

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

WILLIAM WELSH GRAHAM, et al.¹ v. BOARD OF ASSESSORS OF THE
TOWN OF WEST TISBURY

Docket Nos. F271688-271694
F273052-273058

Promulgated:
June 7, 2007

These are appeals filed under the formal procedure pursuant to G.L. c. 58A, § 7 and c. 59, §§ 64 and 65, from the refusal of the appellee to abate taxes on certain real estate located in the Town of West Tisbury, owned by and assessed to the appellants under G.L. c. 59, §§ 11 and 38, for fiscal years 2003 and 2004.

Former Chairman Foley heard these appeals. Commissioners Scharaffa, Gorton, Egan, and Rose joined her in decisions for the appellants in docket numbers F271688, F271694, F273053, and F273055, and in decisions for the appellee in docket numbers F271689-F271693, F273052, F273054, and F273056-F273058.

¹ The other named appellants are: "George J. Gillespie III and Donald E. Graham, trustees"; "George J. Gillespie III, Donald E. Graham, and William W. Graham, trustees"; "William W. Graham, trustees [sic]"; and "William W. Graham."

These findings of fact and report are made pursuant to the appellants' requests for findings of fact and report under G.L. c. 58A, § 13 and 831 CMR 1.32.

Richard L. Wulsin, Esq. and Mark F. Murphy, Esq. for the appellants.

Ellen M. Hutchinson, Esq. for the appellee.

FINDINGS OF FACT AND REPORT

Introduction

This consolidated matter involves fourteen appeals relating to seven different residential properties, on the island of Martha's Vineyard, over two fiscal years, 2003 and 2004. All of the properties are situated in the Lambert's Cove area on the North Shore of West Tisbury, and are owned either individually by William Welsh Graham (a/k/a William W. Graham) or by trusts in which he is either a trustee, a beneficiary, or both.

Martha's Vineyard is a terminal moraine, created from land debris deposited at the end of a glacier. The land on the North Shore of West Tisbury, where the seven subject properties are situated, rises hundreds of feet above sea level, is generally hilly and uneven, and faces Vineyard Sound and the Elizabeth Islands. The view from the higher elevations is panoramic and

spectacular.² The land on the South Shore of West Tisbury was formed by the melting glacier's outwash and is, in contrast, flat, sandy, and nearer to sea level. This area faces the open ocean, and its views are less impressive. The vegetation on the North Shore is typically large hardwoods, like oaks and maples, while the vegetation on the South Shore tends toward scrubby pines and brush.

The seven properties that are the subjects of these appeals are referred to herein by their map and parcel number or their familiar name (not their corresponding street address), as was done at trial. Accordingly, the seven properties are "Graham 6-9" or the "Cistern Lot" (135 Old Herring Creek Road), "Graham 6-12" or the "Cottage Lot" or "Beach Lot" (165 Old Herring Creek Road), "Graham 6-13" or "Mrs. Graham's House" (15 Old Herring Creek Road), "Graham 6-14" or the "Gazebo Lot" (100 John Cottle Road), "Graham 6-14.1" or "Mr. Graham's House" (155 John Cottle Road), "Graham 6-15" or the "Farmhouse" or "Caretaker's Lot" (170 John Cottle Road), and "Graham 6-18" or the "Spring Lot" (40 Simon Athearn Road). Collectively, these seven properties are referred to as the "Graham properties."

² The neighborhood where the subject properties are located is termed neighborhood 200 by the assessors and is defined as being just west of Lambert's Cove and James Pond, to Paul's Point, including those additional properties just beyond Paul's Point. The eastern portion of Lambert's Cove is marked by the bluffs of the Makonikey section of West Tisbury. Neighborhood 200 is the pre-eminent neighborhood in West Tisbury being characterized by large estates in a rural setting.

Access to the Graham properties is off a paved two-lane road called Lambert's Cove Road, which also serves as the major access road to many other parcels in and to the north of this area. John Cottle Road is a private, twenty-foot-wide, dirt road that traverses west from Lambert's Cove Road to another private road named Simon Athearn Road. Old Herring Creek Road is a horseshoe-shaped private dirt road that diverges from and then reconnects with John Cottle Road.

The following table sets forth some basic information about the Graham properties, which will be augmented *infra*, as well as their original and abated assessed values for fiscal year 2003 and their original unabated assessed values for fiscal year 2004.

<u>Pro- perty</u>	<u>Approx. Acreage</u>	<u>Im- proved</u>	<u>Ocean- front</u>	<u>Named Lot</u>	<u>View</u>	<u>FY 2003 Original Assessed Value (\$)</u>	<u>FY 2003 Abated Assessed Value (\$)</u>	<u>FY 2004 Original Assessed Value (\$)</u>
<u>6-9</u>	6.0	No	No	Cistern	Yes	5,170,400	3,977,000	3,977,000
<u>6-12</u>	0.45	Yes	Yes	Cottage	Yes	3,916,000	2,000,300	2,000,300
<u>6-13</u>	50.0	Yes	Yes	Mrs. Graham's	Yes	18,843,000	18,759,400	18,759,400
<u>6-14</u>	114	No	No ³	Gazebo	Yes	15,523,700	13,600,600	13,600,600
<u>6-14.1</u>	45.2	Yes	No	Mr. Graham's	Yes	9,321,100	8,710,900	8,710,900
<u>6-15</u>	3.7	Yes	No	Caretaker	No	1,714,100	1,636,900	1,636,900
<u>6-18</u>	15.4	No	No	Spring	Yes ⁴	2,761,900	2,431,600	2,431,600

For fiscal years 2003 and 2004, the Board of Assessors of the Town of West Tisbury ("assessors") assessed real estate taxes at the respective rates of \$4.95 and \$5.38 per \$1,000 of value. For fiscal year 2003, payments on the actual tax bills

³ This property touches James Pond on a point.

⁴ This property has potential water views from its higher elevations.

were due on February 3, 2003 and May 1, 2003. For fiscal year 2004, payments on the actual tax bills were due on February 2, 2004 and May 3, 2004.⁵ In accordance with G.L. c. 59, § 57C, the appellants timely paid the taxes assessed for both fiscal years without incurring interest. The following two tables provide relevant jurisdictional information for each of the subject appeals for the two fiscal years at issue including: the total tax paid; the dates that the appellants timely filed their applications for abatement in accordance with G.L. c. 59, § 59; the dates that the assessors either granted a partial abatement or denied the applications; and the dates that the appellants seasonably filed their petitions with the Appellate Tax Board ("Board"), in accordance with G.L. c. 59, §§ 64 and 65.

