying this small section of Church Street is an insult to historic preservation.
- the Zoning Administrator and project engineer have stated to property owners that any structures removed or damaged will not be replaced and/or moved further back on property due to lack of funds
- no pedestrian accidents on this stretch of Rt. 5N; digital records date back to May 1997; prior records have yet to be digitalized. See attached report from Norwich Police Department dated December 10, 2015 which was submitted to the SB
- this project was first discussed in 2008 with some property owners and was last mentioned in the 2009 Town Report. The first official information to property owners regarding the resurgence of this project was in the October 2015 e-mail.
- lack of transparency from the very beginning when the petition that was first submitted

The October 2016 property owner meeting/walk with Corey Mac, project manager, left many unanswered questions and revealed many other specific property owner concerns which were submitted to each SB member, TM and ZA at the January 27, 2016 meeting.



February 2, 2016

To the Town Manager and Selectboard

The scope and impact of the proposed Church Street sidewalk has unintended negative consequences, and for the following reasons, we respectfully ask that the project be discontinued.

19 Church Street

Proposed sidewalk would be 8 feet from the front steps of the house

Two historic trees compromised

31 Church Street

Oldest Elm tree in Norwich would die. See enclosure from Chippers Tree Service

Proposed sidewalk would be 8 feet from the front steps of the house

39 Church Street

Trees impacted

55 Church Street

40 foot Magnolia tree would die from root disturbance

Extensive landscaping and drainage issues

63 Church Street

See enclosed documents

In addition, all mailboxes would be eliminated. The engineer suggested that the mail delivery person could drive over the curb and sidewalk to deliver mail. This is illegal.

Generations of residents, young and old, have travelled on Church Street. The speed limit is low, and there is a crossing guard before and after school. There have been no pedestrian accidents on the street. We, therefore, see no need for the proposed sidewalk project.

Susan Dany Ireland
David R. Ireland
Claire Waterman

1
Trustee Brian
Marsha H. Siff
Stuart Rose
Eugene

12/9/2015

Emailed to:

Corey Mack, ^{Project} Engineer Norwich Sidewalk Project Comments

Neil Fulton - TM

Phil Rechest - ZA

Norwich Selectboard

Elaine B. Waterman
63 Church St. PO Box 85 Norwich

e.waterman@valley.net
649-1558

QUESTIONS left unanswered after October site visit with affected property owners:

1. Status of mailbox placement not determined; postal delivery personnel expressed concerns regarding granite edging.
2. Who is paying for replacement of fencing that has to be moved?
3. Who is paying for the certified onsite arborist? The roots of several large trees may be injured or not survive the disruption thus leaving the landowner with expensive maintenance or removal. Having an onsite arborist does not guarantee health of tree.
4. Who will be maintaining the culverts? The present culverts have been neglected for years and have been home to critters. There is a working drain on the front lawn at 55 Church which previous owners enhanced to accommodate their sump pump.
5. Each property owner has property specific concerns. Concerns at 63 Church Street include and are not limited to:
 - size and maintenance of swale
 - swale to shore up sidewalk installation means more of my front property is unusable (beyond scope of walk).
 - utility pole on property and underground cables
 - leach field on property and affect of heavy equipment
 - the plan to install 10' asphalt on property beyond scope of sidewalk – (I have a circular drive) – I do not want asphalt on my property; my drive has hard pack and pavers, two 10' lengths of driveway asphalt would be unsightly, diminish/devalue the look of the front yard and add more cost to maintenance/care

OTHER CONSIDERATIONS for Town

This is a small NE village, not a city. People move here for the quaintness of the Village and/or the rural nature beyond. Why do we need to citify our town when we've chosen to purchase property and live here for those very reasons just mentioned?

Four homes will have the sidewalk in their "dooryard" and a step away from their entry.

This section of Rt. 5 is a popular biking/jogging route for individuals, groups, and HHS teams. Loss of biking/jogging space puts these folks at increased risk on the sidewalk side of the street.

