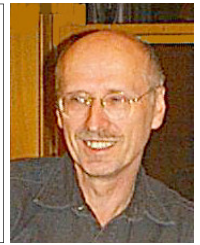


# BERKSHIRE HOME&STYLE

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This is a monthly column on the real estate market and related issues in the upper Hudson River Valley by Roderic H. Blackburn, principal of R. H. Blackburn & Associates, Inc.—Real Estate of Hudson and Kinderhook, NY. It also appears in *Capital District HomeStyle* magazine.



## THE REAL ESTATE REPORT

### What's Your Beef? Grieving Tax Assessments

It's May and the annual cycle begins again: how are your real property taxes determined? This is a long tax train with school and municipal boards driving the engine and you, the property owner, in the caboose. In between are a series of cars which determine what you pay to fuel the engine. Car one holds the students in school, their teachers, buildings and buses whose costs go up about eight to ten percent per year. Car two holds the municipal governments and public services they provide like the highway department, the sheriff's office, social service department and many more. Their costs go up too, usually less than the school costs. For those in both cars one and two, budgets must be produced for the coming year. These require calculation of how much income will be received from federal and state sources, sales taxes, and the only source they really control, real property taxes. Whatever they need and can't get from non-property tax sources will come from local property taxes. There's your first beef. If property taxes go up it is because those responsible for cars one and two raised them to cover increased expenses. But there are more cars in this train and more ways your tax bill can be affected.

Car three is the assessor's office in each municipality (county, town, village, or city). The assessor's job is to proportion the tax burden over all the property owners so that each pays a fair share of the total tax amount. This is like a country circus, where the assessor winds up juggling a bunch of facts and figures trying to get assessments to work fairly.

In car four are the properties themselves – one family and multi-family residential, commercial and vacant land. Some properties are taxed more than others because in New York State about 200 different kinds of tax exemptions are allowed, like those for senior citizens, veterans, and development inducement. Then there are other properties - municipal, state, federal, not-for-profit, religious - which usually do not get taxed at all. Keeping track of who is eligible for exemption and for how much is one ball the assessor has to keep in the air.

Car five contains the assessor's real property records which describe each property and the structures thereon, including their sizes, features, qualities and condition. Each year these records are updated for every property which has been sold or changed in some way. How do assessors know about changes? They look at building permits and visit the actual properties. In most cases they are only able to observe exterior changes.

Car six holds the county's real property records. The assessor receives sale price data from this car along with changes in land parcel size. This is at the heart of the assessment process. When a property is sold the selling price is presumed to establish its market value, providing it is an "arm's length" sale between a willing buyer and a willing seller, neither being under any undue influence. One way of coming up with a property assessment is to compare the subject property to others which are comparable (in land and building size, location, extra structures, condition etc) and have recently been sold. "Recently" is defined in a specific way for assessment purposes. In New York the 12-month selling period for bench-marking the assessment amounts to be announced in April 2006 is July, 2004 through June, 2005. This

is the fiscal year for real property purposes. The assessor only considers sales during that period when identifying the comparables necessary for the calculation of assessments announced in April and finalized on July 1, 2006. Restricting comparables to a one-year period makes assessed values more fair throughout the municipality. But that period is one to two years old by July 1, so the comparables may not reflect current market values. Given the hot real estate market of the last five years, this means a 100% market value assessment as announced may really only be about 65-75% of current actual market value if comparable properties sold 12 to 24 months ago at prices 25-35% lower. No beef for the homeowner there! Although 2005 prices went up only 10-12%, many of the comparables being used today date from 2004 when prices were up 25%. So, regardless of lower recent increases in selling prices, don't be surprised if your assessment goes up 30% (as a "catching up").

Car seven holds really tough double juggling balls, that of fairness and equality. In a conversation Tom Griffin, recently retired Executive Director of the New York State Office of Real Property Services (ORPS), (now in a private practice specializing in real estate issues), in a recent conversation, advised:

"New York is unlike any other state, province, or country in that each assessing unit can assess properties at any fraction of full value. Every other one requires a uniform standard - state, province, or country wide (usually fair market value). Until 1999, assessors were not required to disclose or publish the level of assessment. Now, they are required to publish on the tentative and final roles the fraction at which properties are being assessed relative to the full value. The state then verifies the level stated by the local assessor or, if the state cannot verify, it publishes the fraction that it independently determines. This is, of course, the equalization rate."

New York Statute formerly required all municipalities to assess based on full market value but later changed the law to allow each municipality to assess on its own chosen percentage of full market value. No other state purposely allows such confusion. As an added complication, ORPS must examine each municipality in order to arrive at equalization rates which adjust tax rates so that there is fairness in taxation among municipalities. Now *there* is a law to beef about -- and something to take up with your representatives! To help alleviate this complication, ORPS has instituted Excellence in Equity awards and grants to municipalities which do succeed in achieving 100% market value assessments. Check the ORPS website to see whether your municipality has made it (<http://www.orps.state.ny.us/>).

