

Atfd No. 2008-503  
(May 29, 2009)  
(unpub. mem.)

STATE OF VERMONT  
RUTLAND COUNTY, SS

Dr. John McGarry  
Plaintiff

v.

Town of Pittsford  
Board of Civil Authority  
Defendant

SUPERIOR COURT  
Docket No. 651-9-07 Rdcv

**ORIGINAL PAPER**  
**RUTLAND SUPERIOR COURT**

**NOV 14 2008**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-matter came on for hearing on October 16, 2008. Plaintiff/Appellant was represented by John J. Kennelly, Esq. and Sharen Underwood, Esq. Defendant/Appellee was represented by Gary Kupferer, Esq. Based upon the evidence adduced at hearing, the Court issues the following findings of fact, conclusions of law and order:

Findings of Fact

This is an appeal of the tax assessment on property owned by Appellant, Dr. John McGarry, located at 1074 and 1085 Sangamon Rd. in Pittsford, Vt. The property consists of 268.5 acres, mostly located on the south side of Sangamon Rd. The house and approximately 7 acres are located on the north side of Sangamon Rd. A barn, a garage and a guest cottage are located on the south side of Sangamon Rd. The property is approximately one mile up Sangamon Rd. from its intersection with U.S. Route 7, a major road through Pittsford.

The Town of Pittsford entered into evidence its lister card showing the tax assessment for 2007 on the McGarry property.

Dr. McGarry purchased the property in 1965. It has remained largely unchanged since that time. The house was built approximately 200 years ago. It has not been renovated to any appreciable degree since Dr. McGarry purchased it. The property is located in a conservation zone where development is to be limited.

Most of the property is undeveloped land, some of which is mowed by Dr. McGarry. Approximately 44 acres of the land to the south of Sangamon Rd. is open fields. Dr. McGarry has a forestry plan in place for some of the property and the land has been harvested for timber about three times during his ownership. The property is at high elevation and enjoys long views to the southwest. Much of the land is steep, rocky and with thin soil cover. Dr. McGarry has placed some benches on the land for the convenience of hikers.

Since Dr. McGarry first purchased his property, the character of Sangamon Rd. has changed. It has been paved for the last several years and has become a short-cut around Rutland for many cars. Dr. McGarry estimates as many as 500 cars a day go past his house, the front door of which is only 40 feet from the road. The barn and guest cottage are only 10 feet from the road. Many of the cars going by are travelling faster than the 35 m.p.h. posted speed limit. Dr. McGarry has complained to town officials and to the Vermont State Police, but speeders remain an on-going problem. Dr. McGarry feels these traffic concerns detract from the value of his property.

Dr. McGarry feels his property is worth \$400,000. He offers this opinion as the landowner and not as a result of comparison with other properties. There is little evidence that Dr. McGarry has made any studied inquiry to arrive at his opinion as to the value of his property. Dr. McGarry did provide information concerning other properties

in his area, but primarily for purposes to show their possible negative impact on his property.

Nancy Gadreau is a former lister for the Town of Pittsford. She left that position in March 2008. She was a lister at the time of the last town-wide reappraisal in 2005-2006.

For 2005-2006, Dr. McGarry's property was assessed at \$336,100. The next year there was a town-wide reappraisal done by Cross Country Appraisal Group, a professional appraisal business from New Hampshire. In 2006, Dr. McGarry appealed his tax assessment to the listers. His assessment was \$686,400 before appeal. As a result of the appeal, the listers reduced the assessment by \$42,100. Dr. McGarry then appealed to Board of Civil Authority (BCA), which declined to change the assessment. The adjusted assessment for 2006-2007 was \$644,300.

The Town made changes from the Cross Country reappraisal on many properties for the following tax year to better reflect particular conditions in the Town. As a result of this action, 462 parcels had their appraisals for 2007 reduced, 303 parcels remained assessed at the same amount and 660 had increased assessments. These changes affected the assessments as of April 1, 2007, which is the assessment under appeal here.

Cross Country had placed the McGarry property and others in the vicinity into a neighborhood classified as "Rt 7." The listers felt that the McGarry property and others on Sangamon Rd. which are some distance from U.S. Route 7, belonged in a different neighborhood classification. U.S. Route 7, at a distance of approximately one mile from the McGarry property, is not visible from the subject property and the Town felt inclusion of properties that remote from U.S. Route 7 in the Rt. 7 neighborhood was

improper. Accordingly, the Town placed the McGarry property and those nearby into the "East Rt. 7 Rural" neighborhood. This reclassification increased the value of the all property moved into the "East Rt. 7 Rural" classification by .23% from what they would have been assessed if they had been kept in the Rt. 7 neighborhood (by increasing the neighborhood factor from 1.0 to 1.23%).

The Town also made specific site adjustments on the McGarry parcels on each side of Sangamon Rd. On the parcel including the main house the Town changed the condition factor from 1.1 to 1.5 due to views at the main house, resulting in an increase in the assessment. On the tenant house parcel, a site adjustment was made reducing the condition from 1.0 to .75, resulting in a slightly lesser assessment. These adjustments only affected the calculation of the assessment on the 2 acres under the house and cottage (4 acres out of 268.5).

The 2006 assessment of \$644,300 included \$240,000 for the main house and tenant building. The barn outbuilding was assessed at \$69,400, making a total \$309,400 for buildings in the 2006 assessment. The 2006 assessment was the first to use the Cross Country town-wide reappraisal as its basis. The 2006 appraisal is not under appeal here.

The 2007 assessment, which is the subject of this appeal, is \$736,800, a figure which Ms. Gadreau feels is a fair assessment in comparison to other land in Pittsford. Ms. Gadreau stopped short of opining that the \$736,800 figure represented the fair market value of the property. However, Ms. Gadreau felt the assessment on the McGarry property was fair and proper. There is no evidence that Ms. Gadreau or the other listers violated their oath of office by assessing property at anything other than the fair market

value. Ms. Gadreau's testimony that the property was fairly assessed and treated comparably to other properties in Pittsford is sufficient.

In 2007 the assessment on the main house went up \$3500, due to the correction of an error made by listers for overlooking a bathroom and a laundry sink in the 2006 assessment. This raised the main house and tenant building assessment up to \$243,500. The outbuildings were assessed again at \$69,400. The total assessment for the buildings for 2007 was \$312,900, a very modest change, caused solely by the oversight by the listers in the previous year's assessment.

The primary reason for the increase in Dr. McGarry's assessment from 2006 to 2007 was the change in neighborhoods for the entire property and the site adjustment for the view factor on the 2 acres surrounding the residence. Both of these factors impacted the overall assessment by roughly \$40,000.

Dr. McGarry does not feel his property should have been moved out of the Rt. 7 neighborhood classification. He produced pictures of several houses on or around Sangamon Rd. which he claims impact negatively on the neighborhood. Many of these houses are a considerable distance from the McGarry property and none enjoy the views which exist from his land.

Dr. McGarry also believes his land should have received an adjustment downward in value as a result of the steep terrain on the so-called backlands, those portions of the property which do not include the two acres surrounding the residence and the two acres surrounding the guest house. This type of adjustment was not made on his parcel because the listers felt the steep terrain was not the predominant feature of that property. In instances where the steepness is a predominant factor, such as a parcel owned by Gardner

Stone, the listers have made a downward adjustment. Here, the listers considered the views from the McGarry parcel to be the predominant factor.

Undoubtedly, some of the McGarry land is steep and rocky. This property is at a considerably higher elevation than property adjacent to Route 7. Although only about 40 acres of the roughly 261 on the south side of Sangamon Rd. is open land, views from that property are superb. It was well-within reason for the listers to conclude that no backland adjustment for terrain should be made and to consider the views to be the predominant feature of that land.

On other parcels the listers have made backland adjustments, including a parcel of 838 acres on Fire Hill owned by Gardner Stone. The Stone property is steep and remote, predominant features despite the “rolling” characterization made by the listers. Ms. Gadreau did not consider views to be a predominant feature of that land, as she and the other listers did with respect to the McGarry property. The Court does not find the Stone property to be comparable.

In connection with a divorce proceeding, Dr. McGarry had his property appraised in 1999. At that time, Thomas French, an appraiser, opined the fair market value of the McGarry property to be \$300,000.

#### Conclusions of Law

In appeals under 32 V.S.A. § 4467, a presumption of validity is accorded the appraisal reached by the board of civil authority. *Littlefield v. Town of Brighton*, 151 Vt. 600, 601 (1989). Once the taxpayer presents evidence which fairly and reasonably indicates that the property was assessed at more than fair market value, or that the listed value exceeded the percentage of fair market value applied generally to comparable

property within the community, the presumption is overcome and disappears. *Id.* (citing *Kruse v. Town of Westford*, 145 Vt. 368, 372-73 (1985); *Rutland Country Club, Inc. v. City of Rutland*, 140 Vt. 142, 145 (1981)).

“The burden of producing evidence to overcome the presumption is satisfied by the introduction of credible evidence fairly and reasonably tending to show that the property was assessed at more than fair market value or that the listed value exceeded the percentage of listed value actually applied to the general mass of property in the community.” *New England Power Co. v. Town of Barnet*, 134 Vt. 498, 507 (1976).

A landowner is competent to testify as to the value of his or her real property. 12 V.S.A. § 1604. In determining whether this opinion is “credible evidence” and therefore overcomes the presumption, the standard to be applied is not one of credibility of the evidence, but rather admissibility. *Rutland Country Club, Inc. v. City of Rutland*, 140 Vt. 142, 146 (1981). The question is, “[d]oes the fact offered in proof afford a basis for a rational inference of the fact to be proved?” *Id.*

Dr. McGarry feels his property is worth \$400,000. This is not the result of a comparison with other comparable properties and there is little evidence that Dr. McGarry has made any studied inquiry to arrive at his opinion as to the value of his property.

Dr. McGarry does provide information concerning other properties in his area, but primarily for purposes to show their possible negative impact on his property. The one property that Dr. McGarry does rely on to show disparate treatment is not comparable. The Fire Hill property owned by Gardner Stone is a larger property, without road

frontage, and without comparable views. While the Court is aware that comparable properties need not be equivalent properties, these are not comparable properties.

The only independent valuation offered by Dr. McGarry is an appraisal by Thomas French, an appraiser, in connection with a divorce proceeding in 1999. At that time, Thomas French opined the fair market value of the McGarry property to be \$300,000.

Dr. McGarry's opinion as to the value of his property is not well supported and does not provide a basis for a rational inference of the fact to be proved. It does not fairly and reasonably indicate that the property was assessed at more than fair market value, or that the listed value exceeded the percentage of fair market value applied generally to comparable property within the community. See *New England Power Co.*, 134 Vt. at 507.

Therefore, the evidence proffered by Dr. McGarry is insufficient to "burst the bubble of the presumption." See *Rutland Country Club, Inc.*, 140 Vt. at 146 (testimony by independent appraiser was sufficient to burst the bubble of presumption where expert based his opinion on two separate calculations using the fair market value and sales prices of comparable properties).

Even if Dr. McGarry were able to overcome the presumption, the burden of persuasion would remain on him as to all contested issues. *New England Power Co.*, 134 Vt. 507-08.

Ms. Gadreau's testimony provides that the decisions made by the Town in "tweaking" the Cross Country assessments for 2007 were done after consideration of that appraisal on all properties in town. Dr. McGarry was not singled out for special



treatment and the decisions regarding neighborhood changes, backland adjustments, and corrections for overlooked aspects of the property were fairly applied. Dr. McGarry has not presented any evidence which would persuade this Court otherwise.

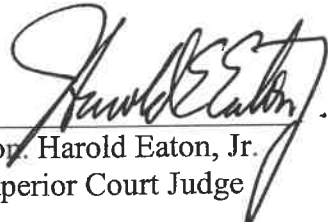
Furthermore, the Cross Country town wide appraisal method was used as a basis in the 2006 appraisal. It is too late to complain about shortcomings in that appraisal for the 2007 assessment.

ORDER

Defendant's Appeal, filed September 27, 2007, is DENIED.

The Assessment by the Listers is AFFIRMED.

Dated at Rutland, Vermont this 13 day of November, 2008.

  
Hon. Harold Eaton, Jr.  
Superior Court Judge