

## LEGAL AND REGULATORY NOTES

### Vermont Supreme Court: The Sum of the Parcels Cannot Exceed the Property as a Whole

The Vanderminden Family Limited Partnership (VFLP) owns a piece of property located in the adjoining towns of Poultney and Wells. The property is 1.49 acres, with 715 feet of lake frontage on Lake St. Catherine. The property contains a seasonal camp, a garage, water, and a sewage system. All of these improvements are located on a parcel in the Town of Poultney. The Wells parcel is .09 acres of undeveloped land, including 125 feet of lake frontage.

In 2011, the Town of Wells assessed its parcel at \$130,200. VFLP grieved that assessment and the listers adjusted the value to \$122,000. On appeal, the Wells Board of Civil Authority affirmed the listers' valuation. VFLP then appealed to the state appraiser. The state appraiser affirmed the Town's valuation of the parcel at \$122,000. VFLP then appealed the state appraiser's decision to the Vermont Supreme Court. *Vanderminden, A Family LTD Partnership v. Town of Wells*, 2013 VT 49.

In appraising the VFLP property, the Town of Wells and the Town of Poultney had each used separate and conflicting appraisal formulas, and according to the Court, therein was the problem. Because Poultney used its appraisal formula for the parcel in its town, and Wells used *its* appraisal formula for the parcel in *its* town, the total of the two parcel values exceeded the fair market value of the VFLP property overall when considered as a whole – an unacceptable result according to the Court.

The Supreme Court held that in those situations where an appeal is taken for a property that lies in more than one town and that property is used for one common purpose and functions as a single tract, both the fair market value of the whole property and the value of the parcel in the town in which the appeal is taken must be determined. If the value of the parcel in the town involved in the appeal exceeds the difference

between the total fair market value of the total property and the value of the parcel in the other town, the value of the parcel in the town involved in the appeal must be reduced so that the overall property is not appraised above fair market value. In no case where the property functions as a single tract can the sum of the values attributable to the parcel in each town exceed the fair market value of the whole property.

The *Vanderminden* decision is likely to have significant impact – and cause significant confusion – around the state. The decision largely ignores, or at least significantly discounts, the fact that for listing purposes, a municipal boundary running through a single property defines two parcels of taxable real estate. Though it may be invisible and unobtrusive, that municipal boundary is nevertheless real – the Vermont Legislature has said that the grand list of each town must contain “a brief description of each parcel of taxable real estate *in the town*. ‘Parcel’ means all contiguous land in the same ownership, together with all improvements thereon.” 32 V.S.A. § 4152(a)(3) (Emphasis added.)

Thus, while a property straddling a municipal boundary may function as a single tract, it is, from the perspective of the Legislature, two separate parcels, in two separate municipalities, each having its own estimated fair market value for taxing purposes. And from the perspective of the market, the value of these two parcels – created by a municipal boundary – may often exceed the fair market value of the single property.

The Court noted that this was not the first time this issue had arisen. The Court also noted that neither the Legislature nor the Division of Property Valuation and Review had specified how to value land that is contiguous, and in

common ownership, but lies in more than one town, stating, “We believe it likely that the Legislature can and should create a less complex and more fair process for determining property valuation where multiple towns are involved. It may also be possible for the Division of Property Valuation and Review to create a solution within its statutory mandate. We urge both to address this area of our property tax laws.”

The *Vanderminden* decision is posted online at <http://info.libraries.vermont.gov/supct/current/op2012-092.html>

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