Winter maintenance. Rt. 5 is well maintained by state plows with frequent trips up/down 5N. The plowed snow will now be on the sidewalk. Will the sidewalks be “plowed” with the same frequency by the town? Snow/ice covered sidewalks increases pedestrian risk when the only alternative is to walk on the cleared road until the walks are cleared.

Towns promise municipal maintenance of sidewalks until there is a budget crunch. This has happened in my former Connecticut home and has happened and is happening this year in many other New England towns with fines levied if not cleared within a certain number of hours. It is my understanding that the Fire District is no longer responsible of maintenance and repair of Village sidewalks; however, I have heard from the Prudential Committee that the Town wants to no longer have that responsibility.

How does this short stretch of sidewalk make Rt. 5N a safer route as it ends at Carpenter Street? There is no record of memory of an accident on this stretch of Rt. 5N since 1976 by long time residents. A search of digital police/accident records from 1997 has been completed; the report documenting pedestrian, bike and car accidents for this stretch of Route 5 and beyond is attached.

Most school children are driven to school and have after school pick-up plans (library, sports, activities, friends). Those few children who do walk to school do so on the other side of the street facing traffic. Few children walk home.

December 9, 2015



NORWICH POLICE DEPARTMENT



ADMINISTRATIVE SECRETARY
JUDITH W. POWELL

P.O. Box 311 ~ 10 Hazen Street ~ Norwich VT 05055 ~ 802-649-1460 ~ FAX 802-649-1775 ~ E-MAIL judith.powell@vermont.gov

TO: Elaine Waterman
FROM: Judy *Judy*
DATE: December 10, 2015
SUBJECT: Motor Vehicle Crashes on Church St.

Electronic storage of our records began in May, 1997 so the data below begins at that time and continues through to today's date.

| <u>DATE</u> | <u>TIME</u> | <u>LOCATION</u> | <u>BRIEF DESCRIPTION</u> |
|-------------|-------------|-----------------|---|
| 12/14/1997 | 12:28am | 50 Church St. | 1 vehicle, hit a tree |
| 07/02/2001 | 8:24am | 19 Church St. | 1 vehicle, hit bicyclist |
| 04/29/2006 | 10:33am | 320 Church St. | 2 vehicles, head on |
| 12/22/2008 | 1:54pm | 134 Church St. | 2 vehicles, pulling out of drive into traffic |
| 02/05/2009 | 6:25am | ?? Church St. | 1 vehicle, hit deer |
| 01/12/2012 | 11:01am | 198 Church St. | 1 vehicle, slippery, slid off road |
| 10/31/2012 | 4:02pm | ?? Church St. | 1 vehicle, hit deer |
| 12/18/2014 | 8:19am | 22 Church St. | 2 vehicles, backed into parked vehicle |

September 21, 2017

RE: September 13 Selectboard meeting; Listers practice of sales chasing

Dear Selectboard and Listers

If the Town wants to continue using elected Listers (and I hope it does), then the Listers must appreciate proper assessment practices and learn from past mistakes. That does not seem to be the case with respect to the improper assessment practice known as sales chasing.

In 2011, the Valuation Appeal Board ("VAB") determined that Norwich had engaged in an improper assessment practice when its Listers used MLS real estate listings as a trigger to reassess those properties. I was extremely disappointed when watching the video of the September 13 Selectboard meeting. One of the Listers in essence stated that the Norwich Listers had been "accused of sales chasing" but that the Listers "never chased sales", that that the Listers "chased information about houses", and that the Listers office had received approval for its approach. (See video at approximately 1:29:00).

As you may recall, this issue is important to me as the practice described by the VAB was the basis of my pro se litigation against the Town, which has been settled. It is alarming to think that the Listers might continue the practices ruled improper by the VAB. I have reviewed numerous public records from the Listers office from 2007 through 2011 and never saw a letter that approved of the practice.

In fact, the decision of the VAB says the contrary at page 2:

While part of their job is to watch the real estate sales market and follow the MLS listings, the MLS cannot be the trigger the listers to go out, inspect a property and use what they learn to change the Grand List value. Sure, such methods will result in more accurate Grand List valuations, but they will only be more accurate for the taxpayers with property on the MLS, and that is the problem.

