

## LEGAL AND REGULATORY NOTES

### **Vermont Supreme Court Upholds Town’s Tax Assessment of Properties’ Development Potential**

In a case of statewide import for municipal property tax appraisal purposes, the Vermont Supreme Court late last year reversed a state appraiser’s ruling striking down the Town of Monkton’s disparate valuation of undeveloped parcels with subdivision permits at a higher rate than those without.

This consolidated appeal to the Court originated with three Monkton taxpayers appealing their 2011 assessment to the Board of Civil Authority (BCA). In Monkton, property may be subdivided, and thereby subsequently conveyed, in one of three ways: by having a road divide the property; by holding multiple contiguous lots in common ownership prior to 1978; and by obtaining a subdivision permit from the Development Review Board (DRB). How property is subdivided in Monkton determines how it is assessed. Property subdivided by a road or prior to 1978 is assessed as having one house site value with remaining property subject to the Town’s land schedule, whereas property subject to a subdivision permit is assessed a house site value for each permitted lot regardless of whether it is developed. This approach allowed the Town to value property at its highest and best use for potential development. The property owners in this case all owned permitted subdivided property. The BCA upheld the listers’ approach to appraising their property, which led to an appeal to the state appraiser. The state appraiser sided with the taxpayers and characterized the Town’s assessment of these classes of subdivided parcels “arbitrary,” resulting in the Town “not treating all properties in Monkton fairly and equitably with other like properties.”

On appeal to the Court, the Town argued that in assessing properties with subdivision permits differently from those properties subdivided without such permits it was valuing property at fair market value – its highest and best use. The highest and best use of those properties with subdivision permits it contested was for potential development. The taxpayers countered that the Town’s appraisal methodology violated the Proportional Clause of the Vermont Constitution and the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution because it treated similarly situated taxpayers –those with subdivided property – differently.

The Court agreed with the Town, holding that “(t)here is sufficient difference between lots with actual permits in place and lots which are potentially subject to division without a permit to justify the different treatment by the Town.” In reaching its decision that the Town’s appraisal scheme was constitutionally valid, the Court looked to whether it bore a reasonable relationship to the purpose for which it was created. This requirement is satisfied so long as the Town had a reasonable policy or purpose underlying the classification. The Court found that the Town’s purpose was reasonable because, while all parcels (permitted or non-permitted) could be sold as subdivided parcels, those with permits would have greater value than those without because the latter “has not been shown to be physically possible, financially feasible, or likely to result in the

highest value. The lots may be unbuildable due to wetland or ledge, or they may be too small or landlocked, preventing residential use. On the other hand, after a taxpayer has gone through the effort of obtaining a permit and recording a subdivision plat, the Town may reasonably conclude that the highest and best use of that land is as a subdivision containing multiple house sites and assess it accordingly.”

This case is welcome affirmation from the state’s highest court for those towns already utilizing this appraisal approach as well as for those that, after reading this case analysis, are likely to follow suit.

The decision is archived at <http://info.libraries.vermont.gov/supct/current/op2013-026.html>

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