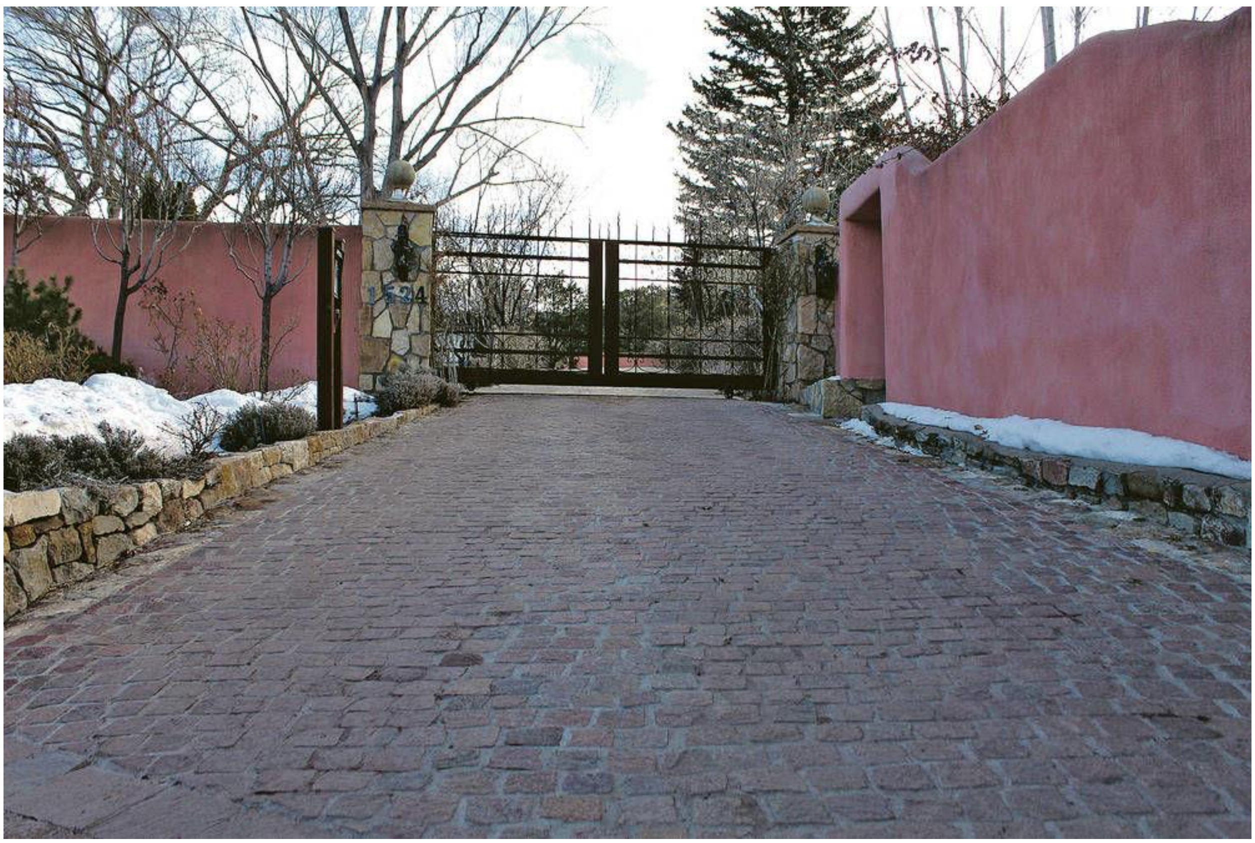
Taxing inequities: Effects of cap on residential property increases vex policymakers

By Thom Cole | tcole@sfnewmexican.com - Feb 9, 2019

Nearly two decades ago, the state installed a sweeping law that limited increases in property taxes in hopes of protecting longtime homeowners in neighborhoods like Santa Fe's east side from being taxed out of their residences as wealthy newcomers moved in and drove up property values.

Under the law, which applies statewide, the market value of a residential property for tax purposes cannot be increased more than 3 percent a year as long as the owner of the property remains the same. Once the property is sold, it is brought to full market value for tax purposes.



