

RHD Trust

v.

Town of Amherst

Docket No.: 16140-95PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1995 assessment of \$198,800 (land \$73,700; buildings \$125,100) on a 1.5-acre lot with a single-family home (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 a disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayer failed to carry this burden.

The Taxpayer argued the assessment was excessive because:

(1) the Property was purchased in an arm's-length transaction for \$136,000 in May 1995 after being exposed to the market for 401 days;

- (2) the Property had a failed septic system, electric heat and a poor interior second floor layout;
- (3) the location between Routes 101 and 122, being within 1,000 feet of a police and fire station and the associated noise detract from the value;

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- (4) an appraisal as of April 1995 estimated the market value to be \$143,000;
- and
- (5) the sale and the appraisal supports a market value of \$143,000.

The Town recommended reducing the assessment to \$179,000 to reflect a 1996 land adjustment applied to the entire neighborhood and an adjustment of 6% for the Property's style and layout. The Town argued the reduced assessment was proper because:

- (1) the Property has very good access from Route 101 and is in a neighborhood of above average homes;
- (2) comparable neighborhood sales support the revised value; and
- (3) the Taxpayer's comparable sales are in a remote location and the Taxpayer's appraisals used conflicting information.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$167,200 (land, \$61,400; building, \$105,800). This assessment is arrived at by applying an additional 4% physical depreciation and additional 10% depreciation. This assessment also generally comports with the board's estimate of the Property's 1995 market value of \$165,000 to \$170,000.

Certainly, this Property is a difficult one to arrive at a definitive

conclusion of value. The board considered and gave some weight to the sale of the Property in May of 1995 for \$136,000. The board, however, is not convinced the sales price was necessarily market value. The Property had been listed for 401 days and had had the listing price dropped three times to a listing price of \$154,900 at the time of the purchase. Mr. Donovan, in response to a question, stated that there were two features about the Property that influenced his mother's purchase: 1) the price; and 2) the desirable neighborhood. The board subsequent to the hearing viewed the Property from the exterior and the neighborhood. The Property is certainly located in a desirable neighborhood of good quality homes. The board finds its location on the corner of Thatcher Drive and Route 122 is reasonably screened from Route

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122, and thus, its effects are minimized. Further, its proximity to the well-maintained and attractive fire and police station is not perceived by the board as a significant detraction. The area has other homes of similar or better quality that attest the road and police and fire noises, while possibly factors in a property's value, do not exceed acceptable levels for residential uses and enjoyment.

The board also considered the comparables submitted by the Town and Mr. Elcik's comments that there are few properties that have sold at the Property's price. The view and this evidence indicates the purchase price was below market.

The board does agree with Mr. Donovan, however, that a combination of the Property's features (second floor layout, physical condition, electric heat) caused the Property not to sell quickly and at a price inconsistent with

the general neighborhood. This is the primary basis for the board's adjustment.

The board places little weight on Mr. Donovan's appraisal for several reasons. First, Mr. Donovan is the son of the owner, is a tenant and cannot reasonably be called an unbiased appraiser. Second, his adjustments were unsubstantiated and not reasonable based on the magnitude of the sales prices.

Third, the difference of adjustments and description between an appraisal submitted to the Town and the one submitted on appeal and at hearing raise questions as to the objectivity of the appraiser.

The board reviewed the Town's submission and its recommended value conclusion of \$179,000 but was unable to adopt it as a reasonable assessment.

While the Town did adjust 6% in their report for the style and layout of the house, it failed to recognize adequately the problems noted above and as recognized by the marketing of the Property.

If the taxes have been paid, the amount paid on the value in excess of \$167,200 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule

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TAX 203.05, unless the Town has undergone a general reassessment, the Town shall also refund any overpayment for 1996. Until the Town undergoes a general reassessment, the Town shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within thirty (30) days of the clerk's date below, not the date this decision is received. RSA 541:3;

TAX 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or in law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(e). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to RHD Trust, Taxpayer; and Chairman, Selectmen of Amherst.

Date: May 22, 1997

Valerie B. Lanigan, Clerk