

*Note: In the case title, an asterisk (\*) indicates an appellant and a double asterisk (\*\*) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2020-159

NOVEMBER TERM, 2020

Nicholas Vosinek* & Alycia Vosinek* v.	}	APPEALED FROM:
Town of Maidstone	}	
	}	Property Valuation and Review
	}	Division
	}	
	}	DOCKET NO. 2019-41

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

Taxpayers appeal a decision by a Division of Property Valuation and Review (PVR) hearing officer (state appraiser) upholding the Town of Maidstone’s assessed value for their residential property. We affirm.

Taxpayers purchased the single-family, year-round residence in November 2018 in a private, non-arm’s-length transaction for \$585,000, \$532,000 of which was allocated to real property. The .37-acre property consists of a main residence, a detached garage, and a storage shed. The total finished heated area of the one-and-one-half-story residence is 2652 square feet. It includes three bedrooms, two and one-half bathrooms, as well as two porches and a deck overlooking Maidstone Lake. The garage has a finished and insulated room in its top half-story. The property has an extensive dock and one hundred feet of water frontage on the east side of the lake.

The Town did a town-wide reappraisal in 2019. The PVR’s annual report of its state equalization study, effective for the 2019 grand list year, placed the Town’s common level of appraisal (CLA) at 104.44%. As a result of the town reappraisal, the assessment on taxpayers’ property increased by 18.4% from the previous year.

For 2019, the town listers initially assessed the property at \$523,300. As the result of taxpayers’ grievance, the listers reduced the assessment to \$484,900. Following taxpayers’ further appeal, the town board of civil authority upheld that assessment, finding no evidence indicating that the property was incorrectly valued or exceeded fair market value. Taxpayers then appealed to the PVR. After conducting an evidentiary hearing and inspecting the property immediately following the hearing, the state appraiser issued a decision upholding the Town’s assessment. The state appraiser concluded that taxpayers met their minimal burden of overcoming the presumption of the validity of the Town’s assessment, but determined that: (1) the Town provided evidence—in particular, the PVR’s evaluation of the Town’s 2019 town-wide reappraisal—demonstrating the validity of the reappraisal; (2) most of taxpayers’ proffered comparable properties were not usable

for various reasons; and (3) taxpayers ultimately failed to produce evidence demonstrating that the Town unfairly assessed their property.

On appeal, taxpayers argue that the Town assessed their property, as well as other recently sold properties, at a higher rate than comparable properties that had not been recently sold. They also challenge the increase in the quality rating of their property, despite no improvements to the property. They argue that the use of five or six different assessors for the town-wide reappraisal resulted in inconsistent quality ratings and that the Town increased their quality rating to make the assessed value for the property more closely align with the price they paid for it.

The goal of a property tax appraisal is to list all properties at fair market value so that “no property owner pays more than his or her share of the tax burden.” Barnett v. Town of Wolcott, 2009 VT 32, ¶ 4, 185 Vt. 627 (mem.). “This Court reviews decisions by the state appraiser to ensure that they are supported by findings rationally drawn from the evidence and are based on a correct interpretation of the law.” Barret v. Town of Warren, 2005 VT 107, ¶ 5, 179 Vt. 134. “We will set aside the state appraiser’s findings of fact only when clearly erroneous, in light of the fact that the appraiser has had the opportunity to judge the credibility of witnesses and weigh the evidence.” Barnett, 2009 VT 32, ¶ 5. “Our review of legal conclusions, by contrast, is nondeferential and plenary.” Id. A taxpayer may successfully challenge a town’s reappraisal if the “taxpayer demonstrates that the [t]own arbitrarily treated similarly situated taxpayers differently.” Town of Castleton v. Parento, 2009 VT 65, ¶ 10, 186 Vt. 616 (mem.). “Conversely, we will uphold the reappraisal if we can conceive of any reasonable policy or purpose for it, and if it treated similarly situated taxpayers equitably.” Id. (quotation and citations omitted) (applying rational basis test). Where there is no error of law and the state appraiser’s valuation is supported by some evidence, “the appellant bears the burden of demonstrating that the [state appraiser’s] exercise of discretion was clearly erroneous.” Garilli v. Town of Waitsfield, 2008 VT 91, ¶ 9, 184 Vt. 594 (mem.) (quotation omitted).

