

Paul H. and Anita A. Danis

v.

City of Dover

Docket No.: 12907-92-PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "City's" 1992 adjusted assessments of \$48,300 each on two condominiums (Units 3 & 4) (the Property). The Taxpayers and the City waived a hearing and agreed to allow the board to decide the appeal on written submittals. The board has reviewed the written submittals and issues the following decision. For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayers 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 Taxpayers carried this burden and proved disproportionality.

The Taxpayers argued the assessment was excessive because:

1) recent condominium sales in a superior location, and with more desirable features, have sold for less than the assessment;

Page 2

Danis v. City of Dover

Docket No.: 12907-92-PT

- 2) the Property is adjacent to a junkyard, the Dover Public Housing Project and a roofing business across the street; and
- 3) a reduction of less than \$30,000 would be appropriate.

The City failed to file a brief in this case and was placed in final default.

Board Findings

Based on the evidence, we find the correct assessment should be \$41,000. This assessment is ordered because:

- 1) the Taxpayers cite several economic factors external to the Property that would affect market value (Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975) [in arriving at a proper assessment, the municipality must look at all relevant factors]);
- 2) the assessment should be reduced further by 15% for these economic factors;
- 3) the board considered but placed little weight on the Taxpayers' sales because there was no direct analysis of the sales relative to the subject properties and there was no evidence as to the arms-length nature of the sales;
- 4) the only other market evidence was an indication on the assessment-record card of monthly rent of \$490;
- 5) based on the board's experience¹, a rental condominium property, such as

¹The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. See RSA 541-A:18, V(b); see also *Petition of Grimm*, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence).

the subject Property, would have a gross rent multiplier normally in the range

Page 3

Danis v. City of Dover
Docket No.: 12907-92-PT

of 6.5 - 7.5 which, for the subject Property, would provide a valuation range of \$38,200 to \$44,100; and

6) the 15% economic adjustment results in the assessment being within the value range indicated by applying the gross rent multiplier to the Property's rent.

If the taxes have been paid, the amount paid on the value in excess of \$41,000 per condominium 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 TAX 203.05, the City shall also refund any overpayment for 1993 and 1994. Until the City undergoes a general reassessment, the City 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 "reconsideration motion") of this decision must be filed within twenty (20) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The reconsideration motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A reconsideration 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

Page 4
Danis v. City of Dover
Docket No.: 12907-92-PT

reconsideration motion is a prerequisite for appealing to the supreme court,
and the grounds on appeal are limited to those stated in the reconsideration
motion. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been
mailed this date, postage prepaid, to Paul H. and Anita A. Danis, Taxpayers;
and the Chairman, Selectmen of Dover.

Dated: December 19, 1994

Melanie J. Ekstrom, Deputy Clerk