

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

THE VILLAGE AT DUXBURY
HOMEOWNERS COOPERATIVE
CORPORATION

v. BOARD OF ASSESSORS OF THE
TOWN OF DUXBURY

Docket Nos. F325880 & F325881
F328946 & F328947

Promulgated
June 19, 2019

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 Board of Assessors of the Town of Duxbury ("assessors" or "appellee") to abate taxes on a certain senior housing complex in the Town of Duxbury ("subject property" or "complex") owned by and assessed to The Village at Duxbury Homeowners Cooperative Corporation ("appellant" or "Corporation") under G.L. c. 59, §§ 11 and 38 for fiscal years 2015 and 2016 ("fiscal years at issue").

Commissioner Rose heard these appeals. Chairman Hammond and Commissioners Scharaffa and Good joined him in the decisions for the appellant.

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

David G. Saliba, Esq. for the appellant.

Ellen M. Hutchinson, Esq. for the appellee.

FINDINGS OF FACT AND REPORT

At the hearing of these appeals, the appellant called one witness to testify, Emmet T. Logue, whom the Board qualified as an expert witness in real estate valuation ("appellant's appraiser"). The appellant also entered three exhibits into evidence: an appraisal report prepared by its appraiser; his Errata for the two valuation tables contained in his appraisal report; and Fannie Mae Form 2090 entitled "Individual Cooperative Interest Appraisal Report."

The assessors principally relied on Steven G. Elliott, whom the Board also qualified as an expert witness in real estate valuation ("assessors' appraiser"). The assessors additionally called Steven J. Dunn, Director of Assessing for Duxbury, and Robert Tuffy, the Corporation's Secretary, as witnesses. The assessors also entered numerous exhibits into evidence, including: the requisite jurisdictional documents; an appraisal report and update prepared by the appellant's appraiser; income and expense statements for calendar years 2014 and 2015; Articles of Organization, Deed, Disclosure Statement, and description from the appellant's website; a property record card for a property in Mansfield, Massachusetts; and an April 15,

2015 publication from the Appraisal Institute entitled, "Common Errors and Issues." Based on all the testimony and exhibits, as well as reasonable inferences drawn therefrom, the Appellate Tax Board ("Board") made the following findings of fact.

I. Introduction

A. The Subject Property

The subject property is a senior housing complex. Residency in the complex is limited to individuals sixty-two years of age or older. The complex consists of 142 independent living ("IL") units and thirty-four assisted living ("AL") units in what is called the "Main Building," plus an additional thirty semi-attached garden houses that are also IL units. The 206-unit complex has numerous common rooms, central and private dining facilities, guest suites, a café, lounge areas, a library and communications center, swimming pool, fitness center, creative arts studio, woodworking shop, hair salon, gift shop, convenience store, multi-purpose rooms, and a freestanding medical office building, as well as a freestanding waste-water treatment plant. The complex is situated on a 37.23-acre site and is owned by the Corporation. Adjacent to the complex is the Bay Path Nursing and Rehabilitation Center, which is under different ownership and is not part of these appeals although the residents of the subject property receive preferential treatment for admission there, if needed.

Each of the 172 IL units is represented by one share of stock. The 34 AL units are represented collectively by one share of stock that is held by a partnership. Each share of stock is accompanied by a residency agreement and proprietary lease. When a shareholder purchases a share of stock, in addition to the cost of the share, the shareholder is responsible for paying a two percent community fee to the Corporation. The seller of the stock pays a stock transfer fee and a reserve fund fee to the Corporation, which together may equal up to a maximum of fifteen percent of the sales price.

Moreover, shareholders pay a monthly fee that covers utilities, fitness and wellness programs, scheduled transportation, twenty-four-hour security and emergency assistance, landscaping and maintenance, snow plowing, and management. Also, IL shareholders can purchase dining services/meal plans and housekeeping services. AL residents pay a monthly service fee and a one-time community fee. The AL residents are tenants of the partnership. The AL residents can elect to receive additional medical-related services for extra fees.

