

Aardvark Properties and Developers, Ltd.

v.

City of Dover

Docket No.: 12896-92PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 1992 adjusted assessment of \$80,0000 on Unit 50, an office condominium unit (the Property). For the reasons stated below, the appeal for abatement is denied.

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 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer failed to carry this burden and prove disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) the unit was purchased at auction for \$62,900 in February 1992 after having been on the market for one year;
 - (2) there are errors on the tax card;
 - (3) the Property was leased in 1992 for approximately \$10 per-square foot;
- and
- (4) the fair market value as of April 1992 was its purchase price of \$62,900.

The City argued the recently revised assessment was proper because:

- (1) it is a fair representation of the market at that time;
- (2) three comparable sales (1991 to 1994) give the best arm's-length conditions; and
- (3) the City believed they had an agreement with the Taxpayer and feel the \$80,000 figure is extremely conservative.

Board's Rulings

The board has reviewed the assessments by both the market and income approaches to value. Both parties submitted sales information and the Taxpayer's agent, Mr. Turcotte, testified to income data relative to Unit 50.

Market Approach

Based on the evidence, we find both the Taxpayer's auction purchase from Hilco Property Services, Inc. of Unit 50 for \$62,900 and the January 1991 sale by First NH Bank of Unit 60 for \$73,000 are not market value sales. Bank sales are by definition not arm's-length transactions and require some adjustment because banks are not your typically motivated sellers and because the board has consistently seen, both through its own studies and studies of others, that bank sales typically sell for less than market sales. Mr. Turcotte submitted numerous sales of office condominiums in the seacoast area that transferred by warranty deeds, foreclosure deeds and quitclaim deeds. While difficult to analyze due to locational and possible quality differences, generally the units that transferred by warranty deed, especially in Dover, commanded a higher price than those sold by foreclosure or quitclaim deeds.

The rights transferred and the security of title are less with a quitclaim deed (RSA 477:28) and a foreclosure deed (RSA 477:31) than with a warranty deed (RSA 477:27). Consequently, without some adjustments to the non-warranty deed sales, the board cannot consider those sales as good indicators of market value.

The City submitted three sales of office condominiums, which indicated a higher selling price for non-bank-related sales. However, two of the three sales occurred in 1994, which arguably could be a different market than the 1992 tax year under appeal. However, these sales do generally indicate the Property is not excessively assessed at approximately \$46 per-square foot.

Income Approach

Given the lack of good comparable sales, the board inquired of Mr. Turcotte as to the general rental level of the condominium units. Mr. Turcotte stated that in 1992, the Property was leased at \$10 per-square foot of leasable area. Based on further evidence supplied by Mr. Turcotte and the following assumptions, the board has determined by the income approach that the units are not overassessed.¹

The following assumptions were made in the board's income approach calculations:

1. leasable area of 1,550 square feet;
2. market rent of \$10 per-square foot;

¹It has been the board's experience that when either certain type of income producing properties do not transfer frequently or when there are few comparable transfers, the income approach can provide a reasonable estimate of a property's value.

3. annual condominium fees of \$1,950;
4. vacancy rate of 10%;
5. management and miscellaneous (management outside that provided by the condominium) 5%; and
6. an overall capitalization rate of 13% based on a mortgage rate of 9%, an equity rate of 15% and effective tax rate of 2.62%.

The calculations are as follows:

Net operating income	\$ 15,500
Vacancy rate (10%) (\$15,500 x .10)	- \$ <u>1,550</u>
Effective Gross Income	= \$ 13,950
Condominium fees	- \$ 1,950
Management and miscellaneous (5%) (\$13,950 x .05)	- \$ <u>698</u>
Net Operating Income	= \$ 11,302
Capitalization rate (13%) (\$11,302 ÷ .13)	= \$ 86,938
Indicated market value	\$ 86,900 (rounded)

Consequently, based on the few market transactions and an estimate by the income approach, the board finds the Taxpayer's unit is not excessively assessed.

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, Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Aardvark Properties and Developers, Ltd., Taxpayer; and Chairman, Board of Assessors, City of Dover.

Dated: March 1, 1996

Valerie B. Lanigan, Clerk