

January 15, 2019

DECISION ON MOTION FOR RECONSIDERATION

re: { Lia C. Venner & Lee E. Cota }
{ }
{ v. } Docket No. PVR 2017-9
{ }
{ Town of Monkton }
{ }

A. INTRODUCTION

1. The Town forwarded a Motion for Reconsideration, ("Motion") to the Director of Property Valuation and Review, ("PVR") on December 26, 2018. PVR forwarded the Motion to me on December 26, 2018. The Motion is entered by the Town Listers for a Reconsideration of my Decision on the instant appeal that was rendered on December 6, 2018.
2. The Appellant was not notified of the Motion, therefore, via email on December 26, 2018 I gave notification to the Appellant and gave the Appellant until January 12, 2019 to submit a response to the Motion.
3. No response from Appellant has been received as of January 14, 2019.
4. The appeal Hearing is governed by the Administrative Procedure Act, ("APA") *V.S.A. 3 §800 et seq.* The APA does not address Motions for Reconsideration and *Vermont Rules of Civil Procedure, (VRCP) §59(e)*, states that a Motion for Reconsideration shall be served not later than 10 days after

entry of the judgment. The Motion is timely.

B. FINDINGS AND DECISION

1. "The finding that the building quality and overall physical condition are below average does not comply with Marshall & "Swift parameters." After inspecting the SP, I found that the 57.00% Physical Depreciation, ("PD") and 2.75 quality grade for the single family residential dwelling set by Town to be correct. I simply described these items below average rather than fair and fair/average.

2. "The decision ignored the pre-hearing (before grievance) reductions and changes." The fact that the Town changed the quality of the subject dwelling and made other changes prior to Lister's Grievance hearings is of no evidentiary value on appeal to PVR. Hearings before Property Valuation Hearing Officers are de novo, "An appeal of property valuation to the board of appraisers is a de novo proceeding . . ." *Gouin v. Town of Halifax (1987) 148 Vt. 524, 535 A.2d 788.* and, "This section, (32 V.S.A. §4467) mandates trial court to try dispute anew, as though it had never been heard before . . ." *In re Milot (1989) 151 Vt. 615, 563 A.2d 1005.*

3. "Despite Lisa Truchon from NEMRC testifying to procedures . . . comparables were dismissed on the basis of being unreliable sale properties because the sale prices are far above any reasonable estimate of FMV for he SP." What comparable sale properties are considered in

the determination of Fair Market Value is at the sole discretion of the Hearing Officer as trier of fact. "Which properties the court will consider and compare in reaching its decision as to fair market value is an evidentiary question laying within its sound discretion. . . " *Monti V. Town of Northfield*, (1977) 135 Vt. 97, 369, A.2d 1373. "Whatever property the state board of appraisers uses to establish fair market value of a property is an evidentiary question and within its discretion." *Kachadorian v. Town of Woodstock* (1988) 149 Vt. 446, 545 A.2d 509. I have thirty eight years of experience in the valuation of real estate and the administration of ad valorem taxation in Vermont and twenty four years of experience hearing appeals from local Boards of Civil Authority throughout the state. "The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence." 3 V.S.A. §810(4) The Hearing Officer is not obligated to accept or apply evidence in accordance with the wishes of either party. "On appeal of a property appraisal, the state board of appraisers, as the trier of fact, is under no obligation to accept, interpret, or apply evidence in accordance with the views of either party." *Kruse v. Town of Westford*, 145 Vt. 368, 488 A.2d 770 (1985).

4. "A fifteen minute recess requested by the Town to review material not presented by the Appellant until the hearing was denied, (even though there was a request for documents in the Hearing Notice)." Asking for documents to be forwarded in a Hearing Notice is simply a request. Unless a subpoena is issued, there are no statutory provisions or sanctions to be applied if a party does not comply with a request for

documents. The Town did not request Discovery from the Appellant therefore it would have been inappropriate and indicated favoritism to recess a Hearing for the Town to review documents not previously presented to the Hearing Officer by the Appellant.

5. "What admissible evidence has been shown to overcome the presumption of validity?" Three admissible documents were presented by the Appellant and entered into the record. As trier of fact, the Hearing Officer must determine the evidentiary weight of all evidence of record. "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." *Kruse v. Town of Westford*, 145 Vt. 368, 488 A.2d 770 (1985), (emphasis added). No evidentiary weight was given to the results of the Appraisal report presented by the Appellants, however there were valid comparable sale properties within the report available for independent use in determining an estimate of FMV for the SP. "It is not necessary for an administrative body or a trial court exercising discretion to explain the precise mathematics that led to a particular decision involving a sum of money." *Breault v. Town of Jericho*, 155 Vt. 565, 568, 569, 586 A.2d 1155-56 (1991).

6. "The decision in #5 states the most recent Town reappraisal was for the 2007 Grand List and it should have been 2017." The Town is correct and I apology for the typographical error.

7. There is no doubt that the Town Listers do their best to be fair and equitable in listing real estate values in the Grand List. It is a fact, however that even a recent market adjusted computer model fails to generate the best estimate of FMV for each and every property in a municipality. When valid comparable sale properties are in evidence, an analysis of the properties through Direct Sales Comparison generally provides the most reliable method of determining an estimate of FMV for single family residential properties.

C. CONCLUSION

1. The year of 2007 in A. 5. of the Decision is corrected to year 2017.
2. After a thorough review of the evidence of record and my Decision rendered on the instant appeal, with the exception of correcting year 2007 to year 2017, no other change is warranted.
5. Dated at Montgomery, Vermont, this 15th day of January in the year of our Lord, Twenty Hundred and Nineteen.

Merle R. Van Gieson
Merle R. Van Gieson
Property Valuation Hearing Officer

cc: Jill Remick, Director of Property Valuation & Review
Lia C. Venner & Lee E. Cota, Appellant
Town of Monkton, Appellee
File