

Continental Hospitality Corp.

v.

Town of Hampton

Docket No.: 11016-91PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$1,601,300 (land \$380,500; buildings \$1,220,800) on a 1.4-acre lot containing Lamie's Inn & Tavern -- a 32-unit inn with a restaurant and office space (the Property). For the reasons stated below, the appeal for abatement is granted.

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 carried this burden and proved disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) while the 1990 purchase was for \$2,000,000, it was a work-out deal with significant loan concessions, disqualifying this as an arm's-length sale;
- (2) the Property had not been properly maintained for several years;

(3) a January 1993 appraisal estimated a \$730,000 value (The appraisal, among other things, concluded the available office space added no value due to renovation costs.);

(4) the Property, because of its unique nature, is not comparable to other hotels in the Town;

(5) the Property could not handle the debt and in 1993 the bank reduced the debt from \$2,180,250 (principal) to \$1,150,000;

(6) the Fremereau, December 1991, \$1,440,000 real estate value was excessive;

(7) a March 1995 appraisal estimated a \$710,000 value for the Property and other nonrealty business assets; and

(8) despite differences in age and room numbers, the Town assessed the Property similar to the Hampton Motor Inn.

The Town argued the assessment was proper because:

(1) the proper ratio was between 1.01 and 1.03 with reasonable equity based on the standard deviation;

(2) the Town had the information concerning the \$2,000,000 sale based on the transfer tax stamps;

(3) based on discussions with the Taxpayer, the assessment was reduced to the appealed assessment;

(4) the taxes increased due to a tax-rate increase not an assessment increase (The assessment was actually decreased based on information from the Taxpayer, including the 1991 \$1,440,000 appraisal.);

(5) without the income and expense information, it is difficult to determine how the Property's uniqueness affects the Property's value;

(6) based on all of the information available, and the Town's review, the assessment was correct; and

(7) the 1993 appraisal, which was not provided to the Town, was irrelevant to the 1991 tax year and had some flaws, including deduction for repairs after the income analysis and deduction of taxes as an expense based on the actual taxes instead of adding it to the capitalization rate.

BOARD'S RULINGS

Based on the evidence, we find the correct assessment should be \$1,388,750. This assessment is based on a market value finding of \$1,375,000 and the Town's 1991 equalization ratio of 1.01.

The board was presented with numerous value indicators for the Property. - The Property was purchased on December 27, 1990 for \$2,000,000, which included \$1,522,285 for real estate and the balance for personal property.

- The December 1991 Fremereau appraisal estimated a market value of \$1,440,000. The full appraisal was not submitted to the board; only the letter of transmittal and the salient facts summarizing the value conclusion were submitted.

- The February 1993 Hospitality appraisal estimated market value at \$730,000. The full appraisal was submitted and marked as Taxpayer's Exhibit #7.

- The May 1993 document outlining the loan restructuring proposal for the Property was submitted and marked as Taxpayer's Exhibit #4. The loan was restructured at \$1,000,000 with an additional \$150,000 to be used to pay outstanding loan costs, renovations and real estate taxes.

- The March 1995 Bredice appraisal estimated a market value of \$710,000 less an undetermined amount for roof repairs. The full appraisal was not submitted; only the letter of transmittal was submitted.

- Subsequent to the hearing and at the board's request, the Taxpayer submitted income and expense information for the Property for the 1990 - 1993 calendar years.

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With such an array of value indicators, the board is reminded of the supreme court's statement that, "the search for fair market value is a snipe hunt carried on at midnight on a moonless landscape." Fusegni v. Portsmouth Housing Authority, 114 N.H. 207, 211 (1974) (citations omitted).

ANALYSIS OF VALUE INDICATORS

The board's analysis will briefly discuss which of these value indicators were given weight.

First, the sale of the Property in December 1990 for approximately \$1,500,000, while considered by the board, is given little weight because of the subsequent inability of the Property to support that price. Normally the sale of the subject Property, if there is no evidence submitted to disqualify it as an arm's-length transfer and if generally conforming to other market data, is given considerable weight by the board in its deliberations. Appeal of Lakeshore Estates, 130 N.H. 504 (1988). However, in this case, the board finds the Property's income-producing capability was not able to support the total loan of \$2,000,000 for real estate and personal property.

The board considered the May 1993 loan restructuring proposal only to the extent that it supports the board's conclusion that the initial purchase price exceeded the Property's income-carrying capability. The board finds the restructuring proposal, as with many financing arrangements made during that time period, was not as reflective of market value as it was in reaching a workable refinancing arrangement for both the bank and the Property owner.

The board was unable to give any weight to either the December 1991 Fremeau appraisal or the March 1995 Bredice appraisal primarily because the appraisals themselves were not submitted. Further, the board questions

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whether a March 1995 opinion of value (the Bredice appraisal) would be significantly relevant to an April 1991 finding of market value.

The board reviewed extensively but in the final conclusion gave little weight to the value conclusions of the February 1993 Hospitality appraisal. The Hospitality appraisal considered the income and the market approaches to value. The board finds the value conclusions by both approaches to be improper due to incorrect assumptions and flawed methodology.

The income approach employed two methods: the yield capitalization (discounted cash flow (DCF) analysis) and the direct capitalization. The board finds both methods include significant mistakes.

Income Approach: DCF Method

First, in the DCF analysis, the appraiser included taxes as an expense. Since the appraisal is being used to support a certain assessment for tax purposes, taxes are an unknown expense and should more properly be considered as a component of the capitalization rate. The inconsistency of using taxes as an expense is highlighted by the Hospitality appraisal estimating taxes based on an assessed value of approximately \$1,250,000 to \$1,330,000 (see page 47 of appraisal) and yet arriving at a market value of only \$625,000 by the DCF analysis.

Second, in estimating the value of the Property at the end of the six-year holding period, a 13% capitalization rate was applied against the net operating income in the sixth year. This capitalization rate appears high and inconsistent with

the 6% rate used in the direct capitalization method. It is also inconsistent with the appraiser's general assumption that the Property

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is not an investment type of property but is an owner-operated type of property, which normally has lower capitalization rates.

Direct Capitalization Method

The appraiser, however, relies on the direct capitalization method for his final determination of value by the income approach. (See page 82.) The value is derived by applying a direct capitalization rate of 6% to the net operating income of year one of the DCF analysis. The appraisal states the indicated value is \$870,850. However, if the net operating income of year one (\$63,996) is capitalized at 6% ($63,966 \div .06$), the indicated value is \$1,066,600, not \$870,850. Further, the appraiser deducts \$200,000 from the incorrectly determined value for deferred maintenance items. The board has reviewed the basis of the \$200,000 estimate of deferred maintenance (pages 51 - 55) and finds that the items are those most owners would address over a period of time out of the operating income of the Property as opposed to expecting the seller of the Property to reduce their price by \$200,000.

Market Approach

The appraiser's market approach is in essence a reworked income approach. The appraiser analyzed five comparables and determined the most suitable unit of comparison is a gross room revenue multiplier (GRRM) based primarily on sales number 4 and 5. Normally, in the market approach, adjustments are made to the comparable properties to make them similar to the subject property. However, apparently in this case, because the Property is so unique with its restaurant and meeting room facilities and hotel

facilities, the appraiser relied on the GRRM for the hotel portion of the Property and some industry estimates of the restaurant value for its contributory share. (See pages 85 and 86.) Gross rent multipliers are easily derived income estimates of value used by appraisers to get an approximate estimate of value or a range of value. For gross rent multipliers to be accurate, however, the sales from which the factors are drawn must be very similar to the subject or adjustments made. The International Association of Assessing Officers, Property Appraisal and Assessment Administration, 270 (1990). In this case, the comparables are dissimilar and no adjustments were made.

Further, the GRRM was given little weight because it was derived from only two sales. The board was unable to review the arm's-length nature and quality of the sales because: 1) very minimal description was provided of the sales; 2) no details of the sales (grantor, grantee, financing, verification, etc.) were contained in the appraisal; and 3) the assessment-record cards for those properties were not submitted in compliance with TAX 201.33(f) and TAX 201.34. Consequently, without adequate information about the properties and conditions of the sale, any market indicators derived from those sales are questionable and given little weight by the board.

In short, the board found enough inconsistencies and flawed methodology in both the income and the market approaches in the Hospitality appraisal that no weight was given to the value conclusions of those approaches.

VALUE BASED ON PROPERTY'S INCOME AND EXPENSE RECORDS

During the hearing, it became obvious that due to the uniqueness of the

Property a review of its actual income and expense information

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would be necessary to assist the board in arriving at the proper assessment.

