

PROPERTY VALUE APPEAL DECISION

{ Lia C. Venner & Lee E. Cota	}	Appeal from Board
{	}	of Civil Authority
re: {		v.
{		
{ Town of Monkton	}	2017 Grand List
	}	Docket No. PVR 2017-9

The property under appeal is listed as 1.70 acres of land improved with a single family dwelling: Parcel I. D. No. 05.104.020002.

Pursuant to 32 V.S.A. §§4461-4467, and 3 V.S.A. §801 et seq., I heard the above captioned appeal on November 26, 2018 in Monkton, Vermont.

The assessed values as determined by the local boards are as follows:

	Land/Site Imp.	Improvements	Total
Lister	\$62,700/\$15,000	\$60,200	\$137,900
BCA	\$62,700/\$15,000	\$60,200	\$137,900

I find the correct values of the Subject property to be:

Fair Market Val.:	\$120,800	Listed Val.:	\$120,800
Homestead Value:	\$120,800	Housesite Val:	\$120,800
Non-Residential Val:	\$0		

Said Values shall be set in the Town's Grand List as provided in 32 V.S.A. §4468.

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

Date of Director's entry order: 12.17.18

Encl: Decision with Findings of Fact and Conclusions of Law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. INTRODUCTION

1. This is a de novo property value appeal from a decision of the Town's Board of Civil Authority, (BCA) pursuant to 32 V.S.A. §§4461-4469. The Listers set the 2017 Listed Value of the Subject property, (SP) at \$137,900. Upon appeal, the BCA affirmed the \$137,900 Listed Value. The instant appeal ensued.

2. Appearance for Appellant: Lee Cota and Lia Venner, Co-owners, (Appellant).

3. Appearance for the Appellee: Samuel H. Burr and John Howard, Listers, and Lisa Truchon, New England Municipal Resource Center, ("NEMRC") Consultant, (Town).

4. Oral testimony was given under oath, proceedings electronically recorded, and the following exhibits identified and entered into the record with no objections:

Appellant:

A-1 A Home Inspection Report, ("HIR") for the SP prepared by Greg Kelsey on August 18, 2015.

A-2 An appraisal report for the SP prepared by William D. Benton on October 13, 2015.

A-3 A copy of pages 81-115, Exclusion #3, (the SP), from a Conservation Easement for Cota Brothers Farm, Inc., and the

appraisal report in A-2.

Town:

- T-1 A copy of the IPC sheet, sketch, and Photo of the SP.
- T-2 A copy of the Official Notice Decision of the BCA with the Inspection Committee's Report.
- T-3 A copy of IPC sheets and Property Transfer Tax Returns, ("PTTR") for three comparable sale properties.

5. The most recent Town wide reappraisal was for the 2007 Grand List. The reappraisal was conducted by NEMRC.

6. The Appellant purchased the SP from family members on September 10, 2015 for \$90,000.

7. Appellant's estimate of Fair Market Value, ("FMV") for the SP on the appraisal date of April 1, 2017 is \$111,200. The FMV estimate is based on the opinion of FMV presented in *Exhibit A-3*.

8. In addition to the IPC sheet for the SP, *Exhibit T-1*, the Town presented IPC sheets and PTTRs for three comparable sale properties in, *Exhibit T-3*, to support the \$137,000 assessed value of the SP. A comparison of the sales with SP is included, however no analysis of the comparable sale properties through Direct Sales Comparison, ("DSC") is provided.

9. After carefully considering the evidence presented, inspection of the SP, and viewing comparable sale properties, I make the following

B. DECISION WITH FINDINGS OF FACT

1. I find that the SP consists of 1.70 acres of land improved with a seventy seven year old, one and half story single family dwelling that contains 1,456 square feet of Gross Living Area, ("GLA"). The dwelling is constructed on a stone foundation with a dirt floor in a full basement, and there is metal covering on gabled roofs, a shed dormer, vinyl and wood clapboard siding, an open wood deck, an enclosed porch, and a one car attached garage with a door opener. On the first floor there is a foyer, kitchen with dining area, living room, two bedrooms, and a full bath. On the second floor there are two bedrooms, and two unfinished rooms. Walls, ceilings, and floors are a mix of building materials. The building quality and overall physical condition are below average. Heat is provided with an oil fired hot air furnace.

