

[The text of this Vermont trial court opinion is unofficial. It has been reformatted from the original. The accuracy of the text and the accompanying data included in the Vermont trial court opinion database is not guaranteed.]

STATE OF VERMONT
WINDSOR COUNTY, SS

John Brendel Megan Brendel Plaintiff v. Town of Norwich Defendant	SUPERIOR COURT Docket No. 756-10-08 Wrcv
Candace Nattie Plaintiff v. Town of Norwich Defendant	SUPERIOR COURT Docket No. 761-10-08 Wrcv
Shiela Swett Plaintiff v. Town of Norwich Defendant	Docket No. 765-10-08 Wrcv

DECISION ON MOTION TO DISMISS

Each of the above-captioned cases involves an appeal from a decision of the Norwich Board of Civil Authority. The taxpayers now seek to dismiss their appeals pursuant to Vermont Civil Procedure Rule 41(a)(2) for the reason that they are no longer “able to afford the ongoing costs associated with the litigation.”

Although the Town of Norwich has not filed an opposition to the motions, it has been represented to the court (through the motions filed by the taxpayers) that the Town opposes dismissal of the appeals unless a condition is added that “freezes” the appellants’ property tax assessments for the next three years. This is the same result that would apply as if the appeals had been decided on the merits. See 32 V.S.A. § 4468 (providing

that appraisals fixed by the superior court “shall become the basis for the grand list of the taxpayer for the year in which the appeal is taken and, if the appraisal relates to real property, for the two next ensuing years”).

The purpose of freezing property tax assessments following an appeal is “to prevent annual, unwarranted reappraisals and provide a reasonable period of stability following a taxpayer’s appeal” so that the taxpayer is not subjected to “the trouble and expense of annual appeals to the . . . tax board.” *Shetland Properties, Inc. v. Town of Poultney*, 145 Vt. 189, 194–95 (1984) (internal quotation omitted). The “freeze” works by preventing the town from undertaking a reappraisal of the property for two years following an appeal unless the property is materially changed or the town has undergone a complete reevaluation of all taxable real estate. 32 V.S.A. § 4468. The “freeze” normally applies regardless of whether the taxpayer or the town prevails on appeal. *Id.*

Here, however, the proposed condition on dismissal is that the “freeze” period will only apply if the Town prevails on the merits of eight other property-tax appeals presently pending in this court. It must be noted that although those cases involve similar or even identical issues, they involve different properties and different taxpayers. In other words, the proposed condition is this: if the Town prevails in cases involving other taxpayers, then a freeze will be imposed in these cases as if the Town had prevailed here too. But if the taxpayers prevail in the other cases, then these taxpayers will not benefit either from the relief afforded by a successful appeal or from the imposition of a freeze period.

It does not make sense to impose a condition on dismissal under Rule 41(a)(2) that is tethered to the substantive results of cases involving different parties. Such a condition would not serve the purpose of leaving these parties in the same situation as if no action had ever been filed. 9 Wright & Miller, *Federal Practice and Procedure: Civil* 3d § 2367.

Moreover, and more importantly, the Legislature has provided guidance as to how property-tax appeals should be treated when the appeal is withdrawn prior to the merits hearing. Had the appellants here appealed their property-tax assessments to the Property and Valuation Review Division instead of to the superior court, the following provision from 32 V.S.A. § 4464 would have governed the result here:

On application to the director an appellant may request leave to withdraw his or her appeal at any time before it is heard. When an appeal is withdrawn, the director shall so certify to the clerk of the town from the action of whose listers or board of civil authority the appeal was taken, and the clerk shall record the certificate of withdrawal of the appeal. The appraisal from which the appeal was taken shall then become a part of the appraisal or grand list of the taxpayer.

Section 4464 represents a legislative determination that when an appellant withdraws his or her appeal prior to its determination on the merits, the three-year freeze period set forth in § 4468 does not apply. Instead, the appraisal from which the appeal was taken becomes final as if the appeal had never been taken in the first instance. This procedure is consistent with the normal rules governing voluntary dismissals. 9 Federal Practice and Procedure, *supra*, at § 2367. Moreover, the Town has not offered any reason why the result should be different here merely because the appeal was taken to the superior court rather than to the Property Valuation and Review Division. See 32 V.S.A. § 4461 (explaining that taxpayers may pursue appeal in either forum); *Britton Lumber Co., Inc. v. Town of Fairlee*, 138 Vt. 206, 207–08 (1980) (same).

For the foregoing reasons, the court concludes that dismissal of the present appeals should have the same effect as a withdrawn appeal under 32 V.S.A. § 4464. The court accordingly grants the motion to dismiss without prejudice, and declines to impose the requested condition on dismissal.

SO ORDERED.

Dated at Woodstock, Vermont this ____ day of November, 2009.

Hon. Harold E. Eaton, Jr.
Presiding Judge