Memorandum

TO: Senate Finance Committee

FROM: Jill Remick, Director of Property Valuation & Review, Department of Taxes

DATE: February 9, 2022

RE: S. 214 Valuation of Time-Share Estates

Thank you for the opportunity. We have reviewed the testimony and documents provided by Mr. Vickery.

We do not feel this language is necessary. As Title 32 § 3481 defines appraisal value, "The estimated fair market value of a property is the price that the property will bring in the market when offered for sale and purchased by another, taking into consideration all the elements of the availability of the property, its use both potential and prospective, any functional deficiencies, and all other elements such as age and condition that combine to give property a market value."

Per the International Association of Assessing Officers, "To determine the highest and best use, you must consider what is physically possible, what type or types of use are legal, what is financially feasible, and in today's market and the near future, what use will bring in the most monetary return."

The court has defined fair market value as "the price which a property will bring in the market, taking into consideration its availability, use and limitations."

I submitted a memo to the committee earlier today from our policy analyst, who was able to closely review the law of six jurisdictions (CA, ME, FL, SC, UT, AZ), choosing jurisdictions that have many timeshares and well-developed law. None of them follow what is being proposed here.

Utah is the closest because it requires valuation that ignores the fees and benefits associated with timeshares. However, even there, assessors conduct market studies involving time-share sales when making an assessment. The Vermont proposal could be read to preclude such market sales of the most relevant properties (because it requires an assessing official to pretend like a time-share is the same as any property).

In short, property valuation is largely based on comparing similar properties to one another. This proposal would require officials to expressly ignore the most similar properties (other time shares). Further, other jurisdictions recognize that time shares should be valued as unique entities, because they are unique entities.

Our property transfer tax return data confirms that these timeshare properties are selling at a loss, sometimes for less than 50% of the purchase price.

The Vermont Supreme Court in 2020 (Jackson Gore Inn v Town of Ludlow) recently upheld a Hearing Officer decision that also codifies this application:

> ¶ 42. Considering these principles of taxation, the hearing officer correctly determined as a matter of law that the profits of the entity that manages the time-share condominium could not be added to the value of the sale price of the individual time-share units. In her decision, the hearing officer first correctly explained that § 3619 "is very specific that the time share unit owners' tax liability shall be handled through the managing entity" and "does not specify that the management fees or rental profits are common property for the individual time share owners." Second, she explained that the unit sales data are alone "sufficient to determine the worth of a quarter share condominium unit, as the sellers and buyers are considering all rights and amenities and contracted obligations ***659** in the unit and the common areas that go with that ownership," which includes the "common interests and management fees spelled out in the contract." The hearing officer correctly applied the relevant legal principles to conclude that unit sales alone reflected fair market value and § 3619 did not dictate otherwise.

Lastly, when it comes to any form of altering assessment practices, we recommend you invite Lisa Wright, the current president of the Vermont Assessors and Listers Association, to weigh in.

I will add, I absolutely agree that the current system of Education Fund collection directly disincentivizes towns from establishing and defending high-value properties, and this is a very concerning construct in our current system of collecting data on $96 Billion of property value on the backs of under-resourced listing offices, going well beyond the changing value of timeshares.

As we have articulated in our Act 73 Report:

The cost of developing the high-value commercial property values and defending those values using independent consultants/appraisers has proven to be expensive, particularly for small Vermont towns with limited resources. Consequently, towns may not always act in the best interest of the Education Grand List because of the cost, resulting in lost revenue and misallocated values (towns paying more or less than their fair share).

Per parcel payments have been static since 1998 for the equalization payments and 2005 for the reappraisal payments, and the formula is not based on the quantity of unique properties in individual municipalities. As a result, particularly in many small towns, they are considered insufficient for the complexity of the work of high value commercial valuation. The average town payment is approximately $12,500 for equalization and reappraisal and $10,500 for education tax revenue retained. A town-by-town analysis of number of parcels and funding is available in our report.

Municipalities are operating with a small and diminishing pool of professional expertise. Town listers are a vanishing breed and towns struggle to find anyone to fill the positions amid growing complexity. When positions are filled, pay is minimal and there are no minimum qualifications or licensing requirements. Complex commercial assessments are not frequent valuations, so expertise is not deep.

Due to limited available funds, towns must often, out of necessity, perform a cost/benefit analysis, wherein they determine how much they are willing to spend to defend the value. Considerations may include the cost of both litigation and Education Fund revenue for which they would be responsible, rather than whether they believe their valuations are correct. The current construct and expense to towns is a direct disincentive for towns to defend high-dollar valuations. This disincentive has potentially significant implications for the Education Fund.

An example from the 2021 Report of the Vermont Tax Structure Commission1 illustrates this issue of misaligned incentives: "consider a $4,000,000 property in a town with a municipal tax rate of 30 cents. If the listed property were reduced to $2,000,000 as the result of an appeal, the town would be out $6,000 per year, which is not enough to warrant an expensive defense. The State, on the other hand, would be out $32,560 per year." The State has a vested interest in Education Fund revenue and there is an inequity in towns "being out front" in defending values that have a larger impact on the Education Fund than their municipal revenue (in most but not all cases). The Education Fund is reduced by settlements and appeals because towns may not have sufficient resources to establish and defend values. Towns often deplete the funds available for reappraisal and grand list dollars on single appeals.

One assessor referred to the situation of a decrease in value after a lengthy appeal as "phantom dollars." Essentially, when a property is appealed and the appeal stretches over multiple grand list years (which is often the case), the town collects and pays those tax dollars into the Education Fund based on the existing value. If the appeal is resolved at a lower value in a future year, the town is responsible for reimbursing the taxpayer for the "over collected" Education Fund dollars. This was pass through money and therefore towns are penalized by having to draw down from their local budgets to refund the taxpayer.

There is only one limited reimbursement mechanism for towns faced with a value loss after an appeal or court action. (for which Cambridge has applied)

As per 32 V.S.A. § 5412, PVR annually considers requests from municipalities for a recalculation of education property tax liabilities when the municipal education grand list has lost value due to a determination, declaratory judgement, or settlement. The municipality must apply for this recalculation with the Director and must demonstrate that their actions in the appeal or court action were consistent with the best practices for property valuation as published and maintained by PVR.

PVR reviews each determination for proof that the settlement resulted in a parcel valuation that is consistent with fair market value. Applications are due in January for determinations of property valuation appeals that were resolved in the previous year. The appeals and settlements can span multiple years and can be attributed to any education property tax classification. There is an annual limit of $100,000 for the total reductions to municipal grands lists across the state. If the reduction amount associated with appeals and settlements exceeds $100,000, PVR will prorate the reduction adjustments across municipalities. This may result in all approved municipalities receiving an adjustment of less than the full financial impact of the settled reduction in grand list value.