

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

ENTRY ORDER

VERMONT SUPREME COURT
FILED IN CLERK'S OFFICE

SUPREME COURT DOCKET NO. 2009-263

APR 1 2010

MARCH TERM, 2010

Johnnie Cordell Breed, Trustee	}	APPEALED FROM:
	}	
	}	
v.	}	Property Valuation and Review
	}	Division
	}	
	}	
Town of Landgrove	}	DOCKET NO. PVR 2008-42

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

Taxpayer, Johnnie Cordell Breed, appeals from a decision of the State Appraiser affirming the Town Board of Civil Authority's assessment of taxpayer's property at \$8,962,319. On appeal, taxpayer claims that the Town of Landgrove's assessment is flawed because it did not properly determine fair market value and lacked common care, skill, and prudence. Taxpayer also claims that the State Appraiser's decision is not entitled to deference because it demonstrates unfamiliarity with basic appraisal theory. We affirm.

The subject property consists of 49.5 acres of land and several building improvements. The three major improvements are an 8,000 square-foot main house, a 6,000 square-foot lake house, and a 12,000 square-foot sports center containing a pool, racquetball court, sauna, kitchen, and steam room. In addition, the property has a studio apartment over a garage, a recording studio, a tennis court, a maintenance garage, and two gazebos. The property was assessed at \$6,555,000 in the last town-wide appraisal in 2003.

In 2008, the Town undertook a town-wide reappraisal. The listers performed the reappraisal themselves. Because Landgrove has a small number of structures and very few sales, the listers determined that they could not rely on a comparable sales method for assessing property. The listers visited all of the properties in Landgrove, considered sales and market data from Landgrove and surrounding towns, spoke with local builders and real estate brokers, and developed working guidelines that set out a land schedule and cost tables for improvements. The listers tested and modified the guidelines for accuracy and consistency. The listers applied these guidelines to taxpayer's property, deriving a listed value of \$9,945,900. Taxpayer grieved the assessment, and the listers adjusted the value to \$9,119,319. Taxpayer then appealed to the

Board of Civil Authority, which reduced the value to \$8,962,319, \$1,634,625 for the land and \$7,327,694 for the improvements.¹

Taxpayer appealed to the State Appraiser, and relying on her own expert appraisal, taxpayer argued that the fair market value of the property is \$5,975,000. Taxpayer's expert appraised the property using the market approach. He identified five comparables that ranged in sale price from \$3,100,000 to \$5,503,700. The expert then adjusted the sales to account for several factors affecting price including property size, view, additional living units, a sports center, and other outbuildings. To determine how much to adjust for each item, the expert used a matched pair analysis.² Using this analysis, the expert assigned a contributory value of \$1,000,000 for the sports center using an equestrian facility in Quechee as the comparable. The appraiser did not attempt to do a matched pair analysis for the recording studio, but instead assigned it a zero value, describing it as an over-improvement that would not add value to the property. The listers testified and disputed the accuracy of taxpayer's appraisal on several grounds.

The State Appraiser found the listers' guidelines were a fair and accurate method for determining fair market value. The State Appraiser noted that the valuations arrived at by the listers for several components of taxpayer's property, including the land site, the main house, and the guest house, were supported by the evidence of taxpayer's expert. The State Appraiser also noted several problems with taxpayer's expert's analysis. As to the sport's complex valuation, the State Appraiser found that the Quechee property used to arrive at the \$1,000,000 contributory value was invalid because that property's equestrian barn was in no way comparable to the sports complex/pool house on taxpayer's land. The State Appraiser found that the listers' assessment of the sports complex was more accurate because it took into account the actual features and condition of the sports complex. Further, the State Appraiser disagreed with the expert's testimony that the music studio added no value to the property and agreed with the listers that it could be modified to be a livable unit and should be assigned some value. Further, the State Appraiser found that overall the taxpayer's expert's choice of comparable properties to arrive at a fair market value was compromised because many of the comparables required very large adjustments. Ultimately, the State Appraiser found the Town's evidence more credible than taxpayer's and affirmed the Board's decision. Taxpayer appeals.

