INITIAL NOTICE ADEQUATE IN ROAD CLASSIFICATION CASE

The Vermont Supreme Court has ruled that due process does not require a town to inform an individual of his or her right to appeal a town action that was taken after a hearing on reclassification of a highway. *Gabriel v. Town of Duxbury,* Vt. No. 2000-057 (Nov. 16, 2000).

In this case, the selectboard proposed to reclassify a road on which Ms.Gabriel owned property from Class 3 to Class 4. She was duly notified and attended two hearings on the matter. After the hearings, the town did reclassify the road. Gabriel attempted to appeal that decision to the superior court but was unsuccessful because her appeal was too late. She then appealed, arguing that the town violated her due process rights because it did not advise her of her right to appeal or that there was a time limit on such an appeal.

The Supreme Court began by assuming that the reclassification of a highway does have an effect on the property rights of abutting landowners. It then applied the three-prong test from *Mathews v. Eldridge, 424* U.S. 319 (1976) which balances the private interest affected, the risk of erroneous deprivation of property and the government's interests.

The private interest in this case was the possible change in quality of access to the property that might result from reclassifying the road. The Court found that the potential change in property right in this case would be minimal.

Second, Gabriel had already taken advantage of the opportunity to be heard on the matter when she attended the two hearings. Thus, she had already had the chance to mitigate the risk of erroneous deprivation of her property right.

The Court then said that although the burden that would be created for the town by requiring it to inform Gabriel of her right to appeal was not heavy, consideration of the entire picture did not appear to justify even that slight burden in this case.

This is an interesting case when compared to two delinquent tax sale cases where Vermont lower courts have held that towns must inform delinquent tax payers of their right to apply for tax abatement and of the process for applying for abatement prior to tax sale. See *VLCT News* May 2000, p. 4 (*Town of Windsor v. Blanchard*) and August 1995, p. 6 (*Fysh v. Town of Bristol*). Those two cases had raised questions about the extent of notice which towns must provide when a person's property rights are being threatened by sale of their real estate for delinquent taxes.

A major difference between *Gabriel* and the tax sale cases is the extent of the property owner's possible damage. In the case of a tax sale, the property owner risked losing his or her home or business while, in the present case, the potential for damage to the property interest was very slight.

Also, in *Gabriel* the Supreme Court drew a distinction between the need to notify a person of his or her right to appeal when the town's action has been unilateral (e.g. a decision by the zoning administrator where no hearing or other adversarial proceeding was provided) and when the town's action has occurred only after notice and an opportunity to be heard. Gabriel had received notice of hearings and had attended them prior to the town's final action.

In addition, the Court cited two federal court cases where it was said that there is no case law that requires that parties be advised of their right to appeal.

The lesson from these cases is that property owners have a right to a fair warning and a chance to respond when significant rights are threatened. If town officials follow all notice and hearing requirements, as was done in *Gabriel,* they will avoid complications later.

VLCT News, January 2001