(b) The 1.70 acre rectangular lot is open with some mature trees at the rear portion of the lot. The topography slopes above a Town road and is relatively level at the building site. There is a drilled well water supply, and a 1,000 gallon septic system for on-site sewage disposal.

2. I find that the Highest and Best Use of the SP is for single family residential use with no potential for further residential development. The SP is located in a rural area of Town on a small lot. There is a

mix of newer and older single family residential properties and farms in the immediate area. The Highest and Best Use as found meets the four criteria for highest and best use: legal permissibility, physical possibility, financial feasibility, and maximum profitability.

3. I find that the Appellant overcome the presumption of validity that lies with the Town by presenting admissible evidence. "A presumption that an appraisal is valid and legal accompanies a taxpayer's appeal to the state board of appraisers; the burden rests on the taxpayer to go forward with evidence to overcome this presumption.", *Vt. Electric Power Co. v. Town of Vernon*, 174 Vt., 471, 472, 807 A.2d 430, (2002). "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*). The Appellant failed to prove by a preponderance of the evidence however that \$111,200 is the best estimate of FMV for the SP on April 1, 2017. "Even after the presumption of validity of a property appraisal disappears, the burden of persuasion on all contested issues on appeal of the appraisal remains with the taxpayer; it does not shift to the town.", *id.*

(a) Appellant's FMV estimate is based on an opinion of FMV presented in *Exhibit A-3*. The exhibit is an opinion of the FMV for the SP when excluding it from a Conservation Easement on the Cota family farm. The preparer was not present at the Hearing to testify on the opinion of FMV and be cross examined by the Town. No evidentiary weight is given to this opinion of FMV.

(b) An appraisal for the SP prepared for the New England Federal Credit Union by William Benton is presented in *Exhibit A-2*. No evidentiary weight is given to the appraisal report for the same reason no evidentiary is given to *Exhibit A-3*. In addition, the appraisal report was prepared for a lending institution for mortgage purposes. However, two comparable sale properties in the report are useful in the determination of an estimate of FMV for the SP even though they are located in other towns.

(c) Sale #A-1 is considered not to be a reliable comparable sale property because it is located greater than ten miles from the SP in the town of Middlebury, a superior market area.

Sale #A-2, located in the town of New Haven is a 1.00 acre lot improved with a single family dwelling containing 1,750 square feet of GLA that sold on 04/20/15 for \$100,000. Location is similar, the dwelling has a greater amount of GLA, amenities, dwelling quality, and physical condition are similar. Lot size is smaller. Overall, this property is superior to the SP primarily because of the greater amount of GLA. Considering all factors and applying required adjustments for differences with the SP results in an Adjusted Sale Price of \$92,700. The Net Adjustment Ratio, ("NAR") is 7.30% and the Gross Adjustment Ratio, ("GAR") is 11.30%. The NAR and GAR measure the comparability of a sale property with the subject. It is desired to have a NAR at 15.00% or below and a GAR at 25.00% or below however it is acceptable to have Ratios greater than desired when due to the lack of comparable sale properties.

Sale #A-3, located in the town of Vergennes is a 0.20 acre lot

improved with a single family dwelling containing 1,960 square feet of GLA that sold on 04/01/15 for \$118,000. Location is similar, the dwelling has a greater amount of GLA, amenities, and dwelling quality, are similar. Physically Condition is superior and lot size is smaller. Overall, this property is slightly superior to the SP primarily because of superior Physical Condition. Considering all factors and applying required adjustments for differences with the SP results in an Adjusted Sale Price of \$115,000. The NAR is 2.54% and the GAR is 11.02%.

(d) *Exhibit A-1* is a HIR for the subject dwelling that was prepared prior to Appellant's purchase of the SP. Appellants made some repairs to the dwelling after purchasing the SP and I inspected the dwelling immediately after the Hearing was closed, therefore the HIR provides no useful evidence with which to determine an estimate of FMV for the SP.

