May 1, 2017

Mr. Kaj Samson, Commissioner

Department of Taxes

133 State Street

Montpelier, VT 05633

Cc: VALA; VLCT; Douglas Farnham, Director, PVR

Dear Sir,

The Board of Listers of Stowe has been involved with a number of appeals concerning the State's methodology used in its Equalization Studies. Stowe is one of the largest contributors to the Education Fund, and, as such, is very concerned that the Studies are done fairly. We believe that the methodology is flawed and does not comport to national standards. This letter is presented, not in the context to favor Stowe, but to help all the towns in the state to be equitably treated by the State's Equalization Studies.

We ask that you take the time to read and understand the following report. It details some of our own appeals, as well as the appeals of other towns. The report cites the Almy Report and the Vermont Assessors and Listers Association (VALA) recommendations to improve the State's Equalization Studies.

We believe that the State has the responsibility to ensure that all towns are treated fairly and equitably by its Equalization Studies. Stowe has been fortunate to have Appraisers for our Board to assist us in being treated fairly. Most towns do not have this expertize and suffer the fate of having volatile CLAs from year to year. This causes a lack of confidence in the State's Studies.

We believe that the State Studies can be improved if the State will follow the recommendations of the Almy Report and of VALA. We are sure that VALA will be a willing participant in helping the State to improve its Studies.

As the Commissioner of Taxes, you have the sole discretion and responsibility to determine the methodologies to be used in the Equalization Studies. The towns, taxpayers, and the school boards want fairness and equitable treatment in the determination of the Education Tax Rates. We thank you for considering our concerns.

Sincerely,

The Board of Listers of Stowe

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VALA Act 68 Analysis 2017

The Vermont Department of Taxes hired Almy, Gloudemans, Jacobs & Denne, Property Taxation and Assessment Consultants, to do a comprehensive analysis of the equalization procedures being conducted by the State in 1998. The "Almy Report" was published in July 1999. It made recommendations to improve the State's equalization procedures then and is still a very relevant study for today. Go to www.agjd.com/Vermont , then to "The Setting for Equalization in Vermont" to read or copy out this report. The State has failed to follow many of the recommendations in this report. This analysis will cite these failings and show how they have affected the quality of the State's Equalization Studies.

The Equalization Committee of the Vermont Assessors and Listers Association (VALA) did an analysis of the State's Equalization Studies from 2006 to 2010. The Committee, with the approval of the Board of Directors, made recommendations to the State to improve the Studies in 2012. The State did follow one of the recommendations made by VALA which was to stop using only 2 sales to determine a Category's Aggregate Ratio. The State now requires at least 5 sales.

The Almy Report, on page 90, had recommended in 1999 that at least 5 sales are needed for a Category that represented less than 15% of the total assessed value of a town's GL. For Categories that represent more than 20% of a GL, a minimum of 10 sales are needed.

The State did not follow any of the other VALA recommendations. On September 19, 2016, at the annual meeting of VALA, the membership voted yes on some of these recommendations to encourage PVR to implement the revisions for the 2017 Grand Lists. (See Addenda 1 of this report for these recommendations). No positive action has yet been taken by PVR to implement these revisions. One backward step, however, was taken which was to eliminate the District Advisor's Supervisor and to replace this position as a "shared position" between two District Advisors.

Recommendations that were not followed are noted below:

- **Realign the current 15 property categories into six categories including a Waterfront Category and a Condominium Category.**
- **Ensure that any major Category (Categories that represent more than 20% of the total assessed value of a town's grand list) have a Sampling Error under 10 and have at least 10 samples.**
- **The Electric and other Utility values should not be calculated in a town's CLA, but be placed below the line on the 411, similar to the Cable values.**
- **Have a Commercial Appraiser on staff at PVR to appraise all utilities and to assist towns when needed.**
- **Add more District Advisors to assist towns and to ensure that the Equalization Studies are fair and equitable.**

The VALA membership did not vote on two of the Equalization Committee's recommendations made to PVR in 2012 as it would have involved major changes in the State's methodology. PVR, in its response in 2012, stated very strongly that it was not going to change the methodology. One recommendation was to go back to a 2- year study, but allowing time trending of any sales outside the 2-year study period to the midpoint of the period. The other was to have its parameters and trimming policies reviewed.

The following report will attempt to clarify these recommendations by citing the Almy Report and showing appeals and actions of the State's Equalization Studies to hopefully improve the Studies.

An Overview of Act 68 with Case Examples

The State went very quickly into Act 60/68 from its previous Studies. Few changes were made to the shell of the Equalization Studies done in the past. The same 15 categories were kept in place. The Studies were being conducted on a short time-line, between June and November of each study year, which has proven to be inadequate to do the job due to the lack of staffing. The Almy Report made special mention of the fact that the time-line for doing the studies should be extended and that the supervision, number, and quality control of the District Advisors should be increased. As an example, the Almy Report recommended that the District Advisors be increased (was 6, went to 8, meant to be more), and a District Advisor Supervisor be added, as well as a Market Analysist and two Senior-Appraisal positions responsible for appraising utility and large commercial and industrial properties. As of 2017, there are only 7 District Advisors, no District Advisor Supervisor, no Market Analysist, and no Senior-Appraisal positions. Corrections were not made because of the financial burdens that would have been placed on the State by changing these past practices. A minimalist attitude was taken to not increase the State's cost in doing the studies. This attitude is a major failing of the State by not taking its responsibility to improve the equalization studies.

The Fairlee Reappraisal & The State's Low CLA

The small lake town of Fairlee, parcel count 632, did a reappraisal effective April 1, 2004. The Fairlee education grand list (EGL) for 2003 was $91,887,200. The State's Education Equalized Grand List (EEGL) for the 2003 Equalization Study was $109,775,188 with a Common Level of Appraisal (CLA) of 83.70 and a Coefficient of Dispersion (COD) of 17.56. The Fairlee education EGL for 2004 was $152,052,400, an increase of 65.5%. The State's EEGL for the 2004 Equalization Study was $144,591,396 with a CLA of 105.16 and a COD of 7.19, an increase of 31.7%. This abnormal increase for Fairlee in the 2004 Study again raised legislative concerns and questions on how accurate were the State's Equalization Studies.

The precursor of the Almy Report was a Commission on Property Tax Appraisals and Equalization that was created under Act 60 to address property tax issues. Its report was issued on January 15, 1988. Among its many findings was that "the annual equalization studies appear too volatile on a year to year basis in many small and intermediate size communities. For the public to have confidence in and support an equalization system, year to year improvements must be made. *The State has the responsibility to improve equalizations."* This 2004 Fairlee example indicated that the volatility that was being addressed had not been corrected, six years after the report and five years after the Almy Report recommendations.

Prior to Act 60 the State's Equalization Studies were based on 2 years of sales, not time trended, and with supplemental appraisals, if needed, added by the PVR staff. With the inception of Act 60, the State's Equalization Studies have been based on 3 years of sales that are not time trended, and with supplemental appraisals, if needed.

Every sale is time sensitive and has a "date certain" that applies to the date of sale. Every fee appraisal and assessment measures the sale date to the "date certain" of the appraisal or of the reappraisal. This is true also for the Equalization Studies that the State conducts. The Vermont Statutes in Title 32, Sec 5405 (c) states that "The commissioner *shall* value property as of April 1 preceding the determination,…". (Italics added) The "date certain" for an Equalization Study, therefore, is April 1 preceding the tax year that the new Education Tax Rates are affected.

The Almy Report in section 5.4 (page 72) "Regarding the Sales Period" states: "A number of factors affect the choice of the sales period. From the perspective of accurately estimating market value as of the study date, the sales period would ideally be centered on the study date (1 April), *although time adjustments can be used to trend sales to the study date* …… However, we recommend that the most recent valuation date be maintained as the official study date and *that sales be adjusted as necessary to that date*. We further recommend that the standard sales period be expanded to three years to provide larger samples, reduce margins of error, and improve year-to-year stability in results." (Italics added)

The State only read the last sentence of Section 5.4 and ignored the most important part that sales must be time trended to the "date certain", if necessary. This is a major failing of the State's Studies. This failing was one of the reasons for Fairlee's volitity.

The State's Equalization Study has no policy that a town's GL be represented fairly in terms of Aggregate Ratios used, other than a Category's Sampling Error must be lower than 10. In Fairlee's 2003 Study, the State only used the R1 Category Aggregate Ratio which represented 34.6% of the total GL and had a Sampling Error under 10. It did not use the V1 Category Aggregate Ratio which comprised the waterfront properties and which represented 22.2% of the total GL as its Sampling Error was 25.81. Fairlee recategorized the waterfront properties on the 2004 GL as the "Other" Category. This waterfront "Other" Category now represented 40% of the 2004 total GL; whereas the R1 Category represented 26.6%. This failure of not using the V1 Category Aggregate Ratio was one of the primary reasons for Fairlee's abnormal increase in EEGL from the 2003 Study to the 2004 study as the waterfront properties saw the largest increase in value over the other properties during that time frame. The lack of a policy that the major categories must have a Sampling Error under 10 is another failing in the State's Studies.

The Almy Report strongly recommended on page ES3 that the number of survey categories should be reduced. It also recommended that a Waterfront Category and a Condominium Category be added. This was not done.

VALA reiterated to the State in 2012 that the 15 categories be reduced to 6 with a waterfront category and with a condominium category. VALA added that Categories representing more than 20% of the total GL shall have a Sampling Error under 10.

