

STATE OF VERMONT

SUPERIOR COURT
Rutland Unit

CIVIL DIVISION
Docket No. 506-9-15 Rdcv

FRANK CHAPMAN et al.

FILED

v.

JAN 06 2016

TOWN OF WALLINGFORD

VERMONT SUPERIOR COURT
RUTLAND

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

This property tax appeal came before the Court for a final hearing on December 1, 2015. Appellants Frank Chapman and Harry S. Chapman represented themselves. Their co-owner, Eric Vernon, did not attend. Selectboard Chair Nelson Tift attended by telephone on behalf of the Town of Wallingford (the "Town").

Appellants challenge the Town's April 1, 2015 assessment of their property, which is a 3-acre parcel with a hunting camp located in a remote part of town. The Town's assessment is \$30,000. Appellants' position is that its value is \$3,000.

Findings of Fact

The property consists of 3 acres with a 678 square foot hunting camp that was built by members of Appellants' family after they acquired the property in 1947. The camp currently needs repair. The property is located on Mitchell Road, TH 53, at a spot approximately 3 miles from the nearest improved road, which is Homer Stone Road. Both the property and much of Mitchell Road are surrounded by 8400+ acres of Green Mountain National Forest property. There are three other private parcels on Mitchell Road adjacent to the subject property. The intersection of Mitchell Road and Homer Stone Road is a very sharp backward angle that would require a vehicle to make a three-point turn.¹

Mitchell Road was created as a town highway in 1844 and is now a Class IV trail. The Town right of way is three rods wide. The Town's witness, a contract assessor, seemed to think that the Town road only went for the first .9 mile and that beyond that,

¹ Full use of the town right of way would permit a more gradual angle, but that would place the roadbed extremely close to an existing house located at the intersection of the two roads. In order to avoid that situation, the Town has required that Mitchell Brook Road be entered from a point further south and away from the residence, and this results in the sharp angle that requires a three-point turn.

the road was apparently an “ancient town road” on National Forest Service land, but the evidence is that the full road was laid out by survey in 1844 and the survey description was recorded in the Town records in March of 1845 and the road has never been discontinued.

Mitchell Road generally runs along Homer Stone Brook and is surrounded in places by steep mountains that drain into the brook, sometimes washing out the road in places. When there is high water in the brook, it washes away portions of the bank. Tropical Storm Irene in 2011 left the road full of rocks. There is a mudslide at one location along the road. There is a crack in the road at another location indicating a safety hazard if the weight of a vehicle put pressure on the road at that point. The road was used in the past for hauling out logs and firewood from the area beyond Appellants’ camp but has not been maintained. It is usable by ATVs, but is not passable by typical motor vehicles. The Town’s witness opined that the road could not be improved without National Forest Service permission, but the evidence is that the Town has a 3 rod wide right of way and there are no restrictions that would require Forest Service permission to improve the road as long as the work was within the Town right of way.

There is some indication that at one spot, the path of the current roadway strays off the track of the right of way onto Forest Service land that is not subject to the right of way. If the road were to be improved at such location, rather than within the right of way, Forest Service permission would be needed. There is a process available for obtaining special use permission. The Forest Service District Ranger, while not indicating permission would be granted, has suggested that drainage improvements done in conjunction with road improvements could possibly benefit adjacent Forest Service lands “by reducing erosion of soils and sediment transport.” As it is, the Forest Service does not allow ATVs on its land, but ATVs are currently used at this spot nonetheless as the only means of travel on the road, other than travel by foot or horseback. The evidence does not show that there are any markings on the ground showing the exact physical location on the ground of the right of way, and the Forest Service does not know the exact location.

It is undisputed that private landowners on the road need Town permission to improve the Class IV trail. Appellants would like to be able to improve the road in order to repair and expand their hunting camp and make it accessible by vehicle.

The Town has assessed the property based on a highest and best use of development as a building lot. Using the land scale it developed on a town-wide basis, it assigned a development lot value to the first two acres and a lesser value to the third acre, and then added a value for the camp. The Town’s witness testified that it was reasonable to start with a presumption based on value as a building site, even though there is no

usable road, because (1) "it is what appraisers use," and (2) the fact that there is a building on it proves that it is possible to have a building on it. She also testified that the owners have the opportunity to maintain the road by use of a bulldozer. The property was last inspected in 2006. At that time it was valued at \$45,000, consisting of \$18,600 in land value and \$26,400 for the camp. In 2007 a \$15,000 reduction was made, apparently by the BCA, and noted on the lister's card as "Miscellaneous adjustment." The assessment has remained at \$30,000 since then. As noted above, the roadbed has deteriorated since then due to Tropical Storm Irene and other natural forces of erosion.

