

LEGAL AND REGULATORY NOTES

Vermont Supreme Court Holds Location May be Considered in Determining Assessed Values of Camp Buildings on Leased Land

In 2011, the Town of Colchester completed a townwide reappraisal. Among the properties subject to reappraisal were hundreds of seasonal lakefront camps, many of which were located on leased lots. Upon discovering that the camps on leased lots were listed on the average at about half their median sale price, the town reappraised the properties based on the actual sales of comparable properties. The town's appraisal software broke down the appraised value of the camps into two categories: "building" value and "land/amenity" value. The town derived the "building" value by estimating the replacement cost of a new building and then deducting depreciation. The town calculated the "land/amenity" value by using market data to establish a fixed base value and then adjusting that value depending on a variety of factors related to location, such as proximity to shoreline, views, and quality of beachfront.

Forty-four camp owners appealed their reappraisal assessments to the superior court. In a ruling on those cases, the court concluded that Vermont law does not give municipalities authority to assess owners of buildings on leased land for location-related value attributable to the leasehold rather than the building itself and ordered the town to remove the "land/amenity" value from the appraised value for each of the 44 camps. Meanwhile, other camp owners appealed to a state appraiser. Despite the court's finding that the town had "presented reliable evidence that camps on leased land are selling in the free and open market for a greater amount than the [fair market value] estimate of the camp/buildings themselves," the state appraiser concluded – as did the superior court in the other consolidated cases – that Vermont law does not authorize the town to assess camps on leased land for a value attributable to location-related factors associated with the land rather than the camp buildings. The town appealed both cases

to the Vermont Supreme Court. *Lesage, McNeil and Mostrom v. Colchester, Marchelewicz v. Colchester, in re Colchester Leased Lands*, 2013 VT 48.

The Supreme Court noted that the center of the controversy was 32 V.S.A. § 3608, which provides "Buildings on leased land or on land not owned by the owner of the buildings shall be set in the list as real estate." As explained by the Court, the Vermont Legislature specifically included buildings on leased land in the definition of taxable real estate, and recognized that a building can be taxed separately from the land upon which it sits. The statute requiring that buildings on leased land be set forth in a town's grand list as real estate is aimed at precluding any argument that such building must be considered personal property rather than real estate.

As real estate, these buildings must be assessed at fair market value. 32 V.S.A. § 3481. Determining fair market value includes consideration of those intangible factors so "intimately intertwined" with the real property that the property would not function without them. The location of the Colchester camp buildings, concluded the Court, was intimately intertwined with the buildings, as reflected by sale transactions showing that the camps were selling at prices significantly above the depreciated replacement cost of the buildings themselves. Therefore, the location of the camp buildings was a factor to consider in determining the fair market value of the camps.

The decision is posted online at <http://info.libraries.vermont.gov/supct/current/op2012-196.html>.

Jim Barlow, Senior Staff Attorney
VLCT Municipal Assistance Center