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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2010-251

DECEMBER TERM, 2010

Bruce Lisman	}	APPEALED FROM:
	}	
	}	
v.	}	Property Valuation and Review
	}	Division
	}	
	}	
Town of Shelburne	}	DOCKET NO. PVR 2008-147

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

The Town of Shelburne appeals the state appraiser's decision reducing the assessed value of taxpayer's property. We affirm.

This appeal involves a fourteen-acre parcel of land with over 1000 feet of frontage on Lake Champlain and two single-family dwellings, the larger of which includes approximately 8000 square feet. The Town assessed the property at $6,199,900 as part of a 2008 town-wide reappraisal. Based on taxpayer's de novo appeal, the state appraiser reduced the assessment to $5,813,700. The Town now appeals, arguing that the state appraiser erred by failing to make adequate findings in arriving at his indicated values for the accepted comparable properties, by rejecting one of the Town's comparables and accepting one of taxpayer's comparables, and by failing to adequately explain why he took the median, rather than the average, of his indicated values for the accepted comparables to arrive at the subject property's fair market value.

The Town first contends that the state appraiser did not adequately explain how he arrived at his indicated values for the accepted comparables. The state appraiser examined each of the proffered comparables, including the adjustments made by the parties' respective experts, and then set forth his own indicated values for the comparables by applying "the most convincing evidence of record for adjustments." The Town acknowledges that the state appraiser noted, in his sixteen-page decision, the specific differences between each of the comparables and the subject property, but nonetheless contends that, by not indicating specifically which adjustments were altered to what degree, the state appraiser failed to adequately explain how his decision was reached, thereby preventing this Court from making that determination. On this point, the Town cites Saufroy v. Town of Danville, 148 Vt. 624, 626 (1987), in which we reversed the state board's decision because we were left to speculate on how the board reached that decision. In Saufroy, the board set the fair market value of the subject property at a value identical to that of taxpayer's lone comparable—even while acknowledging "very significant differences between taxpayers' property and the comparable property"—based on its bare statement that the comparable "defines the general range of fair market value of the [taxpayer's] property." Id. at 625-26. Because the board offered "no explanation how these differences cancel out so that the fair market values are identical," the Court was "left to

speculate on how the Board reached its conclusion on fair market value." Id. at 626. In short, we reversed the board in Saufroy because it found the fair market value of the subject property to be identical to the fair market value of the comparable "without further analysis" despite "very significant differences" in the two properties.

Here, in contrast, the Board accepted five of the several comparables submitted by the parties, specifically indicated how each of the comparables differed from the subject property, and then set an indicated value for each of those comparables based on the stated differences. While it may have been more helpful for the state appraiser to indicate explicitly how he differed from the parties' experts in terms of making specific adjustments to each of the comparables, this case is a far cry from Saufroy. We cannot say, as we did in Saufroy, that we are unable to understand how the state appraiser arrived at his conclusion regarding the subject property's fair market value. The Town could have, but has not, argued that the state appraiser's overall adjustment for any of the comparables was irrational or unsupportable either by itself or as compared to the other comparable properties. "We accord deference to the decisions of the state appraiser." Garilli v. Town of Waitsfield, 2008 VT 91, § 9, 184 Vt. 594. "Where the record contains some basis in evidence for [the appraiser's] valuation, the appellant bears the burden of demonstrating that the exercise of discretion was clearly erroneous." State Housing Auth. v. Town of Northfield, 2007 VT 63, § 5, 182 Vt. 90 (quotation omitted). The Town has failed to meet that burden here.

The Town also argues that the state appraiser abused his discretion by rejecting one of the Town's comparables and accepting one of taxpayer's comparables. We find no abuse of discretion in either case. See Sondergeld v. Town of Hubbardton, 150 Vt. 565, 572 (1988) (stating that decision to use certain property as comparable sale "is an evidentiary question which rests solely within trier's discretion"). Regarding the Town's rejected comparable, the state appraiser explicitly stated his reasons for rejecting the property, including that it was in a less private location near a state beach and that the Town had to adjust the value of the property upward over 180% to arrive at the suggested value of the subject property. These reasons are more than adequate for not accepting the comparable, particularly when there were other more comparable properties available. The Town complains that the net adjustment between the sales price and the state appraiser's indicated value of the comparable property was "only" 161.3%, less than the state appraiser's stated 180% cutoff, and that the same state appraiser used a different cutoff percentage in another recent property tax appeal. Neither complaint is availing. The net adjustment for the rejected comparable was significantly higher than those of the accepted comparables, and the fact that the state appraiser used a different cutoff percentage for net adjustment in another case with different facts and different comparables does not demonstrate an abuse of discretion in this case.

As for the challenged taxpayer comparable, the Town argues that the state appraiser should have rejected that comparable because it involved a three-year-old sale. Given the adjustment provided for the timing of the sale and the testimony from both experts that the real estate market increased only 5% to 10% in 2005 and was flat between 2006 and 2008, we find no abuse of discretion in accepting the comparable. Further, as noted above, we cannot find error solely because the same state appraiser apparently rejected the same comparable as stale in another case involving different facts.

Finally, the Town argues that the state appraiser abused his discretion by using the median rather than the average of the indicated values for the comparables. Again, we find this argument unavailing. There is no requirement that the state appraiser take the average rather than the median of comparable properties—or either one for that matter. Given the wide

divergence of indicated values for the comparables and the fact that the median represents the mid-point among values, it was within the state appraiser's discretion to rely on the median, rather than the average, value. The state appraiser was not compelled to use the mean average merely because he stated that none of the comparables, taken alone, represented the best indicator of the subject property's fair market value.

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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Marilyn S. Skoglund, Associate Justice