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Vermont Supreme Court Addresses Assessment of Condominium Common Lands Located in Two Towns

Vermont law instructs that all properties must be assessed at their fair market value. Fair market value is "the price which a piece of 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, potential and prospective, and all other elements which combine to give a piece of property a market value." *Petition of Mallary*, 127 Vt. 412 (1968). Assigning a value to this elusive concept is difficult enough to do when a parcel of land is wholly located within the territorial limits of one town, but how is it to be achieved when that parcel is a condominium with common property located in two towns? That was the question before the Vermont Supreme Court in the case of *John T. Adams, II v. Town of Sudbury*, 2016 VT 11.

This case concerns a portion of a 26.9-acre condominium community known as Wanee Villas and Resorts (Wanee) in which the appellant taxpayer, John T. Adams, II, owns three units. Almost all of Wanee rests in the Town of Hubbardton, with the exception of 1.29 acres of common land located in the Town of Sudbury. The valuation of that common land was the subject of this appeal.

There is a long, rich history of disagreement between taxpayer Adams and the Town of Sudbury regarding the assessment of his property, but for purposes of this case, Adams' dispute begins in 2012 when, as part of a town-wide reappraisal, the town assessed the portion of common land located within its borders at $177,445, taxing Adams as one of the unit owners at his percentage ownership in Wanee. In assessing his property, the town adhered to the Vermont State law governing taxing common elements, which instructs,

> *[N]o separate tax or assessment may be rendered against any common elements for which a declarant has reserved no development rights; provided, however, that if a portion of the common elements is located in a town other than the town in which the unit is located, the town in which the common elements are located may designate that portion of the of the common elements within its boundaries as a parcel for property tax assessment purposes and may tax each unit owner at an appraisal value pursuant to 32 V.S.A. § 3481.* 27A V.S.A. § 1-105(a)(2).

Adams, after appealing unsuccessfully to the Sudbury Board of Civil Authority and then to Rutland Superior Court, raised three arguments before the Vermont Supreme Court: (1) The state law governing assessment of common elements of condominium communities violated both the U.S. and Vermont constitutions in that it results in condominiums having common land in two towns being taxed at a higher rate than condominiums with common land in just one town; (2) the Town of Sudbury's valuation of the common land was neither supported by the evidence nor representative of fair market value; and (3) all Wanee unit owners should have been taxed

equally with respect to the common land, rather than according to their individual ownership interests.

With respect to Adams' first claim, the court looked first at whether the tax was established for a reasonable purpose and bore a reasonable relation to that purpose; and second whether it was applied fairly so that similarly situated taxpayers were treated alike. This tax survived scrutiny as to both criteria because, according to the court, "it creates a tax regime that is not only reasonable but also results in fair and uniform tax treatment if implemented properly." This was not the first time that the court had addressed the issue of taxing a parcel of land spanning two towns, though it was the first occasion for it to review such land belonging to a condominium community. In its previous case of *Vanderminden v. Town of Wells*, 2014 VT 49, the court held that towns could tax portions of parcels not wholly located within their own boundaries, "so long as the combined valuation of each portion does not exceed the actual fair market value of the entire piece of land." The law Adams challenged, 27A V.S.A. § 1-105(a)(2), comports well with the court's holding in *Vanderminden* because it allows towns to look at the estimated fair market value of the entire parcel of land and tax the value of the portion of that land lying within its boundaries.

Adam's second claim suffered the same fate as the first with the court ruling that the town's practice of adjusting actual sales data with factors specific to the parcel (e.g., land quality, depth, and lake frontage) as well as its methodology for calculating the degree of adjustment for each factor was well within its discretion of valuing property at fair market value.

Finally, the court rejected Adams' third claim that the town improperly apportioned the tax burden of the common lands to each of the condominium owners in Wanee equally rather than according to their percentage ownership interest. In thus ruling, the court relied upon another pertinent statute, 27 V.S.A. § 1310, that provides that "the common expenses shall be charged to the apartment or site owners according to the percentage of the undivided interest in the common areas and facilities." The "common expense" in this case was the tax assessed upon the common property, so it was reasonable, according to the court, for the town to apportion it as it did.

Adams v. Sudbury and its predecessor *Vanderminden* are important cases for towns with parcels that straddle town borders because they affirm the town's ability to tax those parcels, and they illustrate how to do so in a manner that will survive legal challenge.

This case is archived here.

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