COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

HCRI MASSACHUSETTS PROPERTIES TRUST v. BOARD OF ASSESSORS OF THE CITY OF WORCESTER

Docket Nos. F318285, F320894, F324512

Promulgated: July 1, 2020

These are appeals under the formal procedure, pursuant to G.L. c. 58A, § 7 and G.L. c. 59, §§ 64 and 65, from the refusal of the Assessors of the City of Worcester ("assessors" or "appellee") to abate taxes on property located in Worcester and assessed under G.L. c. 59, §§ 11 and 38 for fiscal years 2012, 2013, and 2014 ("fiscal years at issue").

Commissioner Rose heard these appeals. Chairman Hammond and Commissioners Good, Elliott, and Metzer joined him in the Revised Decision for HCRI Massachusetts Properties Trust ("appellant") for the fiscal years at issue, promulgated herewith.

These findings of fact and report are made pursuant to a request by the appellant under G.L. c. 58A, § 13 and 831 CMR 1.32.

Mark J. Witkin, Esq. for the appellant.

John F. O'Day, Jr., Esq. for the appellee.

FINDINGS OF FACT AND REPORT

These appeals concern the valuation of a certain senior housing complex located at 101 Barry Road in Worcester, known as "The Willows at Worcester" (the "subject property") for the fiscal years at issue.

At the hearing of these appeals, the appellant called one witness to testify: Emmet T. Logue whom the Board qualified as an expert in real estate valuation ("appellant's witness"). The appellant also entered several exhibits into evidence, including the appraisal report prepared by its witness and an excerpt on average capitalization rates from *The Senior Care Acquisition Report* (19th ed. 2014).

The appellee principally relied on its cross-examination of the appellant's witness and the testimony of William Ford, Worcester's City Assessor ("assessors' witness"). The appellee also entered numerous exhibits into evidence, including, among others: the requisite jurisdictional documents; the subject property's income and expense report for calendar year 2012; an excerpt on the average price paid and capitalization rates from *The Senior Care Acquisition Report* (19th ed. 2014); the property record and income valuation cards for the subject property for fiscal years 2012, 2013, and 2014; and a print-out of a January 7, 2016 investopedia.com article discussing rates of returns for municipal bond funds. Based on all the testimony and exhibits, as well as reasonable inferences drawn therefrom, the Appellate Tax Board (the "Board") made the following findings of fact.

I. Introduction

A. The Subject Property

The subject property contains 21.7344 acres of land improved with 219 senior living units, for adults ages 55 years and older, consisting of 191 independent living ("IL") units plus a twenty-eight-unit Level IV Rest Home, which is known as "The Health Center at The Willows." The subject property is located approximately one-half mile west of Route 122A and approximately two miles northwest of the I-90/I-290 interchange. The buildings within The Willows at Worcester complex include a three-story main building containing 151 IL apartment-style units, twenty-eight Level IV Rest Home beds, and twelve IL one or two-story cottages located within four pods attached to the main building wings. There are also twenty-eight detached IL 1-story cottages in duplex or single-unit buildings. The main building includes two one-story garages with a total of ninety-six parking spaces. The original building, where the Level IV beds are located, was constructed in the 1960s and renovated when the construction of the remainder of the complex was completed and opened in 2009.

The IL units include an estimated thirty-four different styles consisting of sixty one-bedroom apartment-style units containing from 552 square feet to 977 square feet, ninety-one two-bedroom apartment-style units containing from 1,026 square feet to 1,313 square feet, twelve attached two-bedroom cottages containing from 1,533 square feet to 2,200 square feet, and twenty-eight detached two-bedroom cottages containing 1,721 square feet. The independent living facility has common areas, including: a central outdoor courtyard; a 164-seat dining room; a bistro; a full-service kitchen; a private dining room; a great room; several lounge areas; and other amenities plus office and vendor areas.

The twenty-eight Level IV Rest Home beds are located on the second and third floors of the original building and contain approximately 200 square feet or 225 square feet each. Each floor of the Rest Home has a central nurses' station and dining spaces at the end of the corridor.

A two-way asphalt driveway circles the main building and provides access to the detached cottages along the perimeter where there is surface parking in addition to the two one-level garages.

