

Lessard-Sams Outdoor Heritage Council

MEMO: Agenda Item #8
DATE: August 11, 2015
SUBJECT: Overview of Tax Court Finding (Blandin v Counties)
PRESENTER: Christopher Kleman, House Tax Research

Suggested Motion:

Presentation and Q&A

Background:

Mr. Kleman will provide an overview of the Court finding regarding Blandin Paper Company's filed suit in MN Tax Court. Blandin disputed tax valuation of their lands by assessors of several northern MN counties as excessively high and unwarranted. Blandin contended that its 4,680 parcels of land, after being encumbered with perpetual conservation easements that require Blandin lands to remain as one undividable parcel and excludes resale for development or lease for recreational purposes, should be valued significantly lower for tax purposes.

The MN Tax Court found in favor of Blandin Paper Company and applied the "unit rule" in determining the market value of Blandin's parcels.

Considerations:

What may this mean for County tax receipts?

What may this mean for the future use of perpetual conservation easements as a tool to "protect" habitat?

What is the effect of the 2013/14 change in Minnesota law prohibiting assessors from reducing the market value of properties encumbered by conservation easements on properties with existing conservation easements and future conservation easements?

Overview

- Blandin sold a conservation easement on 4,680 parcels that were also enrolled in SFIA.
- Blandin then challenged their 2010 and 2011 assessments, claiming that the counties should have appraised the parcels as a single unit, under the “unit rule”.
- Counties argued that the unit rule was not allowed in Minnesota; the court held that it was.
- Court reduced the value of Blandin’s parcels from \$190 million to \$52 million for 2010 and \$190 million to \$26 million for 2011.
- The court reasoned that the land use restrictions on the parcels (due to SFIA and the conservation easement, which did not allow subdivision), in addition to other factors in the highest and best use analysis, showed that the highest and best use of the parcels was for timber production and would be sold as a single unit to large institutional investors experienced in conservation-related purchases.

Impact of Blandin decision

- Court held that the unit rule can be used in Minnesota. Biggest impact is likely on large parcels with common ownership and use, as was the case in Blandin.
- SFIA enrollment can play a role in deciding to use the unit rule, but taxpayers still need to show that the “economic reality” of the parcels supports valuation as a single unit.
 - Note: SFIA cap is no longer in place, so market value of SFIA enrolled land should be higher than it was in Blandin. This could mitigate impact.
- Future easements should not be impacted due to a change in Minnesota statutes 273.117, which prevents assessors from reducing the value of a property due to a conservation easement.
 - Under current law, new easements (post-May 2013) would likely be ignored. Old easements (pre-May 2013) could still factor into unit rule analysis (and produce easement adjustments), but only for recent assessments.
- Hypothetically, how would Blandin have turned out if the conservation easement was ignored?
 - The court may still have applied the unit rule due to highest and best use analysis.
 - But without considering the conservation easement, would the universe of purchasers be bigger and produce higher valuations?

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Minnesota House of Representatives

July 29, 2015

TO: Lessard-Sams Outdoor Heritage Council

FROM: Christopher Kleman

RE: Impact of Blandin tax court decision

In *Blandin Paper Company v. County of Aitkin*, the Minnesota Tax Court held that it was appropriate to use the unit rule—a method for valuing property that treats multiple parcels as one unit for valuation purposes—when determining the market value of a large number of parcels of Blandin’s forestland acreage (the subject property). Four northern Minnesota counties argued that the unit rule was per se invalid in Minnesota and that an appraisal method to determine the market value of the subject property initially (which relied on an additive, parcel-by-parcel valuation methodology) should be upheld. In siding with Blandin, the tax court reduced the market value at which the subject property was previously assessed from \$190 million to \$52 million for the 2010 assessment and from \$190 million to \$26 million for the 2011 assessment.

In reaching its decision, the tax court determined that the highest and best use of the subject property was for timber production and that the subject property should be considered a single unit. The court also concluded that the most likely purchaser for the property was an institutional investor. This decision narrowed the submarket for the subject property and ultimately impacted its market value.

