

CONDOMINIUM TAXATION INCLUDES INTEREST IN CONDOMINIUM ASSOCIATION

The Town of Warren has won a reversal in a property taxation matter that it had lost before the state appraiser. *Barrett v. Town of Warren*, 2005 VT 107 (September 16, 2005). The primary question in the case was whether a condominium owner's partial ownership in the condominium association should offset the valuation of the condominium itself. While there are numerous condominiums in Vermont, and the associated appraisal process is relatively simple (as compared to other types of real property), the particular theory on which this appeal was based, and the corporate composition and assets of the condominium association are quite unique.

For the Supreme Court, the question in the case was whether the statutory appraisal criteria were met for setting the fair market value of the property, pursuant to 32 V.S.A. § 3481 ("Listed value" shall be an amount equal to 100 percent of the appraisal value). As viewed by a court, a town, as the taxing authority, bears the burden of proving appraisal value. Once this burden is met, the plaintiff carries the burden of persuasion on the issues he or she raises. Barrett, the plaintiff condominium owner, argued that the Town may not tax his interest in the condominium owners' association, because it is intangible personal property, and not real property, as is taxable under the statute.

The question for the Supreme Court was whether this argument could overcome the initial appraisal evidence presented by the Town. The Court will not overturn the town's appraisal unless the taxpayer/ appellant can show that the Town's appraisal was arbitrary or unlawful. This is a standard that is not easily reached.

Under Barrett's theory, he claimed that his interest in the association was essentially a liability, and that the value of his property should be reduced by some factor. In fact, the state appraiser lowered the value of the Barrett's property by simply calculating his .88% share of the Association's total equity, and took the condominium's value from that figure. The Supreme Court overturned this decision on the basis that the taxpayer's membership in the association, while intangible, is inextricably linked to the value of this property, and thus, is subject to taxation under the appraisal statute.

- Brian Monaghan, Attorney, VLCT Municipal Assistance Center

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