

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>LOIS H. SMITH, TRUSTEE,</p> <p>v.</p> <p>Respondent:</p> <p>LARIMER COUNTY BOARD OF EQUALIZATION.</p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Lois H. Smith Address: P.O. Box 4445 Estes Park, Colorado 80517 Phone Number: (970) 481-9024 E-mail: Attorney Reg. No.:</p>	<p>Docket Number: 38898</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on December 12, 2001, Karen E. Hart and Mark R. Linné presiding. Petitioner, Lois H. Smith, appeared pro se. Respondent was represented by Linda K. Connors, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**POR OF NW ¼ OF SE ¼ & NE ¼ OF SW ¼ 14-4-73
(Larimer County Schedule No. R1240056)**

Petitioner is protesting the 2001 actual value of the subject property. The property is an historic lodging property known as the Baldpate Inn, constructed in 1917. The property is unique, in that it is surrounded by National Forest in a National Park. The property is listed in the National Register of Historic Places. The property consists of 12 guest rooms in the main structure, and two additional guest cabins and employee housing units in cabins situated adjacent to the main lodge.

ISSUES:

Petitioner:

Petitioner contends that her property is very unique and has maintenance that is beyond comprehension. Additionally, Petitioner notes that the subject should not be compared to the comparables utilized by the Respondent, due to the high level of maintenance. The sales used were significantly different than the subject in terms of configuration and design, given that her property is a larger, older building on the side of a mountain, built with older materials such as log and timber, that are not easy to work with. There is nothing standard about this building. The actual income and correct application of the direct sales comparison approach would result in a lower value.

Respondent:

Respondent contends that the subject property has been correctly valued. The comparable sales used are the most similar to the subject available in the market. The actual income considered in tandem with industry data support the assigned valuation.

FINDINGS OF FACT:

1. Ms. Lois H. Smith, Petitioner, presented the appeal on her own behalf.
2. The witness testified that the subject property was constructed in 1917. It has been in the same family for over 70 years. It is an historic lodging property known as the Baldpate Inn, and is surrounded by National Forest in a National Park. The property is listed in the National Register of Historic Places.
3. Ms. Smith testified that the property is very unique, and if there were any underlying descriptive term she could use to describe the difficulty in operating the property, it would be that the subject has maintenance that is beyond comprehension. The witness noted that the subject could not even be compared to the comparables utilized by the Respondent, due to the high level of maintenance.
4. The witness referred to the Respondent's Exhibit #1, and testified that the photographs of the comparable sales clearly showed that the sales used were significantly different than the subject in terms of configuration and design.
5. The witness testified that her property is a larger, older building on the side of a mountain, and built with older materials, such as log and timber, that are not easy to work with. There is nothing standard about this building.

6. The Petitioner noted that the Respondent's comparable sales are typical and consist of traditional motels, each unit having its own bathroom, and typically configured. She noted that out of the 12 rooms in her main building, only two have their own bathroom; everyone else has to go down a hallway to a common bathroom. She noted that while this configuration is adequate for a certain niche segment of the market, it is not fair to compare a room that does not have a bathroom to units that do.

7. The witness testified that there are conditional problems with this building, which include the fact that the property is not entirely sheet rocked; the previously noted lack of separate bathrooms; structural work that needs to be completed on the front porch, and the fact that the roof is totally coming apart and needs some work. The witness additionally pointed to the windows, each of which needed to be reglazed. The current condition of the windows is so poor, that there are times when they are being washed, that an employee must be ready on the opposite side to wipe up the water that comes through.

8. The witness noted that the Respondent had concluded a value of \$32,000.00 per unit and applied this figure to the rooms in her lodge, without taking into account the problems that she had detailed. She felt that this was entirely inappropriate. She felt that the comparison of her property to the referenced sales was not comparing apples to apples.

9. After consideration of the subject property's condition, she felt that a figure of \$17,500.00 per room was more appropriate, resulting in a valuation conclusion of \$245,000.00.

10. The witness testified that the subject property was valued by the Respondent as both a lodging property and a restaurant. In examining the Respondent's comparable restaurant sales, the witness testified that she considered the comparable sales entirely inappropriate, given that the sales are from the 1950s, 1960s and 1990s; and these properties are being compared to a property that was constructed in 1917. The witness also noted that these are different use types, one is a health club and one is a flea market property. In her mind, these properties are not appropriate as sales comparables.

11. The witness testified that if appropriate adjustments were made to the one sale that is truly comparable, a value of \$75.00 per square foot might be more acceptable, resulting in a value for the restaurant component of her property of \$165,000.00. Given the previously determined lodging value of \$245,000.00, this would result in a total property value of \$410,000.00.

12. In discussing the income analysis performed by the Respondent, the witness testified that she did not feel that the figures had been adjusted for the seasonal nature of the business and, additionally, did not consider the inherent limitations of the business. The Baldpate Inn, while beautiful, will never be capable of producing a significant income because of the problems with a property of this age. The witness noted that the property at best operates 100 to 120 days out of 365 days each year. She felt that the income data utilized by the Respondent does not take into account the seasonality, and should therefore be reduced by at least one-third. The starting point for the income analysis should be the four months that it is operational, and that vacancy should then be applied against the shorter operational period. During the season that she is operational, the witness noted that the occupancy is 77%, and this rate should be applied against her 120-day season.

13. The witness testified that much of the income information utilized by the Respondent was quite arbitrary, and did not make sense. She noted that the adjusted net operating income was arbitrary, as was the capitalization rate of 14%.

14. The witness testified that she felt that the actual income and expenses of the operator for the last 15 years should be considered and applied. She felt that the operation of the property under her management had resulted in the maximal operational performance. This was all of the money that she could get out of this property.

15. The Petitioner testified that her operation of the property has less to do with making a profit, because she had done all that she could with the property. Instead she felt that it was a matter of preservation. She again reiterated that the subject was listed on the National Register of Historic Places, because it is the only log western stick architectural building built for the original use of lodging that is still in use in the State of Colorado.

16. The witness noted, through her testimony, that the subject was built as a lodge, and it is still a lodge, but there is a limit to the income you can produce because of maintenance costs and utility costs that are above average. These costs are not typical; there is nothing typical about this property.

17. The witness testified that the income figures used by the Respondent included averages from the Hotel Restaurant Association and the Colorado Restaurant Association, and she felt that there are income and expense issues specific to her property that went far beyond anything that is typical for a property of this type.

18. The witness testified that there are all types of problems with a property of this type, including being on an unmaintained county road, so the maintenance for the road to her property becomes her responsibility. She has performed all of the maintenance on the roadway for the past 15 years, and she cannot perform sufficient maintenance to make the road operational 365 days per year.

19. The witness testified that while she believes that the Respondent has attempted to be fair, they have not considered all of the unique features that she has mentioned.

20. Under cross-examination, the witness testified that she examined the Respondent's appraisal; and after examining the comparable sales, decreased the price per square foot based on age and condition and restroom availability. She indicated that she utilized the same three comparable sales indicated in the appraisal. She noted that she did not feel that the market approach was relevant in valuing the subject.

21. The witness testified that she did not make line item adjustments but, rather, made arbitrary adjustments that she felt were as relevant as the arbitrary adjustments applied by the Respondent.

22. In response to questions from the Board, the witness testified that she is very involved in the operation of the subject property. She further testified that she would not be able to replace her labor for the \$12,000.00 that she pays herself.

23. The Petitioner testified that while she lives on the property during the summer, she does not live on the property during the winter.

24. The witness testified that the most appropriate approach to value the subject property was the income approach. She concluded a value from the direct sales comparison approach because she thought that she had to.

25. In response to recross-examination, the witness testified that the salaries for the employees were listed under cost of goods versus salaries and wages because that was the manner in which her CPA set it up for the previous three years.

26. Ms. Smith testified that the amount of rent that she charged herself as landlord for the property was based on the amount needed to pay for interest on the mortgage and property taxes.

27. The witness testified that much of what she receives as compensation from the property is in the form of the rental payment, but that because of the nature of her position at the property, she does not take the full salary that she would otherwise be entitled to.

28. Based on her actual income, and the adjusted conclusions of the Respondent's appraisal report, the Petitioner requested a 2001 actual value of \$357,000.00, which she rounded to \$360,000.00.