As taxpayers explicitly acknowledge, they are not arguing that the Town assessed their property in excess of its fair market value; rather, they are arguing that because of the town-wide reappraisal’s inconsistency in grading various aspects of the properties—due, in part, to the use of multiple appraisers—they were unfairly being asked to carry more of the tax burden than the owners of other similarly situated properties.<sup>1</sup> They point to the half-point increase in the quality rating of their property despite no recent improvements to the property. They further contend that that reappraisal disproportionately increased the Town’s assessment of recently sold properties like theirs.

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<sup>1</sup> For this reason, we do not consider whether the Town’s assessment reflects the market value of taxpayers’ property but focus only on taxpayers’ claim that in its reassessment the Town assigned greater assessed values to recently sold properties, including taxpayers’, than to properties not recently sold.

We find these arguments unavailing.<sup>2</sup> In concluding that the Town’s 2019 reappraisal complied with statutory and constitutional requirements, the state appraiser relied on the PVR’s evaluation of the Town’s appraisal, in which the PVR concluded, among other things, that the reappraisal provided equal treatment of recently sold properties compared to unsold properties. Regarding taxpayers’ exhibits showing that the reappraisal resulted in a disproportionate percentage change of listed value between recently sold and unsold lake properties, the state appraiser correctly stated that any disproportionate change in the listed value of those two categories of properties did not demonstrate that the properties were currently disproportionately assessed as to fair market value. See Schaffer v. Town of Waitsfield, 2008 VT 44, ¶ 25, 183 Vt. 428 (“[T]axpayers’ evidence of the listed value of comparable properties was meaningless absent evidence of the [fair market value] of these properties.”); Kachadorian v. Town of Woodstock, 144 Vt. 348, 352 (1981) (“The listed value of a comparable is not to be used in determining a subject property’s fair market value, and listed value alone, in the absence of fair market value, is useless in arriving at a ratio for equalization purposes.” (citation omitted)).

As for taxpayers’ proffered comparable properties, the state appraiser found them unusable for various reasons, including that: (1) taxpayers written and verbal comments about the properties were not supported by data from arm’s length actual sales of those properties; (2) some of the properties had been sold in private sales where their exposure to the market was unknown; (3) sales of some of the properties were too stale for comparison; (4) taxpayers did not provide enough detail to determine the comparability of some properties; and (5) some of the properties were plainly not comparable, for example, because they were on the west side of the lake where the land sloped steeply down to the water compared to properties on the east side where appellants’ property is located. Taxpayers have failed to undermine on appeal the state appraiser’s reasoning with respect to their proffered comparable properties. See Scott Constr., Inc. v. City of Newport Bd. of Civil Auth., 165 Vt. 232, 239 (1996) (stating that degree of comparability between subject parcel and proffered comparable properties “goes to the weight of the evidence and is a matter for the trier of fact”); see also Dewey v. Town of Waitsfield, 2008 VT 41, ¶ 31, 184 Vt. 92 (finding no abuse of discretion in state appraiser’s determination that sales greater than one year old were not relevant); Barrett/Canfield, LLC v. City of Rutland, 171 Vt. 196, 198 (2000) (“An ‘arms-length’ transaction is voluntary, generally takes place in an open market, and one in which the parties act in their own best interest.”). Finally, the fact that the quality grade of taxpayers’ property was raised a half-point as the result of the town-wide reappraisal and that several appraisers were used during that reappraisal does not demonstrate that the reappraisal overvalued

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<sup>2</sup> We do not address the Town’s argument that the state appraiser erred in concluding that taxpayers met their initial burden of producing evidence to overcome the presumed validity of the Town’s assessment. We note, however, that that initial burden of production is a “modest” one because determining whether the burden has been met concerns only the admissibility of the taxpayer’s evidence rather than a subjective evaluation of that evidence. In re Bilmar Team Cleaners, 2015 VT 10, ¶ 11, 198 Vt. 330. In this case, the state appraiser concluded that taxpayers had submitted admissible evidence bringing into question the validity of the Town’s assessment of their property. Significantly, even if the taxpayer overcomes that initial burden, the ultimate “burden of persuasion remains on the taxpayer as to all contested issues.” Rutland Country Club, Inc. v. City of Rutland, 140 Vt. 142, 146 (1981).

their property compared to other similarly situated properties. In short, nothing in the record demonstrates that taxpayers carried their burden of demonstrating that their property was assessed disproportionately compared to similar town properties.

Affirmed.

BY THE COURT:

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Beth Robinson, Associate Justice

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Karen R. Carroll, Associate Justice

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William D. Cohen, Associate Justice