The Town's witness introduced into evidence the assessments of four other properties in Wallingford that she deemed comparable in order to show "equity" of assessment. These properties were not sold, and the evidence does not provide information about market value of the properties themselves or market value of particular characteristics of them as of the assessment date.

She introduced evidence of three sales of properties she deemed comparable:

#1) Bianchi to Doty; sale of 50 acres & camp for \$90,000 in January of 2015 (Ira)

The features that she stated made this property comparable were as follows. It is located on a Class IV road, and has no water, septic, or electricity. It is subject to a wind farm lease. The length, condition, and legal development potential of the road is unknown. No adjustments were made from the sale price to the subject property based on the differences in the properties.

#2) Heritage Credit Union to Clark; sale of 28.8 acres & camp for \$52,000, 3/2014 (Ira)

The features that she stated made this property comparable were as follows. It is a camp located on a Class IV road. The road is described as "seasonally passable 2WD pickup" one-half mile in length to the land. It has no water, septic, or electricity. It was owned by a bank, has a possible right of way issue related to an access gate, and was subject to a right of first refusal. The length, condition, and legal development potential of the road is unknown. No adjustments were made from the sale price to the subject property based on the differences in the properties.

#3) Gulli to (unknown); sale of 40 acres of vacant timberland for \$22,000 in 8/2013 (Mt. Holly)

The feature that she stated made this property comparable was that it is remote land on the top of a mountain. It is landlocked with no land access. The length, condition,

and legal development potential of road access is unknown. No adjustments were made from the sale price to the subject property based on the differences in the properties.

Each of the sales involved parcels with substantially more acreage than the subject parcel. That difference alone would require a significant adjustment from each of the sale prices to arrive at a comparable value for the subject parcel. A highly significant feature of the subject parcel is the condition of road access, and there was insufficient information about the roads on the first two sales properties (length, condition, legal potential for development, cost of improvement) to determine the extent of necessary adjustments to the sale prices. Most important of all, no value adjustments were made from the sale prices to the subject based on the differences in features. Thus the sales information has only limited utility in determining the fair market value of the subject property.

The major issue between the Appellants and the Town is the effect of the condition of the road. The Town's position is that although it is a Class IV trail not maintained by the Town, the Appellants may obtain permission from the Town to use a bulldozer to obtain access. The Appellants position is that the Town has effectively barred their ability to have sufficient road access to make use of the property as a building site, including their ability to repair the current camp, and therefore deprived them of effective use of their property.

Exhibit J is the Wallingford Class 4 Roads and Trails policy that was adopted by the Town on April 21, 2014. It provides that:

“Existing rights-of-way of class 4 highways and trails as of the date of adoption of this policy shall be retained by the Town for purposes of recreational multi-use activities, access to private property, and agricultural and forest management.”

Other pertinent provisions include:

“The Town shall not provide any maintenance or upkeep on trails.”

“Permission for repair, maintenance, improvements, or restoration shall not be unreasonably withheld by the Selectboard. The road shall be left in as good or better condition as when permission is granted.”

The Selectboard is specifically authorized to establish weight and speed limits, prohibit wheeled vehicle use during mud and snow season, and require a temporary permit for heavy equipment access with any damage to be repaired at the expense of the user.

In the spring of 2014, owners of the subject parcel and two adjacent parcels submitted a request to the Selectboard to operate a bulldozer on Mitchell Road to be able to improve their properties. On June 3, 2014, the Selectboard sent a letter specifically providing that "no maintenance of any sort shall be performed on TH 53. Therefore, your request to level mud slides has been denied." Permission was granted to remove branches, brush or fallen trees from the trail. Permission was granted for one round-trip use of a bulldozer with 15-day written notice to the Town and abutting landowners, and with entrance to the trail restricted to the south entrance of the Frederick property. In the past, Appellants had been able to use the north entrance to Mitchell Road. Use of the south entrance requires a three-point turn.