⁵ The statutory due dates for payment of the actual real estate bills for fiscal years 2003 and 2004, in the quarterly payment system adopted by West Tisbury, were February 1 and May 1, 2003 and February 1 and May 1, 2004, respectively. G.L. c. 59, § 57C. However, in 2003, February 1 fell on a Saturday and, in 2004, it fell on a Sunday and May 1 fell on a Saturday. When the last day of a filing or payment period falls on a Saturday, Sunday, or legal holiday, filings or payments, made on the following business day, are considered timely. G.L. c. 4, § 9.

Fiscal Year 2003

<u>Docket No.</u>	<u>Property</u>	<u>Total Tax</u> ⁶	<u>Date Application for Abatement Filed</u>	<u>Date of Partial Abatement</u> ⁷	<u>Date Petition Filed</u>
<u>F271688</u>	6-18	\$ 13,671.40	01/31/2003	07/15/2003	08/19/2003
<u>F271689</u>	6-12	\$ 19,384.20	01/31/2003	07/15/2003	08/19/2003
<u>F271690</u>	6-9	\$ 25,593.48	01/31/2003	07/15/2003	08/19/2003
<u>F271691</u>	6-13	\$ 93,272.85	01/31/2003	07/15/2003	08/19/2003
<u>F271692</u>	6-14	\$ 76,842.31	01/31/2003	07/15/2003	08/19/2003
<u>F271693</u>	6-14.1	\$ 46,139.44	01/31/2003	07/15/2003	08/19/2003
<u>F271694</u>	6-15	\$ 8,484.79	01/31/2003	07/15/2003	08/19/2003

Fiscal Year 2004

<u>Docket No.</u>	<u>Property</u>	<u>Total Tax</u>	<u>Date Application for Abatement Filed</u>	<u>Date of Denial</u>	<u>Date Petition Filed</u>
<u>F273052</u>	6-14	\$ 73,171.22	01/12/2004	03/23/2004	06/03/2004
<u>F273053</u>	6-15	\$ 8,806.52	01/12/2004	03/23/2004	06/03/2004
<u>F273054</u>	6-12	\$ 10,761.61	01/13/2004	03/23/2004	06/03/2004
<u>F273055</u>	6-18	\$ 13,082.00	01/12/2004	03/23/2004	06/03/2004
<u>F273056</u>	6-14.1	\$ 46,864.64	01/12/2004	03/23/2004	06/03/2004
<u>F273057</u>	6-9	\$ 21,396.26	01/12/2004	03/23/2004	06/03/2004
<u>F273058</u>	6-13	\$100,925.57	01/12/2004	03/23/2004	06/03/2004

Based on these facts, the Board found and ruled that it had jurisdiction over these appeals.⁸

⁶ These amounts represent the total tax due before partial abatement. After partial abatement, the real estate tax for each of the seven properties in the order set forth in the fiscal year 2003 table above was \$12,036.42 (Graham 6-18), \$9,901.49 (Graham 6-12), \$19,686.15 (Graham 6-9), \$92,859.03 (Graham 6-13), \$67,322.97 (Graham 6-14), \$43,118.96 (Graham 6-14.1), and \$8,102.66 (Graham 6-15).

⁷ On April 9, 2003, the appellants timely executed a three-month extension of time within which the assessors could act on the appellants' applications for abatement.

⁸ During the pendency of the trial, the assessors filed a motion to dismiss the fiscal year 2003 appeals for Graham 6-9 and Graham 6-18 because the signatures on those properties' abatement applications, which were signed by "William W. Graham, trustee," were allegedly improper. The Board found that, in accordance with G.L. c. 59, § 59, the applications for these properties for fiscal year 2003 were brought, in writing, in the names of the nominal owners of these properties upon whom the tax was assessed, and on a form approved by the Commissioner of Revenue. The Board further found that each application adequately described the property and was signed by a principal of the owner, who was also a trustee and beneficiary of the trust that was the beneficiary of the nominee real estate trust in which each property was

The trial of these appeals encompassed thirty-six days of hearings over a four-month period. After the trial, the Board conducted a three-day view of the Graham properties, as well as the appellants' purportedly comparable properties and, subsequently, a two-day view of the assessors' purportedly comparable properties. Following these views and the parties' receipt of the trial and view transcripts, the parties filed post-trial and then reply briefs.

During the trial, the appellants called twelve witnesses: John Early, Member of the West Tisbury Board of Selectmen and general contractor; Douglas Hoehn, land surveyor; Michael Colaneri, Chairman of the West Tisbury Board of Selectmen; Stephen L. Ferreira, District Manager of Vision Appraisal Technology; Jo-Ann Resendes, Principal Assessor for West Tisbury; Jay E. Closser, real estate appraiser; June Perry, Senior Appraiser from Vision Appraisal Technology; William Welsh Graham, appellant and property owner; Stanton C. Richards, Member of the West Tisbury Board of Assessors; Raymond P. Houle, Member of the West Tisbury Board of Assessors; Brian Abbott,

held, as well as a subsequent owner. At any rate, "[G.L. c. 59, § 59] does not, in terms, require that an application be 'signed.'" **Assessors of Boston v. Neal**, 311 Mass. 192, 198 (1942). Moreover, the assessors' previous action of accepting and granting abatements on these two applications "is entitled to consideration in determining whether the applications were in compliance with the statute." **Assessors of Brookline v. Prudential Ins. Co.**, 310 Mass. 300, 304 (1941). Lastly, the Board found and ruled that these applications were authorized by a beneficiary of the nominee real estate trust that owned these properties who could direct or control the action of the trustees of that real estate trust. For these reasons, the Board denied the assessors' motion to dismiss.

landscaper; and John Abrams, Chief Executive Officer of the South Mountain Company. For their part, the assessors called five witnesses: Marilyn Browne, Chief of the Bureau of Local Assessment of the Department of Revenue ("DOR"); Scott Santangelo, Community Advisor for DOR's Bureau of Local Assessment; Jo-Ann Resendes; Kenneth Croft, III, real estate appraiser; and Stephen L. Ferreira. The parties also entered in excess of 450 exhibits into evidence, including, by way of example but not limitation, jurisdictional documents, property record cards, field review cards, site plans, photographs, aerial photographs, maps, charts, compilations, leases, contracts, DOR pronouncements, assessors' informational releases, deeds, proposed 2002 equalization study, final 2004 equalization study, zoning bylaws, expert reports, spreadsheets, trust documents, hand-written notes, newspaper articles, computer printouts, e-mail communications, letters, faxes, bills, invoices, regulations, professional standards, responses to interrogatories, probate documents, plus other demonstrative or documentary evidence. Additional testimony and documents were admitted into evidence at, or because of, the views.