B. Jurisdiction

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

<u>Subject Property by Address and Map/Block/Lot</u>	<u>Fiscal Year</u> <u>2015</u>	<u>Fiscal Year</u> <u>2016</u>	<u>Percentage</u>	
			<u>FY15</u>	<u>FY16</u>
290 Kings Town Way 32-721-2	\$ 31,702,800	\$ 32,526,400	73%	75%
338 Kings Town Way 46-723-3	\$ 11,811,600	\$ 10,901,100	27%	25%
Total for Complex	\$ 43,514,400	\$ 43,427,500	100%	100%

Duxbury's Collector of Taxes issued the actual tax bills for fiscal years 2015 and 2016 on December 30, 2014 and December 30, 2015, respectively, assessing real estate taxes on the subject property at a rate of \$15.60 per \$1,000 for fiscal year 2015 and \$15.55 per \$1,000 for fiscal year 2016, resulting in corresponding real estate taxes of \$678,824.64 and \$675,297.62.¹

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.

<u>Event</u>	<u>FY 2015</u> <u>Docket Nos.</u> <u>F325880-881</u>	<u>FY 2016</u> <u>Docket No.</u> <u>F328946</u>	<u>FY 2016</u> <u>Docket No.</u> <u>F328947</u>
Abatement Apps. Filed	01/29/2015	01/11/2016	02/01/2016
Abatement Apps. Denied	02/03/2015	01/11/2016	02/02/2016
Petitions Filed	04/17/2015	03/08/2016	03/08/2016

On this basis, the Board found and ruled that it had jurisdiction over the fiscal year 2015 and 2016 appeals.

¹ These amounts do not include Community Preservation Act ("CPA") surcharges of \$6,757.04 for fiscal year 2015 and \$6,525.62 for fiscal year 2016.

C. Valuation Summary

The appellant's appraiser used an income approach similar to the one used and approved by the Board 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). He did not use a cost approach because of the difficulty in quantifying the subject property's physical and functional obsolescence, and the unlikelihood that a potential purchaser would measure its market value using that method.

The appellant's appraiser also concluded that a sales-comparison approach based on the sum of the retail values of the individual shares was inappropriate here because the shares represent the value of the Corporation, which includes, among other things, furniture, fixtures, and equipment ("FF&E") and going concern value while at the same time excluding other sources of revenue. He believed that the total value of the Corporation's ongoing business is significantly higher than the value of the fee-simple real estate interests alone. Moreover, the appellant's appraiser concluded that the financial characteristics of typical apartment cooperatives, for which the sale price of a share might be a more appropriate measure of a cooperative apartment's value, and the sum of those values might provide a reasonable value for the apartment complex as a whole,

are very different from those associated with a continuing-care, senior living complex and do not account for factors such as extensive labor and health care costs and intensive management. His estimates of the subject property's values for the fiscal years at issue were \$30,600,000 for fiscal year 2015 and \$32,800,000 for fiscal year 2016.

In contrast, the assessors' appraiser employed a sales approach for the living units coupled with an income approach for the medical office building and then added the values together and applied discounting to estimate the value of the complex. He dismissed the cost approach for similar reasons to the appellant's appraiser.

The assessors' appraiser adopted a sales approach for valuing the living units because it comported with how cooperative apartment units may be valued according to the Appraisal Institute's THE APPRAISAL OF REAL ESTATE 78 (12th ed. 2001).² He also factored in discounting, similar to how appraisers often value developments for wholesale, business, or lending purposes. He used an income approach to value the medical building because it was subject to a long-term lease.

² While this valuation treatise does permit appraisers to value cooperative apartment units using a sales-comparison approach provided "the market for cooperative apartments is active," it also cautions that mortgage terms and limitations in the corporate bylaws "can affect the validity of comparable sales data." It is noteworthy that the treatise does not specifically address the valuation of the type of cooperative living units at issue in these appeals.

After adding the values that he derived for the living units and the medical building, the assessors' appraiser estimated the value of the subject property for fiscal years 2015 and 2016 to be \$46,100,000 and \$46,300,000, respectively, or \$15.5 million and \$13.5 million more than the estimates of the appellant's appraiser for those fiscal years and approximately \$5 million greater than the corresponding assessments. The table below summarizes the assessments and the two witnesses' estimates of the subject property's value for the fiscal years at issue.

