

**Lincoln Inn Associates**

**v.**

**Town of Lincoln**

**Docket Nos.: 9643-90 and 11393-91PT**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 and 1991 assessment of \$5,368,950 (land \$1,491,950; buildings \$3,877,000) on an 8.634-acre lot with a hotel known as The Millhouse Inn (the Property). In 1991, the Taxpayer also owned, but did not appeal, a condominium unit in The Rivergreen Condominiums assessed at \$124,450. 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 did not carry this burden.

The Taxpayer argued the assessment was excessive because:

- (1) actual income and expenses were utilized in arriving at a value of the Property;
- (2) nine hotel sales indicated a range of \$16,500 to \$50,000 per room by the sales comparison approach;

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(3) the income approach which derived a value of \$2,500,000 or \$36,000 per room is the most appropriate approach; and

(4) the market reached a low point in 1990 and 1991 and was turning around in 1993 and the Baybank appraisal is as of 1993.

The Town argued the assessment was proper because:

(1) the Taxpayer's report is not an appraisal but merely uses actual expenses, occupancies, etc. and is not derived from the market, and the expenses are overstated because they are intermingled with other properties owned by the Taxpayer;

(2) the Property is new, in very good condition and the Taxpayer's report does not compare the comparables as to age, condition, location;

(3) a 1993 appraisal by Baybank, presented to the Town by the Taxpayer, relied on the cost approach and is within 10% of the 1993 assessment; and

(4) bank appraisals are typically quite conservative and when appropriately adjusted, the Baybank appraisal supports the Town's assessment.

#### Board's Rulings

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

The burden to prove disproportionality rests squarely with the Taxpayer.

The only evidence received from the Taxpayer relative to the 1990 and 1991 market value of the Property was the "value assessment analysis" performed by John O'Connor of Marvin F. Poer and Co. The board finds this analysis to be lacking in several regards.

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1) The analysis gave most weight to the income approach; the income and expenses employed in the analysis were the actual income and expenses of the Property rather than market income data.

2) While not heavily relied on by Mr. O'Connor, his listing of comparable sales property gave only an unadjusted range of value per unit. For the board to give weight to the market approach, adjustments to the sales data must be made for the location, condition, age etc. of the comparable properties versus the subject property; Mr. O'Connor did not make any adjustments other than indicating at least three were bank resale properties.

3) Mr. O'Connor stated he had done no general market investigation to determine whether the actual gross income, occupancy rate and expenses were consistent with the general market for similar property. Because the goal in all appraisals is to estimate market value, reviewing actual income, occupancy and expense information is only the initial research a typical investor would conduct in determining a property's value. Similar data of competing properties, industry standards, short and long term market expectations all need to be investigated and analyzed before estimating what are the appropriate income and expenses figures and capitalization rate to be used in appraising property by the income approach. This was not done by Mr. O'Connor.

4) Mr. O'Connor has no supporting documentation or explanation of how the capitalization rate of 13% was estimated. While it is conceivable that such a capitalization rate used in the direct capitalization method (as employed by

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Mr. O'Connor) could reflect a reversionary value as estimated in a discounted cash flow method, Mr. O'Connor's willingness during the hearing to add \$1,400,000 of reversionary value to his \$2,500,000 direct capitalization estimate raises grave questions whether his capitalization rate did include such an adjustment.

5) The Town introduced an appraisal done on the property for Baybank in 1993 which estimated market value of the real estate at \$3,935,000; while the assumptions made by the appraiser in the report appeared to be well based, no evidence was submitted by the Taxpayer as to how this 1993 market value estimate should apply to the 1990-1991 years under appeal; the Baybank appraisal raised too many questions to be given much probative value such as: a) relevancy to the two years under appeal to the 1993 value estimate; b) the adjustments for the excessive allocation of various overhead expenses to the Property rather than to other properties managed collectively; c) the stated purpose of the appraisal being for "collateral valuation, loan underwriting, and portfolio management"; and d) its preparer not being present for questioning.

In the best of times this would be a difficult property to appraise. In the fast changing market that occurred in the late 80s and early 90s for this type of property, appraising it is even more challenging. The board often makes the analogy that assessment equity is similar to a three-legged stool with the three legs being: 1) accurate physical description of the property; 2) relevant market data for estimating market value; and 3) determination of

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the general level of assessment within the community. The Taxpayer has the burden first of providing an accurate physical description of the property and second providing a credible estimate of the property's market value. In this case, while the first leg (physical description) appears accurate, the other two legs are short. Mr. O'Connor neither submitted credible value estimates nor did he show how the 1993 Baybank value estimate related to the 1990 and 1991 levels of assessment.

Therefore the board finds that the Taxpayer did not fulfill its burden.

A motion for rehearing, reconsideration or clarification (collectively "rehearing 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 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 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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Michele E. LeBrun, Member

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CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to John M. O'Connor of Marvin F. Poer & Company, Agent for Lincoln Inn Associates, Taxpayer; and Mary E. Pinkham-Langer, Agent for the Town of Lincoln.

Dated: February 16, 1994

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Valerie B. Lanigan, Clerk