Car eight is full of the biggest local beef: fairness in assessment among individual properties. Griffen remarked "Section 305 of the Real Property Tax Law requires, however, that assessments must be uniform throughout the town or city. "This means that you have a right to be assessed fairly, not only based on appropriate comparable sales but also by calculation at the same percentage of market value as that applied to other properties in your community, that is, "uniform percentage of value." For various reasons this does not always happen. One big problem is that not all assessors are able to keep records up-to-date, nor all properties at a consistent and uniform percentage of market value. This may happen because a municipality may not

want to spend (or even be able to raise in taxes) the money to hire required staff. Also to be considered are variables in staff quality and other local agendas. When municipalities fall behind in the review of properties, many assessments may be below the "uniform percentage of value" and newly assessed properties may be relatively, if not absolutely, too high. We are all familiar with the "welcome stranger" assessment, where a recently sold property is assessed at its selling price without proper review. Although this practice is unlawful in New York State, incidents of it keep cropping up. Tom Griffen weighs in on this hot issue: "People often think of reassessments as being necessary only once in awhile. But if one were to ask a taxpayer whether or not his or her property tax bill should be fair every year, he or she would agree that it should be. And, in fact, this is what the law requires. The only way to assure that tax bills are fair is to make sure that assessments are fair every year. This requires a reassessment every year. This does not mean the each property has to be reappraised every year nor does it necessarily mean that all assessments are changed every year. It just means an analysis must be undertaken by the assessor to assure assessments are uniform."

Car nine is where the assessor processes all these facts and standards to come up with a tentative assessment by March 1. Notification is sent to all property owners in April (appropriately timed for school budget voting). At this point begins the grievance process for those who feel their assessments are incorrect. By July 1 the final assessments are published and become the basis for the school tax bill in September, the county and town in January, and city and village tax bills at other times.

Car ten is where the "aggrieved" property owner anxiously sits ready to jump out of the caboose and into action. Assessment letter in hand by April, the owner needs to know how to determine whether the amount is fair according to the criteria discussed above. If an assessment is up 25% or so from the prior year, many owners assume their taxes will go up by an equivalent percentage. Not so. How much taxes go up has to do with (1) local budgets, as proposed by those guys and gals in the engine compartment, and (2) the assessment process itself, which hopefully has been completed properly. If, in comparison with the assessments of neighbors and friends (if they have comparable properties), an owner feels he is over assessed, there is a grievance procedure to appeal the assessment. It goes like this:

1. A grievance challenge is based on issues of market value, excessive assessment or unequal assessment. Complaints about taxes or assessments going up too much or simply being too high, or that you are no longer able to afford your home because its taxes seem overly burdensome, are all irrelevant. Park these arguments at the door.
2. Assessors can and will reduce your assessment if you can convince them with concrete data that you suffer from an excessive or unequal assessment considering comparable properties. You must substantiate such a claim with facts.
3. Look at all the relevant data available regarding market value and select what best supports your argument. What another pays in taxes is not a basis for grievance. Only assessment is the issue.
4. One of the best ways to support your grievance is to show pictures of other properties (along with their assessments and selling prices) sold during the period July 2004 through June 2005. The closer to the "valuation date" of July 1, 2005 (but not after) those sales took place the better. A detailed appraisal of other properties may be correct but may also be an excessive

amount of information for the assessor or the Grievance Board to digest. Keep it simple.

5. ORPS (<http://www.orps.state.ny.us/>) can provide you with the pamphlet "How to File for Review of your Assessment.." This will guide you through the RP-524 grievance application form, and other appeals processes.
6. Grievance Day is usually the 4th Tuesday of May (May 23, 2006). Your application must be submitted to the assessor's office prior to that date. You will appear before the Board of Assessment Review (BAR), not before the assessor, although he or she may be present to supply facts. This board is composed of peers in your community who will take your testimony (hopefully based on comparable sales from the applicable 12-month period). A decision will be made later.
7. If not satisfied with the result, you have a right to a SCARS, The Small Claims Assessment Review Petition by which you may appeal the BAR decision before a hearing officer (see ORPS above).
8. Before taking these steps you should first consider another path. Don't wait for Grievance Day. Start doing the CMA (comparable market appraisal) you would do for Grievance Day as soon as you receive notification of your assessment. Identify comparable properties. Ah, but where? Do you recall recent sales in your neighborhood? Ask a local broker about these and other sales in your community. The county real property office has transfer records. With names and deed numbers you can look up the sale deed, date and selling price. The assessor's office is always a great source for this information, which is all publicly accessible.

Make an appointment to meet with the assessor. On the first visit ask to see your own record of assessments, make a copy and study it. Then come back and request the basis for the assessor's valuation: is it based on "cost" (value per sq ft and acreage), comparables (prior sales), or income (in the case of income producing properties). Then discuss what you have found and see how the assessor evaluates your new information. If your information convincingly shows a change is justified[, the assessor can reduce the assessment right then and there. Fortunately at this point an assessor can't raise an assessment, only lower it. If you feel it has not been reduced enough, you can still go to grievance at which point the Board can leave it the same or lower it, but never raise your assessment higher than the amount agreed by the assessor. Important advice: don't gratuitously tick the assessor off with anger, irrelevant information, or a bad attitude. Build a relationship based on objective discussion of the appropriate facts. Because you may be back next year, a sense of trust may prove valuable in the future.

You are back in the caboose. If you have discovered that your assessor is up-to-date on assessments and that your property has been assessed comparably to similar properties, then your visit to the assessor's office first may have saved you a lot of time and effort. In summary, if you notice what appear to be comparable sales which lack comparable assessment, go to work. However, if your assessment appears relatively too low, what's your beef? Accept it happily and enjoy a dinner out!

My thanks to Thomas G. Griffen, attorney with Devorsetz, Stinziano, Gilberti, Heintz & Smith, PC , 111 Washington Avenue, Suite 600, Albany, New York 12210, 518/476-2001