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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2009-135

NOVEMBER TERM, 2009

David C. Camara, Sr.	}	APPEALED FROM:
	}	
v.	}	Property Valuation and Review Division
	}	
Town of Pawlet	}	DOCKET NO. PVR 2008-43

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

Taxpayer David Camara, Sr., appeals from a decision by the state appraiser setting the value of taxpayer's forty-acre slate quarry and accompanying buildings in the Town of Pawlet at $256,504. Taxpayer challenges the Town's valuation of his land and buildings, and he claims that the appraiser violated his right to due process by denying his request for an additional hearing following the Town's motion to reconsider. We affirm.

Taxpayer owns a forty-acre slate quarry improved with two metal buildings used for slate processing, fabrication, and storage. Following a reassessment of all slate quarries in the Town, the Town assessed the property at $325,900 for the 2007-2008 tax year, and taxpayer grieved the assessment. The listers adjusted the value to $299,710. Taxpayer again appealed to the Board of Civil Authority, which found that the buildings were overvalued and reduced the value to $276,445. Taxpayer then appealed to the state appraiser.

Both parties presented evidence on the value of the property. The Town listers testified that the Town had hired a geologist to create a land schedule for valuing slate quarry properties. The schedule sets a five-acre plot with a value of $6500 per acre. Any excess acreage for the slate quarry parcel is valued using the "Rural Undeveloped Land Schedule." The per-acre values for the schedules were derived by looking at property sales from 2004-2007. The geologist then graded each quarry property based on the quantity, quality, and ease of removing stone resources. Taxpayer's property received a -1 rating, which reduced the value of taxpayer's property by 20%. The Town presented comparables for taxpayer's land and for the buildings on the property.

Taxpayer testified that his property was overvalued because the slate had been exhausted from the property and no further stone could be removed. In support, taxpayer presented as comparables the assessments of two nearby farms, which were assessed at $1706 and $1532 per acre. Taxpayer also testified that the assessments of two quarries in the neighboring town of Wells were much lower than the assessed value of his property. Taxpayer also challenged the valuation of the buildings on his property and presented comparables. Taxpayer testified that the fair market value of his property was $125,000.

The appraiser credited taxpayer's testimony that the slate reserves on his property are exhausted and that the best use of the property is for stone fabrication and storage. The appraiser concluded, however, that the assessments taxpayer presented of the nearby farms were not comparable to taxpayer's property because they were assessed under a different schedule. Both of taxpayer's submitted properties are farms with land in excess of the house site valued on the Excess Acreage Land Schedule. In addition, the appraiser concluded that the evidence of assessments from a neighboring town were not relevant to whether taxpayer's property was properly assessed. The appraiser concluded that because taxpayer's land is a nonproducing quarry the $6500 five-acre assessment should not apply; rather, the entire property should be assessed based on the Rural Undeveloped Land Schedule, which for taxpayer's land is set at $3064 per acre. Thus, the appraiser set the value of the land at $98,016, and the buildings at $164,665 less a depreciation factor of 37.5% for a value of $102,916, resulting in a total value of $200,932. The Town filed a motion to reconsider, explaining that the value of the buildings had already been depreciated and therefore the state appraiser had effectively depreciated the buildings twice. The appraiser agreed and depreciated the original assessed value of the buildings by 37%, arriving at a final assessed value for the entire property of $256,504. Taxpayer now 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 (mem.). We accord deference to decisions of the state appraiser and "will set aside the state appraiser's findings of fact only when clearly erroneous." Id. ¶ 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).

We first address the value of taxpayer's land. Taxpayer argues that the Town overvalued his land because the Town treated it as a working quarry when in fact the slate is exhausted from the site. When a taxpayer grieves an assessment to the state appraiser, there is a presumption that the Town's assessment is valid. City of Barre v. Town of Orange, 152 Vt. 442, 444 (1989). The burden rests with the taxpayer to demonstrate that his property was assessed above fair market value. Id. If the taxpayer presents credible evidence that his property was appraised above fair market value, then the presumption disappears and "it is up to the town to introduce evidence that justifies its appraisal." Adams v. Town of West Haven, 147 Vt. 618, 619-20 (1987).

In this case, taxpayer asserts that he presented credible evidence that his property was overvalued and the Town then failed to introduce evidence justifying its appraisal. Indeed, the state appraiser accepted taxpayer's assertion that the property's slate was exhausted and accordingly discounted the value of the property by eliminating the increased value for a quarry and applying the per-acre value for rural undeveloped land to the entire parcel. Taxpayer asserts that the Town did not adequately explain why this schedule should be applied to his land and that the appraiser failed to adequately explain his decision. Essentially, taxpayer's argument is that once the appraiser found that the Town had over-assessed taxpayer's property, the appraiser could not rely on any of the Town's evidence to arrive at the correct fair market value of taxpayer's property.

We conclude that there was no error. Even where the presumption of validity disappears, the ultimate burden of persuading the court that the Town's appraisal is incorrect "remains with the taxpayer." Id. at 620 n.* (citing Kruse v. Town of Westford, 145 Vt. 368, 372 (1985)). Taxpayer has not presented any evidence to demonstrate why the land schedule upon which the state appraiser relied was not an appropriate method for valuing his land. The appraiser concluded that because the quarry was exhausted of slate, it should be assessed as a non-producing quarry just like the excess acreage for a

producing quarry and applied the per-acre value under the Rural Undeveloped Land Schedule. "[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. The appraiser's decision to rely on the land schedule was rational. This schedule was developed by examining actual sales of quarries in the Town. Given that the value of the property was determined using a schedule which was applied to all similar properties, and that the appraiser's decision puts taxpayer's property at an assessed value similar to those of the comparable properties submitted by the Town, we find no merit to taxpayer's argument that the appraiser failed to equalize his property.

Next, we address taxpayer's argument that the Town overvalued the buildings on his property. On appeal, taxpayer argues that the appraiser failed to consider the two comparables he submitted as evidence. The appraiser, as trier of fact, has the 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, 145 Vt. at 374. 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 Town also submitted comparables to demonstrate that taxpayer's buildings were assessed correctly, and the appraiser was free to accept this evidence. The appraiser did find that the Town had applied an incorrect depreciation factor to the buildings, concluding that the buildings should have been depreciated at 37.5%, instead of the 25% and 29% originally applied by the Town. Because the appraiser's decision is within the range of rational choices, it must be affirmed.

Finally, we address taxpayer's argument that the state appraiser erred in denying his request to hold an additional hearing following the Town's motion to reconsider. We conclude that there were no grounds to hold an additional hearing. The appraiser's original decision assumed that the value of taxpayer's buildings had not been depreciated. Following the Town's clarification that the depreciation had already been applied, the appraiser corrected the error. This correction, as the appraiser explained, resulted from "an inadvertent factual error." There was no additional evidence presented and no need for further testimony from taxpayer. Under similar circumstances in a civil proceeding, the court is not obligated to hold a hearing on a motion to alter or amend. See V.R.C.P. 59(e). Further, taxpayer does not identify any specific prejudice that he suffered from the absence of a hearing, and we find none. See Kalakowski v. Town of Clarendon, 139 Vt. 519, 527 (1981) (court did not err in failing to hold hearing on motion to amend where no additional evidence was presented and no prejudice resulted).

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice