

LEGAL AND REGULATORY NOTES, JAN. 2015

Supreme Court Directs Board of Abatement to Comply With Statutory Minimum for Writing Final Decisions

Regardless of the outcome, one good thing that oftentimes results from a single-town appealing or defending a decision all the way to the Vermont Supreme Court is that all other towns benefit equally from the clarity to the law that such a decision brings. The case of *Guntlow and Winterkorn v. Board of Abatement, Town of Pownal, 2014 VT 188*, is a prime example.

The case began in 2012 when two taxpayers appealed to Bennington Superior Court after their requests for abatement from the town board of abatement were denied. The Superior Court remanded the matter back to the board, directing it to either detail in writing the reasons for its denial, or hold a new, curative hearing, because the board failed to “state in detail in writing the reasons for its decision.” The board held a second hearing, issued another decision, and again denied the taxpayers’ requests for abatement. Unsatisfied with the outcome, process, and explanation from the board, the taxpayers made a second appeal to Superior Court. This time the court affirmed the board’s decision and the taxpayers appealed to the Vermont Supreme Court. The Supreme Court reversed the decision and remanded the case to the Superior Court with instructions to send it back to the board of abatement for either a third hearing or a more detailed explanation of the reasons behind its decision.

State law requires that boards of abatement “state in detail in writing the reasons for its decisions.” 24 V.S.A. § 1535(c). This is a higher standard than what is required of boards of civil authority, which must merely state the “reasons” for rendering a decision in a tax appeal. 32 V.S.A. § 4404(c). The Supreme Court ruled in this case that a board of abatement’s decision “must provide sufficient explanation to indicate to the parties, and to an appellate court, what was decided and upon what considerations.” The writing need not be “lengthy, exhaustive, or legalistic,” but it must address the arguments raised by the applicant. Further, “the more detailed and clear a taxpayer’s own presentation, the greater the board’s duty to respond in kind.”

The board of abatement’s response to the taxpayers’ allegation that the Pownal listers erred when they arbitrarily changed one parcel of contiguous property to five individual parcels was “No, it was not proven by the appellant that the [l]isters had erred.” The Court found this explanation to be insufficient, “especially given that the only information presented to the board on this point was from taxpayers, who supported their claim with reference to documents and legal citation, this response does not meet [the test]. It amounts to ‘you were wrong,’ without any explanation why.” Compare this to another explanation that the Court found satisfied the standard in 24 V.S.A. § 1535(c): The taxpayers alleged that the Pownal listers erred by not equalizing four of the taxpayers properties to all other town properties between 2005 and 2010. The board’s decision stated “No, because the same cost table/schedule were used to value the appellant’s property as were to the rest of the parcels in town.” This explanation *was* sufficient because it “responded directly to the equalization argument, and reflected that because the same cost table

and schedule were used for all properties, the board was not persuaded that taxpayers' properties were unfairly valued. It provides ample basis for what would be a very deferential review, since the question before a reviewing court would be whether any evidence in the record supported the town's conclusion on this point."

Boards of abatement should address each of the arguments raised by applicants in their written decisions. There is no requirement that board decisions be exhaustive or lengthy, however they must provide enough information for a court to understand why and how a decision was reached. It may be adequate to provide one or two sentences about each argument, but those sentences must directly address and explain the decision, and not simply answer "yes" or "no." Towns may save time and money and even prevent appeals by clearly explaining the rationale for each of their abatement decisions.

The case is archived at <http://info.libraries.vermont.gov/supct/current/op2014-139.html>.

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