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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2010-036

OCTOBER TERM, 2010

Herrick Hurlburt	}	APPEALED FROM:
	}	
	}	
v.	}	Property Valuation and Review
	}	Division
	}	
	}	
Town of Monkton	}	DOCKET NO. PVR 2008-032

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

Taxpayer, Herrick Hurlburt, appeals the valuation of his real property in the Town of Monkton. On appeal, taxpayer argues that the state appraiser erred in concluding that the highest and best use of his property is for residential development and in crediting the Town's appraiser over his witnesses. We affirm.

Taxpayer owns 1155.3 acres of land with three dwellings and associated outbuildings. The land contains meadow, pasture, steep woodland and rock faces. In 2005, the Town completed a town-wide reappraisal. Taxpayer's property was appraised at $1,452,400. He appealed first to the Board of Civil Authority and then to the superior court. In May 2007, the superior court ordered the Town to reassess the property. The Town hired an independent licensed appraiser, Michael Gammal, to appraise the 1149.3 acres of bulk land.[1] Gammal concluded that the highest and best use of the property is for residential development and valued the property by dividing it into four sub-parcels bordered by the natural divisions made by the existing roadways. The sizes of the sub-parcels are: one of 50 acres, one of 150 acres and two of 100 acres. The balance of acreage is given no specific value and treated as common land. Gammal used a sales comparison analysis to determine the per-acre value of the land for each parcel. From this comparison, he assigned the following valuations: $2800/acre for the 150-acre parcel, and $3111/acre for the other three. The total was discounted by 15% for economy of scale and to allow a profit margin, and Gammal arrived at a value of $1,020,000 for the land. In combination with the unchallenged appraisal for three dwellings and accompanying two-acre house sites, this resulted in a total appraised value of $1,424,300. Following taxpayer's appeals to the Listers of the Town of Monkton and to the Board of Civil Authority, the appraised value remained at $1,424,300.

Taxpayer appealed to the Division of Property Valuation and Review. At a hearing before the state appraiser, the Town listers appeared on behalf of the Town and presented

[1] The value of the three buildings and accompanying two-acre housesites were not part of the reappraisal and are not at issue in this appeal.

testimony of appraiser Gammal. He explained his valuation method as described above. At the same hearing, Ed Lacroix, a real estate appraiser, and Mark Boivin, a farmer, testified on taxpayer's behalf. Lacroix testified about his appraisal of taxpayer's property, which concludes that the highest and best use of the property is to remain as vacant land. The appraisal specifically notes: "At the request of the client, the potential for subdivision or development has not been considered in this report." Lacroix used seven sales and one listing as comparables. The sale with the largest acreage is 229.8 acres. The other comparables vary in size from 44 to 95 acres. Using this method, Lacroix arrived at a value of $402,000 for the property. Boivin testified that he has taken some relevant courses on appraisal and read the USPAP (Uniform Standards of Professional Appraisal Practice) several times. He initially testified that the property was worth $500,000, but changed his valuation to $400,000.

The state appraiser was not persuaded by taxpayer's witnesses. The state appraiser did not find the Lacroix appraisal credible because the comparable parcels were significantly smaller than taxpayer's land and because significant adjustments—up to 40% for location, 30% for topography and 25% for soils—made the valuations subjective. Thus, the state appraiser concluded that the properties that were sold were not similar to taxpayer's. The state appraiser also discounted the testimony of Boivin. The state appraiser noted that although Boivin had taken some courses and read the USPAP, he was not a qualified expert on appraisal of real estate, and therefore gave his testimony "no weight." Thus, the state appraiser concluded that taxpayer had failed to present evidence that the property is assessed at more than its market value or at a higher percentage of market value than other properties in the Town. Based on the Gammal appraisal, which the state appraiser found credible, the state appraiser set the value of taxpayer's property at $1,424,300. Taxpayer appeals.

In an appeal before the state appraiser, the Town listers' valuation is entitled to a presumption of validity, which may be overcome by any evidence "fairly and reasonably indicating that the property was assessed at more than the fair market value." Rutland Country Club. Inc. v. City of Rutland, 140 Vt. 142, 144-45 (1981) (quotation omitted). Once the presumption disappears, the Town's evidence must be weighed against taxpayer's. Id. at 146. At all times, however, "the burden of persuasion remains on the taxpayer as to all contested issues." Id. The decision of the state appraiser is presumed correct, and we uphold the findings if they are supported by the evidence. Lake Morey Inn Golf Resort, Ltd. P'ship v. Town of Fairlee, 167 Vt. 245, 248 (1997). The appellant bears the burden of demonstrating that the appraiser's exercise of discretion in determining fair market value was clearly erroneous. Breault v. Town of Jericho, 155 Vt. 565, 569 (1991).