B. Jurisdiction

The assessments for the subject property for the fiscal years at issue are as follows:

Subject Property by Address and Map/Block/Lot	Fiscal Year 2012	Fiscal Year 2013	Fiscal Year 2014
101 Barry Road 33-038-00008	$40,116,500	$40,116,500	$40,499,300

Worcester's Collector of Taxes issued the actual tax bills for fiscal years 2012, 2013, and 2014 on May 25, 2012, December 31, 2012, and December 31, 2013, respectively, assessing real estate taxes on the subject property - weighted at eighty percent residential and twenty percent commercial - at a residential rate of $16.98 and a commercial rate of $29.07 per $1,000 for fiscal year 2012, a residential rate of $18.58 and a commercial rate of $30.85 per $1,000 for fiscal year 2013, and a residential rate of $19.54 and a commercial rate of $30.83 per $1,000 for fiscal year 2014, resulting in corresponding real estate taxes of $778,180, $843,810, and $882,804. In accordance with G.L. c. 59, § 57C, the appellant timely paid the assessed taxes without incurring interest.

The following table summarizes the additional relevant jurisdictional information.

Event	FY 2012 Docket No. F318285	FY 2013 Docket No. F320894	FY 2014 Docket No. F324512
Actual Tax Bill Mailed	05/25/2012	12/31/2012	12/31/2013
Abate. Apps. Filed	06/21/2012	01/17/2013	01/30/2014
Abate. Apps. Denied or Deemed Denied	08/30/2012	04/01/2013	04/30/2014
Petitions Filed	10/18/2012	07/02/2013[1]	07/02/2014

On this basis, the Board found and ruled that it had jurisdiction over the fiscal year 2012, 2013, and 2014 appeals.

II. The Appellant's Case and Witness

To prove that the subject property was overvalued for the fiscal years at issue, the appellant primarily relied on the testimony and appraisal report submitted by its witness. After reviewing the subject property's history, the applicable zoning and other land use controls, the site, its improvements, and its operation, the appellant's witness determined that the subject property's highest and best use was its existing use as an Independent Living and Level IV Rest Home complex.

To value the subject property for the fiscal years at issue, the appellant's witness relied on an income-capitalization approach that employed the same monthly fee/entry fee methodology

[1] For fiscal year 2013, the appellant ostensibly filed the petition a day late. However, the assessors had mailed the denial of the appellant's abatement application to the wrong address. Accordingly, the Board granted the appellant a reasonable additional amount of time within which to make a timely filing and found that one day was well within the range of a reasonable additional amount of time within which to file. *See* G.L. c. 59, § 63; ***SCA Disposal Serv. Of New England, Inc. v. State Tax Commn.***, 375 Mass. 338, 342 (1978)(allowing a reasonable additional amount of time for appeal where no notice was received by the taxpayer within the statutory period of time); ***Stagg Chevrolet, Inc. v. Board of Water Commrs. of Harwich***, 68 Mass. App. Ct. 120, 126 (2006) (allowing taxpayer a reasonable additional amount of time within which to file its appeal where the notice was defective).

that the Board previously approved and adopted for valuing a similar, senior housing community in ***The Willows at Westborough v. Assessors of Westborough***, Mass. ATB Findings of Fact and Reports 2002-469, *aff'd*, 60 Mass. App. Ct. 1121 (2004), *further review denied*, 441 Mass. 1108 (2004)(***"Willows"***). The appellant's witness excluded the cost approach because of, among other reasons, the difficulty in estimating the physical and functional obsolescence attributable to the Level IV Rest Home located on the second and third floors of the main building. He also rejected the sales approach because of its unreliability in estimating the value of an income-producing property like the subject property where sales generally involve transfer of the going concern and are often part of a larger portfolio of properties, making allocation of a price to a particular property in the portfolio difficult. Moreover, the appellant's witness "concluded that trying to adjust the sales for business enterprise value and the contributory value of personal property (FF&E), as well as other locational and physical differences between comparable[] [properties] and the subject, would be speculative and most likely result in misleading indications of value for the subject real property."

In implementing the ***Willows*** approach in the present appeals, the appellant's witness calculated annual revenue by analyzing all the sources of revenue at the subject property. These sources included monthly service fees from the IL units, revenue from the

Level IV beds in the Rest Home, and miscellaneous income such as rent from the fitness center, as well as point of sale income from other services such as the hair salon, massage therapists, café dining, store, barber shop, classes, laundry services, and the like. In addition, there was substantial annual revenue from amortization of non-refundable entry fees or deposits, as well as imputed interest income on the refundable portion of the entry deposits from the 191 independent living units.