4. The Town presented three comparable sale properties in *Exhibit T-3* in support of the assessed value with no analysis of the sales through DSC. Sale #T-3 is not a valid comparable sale property because the transaction had special financing and there is no evidence of what impact, if any, this fact had on the sale price.

Sale #T-1, located at 2710 Bristol Road, is a 1.33 acre lot improved with a single family dwelling that sold on 09/10/15 for \$180,000.

Sale #T-2, located at 4995 Silver Street is a 0.33 acre lot improved with a single family dwelling that sold on 06/07/18 for \$222,000.

5. I find that Sales #T-1 and #T-2 are unreliable comparable sale properties because the sale prices are far above any reasonable estimate of FMV for the SP. The NAR and GAR for Sales #A-2 and #A-3 indicate good comparability with SP. The FMV estimates from the two sales are \$92,700 and \$115,000 respectively. Generally, the analysis of comparable sale properties through DSC provides the most reliable estimate of FMV for single family residential properties. However, when valid, reliable comparable sales are few, an estimate of FMV through the Cost Approach to Value may be given nearly equal evidentiary weight.

6. I find that reconciling the estimates of FMV results in the best estimate of FMV for the SP on the Appraisal date of April 1, 2017 of \$120,800.

7. I find that the Town's CLA as determined by the Equalized Education Grand List study conducted by the Division of Property Valuation and Review, (PVR) and published in its' 2017 Report, is 100.47%.

(a) The ratios in PVR's study may be influenced somewhat by the inclusion of use value appraisals and/or exemptions and contracts, however in the absence of a sufficient number of valid sales in evidence for a representative statistical sampling, a more justifiable Equalization Ratio, (ER) cannot be determined; "(O)nce the relevant factors are applied and market values are determined, the ratio of the assessed values to these market values must be uniform throughout the taxing district. Thus, in determining uniformity the ratios of

assessed values to market values of all properties are all relevant, and hence, in that sense all properties are "comparables", *Bowen v. Town of Burke*, 153 Vt. 131, 136, 569 A.2d 452, 454 (1989) (Dooley, J., concurring).

(b) For ad valorem taxation, the goal is to list all real property at 100% of FMV as mandated in 32 V.S.A. §3481(2). It is widely known and readily accepted that this is an unobtainable goal. The next goal then is to list all property at the same percentage of FMV. Likewise, this goal is also unobtainable as evidenced by reviewing the Applied Ratios on any Certified Final Computation Sheet produced by PVR. In order to maintain the highest degree of uniformity for the ratio of Assessed Values to FMVs throughout the taxing district when convincing evidence of an appropriate ER is absent, it is necessary and appropriate to utilize a municipality's CLA to equalize the FMV as found.¹ If FMV is equalized by use of a property category's Applied Ratio, there could be a different ER for each category of property under appeal within a municipality, and there are fifteen, (15), property categories for entry in a municipality's grand list. This procedure could knowingly violate the equal protection clauses in the United States and Vermont Constitutions by putting a disproportionate share of the tax burden on some property owners.

C. CONCLUSIONS OF LAW

¹ The most accurate and reliable method of calculating an ER is for Listers or Assessors to determine a Level of Assessment, ("LOA") in their city or town, based on valid sales within the municipality that have occurred between six months prior to April 1 and six months after April 1 each year. If an appeal hearing is scheduled sooner than six months after April 1, then sales from six months prior to April 1 up to the date of the hearing are appropriate. It may be necessary to use sales greater than six months prior to, or after, April 1 to obtain enough sales for a representative statistical sampling. When an LOA is not in evidence, the CLA becomes the most convincing evidence of an ER in nearly all cases.

