

Listers Must Demonstrate that Selective Appraisal has Rational Basis

The Vermont Supreme Court has ruled that an appraisal conducted by the Castleton listers violated the Proportional Contribution Clause of the Vermont Constitution. The Proportional Contribution Clause provides “That every member of society hath a right to be protected in the enjoyment of life, liberty, and property, and therefore is bound to contribute the member’s proportion towards the expense of that protection ...” Vt. Const. Ch. I, Art. 9. According to the Court, the listers’ selective reappraisal of a property lacked a rational basis and was therefore constitutionally defective. *Selectboard, Town of Castleton v. Parento*, 2009 VT 65.

The property in question is comprised of two parcels in a neighborhood bordering Lake Bomoseen. The first parcel (the House Parcel) consists of 3.35 acres of land on which there was an historic residence. The House Parcel is not lakefront. The second parcel (the Lake Parcel) consists of 0.19 acres of undeveloped land on Lake Bomoseen. The parcels are in close proximity but are not contiguous. Castleton zoning regulations prohibit development of the Lake Parcel.

The Town conducted a complete town-wide reappraisal in 2004. Pursuant to the reappraisal, the listers assessed the value of the House Parcel at \$193,600. The Lake Parcel was listed at \$17,000. The owner, Robert Parento, unsuccessfully grieved the listers’ assessment of the House Parcel and thereafter appealed to the Board of Civil Authority. The BCA disagreed with the value set by the listers and ascribed a new value to the land, \$58,100. The BCA reasoned that the listers had incorrectly classified the House Parcel as having “lake access,” one of the factors contributing to the value of the House Parcel, simply because the owner had concurrent ownership of the Lake Parcel. On appeal to the state appraiser, the listers’ position prevailed and the appraiser affirmed the listers’ assessment of the land at \$193,600 for tax year 2004.

The value of the House Parcel remained \$193,600 for tax year 2005 in conformity with 32 V.S.A. § 4468. That statute provides that, absent certain exceptions, including any town-wide reappraisal, values set by the appraiser shall remain fixed for two years. The value of the Lake Parcel likewise remained the same as tax year 2004, \$17,000. For tax year 2006, the Town conducted a town-wide statistical reappraisal; pursuant to this reappraisal, the listers increased the assessed value of the House Parcel to \$221,500 and the Lake Parcel to \$19,400.

Once again, Mr. Parento unsuccessfully grieved the listers’ valuation of the House Parcel and appealed to the BCA. In September 2006, the BCA again rejected the listers’ valuation and set the value of the House Parcel at \$66,915. The BCA reasoned that the listers had erred in concluding that the House Parcel should be deemed as having lake access just because Parento owned the Lake Parcel. According to the BCA, “[b]oth parcels need to be treated independently of each other.” The Town did not appeal the BCA’s September 2006 decision. Therefore, the listed value of the House Parcel became \$66,915 for tax year 2006.

Notwithstanding the BCA’s 2006 decision, the Town listers changed the assessed values of the two parcels in 2007. They valued the House Parcel at \$221,500 and the Lake Parcel at \$54,400, adding a flat charge of \$35,000 to the value of the Lake Parcel without reference to comparable properties. Having unsuccessfully grieved the listers’ latest decision, Mr. Parento yet again

appealed to the BCA. The BCA disagreed with the value ascribed to the parcels by the listers. It reduced the value of the House Parcel to \$91,465 and set the value of the Lake Parcel at \$19,400. Once again, the BCA concluded that the House Parcel should not be deemed as having lake access. The Town appealed the BCA's decision to the state appraiser, who upheld in part the BCA's valuation of the parcels. The appraiser set the value of the Lake Parcel at \$19,400 and assessed the House Parcel at \$221,500.

In addition to his valuation arguments, Mr. Parento also asserted that the Town selectively reassessed his property in violation of the Proportional Contribution Clause by failing to apply uniform standards in appraising similarly situated properties in 2007. Of particular concern was the \$35,000 flat charge applied to the Lake Parcel, which was not applied to similarly situated non-lakefront homesites in lake neighborhoods, the owners of which also owned separate, undevelopable lakefront parcels.

Noting that there must be a rational basis for identifying a subset of properties to be reassessed, the Court also explained that the reappraisal of this subset of properties must be carried out consistently. The Court concluded that the Castleton listers had not reassessed the homesite and lakefront parcels of numerous other similarly situated property owners, including those whose properties abutted or were in close proximity to Mr. Parento's, rendering the reappraisal "constitutionally suspect." With respect to those properties that it reassessed, the Town was unable to demonstrate that it had reassessed the properties uniformly. The Town's selective reassessment of the Parento property did not "clear the comparatively low hurdle that is rational basis scrutiny."

While the Vermont Supreme Court has readily recognized the legitimacy of partial reappraisals, it has been clear that there must at least be a rational basis for identifying a subset of properties to be selectively reassessed. Once subsets are established, properties within the subset must be treated similarly. The listers must be able to demonstrate to the state appraiser or a reviewing court that the reassessment was effectuated consistently with respect to these properties in the subset. Assessed values should never be based on anticipated decisions of the Board of Civil Authority.

A copy of the decision can be obtained at http://info.libraries.vermont.gov/supct/current/eo2008-203.html#_ftnref5

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