

## **Twin River case win-win for owner, municipality**

by W. Mark Russo

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The Rhode Island Supreme Court recently entered an innovative order and judgment in a case involving property taxes for Twin River Casino in Lincoln.

The judgment in *UTGR, Inc. v. Town of Lincoln, et al.*, sets forth a structured property tax settlement that not only will save Twin River some \$5 million in property taxes over the next eight years, beginning with a \$1.8 million rebate/abatement, but will also provide Lincoln with budget predictability and property tax revenue stabilization going forward.

The case involved a Superior Court trial before Judge Allen P. Rubine, who issued a decision on various issues of first impression arising from the town's use of mass appraisal techniques to assess a unique property employing a "replacement cost valuation methodology."

Of significance is the fact that the replacement cost methodology requires the appraiser to estimate the cost to construct a hypothetical building that achieves the same functional utility as the existing gaming and entertainment complex in Lincoln.

Analyzing functional utility is extremely challenging, especially when the facility has been retro-fitted over the years from massive concrete grandstands constructed in the 1940s into a showcase for thoroughbred horse racing.

After Rubine's decision on the issues of first impression, the matter went on appeal to the Supreme Court, where the Mediation Program, presided over by retired Chief Justice Joseph R. Weisberger, helped the parties structure a unique and forward-thinking settlement that will serve to forge a strong partnership between the town and the casino.

Re-created casino assessed in 2006

In 2005, the former owner of Twin River Casino entered into a contract with the state to re-create what was then Lincoln Park into a first-class gaming and entertainment venue now known as Twin River Casino.

At the end of 2006, the transformation of Twin River was approaching completion. In accord with state law, the town was reassessing all the ratable property in Lincoln, including Twin River. The town chose to assess the value of the real property comprising the Twin River facility by utilizing what is known as "mass appraisal" techniques.

Such techniques are applicable to properties that exist in a universe of similarly situated properties. Advisory opinions arising out of the standards that comprise what are known as the Uniform Standards of Professional Appraisal Practice, or USPAP, specifically state that mass appraisals are applicable to properties that are part of a "universe" of properties.

Yet, when dealing with a property such as Twin River Casino, which is defined as a "limited market property," mass appraisal simply does not work. There is no universe of similarly situated properties.

The town ultimately decided that the appraisal methodology to be used to assess the Twin River facility would be the replacement cost method, which involves estimating the cost to construct a hypothetical building that achieves the same functional utility as the existing building.

Thus, from 2006 to 2009, the town utilized the replacement cost method to assess the value of the real property comprising Twin River at approximately \$113 million.

### **Cost approach in gaming industry**

States that regularly assess gaming and entertainment properties, such as Nevada, New Jersey, Missouri and Indiana, agree that the cost approach is the favored and, oftentimes, statutorily mandated approach to valuation. The cost approach is based on the premise that a person will not pay more for a property than it would cost to duplicate it.

One such method is the "reproduction cost method," which determines the current cost of constructing an exact replica of the subject building utilizing the same or similar materials. That method then applies depreciation factors such as physical depreciation and a number of obsolescence factors such as external/economic and functional obsolescence.

The replacement cost method employed by the town from 2006 to 2009, on the other hand, determines the current cost to construct a building with the same functional utility as the original building, but using current methods in construction design and materials. It excludes portions of the original building that may not be necessary.

The replacement cost method seeks to simplify the cost approach, because it eliminates the application of obsolescence factors. The appraiser is building a hypothetical building to achieve the same functional utility. Thus, functional and external/economic obsolescence are eliminated in the process.

### **Flaws in methodology**

Employing the replacement cost method through mass appraisal techniques, however, is flawed by its very nature.

Mass appraisal techniques simply do not allow the appraiser to do the necessary research to estimate the cost to construct a hypothetical gaming and entertainment facility that would achieve the same functional utility as the existing building.

That is especially critical when considering a limited purpose property such as Twin River, which began life as a concrete grandstand.

As a result, the town's consultants simply estimated the cost of an exact replica of the existing building and did not undertake the research necessary to estimate the cost of a hypothetical building that would serve the same functional utility.

The Superior Court judge agreed with that thinking as to the valuation methodology and, as a result, after trial, the assessed value of Twin River was reduced by more than \$30 million. The subsequent impact of that result on the municipal budget would have been detrimental to the town's finances. (*UTGR, Inc. v. Town of Lincoln, et al.*, C.A. Nos. 2008-2614, 2010-1172 and 2011-1209, decision dated Jan. 26, 2011.)

### **Structured settlement**

Fortunately, the parties — through the leadership of the offices of the town council president, town administrator and town solicitor, with the guidance of the Supreme Court Mediation Program and Justice Weisberger — were able to resolve the matter post-trial through a unique structure that will provide property tax predictability for both the private operator and the municipality for most of the next decade.

The structured settlement involves a blend of rebate, abatement and tax stabilization techniques that address the faults in the prior assessment methodologies and eliminate any detrimental impact on the municipal budget.

The case, the underlying trial and the resulting decision all underscore the fact that municipalities that host unique or special purpose properties, and the owners of those properties, must work together to determine property tax issues well in advance of disputes that require a trial for resolution.

It is vital in light of the stark realities facing our state budget, which is leaving municipalities more and more dependent on property tax revenues.

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