In 2015, the owners renewed their request and received a letter from the Town Administrator stating that on March 16, 2015, the Selectboard unanimously agreed on the same requirements as in 2014. It specifically stated, "No improvements shall be performed on TH 53 Mitchell Road." It imposed similar requirements as in the prior year, limiting bulldozer use to one roundtrip use with 30 days written notice. Requirements were added to inform the Town where the bulldozer would be loaded and unloaded, and provided that "No other heavy equipment would be allowed on the trail without prior town consent."

The owners wish to enlarge their camp by constructing an addition, as well as to make general repairs and bring in a new stove. They also wish to be able to access the camp by vehicle, not only for the purpose of making repairs but as a means of accessing the property for use. They have not requested that the Town improve the road for their benefit, but that they be given permission to improve the road at their own expense.

The limited permission given by the Town allows them to use a bulldozer for a single trip in and out, but they may not improve the trail or do any maintenance that would address the erosion, runoff, or mudslide problems or improve the condition of the road for vehicle use. The court finds that this constitutes a severe limitation on the use of the property, making it either expensive or impractical to maintain the camp even in its present condition, and effectively prohibiting further construction and reliable vehicle access, including for emergency services.

In the past, there was sufficient vehicle access that permitted the road to be used for hauling logs and bringing firewood out from the private properties, as well as for building, maintaining, and using a hunting camp. Now, with the restrictions imposed by the Town, the ability to transport logs and firewood is limited to one trip by bulldozer. The camp cannot effectively be maintained as a structure over time, making its useful life as a hunting camp limited and foreclosing the possibility of other development uses. The

property can still be used as an aging hunting camp property, but access is severely limited, and firewood, forestry, and development uses are no longer viable.

Appellants introduced no evidence to challenge the Town's evidence of the fair market value of the property if usable as a developable building lot. Their evidence is that the limitations on use resulting from denial of the opportunity to improve the road take away 90% of the value of the use and enjoyment of the property. They value it at only 10% of its assessed value, or \$3,000.

The Town's evidence of fair market value is difficult to understand. Its sales comparables do not support its value because there is no evidence to adjust the sales prices to the subject parcel. Its "equity" comparables do not support its value because they provide no evidence of market value. The Town relies on its position that the parcel is a developable building site with a land value based on developable land values plus a building value, both established 8 years prior to the assessment date, with a \$15,000 reduction established 7 years prior to the assessment date. It can be inferred that the \$15,000 reduction was made to reflect the poor condition of the road at that time and its related impact on the use of the hunting camp, and thus is a reduction applicable to building value as opposed to the land value component of the assessment, since the Town continues to assert that the parcel should be valued as a building site.

Conclusions of Law

The fair market value of a property reflects its "highest and best use." *Scott Const., Inc. v. City of Newport Board of Civil Authority*, 165 Vt. 232, 235 (1996). In determining a property's highest and best use, appraisers must consider its "potential and prospective" uses. 32 V.S.A. § 3481(1). "The highest and best use of property has generally been construed to refer to 'the value of the property for its most profitable, likely, and legal use.'" *Scott*, 165 Vt. at 235 (quoting D. Stockford, *Property Tax Assessment of Conservation Easements*, 17 B.C.Env'tl.Aff.L.Rev. 823, 827 (1990)). Because appraisers must project how a property could be used in the future, the highest-and-best-use analysis depends on market and legal assumptions. *See Zurn v. City of St. Albans*, 2009 VT 85, ¶ 9, 186 Vt. 575.

"When a taxpayer grieves [a tax] assessment to the state appraiser, there is a presumption that the town's assessment is valid." *Vanderminden v. Town of Wells*, 2013 VT 49, ¶ 8, 75 A.3d 598. "This is a bursting bubble presumption; if the taxpayer presents any 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.'" *Id.* (quoting *Adams v. Town of West Haven*, 147 Vt. 618, 620 (1987)).

In this case, the Town has assessed the property at a highest and best use as a developable building site. The taxpayer has introduced reliable evidence that the property cannot be developed because although it is located on a Town highway, that highway is an undeveloped Class IV trail that has fallen into disrepair as a result of a combination of natural forces of erosion and lack of maintenance, and the Town declines to grant permission for it to be improved, resulting in loss of effective access to maintain or improve any development on the property. Thus, Appellant's evidence is sufficient to overcome the presumption of validity that otherwise attaches to the Town's valuation.