After reviewing all of the evidence, the Board determined that the principal questions to be answered in these appeals were simply: **(1)** did the appellants prove a right to abatement by showing that the fiscal year 2002 revaluation and

certification process for West Tisbury, upon which the fiscal year 2003 and 2004 assessed values were based, was so compromised by underlying errors that it resulted in unreliable assessed values, which overvalued any of the Graham properties for the fiscal years at issue; **(2)** did the appellants, or the record otherwise, adequately demonstrate that any of the Graham properties' fair cash values as of January 1, 2002 and January 1, 2003 were less than their respective assessments for fiscal years 2003 or 2004; and **(3)** did the appellants prove that any Graham properties were disproportionately assessed in fiscal years 2003 or 2004 resulting in a right to an abatement. After considering all of the evidence, the Board made the following findings of fact.

Discussion

(1)

Every three years, in accordance with G.L. c. 40, § 56, G.L. c. 58, § 1A, and G.L. c. 59, § 38, Massachusetts municipalities must revalue the real and personal property within their boundaries to ensure that it is valued at its full and fair cash value. Pursuant to G.L. c. 58, § 1A, DOR, through its Division of Local Services and Bureau of Local Assessment, is charged with enforcing all laws relating to the valuation, classification and assessment of property and certifying whether

assessed values represent full and fair cash valuation.⁹ Accordingly, DOR acts as the manager of the assessors and the authorized administrator of the revaluation and certification process. In furtherance of these duties, DOR has published guidelines and instructions that municipalities should follow to obtain certification from DOR that their "locally assessed values represent full and fair cash valuation."

Fiscal year 2002 was a revaluation year for West Tisbury. Throughout the Commonwealth, as in West Tisbury, a technique called "mass appraisal" is used to achieve this revaluation mandate. Mass appraisal is the systematic appraisal of groups of properties, as of a given date, using standardized procedures, common data, and statistical testing.¹⁰ DOR recommends that municipalities use computer-assisted mass appraisal (CAMA) systems as automated methods for achieving full, fair, and uniform valuations. To fulfill their revaluation responsibilities in West Tisbury, the assessors hired Vision Appraisal Technology ("Vision") of Northborough,

⁹ G.L. c. 58, § 1A provides in pertinent part:

The commissioner . . . shall enforce all laws relating to the valuation, classification and assessment of property and shall supervise the administration of such laws by local assessors in accordance with the rules, regulations and guidelines [that he establishes]. . . . [The commissioner] shall determine whether or not the locally assessed values represent the full and fair cash valuation for each class of real property.

¹⁰In APPRAISAL INSTITUTE, THE DICTIONARY OF REAL ESTATE APPRAISAL (3rd ed., 1993), the definition of "mass appraisal" is "[t]he process of valuing a universe of properties as of a given date utilizing standard methodology, employing common data, and allowing for statistical testing." *Id.* at 224.

Massachusetts to assist them, during calendar year 2001, in the revaluation of the town's approximately 2,700 tax parcels. Vision is a consulting company, which, for the past thirty years, has provided appraisal, and mass appraisal services to municipalities throughout Massachusetts and New England. Vision has assisted in thousands of triennial revaluations and has continuously provided services to these assessors, including assistance in every triennial revaluation since their initial association with in the mid-1980s.

Vision and the assessors have virtually always used a "two land line model" to value real property in West Tisbury. This model contains an initial land line for the primary site and a second land line for excess land, if the primary site is greater than three acres (as well as a separate valuation for any improvements). The minimal zoning for a residential lot in West Tisbury is three acres. The value of the primary site is obtained by multiplying the square footage of the primary site by a chosen unit price per square foot. This figure is then adjusted by a neighborhood multiplier or factor, to account for the nature of the neighborhood in which the property is located, and subsequently by a condition multiplier or factor, to account for the characteristics of the property itself.

The second land line functions in a similar manner to the first. Ordinarily, any excess acreage that does not contain a

specified amount of wetland is recorded on the second line and multiplied by the excess acreage price. This figure is also then adjusted by a neighborhood factor and subsequently by a condition factor.

With some properties, a third line might be used to designate and value wetlands, not included in the second land line, at \$500 per acre with no further adjustments. With other properties, the presence and extent of wetlands might be reflected in the condition factor used for excess land. The assessors asserted that they customarily valued property with a measured amount of wetlands by the former method, while valuing property with some unascertained amount of wetlands or unbuildable lands by the latter.

In July 2001, DOR published guidelines for fiscal year 2002 that included a systematic approach and standards for triennial certification. In general, assessors must first submit to DOR for review and approval a written plan for meeting the certification requirements. After approval, DOR conducts a preliminary field review, a procedural audit of valuation practices, and a statistical analysis, not always in that order. Once those steps are successfully completed, DOR notifies the assessors that they may proceed with an appropriate public disclosure program, which provides taxpayers with information on proposed assessments. After completion of the public disclosure

program, the assessors determine their final assessments and then request a final review by DOR.

Some of the more important steps that the assessors must address in this extensive and complex process include: (1) determining and reviewing the sales to be used in the analyses; (2) developing the new land-price curve; (3) developing depreciation schedules; (4) calculating the assessment-to-sales ratios for sale properties to determine if they meet DOR's statistical requirements; (5) adjusting the assessments so that the new assessment-to-sales ratios fall within DOR's statistical requirements; (6) determining from the sales what the condition factors should be for the sale properties, for the purpose of adjusting the proposed assessments; (7) determining what the neighborhood factor should be for the purpose of adjusting the sales; (8) looking at all sales in town and determining where the neighborhood boundaries ought to be for the valuation neighborhoods; (9) running the multitude of statistical analyses required by DOR for the newly adjusted sales; (10) taking the condition factors determined for the sale properties and applying them to the non-sale properties; (11) submitting all the required reports, analyses, and land schedules to DOR; and (12) responding to DOR's questions, concerns and issues.

For its part, DOR reviews the multiple assessors' submissions, including a schedule which sets forth the proposed

assessment for every property in West Tisbury, along with each property's neighborhood and condition factor. DOR also performs its own calculations and statistical analyses to confirm the assessors' compliance with DOR's guidelines and the accuracy of their submissions.

