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. 2018-370

APRIL TERM, 2019

James Geddes* & Annie Geddes* v. Town of Bolton Board of Civil Authority	}	APPEALED FROM:
	}	
	}	Superior Court, Chittenden Unit,
	}	Civil Division
	}	
	}	DOCKET NO. 1006-11-16 Cncv
		Trial Judge: Mary Miles Teachout

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

Taxpayers appeal the superior court's decision establishing the fair market and listed values of their residential property for purposes of tax assessment in the Town of Bolton. We affirm.

In January 2015, taxpayers purchased the subject property for $735,000. At the time of the purchase, the property was assessed at $590,000. The Town does town-wide appraisals every five years and had last done one in 2011. The town assessor did a new town-wide appraisal that was completed in April 2016. As the result of that appraisal, the subject property was assessed at $728,165. Taxpayers unsuccessfully grieved the assessment to the town assessor and then the town board of civil authority before appealing to the superior court. The superior court found that the fair market value of the property on April 1, 2016 was its January 2015 sales price, $735,000. After the court applied the 99.07% town common level of appraisal and rounded off the resulting figure, the court set the listed value of the property for assessment purposes at $728,000.

Taxpayers appeal, challenging the superior court's determination of the subject property's fair market and assessed values. "Property tax appeals are considered de novo by either the superior court or the state appraiser." Dewey v. Town of Waitsfield, 2008 VT 41, ¶ 2, 184 Vt. 92 (citing 32 V.S.A. § 4467). The court or state appraiser is charged with first determining the fair market value of the property and then equalizing that value "to insure that the property is listed comparably to corresponding properties in town." Id. (quotation omitted). Real property, other than property enrolled in a use value appraisal program, is taxed at its "estimated fair market value," which is statutorily defined as "the price that the property will bring in the market when offered for sale and purchased by another." 32 V.S.A. § 3481(A). "The statute does not mandate any particular method to determine estimated fair market value," but "when a recent bona fide sale exists to illustrate fair market value," no method of estimation is needed. Barrett/Canfield, LLC v. City of Rutland, 171 Vt. 196, 198 (2000); see Boivin v. Town of Addison, 2010 VT 67, ¶ 6, 188 Vt. 571 (mem.) (noting that "we have upheld the use of any or all methods or combination of methods that results in a rational determination of fair market value" (quotation omitted)); Wilde v. Town of Norwich, 152 Vt. 327, 329 (1989) (given statutory definition of fair market value, recent actual sales price "is strong, if not conclusive, evidence of fair market value"). The second step of the two-step process strives to establish uniformity of taxation and is derived from the

constitutional command that "no taxpayer pays a disproportionate share of the public tax burden." Allen v. Town of W. Windsor, 2004 VT 51, ¶ 2, 177 Vt. 1.

"The burden of persuading the trier of fact that [the] property is over-assessed, which is the underlying issue, remains with the taxpayer throughout the entire proceeding." Dewey, 2008 VT 41, ¶ 2 (quotation omitted). On appeal to this Court, the superior court's decision is deemed presumptively correct and "its findings will be conclusive if they are supported by the evidence." Id. ¶ 3 (quotation omitted) (noting standard with respect to state appraiser's decision). The trial court's findings will stand unless clearly erroneous, and we will uphold its conclusions that are "reasonably drawn from the evidence presented." Id. Further, "we defer to the trial court's determinations with regard to evidentiary credibility, weight, and persuasiveness." Boivin, 2010 VT 67, ¶ 6.

Here, taxpayers first challenge the superior court's finding of fair market value, arguing that the court erred by relying solely on the Town's evidence of the property's appraised value to determine its fair market value and by failing to clearly state its reasons for doing so. We find no merit to this argument. The court made an undisputed finding, which was amply supported by the record, that taxpayers had recently purchased the subject property in an arms-length transaction for $735,000. The record supports the court's finding that the only credible evidence of fair-market value was the relatively recent sale of the property. Taxpayers do not point to any comparable recent sales within the town. The court found that no changes had been made to the property in the fifteen months between the sale and the 2016 town-wide appraisal and that there was no evidence of market changes in that time. The basis for the court's finding of fair market value is clear, and the court did not err in setting the fair market value of the property at $735,000.