Canyon Road home. Tax break: $11,800. Thom Cole/The New Mexican

Lawmakers were warned the law, which took effect in 2001, would create an unfair property tax system, with tax breaks for some and not others. But while there have been many complaints and court challenges, policymakers have struggled to find an alternative that would both be fair to all taxpayers and continue to protect longtime residents of gentrified neighborhoods.

In Santa Fe, a primary target of the tax reform because of its hot housing market, the inequities created by the law are stark. A New Mexican analysis of data on city property valuations found:

- Nearly 26,000 homeowners received a tax break last year because of the law, but about 8,900 didn't.
- Newer homebuyers often may pay substantially more in property taxes than their neighbors.
- The average tax break last year for the owner of a home valued at $300,000 or less was $221.
- The average tax break in 2018 for the owner of a home valued at $1 million or more was $1,345.
- The biggest tax break last year for a homeowner was more than $16,000.
- The homeowners who received the biggest tax breaks in 2018 included a corporation, investment bankers, business entrepreneurs, a Texas oilman, a psychologist, artists, a physician, a lawyer and a philanthropist.
- Eighty-one owners of multiresidential properties got a tax break in 2018, but 105 didn't.
- A California real estate investment company that owns a large south-side apartment complex and a Tennessee company that owns a senior living center each received a tax break last year of more than $40,000.

Calle Nueva Vista home: Tax break: $0. Thom Cole/The New Mexican

“It seems like this is charity going the wrong way,” said Mike Loftin, CEO of Homewise, a nonprofit that works to place families in homes. “I thought this was supposed to be benefiting modest-income homeowners.”

Other critics of the property tax law include Santa Fe County Assessor Gus Martinez, whose office values property for tax purposes.

“When someone is not paying their fair share of taxes, the burden falls on the rest of us,” Martinez said.

State Senate Majority Leader Peter Wirth, a Democrat whose district includes the east side of Santa Fe, agreed the law has resulted in unfairness in how property taxes are levied, but he said he hasn’t seen an alternative that would continue to protect longtime homeowners in neighborhoods such as the east side.

“We value some of the traditional families that formed the fabric of this community,” Wirth said. “Do you want to force that family to have no choice” but to sell its home?

The senator said he would be open to considering proposals that would roll back the property tax break for owners of large multiresidential properties.

A $16,500 break

To assess the effects the 3 percent cap on annual market valuations has had on tax bills for owners of Santa Fe residential properties, The New Mexican requested data from the Santa Fe County Assessor’s Office under the state Inspection of Public Records Act.

For each residential property in the city, the office provided the name of the owner, the address, the market value as set by the Assessor’s Office and the market value, if any, excluded for tax purposes because of the 3 percent cap.

The data show 8,904 homeowners scattered throughout the city were assessed property taxes last year on the full market value of their properties. In neighborhood after neighborhood, there were cases in which newer homebuyers paid more in taxes than longer-term owners of similarly valued properties.

Owners of 25,662 homes in the city received a tax break in 2018 because of the 3 percent cap. The tax reductions ranged from a few dollars to thousands of dollars. The average was $487.

The single-family residence that received the biggest tax break last year is on West Alameda Street. The market value of the corporate-owned property was $2.8 million, but its value for tax purposes was set at less than $800,000 because of the 3 percent cap. The tax savings for 2018 was about $16,500.

The residence was one of 14 homes that received a tax break last year of at least $8,200. The other homes all were on the east and north sides — on exclusive streets such as Canyon Road, Circle Drive, Cerro Gordo Road, Old Santa Fe Trail and Garcia Street.

But the 3 percent cap has succeeded in holding down property taxes for some longtime families on Santa Fe's east side, as well.

Edward "Gonzo" Gonzales, a former city councilor, said his tax cut — nearly $4,000 last year — has helped him and his wife, Patricia, remain at the Delgado Street property once owned by his grandmother.

