

Legal and Regulatory Notes

Vermont Supreme Court Holds Housing Subsidy Covenants do not Create Property Tax Exemptions

Gillian Franks owns an affordable housing unit in the Town of Essex that is subject to a housing-subsidy covenant. Franks appealed the assessed value of the unit. State Appraiser Merle Van Geison concluded that the existence of a housing-subsidy covenant *does not* automatically lower a property's fair market value, and found that the covenant did not negatively affect the value of Franks' property.

Kathleen Margaret owns a house in Rockingham that is also subject to a housing-subsidy covenant. The house sits on land owned by Rockingham Area Community Land Trust, which leases the land to Margaret. The trust appealed the assessed value of the Margaret property on her behalf. State Appraiser Norman Wright concluded that the existence a housing-subsidy covenant *does* automatically lower a property's fair market value. Wright then reduced the assessed value of Margaret's property.

Both cases were appealed to the Vermont Supreme Court, where they were consolidated. *Franks v. Town of Essex*, 2013 VT 84. The central issue in both cases was whether 32 V.S.A. § 3481(1) compels an automatic reduction in property tax valuation for all parcels subject to a housing-subsidy covenant. The Supreme Court held that an automatic reduction is not required. Instead, the statute demands an individualized consideration of the effect a particular covenant has on a property's fair market value. Appraiser Van Geison's decision was affirmed. Appraiser Wright's decision was reversed.

Under 32 V.S.A. § 3481(1), a property's estimated fair market value is defined as "the price which the property will bring in the market when offered for sale and purchased by another, taking into consideration all the elements of the availability of the property, its use both potential and prospective, any functional deficiencies, and all other elements such as age and condition which combine to give property a market value." 32 V.S.A. § 3481(1). In 1997, the statute was amended and since that time municipal listers and assessors have been specifically instructed under 32 V.S.A. § 3481(1) to include in the calculation of estimated fair market value "a consideration of a decrease in value in nonrental residential property due to a housing subsidy covenant. ..." *Id.*

The housing-subsidy covenants at issue in this case are designed to help maintain affordable housing. The covenants are typically executed by lower-income homebuyers as a condition for the receipt of a purchase subsidy from the Vermont Housing and Conservation Board and other affordable housing organizations. A housing-subsidy covenant may include, among other things, restrictions on use, resale price, tenant income and rents, as well as limitations on the income of a purchaser of a housing unit for his or her own residence. See 27 V.S.A. § 610(b).

According to the Court, an automatic decrease in the estimated fair market value of property subject to a housing-subsidy covenant is not warranted by the language of 32 V.S.A. § 3481(1). Rather, listers and assessors must make an individualized analysis of a covenant's specific terms and the market context. The statute "require[s] listers to be mindful of the potential market impact of the housing-subsidy covenants that often accompany these grants. In doing so, however, the Legislature did not impose an affirmative duty on all town residents to personally subsidize these properties at the local level by forcing neighbors to shoulder a disproportionate share of the cost of education and municipal services."

In a dissent, Justice Robinson agreed with the majority's holding that 32 V.S.A. § 3481(1) does not compel an automatic reduction in property tax valuation for all parcels subject to a housing-subsidy covenant, but instead demands an individualized consideration of the effect a particular covenant has on a property's fair market value. However, such an individualized consideration "will necessarily lead to some reduction in value in the overwhelming majority of cases."

According to Justice Robinson, the benchmark for determining the estimated fair market value of property subject to a housing-subsidy covenant "is the amount an individual buyer would pay to purchase the property subject to the various restrictions that apply, and is not the total unrestricted value the property would have in the absence of the covenant."

The decision is archived at http://info.libraries.vermont.gov/supct/current/op2011-359.html#_ftnref6.

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