

STATE OF VERMONT
WASHINGTON COUNTY, SS.

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VIRGINIA HOUSTON)
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v.)
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TOWN OF WAITSFIELD)

SUPERIOR COURT
WASHINGTON COUNTY

Washington Superior Court
Docket No. 539-9-05 Wncv

FINDINGS OF FACT and CONCLUSIONS OF LAW

This is an appeal of the listed value of Virginia Houston's real property in the Town of Waitsfield grand list as of April 1, 2005. Appellant Virginia Houston is represented by Attorney Charles L. Merriman. The Town is represented by Attorney Robert E. Fletcher. An evidentiary hearing was held on October 31, 2006, and the attorneys subsequently filed amended proposed findings of fact and memoranda of law.

Findings of Fact

Virginia Houston owns a parcel of 1543.5 acres of land on Long Road, a class 3 road, in Waitsfield. The property includes a boarded-up vacant farmhouse that is of little importance in the valuation of this property. There is a 100 acre meadow near Long Road. Otherwise, the property is primarily wooded and very steep. The parcel encompasses Scrag Mountain, which is part of the Northfield Mountain Range, and runs to the Waitsfield/Northfield boundary.

Approximately 419 acres are below 1500 ft elevation and in the Agricultural-Residential zoning district. Permitted uses include agricultural and forestry uses and the construction of single-family dwellings. All of the remaining land is in the Forest Reserve zoning district. A conditional use permit is required to construct any building in the district, and all construction of buildings is prohibited above 1700 ft elevation. Approximately 145 acres are between 1500 and 1700 ft elevation, and the balance of 979.5 acres are above 1700 ft elevation.

Prior to grievance, the property was listed at \$724,000. As a result of the grievance hearing, the listers increased the value to \$1,300,000. Upon appeal to the Board of Civil Authority, the fair market value was set at \$1,921,417. A 52% equalization ratio was applied, generating a listed value of \$999,090, although the figure in the Notice of Decision was described as \$990,090.

Appellant taxpayer urges the court to find that the fair market value of the property on April 1, 2005 was \$978,375, and that after applying an equalization ratio of 50.63%, the listed value should be \$508,755. The Town urges the court to find that the fair market value of the property on the valuation date was \$1,700,000, and that after applying an equalization ratio of 70.16%, the listed value should be \$1,193,400.

Fair market value

Appellant taxpayer relies on the opinion of real estate appraiser Richard Lagerstedt. He valued the property as of July 29, 2005, and gave the opinion that there was no change in value between April 1, 2005 and July 29, 2005. Mr. Lagerstedt is familiar with the area, having participated in a survey of the Northfield/Waitsfield boundary line in the past and having hunted on the property for a number of years. He has considerable experience appraising properties in the Waitsfield, Warren, Fayston, and Moretown area, but primarily appraisals of single family residential properties in connection with home mortgaging and refinancing. The biggest parcel he had appraised before this one was 100-150 acres.

He started by concluding that the highest and best use of the 419 acres below 1500 feet is large-lot residential development, and the highest and best use of the remaining acreage is forestry. Having divided the property into two components in this manner, he then researched Vermont's database of property transfer returns.

With respect to large-acre parcels of open land, he found 9 sales of parcels over 100 acres between November 27, 2001 and February 27, 2004 in Waitsfield, Warren, Fayston, and Moretown. The per-acre sales price of the nine sales ranged from \$568 to \$1,728, averaging \$1,328 per acre. He determined that the data did not show that market prices had increased in the last few years.

With respect to large parcels for forestry purposes, he found 19 sales of parcels over 750 acres between November 16, 2001 and March 31, 2005 throughout the State of Vermont, which he determined to be the pertinent market area for large forestry parcels. The per-acre sales prices ranged from \$153 to \$685, averaging \$302. He determined that the data did not show that market prices had increased in the last few years.

He did not inspect any of the properties reflected in the database documents. He was not aware of other sales that did not appear in the database. He did not attempt to adjust any sales price for road access, view, suitability for development, soils, or timber. His opinion was that the impact of these factors on large-acre land sales cannot be verified by sales data, and that they do not significantly modify the per-acre price paid in the market. Therefore, he valued the parcel by using the average per-acre price for each of the two components. He multiplied the per-acre price of the 100-750 acre parcels by 419 acres for a value of \$553,776, and then multiplied the per-acre price of the over 750 acre parcels by 1,124.5 acres for a value of \$339,599, and added \$85,000 for the two acre homestead parcel for a total fair market value of \$978,375.

The Town relies on the opinion of real estate appraiser Michael O'Brien. He has been a fee appraiser in Vermont since 1983. He has appraised other properties over 1000 acres, and has appraised timberland parcels. He has appraisal experience in Waitsfield and the larger Mad River Valley area. He did research in the Waitsfield Town Clerk's office regarding the subject property and Waitsfield property transfers. He viewed the property as consisting of three components, each with a different highest and best use. He determined that for the 50 acres on Long Road, the highest and best use was low intensity residential use; for the acreage above 1700 feet, the highest and best use was timberland, and for the remainder below 1700 feet, the highest and best use was a mix of forestry, recreational, and low intensity residential uses.

He identified 10 property transfers as candidates for comparable sales for purposes of the sales approach to value, but determined that only 4 were comparable. For each of the 4 comparables, he verified the data and made adjustments to reflect differences with the subject property for time, size of parcel, frontage/access, cover, and availability of utilities. After these adjustments, he determined the per-acre value of the subject as adjusted from the 4 comparables to be \$618, \$1,198, \$1,038, and \$1,163. He then eliminated the first adjusted value of \$618 per-acre as being too low when compared with the other three. He also gave "indirect" weight to the per-acre values derived from the data on the 6 sales deemed not comparable, and considered them to show value of \$1,000. On the basis of these results, he assigned a per-acre value to the subject parcel of \$1,100 per acre, and valued the total parcel at \$1,700,000.

The court finds Mr. Lagerstadt's analysis to be helpful in defining a range of values, but not sufficiently detailed and discriminating to rely upon as the basis for a specific determination of fair market value. His use of the database caused him to miss some pertinent sales, including one that had many similar characteristics to the subject and was closest in time. It was a parcel of 2,208 acres that sold in February of 2004 for \$2,300,000 or \$1,042 per acre. Mr. O'Brien selected it as a comparable.

Mr. Lagerstadt relied on sales data from approximately 3 ½ years prior to the valuation date without making adjustments for time of sale, and testified that for large parcels, market evidence does not show an increase in values over time, yet his own evidence on equalization showed market increases in Waitsfield property generally during that period, calling his testimony on that point into question. He also made no attempt to adjust the per-acre sales data from the database to the subject property based on property characteristics. Thus his data supports the general proposition that per-acre values for large parcels, particularly at high elevations where construction is restricted or prohibited, are lower than the Town suggests. However, the data he relies on is too generalized to support the specific value he assigns to the subject property.

Mr. O'Brien's analysis of selected comparables with adjustments to the subject property for specific characteristics is generally more reliable and persuasive, but with some limitations. He explained that he eliminated the information from comparable #1 simply because the per-acre value it showed (\$618) was lower than that shown by the other comparables. However, it is only

a bit higher than the average per-acre value Mr. Lagerstadt's broad-brush approach produced for the non-homestead acreage (\$580). Moreover, it is not clear why the \$618 per-acre value should be eliminated entirely, while the average per-acre value of the 6 sales rejected as comparables (\$1,000) is given weight as having probative value, and used to bolster a higher conclusion of \$1,100 per acre.

Furthermore, Mr. O'Brien minimized the difficulty of obtaining conditional use permission for construction on the acreage below 1700 ft elevation, which appears to have contributed to his decision not to make value adjustments for zoning, and to give undue weight to the highest of the adjusted values in reaching his final value conclusion of \$1,100 per acre. It is also worth noting that the highest adjusted value (\$1,198) was for comparable #2. It is questionable whether this is a valid comparable since the topography is not nearly as steep as the subject property, and there is significantly greater road frontage.

Taking all of this into account, the court finds that Mr. O'Brien's analysis is the most reliable as the foundation for determination of value, but that his per-acre value of \$1,100 is higher than the evidence warrants. A per-acre value of \$1,000 is more reasonable, and results in a value of \$1,543,500, rounded to \$1,544,000.

Equalization ratio

There was much argument at trial and in the parties' legal memoranda about how to determine the appropriate equalization ratio in this case. There appears to be little dispute of fact as to what the data shows, but a disagreement over what data to use in determining the ratio.

