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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2006-315

FEBRUARY TERM, 2007

Angelo Pizzagalli	}	APPEALED FROM:
	}	
v.	}	Chittenden Superior Court
	}	
Town of Shelburne	}	
	}	DOCKET NO. S1341-03 CnC
		Trial Judge: Geoffrey Crawford

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

Taxpayer Angelo Pizzagalli appeals from the superior court's order affirming the Town of Shelburne's assessment of his property at $1,990,000. He argues that the court should have reduced the assessed value of his property because: (1) seven comparable neighboring properties were assessed at substantially lower values than his property; and (2) the Town failed to offer any evidence that the assessed value of his property was in line with other comparable properties. We affirm.

Taxpayer owns a home on 12.1 acres of land in Shelburne, Vermont, with 296 feet of frontage on Lake Champlain. Taxpayer's property is located in a four-lot subdivision developed by members of his family around 1994. The subdivision is governed by a number of restrictive covenants. Taxpayer has also granted an easement to several individuals to allow them access to Lake Champlain. In 2003, the Town conducted a town-wide reappraisal. Taxpayer's property was valued at $1,990,600 after a downward adjustment for an error. Taxpayer appealed this assessment to the Board of Civil Authority, which denied his appeal. Taxpayer then appealed to the superior court, which affirmed the BCA's decision.

In reaching its conclusion, the court made the following findings. The Town generated its appraisal for taxpayer's home through a computer-assisted mass-appraisal (CAMA) process. The appraisal separated the value of the lot ($1,440,200) from the value of the improvements. The value of the lot reflected consideration of three elements: a two-acre building site, 296 feet of lakefront, and 8.66 additional acres. The lakefront footage was most significant, and it was valued at $1,239,400. The CAMA program also included multiplier factors that reflected the desirability of the neighborhood and the grade or desirability of the lot. In taxpayer's case, the multipliers were 1 for the neighborhood, 2 for the building site, 1.25 for the lake frontage, and .75 for the remaining acreage.

Taxpayer did not introduce any evidence to establish the fair market value of his property independent of that found by the appraiser. His expert witness testified that he did not have

sufficient comparable values or experience to conduct an independent appraisal. The focus of his argument was that property owners in a neighboring development called Pheasant Hill were afforded more favorable tax treatment. Taxpayer also challenged the 1.25 multiplier applied for the lake frontage.

Pheasant Hill is a seven-lot development in a gated preserve along the shoreline of Lake Champlain, immediately to the south of taxpayer's development. There are homes on five of the lots. There are also 128 acres of land held in common, which includes a narrow strip along the entire lakefront as well as a larger parcel in the middle of the property. The property owners share access to the two beaches, which are located on the common area. The use of the common area is limited to families of the owners and friends when accompanied by an owner.

The court found that, based on the way in which the Pheasant Hill landowners held title, the Town valued their acreage at roughly half that of taxpayer's parcel. The Town's assessor testified that this difference was attributable to the premium the marketplace set on fee simple ownership. The court found that this logic led to anomalous results—taxpayer's property was valued by the Town at $119,025 per acre, while the neighboring lots were valued at $24,754 per acre, even though the shared title to the common areas was presumably included to enhance the value of the neighboring lots, rather than depress, their value. The court explained that the most logical inference that it could draw from the disparity in the assessed values was that the Town failed to assess the Pheasant Hill properties accurately. The court opined that the Town assessor overstated the impact of the common land structure on the desirability of the property, and with no sales history to rely on, the assessment program treated the Pheasant Hill building lots more favorably than the neighboring lakefront properties. The court pointed out, however, that it had before it no evidence of the actual fair market value of any of the Pheasant Hill lots beyond the 2003 town-wide assessment figures.

Citing 32 V.S.A. § 4467, the court explained that the Town's assessment for taxpayer's property was presumptively valid unless taxpayer provided evidence that the assessment was incorrect or that his property was valued differently than similar properties. The court agreed that the Pheasant Hill properties appeared to receive more favorable tax treatment, but reasoned that the issue before it was whether the anomalous treatment of these seven properties was sufficiently widespread to support a reduction of taxpayer's valuation below its fair market value. The court found no systemwide discrepancies, pointing to an assessor's study conducted by the Town, which showed that the average assessment was within a fraction of 1% of the actual sales prices in 2003-2004. The court also noted that other lots in taxpayer's development had been assessed in a manner similar to his lot. The court concluded that the problem with the Pheasant Hill properties did not raise issues concerning the equality of the Shelburne assessments as a whole, and thus its finding that the Town's program understated these seven values did not provide a legal basis for lowering the otherwise-unchallenged value of one of the neighboring properties.

The court also rejected taxpayer's argument that his lakefront property was graded too high in comparison to two neighboring lots. It explained that no party testified that the two neighboring properties were graded too low, or that taxpayer's property was graded too high. There was similarly no testimony that the Town had systematically set the grade criteria in an unequal fashion. Taxpayer did not introduce his own appraisal of the fair market value of his home or of his two neighbors, and

without such evidence, the court explained, it lacked a basis for finding that either this appraisal figure was wrong or that the choice of grade was part of a broader pattern of unequal assessment. The court thus affirmed the decision of the BCA. Taxpayer appealed.

Taxpayer argues that the trial court should have reduced the value of his property based on its finding that the Pheasant Hill lots were undervalued by the Town. He asserts that the court implicitly found these lots to be "comparable properties" within the meaning of 32 V.S.A. § 4467, and thus, for consistency's sake, he was entitled to have his assessment reduced to $1,392,900. His expert arrived at this figure by applying "similar calculations" to those applied to the Pheasant Hill lots. Taxpayer acknowledges that, to support such an argument, one usually presents evidence of the fair market value of the comparable properties and then equalizes the resulting values. He maintains, however, that he could not do so in this case because the lots were located in a gated community. He asserts that the equalization method employed by his expert in this case was sufficient, and that, contrary to the trial court's conclusion, he was not required to demonstrate a systemwide inequity to be entitled to relief.

