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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2003-023

JUNE TERM, 2003

Stanley and Marilyn Goodell	}	APPEALED FROM:
v.	}	Property Valuation and Review Division
Town of Morgan	}	DOCKET NO. PVR 2002-36
	}	Trial Judge: Merle R. Van Gieson

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

Taxpayers appeal from a decision of the Vermont Property Valuation and Review Division setting the value of their real property in Morgan, Vermont at $266,800 for the town grand list. We affirm.

Taxpayers own two contiguous lots on the shore of Lake Seymour. Each lot has 100 feet of frontage on the lake, and one lot is improved with a small single-family dwelling. As part of a town-wide property reassessment, the Town of Morgan assessed taxpayers' property at $262,400 effective April 1, 2002. Taxpayers appealed the assessment to the Morgan Board of Civil Authority (BCA), which affirmed the listers' decision. An appeal to the Property Valuation and Review Division of the Vermont Department of Taxes followed.

The Division appointed an appraiser in accordance with 32 V.S.A. § 4465 to hear taxpayers' de novo appeal. The appraiser conducted a hearing at which both taxpayers and the Town submitted evidence. The appraiser also inspected taxpayers' property as part of his review. A few days following the site visit and evidentiary hearing, the appraiser issued a written decision concluding that taxpayers' property has a fair market value of $266,800. Taxpayers filed the present appeal to this Court.

Taxpayers raise four claims attacking the decisions of the BCA and the state appraiser: (1) the BCA did not explain why it reached the decision it did, and therefore the Town should use the 2001 value of taxpayers' property on the grand list; (2) taxpayers were denied their appeal rights because the Property Valuation and Review Division misled them about the qualifications of the state appraiser; (3) the state appraiser should have excluded evidence that the town presented on comparable sales because the evidence was submitted after the deadline that the state appraiser had set; and (4) the state appraiser' s decision is clearly erroneous. We address each claim in turn.

Taxpayers first complain that the BCA did not did not comply with 32 V.S.A. § 4404(c) by failing to respond to several arguments they made in their appeal.* The argument is without merit. Section 4404(c) requires the BCA to set forth the rationale for its decision. 32 V.S.A. § 4404(c); Miller v. Town of West Windsor, 167 Vt. 588, 589 (1997) (mem.). Brief explanations satisfy that requirement, particularly when further de novo review is available at the state level. See Miller, 167 Vt. at 589 (once BCA explains itself, even if briefly, its duties end and duties of state authority or superior court begin). In this case, the BCA explained that it had visited the property at issue as well as comparable properties, and had reviewed the evidence submitted to the town listers. Based on its review, the BCA agreed with the value the listers placed on taxpayers' property. The BCA explanation meets the requirements of § 4404(c).

Taxpayers allege they were misled as to the qualifications of the state appraiser appointed to hear their appeal, and thus they were denied a fair appeal. They claim that the Property Valuation and Review Division informed them that a retired appraiser would preside over their appeal, and they assumed that he would be licensed. As the Town points out, however, taxpayers do not provide any support in the record for the factual assertions underlying their claim. We do not consider matters outside the record on appeal. Napro Dev. Corp. v. Town of Berlin, 135 Vt. 353, 355 (1977). Even assuming for argument' s sake that taxpayers were misled about the appraiser' s qualifications, they cite no authority to demonstrate that an appraiser appointed under 32 V.S.A. § 4465 must be licensed to preside over tax appeals for the Division. We find no reversible error.

Taxpayers next challenge the state appraiser' s decision to admit evidence of comparable properties that the Town of Morgan offered at the hearing. They argue that the appraiser should have excluded the evidence because the Town presented it after the deadline he set for submitting evidence. The party opposing the admission of evidence must timely object to it to preserve the issue for appellate review. See V.R.E. 103(a)(1) (timely objection to the admission of evidence necessary to claim error that evidence should have been excluded); In re Estate of Peters, 171 Vt. 381, 390 (2000); see also V.R.A.P. 28(a)(4) (appellant' s brief must explain how issue was preserved for appeal). Taxpayers fail to show that they objected to the admission of the evidence before the appraiser. Consequently, they have waived this matter for our review.

Finally, taxpayers argue that the state appraiser' s decision is clearly erroneous and contrary to the evidence. In a nutshell, taxpayers contend that the appraiser ignored certain evidence and gave too much weight to other evidence. They also allege that the appraiser should have placed a single value on their property because the property' s two lots are contiguous and have common ownership.

Decisions in property valuation appeals enjoy a presumption of validity, and the findings will stand if the record evidence supports them. Lake Morey Inn Golf Resort, L.P. v. Town of Fairlee, 167 Vt. 245, 248 (1997). It is the state appraiser' s responsibility to determine the credibility of witnesses and the weight to be accorded to the evidence. Id. at 249. The party claiming error must show that the decision on appeal is clearly erroneous and outside the range of rationality. Breault v. Town of Jericho, 155 Vt. 565, 569 (1991). Taxpayers have not met their burden. The record contains evidence of a number of comparable properties against which to assess the value of taxpayers' property. The appraisals were supported by testimony. The state appraiser resolved the conflicts in the evidence, and he explained his reasoning. The value he calculated for taxpayers' lake front property was not irrational and is supported by the evidentiary record. No error appears.

Taxpayers contend, however, that the state appraiser erred by finding that the highest and best use of each parcel was for a single family residence with the potential for further residential development. Thus, taxpayers argue, the appraiser should have assessed their property by considering the two separate lots as a single lot, rather than assess the lots separately and combine the values of each lot to obtain a single value for purposes of the grand list. We disagree. It is not unlawful to assess the two lots separately considering the appraiser' s finding that the property could be used for further residential development. See Scott Constr., Inc. v Newport Bd. of Civil Auth., 165 Vt. 232, 235 (1996) (valuation analysis that considers parts of a whole piece of property is not error if highest and best use includes potential development). Taxpayers have not demonstrated that the appraiser' s findings on their property' s highest and best use are clearly erroneous. Thus, we find no error in the state appraiser' s decision to assess the lots separately and combine those assessments for the grand list.

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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Frederic W. Allen, Chief Justice (Ret.)

Specially Assigned

Footnote

***** Taxpayers also contend that the BCA provided inaccurate information about how to appeal the BCA decision. Considering that taxpayers perfected a timely appeal from the BCA decision to teh Property Valuation and Review Division, they have suffered no harm from the alleged error. Relief is, therefore, unwarranted. See V.R.C.P. 61 (harmless errors do not permit reversal).