

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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2000-478

JANUARY TERM, 2002

Gardner Smith, et al.	}	APPEALED FROM:
	}	
v.	}	Property Valuation and Review Division
	}	
Town of Wells	}	DOCKET NO. 1999-25 & 26
	}	
	}	
	}	
	}	
	}	
	}	

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

Appellants Gardner and Bonita Smith appeal from a decision of the State Appraiser increasing the listed value of their property in the Town of Wells. Appellants contend the Appraiser: (1) violated their rights by relying on certain observations made during a site visit; (2) improperly utilized an income approach to valuation not employed by the Town Listers or Board of Civil Authority; and (3) prejudiced their appeal by failing to transcribe the proceedings. We affirm.

Appellants' property contains two components: a three-unit residence, and a commercial rental building with two tenants, a United States Post Office and a real estate office. Following a town-wide reappraisal in 1999, the Listers valued the property at \$230,800. Appellants' grievance to the Board of Listers resulted in an increase in the value to \$237,700. Appellants appealed to the Board of Civil Authority, which reduced the listed value to \$225,900. Appellants then appealed to the Director of Property Valuation and Review, under 32 V.S.A. 4461. Following a hearing, the Appraiser issued a written decision, valuing the property at \$243,000. This appeal followed.

Our review is limited. The Appraiser's decision is presumed to be correct and findings conclusive if supported by the evidence. See Lake Morey Inn Golf Resort v. Town of Fairlee, 167 Vt. 245, 248 (1997). We must defer to the Appraiser when his or her findings are supported, even if the record contains contradictory evidence, and when the Appraiser's conclusions are rationally derived from the findings. Id. Thus, if the record contains some basis in evidence for the Appraiser's valuation, the appellant bears the burden of demonstrating that it is clearly erroneous. Id.

Appellants first contend the State Appraiser failed to follow proper procedure and violated their constitutional rights by relying on certain observations he made of the property during a post-hearing inspection without affording them an opportunity to respond. In its findings, the Appraiser noted two features of the commercial property not described in the Town's testimony - a detached shed, which he characterized as having minimal value, and a basement area, which he described as having present value for future expansion. Appellants argue that they were not afforded the opportunity to show that the basement area may be worthless.

In valuing the commercial component, the Appraiser relied on a detailed analysis submitted by the Town and prepared by a professional appraiser which utilized a discounted cash flow analysis based on income capabilities derived from comparable rental properties. The Appraiser noted that appellants had not contested any of the assumptions or income figures used in the analysis, which the Appraiser found reflected accepted appraisal practices. The Appraiser thus

adopted and relied on the analysis, which yielded a value of \$136,000 for the commercial component, although the Appraiser reduced that figure by the value of the land (\$19,900) because it had already been accounted for in the residential component, thus resulting in a "credible value for the commercial component (not including land)" of \$116,200. The Appraiser's overall findings thus reveal that whatever unspecified present value the basement may have had, it played no meaningful role in the Appraiser's valuation, which was based on the income analysis provided by the Town. Accordingly, any error related to the site visit was harmless.

Appellants next appear to contend that the Town improperly relied on an income analysis to value the commercial property because the Listers and Board of Civil Authority did not use that approach. Upon appeal to the Director of Property Valuation and Review, the State Appraiser is statutorily required to "proceed de novo and determine the correct valuation of the property." 32 V.S.A. 4467. Thus, the Appraiser must conduct an evidentiary hearing and make findings and conclusions entirely independent of the decisions of the Listers or BCA. Furthermore, there is no one accepted means of determining value. "The use of any or all methods is an 'appropriate subject[] for expert testimony, to be evaluated by the [Appraiser],' and unless the use of a single method or combination of methods leads the [Appraiser] astray, this Court will not second-guess [his or her] judgment." Lake Morey Inn, 167 Vt. at 248-49 (quoting New England Power Co. v. Town of Barnet, 134 Vt. 498, 505 (1976)) (first alteration in original). Appellants do not contest the reliability of the income method utilized by the Town's expert and adopted by the Appraiser. Accordingly, we discern no error.

Finally, appellants contend they were prejudiced because the hearing before the Appraiser was not recorded. The Town has represented that the parties were informed prior to the hearing that it would not be recorded unless either party objected, and that appellants did not object. See 3 V.S.A. 809(f) (requiring that oral proceedings in contested administrative hearings be transcribed only on request of party). We note, in any event, that appellants have not indicated how they have been prejudiced by the absence of a recording. Accordingly, we discern no basis to disturb the decision.

Affirmed.

BY THE COURT:

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Jeffrey L. Amestoy, Chief Justice

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James L. Morse, Associate Justice

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Denise R. Johnson, Associate Justice