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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2001-372

JUNE TERM, 2002

Stonegate Mountain Trust v. Town of Bridgewater	}	APPEALED FROM: Property Valuation and Review Division Windsor DOCKET NO. 1998-14-16

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

The Town of Bridgewater appeals from a decision of the state appraiser setting the appraised value of a residential property located in the Town at a value of $4,000,000. The Town contends the appraiser erred by: (1) declining to exclude the testimony of the property owner's expert appraiser; (2) basing his decision on evidence not in the record; (3) taking official notice of certain documents; and (4) reducing the assessed value of the subject property to $4,000,000. Stonegate Mountain Trust, the property owner, has cross-appealed from the decision, claiming the state appraiser improperly failed to enforce certain discovery requests. We affirm.

The facts may be summarized as follows (additional facts will be set forth where pertinent to the claims): In 1996, the property owner purchased the property at issue for $1,750,000. The property consists of 459 acres. At the time of acquisition, it contained a small guest house, a small garage, and an access driveway. Thereafter, the property owner made substantial improvements to the land, and constructed a 12,000 square foot house and three-car garage. The Town listers assessed the property, as of April 1, 1998, at a value of $6,882,300. The property owner appealed to the Town board of civil authority, which reduced the value to $6,065,000. The property owner then appealed to the state appraiser. Evidentiary hearings were held over six days, and numerous exhibits were filed by the parties. The state appraiser issued a lengthy decision, setting the assessed value at $4,000,000. This appeal followed.

The Town first contends the state appraiser erred in declining to exclude the testimony of the property owner's expert appraiser, Bruce A. Taylor. The issue arose when the Town discovered during the course of the proceeding that Taylor also served as a state appraiser in tax appeals. The Town objected to not being informed earlier, and moved to strike Taylor's testimony on the ground that his "collegial relationship" with the state appraiser hearing the case created an appearance of conflict. The Town did not move at any time to disqualify the state appraiser hearing the case. The state appraiser denied the motion to exclude Taylor's testimony.

A fair trial before an impartial decisionmaker is a fundamental due process right, applicable in administrative proceedings as well as courts. Secretary v. Upper Valley Regional Landfill Corp., 167 Vt. 228, 234-35 (1997). There is a presumption of honesty and integrity in those serving as administrative adjudicators, however, and the burden rests with those challenging the presumption to demonstrate an interest that requires disqualification. Id. at 235; see also In re Wildlife Wonderland, Inc., 133 Vt. 507, 513 (1975) (this Court "presumes that all evidence bearing upon issues considered by the trier was heard with impartial patience and adequate reflection"). Apart from the bare speculation that

Taylor's status may have resulted in his opinion being accorded greater weight by the state appraiser, the Town has cited no law or evidence to overcome the presumption of impartiality. Furthermore, Taylor's status as a state appraiser was insufficient, without more, to raise an inference of bias. The out-of-state cases cited by the Town involved matters where a judge had a direct relationship with a witness. See Hammons v. Birket, 759 P.2d 783, 785 (Colo. Ct. App. 1988) (recusal required where trial judge, who also engaged in private practice, was co-counsel in cases in which expert witness had appeared on behalf of his clients); Cafaro v. Pedersen, 507 N.Y.S.2d 645, 646 (N.Y. App. Div. 1986) (recusal compelled where hearing officer's wife was to be material witness in hearing before him). No such relationship has been alleged or established in this case. Accordingly, we discern no error.

The Town next contends the state appraiser erred in relying on certain documents that were not formally admitted. The issue arose initially on the fifth day of these protracted proceedings, when the state appraiser invited the parties to complete the evidence with written submissions. The Town submitted additional written materials, and the property owner responded on November 14, 2000, with additional arguments and several exhibits, including appendices from a publication entitled Exceptional Homes, several brochures on comparable properties, a Wall Street Journal real estate advertisement, and a graph comparing the per-acre price of neighboring properties. The Town objected in writing to the submission, and the property owner responded. In addition, the Town requested and was afforded an additional hearing, at which it introduced an additional exhibit and testimony responding to the items in the property owner's submission. The state appraiser deferred ruling on the admission of the property owner's exhibits at the hearing, but apparently failed thereafter to render a ruling. Nevertheless, the state appraiser made reference in his decision to one of the properties included among the exhibits, as well as some information in the appendices.

Although the Town asserts that it was prejudiced by the state appraiser's reliance on the materials in question, the record does not support the claim. The brochures were similar in nature to others that were admitted by both parties, and the appendices were contained in a publication that the Town itself had utilized during its case in chief. Moreover, the references to the materials in the state appraiser's twenty-three page decision were relatively brief, and were not essential to its central conclusion that the market approach utilized by the property owner's expert witness provided the most reasonable and objective analysis of market value. Accordingly, we conclude that any error in the court's failure to rule on the admission of the exhibits was harmless. See Keus v. Brooks Drug, Inc., 163 Vt. 1, 4 (1994) (error in admission or exclusion of evidence does not require reversal absent an abuse of discretion resulting in prejudice).

The Town further contends the state appraiser erred by taking judicial notice of two property transfer tax returns, offered by the property owner in connection with two comparable properties. The Town contends that these were not matters subject to judicial notice. Although the state appraiser had informed the parties of its intent to take judicial notice, the Town objected solely on the grounds of relevance and probative value. Accordingly, its claim based on the proper scope of judicial notice was not preserved for review on appeal. See In re Peters, 171 Vt. 381, 390 (2000) (where aggrieved party fails to make specific objection at trial, including specific ground of objection, issue is not preserved for review on appeal).

Finally, the Town contends the state appraiser erred in reducing the assessed value of the property to $4,000,000. Our review on appeal is limited. "We have said that once the Board [of Appraisers] shows that it has considered the evidence before it and has explained the reasons for its result, its decision enjoys a presumption of validity." Breault v.Town of Jericho, 155 Vt. 565, 568 (1991). Once the appraiser has shown some basis in the evidence for its valuation, the appellant bears the burden of demonstrating that the exercise of discretion was clearly erroneous. Id. at 569. If the appraiser's decision is "within the range of rationality, it must be affirmed." Id.

Assessed in light of this standard, the Town's claims fail to demonstrate reversible error. The record discloses that the state appraiser conducted six days of hearings over a protracted period, took expert testimony from witnesses for both sides, admitted numerous exhibits and other materials, and inspected the property. Its twenty-three page decision sets forth a detailed review of the evidence and the parties' competing methodologies for valuing the property, and carefully explains the reasons for accepting or rejecting the evidence and the methodology with respect to each component of the property, including the land, the main house, and the other improvements. The appraiser's specific assessment of the main house as having a value of $2,215,000 was premised largely on its conclusion that the appraisal by the property owner's expert appraiser, based on the sales of comparable properties, presented the most reasonable and objective analysis of value, and that the cost of reproduction method advanced by the Town was flawed. The appraiser was clearly

entitled to rely on comparable sales to determine fair market value, and so long as the evidence rationally supports its decision we will not disturb its ruling. See Elliott v. Town of Barnard, 153 Vt. 306, 311 (1989).

Although the Town's specific claims are not set forth separately, distilled from its lengthy argument they appear as follows. First, it argues at length that there was no basis for the state appraiser to reject its cost approach as flawed, and more particularly to reject its expert's characterization of the main house as a Class VI home with a square foot reconstruction cost between $250 and $300. As noted, however, the state appraiser was fully justified in relying on the comparable-property approach as the most reliable indicator of fair market value. Furthermore, a review of the record evidence reveals ample testimony from the property owner's expert appraiser, Taylor, to support the state appraiser's finding that the Town's cost figure was inapplicable to the house in question.

The Town also contends that Taylor improperly adjusted the value of the subject property as compared to certain comparables for "superadequacy," an aspect of functional obsolescence that reduces a home's value where its size or quality exceeds its market value. In this case, the state appraiser found, based on Taylor's testimony and his site visit, that it was proper to utilize this factor in adjusting value; that the home's design was not particularly practical for everyday use, comparing it to a "Munich beer hall" with a dark interior, no formal dining rooms, few windows, and large amounts of useless corridor space; and that this warranted a downward adjustment of the property value. The evidence and findings support the state appraiser's decision to adjust the value of the home in this manner. The Town further contends the state appraiser improperly reduced the value of one comparable property by improperly taking judicial notice of certain evidence. As noted earlier, however, this evidentiary claim was not preserved for review on appeal.

Finally, the Town contends the state appraiser erred in valuing the site improvements at $375,000. The Town had originally valued site improvements at approximately $640,000. The state appraiser found that this figure was not supported by the evidence, and relied on the Town's estimate that driveway improvements totaled $150,000 and other site work improvements totaled $225,000. The Town now contends the state appraiser erred in excluding an additional $90,000 expended on landscaping, which it claims was excluded from the $225,000 figure. Although the $90,000 is mentioned separately in the Town's estimate, there is no indication that it was excluded from the overall site improvement valuation of $225,000. Accordingly, we discern no clear error.

In its cross-appeal, the property owner contends the state appraiser erred in failing to compel certain discovery from the Town. We decline to address the claim for two reasons. First, the argument is not sufficiently developed. See Brigham v. State, 166 Vt. 246, 269 (1997) (Court will not address claims inadequately briefed). Second, the claim is moot, and the mere fact that the property owner has challenged the Town's 2001 appraisal does not establish that the issue is one capable of repetition yet evading review.

Affirmed.

BY THE COURT:

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John A. Dooley, Associate Justice

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James L. Morse, Associate Justice

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Marilyn S. Skoglund, Associate Justice