While the Town had the responsibility to present evidence in support of its value, the burden of persuasion remained with Appellant throughout the hearing, and never shifted to the Town. See *Kruse v. Town of Westford*, 145 Vt. 368, 371-73 (1985). It became the responsibility of the Court to make a *de novo* determination of both highest and best use and the fair market value of the property. 32 V.S.A. § 4467. The goal is to ensure that property owners pay their fair share of the tax burden based on the potential of their property. *Zurn*, 2009 VT 85, ¶ 9.

The fair market value of a property is defined as "the price which the property will bring in the market when offered for sale and purchased by another, taking into consideration all the elements of the availability of the property, its use both potential and prospective, any functional deficiencies, and all other elements such as age and condition which combine to give property a market value." 32 V.S.A. § 3481(1). "Common sense and practical everyday business experience are [tax appraisers'] best guides" for determining a property's fair market value. *Potter v. Town of Clarendon*, 118 Vt. 278, 281 (1954).

Appellants have met the burden of persuasion on the issue of highest and best use. Appellants showed that the Town's determination that the highest and best use was as a building lot is not supported by the evidence. While the Town has the authority to decide to limit improvements and maintenance on Mitchell Road, even if the Appellants are willing to undertake the cost, based on its adopted Class 4 Road Policy, the manner in which that authority is exercised affects the highest and best use of the property. While Appellants have legal road frontage and access, common sense shows that the restrictions preclude highest and best use as a building site. The highest and best use of Appellants' property is limited future use as a hunting camp with no vehicular access, and recreational use through non-vehicular access. This represents the application of "common sense and everyday business experience" to the specific facts of this property.

Because the Town's assessment is based on an invalid highest and best use, its value is not supported by the evidence. The Appellants' value is based on an estimate influenced by their own perception and self-interest and the amount is likewise not

supported by evidence. It is a problem for the Court that neither party provided reliable evidence of fair market value of the property with the highest and best determination the Court has made based on the evidence.

While it is difficult to determine an exact figure for fair market value under these circumstances, it is possible to establish a value that fairly and reasonably represents fair market value for purposes of equitable assessment for tax purposes. Analysis of the evidence suggests the use of different approaches to arrive at an overall fair value.

If the Town's \$15,000 reduction is applied to land value as opposed to improvement value, that suggests land value of $\$18,600 - 15,000 = \$3,600$, which is reasonably close to the Appellants' proposed value of \$3,000. However that ignores the value added by the current hunting camp structure, which has current use value even though it is limited both as to current access and future use. Thus, \$3,600 would be too low a value.

Another approach is to value the land not as a two-acre building site, but as a three-acre lot with a value at the non-building site value that was applied to the third acre as shown on the Lister's card (Exhibit F). This was a per-acre value of \$2,800. This would result in land value of $\$2,800 \times 3 = \$8,400$. Again, this ignores the value added by the hunting camp which can be currently used, albeit with access and maintenance limitations.

If the \$15,000 reduction is taken off the Town's value for the camp, the result is $\$26,400 - 15,000 = \$11,400$ for the camp. Adding \$8,400 in land value to \$11,400 in camp value produces a possible value of \$19,800.

The Town's evidence is that the \$15,000 reduction was made in 2007, which was before the effects of Tropical Storm Irene and before the Town adopted its Class 4 road policy prohibiting development and before the Town Selectboard voted twice to limit Appellants to a single roundtrip with a bulldozer without doing any improvements to the road. These are the severe limitations that restrict prospects for the camp having value for the future as it cannot be effectively maintained or developed in any other way. Thus, applying the principles of common sense and everyday experience, it is reasonable to reduce this value, and a reduction by one-half appears reasonable.

Based on this analysis, the Court finds that the fair market value of the property as of April 1, 2015 is \$9,900.

Pursuant to 32 V.S.A. § 4468, the fair market value for the property for 2015 is \$9,900. There was no evidence that equalized value is different.

ORDER

The assessment value for Appellants' property for 2015, 2016, and 2017 is \$9,900, subject to other terms of that statute that may affect the 2016 and 2017 values.

Dated at Rutland, Vermont this 5th day of January, 2016.

Mary Miles Teachout
Hon. Mary Miles Teachout
Superior Court Judge