Taxpayers take issue, however, with the methodology that the town assessor used in arriving at the assessed value of the subject property. Specifically, as the court found, the assessor acknowledged that in doing the 2016 town-wide appraisal he changed the quality grade of the subject property and other properties that had been sold in the Town in the previous three years to arrive at an assessed value that mirrored the sale prices of those properties. Taxpayers contend that the assessor increased the quality grade in approximately fifty percent of the sold properties, yet did so in only twenty-five percent of the non-sold properties. The court found that taxpayers' expert credibly testified that the quality grade of a constructed building becomes fixed at the time of construction and therefore should not change from year to year. Relying primarily on our opinion in Allen v. Town of West Windsor, taxpayers argue that the superior court erred by failing to conclude that the assessor's use of this methodology did not satisfy the constitutionally mandated uniformity requirement. According to taxpayers, the assessor's manipulation of the quality grades led to "valuation discrepancies" between the subject property and other non-sale properties and thus impacted the Town's coefficient of dispersion, which is the state's measurement of equity within a reappraisal.[*]

We find taxpayers' argument unavailing. Equalization ensures that the listed value of a property corresponds to the listed value of comparable properties within a town. Dewey, 2008 VT 41, ¶ 2; see Allen, 2004 VT 51, ¶ 9 ("The overriding goal is to ensure that, whatever the fair market value of a property might be, its listed value corresponds with the listed value of comparable properties so that no taxpayer pays more than his or her fair share of the property tax burden."). For purposes of calculating an equalization rate, comparable properties "generally include all

[*] As calculated by the state, the coefficient of dispersion for properties in the Town of Bolton following the 2016 town-wide appraisal was very low, indicating that assessments were being applied equitably in the Town.

properties within the class of property to which the subject property belongs." Shaffer v. Town of Waitsfield, 2008 VT 44, ¶ 17, 183 Vt. 428 (quotation omitted). But when a property is "unique" or when the evidence of comparable properties is insufficient to determine an equalization rate, "all property within the taxing municipality may be considered as comparable for purposes of determining the proper corresponding listed value." Id. ¶ 18; accord Dewey, 2008 VT 41, ¶ 19.

In this case, the superior court considered all of the property in the municipality to determine the proper equalization rate. The court referred to this methodology as the "town-wide common-level of appraisal," which it used in the second step of the valuation process to arrive at the listed value. Taxpayers' own expert acknowledged that the subject property was "relatively unique" to the area. Moreover, taxpayers fail to demonstrate the existence of a class of comparable properties that would require the superior court to arrive at an equalization rate different from the town-wide common level of appraisal; rather, they cite a property in another town and note various "valuation discrepancies" in the lister cards of other properties without attempting to show the fair market value of those properties or demonstrate that they are comparable to the subject property. See Shaffer, 2008 VT 44, ¶¶ 19, 25 (concluding that state appraiser appropriately applied town-wide equalization ratio given insufficiency of taxpayers' evidence of comparable properties and stating that "evidence of the listed value of comparable properties is meaningless absent evidence of the FMV of these properties").

To be sure, the use of a common level of appraisal as the equalization rate may be suspect if it is the result of improper "sales chasing"—the practice of adjusting, by selective reassessment, the appraised value of individual properties to the value reported in recent sales transactions. See Boivin, 2010 VT 67, ¶ 14; see also Allen, 2004 VT 51, ¶ 5 (describing how listers manipulated inputs in computer program used to perform previous town-wide appraisal to assess recently sold properties at level of their sales prices). But there was no evidence in this case that the listed prices of properties were adjusted based exclusively on the sales prices of those properties, outside the context of a town-wide reappraisal. See Boivin, 2010 VT 67, ¶ 15. Furthermore, our opinion in Allen, in which we affirmed the state appraiser's reduction of the town's assessment of five properties, is distinguishable not only because there was evidence of "sales chasing" outside the context of a town-wide reappraisal, but also because the evidence showed that there "was an enormous disparity in listed values of comparable properties for equalization purposes." Allen, 2004 VT 51, ¶ 10 (stating that "the state appraiser had ample evidence before him to conclude that the town did not, in fact, list other properties in [the town] at 100% of their fair market value"). That is not the situation here. It was taxpayers' burden to bring such evidence before the superior court, and further to demonstrate to this Court that the superior court erred in applying the town-wide common level of appraisal. They failed on both counts. Nothing in the record demonstrates that taxpayers' property was assessed disproportionately with respect to other comparable properties in the Town, and taxpayers cannot show error with respect to the superior court's

decision to apply the town common level of appraisal merely by pointing to "valuation discrepancies" in the lister cards of various properties.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice