

SUPERIOR COURT HOLDS FOR ROCKINGHAM IN TAX APPEAL

A recent Superior Court decision in a hard-fought tax appeal came down strongly in favor of the town. The decision, which received a great deal of media attention, involved a large industrial taxpayer, USGen New England, Inc., a subsidiary of PG&E Corporation. The case was closely watched by towns involved in tax disputes over utility property, and the decision provides municipalities with some insight into the issues that arise when a major income-generating taxpayer challenges a local appraisal.

The case began when USGen New England Inc. appealed to the Windham Superior Court the Town of Rockingham's valuation for tax purposes of a hydroelectric generation station in Bellows Falls. (Bellows Falls is a village within Rockingham.) In late January, after a long and complex trial, a decision was entered in the case, in which Judge John Wesley agreed with the Town's valuation of \$90,377,000 and rejected USGen's valuation of \$33,351,000.

The trial and resulting decision showcased expert witness testimony on property valuation of hydroelectric generating plants. Several aspects of the case and the decision are of interest to towns in valuing utility and other industrial and commercial property:

- The analyses of value presented by both the Town and the taxpayer were based on projected income and expenses, using the "discounted cash flow" method, as opposed to original cost less depreciation or comparable sales.
- The decision emphasized the importance of using the exact date of valuation (in this case, April 1, 2001) in determining reasonable expectations of future revenues. This was particularly critical in an economically volatile market such as wholesale energy, in which projections undergo large fluctuations, depending on the date on which those projections are made.
- The decision highlights the importance of going to court with strong expert witnesses; here the trial court accepted the testimony of the Town's witnesses and rejected the testimony of USGen's witnesses.
- The decision rejected the taxpayer's version of projected expenses, which would offset revenues and reduce the total value of the asset, holding that the expense estimates by the Town's witnesses were more credible.
- Rockingham's resolve to engage in complex and prolonged litigation against a taxpayer with very substantial resources turned out to be of great benefit to the Town, which relies on the hydro station to generate about 30% of its tax revenues. If the Town had lost the case, it would have had to refund millions of dollars and replace those funds by unacceptable increases in its tax rates.

The decision also dealt with issues that occasionally arise in tax cases, including:

- The allocation of value between Rockingham and another town in which part of the generating plant is located. The Court accepted the determination of the Rockingham listers and rejected the experts' allocations.
- The taxpayer claimed that a portion of the value of the plant should be allocated away from Bellows Falls to other generators up the river, since these were operated to maximize the value of the Bellows Falls plant. This argument, which

could be applied to other types of utility and industrial properties, was examined and rejected by the Court.

Laurie Rowell, Chair of the Rockingham Board of Listers, can be reached at 802/463-1229; a copy of the decision and additional information may be obtained by e-mailing or calling Richard Saudek or David Grayck, the lawyers who represented Rockingham in the case, at rsaudek@cbs-law.com or 802/223-4000.

- Richard Saudek, Esq.

(Editor's Note: As a superior court case, this decision applies only to municipalities within Windham County. VLCT will be watching this case carefully and will follow its progress in the VLCT News if it is appealed to the Vermont Supreme Court.)

VLCT News, March 2003