In essence, this revaluation and certification process enables DOR to determine, among other things, whether the assessors have developed and implemented an acceptable mass appraisal system using appropriate and reasonable valuation methods. This process also is intended to insure the uniform and consistent application of the mass appraisal system. Statistically, DOR requires that the median assessment-to-sales ratio (ASR) for single family homes and the ASR for vacant land fall between 90% and 110% with a 10% coefficient of dispersion about the median (COD) for single family homes and a 20% COD for vacant land. DOR's insistence on these statistical requirements insures that assessed values approximate fair cash value and approach uniformity. The assessors and DOR performed the requisite steps and analyses for West Tisbury's revaluation and certification for fiscal year 2002. DOR certified the assessors' values for West Tisbury for fiscal year 2002.

In the course of performing their responsibilities for the fiscal year 2002 triennial revaluation and certification process for West Tisbury, the assessors and Vision reviewed three sales

that occurred in 1999, before the sale time period used in the fiscal year 2002 triennial certification. These sales included two from West Tisbury's North Shore, parcel 6-3 (86 Ichabod Allen Road) also known during trial as the "Roberts parcel" or "Roberts property" and parcel 6-5 (270 John Cottle Road) also known during trial as the "Ziff I sale" or "Ziff I property," as well as one from West Tisbury's South Shore, parcel 43-16 (58 Oyster Watcha Pond). The assessors and Vision believed that the sale prices associated with the two North Shore properties, which were located in the same neighborhood as the Graham parcels, were likely indicative of a new valuation neighborhood on the North Shore, because the sale prices for these properties surpassed the unprecedented \$10,000,000 level.

As part of the revaluation process, the assessors and Vision appropriately brought the Ziff I property's ASR up to DOR statistical standards. They accomplished this by creating a new valuation neighborhood, "neighborhood 200," with a multiplier of 9.5. When the assessors and Vision applied this new neighborhood factor to the Ziff I property, after the other adjustments had been made, the new ASR met DOR standards.

When the assessors and Vision went to apply this new neighborhood factor to the Roberts property, they realized that they had previously been using an improper valuation model to value the Roberts property. They had been using a three land

line model in which an eight-acre secondary site had been carved out of the excess acreage. The three land line model had a three-acre primary site, an eight-acre secondary site, excess acreage of sixty acres and ten acres of wetlands. Accordingly, the assessors and Vision corrected their mistake and applied a two land line model to the Roberts property. They also placed it in neighborhood 200 with a multiplier of 9.5 for the primary site. Vision derived the condition factor, mathematically, using a residual analysis. The resultant 0.9 condition factor for the excess acreage apparently reflected the contribution of the excess land to the Roberts property's overall value. This condition factor served as the basis for determining the condition factor for other large parcels in the neighborhood, such as Graham 6-13, Graham 6-14, and Graham 6-14.1. The assessors included the seven Graham properties in neighborhood 200 because for the past fifteen years they had been grouped with the Ziff I and the Roberts properties and, in the assessors' judgment, should remain in the same neighborhood. Based on sales, a separate neighborhood 200 was also created on the South Shore.

In addition to the 1999 sales of the Ziff I and Roberts properties, three other sales took place in the North Shore's neighborhood 200 following the fiscal year 2002 triennial certification. In February 2002, parcel 6-11 (104 Old

Herring Creek Road), referred to at trial as the "Bishop property," which contained 5.33 acres of oceanfront land and a 2,756 square foot home, was sold for \$11,100,000. In July 2002, parcel 6-6 (271 John Cottle Road), referred to at trial as "the Paul's Point property" or "Ziff II property," which contained 7.7 acres of oceanfront land improved with a 735-square-foot cottage, was sold for \$15,250,000. In January 2003, parcel 6-4 (290 John Cottle Road), referred to at trial as "the Meili property," which contained 7.2 acres of oceanfront land improved with a 1,367-square-foot house, was sold for \$11,781,950. These sales of nearby oceanfront properties support the creation of, and the Graham properties inclusion in, neighborhood 200.

For fiscal year 2003, the assessors made interim adjustments to the property values in West Tisbury. The unit price of the primary site was increased from \$0.91 to \$0.96 per square foot, and the unadjusted price for excess land was increased from \$13,000 to \$14,000 per acre. Following the issuance of the fiscal year 2003 tax bills, the appellants filed abatement application with the assessors. In response to these applications, the assessors visited the Graham properties' neighborhood and inspected the improved properties.

In May 2003, the assessors met with Mr. Graham, his then attorney and his real estate appraiser. Mr. Graham's real estate appraiser presented information to the assessors

regarding the neighborhoods and comparable properties. He also presented site plans compiled by land surveyor Douglas Hoehn, which showed the Graham properties' topography and the presence of 1.4 acres, 10.5 acres, and 3.0 acres of wetlands on Graham 6-14, 6-14.1, and 6-18, respectively. The site plan for Graham 6-13 did not specify an amount for wetlands. Following this meeting, the assessors granted the appellants abatements on all of the Graham properties for fiscal year 2003 and carried those abated values forward into fiscal year 2004. To the extent that the assessors accounted for wetlands on Graham 6-14, 6-14.1, and 6-18, they did so by adjusting the condition factor on the excess land. The small abatement granted for Graham 6-13 resulted from a reduction in the value of the improvements on that parcel.

For a variety of reasons, the appellants asserted that the DOR certified values derived from West Tisbury's 2002 recertification were problematic, at least with respect to the Graham properties. They essentially argued that the underlying data and methodology, which the assessors used in the revaluation process and to value the Graham properties for the fiscal years at issue, were flawed and unreliable.

More specifically, the appellants contended that of the forty-three sales, which the assessors submitted to DOR for fiscal year 2002 revaluation and certification purposes, eight

to ten necessitated additional scrutiny by DOR and another ten were atypical properties or sales.¹¹ The appellants further argued that the 1999 sales of the two North Shore waterfront properties, the Roberts property and the Ziff I property, which the assessors used in establishing neighborhood 200 in their fiscal year 2002 revaluation, were problematic. The appellants contended that the sale of the Ziff I property was an outlier and the assessors, therefore, should not have relied on that sale in establishing neighborhood 200. The appellants further contended that the assessors fraudulently altered the description on the property record card for the Roberts property (to "no view") to justify a reduction in its second land line condition factor so that its assessed value could better approximate its recent sale price without undermining the recent establishment of neighborhood 200.

The appellants offered the testimony of Jay Closser in an attempt to prove that the changes on the field card for the Roberts property were improper, the reconciliation of the Ziff I and Roberts sales was incorrect, the creation of neighborhood 200 was inappropriate, the locations of the neighborhood boundaries were improper, and there were flaws in the Vision mass appraisal model.

