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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2003-469

APRIL TERM, 2005

Green Mountain Village Owners Association	}	APPEALED FROM:
	}	
v.	}	Property Valuation and Review Division
	}	
Town of Hubbardton	}	
	}	DOCKET NO. PVR 2001-17

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

Taxpayer appeals the state appraiser's decision upholding the Town of Hubbardton's assessment of taxpayer's property. We reverse the decision and remand the matter for the state appraiser to reconsider whether the property is accurately assessed based on its fair market value.

The subject property is a twenty-six-acre parcel of land underlying and adjoining more than a dozen associated, individually-owned residences. Before the town-wide reappraisal in 2001, the property was assessed at $1500. Following the reappraisal, the Town listed the property at $58,600, nearly forty times its previous assessed value. Taxpayer aggrieved the assessment, which was reduced first to $48,500 by the town listers and then to $35,500 by the town board of civil authority. Following a de novo hearing, the state appraiser upheld the board's appraisal, concluding that taxpayer had failed to meet its burden of producing evidence to overcome the presumption of validity given to the Town's assessment. On appeal, taxpayer argues that (1) the state appraiser erred by ruling that it had failed to overcome the presumed validity of the Town's assessment; (2) there is no basis for finding that the fair market value of the property is $35,500; and (3) the state appraiser abused its discretion by restricting taxpayer's efforts to challenge the Town's method and basis of appraisal.

The appraised value set by the town board of civil authority is presumed to be valid, and thus the taxpayer has an initial burden of producing credible evidence to overcome that presumption. Wilde v. Town of Norwich, 152 Vt. 327, 329 (1989). "Any admissible evidence can rebut the presumption, whatever we may ultimately think of the evidence's weight." Woolen Mill Assocs. v. City of Winooski, 162 Vt. 461, 463 (1994) ("Our precedents are clear that we are unwilling to engage in debates about the quality of evidence in determining whether the presumption of validity is overcome."). Generally, the presumption of validity "is overcome when 'credible evidence' is introduced 'fairly and reasonably' indicating that the property was assessed at more than the fair market value or that the listed value exceeded the percentage of fair market value applied generally to property within the community." Rutland Country Club v. City of Rutland, 140 Vt. 142, 145 (1981) (quoting New Eng. Power Co. v. Town of Barnet, 134 Vt. 498, 507 (1976)); accord Giorgetti v. City of Rutland, 154 Vt. 9, 12 (1990). Use of the term "credible evidence" does not imply that the trier of fact must determine whether the evidence introduced to overcome the presumption is more believable than the facts supporting the town's assessment. Rutland Country Club, 140 Vt. at 145. The standard for overcoming the presumption of validity is one of admissibility rather than credibility. Id. at 145-46; accord City of Barre v. Town of Orange, 152 Vt. 442, 444 (1989). Hence, the question is whether the proffered evidence affords a rational basis for inferring the fact to be proved. Rutland Country Club, 140 Vt. at 146.

"Once the taxpayer introduces evidence to rebut the presumption, the burden of production shifts to the Town to support the appraisal either by showing that the appraisal method complies substantially with the law or through independent evidence of the value of the property." Wilde, 152 Vt. at 329; accord Leroux v. Town of Wheelock, 136 Vt. 396, 398 (1978). "The taxpayer, however, retains the overall burden of persuasion." Wilde, 152 Vt. at 329.

Here, the state appraiser erred in concluding that taxpayer had failed to meet its initial burden of producing evidence to overcome the validity of the Town's appraisal concerning the subject property. A representative of taxpayer testified in some detail as to the considerable limitations on the property's use. According to him, the property essentially is a common area for associated, individually-owned residences, and is used, among other things, to serve the residences' sewage and water systems. He opined that the property could not be developed further because of these encumbrances and other circumstances, and thus had only a nominal value of $2000, which was still a twenty-five percent increase over the assessed value before the town-wide reappraisal. The state appraiser found that the highest and best use of the property was continuing its current use. Under these circumstances, taxpayer's evidence was sufficient to rebut the presumed validity of an appraisal that increased the property's assessment by more than twenty-fold from its previous assessment without seeming to take into account the encumbrances cited by taxpayer. The evidence provided credible support for taxpayer's claim that this unique property was appraised in excess of its fair market value.

Having so concluded, we decline taxpayer's request to reweigh the evidence ourselves and direct the Town to assess the property at $2000. Rather, we remand the matter for the state appraiser to disregard the presumptive validity of the Town's assessment, to give taxpayer an opportunity to challenge the Town's basis for its appraisal, to weigh the evidence presented by the Town and taxpayer, and to determine the fair market value of the subject property. The state appraiser has already concluded that, because the Town's overall assessment ratio for 2001 is above one hundred percent, the fair market price will be the assessed value.

The decision of the state appraiser is reversed, and the matter is remanded for further proceedings consistent with this entry order.

BY THE COURT:

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John A. Dooley, Associate Justice

_____

Denise R. Johnson, Associate Justice

_____

Frederic W. Allen, Chief Justice (Ret.),
Specially Assigned