(emphasis added)

It gets worse. The Town's position before the VAB was that each house was inspected and adjustments only made for improvements. With respect to my property, no inspection occurred and no improvements had been made. The claim that the Listers "chased information about houses" was a sham in my case. I doubt I am the only one. What I found was that the Listers went into the computer and manipulated data to get the value desired. That practice is wrong. Allen v Town of West Windsor, 2004 VT 51, 852 A.2d 627 (2004).¹

Perhaps, part of the Listers past practices reflects a misunderstanding of the Listers duty. It is NOT just to list property at fair market value. In fact by statute, the Listers oath of office

¹ "It is apparent from the evidence before the state appraiser that the town used inputs for taxpayers' properties that increased the value resulting from the software computation, and that value was equivalent to the sales price taxpayers paid when they bought their properties. In contrast, properties that had not been the subject of recent sales were not treated in a similar manner." Allen at ¶12.

requires that property be listed “without discrimination on a proportionate basis... .” 32 V.S.A. § 3431.² Discrimination is why sales chasing violates the Equal Protection Clause of the United States Constitution according to the United States Supreme Court decision in Allegheny Pittsburgh Coal Co. v. Commission of Webster County, 488 U.S. 336 (1989).

Uniformity is as important as fair market value. The Listers would not dream of selecting 100 properties totally at random to inspect for interior and exterior improvements, while ignoring the remaining 3000 parcels in Town. That would be arbitrary and discriminatory. That is what happens when the Listers single out for reassessment, properties on the market for sale. Call it “sales chasing” or “chasing information”; it is a form of selective or spot reassessment that violates the United States and Vermont Constitutions. See Town of Castleton v. Parento, 2009 VT 65, 988 A. 2d 158 (2009).³

It took me some time to understand the assessment process and constitutional issues. I think the Listers should make sure they are on firm ground before using novel or aggressive tactics. The BCA is not equipped to handle constitutional challenges. Residents should not need to hire a lawyer when their assessment jumps.

The point of this letter is not to rehash past practices of the Listers. I want to call to the attention of the Selectboard and Listers the decision of the VAB. I also ask that the Listers abide by that ruling and consult with the Division of Property Valuation and Review before testing novel theories of property assessment. I support the lister-assessor model, am glad the Listers want to reset their relationship with the contract assessor, and hope the assessor is of the same view.

² Section 3431 states in part:

(a) Each lister shall take and subscribe and file in the town clerk's office, before entering upon the duties of his or her office, the following oath...:

"I, _____, do solemnly swear (or affirm) that I will appraise all the personal and real property subject to taxation in the town (or city) of _____, so far as required by law, at its fair market value, will list the same without discrimination on a proportionate basis of such value for the grand list of such town (or city), will set the same in the grand list of such town (or city) at one per cent of the listed value and will faithfully discharge all the duties imposed upon me by law. So help me God." (or, "under the pains and penalties of perjury.")

(b) When the listers violate such oath, they shall each be guilty of perjury and punished accordingly.

³ In Town of Castleton, the Town focused on 35 properties. The Court observed: “[T]he Town did not reassess the homesite and lakefront parcels of numerous other similarly situated property owners, including those whose properties abutted or were in close proximity to taxpayer's, rendering the reappraisal constitutionally suspect.” At ¶16.

Attached is a copy of the 2011 VAB decision as well as the 2010 ruling of the Division of Property Valuation and Review appealed from. Pages 1-3 of the VAB decision and pages 1-2 of the PVR letter ruling address the matter at hand. Please note this letter does not constitute legal advice.

I hope this letter is helpful. Thank you in advance for your consideration of my views.