Stowe's Time Trend Appeal Dilemma

The importance of "date certain" and "time trending" can be very easily understood when looking at an equalization appeal made by Stowe on the State's 2009 EEGL Study. Vermont started to experience a downturn in the real estate market in 2007 with a more pronounced decline in 2008. Stowe always breaks down the State's Equalization Study into yearly segments. The 2009 Study covered the time periods 2006, 2007, and 2008. Stowe's Aggregate Ratio breakdown of these yearly segments on this 2009 Study follows:

	2006	2007	2008
Aggregate Ratio	81.43%	82.01%	85.72%
Number of sales	124	104	66

This example shows the declining real estate market that Stowe was experiencing over this 3-year period of sales, both by ratios and by number of sales. When the Aggregate Ratio goes down, it is indicating an inflationary market: when it goes up, it is indicating a declining market. Stowe rightfully expected that the 2009 Study would show a slightly higher CLA than was shown by the State's 2008 EEGL Study with a CLA of 82.30. However, the State's 2009 CLA was 82.13, a lower CLA which indicated that Stowe's market was increasing in value! This was caused by the large number of sales in 2006 which gave a "false read" statistically of the declining market and skewed the "date certain" from the midpoint of the 3-year period to the first period (2006) of the study. It would be nice to say that the State recognized a "flaw" in its methodology with this example. Stowe had argued in its appeal that the un-time trended 3-year study period made the State's methodology statistically unstable. Stowe suggested that the State return to a 2-year study with its methodology which would have given Stowe a CLA of 83.83. Stowe lost its appeal and the CLA remained at 82.13. No corrections or improvements were made to the State Studies.

Stratton's Appeal of the State's Irrational and Unreasonable CLA of 79.49

The intermediate sized ski town of Stratton suffered a dramatic loss in its market value on condominiums in 2008. So much so that it was forced to reappraise all the condominiums by "Errors and Omissions" after it had set its 2009 GL or face huge appeal costs. This it did, but not with the blessing of the State. The Stratton EGL was lowered from $9,979,341 in 2008 to an $8,311,560 EGL in 2009. The State's CLA in the 2008 Study was 99.6 with an EEGL of $10,019,890. The State's CLA in the 2009 Study became 79.49 with an EEGL of $10,456,290, higher than the 2008 EEGL. This CLA of 79.49 was established according to the State's methodology which measured the new lowered assessments against the past 3-year sale prices that consisted of 217 sales. This CLA of 79.49 indicated that Stratton was experiencing a highly inflationary and not the declining market that actually occurred.

Of course, Stratton appealed. How could Stratton be near 100% of Fair Market Value (FMV) on the 2008 Study, maintain its GL at 100% of FMV for the 2009 Study by recognizing this dramatic drop in FMV, yet the State not recognize it? Understand, the Vermont Supreme Court has repeatedly ruled that a town cannot assess a property over 100% of FMV – but, the State <u>can</u> through its Equalization Studies??

On appeal, the State recognized the dilemma of the above questions and changed its methodologies for towns on appeal that had "Dramatic Market Shifts" of more than 10%. With this "Dramatic Market Shift" policy, Stratton's CLA for 2009 was changed from 79.49 to 91.11 and its EEGL was changed from $10,456,290 to $9,122,555. This was done by using only <u>6 months of sales</u> and not the standard 3-year period of sales as was used on other towns. <u>Amazingly</u>, only 18 sales were used to determine the 91.11 CLA.

Stratton's 2010 EGL was $8,133,544. The State's CLA for the 2010 Study was 98.84 to derive an EEGL of $8,228,660 based on a <u>2-year time period</u> with 85 sales.

The questions were being asked by other towns: What if a town dropped 8% or even 3% in FMV - Can these towns be measured by 6 months of sales, 1 year of sales, or 2 years of sales to give those towns a more current EEGL?

The State, by setting the "Dramatic Market Shift" policy, with its high barrier of a 10% change in market value, avoided dealing with these questions. However, problems started to arise with this policy as noted in the next two examples.

Stowe's Unreasonable "Dramatic Market Shift"

In 2010, Stowe was experiencing a more pronounced declining real estate market. The State's Equalization Study for that year showed a CLA of 85.63 with an EEGL of $2,325,273,984. Stowe's yearly breakdown of the sales within this Study's 3-year period indicated the following:

	2007	2008	2009
Aggregate Ratio	82.01%	85.72%	94.03%
Number of sales	104	66	60

Stowe appealed its CLA. The State then applied its "Dramatic Market Shift" and, by using only 1 year of sales, changed Stowe's CLA to 93.91 and its EEGL to $2,120,346,421. This raising of the CLA from 85.63 to 93.91 would change Stowe's Non- Residential Education Tax Rate from $1.5766 to $1.4375.

The Stowe taxpayers were extremely pleased with this change. Stowe sent over 2 million less to the Education Fund for that year as a result of this change.

