

LISTERS' APPRAISAL VALUE UPHELD BY SUPERIOR COURT

A decision of the Bennington County Superior Court has affirmed an appraisal value set by the Town of Winhall's board of listers. *In re Appeal of William Stutt, Trustee*, Bennington Superior Court, Docket No. 337-5-01 Bncv (August 27, 2003). While this decision comes from a superior court, and not from the Supreme Court, the decision is important because it highlights the legal thresholds that appellants must satisfy in order to prevail in a property tax appeal.

The appellant taxpayer, William Stutt ("Taxpayer"), appealed the 2001 valuation set by the listers. The assessment for the property had not changed in three years. In fact, it had been set at the same value, \$1,317,300, for each of the past three years, and Taxpayer never appealed it. In 2001, Taxpayer grieved to the listers, appealed to the board of civil authority (BCA), and appealed beyond to the Bennington Superior Court. Taxpayer claimed that the listers could not demonstrate any uniform method for arriving at appraisal values, and also claimed that the listers' reappraisal was so flawed that no one could make any determination as to whether comparable properties had been assessed equally ("equalized").

The Presumption of Validity

An important concept in the property taxing process is that the value set by the listers is presumed to be correct. How does a taxpayer overcome this presumption of correctness? A property owner may first grieve to the listers, and then appeal that decision to the BCA. What is important here is the *evidence* that must be presented by the parties. One can think of the BCA proceeding in much the same way a court trial occurs, with two parties and a judge. Here, the two parties are the taxpayer/ appellant, and the board of listers.

To overcome the "presumption of validity" that attaches to the listers' appraisal value, an appealing taxpayer must not simply question the value, but must put forth some evidence that the value does not conform to fair market value (as required by 32 V.S.A. §§ 3431, 3481). This is a multiple-step process. While the "burden of persuasion" (the onus on the appellant to convince the BCA, or the judge, of all the elements of the case) rests with the appellant at ALL times throughout the appeal, the "burden of proof" (the duty to prove a fact which is in dispute) on a specific issue may shift back and forth from the appellant to the listers throughout the proceeding.

In the *Stutt* proceeding, Taxpayer questioned the listers at trial, and the evidence was quite clear that the appraisal methods were rather "seat of the pants." *Stutt* at 11. However, Taxpayer never presented evidence that would go beyond merely questioning the listers' methodology. This failure to convince the judge that the appraisals could have been done in a better way is what upheld the listers' valuations. The presumption of validity held up in court. Had Taxpayer presented independent evidence from, say, an expert appraiser showing that the listers were wrong about fair market value, then the case would have had more merit. Instead, the Town introduced independent evidence of fair market value (an independent appraisal) that the actual fair market value was in fact \$2.3 million. The Vermont Supreme Court has stated that independent evidence of fair market value in excess of the listed value is adequate to sustain a challenge to the methodology of the assessment. See *Kruse v. Town of Westford*, 145 Vt. 368 (1985).

This case is not an endorsement of listers flying by the seat of their pants in the reappraisal or valuation process. What the *Stutt* decision says to municipalities is that if an appraisal is challenged in court, and the town can marshal up supporting evidence to show that there was no better method of valuation for a property, the listers' decision will likely stand. Most towns would like to see these appeals resolved before they reach the litigation stage. Therefore, the strong recommendation here is to ensure that your town listers are well trained in the complex art of property appraisal. Where listers can show strong evidence in support of their methodologies, the valuation will likely stand.

- *Brian Monaghan, Attorney, VLCT Municipal Assistance Center*

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