	<u>Fiscal Year</u> <u>2015</u>	<u>Fiscal Year</u> <u>2016</u>
Assessments	\$43,514,400	\$43,427,500
Appellant's Appraiser's Values	\$30,600,000	\$32,800,000
Assessors' Appraiser's Values	\$46,100,000	\$46,300,000

II. Analysis Offered by Appellant's Appraiser

As stated above, to value the subject property for the fiscal years at issue, the appellant's appraiser employed the same monthly fee/entry fee methodology that the Board previously approved and adopted for valuing a similar non-cooperative, senior housing community in *The Willows at Westborough*. In implementing the *Willows* approach here, he calculated revenue by comparing the monthly fees paid by the occupants of the subject units to rents paid by the occupants of comparable but non-

cooperative continuing care units in the area. He determined that these revenue sources were equivalent.

He also included in his revenue ancillary income sources from both the IL and the AL units, such as rent from the medical building, food and beverage extras, general store, beauty shop, guest suites, treatment plant reimbursement, commercial rents, housekeeping, maintenance extras, etc., but did not include revenue that he associated with the sales of stock, such as community fees,³ stock transfer fees, and reserve fund fees because he considered these sources to be peculiar to the cooperative form of ownership.

Based on market data, the appellant's appraiser determined that the sale prices for shares of stock associated with the IL units (plus the cost of carports) were equivalent to the entry fees that occupants were charged at units in other non-cooperative senior housing complexes. In other words, he considered the sale prices to be a proxy for entry fees.

He used the ninety percent entry fee refundable model that was used in the **Willows** and is still prevalent in the marketplace. This model considers the ninety percent refundable portion of the entry fee to be an interest-free loan to the property owner; therefore, he imputed annual interest revenue on

³ The appellant's appraiser did include, however, a one-time community fee in his AL units' ancillary income category.

these amounts at the safe rate of 1.98 percent for fiscal year 2015 and 2.09 percent for fiscal year 2016, based on seven- and ten-year treasury bills during the relevant time-period. Lastly, again in concert with the **Willows** methodology and the stabilized annual number of sales at the subject property during the relevant time period, he included 14.5 percent of the non-refundable ten percent portion of the entry fees as annual revenue generated from the amortization of the non-refundable portion of the entry fees.

In determining a stabilized vacancy rate of six percent, which he applied to the monthly fee revenue only,⁴ he relied on vacancy trends at the subject property, as well as his review of comparable properties in the market during the relevant time period.

For his operating expenses, which include building services, utilities, food and beverage, assisted living, residential services, general store, sales and marketing, administration, insurance, and management, the appellant's appraiser relied primarily on actual amounts that he confirmed with market data. He also included an allowance for replacement of short-lived real estate and a return of and on FF&E, along with an entrepreneurial return on the going concern, all of

⁴ He did not apply the vacancy rate to other revenue sources because he based those amounts on the actuals.

which he calculated using traditional appraisal methods, market data, and his own judgment.

He reviewed industry publications for senior-living housing and multi-family residential properties and performed a band-of-investment calculation in estimating a capitalization rate of 7.5 percent plus a tax factor for both fiscal years at issue. A summary of his income-capitalization methodology for the fiscal years at issue is contained in the following table.

Income	Fiscal Year	Fiscal Year
	2015	2016
IL monthly fees	\$ 5,834,388	\$ 6,068,352
AL monthly fees	\$ 2,530,800	\$ 2,607,000
Subtotal	\$ 8,365,188	\$ 8,675,352
IL ancillary revenue	\$ 950,000	\$ 940,000
AL ancillary revenue	\$ 80,000	\$ 160,000
Housekeeping services	\$ 111,000	\$ 105,000
Meal plan income	\$ 385,000	\$ 390,000
Amortization of non-refundable entry fees	\$ 775,000	\$ 795,000
Interest on refundable entry fees @1.98% & @2.09%	\$ 950,136	\$ 1,027,908
Gross Potential Income	\$11,616,324	\$12,093,260
Less Vacancy @6%	\$ 501,911	\$ 520,521
Effective Gross Revenue ("EGR")	\$11,114,413	\$11,572,739
Operating Expenses		
Building Services	\$ 2,070,000	\$ 2,145,000
Utilities	\$ 580,000	\$ 605,000
Food and Beverage	\$ 1,670,000	\$ 1,720,000
Assisted Living	\$ 1,020,000	\$ 1,060,000
Resident Services	\$ 600,000	\$ 630,000
General Store	\$ 60,000	\$ 60,000
Sales and Marketing	\$ 600,000	\$ 618,000
Administration	\$ 500,000	\$ 515,000
Other Expenses	\$ 600,000	\$ 600,000
Total Operating Expenses	\$ 7,700,000	\$ 7,953,000
Net Operating Income	\$ 3,414,413	\$ 3,619,739
Additional Deductions		
Reserves for Replacements		
Short-lived Real Estate 1% of EGR	\$ 101,643	\$ 105,448
FF&E \$650 x 206 =	\$ 133,900	\$ 133,900
Return on FF&E	\$ 77,250	\$ 63,654
Entrepreneurship Return	\$ 333,432	\$ 347,182
Net Real Estate Income to be Capitalized	\$ 2,766,187	\$ 2,969,555
Capitalization Rate:		
2015: (7.500% rate + 1.560% tax factor)	9.060%	9.055%
2016: (7.500% rate + 1.555% tax factor)		
%		
Indicated Fair Cash Value	\$30,553,943	\$32,794,639
Rounded Value	\$30,600,000	\$32,800,000

III. Analysis Offered by Assessor's Appraiser

To value the subject property for the fiscal years at issue, the assessors' appraiser used a hybrid methodology that entailed adding the value that he derived for the 206 living units using a sales approach to the value that he developed for the medical office building using an income approach. By first adding the actual cost of a share of stock for each differing style of living unit at the subject property during the relevant time period and extrapolating from those sales and market data values for the AL units, he estimated the "effective retail value" for all 206 living units at \$55,732,900 for fiscal year 2015 and \$55,957,000 for fiscal year 2016. To his fiscal year 2015 total, he then added a "nominal value" of \$50,000 for the carports, resulting in a rounded retail value for the living units of \$55,800,000 for that fiscal year.

He then discounted this total by 19 percent to reflect not only a 15 percent developer's profit, but also the developer's overhead and marketing costs on the theory that the sales would take place over a period of time and the combined value of the living units should reflect phased sales over a period of years. After applying his discount and rounding, he achieved what he termed a "single entity value" for the living units of \$45,200,000 for fiscal year 2015.

The assessors' appraiser used a re-ordered approach for fiscal year 2016 in that he first discounted the effective retail value of the living units to \$45,325,170 before adding the \$50,000 value that he attributed to the carports. He also did not round the effective value of the living units from \$45,375,170, as he had done for the previous fiscal year prior to adding the value of the medical office building to reach his combined value. The record was silent as to the differing treatment of these issues for fiscal years 2015 and 2016

In his income approach for valuing the medical office building for both fiscal years at issue, the assessors' appraiser relied on the actual rents and lease terms that resulted in a gross potential income of \$87,960 that he admitted was "well above" market because of the "captive market" at the subject property. To that amount, he applied a "nominal" vacancy rate of one percent because of the existing tenant's long-term commitment to reach an effective gross income of \$87,080. Because of the triple net leasing scenario, he limited his expense deductions to a three percent management fee and a 1.5 percent reserve for replacement, which resulted in a net income of \$83,162.

Based on his consultations with lenders and industry surveys, he selected a capitalization rate of seven percent to which he added another two percent to account for the risk

factor associated with the above-average income stream. By dividing his net income figure by his nine percent capitalization rate, the assessors' appraiser arrived at a value of \$924,022 for the medical office building, which he rounded to \$920,000.

For fiscal year 2015, he added his rounded single entity value for the living units of \$45,200,000 to the \$920,000 value that he derived for the medical office building and recommended a rounded combined value of \$46,100,000. For fiscal year 2016, he added his unrounded single entity value for the living units of \$45,375,170 plus his \$50,000 value for the carports to the \$920,000 value that he derived for medical office building and recommended a rounded combined value of \$46,300,000.

The following table summarizes the valuation methodology used by the assessors' appraiser.

Combined Sales-Comparison and Income-Capitalization Approaches
Used by Assessor's Appraiser

	<u>Fiscal Year</u> <u>2015</u>		<u>Fiscal Year</u> <u>2016</u>
Value of 206 Units	\$55,732,900	Value of 206 Units	\$55,957,000
Total Carport Value	\$ 50,000	Discounted by 19%	\$10,631,830
Subtotal	\$55,782,900	Single Entity Value	\$45,325,170
Rounded	\$55,800,000	Total Carport Value	\$ 50,000
Discounted by 19%	\$10,602,000	Medical Office Bldg. Value	\$ 920,000
Single Entity Value	\$45,198,000	Combined Value of Entity	\$46,295,170
Rounded	\$45,200,000	Rounded Combined Value	\$46,300,000
Medical Office Bldg. Value	\$ 920,000		
Combined Value of Entity	\$46,120,000		
Rounded Combined Value	\$46,100,000		

IV. Board's Ultimate Findings

The basic question in these appeals is how to value the real estate associated with a senior housing complex that is organized as a cooperative corporation. It is a question of first impression in the Commonwealth. The appellant asserted that notwithstanding the form of ownership here, the **Willows** methodology should be applied. The assessors essentially argued that the sum of the value of the shares of stock in the Corporation (with some discounting and added value for the medical office building) is the appropriate methodology to apply. Based on the record in these appeals, the Board adopted the **Willows** methodology used by the appellant's appraiser, with one adjustment.

From a theoretical standpoint, a senior housing complex organized as a cooperative corporation is very different from

and cannot be equated to an apartment building or complex organized as a cooperative cooperation. While an apartment complex is composed almost entirely of the realty, a senior housing complex is additionally comprised of many non-realty assets and liabilities that are part of its going concern value but are not part of an apartment complex's value for real estate tax purposes. Put another way, amounts paid to occupy an apartment complex are directly related to the value of the real estate, whereas amounts paid to occupy the subject property include personal property, inventories, goodwill, and other intangibles, such as business enterprise value and the right of IL residents to preferential treatment in obtaining AL units, if needed, and the right of all residents to preferential treatment for admission into the abutting nursing facility, if needed. It follows then that the value of a share of stock in the senior housing complex here includes not just the value of the realty but also the going concern value of the Corporation. Accordingly, while adding the value of all the stock in the Corporation might provide a hypothetical value for the Corporation as a whole, it does not provide a fee simple value for the real estate associated with the Corporation.

The only cooperative corporation cases cited by the assessors in support of valuing the subject property using a sales approach are apartment complex cases. The sole

Massachusetts case cited by the assessors, *Born v. Assessors of Cambridge*, Mass. ATB Findings of Fact and Reports 1997-459, *aff'd*, 427 Mass 790 (1998), is not only an apartment complex case but one that deals with a residential tax exemption -- not a valuation -- issue. While there is dictum in the Board's *Born* findings suggesting that a sales approach with certain unspecified adjustments might be an acceptable way to value an apartment complex organized as a cooperative corporation, it is dictum and, in any event, inapplicable to the valuation of the senior housing complex at issue in these appeals. Further, the appellant cited several countervailing cooperative corporation cases that sanction the income over the sales approach for valuing apartment complexes organized as cooperative corporations.

The Board noted deficiencies in the hybrid methodology used by the assessors' appraiser. For example, there were inconsistencies in his approach from year to year. The assessors' appraiser also double-counted the medical office building by valuing it using an income approach and then adding that value to the total value of the shares in the Corporation, which already contains the value of the medical office building.⁵ In addition, the Board found that the assessors' appraiser

⁵ Moreover, he failed to similarly address the income received from the wastewater treatment plant.

applied a 19 percent discount to the total value of the shares to ostensibly account for absorption. This approach is comparable to the discounting that some appraisers use when implementing a development approach for a subdivision to obtain a "bulk" value. The Board has never sanctioned this approach for completed, fully operational, turn-key properties like the subject property at issue in these appeals. Furthermore, the discounting implemented by the assessors' appraiser was not an attempt to segregate and account for non-realty values from the value of the shares of stock.

In addition, the Board found that the income-capitalization technique for valuing the medical office building used by the assessors' appraiser was flawed. For example, instead of applying market rents, he used actual rents but then adjusted his capitalization rate to offset his use of the higher actual rents. The appropriate approach would have been to use market rents and a capitalization rate derived from market sources.

Contrary to the assessors' appraiser's approach, the approach recommended and applied here by the appellant's appraiser is consistent with Board precedent. He faithfully tracked the methodology approved by the Board in the *Willows* appeal and used, for the most part, actual income and expense figures that he confirmed with market data. The entry fee/monthly fee model applied by the appellant's appraiser

comports with the methodology used by appraisers to value senior housing complexes in Massachusetts and is an effective approach for segregating the fee simple value of the complexes' real estate from personal property and going concern values.

The Board's one adjustment to the appellant's appraiser's methodology was to include in the ancillary income category associated with the IL units the 2 percent community fee charged to the purchasers of the shares of stock for those units, particularly where he included a one-time community fee in his ancillary income category associated with the AL units. Unlike the other two fees that are paid by the seller upon the sale and transfer of the stock, this fee appears to be closely related to the real estate. Calculated similarly to how the appellant's appraiser handled the hypothetical non-refundable portion of the entry fees, based on the average cost of the shares of stock, the Board determined this 2 percent addition to income for each fiscal year at issue as set forth below.

<u>Fiscal</u> <u>Year</u>	<u>Ave.</u> <u>Entry Fee</u>	<u>2% Community</u> <u>Fee per IL Unit</u>	<u>Annual</u> <u>Turnover</u>	<u>Annual</u> <u>Income</u>
2015	\$309,991	\$6,200	25 units	\$155,000
2016	\$317,715	\$6,354	25 units	\$158,850

The addition of this income to the appellant's appraiser's methodology, which the Board otherwise adopted, resulted in the following determination of fair cash value.

The Board's Income-Capitalization Methodology

Income	Fiscal Year 2015	Fiscal Year 2016
IL monthly fees	\$ 5,834,388	\$ 6,068,352
AL monthly fees	\$ 2,530,800	\$ 2,607,000
Subtotal	\$ 8,365,188	\$ 8,675,352
IL ancillary revenue	\$ 1,105,000	\$ 1,098,850
AL ancillary revenue	\$ 80,000	\$ 160,000
Housekeeping services	\$ 111,000	\$ 105,000
Meal plan income	\$ 385,000	\$ 390,000
Amortization of non-refundable entry fees	\$ 775,000	\$ 795,000
Interest on refundable entry fees @1.98% & @2.09%	\$ 950,136	\$ 1,027,908
Gross Potential Income	\$11,771,324	\$12,252,110
Less Vacancy @ 6%	\$ 501,911	\$ 520,521
Effective Gross Revenue ("EGR")	\$11,269,413	\$11,731,589
Operating Expenses		
Building Services	\$ 2,070,000	\$ 2,145,000
Utilities	\$ 580,000	\$ 605,000
Food and Beverage	\$ 1,670,000	\$ 1,720,000
Assisted Living	\$ 1,020,000	\$ 1,060,000
Resident Services	\$ 600,000	\$ 630,000
General Store	\$ 60,000	\$ 60,000
Sales and Marketing	\$ 600,000	\$ 618,000
Administration	\$ 500,000	\$ 515,000
Other Expenses	\$ 600,000	\$ 600,000
Total Operating Expenses	\$ 7,700,000	\$ 7,953,000
Net Operating Income	\$ 3,569,413	\$ 3,778,589
Additional Deductions		
Reserves for Replacements		
Short-lived Real Estate: 1% of EGR	\$ 103,193	\$ 112,242
FF&E \$650/unit	\$ 133,900	\$ 133,900
Return on FF&E	\$ 77,250	\$ 63,654
Entrepreneurship Return: 3% of EGR	\$ 338,082	\$ 367,563
Net Real Estate Income to be Capitalized	\$ 2,916,988	\$ 3,101,230
Capitalization Rate:		
2015: (7.500% rate + 1.560% tax factor)	9.060%	9.055%
2016: (7.500% rate + 1.555% tax factor)		
Indicated Fair Cash Value	\$32,196,336	\$34,248,811
Fair Cash Value	\$32,200,000	\$34,500,000

Finally, the Board rejected the assessors' argument that the appellant's appraiser inconsistently treated the refundable and non-refundable portions of the entry fees. The assessors argued that it was improper for the appellant's appraiser to only include 14.5 percent (instead of one-hundred percent) of the ten percent non-refundable portion of the entry fees in the income portion of his methodology where he included one-hundred percent of the imputed annual interest earned on the ninety percent refundable portion. However, as in any direct income-capitalization approach, the methodology is based on one year's income and not, as the assessors apparently urged in these appeals, a compilation of several years' income. The appellant's appraiser included in his *Willows* methodology all the imputed interest earned in one year on the 90 percent refundable portion of the entry fee, and he also included the amount paid to the Corporation each year from the non-refundable portion. There is nothing improper or inconsistent in his treatment of these two revenue streams in a direct income-capitalization methodology.

V. Conclusion

For the foregoing reasons, the Board adopted the appellant's appraiser's *Willows* entry fee/monthly fee methodology, his underlying data and figures (with one adjustment), which were well-researched and supported, and the

adjusted values obtained for the subject property for the fiscal years at issue developed from his recommended methodology.

Accordingly, the Board decided these appeals for the appellant and valued the parcels that comprise the subject property as follows:

<u>Subject Property by Address and Map/Block/Lot</u>	<u>Fiscal Year</u>	<u>Fiscal Year</u>	<u>Percentage</u>	
	<u>2015</u>	<u>2016</u>	<u>FY15</u>	<u>FY16</u>
290 Kings Town Way	\$23,506,000	\$25,875,000	73%	75%
338 Kings Town Way	\$ <u>8,694,000</u>	\$ <u>8,625,000</u>	<u>27%</u>	<u>25%</u>
Total for Complex	\$32,200,000	\$34,500,000	100%	100%

The adoption of these values resulted in value abatements as follows:

<u>Subject Property by Address</u>	<u>Assessment for FY15</u>	<u>FCV for FY15</u>	<u>Value Abatement</u>
290 Kings Town Way	\$ 31,702,800	\$ 23,506,000	\$ 8,196,800
338 Kings Town Way	\$ <u>11,811,600</u>	\$ <u>8,694,000</u>	\$ <u>3,117,600</u>
Total for Complex	\$ 43,514,400	\$ 32,200,000	\$11,314,400

<u>Subject Property by Address</u>	<u>Assessment for FY16</u>	<u>FCV for FY16</u>	<u>Value Abatement</u>
290 Kings Town Way	\$ 32,526,400	\$ 25,875,000	\$ 6,651,400
338 Kings Town Way	\$ <u>10,901,100</u>	\$ <u>8,625,000</u>	\$ <u>2,276,100</u>
Total for Complex	\$ 43,427,500	\$ 34,500,000	\$ 8,927,500

These value abatements resulted in the following tax abatements (without CPA surcharges).

Tax Abatement (w/o CPA surcharge) for Fiscal Year 2015

<u>Subject Property by Address</u>	<u>Value Abatement</u>	<u>Tax Rate for FY15</u>	<u>Tax Abatement</u>
290 Kings Town Way	\$ 8,196,800	\$15.60	\$127,870.08
338 Kings Town Way	\$ <u>3,117,600</u>	\$15.60	\$ <u>48,634.56</u>
Total for Complex	\$11,314,400		\$176,504.64

Tax Abatement (w/o CPA surcharge) for Fiscal Year 2016

<u>Subject Property by Address and Map/Block/Lot</u>	<u>Value Abatement</u>	<u>Tax Rate for FY16</u>	<u>Tax Abatement</u>
290 Kings Town Way	\$ 6,651,400	\$15.55	\$103,429.27
338 Kings Town Way	\$ <u>2,276,100</u>	\$15.55	\$ <u>35,393.36</u>
Total for Complex	\$ 8,927,500		\$138,822.63

On this basis, the Board decided these appeals for the appellant and granted tax abatements that include CPA surcharge abatements in the amount of \$178,254.09 for fiscal year 2015 and \$139,999.05 for fiscal year 2016.