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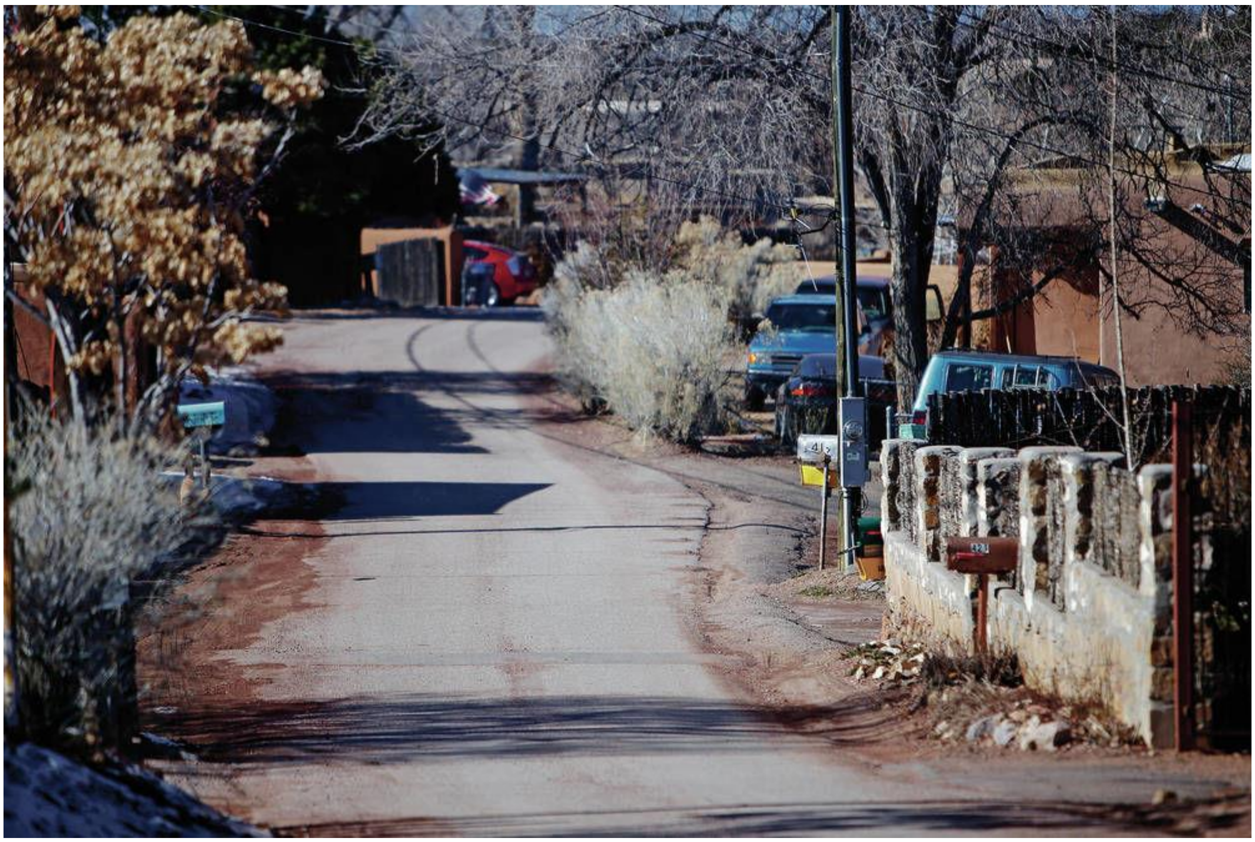
"I've never known any other place than this place," said Gonzales, 83, sitting at a kitchen table in his home.

Despite the tax relief, some longtime families on the east side have sold out. Others rent their properties. A long-term family in the neighborhood recently put a home on the market for $1.6 million. The property was taxed last year at a value of about $609,000.

Gonzales said the area used to be 90 percent Hispanic. “We’re now the 10 percent,” Gonzales said.

Wirth said the neighborhood of Apodaca Hill, off Upper Canyon Road, shows the law has worked as intended.

“It’s an incredibly diverse mix and fabric, and one of the neat neighborhoods in our city,” the senator said.



