

STATE OF VERMONT
WINDSOR COUNTY, SS.

ASCUTNEY MOUNTAIN RESORT)
)
 v.)
)
 TOWN OF WEST WINDSOR)

WINDSOR SUPERIOR COURT

DOCKET NOS. S331-96-WrCa
S332-96-WrCa
S333-96-WrCa

DECISIONS ON STANDARDS AND PROCEDURES OF REVIEW

Plaintiff has filed these consolidated actions under V.R.C.P. 75, and is seeking court review of the decision of the Board of Abatement for the Town of West Windsor in which the Board denied Plaintiff's request for abatement of a portion of property taxes on Plaintiff's real property for the tax year 1993.

In a prior set of cases, this court found that no appeal had been taken on the 1993 tax assessments, and concluded that the validity and finality of the listed values on the 1993 grand list are not in question. Findings, Conclusions, and Order, March 4, 1996, Dockets S345-, 346-, and 347-94-WrCa. The court further concluded that when the Board of Abatement denied abatement of a portion of the 1993 taxes in its August 29, 1994 decision, the Board had failed to exercise discretion as it was required to do by statutory authorization, and had relied instead on a principle of law. The court remanded the case to the Board of Abatement for further action consistent with the court's opinion.

The Board of Abatement reconvened and issued a decision in which it stated: "After consideration of all the matters set

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forth above and having exercised the discretion afforded it under 24 V.S.A. § 1535, the majority of the Board is not inclined to grant any abatement." The vote was 7-3. Plaintiff filed these actions under Rule 75 for court review of governmental action.

The issue presented at this stage is what standard of review should be applied in this Rule 75 action to review the Board's action, and what is the proper extent of review by the court. Both parties have submitted memoranda and reply memoranda.

Although the parties differ in the sources of law and the analyses they rely on in reaching their conclusions, both parties ultimately conclude that the standard of review is abuse of discretion: the court should determine whether the Board of Abatement abused its discretion in taking the action that it did. They do not, however, agree on how the court should conduct such review as a matter of procedure. Plaintiff seeks an evidentiary hearing to present evidence beyond the record of the Board's action. Plaintiff wishes to show that the decision of the Board was arbitrary, unreasonable and capricious in the light of factors that the Board considered or should have considered. Defendant argues that the statute gives the Board wide discretion to make decisions in a nonjudicial and nonquasi-judicial capacity, and that the court should be restricted to reviewing the record to determine whether the Board had the authority to exercise discretion in the manner that it did. Defendant argues that the court should not judge the decision by comparing it to what the court or another decision-making body might do if

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charged with the discretionary decision.

Although it is clear that the standard of review is abuse of discretion, the question for the court is what degree of deference to give to the decision made by the Board below. Generally, deference is due when the decision is one that affects matters of procedure only, rather than substantive rights. Where the decision-making body is one that has expertise, knowledge or special responsibilities in the subject matter of the decision and has had full opportunity to consider the matter, a relatively high level of deference is due, with the reviewing court presuming the validity of the decision below. Somewhat less deference is appropriate where the forum below is determining substantive rights in the only opportunity the litigant will have for determination of those rights. Under those circumstances, the reviewing court has an obligation to determine whether there was a valid basis for the decision made below, although the court still grants deference in the sense that any decision within an appropriate range should be approved. Finally, the least deference is due where substantive rights are being determined based on principles of law. Under such circumstances, the reviewing court has not only the authority but the obligation to determine that the legal standards have been applied properly by the decision-maker below.

It is clear from the statutes on tax appeals and abatement, and from the decisions of the Vermont Supreme Court, that proceedings before the Board of Abatement, and court review of

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such proceedings, should not become a secondary means of pursuing tax assessment appeals. There is already a well-developed structure for grieving and appealing tax assessments on the basis of legal standards. Instead, the legislature has recognized that in some specified situations, there may be some inequities resulting from the final listed values on the grand list, and it has delegated to certain local elected public officials the opportunity and discretion to consider whether or not to provide relief. The Board of Abatement is made up of elected representatives of the local community who are familiar with the grand list, the tax appeal process, the importance of maintaining its integrity, the circumstances in the local community and of the taxpayers, and the effect on the community and the taxpayers of making adjustments to the grand list once listed values are known. When the threshold criteria for consideration by the Board of Abatement, which are established by law, have been met, the Board is not expected to apply legal standards or principles, but is meant to make adjustments as the Board sees fit, taking all the factors within its range of knowledge and expertise into consideration. Accountability is maintained by the fact that those making the decisions are subject to local election, their actions are public, and the Board is required to "state in detail the reasons for its decision." 24 V.S.A. § 1536. Cf. Harris v. Town of Waltham, 158 Vt. 477, 481 (1992) (discussing obligation of Board of Civil Authority, when faced with tax appeal, to explain the "reasons" for its decision).