The appellant's witness determined that the weighted monthly service fees for all the subject property's IL units were $2,280 per month for single occupancy and $2,730 per month for double occupancy which included the additional $450 per month charge for a second occupant. He observed that thirty percent of the IL units at the subject property had a second occupant. The appellant's witness compared the reasonableness of these monthly service fees with those of competing properties in the market and determined that the subject property's monthly service fees were representative of the market. After confirming their reasonableness with the market, he then projected the weighted average monthly service fees over twelve months assuming that thirty percent of the IL units included second person fees. His weighted average monthly service fee of $2,415 paid by 191 IL units resulted in monthly revenue of $461,265 and yearly revenue of $5,535,180.

For revenue attributable to the Level IV Rest Home, the appellant's witness relied on the subject property's actual reported annual income that he grossed up to reflect one-hundred percent occupancy. After averaging these grossed-up amounts, he estimated the revenue from the Level IV Rest Home at $1,555,000 for fiscal year 2012, $1,600,000 for fiscal year 2012, and $1,625,000 for fiscal year 2014.

To determine a stabilized estimate of miscellaneous revenue, the appellant's witness relied on the actual amounts of miscellaneous income from the subject property from calendar years 2010 through 2015, adjusted for inflation. He stabilized these amounts at $200,000.

As previously stated, the buyer of an IL unit at the subject property pays an entry fee. Ten percent of the entry fee payment is non-refundable.[2] The appellant's witness amortized the non-refundable portion of the average entry fees at the subject property to arrive at annual non-refundable entry-fee income of $1,280,000.

The final revenue component that the appellant's witness included in his revenue category related to the ninety percent refundable portion of the entry fees. Consistent with the ***Willows***

[2] The entry fee was fully refundable if the buyer moved out within the first two months. After that, one percent of the deposit would become non-refundable each month until the end of the year, at which time ten percent of the fee would become non-refundable.

methodology, the appellant's witness considered the refundable portion of the entry fees to be equivalent to an interest-free loan to the appellant. To determine that annual revenue amount, he imputed interest on the refundable portion of the entry fees by applying a safe interest rate, derived from a three-year average of ten-year Treasury Bill Notes, to ninety percent of the total annual entry fees of $60,360,000. This calculation produced revenue amounts of $1,749,233, $1,662,314, and $1,307,664 for fiscal years 2012, 2013, and 2014, respectively.

In this way, the appellant's witness, assuming stabilized occupancy, found the total gross potential revenue for the subject property for fiscal years 2012, 2013, and 2014 to be $10,319,413, $10,277,494, and $9,947,844, respectively.

In determining a stabilized vacancy rate for the subject property, the appellant's witness observed that for fiscal year 2012 the subject property's IL units were in the process of being sold and were only thirty-five percent occupied. It took almost another five years for them to achieve a full and stabilized occupancy level of ninety-five percent. He also considered the single-family housing market which was in the process of rebounding during the years at issue from the 2008 through 2009 decline. For these reasons and considering vacancy levels and trends within the market of comparable properties, the appellant's witness concluded that realistic and stabilized vacancy rates for the IL units for fiscal years 2012, 2013, and 2014 were twenty, eighteen, and fifteen percent, respectively.[3]

The appellant's witness observed that the actual occupancy rates for the Level IV beds for the years at issue ranged from over ninety-five to ninety-nine percent. Relying on these statistics, he concluded that two and one-half, one, and two percent were appropriate vacancy rates to apply to the potential gross income estimate from the Level IV beds for fiscal years 2012, 2013, and 2014. Combining these vacancy rates with the vacancy rates for the IL units, resulted in stabilized weighted vacancy rates of 16.8 percent for fiscal year 2012, 14.8 percent for fiscal year 2013, and 12.6 percent for fiscal year 2014.

Deducting the total vacancy estimates for the IL units and the Level IV beds of $1,441,911 for fiscal year 2012, $1,278,732 for fiscal year 2013, and $1,084,777 for fiscal year 2014, resulted in effective gross revenue amounts of $8,877,502, $8,998,762, $8,863,067, respectively.

To determine stabilized operating expenses, the appellant's witness examined market data, market trends, data reported in industry publications, and the 2011 through 2015 costs and trends associated with the various categories of the subject property's

[3] The appellant's witness did not apply this rate to the imputed interest income on the refundable portion of the entry fees because he assumed a vacating resident's unit would be filled within the year's time that the deposit must be refunded to the vacating resident.

actual expenses, including: administrative; maintenance; dietary; laundry; housekeeping; nursing; health services; recreation; resident services; personalized exercise program ("PEP"); marketing; utilities; insurance; and professional fees. He also incorporated into his methodology allowances for: operating expenses including management fees, reserves for replacement of short-lived real estate and reserves for replacement of furniture, fixtures, and equipment ("FF&E"), along with a business enterprise value or entrepreneurial return on the going concern. He determined these allowances by using traditional appraisal methods, market data, and his own judgment. His operating expenses for fiscal years 2012, 2013, and 2014, including and five percent management fees[4], totaled $5,472,413, $5,672,322, and $5,741,270, respectively.

Based primarily on his experience in appraising a wide-range of business-oriented real estate, the appellant's witness concluded that a reasonable deduction for business enterprise value or entrepreneurial return was six percent of effective gross income for the Level IV component of the subject property and three percent of effective gross income for the IL units, including imputed interest income on entry fees. He chose a higher percentage for the return on the Level IV Rest Home because of the

[4] The appellant's witness excluded imputed interest income from his management-fee calculation.

more intensive management, the greater dependence on nursing and other health care, and the greater risks and responsibilities associated with its ownership.

After deducting total operating expenses and entrepreneurial returns from the effective gross incomes, the appellant's witness determined effective gross incomes attributable to the real estate to be $3,093,280 for fiscal year 2012, $3,008,957 for fiscal year 2013, and $2,808,130 for fiscal year 2014.

The appellant's witness next estimated the replacement reserve for short-lived real estate items - such as roof, mechanical systems, and elevators – at three percent of the effective gross income attributable to real estate. This weighted rate included approximately five percent for the Level IV component and slightly more than two percent for the IL portion. He estimated the replacement reserve for FF&E for the fiscal years at issue at $350 per bed for Level IV and at $600 per unit for the IL Units, resulting in totals of $9,800 for the Level IV Rest Home and $114,600 for the IL Units.

After taking these additional deductions, the appellant's witness determined that his net operating incomes to be capitalized were $2,876,081 for fiscal year 2012, $2,794,288 for fiscal year 2013, and $2,714,086 for fiscal year 2014.

The final step in the analysis employed by the appellant's witness was to convert the net operating incomes attributable to the real estate into indications of the subject property's values. To synthesize capitalization rates to accomplish these conversions, the appellant's witness reviewed industry publications for capitalization-rate data specific to senior-living housing and multi-family residential properties and performed band-of-investment calculations. Using these techniques, he estimated capitalization rates of nine, eight and one-half, and eight percent, plus weighted tax factors of 1.94%, 2.103%, and 2.18%, for fiscal years 2012, 2013, and 2014, respectively. The appellant's witness calculated the weighted tax factors and overall capitalization rates as summarized in the tables below.

Weighted Tax Factors

Fiscal Year	**Residential**	**Commercial**	**Weighted Tax Factor**
2012	$16.98 x 80%	$29.07 x 20%	$19.40
2013	$18.58 x 80%	$30.85 x 20%	$21.03
2014	$19.54 x 80%	$30.83 x 20%	$21.80

Overall Capitalization Rates

Fiscal Year	**Capitalization Rate**	**Tax Factor**	**Overall Rate**
2012	9.00%	1.94%	10.94%
2013	8.50%	2.103%	10.603%
2014	8.00%	2.18%	10.18%

Dividing the net operating incomes by the concomitant overall capitalization rates resulted in indicated fair cash values of $26,300,000 for fiscal year 2012, $26,400,000 for fiscal year 2013, and $26,700,000 for fiscal year 2014.

A concise summary of the income-capitalization methodology utilized by the appellant's witness for the fiscal years at issue is contained in the following table.

Income-Capitalization Methodology of Appellant's Witness

Income	**Fiscal Year 2012**	**Fiscal Year 2013**	**Fiscal Year 2014**
IL Units (191)	$ 5,535,180	$ 5,535,180	$ 5,535,180
Level IV Beds (28)	$ 1,555,000	$ 1,600,000	$ 1,625,000
Miscellaneous Income	$ 200,000	$ 200,000	$ 200,000
Amortization of non-refundable entry fees	$ 1,280,000	$ 1,280,000	$ 1,280,000
Int. on refund. entry fees @3.22%, 3.06%, 2.40%	$ 1,749,233	$ 1,662,314	$ 1,307,664
Gross Potential Income	**$10,319,413**	**$10,277,494**	**$ 9,947,844**

Less Vacancy weighted @≈16.8%, ≈14.8%, ≈12.6%[5]	**$ 1,441,911**	**$ 1,278,732**	**$ 1,084,777**
Effective Gross Income	**$ 8,877,502**	**$ 8,998,762**	**$ 8,863,067**
Operating Expenses			
Administrative & General	$ 490,000	$ 490,000	$ 485,000
Maintenance	$ 575,000	$ 600,000	$ 650,000
Dietary	$ 1,300,000	$ 1,350,000	$ 1,350,000
Laundry	$ 1,000	$ 500	$ 500
Housekeeping	$ 200,000	$ 225,000	$ 225,000
Nursing	$ 100,000	$ 100,000	$ 90,000
Health Services	$ 415,000	$ 435,000	$ 435,000
Recreation	$ 10,000	$ 10,000	$ 10,000
Resident Services	$ 150,000	$ 200,000	$ 200,000
PEP	$ 35,000	$ 40,000	$ 38,000
Marketing	$ 750,000	$ 700,000	$ 700,000
Utilities	$ 360,000	$ 525,000	$ 550,000
Insurance	$ 230,000	$ 400,000	$ 400,000
Professional Fees	$ 356,413	4 230,000	$ 230,000
Management[6] @5%	$ 356,413	$ 366,822	$ 377,770
Total Operating Expenses	**$ 5,472,413**	**$ 5,672,322**	**$ 5,741,270**
Entrepreneurial Return			
Level IV @6%	$ 90,968	$ 95,040	$ 95,550
IL Units[7] @3%	$ 220,841	$ 222,443	$ 218,117
Effect. Gross Income Attributable to Real Estate	**$ 3,093,280**	**$ 3,008,957**	**$ 2,808,130**
Additional Deductions			
Reserves for Replacements			
Short-lived Real Estate 3%[8]	$ 92,798	$ 90,269	$ 84,244
FF&E			
Level IV @$350/Bed	$ 9,800	$ 9,800	$ 9,800
IL @$600/Unit	$ 114,600	$ 114,600	$ 114,600
Net Real Estate Income to be Capitalized	$ 2,876,081	$ 2,794,288	$ 2,714,086

Capitalization Rate

	FY2012	**FY2013**	**FY2014**
Cap. Rate	9.000%	8.500%	8.000%
Tax Factor	1.940%	2.103%	2.180%
Overall Rate	**10.940%**	**10.603%**	**10.180%**

Indicated Fair Cash Value	$26,289,593	$26,353,749	$26,660,962
Rounded	**$26,300,000**	**$26,400,000**	**$26,700,000**

[5] Vacancy not applied to interest income from refundable entry fees.
[6] Excluding interest income on entry fees.
[7] Applied to Effective Gross Income less Level IV Effective Gross Income.
[8] Applied to Effective Gross Income Attributable to Real Estate.

III. Assessors' Case and Witness

In support of the assessed values, the assessors relied on cross-examination of the appellant's witness and the testimony of the City Assessor for Worcester and the exhibits introduced through him. This evidence revealed that: the acquisition cost and amounts on construction permits associated with the subject property totaled approximately $63 million; there was a mortgage on the subject property in excess of $53 million; and there was a non-arm's-length, multi-property lease connected with the subject property.

The assessors' witness also testified that, notwithstanding the above information, he adopted the valuation methodology used by the appellant's witness with several alterations to value the subject property for the fiscal years at issue, agreeing that the highest and best use of the subject property for the fiscal years at issue was its present use as an Independent Living and Level IV Rest Home complex. Most significantly, the assessor's witness used sixty one-bedroom IL units and 131 two-bedroom IL units in his analysis without regard to the actual occupancy. His change in the IL units' occupancy ratio increased that revenue category by over $350,000 to $5,894,600. He also suggested that the imputed interest rate applied to the entry fees should, for the vast majority of those fees, reflect a rate associated with a more aggressive but still safe investment such as municipal bonds that approached 4.5 percent, as opposed to the 2.40 through 3.22 percent safe treasury bond rates that the appellant’s witness used.

For vacancy rates, the assessor’s witness used five percent for all the fiscal years at issue and an operating expense ratio of seventy-five percent that he did not apply to imputed interest income. The entrepreneurial profit percentages used by the assessor’s witness were three percent for the IL units and five percent for the Level IV Rest Home. He did not apply his entrepreneurial return percentage to the amortization of non-refundable entry fees, miscellaneous income, or the imputed interest income revenues. Lastly, for capitalization rates, he used a base rate of 7.5 percent plus the applicable tax factor, resulting in overall rates of 9.44% for fiscal year 2012, 9.60% for fiscal year 2013, and 9.68% for fiscal year 2014. Applying these capitalization rates to the $4,259,788 net real estate income calculated by the assessors’ witness for all the fiscal years at issue produced values of $45,125,825 for fiscal year 2012, $44,357,078 for fiscal year 2013, and $44,006,980 for fiscal year 2014.