The goal of property tax appraisal is to list all properties at fair market value so that "no property owner pays more than his or her fair share of the tax burden." Barnett v. Town of Wolcott, 2009 VT 32, ¶ 4, __ Vt. __ (mem.). 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

¹ This is the corrected final value from the Board of Civil Authority decision, which had a mathematical error.

² As taxpayer's expert described, this type of analysis involves comparing two or more pieces of property that, with one exception, have the same characteristics. By comparing their sale price, one can identify the value, if any, that the one different characteristic has on the market value of the property.

presumption disappears, the town's evidence must be weighed against taxpayer's. *Id.* at 145. At that stage, the town can prove its case by "demonstrating that the method of appraisal substantially complied with the relevant constitutional and statutory requirements, or (by substantiating) the appraisal with independent evidence relative to the fair market value of the subject property and the listed value of comparable properties within the town." *Id.* (quotation omitted). At all times, however, "the burden of persuasion remains on the taxpayer as to all contested issues." *Id.*

Before addressing taxpayer's individual arguments, we note that the State Appraiser did not identify whether it found taxpayer's evidence sufficient to rebut the validity of the listers' valuation. This distinction is not critical in this appeal, however, because, even assuming that the presumption was initially rebutted, we conclude that taxpayer did not meet her burden of demonstrating that the listed value was not a fair assessment of the property's fair market value.

Taxpayer asserts several arguments on appeal challenging the State Appraiser's decision to affirm the listers' valuation, arguing that it was in error because: (1) the listers' land schedule and cost tables do not consider all elements that give property value and the market factor grade is subjective; (2) the listers' approach was not professional or equitable, and (3) the factual findings of the State Appraiser are not entitled to deference.

We address the final argument first. Taxpayer asserts that the State Appraiser's decision, specifically its factual findings, is not entitled to deference because according to taxpayer the decision exhibits a lack of knowledge regarding basic appraisal theory. Ordinarily, we accord deference to decisions of the state appraiser and "will set aside the state appraiser's findings of fact only when clearly erroneous." *Barnett*, 2009 VT 32, ¶ 5. Where the state appraiser's valuation is supported by some evidence from the record, "the appellant bears the burden of demonstrating that the exercise of discretion was clearly erroneous." *Garilli v. Town of Waitsfield*, 2008 VT 91, ¶ 9, 184 Vt. 594 (mem.) (quotation omitted). Taxpayer has presented no valid reason to deviate from our traditional standard of review in this case.

Next, we address taxpayer's challenges to the listers' methodology in using a land schedule and cost tables to assess the Town's land and improvements. Taxpayer's argument is that the listers' guidelines did not meet the statutory mandate that the "estimated fair market value of a property" should take into consideration "all the elements of the availability of the property, its use both potential and prospective, any functional deficiencies, and all other elements such as age and condition which combine to give property a market value." 32 V.S.A. § 3481. According to taxpayer, the listers should have considered more elements of the property in their assessment. See *Bloomer v. Town of Danby*, 135 Vt. 56, 57 (1977) (holding that "fair market value should not be established by resort to only one criterion").

"[A]ny valuation method resulting in a rational determination of fair market value will survive scrutiny." *State Hous. Auth. v. Town of Northfield*, 2007 VT 63, ¶ 5, 182 Vt. 90. We conclude that utilizing the land schedule and cost tables was a rational and appropriate method for valuing the residential property in the Town and properly took into account different attributes of each property. The listers' decision to construct and rely on guidelines was rational given the lack of comparable sales. These tables were constructed by examining every property and structure in the Town and examining cost and valuation data from builders and brokers. The

listers then back-tested the guidelines by comparing results with recent sales and verified that the guidelines produced accurate valuations. For dwellings and other improvements, the guidelines used quality factors to enhance or diminish value depending on condition. In addition, the listers' valuation method used a market factor grade to distinguish properties that command higher values due to factors including end-of-road privacy, views, ponds, and accompanying features. This was an appropriate means to take into account the characteristics of different properties. Thus, we reject taxpayer's argument that the Town's use of a market factor grade multiplier is arbitrary and lacks supporting documentation. This is not a situation where the listers applied a wholly ad hoc and arbitrary system. Cf. Town of Victory v. State, 2004 VT 110, ¶¶ 7-9, 177 Vt. 383. The process was defined and applied evenly across the Town.³

