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Vermont Supreme Court Revisits Town's Tax Assessment of Properties' Development Potential

Earlier this year, we reported on a Vermont Supreme Court decision, *Lathrop v. Town of Monkton*, 2014 VT 9, in which the Court held that "a town may assess a parcel as including multiple house sites where the owner has subdivided the property into separate lots." (See "Vermont Supreme Court Upholds Town's Tax Assessment of Properties' Development Potential" at www.vlct.org/league-resources/search-vlctresources?zoom_sort=0&zoom_query=Monkton&zoom_per_page=10&zoom_and=0&zoom_cat%5B%5D=4.)

The *Lathrop* case left unresolved the question of what acts – short of obtaining subdivision approval – could be used as grounds for assessing one property as two parcels. In July, the Court answered this question in the case of *Hoiska v. Town of East Montpelier*, 2014 VT 80. The taxpayer in this case, Elaine Hoiska, acquired a 16.2 acre parcel with a house and barn in East Montpelier in 1977. In 1978, the taxpayer had a survey prepared for her property which included a line dividing the property into two lots. The survey was not recorded until 1986. The town's zoning and subdivision regulations in existence from 1974 until 1982 only required subdivision approval when three or more lots were created.

In 2011, Ms. Hoiska's property was assessed as two lots on the basis of her survey. That separate assessment was challenged by the taxpayer but upheld by the Board of Listers, the Board of Civil Authority, and the State Appraiser in turn.

The question before the Vermont Supreme Court was whether a survey including a subdivision line automatically creates a subdivision for appraisal purposes. The Court held that it did not. "[A] survey alone, unaccompanied by any evidence manifesting an intent by the owner to actually subdivide along the lines reflected in the survey, does not effectuate a subdivision." The difference between this case and *Lathrop*, the Court ruled, was that the property owner in *Lathrop* had received a subdivision permit. In *Hoiska*, the taxpayer neither requested nor received such approval to subdivide her property and furthermore evidenced no such intent. "The intention to subdivide can be manifested in many ways, including by recording the survey reflecting the subdivision, on one or both subdivided lots, conveying one or both subdivided lots, offering to sell one or more subdivided lots, or otherwise expressing an intention to prospectively treat the lots as separate. However, the mere preparation of a survey reflecting two lots, by itself, is not enough." While Ms. Hoiska did eventually record her survey, the Town's subdivision regulations at that time did not require subdivision approval for the two.

Though this case did not turn out in the Town's favor, it's nonetheless helpful to municipalities as, when taken in conjunction with the *Lathrop* case, it provides clearer direction to listers and assessors as to how to determine and how to appraise "subdivided" property.

The decision is archived at http://info.libraries.vermont.gov/supct/current/op2013-274.html

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