

STATE OF VERMONT

**SUPERIOR COURT
Rutland Unit**

**CIVIL DIVISION
Docket No. 562-9-14 Rdcv**

CRESTMARK, INC.

v.

TOWN OF WEST RUTLAND

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

This property tax appeal came before the court for a final hearing on February 8, 2016. Appellant was represented by Attorney Sigismund J. Wysolmerski. Attorney Charles L. Merriman represented the Town of West Rutland. Appellant filed post-hearing proposed findings of fact.

Appellant challenges the Town's April 1, 2014 assessment of its property in the Town of West Rutland, which is a 14-acre parcel with an 8-unit apartment house and a mobile home pad. In 2014, the Town increased the assessment of this and 14 other properties in the Town by adding a component of value that it attributed to a second development site. The result was an increase of \$41,000 to the prior year's assessment, resulting in a 2014 assessment of \$301,200. This was unchanged upon appeal to the Town's Board of Civil Authority. The Town now seeks an assessment value of \$330,000. Appellant's position is that the value should be \$203,000. No issue was raised about the equalization ratio.

Findings of Fact

The 14-acre parcel is located near the center of West Rutland. A site of approximately .44 of an acre is high ground directly on Barnes Street on which a multi-family residential building is located. Another site of approximately .25 of an acre is high ground fronting on nearby Main Street on which a mobile home pad is located. A third site of approximately .17 of an acre also fronts Main Street at a different location and is high ground for a depth of only 40 feet back from Main Street. Of the total acreage, less than one acre, including the three sites described, is on high ground. The remaining 13.14 acres of land is lower and is behind the high ground of the three sites, joining them and away from the road. These 13.14 acres are in a FEMA designated flood hazard area. There is a pond and most of the land is actual wetlands and unavailable for any development.

The building fronting on Barnes Street is a handsome 1869 Greek Revival house that now consists of 8 rental units that are rented to long term residential tenants. The mobile home pad on Main Street is rented as a pad, without a mobile home included, for approximately \$3,000 per year.¹

Experts for both the Town and the Appellant testified, as did Joseph A. Giancola, an officer of the owner Appellant Crestmark, Inc. The Town's expert values the property at \$330,000, the Appellant's expert values it at \$203,000, and Mr. Giancola values it at \$200,000.

There is no disagreement that the highest and best use of the property is as an investor-owned income producing property with rents generated from the 8 residential units and the mobile home pad. Although the Town's expert considered the possibility of what the highest and best use would be if the property were vacant, in the end he agreed that the current use is the property's highest and best use.

Both experts used both the Sales and Income approaches to valuing the property. Both experts are highly qualified real estate appraisers with experience in the region and with this type of property.

Sean Sargeant is the Town's appraiser. In using the Sales approach, he used 5 comparable sales in a large region encompassing downtown Rutland and the greater Rutland area. The properties were multi-unit old buildings that had been repurposed and consisted of 6-10 units. He made adjustments from the comparables, some of the adjustments being significant (24%, 41%, 59%) and developed a per-unit value of \$45,000, resulting in a value based on the Sales approach of \$360,000.

In using the Income approach, he used rental income information for both rental units and mobile home pads from the large region. He testified that rental values in West Rutland are the same as in Rutland. He did not use actual rent and expense figures, as his data showed that actual income was 17% lower than rents in the greater Rutland area market. His data also showed that even using only West Rutland data, the actual figures were 4.7% lower than rents generally in West Rutland. His income capitalization method produced a figure of \$297,556, to which he added contributory value of the surplus land at \$26,000 for a total figure of \$325,000.

He reconciled the results of the two approaches at \$330,000.

¹ It appears that the basis for the Listers' addition of \$41,000 in 2014 was its determination that the mobile home pad plus land that extended into the wetlands behind to the extent of two acres was a development site and assessed that two acres as a second building site. The Town is no longer seeking valuation on that basis.

William Scranton is the Appellant's appraiser. His first appraisal report was done in March of 2015 and showed a value of \$212,580 using the Sales Approach and \$208,430 using the Income approach which he reconciled at \$210,000. He prepared a revised report in February of 2016 showing a value of \$203,000 using both approaches. He testified that in his original report, he had not included administrative expenses in applying the Income approach. His reason for making a comparable adjustment in the application of the Sales approach was not adequately explained.