IV. Board Ultimate Findings

The Board agreed with both parties and their witnesses that the highest and best use of the subject property for the fiscal years at issue was its present use as an Independent Living and Level IV Rest Home complex. The Board further agreed that an income-capitalization methodology modeled after the monthly fee/entry fee approach approved and implemented in ***Willows*** was the most appropriate valuation technique to use to value the subject property. The Board did not rely on the testimony of the assessors' witness regarding building permits because the purported permits were not introduced into evidence and the assessors' witness did not rely on them to value the subject property. The Board did not rely on the open-ended mortgage because an open-end mortgage is not evidence of value in and of itself; there was no underlying first-hand testimony, appraisal report, or other document or information explaining its derivation, purpose, or total collateral; and the assessors' witness did not rely on it in his valuation methodology. For these reasons, the Board did not find this evidence useful for ascertaining the fair cash value of the subject property for the fiscal years at issue.

The Board, however, did find relevant and useful the income-capitalization methodology employed by the appellant's witness and most of the data that he used to populate it. The Board found that most of his recommendations and assumptions were reasonable and well-supported by actual, market, and industry data, as well as his extensive experience appraising these and similar types of properties. Accordingly, the Board adopted his income categories and amounts, only minimally adjusting the income from Level IV beds to further stabilize that income over three years and the rate of return for the refundable portion of the entrance fees. The Board used lower vacancy rates than the appellant's witness to better reflect the market as opposed to the subject property's actual occupancy for the fiscal years at issue. The Board adopted the operating expenses, entrepreneurial returns, and additional deduction amounts or percentages offered by the appellant's witness, making only minimal adjustments to further stabilize them. Lastly, the Board adopted his well-supported capitalization rates of 10.940%, 10.603%, and 10.180%, for fiscal years 2012, 2013, and 2014, respectively.

The Board reviewed but did not adopt most of the income, expenses, returns, percentages, and rates offered by the assessors' witness except where they mirrored those offered by the appellant's witness. The Board found that many of his conclusions were largely unsupported by credible evidence. For example, his ratio of one- and two-person IL units, used for determining the monthly and annual service fee revenue associated with IL units, did not reflect the subject property's or the market's experience. In addition, his failure to apply his entrepreneurial return percentages to miscellaneous income, the income from the amortization of the non-refundable portion of the entry fees, and the imputed interest income from the entry fees did not comport with logic or the ***Willows*** methodology. The Board did, however, agree that his recommended interest rates on refundable deposits was a more appropriate rate of return than the rates offered by the appellant's witness.

The Board's income-capitalization methodology is summarized in the table below.

The Board's Income-Capitalization Methodology

Income	**Fiscal Year 2012**	**Fiscal Year 2013**	**Fiscal Year 2014**
IL Units (191)	$ 5,535,180	$ 5,535,180	$ 5,535,180
Level IV Beds (28)	$ 1,600,000	$ 1,600,000	$ 1,600,000
Miscellaneous Income	$ 200,000	$ 200,000	$ 200,000
Amortization of Non-Refundable Entry Fees	$ 1,280,000	$ 1,280,000	$ 1,280,000
Int. on Refund. Ent. Fees @4.5%	$2,363,094	$2,363,094	$2,363,094
Gross Potential Income	**$10,978,274**	**$10,978,274**	**$10,978,274**
Less Vacancy weighted @10%, @7.5%, @5%	**$733,518**	**$550,139**	**$366,759**
Effective Gross Income	**$10,244,756**	**$10,428,136**	**$10,611,515**
Operating Expenses			
Administrative & General	$ 490,000	$ 490,000	$ 490,000
Maintenance	$ 650,000	$ 650,000	$ 650,000
Dietary	$ 1,350,000	$ 1,350,000	$ 1,350,000
Laundry	$ 1,000	$ 1,000	$ 1,000
Housekeeping	$ 225,000	$ 225,000	$ 225,000
Nursing	$ 100,000	$ 100,000	$ 100,000
Health Services	$ 435,000	$ 435,000	$ 435,000
Recreation	$ 10,000	$ 10,000	$ 10,000
Resident Services	$ 200,000	$ 200,000	$ 200,000
PEP	$ 40,000	$ 40,000	$ 40,000
Marketing	$ 700,000	$ 700,000	$ 700,000
Utilities	$ 550,000	$ 550,000	$ 550,000
Insurance	$ 400,000	$ 400,000	$ 400,000
Professional Fees	$ 230,000	4 230,000	$ 230,000
Management[9] @5%	$ 387,683	$ 398,452	$ 409,221
Total Operating Expenses	**$ 5,768,683**	**$ 5,779,452**	**$ 5,790,221**
Entrepreneurial Return			
Level IV @6%	$ 86,400	$ 88,800	$ 91,200
IL Units[10] @3%	$ 241,887	$ 244,541	$ 239,163

[9] Excluding interest income on entry fees.
[10] Applied to Effective Gross Income less Level IV Effective Gross Income.

Effective Gross Income Attributable to RE	**$4,147,786**	**$4,315,343**	**$4,490,931**
Additional Deductions			
Reserves for Replacements			
Short-lived Real Estate[11] @3%	$ 102,178	$ 105,557	$ 101,145
FF&E			
Level IV @$350/Bed	$ 9,800	$ 9,800	$ 9,800
IL @$600/Unit	$ 114,600	$ 114,600	$ 114,600
Net Real Estate Income to be Capitalized	$3,921,208	$4,085,386	$4,265,386
Capitalization Rate			

	FY2012	**FY2013**	**FY2014**
Cap. Rate	9.000%	8.500%	8.000%
Tax Factor	1.940%	2.103%	2.180%
Overall Rate	**10.940%**	**10.603%**	**10.180%**

Indicated Fair Cash Value	$35,842,852	$37,343,560	$38,988,903
Board's Fair Cash Value	**$35,850,000**	**$37,350,000**	**$39,000,000**

Conclusion

On this basis, the Board found that the assessed values for the fiscal years at issue exceeded the subject property's fair cash values and calculated and granted abatements in its Revised Decision as follows:

	Assessments	**Fair Cash Values**	**Value Abatements**
Fiscal Year 2012	$ 40,116,500	$35,850,000	$4,266,500
Fiscal Year 2013	$ 40,116,500	$37,350,000	$2,766,500
Fiscal Year 2014	$ 40,499,300	$39,000,000	$1,499,300

These value abatements resulted in the following tax abatements.

[11] Applied to Effective Gross Income Attributable to Real Estate.

	Value Abatement	Combined Tax Rate	Tax Abatements
Fiscal Year 2012	$4,266,500	$19.40/$1,000	$82,770.10
Fiscal Year 2013	$2,766,500	$21.00/$1,000	$58,096.50
Fiscal Year 2014	$1,499,300	$21.80/$1,000	$32,684.74

OPINION

The assessors are required to assess real estate at its fair cash value. G.L. c. 59, § 38. Fair cash value is defined as the price at which a willing seller and a willing buyer in a free and open market will agree if both of them are fully informed and under no compulsion. ***Boston Gas Co. v. Assessors of Boston***, 334 Mass. 549, 566 (1956). Accordingly, "fair cash value" means "fair market value." ***Id.*** at 566.

The appellant has the burden of proving that the property has a lower value than that assessed. "The burden of proof is upon the petitioner[s] to make out [their] right as [a] matter of law to abatement of the tax.'" ***Schlaiker v. Assessors of Great Barrington***, 365 Mass. 243, 245 (1974) (quoting ***Judson Freight Forwarding Co. v. Commonwealth***, 242 Mass. 47, 55 (1922)). "[T]he board is entitled to 'presume that the valuation made by the assessors [is] valid unless the taxpayers . . . prov[e] the contrary." ***General Electric***

Co. v. Assessors of Lynn, 393 Mass. 591, 598 (1984) (quoting ***Schlaiker***, 365 Mass. at 245)).

In appeals before this Board, a taxpayer "may present persuasive evidence of overvaluation either by exposing flaws or errors in the assessors' method of valuation, or by introducing affirmative evidence of value which undermines the assessors' valuation." ***General Electric Co.,*** 393 Mass. at 600 (quoting ***Donlon v. Assessors of Holliston***, 389 Mass. 848, 855 (1983)). In the present appeals, the appellant presented affirmative evidence of value to demonstrate that the assessors had overvalued the subject property.

