

SECOND SUPERIOR COURT DECISION QUESTIONS STATE'S TAX METHODOLOGIES

The Town of Victory has won its appeal of appraisal values set by the State Division of Property Valuation and Review (PVR) for forest land for which the town was receiving payment in lieu of taxes (PILOT). Judge Kathleen Manley concluded, "the application and determination of the [property appraisal] adjustment factors were arbitrary and unreasonable." *Town of Victory v. State of Vermont, Department of Taxes*, Decision and Order, Docket No. 33-6-99Excv, at 17 (2003).

This case is important for Vermont municipalities because it is yet another instance of a Vermont superior court questioning an aspect of the State's property appraisal methodologies. You may recall that in August 2002, the Rutland Superior Court used similar language to describe PVR's equalization methodologies under Act 60, when the Town of Killington appealed its equalized education property tax grand list value. (See September 2002 *VLCT News* Legal Corner.) That case is now pending before the Vermont Supreme Court.

In the instant case, the Town of Victory appealed the State's annual PILOT payment for about 11,000 acres of land in the town that are owned by the State Agency of Natural Resources (ANR). Pursuant to statute, the State makes payments to the Town in lieu of municipal property taxes on these ANR-owned lands (the payment for this property, which was not enrolled in the current use program, was calculated at one percent of its appraisal value). 32 V.S.A. § 3708. These properties are supposed to be appraised annually, or their values reviewed each year. The court's findings focused on the annual appraisals conducted by PVR's District Advisor, to whom the responsibility for appraising ANR lands in the PILOT program was delegated. Instead of truly appraising the property annually, the court found that the District Advisor merely rubberstamped the prior year's appraisal, which had not changed for the four preceding tax years.

The court's opinion focused on the facts that PVR's District Advisor was not certified or licensed by the State to perform appraisals, and he was only physically on the site on six occasions (but did not inspect the property other than what he was able to observe from his immediate location). The District Advisor's "appraisal" (quotation marks used by the Court in its decision) included a series of arbitrary calculations that were used more because of instinct than because of PVR procedures.

The value of the property in question remained the same from 1995 to 1998. In 1998 and 1999, another District Advisor reviewed the appraisal values and recommended the same values to the Director of PVR, who affirmed those figures. Throughout the trial in this matter, the Town questioned PVR's appraisal procedures, asserting, essentially, that there were no procedures to guide PVR District Advisors in appraising property, and if there were procedures in place, they were not followed, or ignored outright. Each year, the Director of PVR would then affirm those property values without any independent review. The Court accepted most of the Town's assertions, stating that a review of PVR's appraisal procedures shows "its ad hoc and essentially arbitrary nature reflects both the lack of any guiding standardized appraisal methodology or procedures on the part of PVR at the time." Decision and Order at 14. "Even the most basic principles stated in the PVR's own training manual for listers were ignored . . . There was no consideration of

‘forest potential,’ nor of actual alternate uses, nor of the degree such uses, if present, might have influenced the sales price.” *Id* at 15.

What does this mean for your town? There are approximately 800 parcels of land in Vermont owned by ANR, for which the State must provide a payment in lieu of taxes, based on the appraisal value of the property. 32 V.S.A. § 3708. If PVR is appraising these lands without regard to accepted listing practices, there exists the possibility that many Vermont towns are being short-changed in receiving PILOT monies from the State. More than half the acreage in some Vermont towns is owned by the State; the impacts of improper tax appraisal on these vast quantities of land are significant. VLCT encourages towns to review their PILOT payments and respective appraisals to determine if they have changed in recent years and how those changes correspond with changes in the local real estate market. It may behoove towns to contact PVR for an explanation of the process used to appraise PILOT lands; there may be errors in these figures or they may not account for changes in the real estate market. If your town has additional questions or concerns about PILOT appraisals, call the Municipal Law Center or your town attorney to evaluate your options.

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