The Lister's office was not pleased with the result. It had been arguing for a CLA based on a 2-year period, the 2008 and 2009 sales, which would have indicated a CLA in the 89.00 to 90.00 range.

The State did not use this 2-year period of sales as it did not meet its policy of a 10% change in market value. How do you make the State learn that its methodologies are flawed and inconsistent?

Reading's Appeal of the "Dramatic Market Shift" for a Rational Result

On the 2011 Equalization Study, the State made the decision to apply the "Dramatic Market Shift" policy to all towns, not just to towns which had appealed.

The small town of Reading, property count 521, was one of several towns that benefited from this policy. The State used only 1 year of sales (7 sales total) to derive a CLA of 123.51. The 2010 Equalization Study had indicated a CLA of 98.78. The Board of Listers appealed the CLA of 123.51. The Town asserted that the 1-year sample of only 7 sales was too small to be truly representative for an equalization study. If the CLA of 123.51 stood, then the Town would experience significant fluctuations in Education Tax Rates over a 3-year period: first rising more than 24% in 2011 from the 2010 CLA of 98.78, then dropping by more than 9 points in 2012 from a projected 114 CLA due to new sales. The town was arguing for 2 years of sales to be used which would have given a CLA in the 114 range. The Town was asserting that this was a more rational progression and would avoid the whipsaw effect of the Education Tax Rates.

The State relented with this very wise argument and did use only 2 years of sales (even though it did not meet the 10% market change threshold) and the CLA changed from 123.51 to 114.20. It should be noted here that the Chairman of the Board of Listers had also been a Reading School Board member and

been on the Vermont School Board. Taxpayers and the School Boards do want to see a rational progression in their Education Tax Rates. The current 3-year period of sales, not trended for time, has caused most of the volatility in these tax rates.

From this appeal, the State made the decision not to apply this "Dramatic Market Shift" in future studies.

Sutton's Education Tax Rate Rollercoaster Ride

In 2012, the small town of Sutton, property count 598, had been notified that its CLA was going to be 132.62, but ended up being certified as 162.08 due to a glitch in the State's software program. This was not appealed by the Board of Listers in a timely fashion. They did question it after the fact and were notified that a mistake had been made in a March 27, 2013 letter from the State. However, the State had no intention of recertifying the 162.08 CLA to 132.62. This letter ended with "As a result of the mistake, the very high CLA for this year will have the effect of artificially lowering your education tax rates for fiscal year 2014 but it is likely that the rates will increase significantly in the following year." The Sutton School Board, when doing the school budget for the following year, was also concerned by the mistake. They received a letter from the State on January 10, 2014 that ended as follows: "While our mistake served to provide Sutton with a significant windfall in terms of school taxes for the 2013-2014 school year, I understand that it places your Board in a very difficult situation for the coming school year. Again, we apologize for our error and the difficulty that it now presents to the Sutton School and to your Board."

Following is the rollercoaster ride that Sutton took over a five-year Study period with its CLAs and resultant Non-Homestead Education Tax Rates (NHTR):

	2010	2011	2012	2013	2014
Suttons CLAs:	114.90	125.10	162.08	121.17	112.50
Non- Residential Ed TRs:	1.1836	1.0871	0.8391	1.1224	1.2089

How does a School Board tell its taxpayers that the State Education Tax System is fair when the Education Tax Rates fluctuate so greatly from year to year? The School Board did not raise its school budget significantly and the State's NHTR stayed approximately the same during this period (NHTR of $1.36 used). Sutton's EGL did not change much during these five Studies, but the CLAs did. The CLA's changed due to the small number of samples used and the fact that the major categories had little influence.

In Vermont, more than 30% of the towns have less than 700 parcels. More than half of these towns were measured with 20 samples or less on the 2015 State Equalization Study.

It might be just as well to question the validity of Act 68 when it uses statistical measures that are unreliable due to the low number of samples used in many towns and samples that, many times, are not representative of a town's GL**.** This was the gist of the Killington* case in 1998. Can a statewide education property tax be administrated properly? *Town of Killington v. Dep't of Taxes, 176 Vt. 70 73 (2003) Killington lost its appeal. This Supreme Court decision gave the State immense discretion in doing the Studies by stating that any appeal must show the State's methodology to be "wholly irrational and unreasonable".

The reality is that the Vermont Legislature will not relinquish its hold on the education property tax. For this reason, the Equalization Studies must be improved to provide equity amongst towns.

