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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2004-066

AUGUST TERM, 2004

Warren G. Gardner, Jr. v. Town of Shrewsbury	}	APPEALED FROM: Property Valuation and Review Division DOCKET NO. PVR 2002-40

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

Taxpayer appeals the state appraiser's assessment of his real property. We affirm.

Taxpayer owns 240 acres of land, including an uncompleted building, in the Town of Shrewsbury. The Town initially assessed the property at $176,800, but reduced the assessment to $171,800 following taxpayer's appeal. The town board of civil authority further reduced the assessment to $155,300, but, on appeal, the state appraiser found the property to have a fair market value of $171,800 and, applying the common level of appraisal factor to that figure, found the final assessed value to be $165,250. On appeal to this Court, taxpayer indicates that the primary issue is the use of a double standard by the Town to establish property values. According to taxpayer, use of the market value approach by the Town and the state appraiser has resulted in his property being assessed at a comparatively higher rate than that of his neighbors. After distinguishing some of the comparable properties relied upon by the state appraiser, taxpayer argues that there is only one valid way to ascertain a fair assessment of his property " apply the grade standard used in the recent 2001 appraisal, and then multiply the grade by the appropriate land schedule and acreage factors.

We find no basis for overturning the state appraiser's assessment. The state appraiser's decision is presumptively correct, and if the record contains some basis to support his valuation, the taxpayer cannot prevail on appeal without showing that the appraiser's exercise of discretion was clearly erroneous. Lake Morey Inn Golf Resort v. Town of Fairlee, 167 Vt. 245, 248 (1997); see Breault v. Town of Jericho, 155 Vt. 565, 569 (1991) (" If the decision is within the range of rationality, it must be affirmed."). Further, the state appraiser is not required to employ any particular method in determining fair market value, and generally we will not second-guess the methodology employed. Lake Morey Inn Golf Resort, 167 Vt. at 248-49; see Scott Constr., Inc. v. Newport Bd. of Civil Auth., 165 Vt. 232, 240 (1996) (noting that trier of fact is not required to make findings tailored to any particular theory of valuation, but rather need only sift through evidence and make findings sufficient to indicate to parties how it reached ultimate conclusion). Moreover, comparable properties are rarely, if ever, identical, and thus, absent a demonstrated abuse of discretion, it is within the province of the trier of fact to weigh the degree of comparability. Scott Constr., 165 Vt. at 239; see Lake Morey Inn Golf Resort, 167 Vt. at 249 (observing that this Court has " consistently held" decision to use or reject comparable properties to be evidentiary question, not question of law).

Here, the state appraiser acknowledged that taxpayer's two-acre lot site was assessed at a higher value ($30,000) than the average two-acre site in the Town ($20,000), but concluded that there was a reasonable basis for the higher assessed value " good road frontage, excellent views, and a pond across the road. Further, after examining the comparable properties, the state appraiser concluded that the Town had taken a very conservative approach in valuing the remaining 238 acres at $533 per acre (for a total of $132,100), well below the average per-acre value of land in the Town. The state appraiser's valuation was based on the evidence presented by the parties as well as his site visits to the subject

property and some of the comparable properties. Taxpayer has failed to demonstrate that the state appraiser valued his property above its fair market value or inequitably in relation to other comparable properties.

Finally, we decline to consider taxpayer's argument, raised for the first time at oral argument, that he was denied access to certain relevant information regarding his case. See Guiel v. Guiel, 165 Vt. 584, 585 n.2 (1996) (" Arguments raised for the first time at oral argument will not be considered by the Court.").

Affirmed.

BY THE COURT:

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John A. Dooley, Associate Justice

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Denise R. Johnson, Associate Justice

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Marilyn S. Skoglund, Associate Justice