Nearly all of the 55 homeowners on Apodaca Hill received tax breaks last year because of the 3 percent cap on annual increases in market valuations for residential properties. Luis Sánchez Saturno/The New Mexican

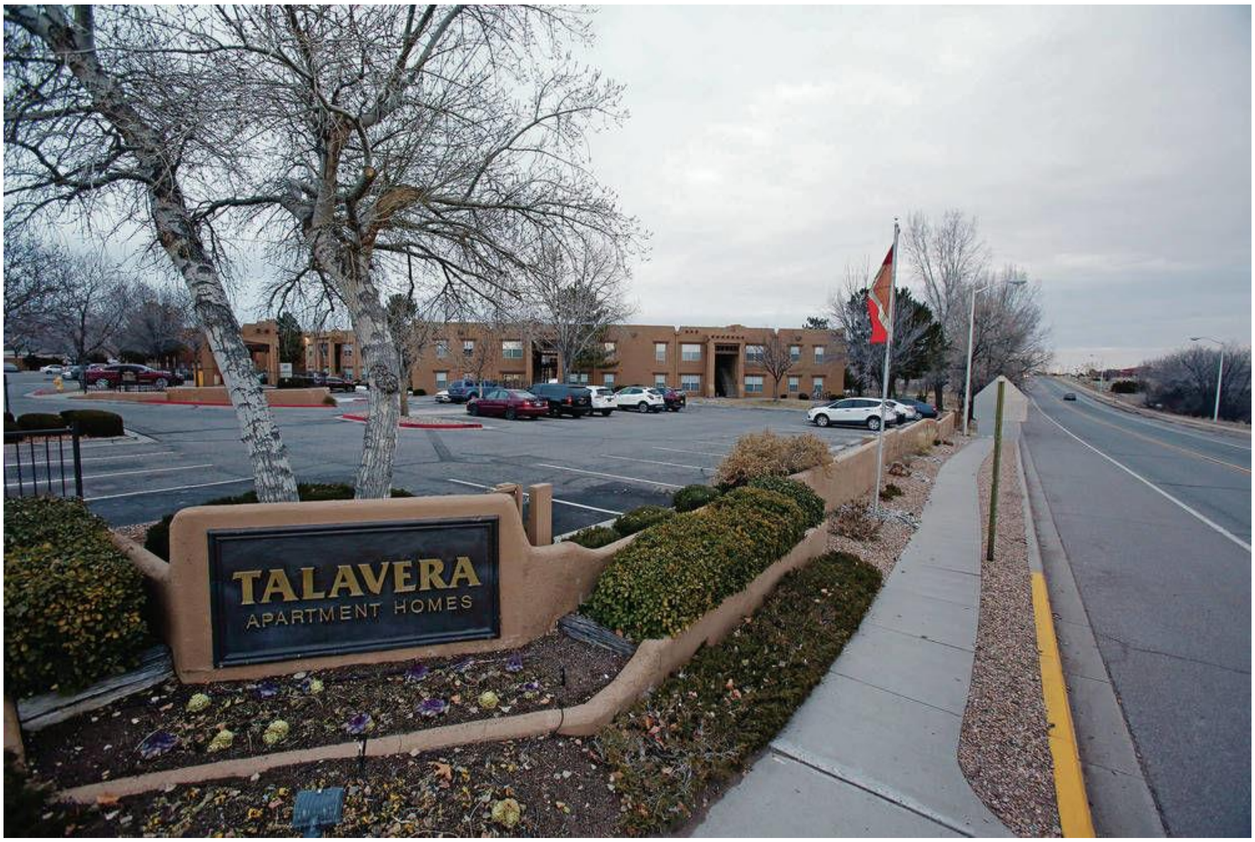
Nearly all of the 55 homeowners on Apodaca Hill, many of them with Hispanic surnames, received tax breaks last year because of the 3 percent cap on annual increases in market valuations for residential properties.

‘Unlevel playing field’

When it came to multifamily residential properties, the biggest tax break in 2018 went to Talavera Apartment Homes on South Meadows Road, just off Airport Road.

A company formed by NALS Apartment Homes, a real estate investment firm based in Santa Barbara, Calif., owns Talavera.

Last year, Talavera had a market value set by the Assessor's Office of nearly $18 million, but the property was taxed on a value of $12.8 million because of the 3 percent cap on annual market value increases for residential properties. The tax break was about $42,000.