Stowe's Appeal to Change the Studies back to a 2-year Period of Sales

In 2012, the town of Stowe did a reappraisal to 100% of FMV. The State's Equalization Study, based on the 2012 Stowe GL, came out with a CLA of 96.39. Stowe appealed this CLA as the new assessed values were used against a 3-year period of sales which were not time trended. This appeal went all the way to the Superior Court. An out of court settlement was made 5 years later in 2017 to end the appeal. In the process of the appeal, the Valuation Appeal Board (VAB) had to make a ruling. The argument before the VAB centered on the following:

	2008 Study	2009 Study	2010 Study	2011 Study	2012 Study
State's Study CLA	82.30	82.13	93.91	94.41	96.39
Stowe's 2-yr Agg Ratio	82.39	83.39	89.73	94.14	97.96

The point in showing the above is to illustrate the adverse effect using a 3-year time period of sales instead of a 2-year period. Now consider the effect that this would have on the Non-Homestead Tax Rates for Stowe using the same State base of $1.36 for the NHTR as was used for Sutton.

	2008 Study	2009 Study	2010 Study	2011 Study	2012 Study
3-year Methodology	1.6525	1.6559	1.4482	1.4405	1.4109
2-year Methodology	1.6507	1.6309	1.5157	1.4447	1.3883

Stowe and most towns and School Boards, would prefer to see a rational increase or decrease in the State Education Tax rates that reflects accurately what is happening to the real estate market in the town.

The Vermont Appeal Board stated in its Findings of Fact:

- #5: "Stowe and some other towns in Vermont have enough sales activity so that a two-year study or time trend adjusted three-year study will more *accurately* reflect grand list variance from 100% fair market value appraisal, *thus providing a more accurate CLA*." (Italics added)

- #6: "Most towns in Vermont *do not have enough sales activity* to determine grand list accuracy using only a two-year study or a time trended three-year study." (Italics added)

Findings of Fact #6 was and is a very profound statement. What then is a small town to do when there are insufficient sales? Can an Equalization Study be always accurate, as the State claims, when there are few sales? Apparently not according to Findings of Fact #6.

The VAB denied Stowe's appeal ending with: "It is not our function, …to choose between competing statistical models". "We hold therefore that Stowe has failed to sustain the *admittedly high burden of proof* required by Killington* that PVR's established equalization methodology in 2013 was irrational and unreasonable". (Italics added) *Town of Killington v. Dep't of Taxes, 176 Vt. 70 73 (2003)

The VAB opened the door for Stowe to appeal to the Superior Court. This case was settled out of court due to the high cost of going to court and to the settlement offer made by the State. The State has made no attempt to revise its methodology.

The State's Justification for Using the 3-year Period

Jim Knapp, interim acting Director of the Property Valuation and Review (PVR) division of the Tax Department, testified before the VAB at the Stowe 2012 hearing that the State lacked the resources to change its methodology. This testimony highlights the State's position that its responsibility is governed by Title 32, section 5405 (d) which states: "Any determining of fair market value made by the commissioner under this section shall be based upon such methods, as in the judgement of the commissioner, and *in view of the resources available for that purpose,* shall be appropriate to support that determination." (Italics added)

Jim Knapp's testimony of not having the resources to change its methodology gives the State an "out" for not doing its job responsibly for the taxpayers of this state. The Statute supports this "out". The Killington case with its high burden of proof needed to demonstrate that the State's methodology was "wholly irrational and unreasonable in relation to its intended purpose" gives the Valuation Appeal Board and the Courts an "out" in directing a change.

The State's Flaw in Using a 3-year Period of Sales

The International Association of Assessing Officers (IAAO) published a 2012 survey of 46 states on Equalization Studies. Vermont was one of the responders. Vermont stands alone among all the states in using an untimed adjusted 3-year period of sales. 29 states used a 1-year period of sales. 12 states used more than a 1-year period, but adjusted for time when necessary. 2 states could use a 2-year period without any time adjustments. 2 states could use more than a 2-year period, if needed, on some categories without time adjustments. Vermont is the only state that mandates by the Tax Commissioner's policy a 3-year untimed adjusted period for all sales.

Time Trending……..

The major change to the equalization process with Act 60/68 was to go to a three-year study to increase the number of samples. The decision was made not to time trend these samples due to the large number of categories. It was felt that to time trend for every category would be an impossible task and leave the State vulnerable to appeals which would be difficult to defend. One of the reasons in making this decision was that the state, from 1990 to 1997, had been going through a stagnant period of real estate market change. The State did not anticipate the high rate of inflation that occurred between 1999 to 2007 and then the sharp decline in the real estate market that occurred from 2008 to 2012. Both of these events proved the error of not time trending the three-year study period.

The State, each study period, adds a new year of sales and drops the last year of sales. The time trend is within the data of the Study. It just has to be organized in a meaningful fashion to be applied as a

tool to measure the real estate market changes on a state or regional basis to the valuation types. This is why the Almy Report recommended that a Market Analyst was needed to monitor market activity statewide to develop time adjustments for sales. No Market Analyst was added to monitor time trends.

The following chart will show the % change in the EEGL of the State and of the Counties from the 2003 to 2015 Equalization Studies. This shows the growth as well as the real estate market change from Study to Study. It is the basis upon which the tax commissioner bases the education tax rates each year. The EEGL is the result of the CLAs applied to the ED GL for each town in the state.