In addition, many of taxpayer's arguments about the listers' methodology relate to the listers' valuation of taxpayer's land, main house, and lake house, but none of these valuations appears to be contested. With the exception of the sports complex and the music studio, taxpayer's own expert's comparables generally support the Town's assessment of the other elements of taxpayer's property, including the value of the land, main house, and lake house. Given this accord of the value arrived at using the listers' land schedule and the cost tables with taxpayer's expert's appraisal, we conclude that there was no fundamental error in the listers' valuation process.


Essentially, the difference between the Town's listed value and taxpayer's expert's value is the amount assigned to the sports complex and the music studio. Taxpayer argues that the sports complex adds a value of \$1,000,000 to taxpayer's property, and the music studio does not add any value to the property. The listed value assigns these two elements of taxpayer's property values of \$3,130,000 and \$686,869 respectively. The State Appraiser did not find taxpayer's evidence to support her valuation credible. The State Appraiser concluded that the matched pair analysis used by taxpayer's expert to arrive at a \$1,000,000 contributory value for the sports complex was flawed and not credible. The State Appraiser, as the trier of fact, has discretion to determine the weight, credibility, and persuasive effect of the evidence and is not obligated to accept the views of either party. See Kruse v. Town of Westford, 145 Vt. 368, 374 (1985). The degree of comparability between the subject parcel and comparables "goes to the weight of the evidence and is a matter for the trier of fact." Scott Constr., Inc. v. City of Newport Bd. of Civil Auth., 165 Vt. 232, 239 (1996). The State Appraiser's determination that listers' valuation of the sports complex was more credible than taxpayer's is not erroneous. Although taxpayer's expert described the Quechee property as having a sports center with a large gym, offices, and a billiard room, at trial, taxpayer's expert conceded that this description was error and that actually the property had a riding barn. Given the differences between these two properties, the State Appraiser did not abuse its discretion in disregarding the expert's opinion on this point.

³ Taxpayer's assertion that her property is unique and therefore the Town should have hired an independent appraiser to determine the value is without merit. The Town is bound to equitably determine the value of all properties. In this case, the listers properly treated all residential properties equally by applying their guidelines in the same manner to all residential properties. See Town of Castleton v. Parento, 2009 VT 65, ¶ 10, ___ Vt. ___ (explaining that reappraisal is unconstitutional if it treats similarly situated taxpayers differently).

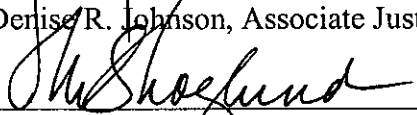
As to the music studio, given the undisputed evidence that this 4,600 square-foot building is in good condition and contains bathrooms, a septic system, and a garage, it was not clearly erroneous for the State Appraiser to reject taxpayer's argument that the building added no value to the property. Other than taxpayer's expert's opinion that the studio was an over-improvement and valueless, taxpayer offered no evidence as to the value of the music studio. The listers applied neutral criteria to determine the value of the studio, and the State Appraiser's rejection of taxpayer's arguments and acceptance of the listers' valuation was rational and within its discretion.

Affirmed.

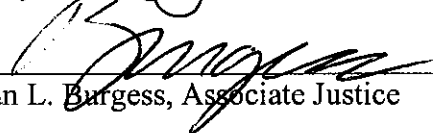
BY THE COURT:



Denise R. Johnson, Associate Justice



Marilyn S. Skoglund, Associate Justice



Brian L. Burgess, Associate Justice