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ENTRY ORDER

SUPREME COURT DOCKET NO. 2006-169

NOVEMBER TERM, 2006

Real Daigle } APPEALED FROM:

}

}

v. } Property Valuation and Review Division

}

Town of Eden }

} DOCKET NO. PVR 2005-1

Trial Judge:

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

The Town of Eden challenges the decision of the state appraiser setting the 2005 grand list value for two parcels of land. We affirm.

The state appraiser found the following facts. The parcels at issue are a 155.30-acre lot with a number of structures (Athe farm@) and a contiguous two-acre lot with a single-family home. Taxpayer originally

acquired the subject property in 1983 and subsequently sold some acreage and also subdivided the lot. As part of this process, taxpayer created the two-acre lot with a separate deed and constructed a single-family home there. Taxpayer then granted a life estate interest in the two-acre lot to his mother. The Board of Civil Authority set the value of the farm at $271,040 and the value of the two-acre lot at $108,000 for the 2005 Grand List. Taxpayer appealed to the state appraiser. Taxpayer contended that the fair market value of the two-acre lot was reduced because it was encumbered by the life estate. The Town maintained that the life estate should be valued separately and entered on the grand list as a separate property.

The state appraiser assessed the quality and type of structures on both parcels, the topography of the land, and the highest and best use of each. The state appraiser further concluded that the two parcels were properly considered a single property for purposes of the grand list, as they were contiguous and had the same owner. See 32 V.S.A. ' 4152(a)(3) (A>Parcel= means all contiguous land in the same ownership, together with all improvements thereon.@). While the fair market value of the parcels could be established separately, there would be only one entry in the Grand List.

Determining fair market value in a de novo proceeding, the appraiser relied upon the town=s 2002 Grand List and made adjustments for appreciation. Accordingly, the listed $256,000 fair market value of the farm lot was adjusted to $330,200, and the Aunencumbered@ fair market value of the two acre house lot was adjusted from the listed $108,000 to $140,400. The appraiser then considered that the two-acre lot was Aencumbered with a Life Estate to a seventy[-]eight year old female. Life Estate is defined as the total rights of use, occupancy, and control, limited to the lifetime of a designated party.@ The appraiser concluded that any purchaser of the two acre house lot would have only limited property rightsCthey would not be able to occupy, use or lease the property, only sell it. AIt is unreasonable to believe that a willing buyer would pay 100% of FMV with the rights of ownership so severely restricted.@ Noting that the life estate generated no income, the appraiser calculated the fair market value of the life estate by projecting the future value of the property at the end of the life estate, and then discounting that value back to present terms. The appraiser performed other, uncontested adjustments to the value, and concluded that the proper value for the Grand List for both parcels was $287,479. The appraiser noted that the Town produced no evidence of the fair market value of the

property other than the Listed Values.

On appeal, the Town does not contest any aspect of the appraiser=s calculations, but challenges the assumptions underlying the appraiser=s approach. Specifically, the Town argues that the appraiser erred in concluding that: (1) both parcels were owned by the same person; (2) the life estate reduced the value of the two-acre parcel; and (3) the life estate did not have a separate tax value.

AThis Court reviews decisions by the state appraiser to ensure that they are supported by findings rationally drawn from the evidence and are based on a correct interpretation of the law. We will not disturb a fair market value determination unless an error of law exists.@ Barrett v. Town of Warren, 2005 VT 107, & 5, 179 Vt. 134 (citation omitted). The Town argues that the two parcels are not under the same ownership, yet it is uncontested that taxpayer owns the farm and that ownership and possession of the two-acre lot will revert to him at the end of the life tenancy. The Town cites Town of Brattleboro v. Smith, 117 Vt. 425 (1953) for the proposition that a life estate holder may be held responsible for the payment of taxes. But that decision also stands for the proposition that the term Aowner@ in a real estate context may refer to the owner in fee or the owner of a lesser estateCbe that the life tenant or the remainderman. Id. at 426.

The Town next argues that the existence of the life estate does not reduce the fair market value of the two-acre lot. AThe property taxation statute requires the listed value of real property to be equal to its appraisal value, which in turn must reflect its estimated fair market value.@ Barrett, 2005 VT 107, & 6 (citing 32 V.S.A. ' 3481(1)-(2)). Fair market value, in turn, is defined as Athe 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). It was not legal error for the state appraiser to consider the future termination of the life estate and the limitations this placed on the marketability of the property. In Townsend v. Town of Middlebury, 134 Vt. 438, 440 (1976), we held that Ait is clear that the Legislature intended that bona fide restraints affecting property, at least those governmental in origin, should be a factor in determining fair market value@ and that this concern should be extended to

Aprivately imposed restraint[s] on land@ as well. In that case, we concluded that Athe presence of a lease/option agreement concerning a parcel of property is an element which enters into giving a saleable or market value to the property,@ in that A[a] buyer, confronted with the presence of a lease/option involving a parcel of property which he was interested in purchasing, would certainly take such an agreement into account in determining what price he found acceptable for the parcel desired since any such agreement would affect both the use and future alienability of the property.@ Id. The same is true here, whether viewed from the perspective of a party interested in purchasing the life estate or the remainderCthe marketability of both interests is compromised by the existence of the other interest.

The Town=s concern that any burden on the two-acre lot should not affect the marketability of the farm, appears unfounded since the fair market value of the farm was established independently of the two-acre house lot.

The Town=s argument that the life estate is an interest in real property that simply must be taxed fails to undermine the appraiser=s determination of the current fair market value of that lot to the title holder. The appraiser employed an apparently sound approach to valuation, considering both appreciation and depreciation of the real estate over the actuarially expected duration of the life estate, and then reducing that future value to present value by a stated discount rate. The Town offers no reason why the entire value of the house lot, including the life estate, is not fairly accounted for by all, or any part of, the appraiser=s formula and calculation.

The Town has failed to demonstrate legal error in the state appraiser=s estimate of fair market value.

Affirmed.

BY THE COURT:

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Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice

Brian L. Burgess, Associate Justice