Among the factors the tax court considered in determining whether the subject property’s highest and best use should consider the subject property as a single unit were the existence of land use restrictions on the property, due to the land’s enrollment in the Sustainable Forest Incentive Act program (SFIA) and, for the 2011 assessment, the encumbrance of the subject property by an even more restrictive conservation easement (which required the subject property never to be subdivided). Together, these restrictions not only limited the use of the subject property to timber production, but also limited the universe of potential buyers to those institutional investors who had experience working with conservation-oriented purchases. (The court noted that even as of the 2010 assessment date, Blandin was known to be contemplating a sale of the conservation easement to the state, and the universe of purchasers was therefore the same as that hypothesized for the 2011 assessment.)

In discussing the unit rule, the court offered some guidance on when it is appropriate to apply this particular valuation methodology. In short, the highest and best use analysis of the property should consider multiple parcels as a single unit based on the economic reality governing the property's use. For instance, the court approvingly cited a New Jersey tax court opinion that upheld the application of the unit rule for two parcels on separate lots and blocks, but that straddled a vacant street with a bridge and were used in the same business under the same ownership.

Blandin most likely will not impact the market value of other properties newly encumbered by conservation easements due to a 2013 change in the law (and subsequent 2014 clarification) regarding conservation property tax valuation.¹ This change in law requires assessors not to reduce the value of real property due to the existence of a conservation easement encumbering a property if the easement was entered into on May 23, 2013 or after (the new easements), in most instances. Yet for the 2010 and 2011 assessments at issue in *Blandin*, the law did allow assessors to reduce the value of properties subject to these easements (and continues to allow reductions for old easements). In fact, the *Blandin* court held that an "easement adjustment" to the value of the subject property for the 2011 assessment of over 50% was proper. This would not be allowed under current law for new conservation easements.

Furthermore, if the 2013 law were interpreted as requiring assessors to ignore new easements for valuation purposes (instead of merely prohibiting "easement adjustments"), then the existence of a new conservation easement would not be considered in the highest and best use analysis, which would mean that such easements would not factor into the determination of whether to apply the unit rule, as in *Blandin*. This could impact the market value for a property by creating a different universe of hypothetical purchasers for valuation purposes, purchasers that might pay more per acre than they would if they purchased all the parcels in a single unit.

If there is to be any impact at all from *Blandin*, it is for multiple parcels of property enrolled in SFIA or parcels encumbered by conservation easements entered into before May 23, 2013 (old easements). While SFIA enrollment does not encumber property to the extent a conservation easement does, the land use restrictions of the SFIA program were considered by the *Blandin* court as a factor in the highest and best use analysis. It is that analysis that produces the determination of whether to apply the unit rule in some circumstances. The tax court's decision may therefore open the door to cases involving challenges to the assessed value of multiple parcels enrolled in SFIA that have been appraised individually, instead of as a single economic unit. Such challenges could also come from property owners challenging valuations for parcels subject to old conservation easements that have also not been appraised under the unit rule. Of

¹ **273.117 CONSERVATION PROPERTY TAX VALUATION.**

The value of real property which is subject to a conservation restriction or easement shall not be reduced by the assessor if:

- (a) the restriction or easement is for a conservation purpose and is recorded on the property; and
- (b) the property is being used in accordance with the terms of the conservation restriction or easement.

This section does not apply to (1) conservation restrictions or easements covering riparian buffers along lakes, rivers, and streams that are used for water quantity or quality control; (2) easements in a county that has adopted, by referendum, a program to protect farmland and natural areas since 1999; or (3) conservation restrictions or easements entered into prior to May 23, 2013.

course, SFIA enrollment or the existence of an old conservation easement is not the sole or determining factor for application of the unit rule, and a potential plaintiff still has to show the economic reality of the functioning of multiple parcels as a single unit. Thus, the impact of *Blandin* on future cases involving the application of the unit rule to the valuation of multiple parcels enrolled in SFIA or with old easements may not be that significant.

To be clear, land use restrictions have always been part of the valuation process used in assessing real property for property tax assessment purposes. After *Blandin*, land use restrictions (other than those imposed on a property through a new easement) may also support the application of the unit rule under some circumstances, which could negatively impact the market value of assessed properties in a particular taxing district.

CK/sk