

COURT REQUIRES MORE CAREFUL ASSESSMENT OF PILOT PROPERTIES

Last year, we reported to you on a trial court decision involving the Town of Victory and the State of Vermont, and the value of State-owned forestland in the Town for which the State paid the Town a payment in lieu of taxes (PILOT). The Vermont Supreme Court heard the appeal of that case and recently issued a decision, which affirmed the trial court's finding that the State of Vermont's assessment, through the Division of Property Valuation and Review (PVR), was arbitrary and capricious, and ordered PVR to re-appraise the property. The take-home message for Vermont municipalities is that the Court has required PVR to take a more professional approach to its appraisals of State-owned property for purposes of PILOT. *Town of Victory v. State of Vermont, 2004 VT 110.*

First, some background on the PILOT program: Pursuant to statute, the State makes payments to towns in lieu of municipal property taxes on State-owned lands and buildings. These properties are supposed to be appraised annually, or their values reviewed each year. Towns have the ability to appeal the appraisal to the Director of PVR.

There are two issues that emerged from the Supreme Court's decision in this case: The first is that the Court upheld Judge Kathleen Manley's finding that PVR's valuation of the property was "arbitrary and capricious." The second is the legal standard of review that courts will look through in reviewing appeals of this sort.

Turning to PVR's valuation of the property, the Town made the decision that it was being shortchanged what it was owed from the State, and appealed the State's assessment of the property. In fact, the trial court found that PVR's District Advisor had not changed the value on the property for four years in a row, essentially rubberstamping the appraisal for the preceding years. Moreover, the trial court found that the District Advisor charged with appraising the property was not certified or licensed by the State to perform appraisals, and was only physically on the site on six occasions. The court found this appraisal unreliable, stating, "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 that time, and an approach that relies primarily on vague general impressions rather than feasible empirical research and evaluation." While the Supreme Court did not recommend any procedures for PVR to follow, it remanded the case to PVR for a reappraisal, and to allow PVR's expertise in appraising property to guide future appraisals. This is because courts typically will defer to the expertise of a state agency, and are reluctant to impose their views, so long as the agency's actions comply with legal and constitutional requirements.

As far as the legal standard of review that courts must apply in reviewing appeals of PILOT determinations, the Supreme Court has imposed the "arbitrary and capricious" review standard, meaning that PVR's determination of PILOT value will stand unless a town can prove that the determination was "arbitrary and capricious." This is a difficult standard for towns to prove; however, it also imposes a requirement on PVR to justify its appraisals and show that they were performed by qualified appraisers using defensible assessment data – something that has not always happened with PILOT properties.

Municipalities should study their PILOT values and be aware of how those values were arrived at. VLCT recommends keeping the lines of communication open with your

District Advisors and other PVR officials for an explanation of PILOT valuation in your community, which can be a valuable learning experience and provide a better understanding of the “why” behind your PILOT payments.

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

VLCT News, December 2004