

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2003-358

APRIL TERM, 2004

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|----------------------------|------------------------------------------|
| | } APPEALED FROM: |
| | } } |
| Austin and Josephine Royle | } Property Valuation and Review Division |
| | } } |
| v. | } DOCKET NO. PVR-2002-1 |
| | } } |
| Town of Pomfret | } Trial Judge: Rexford E. Roberts |
| | } } |
| | } } |

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

The Town of Pomfret appeals from a decision of the state appraiser which set the value of taxpayers= residential property at \$325,000, approximately \$44,000 less than the value determined by the town= s board of civil authority. We reverse.

Taxpayers own a home on a 17.48 acre parcel in Pomfret, Vermont which they purchased in 2002 for \$395,000. The town assessed the property at \$372,100 as of April 1, 2002. Taxpayers appealed the valuation first to the town= s listers, and then to the board of civil authority. The board of civil authority reduced the assessment to \$369,400. Taxpayers appealed that decision to the state appraiser.

The state appraiser took evidence during a hearing at which taxpayers testified. Taxpayers claimed that the proper assessment value for their residence and associated land was no more than

roughly \$235,000. In support of their case, taxpayers presented an analysis of values for ten properties that they believed were comparable to theirs and that proved that the town over-assessed their property. The state appraiser rejected taxpayers= evidence. He found the evidence unpersuasive and of little probative value because taxpayers= methodology excluded land values from the total value of each comparable property.

In contrast to taxpayers= evidence, the state appraiser found persuasive the comparability analysis the town= s listers prepared. The town used higher value properties within the same neighborhood as taxpayers. Although he found the town= s evidence more reliable, the state appraiser reduced the final value of taxpayers= property to account for economic depreciation. This appeal followed.

A town= s valuation of real property for tax assessment purposes enjoys a presumption of validity when appealed to the state appraiser. Vt. Elec. Power Co. v. Town of Vernon, 174 Vt. 471, 472 (2002) (mem.). We defer to the state appraiser= s expertise and will affirm his decision if it is rationally based on the findings. Id. In this case, the state appraiser reduced the town= s assessment value by increasing the deduction for economic depreciation that the town had applied. The town claims that the state appraiser erred by increasing economic depreciation where there was no evidence in the record to support the increase. We agree.

Economic depreciation recognizes that factors external to a piece of real property may affect the property= s value. Breault v. Town of Jericho, 155 Vt. 565, 567 (1991). For example, in Breault, we upheld a deduction for economic depreciation because the value of the taxpayer= s property was affected by a nearby salt shed. The shed contaminated the taxpayer= s well and taxpayer could see the shed from his property. Id. The findings on the shed were based on

testimony from taxpayers, and thus, they had support in the evidentiary record. Id. We held that the board= s deduction for depreciation was supported by its findings on the proximity of the salt shed to the property and upheld its decision. Id. at 568-69.

In this case, the state appraiser= s deduction is problematic in two ways. First, it does not take into account the depreciation the town already applied due to a nearby riding stable. The riding stable operates at night using lights that can be seen from the subject property. The uncontradicted record evidence shows, however, that the town had already applied a five percent depreciation deduction to account for the riding stable. The state appraiser= s decision fails to explain why additional depreciation was necessary due to the presence of the riding stable.

Second, the state appraiser= s depreciation decision lacks evidentiary support. In deciding that an increase in depreciation was necessary, the state appraiser pointed to two properties A close to the subject property that are definitely not high end properties, and one of these properties was littered with junk automobiles.@ There is no record evidence about where those two properties are located in relation to the subject property, what characteristics make the nearby properties not A high end@ properties, or whether the junk vehicles are visible from the subject property. Although taxpayers claim the state appraiser found the two properties A run down,@ there are no findings to that effect B the state appraiser found only that the properties were not A high end.@

Taxpayers urge us to affirm the state appraiser= s decision because it was within his expertise and was based on his personal observation of the property during the statutorily-mandated site inspection. Certainly the state appraiser= s expertise allows him to adjust the value of the subject property where necessary, but he must do so based on record evidence and with an explanation sufficient to demonstrate the correctness of his adjustment. Because the decision to increase economic depreciation here is not adequately explained in light of the town= s previous application of depreciation, and because the decision lacks support in the evidentiary record, the state appraiser= s decision must be reversed.

Reversed.

BY THE COURT:

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice

Paul L. Reiber, Associate Justice