Sincerely,

Christopher Katucki
47 Old Coach Road
Norwich, VT 05055
802-649-7224



State of Vermont
Department of Taxes
133 State Street
Montpelier, VT 05633-1401

Agency of Administration

June 17, 2010

Charles Merriman, Esq.
Tarrant, Gillies, Merriman & Richardson
44 East State Street
PO Box 1440
Montpelier, Vermont 05601-1440

Re: Redetermination of the Town of Norwich 2010 EEPV and COD (Derived from 2009 Grand List)

Dear Mr. Merriman:

On April 23, 2010, I heard Norwich's appeal of its equalized education property value (EEPV) and coefficient of dispersion (COD). Charles Merriman, Esq. and Ister Dennis Kaufman appeared for the Town. Mark Paulsen, Bill Tobin, and Assistant Attorney General Suzanne Monte represented Property Valuation and Review (PVR). Judith Henkin was hearing officer by designation of William E. Johnson, Director of PVR.

First, the Town maintains that the study should include property values that it adjusted based on information garnered from viewing the properties' real estate listings. The Town argues that such changes are essential grand list maintenance. In advance of hearing, the Town provided PVR with a list of nine properties which it contends should be included in the study at the values set by the Town, rather than at their prior assessed values.

In response, PVR contends that by using real estate listings as the prompt for adjusting values, sold properties are treated differently than unsold properties – they are more likely to be reassessed, with the resulting value tellingly close to the sales price – and that the Town is thus engaging in sales chasing. In support of its position, PVR presented a document entitled "Treatment of Sold Properties" that illustrates the likelihood of sold property being assessed, versus unsold properties.

Review of the documentation supports PVR's position, as does the Town's testimony at hearing. "Sales chasing is the practice of using the sale of a property to trigger a reappraisal of that property at or near the selling price." IAAO Standard on Ratio Studies at 43 (July 2007). Here, the Town acknowledged that it routinely scrutinizes MLS listings to find discrepancies with grand list values, and thereafter adjusts values to reflect what it claims are changes and improvements to the property. The Town presented no

evidence, however, that unsold properties were similarly reviewed and reassessed, and PVR's analysis – showing the frequency of change in value of sold properties, versus unsold, at more than two to one in three of the last five years, and the close proximity of assessed value to sales price – is sound and persuasive. While the Town intimates that PVR's failure to inspect the properties impugns its conclusion, the Town itself did not inspect all of the challenged properties before changing the values. In addition, property values were consistently adjusted based on purported changes to static features – for example, topography, view, and grading – which strongly suggests that the change was not a physical one, but a subjective call on the part of the listers. In short, the Town has not shown that PVR's dismissal of the updated listed values – values plainly triggered by real estate listings – was unreasonable.

Next, the Town contends that it reappraised its commercial category in 2008 and that PVR wrongly rejected the newly adjusted values on three sales. Citing the lack of promulgated regulations, the Town also takes issue with PVR's claim that the Town was required to notify PVR prior to conducting a partial reappraisal. In response, PVR maintains that it did not need to promulgate a formal rule because the authority was conferred by statutory directive to the commissioner. Further, PVR asserts that the Town failed to meet its guidelines for conducting a reappraisal, having conducted too few assessments to be representative of the category.

It is not to be summarily presumed that an agency is required to conduct rulemaking. *See State v. Wuerstin*, 174 Vt. 570, 570 (2002) (mem.) (agency “not required to enact regulations to carry out what its authorizing statute specifically directs it to do.”) Here, the Town has not shown a violation of its citizens' substantive rights – despite its assertion otherwise – nor has there been a request for rulemaking. *See* 3 V.S.A. § 831. Further, the legislature unambiguously charged the commissioner with the broad task of annually determining the equalized education property tax grand list and coefficient of dispersion for each of Vermont's municipalities, 32 V.S.A. § 5405(a), and conferred to the commissioner wide latitude to employ any “appropriate” method to determine the fair market value of property, “in view of the resources available for that purpose.” 32 V.S.A. § 5405(d). Under PVR guidelines, the Town has not conducted a partial reappraisal, and has failed to show error with PVR's decision not to use the adjusted commercial category values. PVR did not err in its refusal to use the adjusted values in the study.