On appeal, taxpayer argues that the state appraiser erred by: (1) determining that the highest and best use of his property was for development, and (2) crediting the Gammal appraisal, while discounting the Lacroix appraisal and Boivin's testimony on valuation. Additionally, taxpayer argues the valuation and disregard of the property's current use as farmland is unconstitutional.[2]

[2] These are the arguments we are able to particularly identify from appellant's pro se brief. To the extent appellant raises other arguments on appeal, his brief is so inexact and inadequate that we cannot discern them and therefore do not address them.

Taxpayer's first argument is that the state appraiser erred in determining that the highest and best use of his property is for development. Taxpayer contends that this conclusion is contradicted by the evidence presented by taxpayer and by the Town plan. According to taxpayer, development is precluded by the prevalence of wet soil and rock on his land. The evidence indicates, however, that the land would support the limited development envisioned by the Gammal appraisal. In addition, taxpayer contends that the town plan encourages farming and open land, and subdivision would conflict with this goal. The town plan, however, does not prohibit development, and the testimony indicated that town zoning rules do not restrict the type of development envisioned by the Gammal appraisal. We construe the findings in support of the judgment, and will resolve conflicting inferences in favor of the prevailing party. Villeneuve v. Town of Waterville, 141 Vt. 154, 156 (1982). Viewed in this light, the soil analysis and the town plan are wholly consistent with the state appraiser's decision that the highest and best use of taxpayer's property is for residential development.

Taxpayer further asserts that taxation of his property based on its development value rather than its farming value is unfair and violates chapter I, article 9 of the Vermont Constitution. Taxpayer did not raise this argument below. Therefore, it has been waived, and we do not address it. See Garilli v. Town of Waitsfield, 2008 VT 91, ¶ 7, 184 Vt. 594 (mem.) (holding that argument not raised below is not preserved for appeal, even if it is a constitutional challenge).

Next, taxpayer contends that the Gammal appraisal should not be given any weight because it divides his land into four parcels. Taxpayer argues that this division contradicts state statutes, which define a landowner's parcel as one contiguous piece of land. See 32 V.S.A. § 4152(a)(3) (defining parcel for taxation purposes as "all contiguous land in the same ownership"). Our cases, however, have explained that it is not unlawful to assess subdivided lots of a larger parcel separately if the highest and best use of the property is for potential development. See Scott Constr., Inc. v. Newport Bd. of Civil Auth., 165 Vt. 232, 238 (1996) (valuation analysis that considers parts of a whole piece of property is not error). Taxpayer has not demonstrated that the appraiser's findings on the property's highest and best use are clearly erroneous. Thus, we find no error in the state appraiser's decision to rely on the Gammal appraisal over the valuations submitted by Lacroix and Boivin. The state appraiser, as the trier of fact, has discretion to determine the weight, credibility, and persuasive effect of the evidence. See Kruse v. Town of Westford, 145 Vt. 368, 374 (1985).

Taxpayer's remaining arguments attempt to reargue the evidence, and broadly assert that farmland in Monkton is overassessed. For example, taxpayer argues that his property is overassessed based on a sale of property from 1997 that was for half of the property's assessed value. The state appraiser's findings and conclusions as to comparable properties fall within its broad discretion to assess the weight and credibility of the evidence. See Scott Constr., Inc., 165 Vt. at 239. We concluded there was no error. As explained above, the state appraiser carefully reviewed and evaluated the evidence submitted by the taxpayer and the Town and concluded that the Gammal appraisal supported the assessed value. After listening to the witnesses, the appraiser was persuaded by the Gammal appraisal, and, for the reasons the appraiser gave, was not persuaded by taxpayer's appraisal testimony from Lacroix and Boivin. The appraiser explained his decision. The appraiser's decision is supported by the evidence, and therefore we find no grounds to disturb it on appeal.

On a final note, the Town filed a motion to strike portions of taxpayer's printed case alleging that some of the documents were not entered below and therefore not part of the record on appeal. Because we dispose of the case without reference to the challenged documents, we need not reach the motion to strike, and therefore dismiss it as moot.

Affirmed.

BY THE COURT:

_____
John A. Dooley, Associate Justice

_____
Denise R. Johnson, Associate Justice

_____
Brian L. Burgess, Associate Justice