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"Why are investment properties benefiting from this?" asked Loftin of Homewise. "The value of their property is going up. Presumably the value of their rents is going up. Why isn't their tax going up with it?"

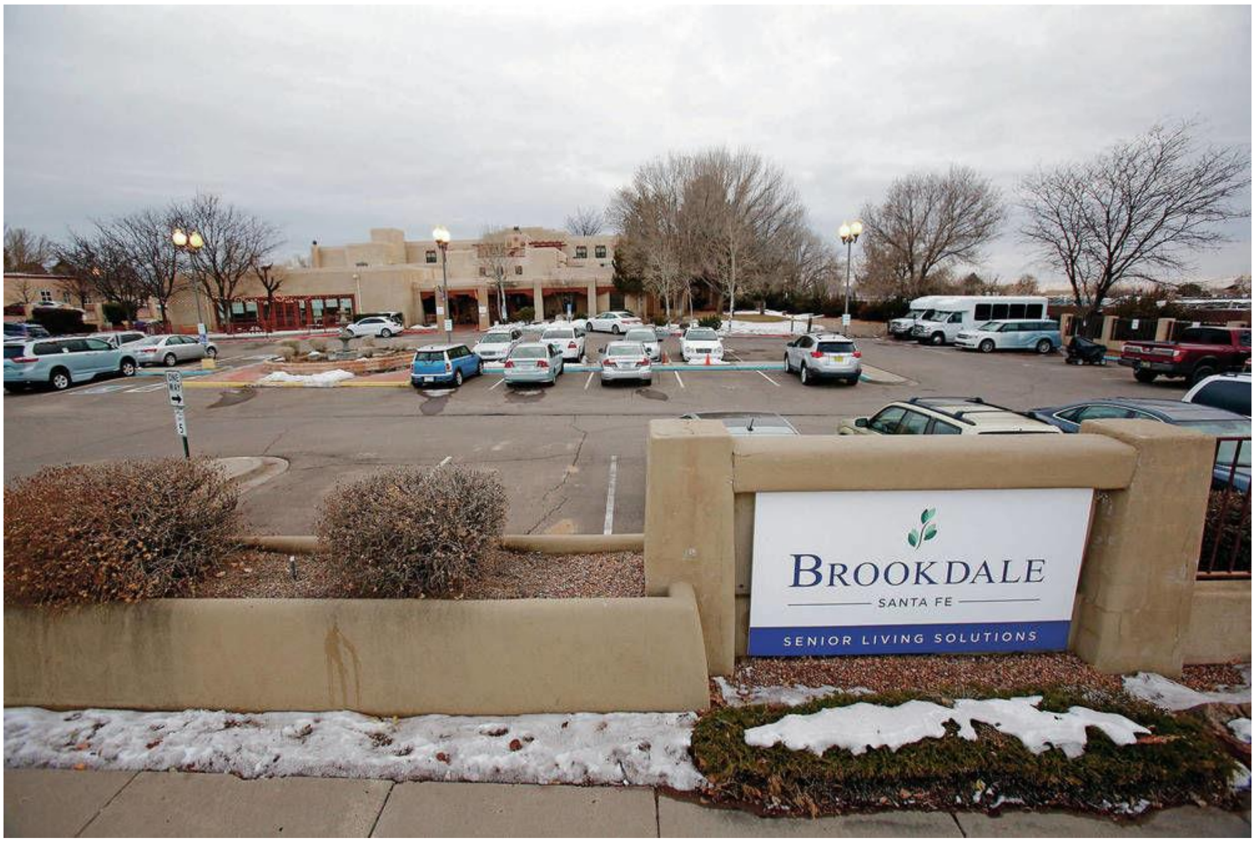
NALS Apartment Homes didn't respond to a request for comment.

Brookdale Senior Living of Nashville, Tenn., owner of Brookdale Santa Fe on Alta Vista Street, received the second-biggest tax break in 2018 for a multiresidential property.

The Brookdale property had a market value of more than $12.4 million last year, but it was taxed on a value of $7.4 million. The tax break amounted to about $41,000.

Brookdale declined to answer questions about the fairness of the tax break and what would happen if it had to pay taxes on the property's full market value.