¹¹ These purportedly atypical sales were on Rock Pond Road and were also known and referred to as Island Co-Housing sales.

The appellants also asserted that the assessors' disparate treatment of wetlands, valuing some at \$500 per acre while adjusting the condition factor for other wetland areas, resulted in inconsistent and unequal values. The appellants additionally proposed valuing any unbuildable land at \$500 per acre, the value ascribed to wetlands.

The assessors answered these contentions and concerns with countervailing points and analyses. In particular, they pointed out that DOR's questions about certain sales, which were included in the forty-three that the assessors submitted to DOR for revaluation and certification purposes, were resolved to DOR's satisfaction. The assessors also explained that the ten supposedly atypical properties included in the forty-three sales were arm's-length transactions and were not dissimilar from other smaller, grandfathered lots in West Tisbury, like Graham 6-12. Further, the assessors explained that the differing prices paid by the buyers for these purportedly atypical properties were derived from discussions between seller and buyer and reflected the entire cost of the project to the seller, including land costs, development costs, construction costs, overhead and a profit to the builder. Moreover, the adjustment that the assessors made to the then existing building rates, which they used for assessment purposes, was necessary to reconcile the sale prices of these properties to their

assessments because the existing rates were not applicable to houses of this size. The assessors' action in this regard was necessary and appropriate and in furtherance of the revaluation and certification process. At any rate, the assessors did not rely on these sales in creating neighborhood 200, so their status neither supported nor undermined the creation of that neighborhood. The assessors noted that DOR certified West Tisbury's assessed values for the fiscal year 2002 revaluation, which, among other things, demonstrated DOR's approval of the assessors' methodology.

The assessors admittedly relied primarily on the sales of the Ziff I and Roberts properties for the creation of neighborhood 200. The assessors considered these sales to be arm's-length transactions and believed that subsequent sales in this neighborhood proved that the Ziff I sale was not an outlier. Moreover, at the time, there was insufficient information to suggest that the Ziff family was attempting to create a family compound, and, at trial, there was insufficient evidence to establish that fact.¹² The adjustments that the assessors made to the property record card for the Roberts property were necessary to rectify the prior use

¹² The record reveals two subsequent sales in the Graham properties' neighborhood to Ziff-related buyers. There was no direct evidence presented, however, from any of the principals involved in these transactions regarding the creation of a family compound or the buyers' willingness to pay more than fair cash value to purchase these properties.

of an inconsistent valuation model and the condition factor for the excess acreage of this large parcel was mathematically derived. The "no view" notation on the property record card for the Roberts property describing the excess land, while inaccurate, did not dictate the numeric value assigned to the excess acreage condition factor.¹³

In response to Mr. Closser's assertions, the assessors correctly asserted that he lacked the requisite experience, expertise, and independence to opine meaningfully on the valuation or assessment of waterfront properties in West Tisbury, particularly with respect to the Vision revaluation model. The assessors appropriately stressed that Mr. Closser's credibility was compromised because he conducted virtually no independent research on these issues but relied almost entirely on conversations with and documents provided by the appellants or their attorneys. In analyzing the two 1999 North Shore sales

¹³ Ms. Resendes, West Tisbury's Principal Assessor, testified that she and Ms. Perry, Vision's Senior Appraiser, visited the Roberts property in March or April of 2001 as part of the fiscal year 2002 revaluation and certification process. Ms. Resendes stated that from the rear of the property and approaching the location of the main house, any potential view of the water was obscured by vegetation. This testimony was consonant with the "no view" notation on the parcel's property record card, which the assessors had changed from a "view" notation during the revaluation. She further testified that she and Ms. Perry viewed the exterior of the main house during this visit. Ms. Perry, in her testimony, generally affirmed Ms. Resendes' account of their visit. Other evidence established that at the time of the claimed visit, the house had already been razed and views of the water were apparent from much of the property. The Board found that while these inconsistencies served to diminish Ms. Resendes and Ms. Perry's credibility, they did not undermine the overall validity of the mass appraisal methodology employed by the assessors.

used by the assessors for creating neighborhood 200, Mr. Closser essentially agreed with the assessors that, if the Ziff I sale was not considered an outlier, then its reconciliation supported the creation of neighborhood 200. With respect to the Roberts sale, Mr. Closser used, what the Board regarded as, the anomalous three land line model in his analysis instead of the prevailing two land line model. The Board found that this inconsistency improperly skewed his results and rendered them unreliable. Finally, Mr. Closser acknowledged that the subsequent sales of several properties in neighborhood 200 in 2002 supported the formation of neighborhood 200 with its attendant multiplier of 9.5.

With respect to their treatment of wetlands and unbuildable land, the assessors asserted that they consistently and uniformly treated wetlands and unbuildable land differently in their assessments, and the appellants failed to offer a convincing basis for treating them equivalently. The assessors also asserted that once the actual amount of wetlands on the Graham properties was brought to their attention, they appropriately abated the affected properties, all other matters being equal, and then carried the abated assessments forward into the subsequent fiscal year at issue.

On this basis, the Board found that the creation of neighborhood 200 in the North Shore of West Tisbury in

connection with the fiscal year 2002 revaluation and for the two subsequent fiscal years at issue was warranted. The Board further found that DOR was justified in certifying the assessed values associated with West Tisbury's fiscal year 2002 revaluation. The Board also found that the assessors' treatment of wetlands and unbuildable land was acceptable under the circumstances.

Even assuming, *arguendo*, that the appellants exposed flaws or errors in the assessors' method of valuation that raised doubts about the assessments on the Graham properties for the fiscal year 2003 and 2004, the appellants failed to show that such errors resulted in an overvaluation of the Graham properties by the assessors, particularly after the Board considered other evidence in the record pertaining to the Graham properties' fair cash values for fiscal years 2003 and 2004, which, for the most part, established the efficacy of the assessments, regardless of the assessors' purported mistakes and inconsistencies.¹⁴

(2)

The Board found considerable evidence in the record directly relating to the fair cash value of the Graham properties for fiscal years 2003 and 2004. The testimony, expert report, and revisions submitted by the assessors' expert

¹⁴ As discussed in greater detail, *infra*, the Board found that Graham 6-15 and 6-18 were entitled to small abatements for fiscal years 2003 and 2004.

real estate appraiser, Mr. Croft, were particularly instructive and compelling. The Board found that Mr. Croft's credibility as an expert witness was enhanced by his willingness to reconsider his analyses and conclusions in light of newly discovered or presented information and data, such as that contained in the Hoehn reports, which, as discussed *supra*, depicted the Graham properties' topography and some wetlands, as well as a recent sale near the Graham properties.

In contrast, the appellants offered little evidence and no direct expert analysis or opinions regarding the Graham properties' fair cash value for fiscal years 2003 and 2004. All the appellants essentially did was to substitute a single element, the neighborhood factor, in the mass appraisal formula used by the assessors to arrive at the assessed values of the Graham properties, to calculate their "proposed assessments."¹⁵ As discussed in greater detail, *infra*, their "proposed assessment" submissions were not the equivalent of fair cash value opinions and did little to advance their cause. What follows in this section are individual descriptions of the Graham properties coupled with the salient information and analyses, as well as the Board's findings, relating to their fair cash values for the fiscal years at issue.

¹⁵ For some Graham properties, the appellants also broke out what they considered "unbuildable land" from the excess land and valued it as wetlands at \$500 per acre.

Graham 6-9, the "Cistern Lot," is a six-acre undeveloped parcel of real estate, which is one parcel removed from oceanfront property. It has impressive hilltop views of Vineyard Sound and deeded beach rights. It was originally assessed for \$5,170,400 for fiscal year 2003, but that value was abated by the assessors to \$3,977,000 and then carried forward into fiscal year 2004. The Board agreed with the determination of the assessors' real estate valuation expert, Mr. Croft, that this property's highest and best use was its development into a high-end, single-family estate.

In his comparable sales approach, Mr. Croft compared five other properties on Martha's Vineyard, which sold within a relevant timeframe, to Graham 6-9. The physical characteristics of those properties and some other relevant information are summarized in the following table.

Croft's Comparables

<u>Sale #</u>	<u>Property</u>	<u>Acre-age</u>	<u>Improved</u>	<u>Ocean-front</u>	<u>View</u>	<u>Other Relevant Information</u>
1	38 Cow Bay Rd. Edgartown	2.60 A	Residence razed	No	Nantucket Sound	Deeded beach access; like vacant land sale; adjacent to 30 Cow Bay Road (sale 5)
2	48 Menemsha Inn Rd. Chilmark	1.5 0A	Yes 4 bedroom	No	Vineyard Sound	High elevation; north shore view; water access; narrow parcel; rt.-of-way through parcel behind dwelling
3	88 Harlock Pond Rd. Chilmark	6.9 0A	No	No	Harlock Pond distant ocean	Seven Gates Farm area; purchase share in corp. & lease premises 99 yrs. – Croft opined that this arrangement is market equivalent to fee-simple
4	14 Golf Club Rd. Edgartown	5.6 0A	Contemporary Cape circa 1984	No	Nantucket Sound	"second tier"; closer view than 6-9; less privacy & elevation; smaller bldg. envelope; 2 salt ponds; owns strip of beach

5 30 Cow Bay Rd. 2.60 A¹⁷ No No Nantucket Deeded beach access; adjacent to 38 Cow
Edgartown¹⁶ Sound Bay Rd. (sale 1)

To properly compare these comparable sale properties to Graham 6-9, Mr. Croft first adjusted the sale prices associated with these five properties for time and appreciation, if any, and then for any noteworthy differences in their locations, physical characteristics, and conditions of sale, when compared to Graham 6-9. A summary of these five comparable properties' sale information and Mr. Croft's adjustments is contained in the following table.

Croft's Adjustments to Comparables¹⁸

<u>Sale #</u>	<u>Date of Sale</u>	<u>Sale Price \$</u>	<u>Arm's Length</u>	<u>Apprec. %</u>	<u>Apprec. \$</u>	<u>Time Adj. Price</u>	<u>Loc. %</u>	<u>Phys. Char. %</u>	<u>Sale Cond. %</u>	<u>Net Adj. %</u>	<u>Net Adj. \$</u>	<u>Adj. Price \$</u>
1	02/99	2.75M	Yes	106.41	2,926,301	5,676,301	0	5	0	5	283,815	5,960,116
2	01/00	2.0M	Yes	67.18	1,343,562	3,343,562	15	10	0	25	835,890	4,179,452
3	04/02	4.0M	Yes	0.00	0	4,000,000	0	10	0	10	400,000	4,400,000
4	09/02	4.0M	No	0.00	0	4,000,000	0	0	0	0	0	4,000,000
5	07/03	7.2M	Yes	-6.15	(442,652)	6,757,348	0	0	0	0	0	6,757,348

The Board found that Mr. Croft's comparable sales data, including his adjustments, which he used for valuing Graham 6-9, were credible. The Board also found that they supported the assessments that the assessors assigned to Graham 6-9 for the fiscal years at issue. The Board further found that Mr. Croft's use of paired sales -- a second sale of the same (or even equivalent) property in a given time period -- to generate his

¹⁶ Deed reflects 30 Cow Bay Road address, not 34 Cow Bay Road.

¹⁷ In his report, Mr. Croft incorrectly used 3.8 acres as this property's area.

¹⁸ There are several negligible errors contained in Mr. Croft's computations.

time adjustments constituted an appropriate methodology and the time adjustments themselves appeared reasonable under the circumstances. The Board additionally found that the properties associated with sales 1 and 5 were the more comparable ones to Graham 6-9 and comparable sale property 4 represented the lowest value within a potential range of values that could be attributed to Graham 6-9 for fiscal years 2003 and 2004.

For their part, the appellants relied on purportedly comparable land assessments and their "proposed assessment," which consisted exclusively of substituting a lower neighborhood factor in the mass appraisal calculation, to prove Graham 6-9's value for fiscal years 2003 and 2004. The Board's evaluation of the appellants' approach appears at the end of its discussion on valuation in this section (2). A summary of the assessors' mass appraisal valuation for Graham 6-9 and the appellants' proposed assessment for this property is contained in the following table.

Assessors' Assessment and Appellants' Proposed Assessment

<u>Assessment As Abated</u>					<u>Proposed Assessment</u>				
<u>Unit</u> <u>Sq.' or A</u>	<u>Price</u> <u>\$</u>	<u>Nbhd.</u>	<u>Cond.</u> <u>Factor</u>	<u>Value</u> <u>\$</u>	<u>Unit</u> <u>Sq.' or A</u>	<u>Price</u> <u>\$</u>	<u>Nbhd.</u>	<u>Cond.</u> <u>Factor</u>	<u>Value</u> <u>\$</u>
130,680	0.96	9.5	2.5	2,979,504	130,680	0.96	3.75	2.5	1,176,120
3.00	14,000	9.5	2.5	997,500	3.00	14,000	3.75	2.5	393,750
<u>Total</u>	6.00			3,977,004					1,569,870
<u>Assess./Round</u>				3,977,004					1,570,000

Graham 6-12, the "Cottage Lot" or Beach Lot," is a 0.45-acre developed parcel of real estate with eighty-nine feet of

sandy beach frontage on Vineyard Sound. Although it has no direct street frontage of its own, Graham 6-12 is readily accessible from other Graham properties.¹⁹ The parcel slopes upward slightly from the beach, to a grassy dune, and then to a small, single-story, 702-square-foot, two-bedroom, one-bathroom house with a galley kitchen. The interior finish includes exposed pine framing and sheathing, pickled hardwood flooring and a vaulted ceiling with a skylight. There is a small wood stove on a ceramic-tiled hearth.

The exterior of the house is finished with natural white cedar shingles and wood trim. There is a full-length wood deck on the Vineyard Sound side of the house with an open covered porch behind the deck. The screened-in portion of the porch wraps around the east side of the cottage. There is an outdoor shower on the west side of the house next to two propane tanks that service the hot water heater. The house has 200 amperage electric service. The slope, dune and scrub plants in front coupled with light woodlands in back provide a semblance of privacy for the house. The beach area associated with Graham 6-12 is private, limiting third parties to walking in the inter-tidal zone.

¹⁹ To the extent an easement might at some time be necessary to assure continued access to Graham 6-12, it could, in all likelihood, be obtained with little further inconvenience or disruption to other Graham properties and at a near nominal cost given the common relationships among the owners and beneficiaries of the Graham properties.

Graham 6-12 is a pre-existing, non-conforming use that may not be subdivided. The entire parcel is located within the Coastal Overlay District. While no expansion of the improvement is likely under the existing zoning and regulatory system, the improvement's footprint is grandfathered. The assessors originally assessed this property for \$3,916,000 for fiscal year 2003, but abated that value down to \$2,000,300 and then carried this lower valuation forward for fiscal year 2004. The Board agreed with Mr. Croft's determination that the property's current use represented its highest and best use for the fiscal years at issue.

In his comparable sales approach, Mr. Croft compared six other properties on Martha's Vineyard, which sold within a relevant timeframe, to Graham 6-12. The physical characteristics of those properties and some other relevant information are summarized in the following table.

Croft's Comparables

<u>Sale #</u>	<u>Property</u>	<u>Acre-age</u>	<u>Improved</u>	<u>Ocean front</u>	<u>View</u>	<u>Other Relevant Information</u>
1	3 Eliot Ave. Chilmark	1.2 A	900 sq.' cottage	No	Quitsa Pond & Atlantic Ocean	Sits on crest of sm. knoll; fronts on main road; deeded ocean access; dwelling since redone
2	12 Windy Way West Tisbury	0.72 A	1,129 sq.' contemp. house; owners thus far unable to get permits to rehab.	Yes	Vineyard Sound	Sits atop coastal bluff; superior views; common beach cannot be accessed directly from property; presume access; inferior neighborhood to Graham's; smaller & narrower lots, area more dense
3	131 State Rd. Chilmark	0.14 A	1,260 sq.' house	Salt pond	Quitsa Pond	Adjacent to public landing; near busy road; pier license
4	20 Vineyard Sound Path (Davis Path) Chilmark	1.0 A (2.0 A)	600 sq.' cottage	Yes	Vineyard Sound	Parcel has similar width & frontage to subject; remote from public ways; private; cottage similar in size to subject's
5	16 Crick Hill Rd. Chilmark	0.10 A	957 sq.' cottage & sep. guest hse.	Yes on harbor	Vineyard Sound	Includes dock; deep water boat access; in heart of Menemsha; some privacy
6	25 Old Barnes Rd. Oak Bluffs	1.20 A	circa 1963 1,032 sq.' raised ranch ²⁰	Lagoon Pond	Oak Bluff Lagoon	Vastly inferior location to subject; 50' of frontage; given least weight

To properly compare these comparable sale properties to Graham 6-12, Mr. Croft first adjusted the sale prices associated with these six properties for time and appreciation, if any, and then for any noteworthy differences, in their locations, physical characteristics, and conditions of sale, when compared to Graham 6-12. A summary of these six comparable properties' sale information and Mr. Croft's adjustments is contained in the following table.

²⁰ In his appraisal report, Mr. Croft also stated that the area associated with this comparable property's improvement is 1,592 square feet. The Board found that any discrepancy in the improvement's area was inconsequential because Mr. Croft gave this property the least weight in his analysis and the Board gave it no weight.

Croft's Adjustments to Comparables²¹

<u>Sale #</u>	<u>Date of Sale</u>	<u>Sale Price \$</u>	<u>Arm's Length</u>	<u>Apprec. %</u>	<u>Apprec. \$</u>	<u>Time Adj. Price</u>	<u>Loc. %</u>	<u>Phvs. Char. %</u>	<u>Sale Cond. %</u>	<u>Net Adj. %</u>	<u>Net Adj. \$</u>	<u>Adj. Price \$</u>
1	11/99	1.525M	Yes	74.41	1,134,767	2,659,767	15	10	0	25	664,942	3,324,709
2	11/00	1.1M	Yes	34.41	378,521	1,478,521	10	25	0	35	517,482	1,996,003
3	01/01	1.1M	Yes	27.18	298,959	1,398,959	15	25	0	40	559,584	1,958,542
4	03/01	2.55M	Yes	21.04	536,548	3,086,548	0	0	0	0	0	3,086,548
5	04/01	3.175M	Yes	19.84	629,781	3,804,781	10	-20	0	-10	(380,478)	3,424,303
6	09/02	1.285M	Yes	0.00	0	1,285,000	50	10	0	60	771,000	2,056,000

The Board found that Mr. Croft's comparable sales data, including his adjustments, which he used for valuing Graham 6-12, were credible. The Board also found that they supported the assessments that the assessors assigned to Graham 6-12 for the fiscal years at issue.²² The Board further found that Mr. Croft's use of paired sales to generate his time adjustments constituted an appropriate methodology and the time adjustments themselves appeared reasonable under the circumstances. The Board additionally found that the property described in sale 4 was particularly comparable to Graham 6-12 and its adjusted value supported the abated assessment for fiscal year 2003 and the assessment for fiscal year 2004 even if a substantial negative adjustment for size were incorporated into the analysis.

²¹ There are several negligible errors contained in Mr. Croft's computations.