Appellant asks the court to apply a ratio of 50.63%, a figure derived by comparing sales prices to assessed value in the 59 sales that took place in Waitsfield in the one-year period prior to the assessment date of April 1, 2005. The Town asks the court to apply a ratio of 70.16%, a figure derived by comparing sales prices to assessed value in the sales that took place in a three-year period ending one year before the assessment date (April 1, 2001 to April 1, 2004).

Conclusions of Law

1. There is a presumption that the listed value set by the Board of Civil Authority for Appellant's property of \$990,090 is valid, and Appellant has the burden of overcoming that presumption of validity with evidence. *City of Barre v. Town of Orange*, 152 Vt. 442, 444 (1989). Appellant has done so by the testimony of Mr. Lagerstadt that a review of property sales of large parcels with highest and best uses comparable to the Appellant's property shows a per-acre price lower than the one used to produce an overall value of \$1,921,417, which was the fair market value determined by the BCA. ($\$1,921,417 \div 1543.5 \text{ acres} = \$1,245$).

2. Once the presumption is overcome, the court must determine *de novo* the value of the

property as of April 1, 2005. 32 V.S.A. §4467. Based on the Findings of Fact set forth above, the court finds the fair market value to be \$1,544,000.

3. The court must determine the appropriate equalization ratio to apply to the fair market value in order to determine an assessed value that results in proportional contribution to the common tax burden. *Vt. Const*, Ch. I, Art.9, 32 V.S.A. §3431, *Vermont Elec. Power Co. V. Town of Cavendish*, 158 Vt. 369 (1992).

The Town argues that its ratio, derived from sales from the three years ending April 1, 2004, is the most equitable method because it is the one used by the Division of Property Valuation and Review to establish proportionality among taxpayers for the state-wide portion of the property tax. The Town argues that it is necessary to use this ratio to achieve equity among taxpayers state-wide. The Appellant argues that the result produces inequity between her and other taxpayers in Waitsfield as to both the local and state-wide portions of the property tax, since others are contributing based on a 50.63% ratio, whereas she would be required to contribute based on a much higher ratio.

The Town has not shown that the Division of Property Valuation and Review is compelled to use data 1-4 years old as of the valuation date. The fact that it does so does not make such data the correct measure, nor is the effect to create state-wide equity with respect to the state-wide portion of the property tax, as this case shows. If Virginia Houston were required to contribute based on a 70.16% ratio, her contribution would not be proportionate to the contributions of other Waitsfield taxpayers, nor is it likely to be proportionate to the contributions of all taxpayers in all other towns.

The burden should be proportional as between Appellant and other Waitsfield taxpayers with respect to the local portion, and as between Appellant and other Vermont taxpayers with respect to the state-wide portion. The way to achieve that is to use the most current and reliable data. The Town's equalization ratio of 50.63% is based on current reliable market data as of the valuation date, whereas the State's equalization ratio of 70.16% is based on outdated information. While PVR may not use data from sales in the year immediately preceding the valuation date, it is available, and there appears to be no legal impediment to the use of it for state-wide purposes.

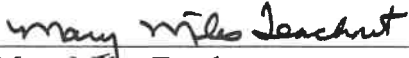
If the court were to validate the use of data 1-4 years old to promote equity with some other taxpayers statewide, it would be perpetuating non-proportional tax burdens rather than promoting the use of the data that would best achieve equity on both a local and statewide basis. The court's role is set forth explicitly in 32 V.S.A. §4467: "If the . . . court finds that the listed value of the property subject to appeal does not correspond to the listed value of comparable properties within the town, the . . . court shall set said property in the list at a corresponding value."

The court has before it reliable data to support equity as between taxpayers in Waitsfield:

50.63%. It does not have before it reliable data to support equity as between taxpayers state-wide as of the valuation date, since the data used by PVR is outdated. The Town's state-wide data has limited probative value in establishing equity between taxpayers statewide as of April 1, 2005. Therefore, the equalization rate of 50.63% is the most reliable method of achieving proportionate contributions to the tax burden.

Applying the equalization ratio of 50.63% to the fair market value of \$1,544,000 results in \$781,727. Therefore, the listed value of Appellant's property as of April 1, 2005 is \$781,727.

Dated at Montpelier, Vermont this 26th day of December, 2006.



Mary Miles Teachout
Superior Court Judge