Note: In the case title, an asterisk (*) indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2018-053

NOVEMBER TERM, 2019

Cindy R. Slane* v. Town of Woodstock	}	APPEALED FROM:
	}	
	}	Property Valuation and Review
	}	Division
	}	
	}	DOCKET NO. 2016-50

In the above-entitled cause, the Clerk will enter:

Taxpayer appeals the state appraiser's decision establishing the listed value of her real property for the year 2016.[1] We reverse and remand the matter for further findings and reconsideration of the decision.

The subject property is a 92.78-acre parcel of undeveloped land in the Town of Woodstock that taxpayer purchased in 2004 for $675,000. That parcel now includes 81.03 acres in the Current Use Value Appraisal Program (enrolled acres) and 11.75 acres that are not enrolled in the program (excluded acres).

In 2016, the Town initially listed the entire parcel at $636,600, of which $366,000 was attributed to the excluded acres and the remaining $270,600 to the enrolled acres. Although the listed value for the entire parcel was only slightly higher than that of the previous year, the component of that value attributed to the excluded acres was approximately four times greater, resulting in a significantly higher tax obligation for taxpayer.

Taxpayer appealed to the town listers, who reduced the listed value of the excluded acres from $366,000 to $219,600 based on the improvements that would be needed to create a viable building site. Following a further appeal, the town board of civil authority (BCA) reduced the listed value of the excluded acres further from $219,600 to $180,000 but added the $39,600 reduction to the listed value of the enrolled acres to keep the value of the entire parcel the same.

Taxpayer then appealed to the Property Valuation and Review Division of the Department of Taxes. The de novo hearing was held over two days on August 24 and September 19, 2017. On the first day, the town listers requested a continuance after taxpayer indicated for the first time that she intended to challenge the Town's listed value for not only the excluded acres but also the entire parcel. On the second day of the hearing, taxpayer testified and presented the appraisal and testimony of her expert, a real estate appraiser, who valued the entire parcel at $510,000 and attributed a value of $98,000 to the excluded acres. A town lister testified on behalf of the Town. Both parties submitted multiple exhibits and presented evidence of sales they respectively viewed as comparable.

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[1] Substantial delay in this appeal resulted, in part, from the need to remand the matter to recreate the record of the first day of hearing before the state appraiser.

Following the hearing, the state appraiser entered a decision setting the listed value of the subject property as that originally listed by the Town before taxpayer's appeals to the listers and BCA—$636,600 for the entire parcel, with $366,000 attributed to the excluded acres and $270,600 attributed to the enrolled acres. In its decision, the state appraiser summarized the evidence submitted by the parties, including their proffered comparable properties, and, without any discussion of the shifting burdens of production in appeals of property tax assessments, concluded that taxpayer "was not able to overcome the town market assessed value for April 1, 2016." In support of this conclusion, the state appraiser stated that: (1) the Town used property sales within the town to establish its lot values for its 2016 town reappraisal and offered four sales in support of its $366,000 valuation of the excluded acres; (2) taxpayer's expert based his valuation on sales in surrounding towns and overlooked sales within the town; (3) taxpayer offered market data for the region to show a slow market over time, but sales offered by the Town did not confirm taxpayer's conclusion; and (4) neither party "presented any convincing sales data to override the town's total market value of $636,600."

On appeal, taxpayer argues that: (1) the state appraiser's findings and conclusions are insufficient, inconsistent, and unsupported by the evidence; (2) once she produced evidence to overcome the presumption of the validity of the Town's valuation, the state appraiser failed to hold the Town to its burden of producing evidence to support its valuation of the entire parcel; (3) the state appraiser abused its discretion by not according any weight to her evidence valuing both the excluded and enrolled acres; (4) the state appraiser's decision did not comply with 32 V.S.A. § 3756; and (5) the Town's reappraisal violated the proportional contribution clause of the Vermont Constitution.

The Town agrees that the state appraiser did not identify evidence upon which he was relying and did not adequately explain how any such evidence led to his decision. The Town asserts that a remand to the state appraiser is the appropriate remedy. For her part, taxpayer asks this Court to set the 2016 value of her property at the amount proposed by her expert, or, in the alternative, rule on such issues that may recur before remanding the matter for reconsideration of the decision.

"When a taxpayer grieves an 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, 194 Vt. 96. "[I]f the taxpayer presents any evidence that [her] 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. (quotation omitted). However, the ultimate burden of persuasion "that the town's appraisal is incorrect remains with the taxpayer." Id. (quotation omitted).

The state appraiser "has a duty to sift the evidence and make clear statements, so that the parties and this Court will be able to determine not only what was decided, but of equal importance, how that decision was reached." Roy v. Town of Barnet, 147 Vt. 551, 551-52 (1986). "Findings which merely recite the contentions and testimony of the parties and their witnesses will not support a judgment." Id. at 552.

"On appeal, we accord deference to decisions of the state appraiser and will set aside the state appraiser's findings of fact only when clearly erroneous." Vanderminden, 2013 VT 49, ¶ 9 (quotation omitted). "Where the state appraiser's valuation is supported by some evidence from the record, the appellant bears the burden of demonstrating that the exercise of discretion was clearly erroneous." Id. (quotation omitted).

We concur with the parties that multiple errors and incomplete findings and analysis compels a remand for further findings and reconsideration of the state appraiser's decision. We

decline to weigh the evidence ourselves to assign values to the excluded portion of the property and the parcel as a whole.