(Apparently the Town had not had access to this information in its review of the assessment.) Consequently, subsequent to the hearing, the Taxpayer submitted the Property's 1990 - 1993 actual income and expense information.

Because the Property is so unique, the board finds that any prospective purchaser of the Property would look closely at the income capability of the Property in determining what price to pay.

The board agrees with the Hospitality appraisal that any potential purchaser of the Property would be one that would own and operate the facility as opposed to being an absentee real estate investor. Individuals looking at properties such as the Taxpayer's are interested first in a livelihood from the operation of the facility and second, a return on their real estate investment. Thus, the actual income history of the Property is critical in their estimation of market value.

The board reviewed the Taxpayer's income and expense information and developed a "pro forma" estimate of value by the income approach based on the following assumptions:

Effective Gross Income	=	\$ 1,000,000
Departmental Expenses (63%)	=	- 630,000
Undistributed Expenses (23%)	=	- 230,000
Replacement for Reserves (3%)	=	- <u>30,000</u>
Net Operating Income	=	\$ 110,000
Capitalization Rate (8%)	÷	<u>.08</u>
Indicated Market Value	=	\$ 1,375,000

The first three estimates (effective gross income, departmental expenses and undistributed expenses) were derived from the Taxpayer's income and expense

information. The replacement for reserves was an estimate based on

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information contained in the Hospitality appraisal and the board's general experience as to the appropriate percent of effective gross income for replacement reserves. The board finds this estimate of replacement reserves adequately accounts for the deferred maintenance items discussed in the Hospitality appraisal and testified to by the Taxpayer. Further, because this income approach is based on the Property's actual generation of income, which inherently reflects any of the existing deferred maintenance, it would be inappropriate to do a total deduct of the \$200,000 for the deferred maintenance mentioned in the Hospitality appraisal. As the board has earlier stated, it finds that many of those deferred maintenance items are items that would normally be handled by replacement reserves and repaired on a five-to-ten-year cycle.

The 8% capitalization rate was based on information contained in the Hospitality appraisal report, the Town's August 23, 1995 response to the Taxpayer's income information, and the board's general knowledge and experience. Because the Property is one that would most likely be purchased by an owner-operator, their anticipated return on the real estate would be at a lower rate than expected by an individual purchasing the Property strictly for investment purposes.

The board did not make any reduction for management as it was unable to determine from the Taxpayer's statements of income and expenses how many management functions were already captured by several of the undistributed expense items.

CONCLUSION

There is no doubt that any estimate of value for this Property is debatable. The Property has too many unique factors for any one appraiser or board to say with absolute certainty that this is the exact market value. However, the board finds its conclusion of value, by being tied to the income stream of the Property, reasonably reflects a value a perspective purchaser/owner would likely pay for the Property.

If the taxes have been paid, the amount paid on the value in excess of \$1,388,750 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, unless the Town has undergone a general reassessment, the Town shall also refund any overpayment for 1992, 1993, 1994 and 1995.

Until the Town undergoes a general reassessment, the Town 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 "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

Ignatius MacLellan, Esq., Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Sanford Roberts, Esq., Counsel for Continental Hospitality Corp., Taxpayer; and Chairman, Selectmen of Hampton.

Dated: January 24, 1996

Valerie B. Lanigan, Clerk

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ORDER

This order responds to the "Taxpayer's" February 8, 1996 letter requesting a thirty day extension for filing a reconsideration motion. The board denies the request for an extension because the board has no statutory authority to grant such an extension. The board's jurisdiction is strictly statutory. Appeal of Gillin, 132 N.H. 311, 313 (1989); Appeal of Town of Sunapee, 126 N.H. 214, 216 (1985).

If the Taxpayer wishes to file a motion for rehearing (reconsideration), it must be filed with the board by February 23, 1996 outlining the basic reasons for requesting the rehearing. While this motion must include all the substantive reasons for requesting the rehearing, the Taxpayer may file a detailed brief supporting the reasons within thirty (30) days of February 23, 1996.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Sanford Roberts, Esq., Counsel for Continental Hospitality Corp., Taxpayer; and Chairman, Selectmen of Hampton.

Date:

Valerie B. Lanigan, Clerk

0006

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ORDER

This order relates to the "Taxpayer's" motion for rehearing (Motion). The board denies the Motion and responds to the Motion by its paragraph numbers as follows.

