

*Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2001-341

MARCH TERM, 2002

Laterre House Ltd. Partnership	}	APPEALED FROM:
	}	
v.	}	Property Valuation and Review Division
	}	
Town of Wilmington	}	DOCKET NO. Windham 1999-40
	}	
	}	
	}	
	}	
	}	

In the above-entitled cause, the Clerk will enter:

Taxpayer appeals the state appraiser's valuation of its real property located on a 0.6-acre site in the Town of Wilmington. We reverse and remand.

The subject property, owned by taxpayer Laterre House Limited Partnership, is a three-story, seven-unit affordable housing project known locally as the Laterre House. The 100-year-old Laterre House was acquired by the Town in 1996 in a sale for delinquent property taxes. The Town approached Brattleboro Area Community Land Trust, Inc. to see whether the property could be rehabilitated and used as an affordable housing project. In December 1997, the Land Trust purchased the Laterre House from the Town for \$49,500. The Land Trust formed the Laterre House Limited Partnership to raise additional funds to rehabilitate the property. Using state and federal subsidized loans, the Land Trust borrowed approximately \$400,000 from the Vermont Housing and Conservation Board to acquire and rehabilitate the property.

As a condition of the financing, the Land Trust granted the Board a statutory housing subsidy covenant requiring the Partnership to lease most of the units in the Laterre House to persons having income below a specified level and to limit the amount of rent charged to a specified percentage of that income. See 27 V.S.A. 610 (defining and setting forth restrictions, requirements, duration, and enforceability of "housing subsidy covenant"). The covenant also prohibited the sale of the Laterre House without the Board's approval, with certain limited exceptions.

After these encumbrances were placed on the property, the Land Trust sold the Laterre House to the Partnership, the taxpayer in this matter. The covenant required taxpayer to grant the Land Trust and the Board one-year options, beginning in 2004, to purchase the Laterre House by paying the highest price that would result from either (1) paying the amount yielding a sixteen percent after-tax return to taxpayer; (2) assuming the debt encumbering the property; or (3) paying the fair market value of the Laterre House as determined by the income approach to value.

For the 1999 tax year, town listers appraised the Laterre House at \$450,000. After its grievance with the listers was denied, taxpayer appealed to the town board of civil authority, which reduced the appraisal value to \$350,000. Taxpayer then appealed to the division of property valuation and review, which assigned a state appraiser to hear and decide the appeal. Following a hearing and site inspection, the state appraiser reduced the appraisal value of the Laterre House to \$270,000. Taxpayer now appeals that appraisal to this Court, arguing that the state appraiser's conclusion that the Laterre House has an appraisal value of \$270,000 is not supported either by his findings of fact or by the evidence.

Our standard of review in these matters is deferential. Property tax appraisals are deemed to be presumptively correct. Lake Morey Inn Golf Resort, Ltd. P'ship v. Town of Fairlee, 167 Vt. 245, 248 (1997). The findings of the state appraiser are conclusive if they are supported by evidence, notwithstanding the existence of contradictory evidence. Id. If the record contains any evidence supporting the appraisal, the appellant must demonstrate that the state appraiser's exercise of discretion in accepting that evidence was clearly erroneous. Id.

Nevertheless, the state appraiser is required to make adequate findings supporting the valuation. Id. at 251; see Beach Properties, Inc. v. Town of Ferrisburg, 161 Vt. 368, 371 (1994). The central question is whether the decision "reveals to the parties and this Court how the decision was reached." Lake Morey, 167 Vt. at 251; see Beach Properties, 161 Vt. at 371 (findings "must state clearly what evidence it credits and why, so that the parties and this Court will know how the decision was reached"). The state appraiser's mere reference to the documentary submissions of the parties neither constitutes findings nor provides, in and of itself, adequate support for a valuation. Beach Properties, 161 Vt. at 371.

Here, taxpayer contends that neither the state appraiser's findings nor the evidence supports his conclusion that the Laterre House should be valued at \$270,000. According to taxpayer, the state appraiser merely summarized the positions of the parties' experts and then picked the value arrived at by the Town's expert without explaining why. Taxpayer further contends that the \$270,000 figure is flawed because the Town's expert arrived at that number by applying a direct capitalization income approach that assumed market rents rather than rents allowable under the covenant. Taxpayer points out that the expert's own analysis indicates that, when assuming allowable rents and applying the same capitalization ratio, the direct capitalization income approach results in a valuation of \$181,560 for the property. Taxpayer also notes that the appraisal values arrived at by the Town's expert after applying the gross income multiplier approach and the sales comparison approach are also flawed because they rely on comparing properties that have none of the restrictions set forth under the covenant.

After noting the characteristics and conditions associated with the subject property, the state appraiser summarized the positions taken by the opposing experts. The state appraiser concluded that taxpayer had overcome the presumption of validity given to the town's assessment, but that the appraisal report filed by taxpayer's expert had limited usefulness because it was prepared based on an effective date of April 1, 2000 rather than April 1, 1999. The state appraiser noted that the Town's expert had arrived at a \$270,000 appraisal value for the Laterre House "with no consideration given to the housing subsidy covenants." He noted further that taxpayer's expert had arrived at a value of \$150,000, and the Town's expert at a value of \$181,560, when rent limitations imposed by the covenant were considered, but that the Town's expert increased the \$181,560 figure by \$129,402 to arrive at an appraisal value of \$310,000 under an income capitalization approach when the favorable financing arrangement available to the Laterre House was considered. Thus, the Town's expert was of the opinion that, considering the favorable financing available to low-income housing projects, the housing subsidy covenant actually increased the appraisal value of the Laterre House. The state appraiser agreed that the favorable financing terms ran with the property and thus would benefit any qualified purchaser of the property, but concluded, without further explanation, that the appraisal report of the Town's expert was most convincing, and thus the Laterre House should be appraised at \$270,000 with "no reduction in value because of the housing subsidy covenant."

The appraisal cannot stand. Section 3481(1) of Title 32 explicitly states that an assessment of fair market value "shall include a consideration of a decrease in value due to a housing subsidy covenant as defined in section 610 of Title 27." Here, the appraisal value of the Town's expert accepted by the state appraiser was based on an income capitalization approach that assumed market rents unobtainable under the property's 610 housing subsidy covenant. It might be that other factors associated with the covenant increased the value of the property, but the \$270,000 appraisal value reached by the Town's expert and accepted by the state appraiser was not based on any such considerations. Rather, the state appraiser simply accepted an appraisal that ignored covenant rent limitations plainly reducing the value of the property under the income capitalization approach upon which the \$270,000 figure was based. In doing so, the state appraiser violated the statutory mandate that he consider a decrease in value resulting from a 610 housing subsidy covenant.

Reversed and remanded.

BY THE COURT:

Jeffrey L. Amestoy, Chief Justice

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John A. Dooley, Associate Justice

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Denise R. Johnson, Associate Justice