We catalog the most egregious errors here. First, in reciting the procedural history, the state appraiser erroneously stated that taxpayer's appeals to the town listers and the BCA had been denied, when in fact they had led to a collective reduction in the valuation of the excluded parcel from $366,000 to $180,000. This misunderstanding of the status of the initial $366,000 valuation appears to have recurred in several places.

Second, in describing the Town's position and testimony the state appraiser wrongly asserted that the town assigned a value of $180,000 to two acres of the excluded portion of the parcel, added $14,000 for the sugar house on the excluded portion of the parcel, and then valued the remaining 9.75 acres of the excluded land to reach a valuation of $366,000 for the excluded land. That description of the town's evidence is not supported by the record. Rather, the town lister indicated that the value of the excluded property was $180,000 for the land plus $14,000 for the sugar house, for a total of $194,000 for the full 11.75 acres as a standalone parcel.

Third, in its brief explanation of its rejection of taxpayer's position and embrace of the initial valuation abandoned by the town following appeals to the lister and the BCA, the state appraiser appeared to rely on a consideration that was not supported by the evidence. The state appraiser asserted that the town, in defending the BCA decision, properly relied on property sales within the town to establish its lot values for the 2016 re-appraisal of the town, whereas taxpayer's appraiser relied on sales from surrounding towns rather than sales from Woodstock. This statement was erroneous. Taxpayer's expert's comparable properties with respect to the entire parcel were from surrounding towns, but two of the three comparable properties taxpayer offered with respect to the excluded acres were in the Town of Woodstock.

Fourth, the state appraiser asserted that the town had offered "four sales in support of the estimated market value of the excluded acres at $366,000." As noted above, the town offered those comparables in support of its valuation of $180,000 for the land in the excluded portion of the parcel.

In addition to these factual errors, the state appraiser's decision fails to explain the reasoning underlying its conclusion.

We cannot tell whether the state appraiser's conclusion that taxpayer had not "overcome the town market assessed value for April 1, 2016," signals that the state appraiser thought that taxpayer had not overcome the initial presumption of validity applicable to the town's assessment. To the extent that the state appraiser was suggesting that taxpayer had failed to meet her initial burden of overcoming the presumption of the validity of the Town's appraisal, that conclusion was erroneous. Taxpayer presented ample evidence to meet her initial burden, thereby requiring the Town to introduce evidence to justify its appraisal. See Rutland Country Club v. City of Rutland, 140 Vt. 142, 145 (1981) (stating that presumption of validity "is overcome when credible evidence is introduced fairly and reasonably indicating that the property was assessed at more than the fair market value or that the listed value exceeded the percentage of fair market value applied generally to property within the community" (quotations omitted)).

Further, even assuming that the state appraiser considered taxpayer to have met this initial burden, his findings and conclusions were woefully inadequate to support his decision. Other than an erroneous finding concerning the location of taxpayer's comparable properties, the state appraiser's analysis consisted of a suggestion that the real estate market had not slowed as taxpayer claimed and a conclusory statement that neither party had submitted sales data to override the Town's listed value for the entire parcel. The state appraiser did not evaluate the comparable

properties identified by the town and by the taxpayer to determine whether and how they impacted the valuation of of the subject property's enrolled and excluded acres. Cf. Saufroy v. Town of Danville, 148 Vt. 624, 625-26 (1987) (concluding that board of state appraisers provided no explanation of how noted differences in comparable property canceled out to equal fair market value of subject property); Shetland Properties, Inc. v. Town of Poultney, 145 Vt. 189, 192-93 (1984) (stating that board committed reversal error by failing "to make specific findings of fact to support its conclusions concerning comparable property values"); Rutland Country Club, 140 Vt. at 147 (stating board's "findings were merely conclusory and provided no guidance for evaluating the land assessment procedures"). In short, the state appraiser's minimal findings and conclusions fail to provide us with any insight as to how he reached his decisions as to the market value of the excluded portion and the parcel as a whole.

We reverse the state appraiser's decision but decline taxpayer's request that we sort through the record, weigh the competing evidence, and establish the listed value of the subject property. Further, apart from acknowledging the inadequacy of the state appraiser's findings and the fact that taxpayer met her initial burden of overcoming the presumption of validity of the Town's appraisal of her property, we need not address in detail the other issues she raises on appeal. Taxpayer argues that the state appraiser's decision did not comply with 32 V.S.A. § 3756(d), which provides, with respect to parcels that include both enrolled and excluded acres in the Current Use Value Appraisal program, that

> any portion of a parcel not receiving a use value appraisal shall be valued at its fair market value as a stand-alone parcel, and, for the purposes of the payment under section 3760 of this chapter, the entire parcel shall be valued at its fair market value as other similar parcels in the municipality.

According to taxpayer, the Town's methodology for assessing the excluded acres has no relation to fair market value. Taxpayer also argues that the Town's reappraisal of her property violated the proportional contribution clause of the Vermont Constitution because it did not list either the enrolled or excluded acres at fair market value. On remand, the state appraiser must determine the fair market value of both the enrolled and excluded acres, irrespective of what methodology the Town employed to arrive at its listed values of the subject property. See Sondergeld v. Town of Hubbardton, 150 Vt. 565, 568 (1988) ("The [taxpayer's] burden of proof is not met by simply impugning the Board's methods or questioning its understanding of assessment theory or technique. To prevail a taxpayer must show an arbitrary or unlawful valuation.").

Reversed and remanded.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Beth Robinson, Associate Justice

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Brian J. Grearson, Superior Judge,
Specially Assigned