29. Respondent's witness, Ms. Amy Wagner, Colorado Certified General Appraiser, Chief Commercial Appraiser for the Larimer County Assessor's Office, presented the following indications of value:

Cost Approach:	\$464,324.00
Market Approach:	\$646,900.00
Income Approach:	\$610,200.00

30. Respondent's witness presented three comparable lodging sales ranging in sales price from \$27,306.00 to \$30,869.00 per unit and in size from 7 to 16 units. After adjustments were made, the sales ranged from \$31,200.00 to \$34,000.00 per unit.

31. Respondent's witness presented three comparable restaurant sales ranging in sales price from \$416,500.00 to \$955,080.00, and in size from 3,754 square feet to 7,804 square feet. After adjustments were made, the sales ranged from \$86.55 per square foot to \$134.46 per square foot.

32. After separately determining the value of the lodging and restaurant components, the Respondent concluded a value of \$646,900.00.

33. The witness considered income and expense data from lodging and restaurant properties and utilizing a pro-forma analysis concluded a value of \$610,200.00.

34. The witness described the subject as being very unique, including a unique museum that features keys from previous visitors.

35. The witness testified that the subject consists of a main lodge and two cabins. Three additional cabins are used for employee housing. The property also includes a storage shed and a shed for the water treatment plant.

36. The witness testified that she utilized all three approaches to value to conclude a valuation for the subject property.

37. Ms. Wagner testified that the Petitioner agreed with her cost approach value, and thus there was no need to go into further detail on this approach. Based on the cost approach analysis, the witness concluded a value of \$464,324.00.

38. In discussing the market approach to value, the witness testified that the subject is a very unique property, and there are historically very few properties within Estes Park to use as comparable sales. Because there are no lodges that have sold, it is very difficult to get comparable sales. The valuation solution that they determined was most appropriate was to look at the property as both a lodging property and a restaurant property.

39. The witness testified with respect to the comparable sales and the manner in which they were utilized to derive a value for the subject. Ms. Wagner indicated that they utilized the lower end of the market for both the lodging and restaurant components of the subject. While Ms. Wagner agreed it was not the best method of valuing the subject, she noted that without a lodging sale containing a restaurant having sold in the market, this was one of the few techniques they could utilize in order to derive a value for the subject.

40. The witness agreed with the Petitioner that two of the three restaurant comparables are not actually operating as restaurants at the present time. She did note, however, that the properties were restaurants as of the date of sale.

41. In discussing the income approach, the witness testified that she considered typical income and expense information for lodging properties. Initially, the witness considered that the subject has 14 rentable rooms. Normally, the witness indicated that she would have applied between 35% and 50% occupancy, but after talking with the property owner during the appeal period, she applied an occupancy rate of 30%. An average daily rate of \$90.00 per unit was applied. A 1% figure was applied for miscellaneous income.

42. The witness testified that the income figures that she utilized were basically standard between the hotel and motel world, with additional information provided from the Division of Property Taxation. Departmental expenses, as well as operating expenses such as repairs, utilities, insurance and marketing were also applied, as were deductions for management and personal property. The final net operating income figure was capitalized into value with a rate of 14%.

43. The witness testified that a 14% rate was higher than would typically be applied to a property of this type. She noted that the higher the capitalization rate, the lower the value.

44. The witness testified that she did not include rental payments as an expense. She felt that some of the income and expense figures supplied by the Petitioner were in a gray area or were somewhat confusing. Additionally, the property must be valued without consideration for any encumbrances, such as a mortgage.

45. The witness testified that for the restaurant portion of the property, she applied a rent for the space as if it could be rented. A rental rate of \$10.00 per square foot and a 5% vacancy and collection loss was applied, with the property rented on a triple net basis; all of the expenses paid by the tenant. The income stream was capitalized at a rate of 10%.

46. After considering both the lodging and restaurant components of the subject, the witness concluded a value from income analysis of \$610,200.00.

47. With respect to the actual income being generated by the subject, the witness testified that there were certain expenses that could not be considered, due to the fact that certain types of expenses were not appropriate. When the actual income and expense data was appropriately utilized, it resulted in a value that was higher than her valuation conclusions.

48. In response to cross-examination, Ms. Wagner testified that she felt that a 30% occupancy figure was appropriate for the subject, and explained that it considered the portion of the year that the subject was open from a total possible of 365 days.

49. The witness testified that she felt a hotel was a riskier property than a restaurant, because a restaurant would typically be easier to rent out. Additionally, a restaurant can be run all year round, and does not have to be seasonal. She admitted that she applied two different capitalization rates: 10% for the restaurant and 14% for the hotel. The higher rate for the hotel was appropriate because the lodging business is fickle.

50. The witness admitted that the subject property is not a typical lodging property, but she stressed that she had looked at typical industry data as well as income and expense data specific to the subject.

51. Under redirect examination, the witness testified that she had considered the issues specific to the subject in her appraisal, specifically noting that she was at the lower end of the market in the market approach. Within the income approach, she indicated that she had used a lower occupancy rate, a lower average daily room rate, and that they considered the actual income and expenses in the derivation of the pro-forma analysis. She used the actual information as a double check to her industry-derived income and expense information.

52. In response to questions from the Board, the witness testified that she was unable to extract and separate the actual income and expense attributable to the restaurant component of the subject property.

53. The witness testified that the expenses applied against the property's income stream were those that were typical for the Estes Park market. Some of these items were not broken down in the information that was provided to the witness by the Petitioner. Even after considering the actual income and expenses, the final value conclusions of her appraisal were still within the range of value indicated by a consideration of the actual income and expense data.

54. Respondent assigned an actual value of \$635,700.00 the subject property for tax year 2001.

55. Under rebuttal testimony, the Petitioner testified that properties on the National Register of Historic Places were not compensated for repair items such as roof without applying for these grants. She had never applied for, or received, grants of any kind.

56. In response to cross-examination, Ms. Smith testified that she had not applied for any grants because she had been spending most of her time fighting her taxes.

57. In response to questions from the Board, Ms. Smith testified that her restaurant operation supplied three-quarters of her gross revenues, and lodging accounted for one-fourth.

CONCLUSIONS:

1. Petitioner presented sufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2001.

2. The Board has carefully considered all admitted evidence and testimony and notes that the subject presents very complex valuation issues.

3. The Board felt that the comparable sales were quite different in appearance, design and condition in comparison to the subject, and were sufficiently disparate to render any valuation conclusion less than reliable. The Petitioner's contention that the adjustments and the comparables themselves were arbitrary from both parties is frank and accurate.

4. Similarly, the cost approach is not reliable or relevant in the valuation of a property of the age of the subject.

5. Both parties agreed that the income approach was the most relevant and appropriate to utilize in the valuation of the subject, with the caveat that the actual income should be given the greatest weighting.

6. The Board does not believe that the application of a distinct income value for the restaurant and lodging components is appropriate and supportable in this case. While the Board appreciates the difficulty of applying the income approach in the case of the subject, it is critical to realistically value the subject in a manner that would replicate market considerations and motivations. The use of two distinct capitalization rates for one property is entirely inappropriate. The actual income of the subject, while confusing and at time contradictory, must be given weighting in this case, given the unique nature of the subject in its market. While admitting the subject was a unique property, the Respondent nevertheless utilized Estes Park expense data, despite testimony that the subject experienced higher than typical expenses by virtue of its construction and design.

7. The Board noted that certain aspects of the Petitioner's reconstructed income and expense analysis were not appropriate for a valuation analysis, including such items as the rental payment and the mortgage interest.

8. The Respondent's assigned value does not take into consideration all the factors affecting the overall valuation. The assigned value is not supported, and it the Board's conclusion that a single capitalization rate, applied to an income stream that is supportable based on base year income, is the most appropriate method of valuing the property. The Board believes that a consideration of market parameters and the application of a 14% capitalization rate is a logical manner of valuing the subject property. Accordingly, the Board believes that a net operating income of \$77,000.00, and a capitalization rate of 14% are appropriate for the subject. A final value of \$550,000.00 is concluded for the subject.

ORDER:

Respondent is ordered to reduce the 2001 actual value of the subject property to \$550,000.00.

The Larimer County Assessor is directed to change his records accordingly.

APPEAL:

Petitioner may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

If Respondent alleges procedural errors or errors of law by this Board, Respondent may petition the Court of Appeals for judicial review within 30 days from the date of this decision.

DATED and MAILED this 19th day of March, 2002.

BOARD OF ASSESSMENT APPEALS

Karen E Hart
Karen E. Hart

Mark R. Linné
Mark R. Linné

This decision was put on the record

MAR 18 2002

I hereby certify that this is a true
and correct copy of the decision of
the Board of Assessment Appeals.

Diane Von Dollen
Diane Von Dollen

38898.02