% Change in EEGL from Study to Study

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
State	10.91	13.66	12.36	9.68	6.73	2.17	- 1.62	- 2.02	- 1.45	- 0.46	0.84	1.44
Add C	10.32	13.31	11.69	11.95	9.58	4.04	- 1.78	- 3.16	- 0.62	0.35	0.21	0.38
Ben C	12.29	12.12	13.23	9.57	5.18	1.60	- 2.58	- 6.02	- 3.55	0.29	1.14	- 1.13
Cal C	8.87	13.72	13.77	12.78	7.60	3.40	- 0.48	- 0.89	- 2.46	- 0.38	0.38	0.66
Chit C	9.56	12.16	10.09	7.34	6.24	1.84	0.93	0.35	- 0.22	1.16	2.18	3.40
Essex	9.46	12.91	15.06	10.91	9.25	2.28	- 2.07	- 3.59	- 3.53	- 0.76	1.40	- 0.78
G Isle	12.96	14.76	11.00	10.09	10.62	4.44	0.50	2.12	- 3.02	- 2.09	- 0.08	0.72
Lam C	12.49	17.67	14.38	12.22	9.98	2.49	- 2.83	- 6.27	- 1.29	- 1.81	0.51	1.28
Oran	11.48	13.17	13.09	9.71	6.54	4.14	- 0.76	- 1.46	- 1.26	- 1.46	- 0.93	0.94
Orl C	10.10	16.02	15.47	12.18	9.44	4.92	- 1.91	- 1.34	- 0.47	1.92	1.12	0.83
Rut C	8.67	14.02	11.35	10.28	7.40	1.61	- 2.89	- 4.75	- 3.77	- 2.57	- 0.03	- 0.25
Wash	12.55	13.01	13.49	12.53	6.65	2.19	- 2.03	- 0.78	- 1.17	- 0.85	1.24	0.81
Wham	11.60	16.20	13.09	9.63	5.05	0.84	- 4.22	- 0.10	- 0.55	- 1.59	0.62	3.22
Wsor	13.19	14.39	13.64	8.48	5.60	1.93	- 3.07	- 3.73	- 2.68	- 2.25	- 1.08	0.03

Time Trends are discernable. You can see from the above chart that the real estate market was increasing at a 9% +- per year increase from 2001 to 2006 then started to decrease dramatically from 2007 to 2012 before leveling off in 2012. A slow recovery started in 2013 with Chittenden County leading the way. There are variations shown with Rutland, Bennington and Windsor Counties showing a lagging recovery from 2008 on. Grand Isle County, due to its waterfront properties, showed a very healthy increase in the real estate market from 2001 to 2007, then a more pronounced drop thereafter. If the ski area towns were analyzed, a similar trend would be seen. This is due in large part to the vacation type nature of the properties in these towns and the effect of the high education taxes on secondary properties such as condominiums or waterfront properties. These high taxes have had an adverse effect on the FMV of these properties.

The chart is a broad brush stoke as it is conglomerating all of the sales in the State and in the Counties. If a 9% increase was the average between 2001 and 2007, the range in this average could be between 6% +- and 12% +-. It includes the growth rates and the State's CLAs on each town to derive the % increase of the EEGLs. This means that it also includes the flaws of the Studies as demonstrated by the towns used in the preceding segments. Surprisingly, the market trend is fairly consistent when looked at broadly. The consistency breaks down when looked at by individual towns with few samples or samples not truly representable of the town's GL. This consistency also breaks down due to the market reaction to the various valuation types of property and to the location of the properties in the state. For this reason, the State needs a Market Analyst to monitor market trends. Time trending the sales for the major categories to have a Sampling Error under 10 would greatly improve the studies and help stop the volatility from Study to Study.

Greensboro's Successful/Unsuccessful Appeal to the Valuation Appeal Board

Title 32, Sec 5405 (d) states ……. "if the common level of appraisal is calculated using the weighted means of ratios, any outlier *shall* be carefully reviewed and deleted if it will significantly affect the weighted mean, *particularly if the outlier is a high value property*" (Italics added) An "Outlier" refers to a sale price which may not be the "most probable price"* or is a sale which greatly influences the weighted mean of a Category. *Fee Appraisal and IAAO** Definition of Fair Market Value (See Addenda 2)

The Almy Report on page 95 states: "The reliability of the estimated equalization ratio is a function of the variability of the individual assessment ratio. Thus the correct treatment of outliers is important not only in ensuring that the measure of central tendency is not unduly affected by one or more aberrant ratios, *but also for ensuring that confidence intervals are meaningful*." (Italics added) The report states further in the paragraph: "It should be noted that the IAAO** *Standard on Ratio Studies* (SRS) condones symmetrical trimming of no more than 5 percent of a sales sample, but this rule implies that the sample should be at least forty (the symmetry and 5% rule for small samples will likely be relaxed in the revised standard). Hence, one or two extremes could still be deleted in small samples"