Last, the Town requests that PVR include in the study the Town's appraisal value for the Leatherwood to Rising property, rather than its former listed value. Citing *Townsend v. Middlebury*, 134 Vt. 438, 440 (1976), the Town argues that it appropriately increased the assessment after the holder of a life estate in the property died, and the ownership interests merged. PVR responds that the Town mischaracterizes its rationale for reverting to the prior value; the Town did not alter the assessed value at the time the life estate was created, so it should not now increase the value on that basis because the interest was extinguished. Moreover, PVR maintains that the Town's assessment – which more than doubled the prior assessment and was disproportionately attributed to the land – is “strikingly similar” to the ultimate sales price.

Whether or not the Town should have increased or decreased value based on the existence of a life estate is not the focal issue. If the equalization study is to reflect the Town's listing practices, Norwich has consistently demonstrated that it selectively assesses properties, and arrives at values within remarkably close range of the sales price. Furthermore, in this instance, despite its argument that the value was changed to reflect the merger of the ownership interests, the Town attributed the change in value to the property having the "best river frontage in Norwich." Again, the Town's change in value is based on a non-changing, subjective attribute, and does not warrant the dramatic increase in the assessment. The prior value will remain in the study.

I therefore certify that the values are as follows:

| | |
|-------------------------------------|---------------|
| Equalized Education Property Value: | \$767,298,000 |
| Common Level of Appraisal: | 91.40 % |
| Coefficient of Dispersion: | 12.29 % |

If the town wishes to preserve its appeal rights with the Valuation Appeal Board it must do so in writing. The appeal to the Board must be received by the Division of Property Valuation and Review by the close of business on the 30th day following this determination.

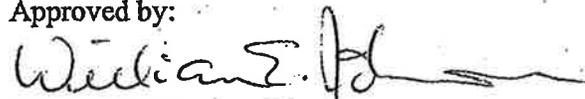
Please contact the Division if you have any questions.

Sincerely,



Judith Henkin
Designated Hearing Officer

Approved by:



William E. Johnson, Director
Property Valuation and Review

Date: 6-17-10

cc: Chair, Selectboard
Town Clerk
Chair, Board of Listers / Assessor
Chair, School Board
Superintendent of Schools: SU055
District Advisor: Bill Tobin

**STATE OF VERMONT
VALUATION APPEAL BOARD**

In Re:) **Appeal of 2010 EEPV & COD**
Appeal of Town of Norwich) **(Grand List 2009)**
) **Docket #EQ-08-1**
)

DECISION

The above captioned appeal came for hearing before the State of Vermont Valuation Appeal Board (VAB) on October 29, 2010 in the meeting room at the Norwich Town Hall to consider the redetermination of Norwich's 2010 equalized education property value (EEPV) and the coefficient of dispersion (COD) pursuant to 32 V.S.A. §5408(c). Present at the hearing were VAB members: Laurie A. Rowell, board chair, Sonia A. Alexander, Anne Bernhardt and Sandy Murphy, board members. Steve Wheelock, assessor, and Dennis Kaufman, chair of the board of listers, testified on behalf of the Town of Norwich. The Vermont Department of Taxes was represented by Suzanne M. Monte, Assistant Attorney General. Mark Paulsen, district advisor supervisor/overseer of the equalization study, and William Smith, consultant to the State/formerly Tax Department's statistician, testified on behalf of the State of Vermont Department of Taxes - Division of Property Valuation and Review (PVR).

PROCEDURAL HISTORY

Norwich filed a petition with the director of the division of PVR for a redetermination of the municipality's EEPV and COD based on its 2009 Grand List. The redetermination hearing was held on April 23, 2010 before Judith Henkin, hearing officer by designation of William E. Johnson, Director of PVR.

The town based its request for redetermination on three issues. The hearing officer found in favor of the State on all three issues and this appeal from the Town to the VAB followed based on the same three issues: sales chasing; partial reappraisal, and life estate property interests.

FINDINGS OF FACT: Issue One

1. The Town of Norwich underwent a town-wide reappraisal in 2004 by an outside appraisal firm.

2. Some of the data collectors for the 2004 reappraisal were inconsistent in entering their property information for Grand List valuation purposes.
3. Norwich listers and assessor have used a number of different ways to correct inaccuracies from the 2004 reappraisal and in general maintenance of the Town's Grand List.
4. One method used by the Norwich listers to correct and maintain the Grand List is to routinely check the area's Multiple Listing System (MLS) to find properties going on the market, listers then sometimes inspect the properties and, in some cases, based on the inspection adjust the property's Grand List value.

