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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2004-480

APRIL TERM, 2005

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| John Wardle | } | APPEALED FROM: |
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| v. | } | Property Valuation and Review Division |
| | } | |
| Town of Roxbury | } | |
| | } | DOCKET NO. PVR 2003-132 |

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

Taxpayer appeals from a Property Valuation and Review Division determination valuing taxpayer's property at $79,000 for the Town of Roxbury's 2003 grand list. Taxpayer challenges the state appraiser's view of the evidence and urges us to reverse the decision and assign his property a lower value. We affirm because taxpayer has not demonstrated reversible error.

Taxpayer owns a single family cape-style residence on eleven acres in Roxbury, Vermont. The home is a not completely finished. In 2003, the town listers set the property's value at $81,000. Taxpayer appealed the valuation to the board of civil authority because he believed several characteristics of the property made it worth considerably less. Specifically, the bathroom fixtures have rust stains; the bulk land is swampy and contains valueless red pine trees; the septic system, while functional, violates local regulations; and the roof insulation on one of the outbuildings is made from brown asbestos, a hazardous material. After a hearing and site visit, the board lowered the listed value of the property to $79,000. Taxpayer appealed that decision to the state appraiser.

On August 12, 2004, the state appraiser held an evidentiary hearing at which taxpayer and one of the town listers testified. Both parties offered exhibits that they believed supported their respective positions on the property's fair market value. The state appraiser also conducted a site visit, and on September 14, 2004, he issued a written decision setting the value of the property at $79,000. In his decision, the state appraiser explained that taxpayer failed to overcome the presumptive validity of board of civil authority's decision. Taxpayer filed the present appeal in this Court.

On appeal, taxpayer argues that the state appraiser erred by (1) not reducing the property's value to reflect the stained bathroom fixtures; (2) rejecting taxpayer's argument to lower the grade of the bulk land from .8 to .63; (3) refusing to adjust the property's value in light of the septic system's violation of local regulations for year-round residences; (4) finding that the residence has 1200 square feet of living space rather than 960 square feet as taxpayer suggested; (5) giving weight to the town's comparable properties in the decision rather than the comparable properties taxpayer used in his analysis of market value; and (6) declining to reduce the value to account for the hazardous asbestos in one of the outbuildings. Taxpayer contends that $63,520 is a more accurate market value for his property than the value set by the state appraiser.

Before addressing taxpayer's specific claims of error, we must correct what appears to be a misunderstanding of the presumptions that apply in proceedings before the state appraiser. In his decision, the state appraiser concluded that

taxpayer did "not overcome the presumption that the assessed valuation found by the Board of Civil Authority is valid." The presumption applicable in property tax proceedings like this one disappears once the taxpayer produces some evidence contrary to the board's valuation. Town of Victory v. State, 2004 VT 110, ¶ 18, 865 A.2d 373. Whatever the state appraiser may ultimately think of the weight of the evidence, taxpayer need produce only some admissible evidence of value to rebut the presumption. Vt. Elec. Power Co. v. Town of Vernon, 174 Vt. 471, 472 (2002) (mem.).

In this case, taxpayer offered evidence of three properties he testified were comparable to his, and he offered his opinion of his property's fair market value. Taxpayer's evidence was sufficient to burst the presumption that the town's valuation was correct. See Jeffer v. Town of Chester, 138 Vt. 478, 480 (1980) (per curiam) (explaining that taxpayer's evidence, including his own opinion on the value of his property was enough to burst presumption in favor of town's valuation). Once the town's valuation lost its presumptive validity, the state appraiser had to weigh the competing evidence before him to determine the property's fair market value. Although the state appraiser erroneously stated that the presumption was not rebutted, he went on to weigh the competing evidence as if it were. Thus, the erroneous statement was harmless.

The state appraiser's evidentiary weight and credibility determinations are at the heart of taxpayer's appeal. Because the state appraiser, as fact finder, has sole responsibility for making those determinations, see Lake Morey Inn Golf Resort, L.P. v. Town of Fairlee, 167 Vt. 245, 249 (1997), taxpayer carries a heavy burden on appeal. Unless taxpayer demonstrates that the state appraiser's decision is not rationally derived from his findings, which must have an evidentiary basis, we will not disturb the decision on appeal. Vt. Elec. Power Co., 174 Vt. at 472.

