

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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2005-540

SEPTEMBER TERM, 2006

G. Lewis Hotaling, Barbara W. Hotaling  
and June K. Wells

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APPEALED FROM:

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v.

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Rutland Superior Court

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Town of Castleton

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DOCKET NO. 647-10-04 Rdcv

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Trial Judge: William D. Cohen

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

Owners of property in the Town of Castleton appeal the decision of the superior court setting the appraisal value of their property at \$622,700. We affirm.

In 2004, the Town conducted a town-wide reappraisal, hiring an outside firm for the task. The firm initially assessed the property at issue, located at 8 Ryan Road, at \$569,000. The owner appealed to the

listers and subsequently to the Board of Civil Authority. A committee of the Board recommended a 20% reduction in the appraisal. By the time the full Board considered the committee's recommendation, however, the Board had learned that the owner was attempting to sell the property for \$770,000. The Board set the appraisal at \$660,000. The owner then appealed to the superior court. While the matter was pending before the superior court, the owner sold the property to G. Lewis Hotaling, Barbara W. Hotaling and June K. Wells for \$630,000.<sup>[1]</sup> Following a trial on the issue, the superior court set the appraisal at \$622,700.

The superior court explained its reasoning in a thorough written decision. The court recognized that the Town's appraisal enjoys an initial presumption of validity. Heindel v. Town of Grafton, 140 Vt. 147, 149 (1981). The property owner challenging the appraisal bears the burden of overcoming this presumption by introducing evidence that the appraisal is inaccurate. Id. Any credible, contrary evidence can defeat the presumption. Id. The court determined that owners successfully rebutted the presumption of validity when they demonstrated that the Board relied solely on the advertised sale price (\$770,000) to set the property's value. See Beaudry v. Town of Chester, 143 Vt. 182, 184 (1983) (holding that owner can overcome presumption by showing that Town used invalid appraisal method). Rather than relying on the advertised sale price, the Board should have looked at the price at which the property was actually purchased:

Appraisal value shall mean . . . the estimated fair market value. The estimated fair market value of a property is the price which the property will bring in the market when offered for sale and purchased by another, taking into consideration all the elements of the availability of the property, its use both potential and prospective, any functional deficiencies, and all other elements such as age and condition which combine to give property a market value.

32 V.S.A. § 3481(1). Thus, the statute required the Town to rely on fair market value, which is established not by the asking price for a piece of property, but by the price that would be accepted by a purchaser. See also Bookstaver v. Town of Westminster, 131 Vt. 133, 136-37 (1973) (noting factors in determining fair market

value).

Because the owners in this case overcame the presumption of validity, the superior court reviewed the appraisal de novo. See 32 V.S.A. ' 4467. Once the owners have overcome the presumption of validity by producing admissible evidence that the Town's appraisal was incorrect, then the Town, having lost its entitlement to rely on the presumption of validity alone, must produce evidence to justify its appraisal. Kruse v. Town of Westford, 145 Vt. 368, 372 (1985). Nonetheless, the ultimate burden of persuading the court that the Town's appraisal is incorrect remains with the taxpayer throughout the entire proceeding. @ Id. [2]

The court noted that the best evidence of the fair market value of the property was the actual purchase price. See Barrett/Canfield, LLC v. City of Rutland, 171 Vt. 196, 199 (2000) (sale price is strong, if not conclusive, evidence of fair market value) (citation and quotation omitted). [3] Acknowledging that purchase price was not solely determinative of the fair market value, the court considered other factors, including the property's current and potential use, functionality, age, and condition, @ as well as the fact that it was a high-value lakefront home with excess acreage, @ and concluded that these factors tended to support the conclusion that the sale price was equivalent or close to the actual fair market value of the home. The fact that the sale occurred after the appraisal date did not diminish its relevance. See Sondergeld v. Town of Hubbardton, 150 Vt. 565, 571-72 (1988) (holding that purchase price in sale taking place seven months after assessment was relevant and adequate basis for appraisal). Finally, one of the owners asserted in his testimony that the purchase price should be reduced by \$40,000, because this amount reflected the value of two additional, undeveloped lots that were included in the sale. The court examined this testimony in light of the fact that the appraisal set a value of \$7,300 for the two lots, and concluded that owners' bald assertion of the value of the additional land did not meet the burden of persuasion. See id. at 570. Therefore the superior court discounted the purchase price by the appraisal value of \$7,300.