DISCUSSION: Issue One

In Norwich the listers are trying to do what Vermont statutes require of them, with the methods that they have available to them. While part of their job is to watch the real estate sales market and follow the MLS listings, the MLS cannot be the trigger the listers to go out, inspect a property and use what they learn to change the Grand List value. Sure, such methods will result in more accurate Grand List valuations, but they will only be more accurate for the taxpayers with property on the MLS, and that is the problem.

Vermont Listers' Handbook in the discussion regarding Ongoing Analysis and Maintenance states that listers, "[S]hould review sales on an on-going process to determine the ratio of the listed values to the sale prices in order to determine if any general adjustments are warranted.... Even though the statutes direct you to appraise all properties at fair market value, you must ensure the value of new or changed properties is at the same percentage of fair market value as other properties." Kachadorian v. Town of Woodstock, 144 Vt. 348 (1984). Listers' Handbook, page 21, 2008.

People place their property with a realtor for all sorts of reasons, sometimes just to find whether there is anyone out there ready and willing to purchase at their asking price. Sometimes the listing will result in a sale, sometimes after a period of time the seller will decide to take the property off the market, either way the listing should not result in a change by the Town to their property's taxable value.

When listers decide to reassess a property, or a couple of properties, outside of a town-wide reappraisal year, and without the property owner having applied for a building permit, they had better be able to justify their decision(s) or face a selective reassessment challenge. There are many Vermont cases directly on point regarding “whether a particular assessment lacks uniformity”, particularly when only recently sold properties were subject to reassessment at current full fair market value. “The overriding goal [of a town’s property assessment] is to ensure that, whatever the fair market value of a property might be, its listed value corresponds with the listed value of comparable properties so that no taxpayer pays more than his or her fair share of the property tax burden.” Allen v Town of West Windsor, 177 Vt. 2, at 3 and 6 (2004). The year of the opinion as cited in the Listers’ Handbook on page 22 is incorrect.

The facts of the Allen case are so similar to the situation in Norwich one would wonder whether the State district advisor or hearing officer ever provided a copy of the court’s opinion to the Norwich listers. Perhaps PVR’s website should provide a link to particular case law referenced in the Listers’ Handbook. The present tax valuation appeal’s process in Vermont begins with PVR, through district advisors and hearing officers, educating, counseling and advising listers, many of whom are simply townspeople trying to do the right thing. Unfortunately, though, by the time PVR and a town come before this board, both parties find themselves on opposite sides of the table. The appeal process involves a great deal of time and expense for both parties and often the Town and State do not arrive here on equal footing. The State has an obligation to assist the Towns as much as possible.

FINDINGS OF FACT: Issue Two

1. The Norwich listers reviewed the property card information and sales information for each property in the Town’s Grand List’s commercial category in 2008, without requesting permission of PVR to undertake a partial reappraisal.
2. The Town’s commercial category consists of 66 properties (including exempt and Dartmouth parcels), 22 properties values were changed by the listeres on the 2008 Grand List.

DISCUSSION: Issue Two

Certainly if there existed a written policy, requirement, rule or recommendation that a town notify PVR when it has begun a reappraisal of a category of properties, it would have been included as part of the seventeen (17) exhibits for the VAB hearing provided by the State, but there is none to be found. Even a review of the Listers' Handbook has no such notice provision. So how would a part time, elected lister have known of such a requirement? The State in its Reply Memorandum of Law references State's exhibit #2 "Reappraisal Activity for the Equalization Study" as authority for the notification requirement without a citation to a page number. A review of the eleven page document produced no such notification requirement.