The ascertainment of a property's highest and best use is a prerequisite to valuation analysis. *See* ***Peterson v. Assessors of Boston***, 62 Mass. App. Ct. 428, 429 (2004); ***Irving Saunders Trust v. Assessors of Boston***, 26 Mass. App. Ct. 838, 843 (1989). The goal is to ascertain the maximum value of the property for any legitimate and reasonable use. *See* ***Irving Saunders Trust,*** 26 Mass. App. Ct. at 843-44. If the property is particularly well suited for a certain use that is not prohibited, then that use may be reflected in an estimate of fair market value. *See* ***Colonial Acres, Inc. v. North Reading***, 3 Mass. App. Ct. 384, 386 (1975). Consideration should be given to the purpose for which the property is adapted. *See* ***Leen v. Assessors of Boston***, 345 Mass. 494, 504 (1963); ***Boston Gas Co.,*** 334 Mass. at 566.

In the instant appeals, the Board found and ruled that that the highest and best use of the subject property for the fiscal years at issue was its continued use as an Independent Living and Level IV Rest Home complex. Both the appellant's witness and the assessors' witness also considered its highest and best use to be its existing use as an Independent Living and Level IV Rest Home complex.

Generally, real estate valuation experts, the Massachusetts courts, and this Board rely upon three approaches to determine the fair cash value of property: income capitalization, sales comparison, and cost. ***Correia v. New Bedford Development Authority***, 375 Mass. 360, 362 (1978). In these appeals, the appellant's witness used an income approach modeled after the ***Willows*** methodology that previously had been approved and adopted by the Board and the courts for this type of property. ***The Willows at Westborough v. Assessors of Westborough***, Mass. ATB Findings of Fact and Reports 2002-469, *aff'd*, 60 Mass. App. Ct. 1121 (2004) (decision under Rule 1:28), *further review denied*, 441 Mass. 1108 (2004).

The Board further found and ruled here that the income approach implemented by the appellant's witness was the appropriate methodology to apply to value the subject property for the fiscal years at issue because it best distinguished the value of the real estate from non-realty items, including personal property and business enterprise value, and was consistent with how the Board has valued similar properties.

The Board found that most of the recommendations and assumptions used by the appellant's witness were reasonable and well-supported by actual, market, and industry data, as well as his extensive experience appraising these and similar types of properties. Accordingly, the Board adopted much of the data that he used to populate his income capitalization methodology, making only minimal adjustments. In contrast, the Board reviewed but did not adopt most of the income, expenses, returns, percentages, and rates offered by the assessor's witness except where they mirrored those offered by the appellant's witness The Board found that his conclusions were largely unsupported by credible evidence.

The board is not required to adopt any particular method of valuation, ***Pepsi-Cola Bottling Co. v. Assessors of Boston***, 397 Mass. 447, 449 (1986), and can accept those portions of the evidence which appear to have the more convincing weight. ***Assessors of Quincy v. Boston Consolidated Gas Co.,*** 309 Mass. 60, 72 (1941). *See also* ***North American Philips Lighting Corp. v. Assessors of Lynn***, 392 Mass. 296, 300 (1984); ***New Boston Garden Corp. v. Assessors of Boston***, 383 Mass. 456, 473 (1981). "The credibility of witnesses, the weight of evidence, and inferences to be drawn from the evidence are matters for the board." ***Cummington School of the Arts, Inc. v. Assessors of Cummington,*** 373 Mass. 597, 605

(1977). The Board may select among various elements of value as shown by the record and form an independent judgment of fair cash value. ***General Electric Co.***, 393 Mass. at 605. The Board need not specify the exact manner by which it arrived at its valuation. ***Jordan Marsh Co. v. Assessors of Malden***, 359 Mass. 106, 110 (1971). "The market value of the property c[an] not be proved with mathematical certainty and must ultimately rest in the realm of opinion, estimate, and judgment . . . ." ***Assessors of Quincy v. Boston Consolidated Gas Co.***, 309 Mass. at 72 (1941)(citations omitted). *See also* ***Jordan Marsh Co.***, 359 Mass. at 110.

Based on the evidence presented in these appeals and the Board's subsidiary findings and rulings, the Board ultimately found and ruled that the subject property was overvalued because its fair cash value for fiscal years 2012, 2013, and 2014 was $35,850,000, 37,350,000, and 39,000,000, respectively.

Accordingly, the Board decided these appeals in its Revised Decision for the appellant and granted tax abatements in the amount of $82,770.10 for fiscal year 2012, $58,096.50 for fiscal year 2013, and $32,684.74 for fiscal year 2014.

THE APPELLATE TAX BOARD

By: /S/ *Thomas W. Hammond*
Thomas W. Hammond, Jr., Chairman

A true copy,

Attest: /S/ *William J. Doherty*
Clerk of the Board