1. Based on the foregoing Findings of Fact and Discussion, the following is concluded as a matter of law.

2. The FMV of the SP for tax year 2017 is \$120,800.

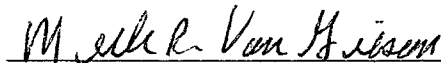
3. An Equalization Ratio, ("ER") of 100.00% shall be applied to the FMV as found, and the Listed Value of the SP shall be \$120,800. The highest useable ER is 100.00%. "Equity is satisfied by applying an equalization ratio of 100.00%, since that is the highest ratio usable for equalization.", *Bowen v. Town of Burke*, 153 Vt. 131, 136, 569 A.2d 452, 454 (1989), (Dooley, J., concurring). "A court may not list a taxpayer's property higher than fair market value, even if comparable properties are listed above fair market value.", *Brown v. Town of Windsor*, 139 Vt. 129, 131, 422 A.2d 1268, (1980).

4. Pursuant to 32 V.S.A. §4468, \$120,800 shall be the Listed Value for the SP for 2017 and for the following two years unless the property is materially altered, changed, damaged, or the Town undergoes a complete revaluation of all taxable real estate. The Homestead Value is \$120,800 House site Value is \$120,800, and Non-Residential Value is \$0.

5. The foregoing is reported to PVR pursuant to 32 V.S.A. §4467.

6. Dated at Montgomery, Vermont, this 6th day of December in the year of our Lord, Twenty Hundred and Eighteen.

Respectfully submitted,



Merle R. Van Gieson

Property Valuation Hearing Officer

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



Town of Monkton

Jill Remick
Director, Property Valuation and Review
Vermont Department of Taxes
133 State Street
Montpelier, VT 05633-1401

February 8, 2019


Re: Lia Venner and Lee Cota v. Town of Monkton
PVR 2017-9

Dear Director Remick,

We write to notify you that we have decided not to appeal the hearing officer's decision in the above matter. We make this decision because we believe that is the fairest thing to do for the taxpayers who have already waited over a year too long for their dispute to be resolved and do not deserve to be dragged through the extra time and expense of an appeal to the Supreme Court. This is especially true where the disagreement now is between us and the hearing officer. Our decision in no way indicates any agreement with or understanding of the decision. Our disgust at the incomprehensible decision and the incompetent response to our motion for reconsideration remains undiminished. We have attached these documents.

We stand by our criticisms outlined in our Motion To Reconsider. We believe the decision offers us no basis to understand what was incorrect with our work and to adjust our appraisals going forward. Indeed, in his response to our motion, the hearing officer justifies his decision on his "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." Would seem the only way for Monkton to get our appraisals correct would be to hire Mr. Van Gieson.

We believe we established by evidence presented that our reappraisal was done correctly. "The town can prevail by either "demonstrating that the method of appraisal substantially complied with the relevant constitutional and statutory requirements, or [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." *Kruse v. Town of Westford* 145 Vt. 368, 488 A.2d 770 (1985)[see footnote 1] (quoting *Leroux v. Town of Wheelock*, 136 Vt. 396, 398, 392 A.2d 387, 389 (1978)). We did both in this case and there is no finding in the decision that we didn't.



32 V.S.A. section 4467 states: “If the hearing officer or the Court finds the listed value of the property subject to appeal does not correspond to the listed value of comparable properties within the town, the hearing officer or Court shall set the property in the list at a corresponding value.” The hearing officer failed to make such a finding of listed value here. Instead he found that two of the town’s comparables “are unreliable comparable sale properties because the sale prices are far above any reasonable estimate of FMV for the SP.” He offers no basis for this finding so it would seem we are back to his “thirty eight years of experience”. We do not find that sufficient to call in question the basis of our reappraisal which is the sales, like these, which are valid, arms’ length transactions. The hearing officer provides us with nothing to go forward and improve our work. The result calls into question the whole reappraisal and the experienced firm that did the work. Other taxpayers are encouraged to doubt our numbers and to appeal their appraisals, leaving us no way to know how to defend ourselves. We consider your Department, and your Division in particular, a partner in trying to administer the property tax as equitably and fairly as possible. Hearing officers must be trained and supervised so their decisions can be used to help us, not to undermine us.

Footnote 1: The hearing officer relies heavily on Kruse in both his decision and his response to our motion. In Kruse the Vermont Supreme Court affirmed a hearing officer’s decision finding the property should be assessed at the same value set by the Board of Civil Authority.