The "Reappraisal Activity Evaluation for the Equalization Study" is interesting reading, but how would one find it if they were not part of the VAB hearing last October? It is not referenced in the Redetermination hearing decision on Norwich's appeal. Again, PVR has the resources and an obligation to make data available to the towns they serve. What seems to be missing is the "towns they serve" attitude, not the towns with which they battle. Technology has made access to information easier than ever, PVR should add the "Reappraisal" document to the list of documents on the listers' page at the Tax Department's website. Go ahead and add it whether or not any town or person has asked for formal rule-making on this particular issue.

The "Reappraisal Activity Evaluation for the Equalization Study" spells out the differences between a partial reappraisal, rolling reappraisal and general Grand List maintenance and provides a clear convincing rationale. Again, this entire appeal may have been curtailed earlier, or avoided entirely, if Norwich had been provided with the proper documentation. After reviewing the document, Norwich has not met the requirements for a partial reappraisal of their commercial category, and neither did they then adjust changed valuations to the level of appraisal of the portion of town that has not been reappraised. See "Reappraisal Activity Evaluation for the Equalization Study", page 9, in bold print, (2007).

Clearly the Commissioner has the power to determine "appropriate" methods to determine fair market value. 32 V.S.A. § 5405(d). Case law puts the burden of proof and a very high standard of review on appeal squarely on the shoulders of the towns. The towns can only prevail if they can prove the State's approach is "wholly irrational and unreasonable in relation to

its intended purpose,” and cannot simply impugn or question the State’s methodology. *Town of Killington v. Dep’t of Taxes*, 176 Vt. 70, 73 (2003). Much of the work has been done by PVR already, the State needs to make the information available to the Towns.

FINDINGS OF FACT: Issue #3

1. Property Transfer Tax Return from Mary F. Rising to her daughter Cia M. Rising dated May 28, 1998, of remainder interest, price paid for real property \$130,000. Primary residence and 5.6 acres. If price paid is less than fair market value, describe circumstances: Transfer between parent and child without consideration. Recorded in Norwich Land Records on June 1, 1999.
2. Warranty deed from Mary F. Rising to her daughter Cia M. Rising dated May 28, 1999, grantor reserved a life estate: the right to possess, use and enjoy all of the real property during her lifetime, recorded in Norwich Land Records on June 1, 1999.
3. April 1999 Grand List value in the name of Mary Rising, Dwelling and 3.6 acres, total Grand List value \$101,600: homestead from \$95,800 to \$96,000.
4. Grand List 7/13/2000, Cia Rising dwelling and 3.6 acres Total Grand List value \$101,600.
5. 2005 Grand List as of April 1, 2005, Cia Rising, (building of second house started), Total Grand List value \$390,000.
6. Grand List 2006 as of April 1, 2006, Cia Rising, 3.6 acres and 2 dwellings (second house completed), Total Grand List value \$449,100.
7. September 3, 2006 Mary Rising died.
8. February 23, 2007, Norwich reappraised the Rising property to \$963,200.
9. Warranty Deed from Cia M. Rising to David P. Leatherwood and Loretta E. Leatherwood dated June 29, 2007, in fee simple.
10. Property Transfer Tax Return from Cia M. Rising to David P. Leatherwood and Loretta E. Leatherwood dated June 29, 2007, of single family dwelling and 3.6 acres from a primary residence to camp/vacation, price paid \$949,000, recorded July 2, 2007 Norwich Land Records.

DISCUSSION: Issue Three

In contrast to the State's decision in its redetermination decision at this third appeal issue, whether or not the Town should have increased or decreased the Grand List value based on the termination of a life estate is exactly the focal issue here. What is not the issue here is the State's broad characterization of Norwich's property valuation practices as selective assessments and their apparent determination as to the Town's motivation.

The May 28, 1998 transfer from Mary Rising to her daughter was irrevocable in that her daughter received a vested remainder interest. While Mary Rising retained a life estate she did give up her rights to sell her Norwich property. The Rising transfer was a common estate planning device at that time. The more recent life estate deeds offered by the State, date from 2005 and 2008, and reserve to the grantor almost all, if not all, of the attributes of ownership including but not limited to the power to sell and retain the proceeds, mortgage or otherwise encumber the property. The transfer tax returns in all three instances could accurately have stated that the grantees were receiving only contingent remainder interests. Contingent because they may very well have received nothing at all at the grantor's death, should the grantor have exercised their retained right to transfer title. Mrs. Rising had not retained such right.

Apparently, the Town did not decrease the Grand List value on the Rising property when Mrs. Rising deeded her remainder interest to her daughter in 1998, thirteen years ago. Why not? We will never know why not, may have been a different set of listers, a Grand List value very close to the transfer tax consideration value, based on legal advice, an oversight, a combination of factors - hard to say. The State claims that the issue is, "Whether the Town changes the value at all when a life estate is added." *State's Reply Memorandum of Law*, dated May 7, 2010. But that is not the issue here, in fact, there was no testimony on the rationale of the decision or lack of decision by the listers in 1999. This is an appeal based on the 2009 Norwich Grand List, not the 1999 Grand List.

This board is concerned about the hearing officer's and the State's interpretation of the third issue before the board and, in fact, with the overall attitude toward the practices of the Norwich listers. The Rising transfer is nothing like the other referenced transfers of life estates,

with powers of sale. The Rising property was encumbered by the life estate of Mrs. Rising, the remainder interest was vested. Could the Rising property have sold with such an encumbrance - maybe, but it wouldn't have sold at full fair market value of property with full fee simple title. Absent any evidence of Mrs. Rising's age and the attributed increase in value to the property at her death, this board finds in favor of the Town at the Grand List value of the Rising property as entered by the Norwich listers.

CONCLUSION

In conclusion, in regards to the first issue on appeal, this board orders that the property values that were changed by Norwich based in part in on their listings in the MLS be entered into the 2010 Equalization Study at the prior year's assessments.

In regards to the second issue, this board finds that the Town of Norwich did not undertake a partial reappraisal of their Grand List's commercial category in accordance with the description as provided for by PVR publication, "Reappraisal Activity Evaluation for the Equalization Study" and, therefore, all commercial properties whose values were changed based on Norwich 2008 reassessment of their commercial properties shall be entered into the 2010 equalization study at their prior year's assessment.

In regards to the third issue, this board finds that the fair market value of the real estate did increase at the death of the life estate holder. Therefore, absent evidence to establish a different value, this board orders PVR to leave the Norwich value of the Leatherwood property as it was entered by the Norwich listers following Mrs. Rising's death, whether or not it was "strikingly similar" to anything at all.

Dated at Brattleboro, Vermont this ^{14th} day of April, 2011.



Valuation Appeal Board, Chair

Laurie A. Rowell, Esq.

C/o Fitts, Olson & Giddings, P.L.C.

16 High Street

Brattleboro, Vermont 05301

NOTICE

In accordance with 32 V.S.A. section 5408(d), a municipality or the Division of Property Valuation and Review may appeal from a decision of the Valuation Appeal Board to the Superior Court of the county in which the municipality is located. The superior court shall hear the matter de novo in the manner provided by Rule 74 of the Vermont Rules of Civil Procedure.

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Vermont Land Trust

CONSERVING LAND FOR THE FUTURE OF VERMONT

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September 19, 2017

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Re: Acquisition of Development Rights; Polashenski Farm

Dear Members of the Selectboard:

We had notified you earlier that the Vermont Land Trust (VLT) was applying for a grant from the Vermont Housing and Conservation Board (VHCB) to acquire development rights and perpetually conserve the Polashenski farm in Norwich. VHCB subsequently approved this application on October 5, 2016.

This letter is to notify you, per Title 10 V.S.A. Section 6302(d), that the Vermont Land Trust will be closing on the purchase of the "Grant of Development Rights, Conservation Restrictions, Option to Purchase, and Right of Enforcement of the United States" (the "Grant") on 32 acres of land located east of Vermont Route 132 for \$191,250.00 which will be co-held by the Vermont Land Trust, Inc. and Vermont Housing and Conservation Board.

A copy of the Grant is available upon request and will be sent to the Norwich Town Clerk for recording immediately following closing. For more information about this transaction, please contact Jon Ramsay at (802)533-7705 or JRamsay@vlt.org.

Sincerely,

Christine McShea
Paralegal