A principal difference between his work and that of Mr. Sargeant's is that Mr. Scranton used both sales and income figures from West Rutland rather than from a larger region including downtown Rutland. Mr. Scranton and Mr. Giancola both testified that rents are lower in West Rutland, and there is less demand in West Rutland because the jobs are located in Rutland and people living in West Rutland cannot walk to work and must incur inconvenience and transportation costs.

In using the Sales approach, Mr. Scranton used the only two recent sales of comparable properties from West Rutland, which were in 2012 (both were 7-unit apartment buildings and were also two of the comparables used by Mr. Sargeant). He made adjustments to those sales prices for a decline in the market of 1% per month from 2012 to 2014 based on his statement that there was a decline during that period in prices for residential properties in West Rutland and foreclosures in the multi-unit housing market. He added contributory value for the mobile home pad, but not for the extra land. His first report showed a value of \$210,000, and his second report showed a value of \$203,000.

In using the Income approach, he used actual income and expense figures for the property, rather than regional income and expense data. There was a difference in the capitalization rates used by the two appraisers, but both had satisfactory bases for the rates they used. As stated above, Mr. Scranton testified that his second report included a lower figure for the Income approach because he added actual administrative expenses provided by Appellant that had not been included in his first analysis. His first report showed a value of \$208,430 and the second report showed a value of \$200,000.

He reconciled the results of the two approaches in 2015 at \$210,000, and in 2016 at \$203,000.

The court finds that Mr. Sargeant's own data is consistent with the testimony of both Mr. Scranton and Mr. Giancola that multi-unit residential rentals and rental properties are lower in West Rutland than in the larger Rutland region. In order to accurately value property in West Rutland, values from West Rutland should be used. Thus, since Mr. Scranton's appraisals were based on West Rutland market data rather than regional data, his values are initially more reliable, subject to adjustments.

The court also finds that actual income figures for the subject property are 4.7 % lower than market data for rentals in West Rutland, as shown by Mr. Sargeant’s data. Thus, although it was reasonable for Mr. Scranton to recalculate the Income approach to include administrative expenses (such recalculation reduced the Income approach value from \$210,000 to \$200,000), the actual income figures used are lower than West Rutland market figures. The amount of \$10,000 is a reasonable sum to add back to adjust actual rentals to the West Rutland market level. Thus \$210,000 is a more reliable figure for valuation of the subject property in the Income approach.

The court also finds that the adjustment Mr. Scranton made in the Sales approach to adjust the 2012 sales of the two comparables to 2014 values means a significant adjustment (24%), and that the size of that adjustment has not been supported by data and was only supported by generalized statements about the market. While the court accepts that there has been some decline, it is not reasonable to use a decline as large as 24% without supporting data. The evidence supports limiting the extent of an adjustment from 2012 to 2014 to 10%. Using the 2015 analysis, the per-unit value under the Sales approach is \$31,785, resulting in value under the Sales approach of \$254,280.

Thus, the most reliable indicators of value are:

Scranton 2015 Income approach, adjusted to	\$210,000
Scranton 2015 Sales approach, adjusted to	\$254,000.

Reconciling by giving equal weight to each approach, the reliable evidence supports a finding that the fair market value as of April 1, 2014 was \$232,000.

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.Envntl.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’s current proposed value is higher than the value determined by the BCA. Appellant has produced an expert opinion of value that is lower than both the BCA figure and the Town’s current opinion, so in any event, Appellant has introduced sufficient evidence to overcome any presumption in favor of the Town.

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).

Appellant has met the burden of persuasion on the issue of fair market value. For the reasons set forth in the Findings of Fact and pursuant to 32 V.S.A. § 4468, the fair market value for the property as of April 1, 2014 was \$232,000.

ORDER

The market value of Appellant’s property as of April 1, 2014 for purposes of property tax assessment was \$232,000.

Dated at Rutland, Vermont this _____ day of April, 2016.

Hon. Mary Miles Teachout
Superior Court Judge