We find these arguments unpersuasive. In appeals to the superior court, "the town appraisal is presumed valid until the taxpayer produces some evidence to the contrary. At that point, the presumption disappears and the court reviews the appraisal de novo, with the taxpayer bearing the burden of persuasion." Town of Victory v. State, 2004 VT 110, ¶ 18, 177 Vt. 383 (citation omitted); see also Littlefield v. Town of Brighton, 151 Vt. 600, 603-04 (1989) ("Once the taxpayer presents evidence which fairly and reasonably indicates that the property was assessed at more than fair market value, or that the listed value exceeded the percentage of fair market value applied generally to comparable property within the community, the presumption is overcome and disappears."). It is not clear from the record in this case if the court found that taxpayer overcame the presumption of validity, but assuming that he did, taxpayer failed to carry his burden of persuasion. We therefore affirm the court's decision.

As a general rule, the listed value of a parcel of property for tax purposes should equal its fair market value. Allen v. Town of West Windsor, 2004 VT 51, ¶ 2, 177 Vt. 1 (citing 32 V.S.A. § 3481(1), (2)). We have recognized, however, that it is not feasible to list all property at fair market value every year, and thus a difference may exist between the listed and fair market values of real property. Such a difference is allowable as long as "the ratio between listed and fair market values is consistent among properties." Id. "The need for uniformity derives from the constitutional command that no taxpayer pays a disproportionate share of the public tax burden." Id. Thus,

> [t]o comply with the Proportional Contribution Clause, a town must appraise its property at a uniform rate. Consequently, if a taxpayer demonstrates that the property at issue is assessed at a higher percentage of fair market value than comparable properties, the court must list the taxpayer's property at a corresponding value.

M.T. Assocs. v. Town of Randolph, 2005 VT 112, ¶ 13, 179 Vt. 81 (citation omitted).

We have distinguished between properties that are considered "comparable" for purposes of

the initial assessment of fair market value, and those that are considered "comparables" for purposes of calculating an equalization ratio. The former are "generally similar to the subject property in such factors as size, age, description, condition, use, income and expenses, and surroundings." Philbin v. Town of St. George, 156 Vt. 640, 640 n.* (1991) (mem.). In contrast, "for purposes of establishing a correct equalization ratio 'comparable' properties include all properties within the class of property to which the subject property belongs." Id. at 640. Thus, in Philbin, we held that the State Board of Appraisers erred in rejecting certain properties within the same class as that of taxpayers solely on the ground that none were "comparable" to the subject property under criteria appropriate for initial fair market valuation. Id. at 640-41. We concluded that the Board "unduly narrowed the class of comparable properties which it considered for equalization purposes, leaving little likelihood that the average of the ratios of the properties is equal or close to the average of all ratios or the average of the ratios for properties within the class." Id. at 641 (quotation omitted).

In this case, the Town presented evidence indicating that its assessments, town-wide, were within a fraction of 1% of fair market value as reflected by sales in 2003-2004. Taxpayer conceded that the assessed value of his home reflected its fair market value, and the record shows that his property is being taxed at the same rate as other comparable properties in the Town.

Even if we accept taxpayer's argument that he did not need to establish a "systemwide discrepancy," or put another way, that the appropriate equalization ratio should be derived by comparing his property to only seven other lots, taxpayer failed to present sufficient evidence to demonstrate what an appropriate equalization ratio would be. As we have explained, "[w]hen comparable properties exist, their current market value must be compared with their current listed value to arrive at an equalization rate. This rate must then be applied to the subject property's fair market value to produce the proper listed value." Kachadorian v. Town of Woodstock, 144 Vt. 349, 351 (1984). Taxpayer argues that he was unable to discern the fair market value of the Pheasant Hill lots because they are in a gated development. As support for this assertion, taxpayer cites to a stipulation dated after the trial court's decision. Because this document was not before the trial court, it is not properly part of the record on appeal, and we do not consider it. Hoover v. Hoover, 171 Vt. 256, 258 (2000) (Supreme Court's review on appeal is confined to the record and evidence adduced at trial; Court cannot consider facts not in the record). In any event, consideration of this document would not change the result in this case.

We reject taxpayer's assertion that the testimony presented by his expert was sufficient to demonstrate an appropriate equalization ratio—the expert compared only the listed values of the Pheasant Hill lots with the listed value of taxpayer's lot. He appears to have taken the assessed value of two acres of land in Pheasant Hill, and applied this value to two acres of taxpayer's property. The expert then took the assessed per acre value of the remaining acreage of the Pheasant Hill lots, and used this figure to calculate the value of taxpayer's remaining land. In this way, he arrived at a figure of $1,303,462, $753,062 of which was attributable to taxpayer's land. Without any evidence of the fair market value of the Pheasant Hill lots, however, the listed values of the Pheasant Hill lots are meaningless. See Kachadorian, 144 Vt. at 352 ("The listed value of a comparable is not to be used in determining a subject property's fair market value, and listed value alone, in the absence of fair market value, is useless in arriving at a ratio for equalization purposes."). Taxpayer presented no evidence that would allow the court to determine at what percentage of fair market value the

Pheasant Hill lots are being assessed by the Town. Taxpayer failed to carry his burden of persuasion, and the superior court properly affirmed the BCA's decision.

Affirmed.

BY THE COURT:

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John A. Dooley, Associate Justice

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Marilyn S. Skoglund, Associate Justice

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Brian L. Burgess, Associate Justice