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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2005-057

SEPTEMBER TERM, 2005

Peter B. Smith	}	APPEALED FROM:
	}	
v.	}	Property Valuation and Review Division
	}	
Town of Mt. Holly	}	
	}	DOCKET NO. PVR #2003-107

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

Taxpayer appeals from the state appraiser=s decision upholding the listed value of his property. He argues that the appraiser erred by applying a presumption of validity to the town=s valuation when he introduced credible evidence tending to prove that the property had been assessed in excess of its fair market value. We affirm.

Taxpayer owns a single-family residence on nine acres of land in Mt. Holly, Vermont. The residence is a New England farmhouse built in the early 1800s. It has seven rooms, including four bedrooms and two and one-half baths. The living area encompasses approximately 2686 square feet. Amenities include two fireplaces, a large open deck, a two-car detached garage, an attached shed, and two small barns. In 2003, the town reappraised the property and set its listed value at $285,000. Taxpayer appealed to the board of listers, which reduced the listed value to $253,000. Taxpayer appealed this decision to the town=s board of civil authority, which denied the appeal. A state appraiser was then appointed to review taxpayer=s claim and after a hearing and a site visit to the subject property and the comparable properties, the appraiser upheld the listed value of the property.

The town used a sales comparison approach to assess the fair market value of taxpayer=s property, and, at the hearing, it introduced a Uniform Residential Appraisal Report for taxpayer=s property, which contained three comparable properties. Taxpayer testified on his own behalf and the town=s independent, Vermont-licensed expert appraiser testified for the town. Taxpayer asserted that the town=s appraiser had miscalculated the value of the comparable properties, and therefore his property had not been assessed at its fair market value.

The following evidence was presented at the hearing. The first comparable property used by the town=s appraiser was a home on an approximately one-hundred-acre site, which sold for $270,000 in 2001. The town=s appraiser had reduced the value of this property by $50,000 to account for the difference in acreage. Taxpayer asserted that, based on his calculations, the town=s appraiser should have reduced the value of the property by $108,000, or approximately $1550 per acre. Taxpayer arrived at this figure by looking at the assessed value of fourteen parcels of property in town, which varied in size from ninety-one acres to 109 acres. Taxpayer testified that he took the total value of each parcel, minus the homestead value, and assumed that the balance Awas for whatever other factors the land had.@ If the parcels had homesteads, he reduced the property=s acreage by two acres. He then added all of the acreage and added the selling prices and calculated an average price of $1550 per acre. He thus asserted that the town=s valuation of the one-hundred-acre parcel was out of line with the value of one-hundred acre parcels for the rest of the town.

Taxpayer next asserted that the value of the second comparable property should have been reduced by $82,550 because a portion of that site had lake frontage, which his property did not. Taxpayer arrived at his figure by looking at a third parcel of property in the town that had approximately five acres of frontage on the same lake. This third lot sold in 1998 for $120,000. Taxpayer testified that he Aarbitrarily@ reduced the value of that lot by $20,000 to reflect the presence of a septic system, and thereby determined that lake frontage was worth $21,276 per acre. He reasoned that

the value of the second comparable should be therefore be reduced by $82,550 to reflect the value of the 3.88 acres of lake frontage. The town responded that the second comparable site did not in fact have any lake frontage at the time of the relevant sale and the owners of the second comparable site had acquired a lakefront lot at a later date. A town official testified that the listers= card for the property, on which taxpayer relied, was not a reflection of what had been transferred earlier. Taxpayer also challenged the town=s third comparable property, asserting that it should not have been used because the properties were very different. Finally, taxpayer maintained that another parcel of property should have been used as a comparable sale. The town=s appraiser testified that he had seen a building inspection report on that parcel of property, however, and due to its condition, concluded that it would not be a good comparable sale.

In a written order, the state appraiser concluded that the evidence presented by taxpayer was insufficient to overcome the presumption that the town=s assessment was valid. The appraiser explained that he did not need to be an arbiter between the town and taxpayer as to which sales were appropriate to use as comparable sales because taxpayer was not a qualified real estate appraiser, and, in his attempts to make comparative analyses on comparables #1 and #2 in the listers= appraisal, taxpayer had apparently relied more on his personal opinion rather than supportable market data. As to the first comparable property, for example, the appraiser found that taxpayer=s per-acre calculation gave no consideration to the characteristics of the parcels, such as topography, access, location, and view amenity; the average of all of the sales identified by taxpayer was in no way indicative of the value of the land in the first comparable property. The appraiser also noted that, although the third comparable was newer and smaller than taxpayer=s home, it had been chosen because of the lack of available sales, and the appraisal made significant adjustments for its higher quality, better condition, and gross living area. The appraiser explained that taxpayer had the burden of providing credible evidence to show that the town=s assessed value was more than the fair market value or that the property was assessed at a higher percentage of market value than other properties in the town, and he had failed to meet his burden. The appraiser therefore upheld the listed value of the property at $233,000. This appeal followed.

On appeal, taxpayer argues that he introduced credible evidence that tended to prove that his property had been assessed in excess of its fair market value, and the appraiser therefore erred in presuming the validity of the town=s assessment. According to taxpayer, the appraiser erred by discrediting his evidence on the basis that it was his personal opinion and taxpayer was not a licensed real estate appraiser. He argues that he presented the appraiser with facts, not opinion evidence. In support of his assertion, taxpayer points to his assessment of the per-acre value on the first comparable, and his calculation as to the value of lake frontage on the second comparable. He argues that this evidence afforded a basis for a rational inference that his property had been assessed substantially in excess of its fair market value.

AIn appeals taken to the state board of appraisers there is a presumption that the appraisal is valid and legal.@ Kruse v. Town of Westford, 145 Vt. 368, 371 (1985). The taxpayer bears the burden of providing evidence to overcome this presumption, and he overcomes the burden if he presents Acredible evidence@ that Afairly and reasonably@ indicates that the property was assessed at more than its fair market value. Rutland Country Club, Inc. v. City of Rutland, 140 Vt. 142, 145 (1981) (quotations omitted). If the taxpayer overcomes the presumption of validity, the town must then come forward with evidence to justify its appraisal. Kruse, 145 Vt. at 372. The taxpayer retains the burden of persuading the trier of fact that his property is over-assessed, however, and at the close of the evidence, the Board must weigh the town=s evidence against that presented by the taxpayer. Id. at 372-73. AThe town can prevail 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. at 373 (quotations and brackets omitted). Once the state appraiser has shown some basis in evidence for his valuation, the appellant bears the burden of demonstrating that the exercise of discretion was clearly erroneous. Breault v. Town of Jericho, 155 Vt. 565, 569 (1991). If the decision is within the Arange of rationality,@ it must be affirmed. Id.

We find no basis to disturb the appraiser=s decision here. Although the state appraiser erred in finding that the taxpayer had not introduced sufficient evidence to overcome the presumption, the error is harmless. The appraiser went on to weigh the evidence, and he found taxpayer=s evidence unpersuasive. We need not reiterate the appraiser=s findings to this effect here. The appraiser, as trier of fact, has the discretion to determine the weight, credibility and persuasive effect of the evidence, Kruse, 145 Vt. at 374, and the degree of comparability between the subject parcel and

comparable parcels 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 town presented evidence to support its appraisal, and we will not disturb the state appraiser=s assessment of the weight of the evidence on appeal. Taxpayer fails to show that the appraiser=s decision was outside of the range of rationality.

Affirmed.

BY THE COURT:

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Denise R. Johnson, Associate Justice

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Marilyn S. Skoglund, Associate Justice

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Brian L. Burgess, Associate Justice