1. We find the letter submitted by Hospitality Appraisals, Inc. dated February 14, 1996 is additional facts and arguments that could have been presented at the hearing but were not. Therefore, in accordance with TAX 201.37(e), the board finds no reason to grant leave to submit these new arguments.

2.(a) The board gave little weight to the discounted cash flow analysis because of the inconsistencies noted in the decision of January 24, 1996 (Decision). The board respectfully points out that it is within its purview to review the evidence and give it the weight it deserves.

2.(b) On page 6 of the Decision, the board found the direct capitalization method made a mathematical error of \$195,750. This alone raises a concern as to how much weight to give the appraisal. Further, the

board adequately described in its Decision the basis for disagreeing with the assumption that a knowledgeable buyer would deduct \$200,000 from the indicated value by the direct capitalization method.

2.(c) The board appreciates having the supplemental sales information pointed out to it in the addendum of the appraisal. However, after reviewing those two pages, the board still concludes that the gross rent multiplier is a very general indication of value, and the two properties from which it was derived are different enough from the "Property" to make the gross rent multiplier unreliable for a good basis to value the Property.

3. The board finds the effective gross income used in its pro forma is reasonable based on what the market had available for information as of the tax year under appeal. The 1990 actuals were the only information contained in the Taxpayer's statements of income that would have been available to any prospective purchaser on April 1, 1991. The effective gross income (total revenue) was \$1,050,800.

The Decision, on pages 8 and 9, states the basis for the board's estimation of reserve replacements and will not be repeated here. The board's determination of the 8% capitalization rate was based to some extent on the chart, which is page 82 of the Hospitality Appraisal Report (Taxpayer's Exhibit No. 7) and not from the 1995 Berdice appraisal.

4. The board did not consider in its Decision nor did it place any weight on the assessment comparison between the Property and the Hampton Motor Inn. Without market data to which to tether any assessment, an assessment comparison alone is of little value except for comparing the assessment

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methodology used by the Town and the general reasonableness of the base rates. In the final analysis, all assessments must be based on market value (RSA 75:1).

The Taxpayer, both in its Motion and its supplement dated March 19, 1996, makes the argument that because the Town reduced the assessment in 1995 to \$675,000 and because the assessor testified that the economic conditions were not significantly different between 1991 and 1995, it is illogical for the board to arrive at a 1991 estimate of value of \$1,375,000. Yes, this is one way to interpret those pieces of evidence. Another possible way is to conclude the reduction in the 1995 assessment may be too low. However, the board's jurisdiction in this case relates to the original year under appeal, 1991, and the Decision conclusion is relative to the evidence within that timeframe, not four years later.

Lastly, in reviewing the evidence to respond to the Motion, the board noted it neglected to deduct from its income approach an estimate of value for the furniture, fixtures and equipment (FF&E). Because the pro forma estimates relied upon by the board were generated by both the real estate and personal property at the site, a depreciated replacement cost of the FF&E should be deducted from the indicated market value of \$1,375,000. The board reviewed the Hospitality Appraisal Inc.'s appraisal and determined its estimate of FF&E of \$64,000 on page 64 should be deducted from the board's findings in the Decision. Therefore, on its own motion the board amends the Decision on page 8 to read as follows:

"The board reviewed the Taxpayer's income and expense information and developed a "pro forma" estimate of value by the income approach based on the following assumptions:

Effective Gross Income	=	\$ 1,000,000
Departmental Expenses (63%)	-	630,000
Undistributed Expenses (23%)	-	230,000
Replacement for Reserves (3%)	-	<u>30,000</u>
Net Operating Income	=	\$ 110,000
Capitalization Rate (8%)	÷	<u>.08</u>
Indicated Market Value	=	\$ 1,375,000

Furniture, fixtures & equipment - 64,000
Indicated Market Value/real estate \$ 1,311,000"

Further, the board amends page 10 to read:

"If the taxes have been paid, the amount paid on the value in excess of \$1,324,000 shall be refunded with interest at six percent per annum from date paid to refund date. ..."

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

Certification

I hereby certify that copies of the foregoing order have this date been mailed, postage prepaid, to Sanford Roberts, Esq., Counsel for Continental Hospitality Corp., Taxpayer; and Chairman, Selectmen of Hampton.

Dated: april 16, 1996

Valerie B. Lanigan, Clerk