The IAAO** SRS states on page 9 under 3.4 that "The reliability of a ratio study depends in part on how well the sales used in the study reflect market values. The underlying principle for review of sales data is to optimize the sample size, *but at the same time to exclude sales that provide invalid indicators of market value*. A ratio study sample with fewer than five sales tends to have exceptionally poor reliability and is not useful. (Italics added) **IAAO refers to the International Association of Assessing Officers

The town of Greensboro appealed its 2009 Equalization Study based on the State's use of a sale. There were 39 sales used in the 2009 Study. The two highest sales sold for $800,000 each. The ratios of these two sales were 64.06% and 33.99%. The average sale price of all the other sales was $192,745. The CLA for the town was 65.79. The 33.99% ratio, the Perry to Cubbage sale, was the lowest ratio in the town, but was not classified as an "outlier" or "influential sale" due to the parameters set by the State's methodology.

The Perry to Cubbage sale consisted of 95 acres and a dwelling that was built in 1960. All the land, but two acres, was enrolled in the state's Current Use Program. It was purchased by a family who had first looked at properties in Stowe and then expanded their search. It was purchased with cash and did not

have an appraisal done to justify the value. The dwelling was demolished and an expensive new dwelling was built. The Town contended that this was not a typical sale for the area and far exceeded the market value of other properties in the town. As evidence, the Town submitted that this property, as purchased, would have appraised at $620,900 on the reappraisal and not at the $800,000 sale price. The State would not remove this sale from the Study.

Greensboro appealed the 2009 Study to the Valuation Appeal Board (VAB) to have this sale removed from the Study. At issue was the contention that it was not a typical sale in the town and also due to its high value and low ratio. This one sale affected the Aggregate Ratio of its Class by 2.5% and the overall Aggregate Ratio by more than 1.25%. The Town contended that the Aggregate Ratio was much lower than the other measure of central tendency (Median Ratio) which should have raised a red flag to the State in its review.

The Almy Report on Pages 79 through 83 recognized that the weighed mean is conceptionally preferred for indirect equalization. However, the report noted that "the median is more generally stable for small samples". The Almy Report, did on page 83 recommend to the State "the use of the median, which provides better stability than the weighted mean in small jurisdictions". The State, with Act 60/68, chose to stay with its use of the weighted mean as the measure of the level of valuation.

The Town showed the effect that this sale had on the Aggregate and the Median Ratios. The Town, by trimming this sale, tightened the gap between the Aggregate and Median Ratios (was 61.66 to 64.06; after 64.45 to 64.42). The Town showed that by removing the sale, the Greensboro taxpayers would have saved approximately $64,000 in education property taxes.

The State countered with the fact that the weighted mean is used on all towns within the State and to change the methodology for one town would mean preferential treatment for that town. The Town tried to show that the parameters for outliers and extremes would be more reasonable for all towns if a percentage differential from the median was used and not the interquartile range as used for the weighted mean.

The VAB understood the Town's arguments by stating "If ever there was a "wholly irrational and unreasonable" result from the methodology the State uses for its equalization study this is it". And further, "That type of inconsistency not only mandates the exclusion of the Perry to Cubbage sale, it should immediately prompt the Department's review of the procedures that produced such an absurd and inconsistent result".

And further, "It is not for this board to come up with better equalization procedures for PVR; but it is up to the board to point out an absurd result and remove it from the equalization study. It appears that what are described as "fences" or parameters on the computer outlier calculation are *way too far apart* in Greensboro's S1 category and are apparently standing side by side in the Town's R1 category. *This board advises PVR to reassess where the "fences" ought to be*". (Italics added)

And further, "This Board hereby orders that the Perry to Cubbage sale be removed from the 2010 equalization study and the EEV, CLA, COD values be adjusted accordingly.

The State refused to comply with the order and took the case to the Superior Court. The Town had to hire an attorney to defend its position. This case was settled out of court due to the high cost of

defending and the slim chance of winning with the Killington Supreme Court ruling. The State did not reassess its methodologies. The Equalization Studies continued on as usual.

The above case represents the frustration of most small towns with the Equalization Studies. One or two sales can unduly affect the CLA of a town, and the town has little remedy as the State will force the appeal to a high cost. The State does not have the resources to supplement the samples with appraisals and thus is very reluctant to "trim" (remove) a sale. For small towns with few samples, this failure causes the volatility in CLAs from one Study to the next. The State does not want to trim sales as this involves responsibility in judgement to shape a CLA. The State has taken the attitude to let the numbers do the job. Forget about volatility as numbers do not lie. But numbers can lie.

