

**Appleton Inn I**  
**v.**  
**Town of Merrimack**

**Docket Nos. 3921-87 and 4778-88**

**DECISION**

These cases were consolidated for hearing purposes.

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1987 and 1988 assessments of \$1,893,990 (land, \$216,310, buildings, \$1,677,680) on its real estate consisting of a 116 room hotel located on Continental Blvd. (the Property). For the reasons stated below, the appeal for abatement is denied.

Neither party contested the Department of Revenue Administration's equalization ratio of 43 and 42 percent for the Town for the 1987 and 1988 tax years respectively. Based on that ratio the Taxpayer's assessment equates to an indicated market value of \$4,404,628 and \$4,509,500.

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 failed to carry its burden and prove any disproportionality.

The Taxpayers argued the assessment was excessive because: 1) the income approach to value, using income and expense information of the subject property, indicated market values of \$3,650,000 for 1987 and \$3,200,000 for 1988. (Exhibit TP-1); and 2) the property sold to Marriot Corp. in February of 1990 for \$3,218,000.

The Town argued the assessment was proper because: 1) it was appraised equitably with the same base prices established and used for other similar property during the 1979 revaluation; 2) the total cost to purchase and construct the property in 1981 (\$1,754,439) was reasonably close to the

assessment at that

time of \$1,892,990; and 3) the property has the potential and legal right to add a restaurant.

We find the Taxpayer failed to prove the assessment was disproportional. We also find the Town supported the Property's assessment.

In doing so we do not dismiss entirely the Taxpayer's argument that the income approach in this case has merit. Rather we find enough unsupported contentions on the part of the Taxpayers argument for it to fall short of fulfilling the Taxpayers burden of proof.

The Taxpayer used actual income and expenses and occupancy rates to determine value through the income approach. No evidence was presented as to whether these figures were representative of the general market conditions for this type of property or whether they were effected by such property specific items as management, renovations or ruinous competition. Further, the sale of the property to Marriot in 1990 was one of several properties transferred at the same time. In such a sale the allocation of value amongst properties is not indicative of market value.

On balance while the arguments raised by the Taxpayer had potential merit, they were not substantiated enough to tip the scale in favor of the Taxpayer.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Peter J. Donahue, Member

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Paul B. Franklin, Member

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Ignatius MacLellan, Member

Date: May 2, 1991

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Marvin F. Poer & Company, representative for Appleton Inn I, taxpayer; and Jay L Hodes, Esq., counsel for the Chairman, Selectmen of Merrimack.

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Michele E. LeBrun, Clerk

Date: May 2, 1991

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