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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2004-156

NOVEMBER TERM, 2004

David and Susan Bourgeois	}	APPEALED FROM:
	}	
	}	
v.	}	Property Valuation and Review Division
	}	
Town of Derby	}	
	}	DOCKET NO. PVR 2003-119

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

David and Susan Bourgeois appeal pro se from the state appraiser's determination of their property's listed value. They assert that the appraiser erred by using the Town of Derby's common level of appraisal to equalize the fair market value of their property. We affirm.

Taxpayers own property in the Town of Derby. The town assessed the fair market value of their property at $308,700, and taxpayers appealed. The state appraiser, using a direct sales comparison method, determined that the fair market value of the property was $299,200. The appraiser rejected taxpayers' proposed equalization ratio, which was derived from the comparable sales in evidence, and instead applied the equalization ratio from the town's common level of appraisal, which was based on the equalized education grand list study conducted by the Division of Property Valuation and Review. The appraiser explained that, although the ratios in the Division's study could be influenced somewhat by the inclusion of use value appraisals and/or exemptions and contracts, in the absence of a sufficient number of valid sales in evidence for a representative statistical sampling, a more justifiable ratio could not be computed. Thus, applying an equalization ratio of 89.03%, the appraiser determined that the listed value of taxpayer's property was $266,400. Taxpayers appealed.

Taxpayers assert that the appraiser erred by applying an equalization ratio from the town's common level of appraisal. They maintain that this ratio, which includes both comparable and non-comparable properties, disregards the requirement set forth in 32 V.S.A. § 4467 that a property's listed value should correspond to the value of comparable properties within the town. According to taxpayers, the evidence presented as to comparable properties was a "statistically representative sample" that reflects a reproducible equalization ratio of at least 70% of listed value to sales value. Taxpayers thus assert that the 70% equalization ratio should apply.

We find this argument without merit. The appraiser acted within his discretion in using an equalization ratio from the town's common level of appraisal. As we have recognized, "the law does not require the use of a single method of equalization." Allen v. Town of West Windsor, 2004 VT 51, ¶ 9, 15 Vt. L. Wk 163. When the appraiser concludes that he lacks a statistically representative sample of comparable property, he may use other evidence to determine the appropriate equalization ratio. Vt. Elec. Power Co. v. Town of Cavendish, 158 Vt. 369, 373 (1992); see also Philbin v. Town of St. George, 156 Vt. 640, 641 (1991) (mem.) (appraiser's use of other evidence, based on lack of evidence of a statistically representative sample under 32 V.S.A. § 4467, is a matter within appraiser's sound discretion). "Other relevant evidence" includes a town's average equalization ratio. Town of Cavendish, 158 Vt. at 373-74. As we have explained, "[b]ecause property taxation rests on notions of equity and fairness, there is no better evidence than the average equalization ratio for all property within the Town." Id. In this case, the appraiser found an insufficient number of valid sales for a representative statistical sampling. This finding was within the appraiser's discretion, as was his decision to apply an equalization ratio from the town's common level of appraisal. See Kruse v. Town of Westford, 145 Vt. 368, 374 (1985) (appraiser, as trier of fact, has the discretion to determine the weight, credibility, and persuasive effect of the evidence). We find no error.

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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Paul L. Reiber, Associate Justice