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Vermont Supreme Court Upholds Town's Dismissal of Tax Appeal

The Vermont Supreme Court reiterated in January its prior rulings that tax appeals to a municipality's board of civil authority (BCA) may be "deemed withdrawn," and therefore dismissed, if the taxpayer appealing his or her property assessment refuses to allow the BCA to inspect all property within the taxpayer's parcel. *Rasmussen v. Town of Fair Haven*, 2016 VT 1.

The appellant taxpayer, Lauritz Rasmussen, owned three lots, each containing a house. Rasmussen rented out two of the houses while the last lot contained his primary residence. All three lots were adjacent to each other, forming one contiguous parcel. The Town of Fair Haven's listers assessed the three lots as one parcel in the town's grand list, lumping together both rental houses and Rasmussen's residence, and assigning a valuation of $585,800 to the parcel in 2014.

Rasmussen appealed the assessment to the Fair Haven BCA but refused to allow the BCA to inspect all property on the parcel, specifically the interior of his residence. Based on this refusal, the BCA considered the appeal "withdrawn," and, therefore, the appeal was dismissed. Rasmussen appealed the BCA's decision to Vermont's director of the Property Valuation and Review Division (PVR) of the Tax Department, who assigned a property tax hearing officer to the case. The hearing officer considered Rasmussen's argument and concluded the BCA properly dismissed the appeal.

On appeal to the Vermont Supreme Court, the justices considered Rasmussen's main argument: that the BCA inappropriately deemed his appeal "withdrawn" for refusing to allow inspection of his residence. Rasmussen stated that he was appealing only the valuation of the two lots containing the rental houses, not the lot where his residence was located. Therefore, he asserted, only the property on that portion of the parcel required inspection.

The court upheld the BCA's dismissal, reaffirming current tax appeal case law and providing all parties involved – towns, taxpayers, and PVR – with some concise guidance when dealing with these types of appeals. First, the Court restated the well-established but significant law giving presumptive validity to BCA's fact finding and tax appeal decisions. See *Garbitelli v. Town of Brookfield*, 2009 VT 109, ¶ 5. (BCA's decision on merits is "presumed valid in an appeal" and the burden is on the taxpayer to overcome this presumption.) Second, the court explained how adjacent lots under the same ownership may be assessed as a contiguous parcel, where assessment includes all property therein valued as a whole. Finally, for the BCA to properly hear a taxpayer's appeal, state law provides that the BCA is able to inspect all property located on the parcel being contested, and further that inspection necessarily implies interior inspection.

In its consideration of Rasmussen's arguments, the Vermont Supreme Court started by reviewing the duties and authority of listers. When listers make valuations of real property in the town, they do so by including in the grand list the taxable real estate of each parcel. According to 32 V.S.A.

§ 4152(a)(3), a "parcel" is "all contiguous land in the same ownership, together with all improvements thereon." Put differently, when listers make a valuation of a parcel, all property therein is assessed. Assessment of a property is "based on the highest and best use of the property." *Zurn v. City of St. Albans*, 2009 VT 85. Additionally, PVR rules provide that the state appraiser "shall" review the valuation of "an entire contiguous parcel of land together with all buildings and fixtures thereon." Div. of Property Valuation & Review, § (32)4467-1. The takeaway is that listers may assess separate lots and all real property therein as one parcel (assuming the lots are contiguous and under the same ownership).

Here, the Fair Haven listers were entirely within their authority to assess Rasmussen's three adjacent lots as one contiguous parcel. Critically, the BCA viewed the listers' assessment of Rasmussen's contiguous parcel as an indivisible aggregation of the properties. In other words, for the appeal to be properly considered, the BCA needed to inspect all of Rasmussen's property, including his residence. Only then would the BCA have the necessary evidence to make an informed decision on the merits regarding the listers' assessment of the *parcel* on the whole.

Regarding the necessity of inspection, the court made it clear that state law allows the BCA to inspect an appellant taxpayer's property after proper notice. Inspection is "a critical component of an assessment" and the BCA's fact finding process; it allows the gathering of proper evidence upon which to make a decision. Referring to *Garbitelli* again, the court made it clear that inspection "would necessarily have to include an inspection of the interior of any dwelling."

Finally, Rasmussen argued that the inspection was an "unreasonable" search under the Fourth Amendment of the United States Constitution. The court rejected this argument by reasoning that "obviously" a taxpayer can refuse an inspection, although doing so will likely prevent the appeal from proceeding in a manner advantageous to the appellant. This is precisely what Rasmussen did: he refused to allow the BCA to inspect all the property on the contiguous parcel (i.e., his residence), and the BCA deemed his appeal "withdrawn," thereby dismissing it. With no review by the BCA, the record on appeal was essentially nonexistent. Without a record, and further refusal by Rasmussen to allow even the state hearing officer to inspect his property, there was no basis in law or fact in which Rasmussen could overcome the BCA's presumptively valid dismissal of his tax appeal.

VLCT's Municipal Assistance Center provides on-site training for the tax appeal process. Please email info@vlct.org or call 802-229-9111 to discuss how MAC can assist your town.

The *Rasmussen* decision is archived here.

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