"You're asking questions that are best answered by the government officials who enacted the legislation you are writing about," a company spokeswoman said in an email. "We are confident that the elected officials, who also serve citizens of Santa Fe, have a broad perspective and the best interests of all in mind."



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Competitors of Talavera and Brookdale were among the more than 100 owners of multiresidential properties that didn't get a property tax break last year.

"It sounds as though it's an unlevel playing field," said Simon Brackley, president and CEO of the Santa Fe Chamber of Commerce.

But Brackley cautioned that an owner of a multiresidential property would increase rents to offset a jump in property taxes.

“We want fairness when it comes to tax payments by everyone,” he said. “But in today’s housing shortage, housing crisis, avoiding anything that will increase the price of rent is desirable.”

Wirth, the Senate majority leader, said there might be a way to roll back the tax break for some owners of multiresidential properties.

“When it starts to get into a commercial enterprise, it does seem to be a different argument” for eliminating the tax break, he said.

‘Not fair and equitable’

Critics of the 3 percent cap say it was well-intentioned.

“There were real and compelling stories about potentially people not being able to hold on to their homes,” said James Jimenez, executive director of New Mexico Voices for Children and a former head of the state Department of Finance and Administration.

But Jimenez said the potential impacts of the cap weren’t sufficiently analyzed when it was enacted.

Martinez, the Santa Fe County assessor, acknowledged the cap works for longtime homeowners of modest means. “But it’s not fair and equitable across the board” to other owners of residential properties, he said.

Loftin said the 3 percent cap has resulted in a regressive property tax system that has outlived its purpose.

“I don’t know why this was considered a progressive thing when it was done,” he said.

State Treasurer Tim Eichenberg, a critic of the law that set the 3 percent cap, said elderly homeowners who want to downsize may be discouraged from doing so because they could face higher property taxes with the purchase of a new home.

Martinez said that if government wants to help longtime homeowners of modest means stay in their homes, it should tax all residential properties at full value, then provide targeted tax relief for those homeowners in need.

Jimenez and Loftin agree.

“We should have a way more rational tax policy,” Loftin said.

State law gives counties the option of rebating up to 75 percent of the property taxes paid by individuals with modified gross incomes of less than $24,000 a year. Santa Fe County is the only county that has exercised the option, according to Santa Fe County Manager Katherine Miller.

Low-income homeowners who are disabled or who are age 65 or older also can have the market value of their properties frozen for tax purposes.

Lack of support

Since the 3 percent cap was enacted, there have been unsuccessful attempts in the Legislature to amend the law.

Eichenberg, as a state senator, tried in 2012 to do away with the requirement that newly purchased homes be taxed at full market value. That would have ended the cases in which the buyers of new homes pay more in property taxes than neighbors benefiting from the 3 percent cap. The Senate approved Eichenberg's bill, but it never made it out of committee in the House.

In 2013, the Legislature rejected a bill that called for all residential properties to be taxed at 90 percent of market value, with increases in annual valuations limited to 5 percent.

That legislation was backed by the county assessor affiliate of the New Mexico Association of Counties, but assessors have since backed off from seeking changes to the 3 percent cap.

"It was really difficult to find any support in the Legislature for fixing it, for changing it," said Miller, the county manager and chairwoman of the tax policy committee for the Association of Counties.

She said lack of support for changes in the 3 percent cap is likely the result of two major factors.

First, there are a lot of residential property owners who benefit from the cap, Miller said. Second, while the 3 percent cap has a major impact in Santa Fe, that's not the case in rural or other areas where property isn't appreciating in value that fast on an annual basis.

There's simply not a lot of impetus for lawmakers to amend or eliminate the 3 percent cap, she said.

Wirth and others say the effects of the cap have led to sharper inequities in Santa Fe County in part because the market values of properties weren't current when the law was enacted.

The senator said he is sympathetic to both sides of the arguments surrounding the law that set the cap: that the law is unfair but provides needed tax relief to longtime residents in neighborhoods where property values have increased rapidly.

“That’s the challenge. How do we find the right solution? I just haven’t seen it yet,” he said.