

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2004-069

AUGUST TERM, 2004

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| | } | APPEALED FROM: |
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| Poquette & Bruley | } | Property Valuation and Review Division |
| | } | |
| v. | } | DOCKET NO. PVR 2003-76 |
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| City of St. Albans | } | |
| | } | |
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In the above-entitled cause, the Clerk will enter:

Taxpayer Poquette & Bruley Partnership appeals the state appraiser's assessment of its apartment buildings. We reverse the state appraiser's decision, and remand the matter for further consideration.

Taxpayer owns two buildings that contain ten units of affordable housing. The City of St. Albans assessed the property at \$708,700. On appeal before the state appraiser, taxpayer argued that the fair market value of the property was \$500,000 under an income approach to valuation. The state appraiser agreed that the income approach was the most appropriate method for determining the property's fair market value, but concluded that the value of the property under that approach was \$687,800. The state appraiser arrived at that figure by subtracting expenses from income and dividing by a capitalization rate of 0.1048. Taxpayer does not challenge either the methodology or the capitalization rate employed, but rather argues that (1) the state appraiser was required to accept its testimony as to the fair market value of the property, and (2) in any event, no evidence supported the state appraiser's decision to ignore taxpayer's gardening expenses and to substitute his own values for repairs and utilities in place of those provided by taxpayer.

We find no merit to taxpayer's first argument. While taxpayer's testimony concerning the fair market value of the property was certainly admissible, see 12 V.S.A. § 1604 (" The owner of real or personal property shall be a competent witness to testify as to the value thereof."), the state appraiser is not bound by that testimony. Here, the state appraiser acted well within his discretion by relying on his expertise and the evidence in the record to arrive at a fair market value under the income approach different from that urged by taxpayer. See Wood v. Wood, 143 Vt. 113, 119 (1983) (weight to be given property owner's testimony as to value of property is matter solely within discretion of trier of fact).

Taxpayer's second argument concerns the amount of expenses to be applied in calculating fair market value under the income approach. For the most part, the state appraiser accepted the expenses claimed by taxpayer on Internal Revenue Service (IRS) forms admitted into evidence. The state appraiser noted, however, that the expenses claimed for repairs and utilities " \$8141 or 8.2% of income for repairs, and \$15,167 or 15.3% of income for utilities " were higher than those normally incurred for single family residential units. Consequently, the state appraiser ignored those figures and replaced them with figures equaling 5% of income for repairs (\$4969) and 10% of income for utilities (\$9939).

On appeal, taxpayer argues that there is no evidence to support the state appraiser's decision to substitute his own values for repairs and utilities in place of those claimed by taxpayer. Taxpayer also contends that the state appraiser ignored its claim of \$875 in gardening expenses. The issue concerning the gardening expenses is easily resolved. Taxpayer's own IRS forms indicate that the gardening expenses were included under the category of repairs, and indeed taxpayer testified that its cleaning and maintenance expenses fell under that category. The issue concerning the appropriate values for repairs and utilities is more troubling, however. The state appraiser provided no explanation as to why it is

appropriate, in calculating the fair market value of real property under the income approach, to deduct a standard percentage of income for both repairs and utilities rather than the actual value of those repairs and utilities in any given year. The state appraiser's failure to explain why doing so is necessary or appropriate to calculate fair market value leaves us without any basis to review his ultimate assessment of taxpayer's property. See Beach Props., Inc. v. Town of Ferrisburg, 161 Vt. 368, 371 (1994) (Board of Appraisers is required to make findings that support its ultimate determination of value, and " must state clearly what evidence it credits and why, so that the parties and this Court will know how the decision was reached"). When, as here, the state appraiser effectively relies on his expertise to produce evidence, he must explain the basis for presenting that evidence so that we may review it. Because that was not done in this instance, the matter must be remanded for the state appraiser to reconsider his valuation of taxpayer's property after addressing the appropriateness of submitting standard percentages of income for repairs and utilities in calculating expenses under the income approach to valuation.

Reversed and remanded.

BY THE COURT:

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice