Downeast Inns, Inc., Docket No.: 16382-95PT

and

Fine Valley Associates, Docket No.: 17257-96PT

v.

Town of Conway

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1995 and 1996 assessments of: $382,600 on Lot 1, a 14.34-acre parking lot; and $8,413,100 (land $556,000; buildings $7,857,100) on Lot 2, a 3.53-acre lot with a 200-room hotel (the Property). For the reasons stated below, the appeals for abatement are granted.

The Taxpayers have the burden of showing the assessments were disproportionately high or unlawful, resulting in the Taxpayers paying a disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayers must show that the Property's assessments were higher than the general level of assessment in the municipality. Id. The Taxpayers carried this burden.

The Taxpayers argued the assessments were excessive because:

(1) four professional appraisals of value all support the conclusion that the Property is overassessed;

(2) the Town's income analysis supports an abatement because no deduction was made for tangible business value and furniture, fixtures and equipment (FF&E);

(3) a Bragg appraisal estimated the ad valorem value to be $4.2 million (after deduction of $1.3 million for FF&E) as of September 1995; and

(4) the 1996 sale of the Property for $6.8 million ($5.0 million allocated to the real estate value) was an arm's-length sale and indicates the Property was overassessed.

The Town argued the assessments were proper because:

(1) much of the market data (appraisals and sale) were obtained or occurred after the time for the Town to respond to the abatement;

(2) the sale of the Property was distressed because the owners had just negotiated (in writing) the loan down from $9,300,000 to $5,700,000 contingent upon two payments totalling $700,000;

(3) the Bragg appraisal should be given no weight because it valued the Property for significantly less than it sold for and its sales comparison approach used all FDIC sales;

(4) there should be little or no reduction in value for business value because the sale only allocated $100,000 of the approximately $7,500,000 sale price for business value; and

(5) the Town to a large extent relied on the Maineland appraisal because it was used by a prospective purchaser to go to a bank for a $11,000,000 loan.

The parties stipulated that the level of assessment for 1995 and 1996

for purposes of this appeal was 100%. The parties also agreed that in estimating the Property's value, the income approach was the most reliable approach.

Board's Rulings

Based on the evidence, the board finds the market values and assessed values for both 1995 and 1996 to be $6,600,000. Despite the parties' stipulation to 100% market value level of assessment for both years, the board performed a separate analysis for each year because distinct evidence was submitted for both years. However, the value conclusions for both years are not significantly different due to a higher capitalization rate in 1996

offsetting a higher net operating income; thus the same value conclusion is found for both years.

These appeals raise two distinct issues that this decision will address: (1) the December 1996 sale of the Property as an indication of market value; and (2) in valuing the Property by the income approach, the choice of appropriate potential gross income and expenses to reflect prudent management, recognition of the unique aspects of the Property (e.g. visibility, competition, marketing niche, etc.), and accounting for business and tangible personal property value.

Sale of the Property

The Taxpayer argued the sale of the Property was an arm's-length transaction and should be given weight by the board in determining whether an abatement is warranted. Conversely, the Town argued the sale was distressed and should not be given any weight in determining the market value of the Property.

The board does not entirely discount the sale as an indication of the Property's market value; however, after lengthy review of the complicated transaction, the board concludes the sale included too many financial aspects to arrive at any conclusive determination of market value. The board's discussion on some of the complicated financial arrangements of this sale follows.

The basis of the December 1996 transfer was the May 1996 Purchase and Sales Agreement between Downeast Inns, Inc. and James McCann which was subsequently transferred to Fine Valley in October 1996. While the purchase price was indicated at $6,500,000, the board was unable to determine the actual purchase price at closing. The cash at closing in the Purchase and Sales Agreement was for $6,430,000, while the Closing Statement indicated cash exchanging hands of between $6,800,000 and $6,900,000. Further, the purchase price was conditioned with an indemnification agreement of a promissory note to Blackstone Bank and Trust and an assumption of liabilities. At closing,

this indemnification agreement resulted in $250,000 being paid by the purchaser. The board reviewed the list of assumed liabilities attached to the Purchase and Sales Agreement. Many of the assumed liabilities appear to be a proration of ongoing operating expenses of the Property (e.g. real estate taxes, rooms and meal taxes, payroll, franchise fees, etc.) and thus not considered part of the Property's real estate value. However, two items (FDIC/Blackstone Bank account/Bar Harbor note and loans to B. K. Cough and James Cough) raise unanswered questions whether these were a proration of actual operating expenses or whether they were either partially or wholly

attributable to the sale price. For example, while it is quite possible that the over $500,000 in loans to Cough and Cough incorporated the infusion of capital for cash flow purposes, it is unusual, based on the board's experience, that such operating loans would normally be assumed by the purchaser without a concomitant affect on the sale price. In short, from the testimony and exhibits, the board was unable to clearly understand the cash value that both the buyer and seller intended to be the final consideration.

The board is concerned that the negotiated write-down of the mortgage inordinately affected the sale price. Drew Swenson, CPA for Barry, Dunn, McNeil and Parker testified that one of the goals of writing down the $9,700,000 mortgage to $5,700,000 was the ultimate sale of the Property at a price closely tied to the final mortgage liability. Also, one of the conditions in the assigned Purchase and Sales Agreement was the mortgagee's satisfaction of all outstanding obligations by a lower mortgage amount and a one-time principal payment. It appears that the sale price was largely driven by the negotiated write-down of the mortgage and thus it is difficult to conclude that the sale price is a product of more normal market motivations. Nonetheless, the board does understand the Taxpayers' argument that such negotiated writing down of a mortgage for a property whose value has dropped relative to its initial construction costs was not uncommon during this time period to get the Property's debt more in balance with its current value.

However, this write-down process, along with the other financial aspects of the sale, diminishes the confidence that can be placed in the sale as an indication of market value. See Society Hill at Merrimack Condo. Assoc. v.

Town of Merrimack, 139 N.H. 253 (1994) (trial court has discretion to evaluate the evidence surrounding a sale of a property in determining whether such sale should be given weight in determining market value).

In the October 8, 1996 letter (exhibit 7 of Taxpayers' Ex. #1) (Letter), Fine Valley agreed to acquire Mr. James McCann's right to purchase the Property in accordance with the May 24, 1996 Purchase and Sales Agreement for $340,000 plus $60,000 reimbursement for "hard costs incurred ... in connection with the Purchase Agreement". Further, the Letter also agreed to pay Mr. McCann up to $340,000 for indemnifying Fine Valley from any claim Mr. Robert Cowan, a shareholder of Downeast Inns, Inc., might have by virtue of a first refusal right under a shareholder's agreement and by an action filed by Mr. Cowan in Cumberland Maine Superior Court. Apparently Mr. Cowan's interests and claims were subsequently settled by the November 6, 1996 Assignment Agreement (exhibit 6 of Taxpayers' Ex. #1), from Mr. Cowan to Marlin Capital Corp. (a corporation with some relation to Mr. McCann) with a payment of $355,000. The Letter also provided that Fine Valley would pay any new legal costs incurred by Mr. McCann in assuring he or his assignee, Fine Valley, would be the only "parties entitled to purchase the Hotel, free and clear of any and all third party claims...."

The parties disagreed as to whether these additional payments should be considered part of the transaction price. The Taxpayers argued that because none of the proceeds of these peripheral payments went to Down East Inns, these payments are not attributable to acquiring the physical aspects of the Property. The Town argued that the payments were necessary for Fine Valley to acquire all interests in the Property, and thus, they should be considered as part of the total sale price. We agree with the Town. Prior to the Fine Valley purchase, the rights to the Property had either been fragmented by the

Purchase and Sale agreement or clouded by the claims made by Mr. Cowan. For Fine Valley to acquire title "free and clear of any and all third party claims," it agreed to pay these peripheral payments for that clear title and to reassemble the fragmented bundle of rights. The board understands an argument could be made that purchase and sale agreements, rights of first refusal and the like can be considered personalty and not realty. However, as in this case where the extinguishing of these interests is so closely tied to obtaining clear title to real estate, the consideration paid for those interests can be deemed part of the total acquisition price. While the board finds these peripheral payments should be considered part of the sale price, the machinations that produced these payments raise a question whether the total consideration paid for the various rights is reflective of the market value of the Property.

In conclusion, the sale price is not clearly determinable and is comprised of so many components influenced by varying motivations that it is not possible to conclude their sum total is reflective of market value.

Valuation Issues

In addition to the assessed value and the sale of the Property, six opinions of value (summarized below) were submitted:

	Bragg Appraisal	Northern Appraisal	Maineland June 1996 Appraisal	Maineland December 1996 Appraisal	Losapio DCF	Town's Income Value
Total Value	$4,700,000	$4,800,000 (incl. FF&E but not business value)	$11,400,000	$11,250,000	$6,695,000	$8,900,000

		$5,705,000 w/bus.value				
FF&E	$1,300,000	$1,034,000	$1,500,000	$1,500,000	$1,000,000	None
Business Value	None	$905,000	$1,335,000	$1,360,000	$674,000	None

In its decision, the board has reviewed and drawn information from all of the opinions of value and incorporated them in its findings with the exception of the Northern Appraisal. The board has given little weight to the value conclusion in the Northern Appraisal due to its generally simplistic approach and brief description of analysis. However, the board has considered the FF&E information contained in the Northern appraisal. The balance of the financial information (actual historical revenue and expenses) is mostly repetitive of that contained in the other appraisals.

There are three approaches to value: 1) the cost approach; 2) the comparable-sales approach; and 3) the income approach. The Appraisal of Real Estate at 71 (10th Ed. 1991).

While there are three approaches to value, not all three approaches are of equal import in every situation. The Appraisal of Real Estate at 72; Property Appraisal and Assessment Administration at 108. In New Hampshire, the supreme court has recognized that no single method is controlling in all cases, Demoulas v. Town of Salem, 116 N.H. 775, 780 (1976), and the tribunal that is reviewing valuation is authorized to select any one of the valuation approaches based on the evidence. Brickman v. City of Manchester, 119 N.H. 919, 920 (1979). While some sales evidence was submitted, both parties

primarily focused on the income approach in the presentation of their evidence. The board agrees that any prospective purchaser of this Property would be significantly more influenced by its income stream than by either the Property's replacement cost or sales of similar properties. Comparing the Property's relatively recent construction costs (1989) with <u>any</u> of the parties' value estimates indicates that the cost approach is a less than reliable method in estimating the Property's value. Evidence submitted indicated the actual land acquisition and construction costs were in the range of approximately $16 to $18 million, while the parties value estimates ranged from $3.4 million to approximately $8.8 million. While a sales approach could theoretically be performed, it is difficult to derive a value estimate from

the few sales submitted given the unique nature, size and location of the Property and the general lack of comparability of the sales submitted.

The first step in any income approach estimate is determination of market rents (income) and reasonable expenses. Hotel properties such as this differ to some extent from more typical income producing properties in that it is common that the entire income stream from the property be analyzed as opposed to just rents received from leasing space. Nonetheless, the principal is the same that the capitalized income must be reflective of general market practices to lead to a proper indication of the property's value. Consequently, actual income and expenses of a property can be utilized as long as adequate evidence exists to indicate that they are reflective of market.

In this case, actual income and expenses, along with national and

regional studies, were referenced as the bases for the various value estimates submitted by the parties. In different ways, the parties argued the general studies either supported or disallowed the use of the actual income and expenses. For example, the Town argued that the Property's occupancy rate (and thus its actual income) was low compared to other similar full-service lodging properties. Also, the Town argued that the actual expenses were higher than those of other similar facilities and that a specific report by Daniel C. Wright for the Property identified specific expense savings. On the other hand, the Taxpayer argued that while the Property's occupancy level was lower and expenses higher than regional or national norms, they were so due to the Property's unique aspects. These unique aspects, the Taxpayer's argued, included the limited visibility and signage for the Property from Routes 16 and 302 and its marketing niche being primarily conference and referral clients as opposed to seasonal/recreational customers. The Taxpayer also cautioned that the use of the actuals needed to be tempered by the impending construction of a competing facility (Summit) and the Summit's raid of the Property's marketing staff in late 1996 through 1997.

Based on the evidence, including the testimony of the Property's controller and manager, the board finds the Property was being prudently managed. We find the lower than normal occupancy rate is related to the unique factors of the Property rather than lack of prudent management. Adequate evidence was submitted that the Property is marketed in a reasonable fashion and directed at the clientele best suited for the Property. Because the Property is not located directly on a main highway or immediately adjacent to a ski area, the management has properly directed its marketing towards

conference and Sheraton referral businesses. Consequently, the board places significant weight on the Property's historical actual income.

Similarly, the board finds that the Taxpayer's expenses were generally prudent. However, based primarily on the testimony of the Property's controller, we find that some expense savings could have been anticipated to have been made and these adjustments will be further detailed in the decision.

Because this decision addresses two separate tax years and appeals, the board's income approach will be calculated separately for each year noting any similarities or differences between the two years' assumptions.

Estimated Income

1995

Based on a review of historical income for the Property and general New Hampshire lodging trends, the board concludes the 1995 actual revenue of $5,110,062 appears to be reflective of the Property's market potential. Actual net revenues from 1993 to 1994 dropped 1.3% (page 45 of Maineland June 1996 appraisal). Regional and statewide lodging trends for that same time period indicated an increase in lodging revenue of 1.8% to 5.5% (Bragg Appraisal, page 32). While at first glance, the Property's actual revenues for this time period appear to be contrary to regional trends, and could raise a question about prudent management, expanding the time period to include 1995 actual revenues indicates the 1995 actuals reflect an increase in lodging revenues in keeping with regional trends. Specifically, the increase in

actual revenues from 1994 to 1995 was 5.3%, however, if the 1.3 decrease from 1993 to 1994 is subtracted, it shows an average 4% increase in net revenues from 1993 to 1995 (page 45 of Maineland June 1996 appraisal). This average

annual increase is similar to that shown in the Bragg appraisal (page 32) and in the June Maineland appraisal (page 48). Further, if 1992 actuals are also considered, the board concludes that the reduction in revenues for 1993 and 1994 and the subsequent rebounding in 1995 is reflective of general

fluctuations in the economy for that period and is not necessarily reflective of imprudent management. Also this analysis indicates that the observations in the Bragg appraisal (pages 43 and 45) that the hotel "may have missed out on potential rate increases" are not necessarily correct. The Bragg appraisal analysis (page 43), comparing the first nine months of revenue for 1994 with the first nine months of revenue for 1995, showed a slight reduction in average daily rate. However, when the entire 12 months are reviewed (see page 45 in Maineland June appraisal), the total 1995 actuals show an increase over 1994. Consequently, the board concludes the Property was competitive during this time period in both occupancy and daily rate but that seasonal fluctuations may have led to the conclusion of missed rate increases in the Bragg appraisal.

1996

The board finds an increase of 2.5% in the Property's 1995 income for 1996 ($5,237,814) is reasonable based on the various appraisals submitted and factors including:

1) the Bragg appraisal estimated a 4.0% increase in both revenue and expenses in its discounted cash flow (DCF) analysis;

2) the DCF performed by Mr. Losapio attached to the 1995 appeal assumed an inflation rate increase in the net operating income (NOI) of 3.9%;

3) the June Maineland appraisal assumed a 2.5% increase in revenues for 1996;

4) general rates of inflation and estimates of economy increases contained in the various appraisals;

5) the construction of a competing hotel at Attitash known as the "Summit" in 1996 (The board finds that this is a factor that a knowledgeable purchaser on April 1, 1996 could have been aware of as plans for its construction had been made available at that time. However, the board finds that a prospective purchaser would not necessarily temper its expectations as much as that argued by the Taxpayers. First, the Summit being located next to a ski area would attract a more ski oriented clientele than the business clientele the Property attracts. Second, the construction of a new hotel in the same marketing area is also an indication that opportunities exist for overall market growth in the lodging industry in this area. Testimony was submitted that the Property's revenues from 1995 to 1997 dropped approximately $600,000 due to the opening of the Summit. The board finds this loss was mostly attributable to several of the Property sales and marketing staff leaving to work at the Summit and taking some clients with them. The board finds that in valuing a property by the income approach, such anomalies or blips in the revenue stream should not be considered because valuing property by the income approach always assumes prudent and efficient management.)

Expenses

The board has adopted the actual 1995 expenses revised for the actual savings of approximately $126,000 that occurred in 1996 through 1997 including such things as change of electrical rate and various management and staffing efficiencies. The board finds these savings could have reasonably been made

in 1995 and that a prudent owner or purchaser could have expected to have achieved those savings. The board has reviewed the business plan prepared by Daniel C. Wright which outlined total annual savings of over $380,000. We find many of these proposed savings could not realistically have been met without an affect on the quality of service. The testimony of the general manager, Mary Colorio, and the controller, Susan Lautenschlager, also

confirmed, based on their review, that the savings from increased efficiency certainly could not be of the magnitude as that envisioned in the Wright report.

The actual 1995 expenses were $4,042,630. Reducing these expenses by the potential savings of approximately $126,000 indicates expenses could have been reduced to $3,916,630. These expenses include all the operating and overhead costs actually incurred except for real estate taxes, debt service, estimate of off-site management and estimate for reserves for replacement.

The board estimates a reserve for replacement at 3% of gross revenues ($153,302). The appraisals submitted, with the exception of the Town's estimate at $73,000 per year, estimated replacement for reserves at 3-4%. This amount for reserves is reasonable given, on one hand, the relatively recent construction of the Property and, on the other hand, the amount of shorter life FF&E in this type of property.

Based on a review of the detailed expense itemizations included in the various appraisals, the board concludes the expenses include actual franchise fees and all payroll and benefits related to on-site management of the Property. Because of the inclusion of all on-site management costs in the expenses, the board finds it is inappropriate to add an additional management

fee of 3% as suggested in several of the appraisals. This 3% management fee adds approximately $150,000 expense for off-site management. No testimony was submitted to substantiate the necessity of such off-site management expenses. Nonetheless, the board does find that the on-site management costs do not fully account for all of the management activities necessary for running a property of this size. It is conceivable that additional management by the owner of the Property (financial planning, oversight of on-site management, etc.) is appropriate for the overall prudent management of the Property. No estimate of such management was submitted; however, based on the board's judgment we find an additional management expense of 1% of the gross revenues ($51,101) is reasonable.

By including the actual franchise fees and the actual on-site management expenses and estimated off-site management expenses, the board finds these three items collectively remove any business value from the income approach. Both the appraisals submitted and various sources indicate this method as a way of estimating such a property's business value.[1] Adding together the 1995

[1] The board researched existing literature as to accepted methodology in deducting business (ongoing concern value). While the sources reviewed are too numerous to list, four recent articles cover the current thinking on the methodology for these deductions. Gloodt, Hotel Valuation: Splitting the Hospitality Business From the Real Estate Assets, Journal of Multistate Taxation, July/August 1998 Vol 8/No 3, at 106; Egan, Mixed Business and Real Estate Components in Hotel Valuation, The Appraisal Journal, July 1996 at 246; Matonis and DeRango, The Determination of Hotel Value Components for Ad Valorem Tax Assessment, The Appraisal Journal, July 1993 at 342; Rushmore, Property Tax Assessments for Hotels and Motels, The Real Estate Finance Journal, Winter 1991 at 75. Review of the literature indicates there is not consistent agreement as to how to deduct for business value.

However, based on the evidence submitted by the parties and the more common consensus of the literature, the board has estimated business value by deducting franchise fees as an expense and accounting for any additional off-site management by the owner at 1% of gross revenues. The board recognizes

actual expenses, the additional 1% management estimate and the reserve for replacement estimate, the board finds the total 1995 expenses to be $4,121,033. No evidence was submitted as to any inordinate increase in the expenses for 1996. Therefore, the board concludes the 1996 expenses can be estimated by increasing the 1995 level by 2.5%, the same estimated rate of increase as the income.

Capitalization Rate

The board finds an appropriate capitalization rate for both 1995 and 1996 exclusive of tax rate to be 10.5%. The capitalization rates contained in the various analyses submitted ranged from 9.0% to 12.0%. The 9.0% rate was contained in the Town's appraisal submitted in their prehearing statement. The board finds this rate does not adequately cover the mortgage and equity requirements of the Property. The 12.0% rate on the other hand is too high since the net operating income is largely comprised of actual income and

expenses. Thus, the risk component of the capitalization rate is minimized by the use of the actual income which reflects the Property's lower occupancy rate. The 10.5% rate was used by the Town in its assessment income calculation, was the terminal capitalization rate in the discounted cash flow (DCF) of the June Maineland appraisal and falls in the middle of the range of the residual capitalization rate for full service hotels contained in the Bragg appraisal. The board finds this rate adequately reflects the risk and debt requirements of the Property given its location, marketing niche and

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this approach does not recognize any revenue enhancement from the franchise arrangement. However, no evidence or arguments were submitted by the parties on that issue.

newness of construction.

Based on the Town's evidence, the board has added an effective 1995 tax rate of 2.55% to the capitalization rate of 10.5% for an overall rate of 13.05% for 1995. The board determined from the department of revenue administration's records that an effective tax rate for 1996 should be 2.80% based on a base tax rate of $23.82 and a North Conway Water Precinct tax rate of $4.18. This results in an overall tax rate for 1996 of 13.30%.

A summary of the value calculations follows:

	1995		1996
Gross Income	$5,110,062	(1995 x 1.025)	$5,237,814
Expenses	$3,916,630		-
1% Management	$ 51,101		-
RFR 3%	$ 153,302		-
Total Expenses	($4,121,033)	(1995 x 1.025)	($4,224,059)
NOI	$ 989,029		$1,013,755
OAR	13.05%[2]		13.30%[3]
Indicated Value	**$7,578,766**		**$7,622,218**

Based on the indicated values for 1995 and 1996, the board finds the market value of the real estate and FF&E for both years to be $7,600,000.

The parties estimates for FF&E were: $0 - (the Town's appraisal made no deduction for FF&E), approximately $1,000,000 (Losapio and Northern Appraisal) and $1,500,000 (Maineland June and December appraisals). All the estimates were depreciated estimates of either original cost or industry estimates per

room. To verify the accuracy of the original cost of FF&E per room of $15,000-$16,000 utilized in the Bragg and Maineland appraisals, the board,

[2] Cap rate 10.5% + 2.55% (eff. tax rate) = 13.05%

[3] Cap rate 10.5% + 2.8% (eff. tax rate) = 13.3%

using Marshall Valuation Service hotel equipment time trending indexes, trended the original costs contained in the Northern Appraisal (pages 100 - 101) to both 1995 and 1996. The time trending indexes were 1.14 and 1.16 respectively or on average 1.15 for both years. Multiplying the equipment index factor times the $1,722,928 original cost itemization (Northern Appraisal) results in an indicated cost per room of approximately $10,000 ($1,722,928 X 1.15 ÷ 200 rooms = $10,000 rounded). Consequently, the board concludes the $15,000 - $16,000 industry estimates are too high and uses $10,000 per room as an estimate of the replacement cost of the FF&E. Based on the age of the Property and the depreciations employed by the various appraisers, the board concludes an appropriate depreciation for the FF&E is 50% resulting in a $1,000,000 estimate for FF&E (200 rooms x $10,000 x .50 = $1,000,000). The board realizes this analysis is obviously subject to debate if the actual itemization of FF&E in the Northern Appraisal is not accurate and if actual costs of hotel equipment differed from the national trend contained in Marshall Valuation Service. However, this was the only actual itemization of FF&E submitted in any of the evidence by which to check the various appraisers' estimates based on industry standards. Notwithstanding these comments, the $1,000,000 estimate corresponds with Mr. Losapio's and Northern Appraisal estimates of FF&E.