Owners appeal. First, they argue that A[i]t was error as a matter of law for the [superior court] to

assess [the] property based solely on the November 16, 2004 purchase price.@ While owners agree that the fair market value of the property was \$630,000 on the date of the sale, they argue that 32 V.S.A. ' 4467 requires the superior court to go beyond fair market value to ensure that the appraisal corresponds with appraisals for comparable properties in the Town. Specifically, ' 4467 directs the court to apply Chapter I, Article 9 of the Vermont Constitution, which we have interpreted to require that Amethods of taxation must operate equally upon all of the inhabitants.@ Bookstaver, 131 Vt. at 142. The owners assert that they demonstrated lack of uniformity by the disparity between the original appraisal by the private firm, the appraisal set by the Board, and the appraisal set by the superior court.

We will uphold an appraisal where it is Asupported by findings that are rationally drawn from the evidence.@ Allen v. Town of W. Windsor, 2004 VT 51, & 4, 177 Vt. 1. Here, the superior court looked at factors beyond the purchase price, [\[4\]](#) and considered why those factors might cause the property at issue to be appraised at a higher value than other properties in the Town.

Owners argue that, because the appraisal of their property was based on fair market value rather than the land schedule developed for other properties in the town, their property was not treated uniformly. Here, however, owners waived the issue of equalizing their appraisal based on fair market value with other properties in the Town by failing to present evidence of a different equalization rate to the superior court. In fact, the superior court acknowledged its obligation to Aequalize@ the fair market value by comparing it to corresponding properties, see Littlefield v. Town of Brighton, 151 Vt. 600, 603 (1989), but noted that neither party suggested an equalization rate other than 100% of the fair market value. Accordingly, the court applied a 100% equalization rate. See Haystack Prop. Owners Assoc., Inc. v. Town of Wilmington, 151 Vt. 47, 49 (1989) (holding that equalization rate of 100% must be assumed where parties present no significant evidence of different equalization rate). Owners do not claim in their appellate briefing that they did, in fact, present such evidence. As with all other contested fact issues regarding an appraisal, the burden of persuading the trier of fact that a different equalization rate applies lies with owners. See Kruse, 145 Vt. at 372 (holding that taxpayer bears burden of persuasion on all contested issues; Philbin v. Town of St. George, 156 Vt. 640 (1991)). Because owners did not present evidence in support of a different equalization rate, the issue is waived.

The superior court's appraisal is supported by the findings and evidence, and owners have not demonstrated any legal error.

Alternatively, owners argue that the assessment should, at a minimum, be adjusted to reflect the fact that the \$630,000 owners paid included payment for two additional lots of land, which they value at \$40,000. The \$40,000 value was based solely on the testimony of one of the owners, and the Town offered conflicting evidence that the two other parcels were only worth \$7,300. Credibility determinations and the relative weight to be assigned to conflicting evidence are the exclusive province of the trial court. MacDonough-Webster Lodge No. 26 v. Wells, 2003 VT 70, & 22, 175 Vt. 382. Owners have not established reversible error.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Denise R. Johnson, Associate Justice

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Brian L. Burgess, Associate Justice

[1] At that time, these three individuals who are the current owners substituted for the prior owner in the proceedings. The current owners are the litigants in this appeal.

[2] As explained in Kruse, the distinction here is between the burden of coming forward with evidence, which may shift back and forth between the parties during the proceeding, and the burden of persuasion, which does not shift through the course of the proceeding. Id. at 372 n.\*.

[3] In Barrett, we further held that the court need only look beyond the purchase price where some evidence undermines the bona fide nature of the sale. Id. In that case we concluded there was no reason to look beyond the evidence of the actual sale price. Arguably, there was no need to look beyond the purchase price here because there was no evidence that the transaction at issue was anything other than a bona fide sale.

[4] Because the superior court's appraisal was not based solely on the purchase price, we need not consider owners' argument that the figure must be time adjusted if the appraisal was based solely on the purchase price.