Taxpayer first claims that the state appraiser should have reduced the value of the property because the bathroom fixtures were stained with iron from the water serving the property. The state appraiser rejected taxpayer's claim because he concluded that the problem could be eliminated with a filter system. Moreover, the below-average quality of the water serving taxpayer's property was taken into account in the state appraiser's valuation. Taxpayer has not demonstrated that the state appraiser's decision was irrational. Accordingly, taxpayer's first claim must fail.

Taxpayer next argues that the state appraiser should have lowered the grade of taxpayer's bulk land to reflect the property's poor quality timber and its swampy character. Taxpayer offered only his own opinion to support this claim. A landowner's opinion of value is admissible evidence of the fair market value of real property. See Kachadorian v. Town of Woodstock,149 Vt. 446, 450 (1988) (reaffirming that an opinion of a well informed person based upon the purposes for which a piece of property is suited may be considered in determining fair market value). The state appraiser is not compelled, however, to accept the opinion if he does not believe it because the state appraiser is solely responsible for credibility determinations. Town of Fairlee, 167 Vt. at 249. In this case, the state appraiser explained that taxpayer did not support his opinion by presenting evidence that his land was graded higher than other similar land in the Town of Roxbury. Under the circumstances, we cannot say that the state appraiser erred in denying taxpayer's request to reduce the grade of the bulk land.

Taxpayer's third claim on appeal relates to the septic system serving his property. Taxpayer testified that he was informed by a town officer that the septic system to his property did not comply with the town's regulations for year-round residences. Taxpayer urged a downward adjustment to reflect the apparent zoning violation. The state appraiser considered taxpayer's suggestion and ultimately rejected it. He explained that the record lacked any evidence that taxpayer's septic system had failed, and he noted that the sewage systems of several properties both parties used as comparables were valued the same as taxpayer's. The evidence supports the state appraiser's findings, and those findings support his decision. Taxpayer's third claim is, therefore, unavailing.

Next, taxpayer takes issue with the state appraiser's findings on the square footage of his property. Taxpayer concedes that the parties measured the residence during a site visit and the measurement came to 1200 square feet of

living space. But, taxpayer argues, one cannot walk erect throughout the second floor of the home because of the ceiling angles. Thus, the town should consider the home to have only one and one-half stories and not two stories. The state appraiser's decision shows that he considered the site-visit measurement to be accurate—whether one characterizes the home as a one and one-half story or two-story home—and he was unpersuaded by taxpayer's argument. Taxpayer has not demonstrated any irrationality in the state appraiser's decision on the home's living space, and we therefore find no reason to disturb it on appeal.

The weight the state appraiser accorded the town's evidence of comparable properties forms the basis of taxpayer's fifth claim on appeal. Taxpayer argues that the properties he offered into evidence were more comparable to his property than the properties the town used in its fair market value analysis. Again, questions of evidentiary weight and credibility are the province of the fact finder. Town of Fairlee, 167 Vt. at 249. In any event, the state appraiser explained that taxpayer's exhibits of comparable properties showed that the properties were sold at less than their assessed values by $15,600 and $10,600. He also noted that the evidence did not establish that taxpayer's property was listed at a value higher than its fair market value or that it was assessed at a higher percentage of fair market value than other similar properties in the Town of Roxbury. We find no reason to overturn the state appraiser's decision considering the evidentiary record.

Finally, taxpayer argues that hazardous asbestos insulation in the roofing of one of his outbuildings should have reduced the fair market value of the subject property. The state appraiser explained that taxpayer's suggested reduction was not appropriate because the building containing the asbestos was not considered in the town's valuation. The state appraiser did not err considering that the building is not included in the assessment.

Affirmed.

BY THE COURT:

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John A. Dooley, Associate Justice

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Denise R. Johnson, Associate Justice

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Frederic W. Allen, Chief Justice (Ret.),
Specially Assigned