Conclusion

Deducting the $1,000,000 estimate for FF&E from the $7,600,000 estimate for real estate and FF&E results in a market value estimate and assessment for the real estate of $6,600,000.

Findings of Fact and Rulings of Law

In these responses, "neither granted nor denied" generally means one of the following:

a. the request contained multiple requests for which a consistent response could not be given;

b. the request contained words, especially adjectives or adverbs, that made the request so broad or specific that the request could not be granted or denied;

c. the request contained matters not in evidence or not sufficiently supported to grant or deny;

d. the request was irrelevant; or

e. the request is specifically addressed in the decision.

Town

Findings of Fact

1. Neither granted nor denied.

2. Neither granted nor denied.

3. Neither granted nor denied.

4. Granted.

5. Granted. However, based on the testimony, these cash payments were necessary to meet only seasonal negative cash flow.

6. Granted.

7. Neither granted nor denied.

8. Neither granted nor denied.

9. Neither granted nor denied.

10. Neither granted nor denied.

11. Granted.

12. Granted.

13. Granted.

14. Neither granted nor denied.

15. Granted.

16. Granted.

17. Neither granted nor denied.

18. Denied.

Rulings of Law

A. Granted.

B. Granted.

C. Granted.

D. Granted.

E. Granted.

F. Granted.

G. Granted

H. Granted.

I. Denied.

J. Neither granted nor denied.

K. Granted.

Taxpayer

Findings of Fact and Rulings of Law

1. Granted.

2. Granted.

3. Granted.

4. Neither granted nor denied.

5. Granted. Additionally, the June 1996 Maineland Appraisal, $11,400,000.

6. Granted.

7. Granted.

8. Denied. See page 18 of June 1996 Maineland Appraisal and page 20 of December 1996 Maineland Appraisal.

9. Granted.

10. Neither granted nor denied.

11. Neither granted nor denied.

12. Neither granted nor denied.

13. Granted.

14. Granted.

15. Granted.

16. No request numbered 16.

17. Denied.

18. Neither granted nor denied.

19. Neither granted nor denied.

20. Neither granted nor denied.

21. Neither granted nor denied.

22. Denied.

23. Neither granted nor denied.

24. Denied.

25. Granted.

Refund

If the taxes have been paid for the tax years 1995 and 1996, the amounts paid on the value in excess of $6,600,000 each year 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 1997 and 1998. 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.

Rehearing

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

Concurred, unavailable for signature
Paul B. Franklin, Chairman

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Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Margaret H. Nelson, Esq., Counsel for Downeast Inns, Inc. and Fine Valley Associates, Taxpayers; Peter G. Hastings, Esq., Counsel for the Town of Conway; and Chairman, Selectmen of Conway.

Date: February 25, 1999

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Valerie B. Lanigan, Clerk

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Downeast Inns, Inc.

v.

Town of Conway

Docket No.: 16382-95PT

ORDER

This order responds to the "Taxpayer's" March 27, 1998 request for leave to use more than 10 comparables.

The request is granted. The board understands the motion was necessary because the total comparables contained in the various appraisals submitted by the Taxpayer exceeded the limit of 10 in TAX 201.33(g). In granting this request, the Taxpayer is limited to only those comparables referenced or contained in its prehearing submissions. Further, in accordance with TAX 201.33(f), the assessment-record cards for the comparables shall be submitted before or at the hearing.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

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Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

Douglas S. Ricard, Member

CERTIFICATION

I hereby certify that copies of the foregoing order have this date been mailed, postage prepaid, to Michael Losapio, Agent for Downeast Inns, Inc., Taxpayer; Peter G. Hastings, Esq., Counsel for the Town of Conway; and Chairman, Selectmen of Conway.

Dated: April 6, 1998

Valerie B. Lanigan, Clerk