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Because of the availability of another forum for adjudicating substantive rights, the specialized knowledge and familiarity of the Board of Abatement, and the fact that the grant of authority to the Board is specifically discretionary, this court considers that a relatively high degree of deference is due, although the court will also determine whether the Board's decision was within the range of decision for which a reasonable basis exists under the circumstances. The court will not apply the legal standards that are used in the tax appeal process, or substitute its own judgment for the Board's, as long as the Board was within a supportable range. The court will require that the specific reason for the decision be identified, as required by the statute. It is not enough for the Board to say, "We exercised discretion, and this is our result." The statute requires the board to state, "We exercised discretion, and this is the reason we reached the result we did."

The Vermont Supreme Court has likened the standard of review to that of an old-style petition for *certiorari*. Chapin Hill Estates, Inc. v. Town of Stowe, 131 Vt. 10, 13 (1972). A modern review "in the nature of *certiorari*," or "in the nature of *mandamus*," may provide somewhat greater opportunity for review than the old-style writs, but the standard is nevertheless "a very narrow standard of review, as narrow as any in our law." State v. Forte, 159 Vt. 550, 557 (1993).

Plaintiff points out that the appropriate review sometimes involves consideration of new evidence, citing footnote 2 of

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State v. Forte, 159 Vt. 550, at 554. The same footnote also supports the concept that it is not always necessary for the court to take any additional evidence:

Much of the confusion here probably relates to the use of the term "record." The superior court treated that term as meaning the official file in the criminal case together with the transcript of the trial and other events. As early certiorari decisions of this Court have noted, however, transcripts are frequently unavailable, especially with respect to the quasi-judicial proceedings that are often the subject of certiorari review. See, e.g., Rutter v. Burke, 89 Vt. 14, 31, 93 A. 842, 850 (1915). **In such cases**, the substance of the actions for which review is sought must be established by evidence. The State sought exactly that kind of review in this case. Its allegations involved actions that occurred in the district court, although not all of them were shown fully by the transcript or the case file.

State v. Forte, 159 Vt. at 554, n.2 (emphasis added). Under the appropriate circumstances, the court may examine the existing record without taking any additional evidence.

Given the complete Findings and Conclusions as set forth in this court's decision of March 4, 1996, the June 17, 1996 written decision of the Board of Abatement, and the conclusion under the foregoing analysis that the Board has a wide range of discretion, the court concludes that on the facts as pleaded by Plaintiff, there is not a good and sufficient reason to go beyond the record or to take evidence on factors that might have led a different Board to reach a different result. This is not a case in which the complainant alleges that the Board issued its decision without ever meeting or discussing the matter, or that it did not have a quorum, or that it acted with intentional disregard of the prior order of this court at its meeting, or that any member had

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a conflict of interest or exercised undue influence over the others. Under those kinds of circumstances, the court might need to take evidence on facts and circumstances outside the record to evaluate the claim. The basis of Plaintiff's complaint, however, is that the Board's decision is not a wise or reasonable one in light of the compelling considerations in Plaintiff's favor. It appears that the record in this case is sufficient to supply the court with information about the factors before the Board at the time of its decision. This is all the court needs to determine whether the Board's decision was within the range of its discretion, and whether it complied with its statutory duty to state the basis of its discretionary decision.

Plaintiff shall file a complete record within 15 days after the filing of this decision, and Defendant may supplement it within 10 days thereafter. The court will apply the standards identified herein in reviewing the action of the Board of Abatement.

DATED AT WOODSTOCK in the County of Windsor and State of Vermont this 21st day of February, 1997.

Mary Miles Teachout
Hon. Mary Miles Teachout,
Presiding Superior Court Judge

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