

David J. Houston

v.

Town of Rindge

Docket No.: 7579-89

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$247,650 (land, \$108,800; buildings, \$138,850) on an 8.43-acre lot with a two-story colonial house (the Property). For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer paying an unfair and disproportionate share of taxes. See RSA 76:16-a; Tax 201.04(e); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer carried this burden and proved disproportionality.

The Taxpayer argued the assessment was excessive because:

(1) the lot cannot be subdivided; (2) the house assessment was excessive given physical and functional condition of the house;

(3) he bought the Property in April 1989 for \$105,000 with the owner retaining a life estate; and

(4) a September 1988 appraisal estimated a \$145,000 value on the fee-simple interest.

The Town argued the assessment was proper because:

(1) it was consistent with the values shown by the Austin sale and the Sandback assessment; and

(2) the Town acknowledged an adjustment was warranted due to the subdivision problems and the poor quality of the rear acres, resulting in an adjusted assessment of \$214,350.

With respect to the life estate retained by the eighty plus year old seller, the Board finds the 1989 sales price of \$105,000 represents a value less than the entire fee simple estate. The Board experienced difficulty quantifying the potential value of the expense and maintenance costs of the subject property assumed by the Taxpayer for the duration of the life estate. The life estate per se neither creates nor destroys value, it merely transfers it.

Based on the evidence, we find the correct assessment should be \$193,510 (land \$75,530 and building \$117,980). This assessment is ordered because:

(1) the Town's adjusted land assessment adequately adjusts for the poor rear acreage and the lack of subdivision potential;

(2) the building was given an additional -15% physical depreciation because the Taxpayer's evidence clearly indicated the building was in poor shape and needed modernization, e.g., the wiring, the kitchen, and the bathroom.

We also conclude the Taxpayer's appraisal undervalued the Property by failing to make upward adjustments to the comparables due to the Property's significant superiority in location, siting of the building, landscaping, and quality of construction.

If the taxes have been paid, the amount paid on the value in excess of

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\$193,510 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to David J. Houston, Taxpayer; Department of Revenue Administration; and Chairman, Selectmen of Rindge.

Dated: December 1, 1992

Valerie B. Lanigan, Clerk

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