In every Equalization Study, the three measures of central tendency are shown. The State's sole reliance on the Aggregate Ratio and not judging its relationship to the Median Ratio is a major failing, especially in the smaller jurisdictions. The State's reliance on the parameters being set by the weighted mean forbids argument by a small town that a sale is an outlier and should be trimmed from the study. This is another failure. The State could set its parameters on the median and still use the weighted mean as the measure of value.

The towns, taxpayers and the local school boards want an understandable state education funding formula that is predictable and rational. The CLA calculation problem can be improved if the State would consider the recommendations of the Almy Report and of VALA. The State must take its responsibility to have the Equalization Studies funded adequately and done equitably.

The CLA differential from year to year should really be a measure of the time differential that has occurred in a town from year to year. The State's Studies, for small or intermediate towns, show more the effect of the unpredictability of a CLA calculation due to the few samples or un-representable samples used in the Studies. It is not a true measure of the time differential which should be the real intent of the Studies to prevent the year to year volitivity. This has to be corrected.

Conclusion

The failings of the State's Equalization Studies have been shown. If the State had changed its procedures and followed the recommendations of the Almy Report back in 2004 when Act 60 became Act 68, there would not have been the problems encounterd as detailed. The VALA recommendations, as voted on in 2016, would help to relieve these problems. The State's reluctance to change past practices and to not adequately fund the Equalization Studies is the main problem. This has to be corrected.

These changes can be done administratively as the Commissioner of Taxes has the discretion to correct the State's Equalization Studies.

The definition of Fair Market Value as defined in Addenda 2 should replace the definition as stated in Title 32, Sec. 3481 (A). The emphasis on "price" instead of "most probable price" has caused the Courts and the State Appeal Board to not consider all the factors that are relevant to the definition of FMV. VALA has long been in favor of this definition correction.

ADDENDA 1

VALA 2016 CHANGES TO THE EQUALIZATIONS STUDY

The Board of Directors of VALA voted at the June 19, 2016 meeting to bring before the members at the Annual Meeting on September 19, 2016 the following recommendations for approval.

The purpose of these changes is to ensure that all Municipalities are on the same level playing field during the Annual Equalization Study process.

It is hoped that PVR will implement these revisions for the 2017 Grand Lists.

Recommendations to the membership at the Annual Meeting

1) Realign the current 15 property categories into 6 Classes listed below:

1.) RS Class: Combine R1, R2, MHL, S1, S2, and Farm categories
2.) CN Class: Condominiums (Residential & Vacation, but not Commercial)
3.) WF Class: Waterfront properties (including vacant waterfront land)
4.) CI Class: Commercial, Industrial, Multi Family and Commercial Condominiums
5.) UL: Un-landed MHs and buildings on leased land
6.) VL: Miscellaneous and Woodland

The properties within these Classes tend to be valued differently, primarily caused by land valuation schedules (or lack thereof), an investment component, or an improvement value only.

VALA is also recommending that the major category must have enough sales or samples to have a Sampling Error less than 10. For the smaller towns, this would be the RS Class.

2) Group all Utility values together and place where the Cable values are on the 411. Utilities should be valued at 100% of FMV for the Education Tax Rate and at the CLA for the Municipal Tax Rate. PVR will be responsible for the values and the defense of these values.

3) Encourage the Tax Department to place a Commercial Appraiser on staff at PVR to appraise all Utilities and to assist towns when requested.

4) Encourage the Tax Department to add District Advisors to PVR to ensure that the equalization studies are fair.

The aforementioned revisions to the classes would involve changes in the 411.

Most of the category changes could be made for the Municipalities by NEMRC.

For those Municipalities which have not used the OTHER Category for condominiums or for waterfront properties, will need a review and change by the Listers.

<u>All properties</u> should be reviewed to make sure they are in the correct Class.

ADDENDA 2

The Definition of Fair Market Value

VALA has been saying for years that the definition of Fair Market Value in Title 32, Sec. 3481(a) is very limited and not in tune with the definition as used by fee appraisers or by the International Association of Assessing Officers (IAAO). It puts too much emphasis on the "price" and does not take into consideration all the elements that apply to the "price". Unfortunately, in recent years, the Courts and the State Board of Appraisers has come to rely on the "price" as the primary indicator of FMV.

Title 32, Sec. 3481 (A) states 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 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. (Italics added)

Those elements shall include the effect of any State or local law or regulation affecting the use of the 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. (This sentence is often ignored when a "price" is given to the courts or an appeal board)

Fee Appraiser's and IAAO's FMV definition is as follows:

The *most probable price* which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by *undue stimulus*. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: (Italics added)

(1) buyer and seller are typically motivated.

(2) both parties are well informed or well advised, and each acting in what he or she considers his or her own best interest.

(3) a reasonable time is allowed for exposure in the open market.

(4) payment is made in terms of cash in U. S. dollars or in terms of financial arrangements comparable thereto.

(5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.