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 to make out its 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 *id.* at 843. 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. Property cannot be valued on the basis of hypothetical or future uses that are remote or speculative. See *Skyline Homes, Inc. v. Commonwealth*, 362 Mass. 684, 687 (1972); *Tigar v. Mystic River Bridge Authority*, 329 Mass. 514, 518 (1952); *Salem Country Club, Inc. v. Peabody Redevelopment Authority*, 21 Mass. App. Ct. 433, 435 (1986). "Whenever a market value opinion is developed, analysis of the highest and best use is necessary." APPRAISAL INSTITUTE, *THE APPRAISAL OF REAL ESTATE* 42 (14th ed. 2013).

In the instant appeals, the Board found and ruled that the highest and best use of the subject property for the fiscal years at issue was its continued use as a senior independent and assisted living complex. Both parties' appraisers also considered its highest and best use to be its existing use as a senior independent and assisted living 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 Redevelopment Authority**, 375 Mass. 360, 362 (1978). In these appeals, the appellant's appraiser used an income approach modeled after the **Willows** methodology that previously had been approved by the Board 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), *further review denied*, 441 Mass. 1108 (2004). In contrast, the assessors' appraiser used a hybrid methodology that included both a modified sales-comparison approach for the IL and AL units and an income approach for the medical office building. The Board determined that this approach was inappropriate for this type of property, notwithstanding the form of ownership.

The hybrid methodology used by the assessors' appraiser was also flawed in several respects. For example, he not only varied

steps from one fiscal year to the next, but he also double-counted the medical office building by valuing it using an income approach and then adding that value to the total value of the shares in the Corporation, which already contained the value of the medical office building. Moreover, he failed to similarly address the income received from the waste-water treatment plant.

In addition, the assessors' appraiser applied a nineteen percent discount to the total value of the shares to ostensibly account for absorption. The Board found that this approach was comparable to the discounting that appraisers may use when implementing a development approach for a subdivision to obtain a "bulk" value. See generally APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE 365 (14th ed. 2013); *GLW Kids, LLC, et al. v. Assessors of Carlisle*, Mass. ATB Findings of Fact and Reports 2016-53, 79-87, *aff'd*, 91 Mass. App. Ct. 1132 (2017). The Board has never sanctioned this approach for completed, fully operational, turn-key properties like the subject property here. Furthermore, the discounting implemented by the assessors' appraiser was not an attempt to segregate and account for non-realty values from the value of the shares of stock.

In addition, the Board found that the assessors' appraiser's income-capitalization technique for valuing the medical office building was flawed. For example, instead of

applying market rents, he used actual rents but then adjusted his capitalization rate to offset his use of the higher actual rents. The Board found and ruled that a better approach would have been to use market rents with a capitalization rate derived from market sources.

The Board further found and ruled here that the income approach implemented by the appellant's appraiser 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 the non-realty assets of the Corporation, including personal property and going concern values, and was consistent with how the Board has valued similar properties.

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 that appear to have the more convincing weight. *Foxboro Associates*, 385 Mass. 679, 683 (1982). "The credibility of witnesses, the weight of evidence, and inferences to be drawn from the evidence are matters for the board." *Cumington School of the Arts, Inc. v. Assessors of Cumington*, 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 [cannot] 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. 60, 72 (1941) (citations omitted). See also *North American Philips Lighting Corp. v. Assessors of Lynn*, 392 Mass. 296, 300 (1984); *New Boston Garden Corp.*, 383 Mass. at 473; *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, and its fair cash value for fiscal year 2015 was \$32,300,000 and for fiscal year 2016 was \$34,500,000.

Accordingly, the Board decided these appeals for the appellants and granted tax abatements in the amount of \$178,254.09 for fiscal year 2015 and \$139,999.05 for fiscal year 2016, which include appropriate CPA surcharge abatements.

THE APPELLATE TAX BOARD

By: 

Thomas W. Hammond, Jr., Chairman

A true copy,

Attest: 

Clerk of the Board