²² An appraiser for the estate of Mrs. Graham, of which Mr. Graham was a named executor and personal representative, valued Graham 6-12, as of January 2002, at \$3.1 million for estate tax purposes. This value was also cited as the consideration for a November 2002 conveyance of this property by Mr. Graham into trust. While the Board considered this evidence, it did not rely upon it in finding that the abated assessment for fiscal year 2003 and the assessment for fiscal year 2004 for Graham 6-12 did not exceed the property's fair cash value as of January 1, 2002 and January 1, 2003.

For their part, the appellants relied on purportedly comparable land assessments and their "proposed assessment" to prove Graham 6-12's value for fiscal years 2003 and 2004. The Board's analysis of the appellants' approach, which consisted exclusively of substituting a lower neighborhood factor in the mass appraisal calculation, appears at the end of its discussion on valuation contained in this section (2). A summary of the assessors' mass appraisal valuation for Graham 6-12 and the appellants' proposed assessment for this property is contained in the following table.

Assessors' Assessment and Appellants' Proposed Assessment

	<u>Assessment As Abated</u>					<u>Proposed Assessment</u>				
	<u>Unit</u> <u>Sq.' or A</u>	<u>Price</u> <u>\$</u>	<u>Nbhd.</u>	<u>Cond.</u> <u>Factor</u>	<u>Value</u> <u>\$</u>	<u>Unit</u> <u>Sq.' or A</u>	<u>Price</u> <u>\$</u>	<u>Nbhd.</u>	<u>Cond.</u> <u>Factor</u>	<u>Value</u> <u>\$</u>
	19,600	4.82	9.5	2.13	1,911,641	19,600	4.82	5.75	2.13	1,157,046
<u>Improvements</u>					88,100					88,100
<u>Total</u>					1,999,741					1,245,146
<u>Assess./Round</u>					2,000,300					1,250,000

Graham 6-13, "Mrs. Graham's House," is a fifty-acre, irregularly shaped, improved parcel with an extensive shoreline along Vineyard Sound, Herring Creek, and James Pond. It has its own sandy beach. Graham 6-13 also possesses extensive lawns, established trees, and stone walls, along with substantial excess land. The topography is varied with the lowest areas along the beach, Herring Creek, and James Pond. The lot slopes up to the site where the main residence was situated on the relevant assessment dates, and the grounds include manicured

lawns, gardens, and plantings. The topography on the non-waterfront side of the house is rolling with several level areas between knolls. The high point is approximately sixty feet above sea level. The view from Graham 6-13 over Lambert's Cove is particularly impressive and interesting because it includes the bluffs on the far side of the cove.

At all relevant times, this parcel was improved with four buildings: a five-bedroom antique ranch; a garage or carriage house with a one-bedroom guest suite; a one-bedroom bungalow (formerly the "pool house"); and a one-room camp. Near the main entrance to the property located off the "east branch" of Old Herring Creek Road is the 500-square-foot, circa 1930, heated bungalow. This building is in excellent condition and contains a galley kitchen, a bathroom, a bedroom, and a fireplace. It also has a nine-foot wrap-around porch and is suited for use as a guest house. Across from the bungalow is a reflecting pool area with an open portico.

Between the bungalow located at the head of the driveway and the main house at its circular end is a fieldstone carriage house, which was also built around 1930. It contains two garage bays and a 1,240-square-foot caretaker's apartment, with a kitchen, two bedrooms, a living room, and a bathroom. The interior is modern and appropriate for its use. There is also a ground-level deck along the front of this building.

From the bungalow, the driveway winds through a wooded area, toward the ocean, and ends as a circular drive at the 9,780-square-foot main house, which was built in the 1920s. At all relevant times, the house had five bedrooms and seven bathrooms. The house was laid out as three wings off a central area, which contained common space and two main rooms in the rear with vaulted ceilings and fireplaces. The guest wing included two bedrooms and a common older bathroom with vintage finishes and fixtures. The master bedroom wing had its own period bathroom. The service wing was composed of a large, well-equipped, professional-type, kitchen, as well as a separate living and kitchen area for use by live-in staff.

The house had a fieldstone unfinished basement and older systems. The house was heated by electric baseboard, and it was not air conditioned except for a small unit near the kitchen. The exterior of the house was weathered white cedar shingles and painted wood trim. There was a small drive-through portico on the front of the house and an outdoor shower near the kitchen. The rear of the house featured a seventy-eight foot long wood deck overlooking Vineyard Sound.

Overall, the house was in fair condition and contained many outdated features. The Board agreed with Mr. Croft's conclusion that a potential buyer would likely perform extensive renovations to the property before moving in or even demolish it

and rebuild from scratch. At the time of the hearing of these appeals, the house had indeed been razed.

The fourth improvement on Graham 6-13 is a small, 252-square-foot, unheated and unplumbed camp located near the property's beach area. This camp building is used for storage of small boats and beach furniture. While it is not suited presently for living space, it is suited for use as a storage facility for small boats and beach furniture. It also has a covered porch and open deck facing the beach. The camp contributes value to Graham 6-13 considering that it is grandfathered and proximate to the beach.

The Board agreed with Mr. Croft's determination that, for the two fiscal years at issue, Graham 6-13's highest and best use was its then existing estate use.²³ In his sales comparison approach, Mr. Croft compared ten other properties on Martha's Vineyard, which sold within a relevant timeframe, to Graham 6-13.²⁴ The physical characteristics of those properties and some other relevant information are summarized in the following table.

²³ Like Mr. Croft, the Board also recognized, but did not adopt as a highest and best use, this property's subdivision potential for one or more additional estate lots.

²⁴ Two sales are associated with one of the properties included in Mr. Croft's sales comparison analysis of eleven sales.

Croft's Comparables

<u>Sale #</u>	<u>Property</u>	<u>Acre-age</u>	<u>Improved</u>	<u>Ocean front</u>	<u>View</u>	<u>Other Relevant Information</u>
1	86 Ichabod Allen Rd. West Tisbury	81.4 A	Modest home since razed & barn with view	Yes	Yes	"Roberts" property; view not quite as spectacular as Mrs. Graham's; add'l. acreage here offset by improvements on Mrs. Graham's; now a waterfront estate complex under construction
2	270 John Cottle Road West Tisbury	12 A	2,674 sq.' home since razed	Yes	Yes	"Ziff I" property; superior view of bluffs & Lambert's Cove; home (since razed) inferior to subject improvements
3	58 Oyster Watcha Rd., West Tisbury	14 A	No	No, but on pond & fronts on the common beach (of subdivision)	Yes	Inferior to subject; frontage on Oyster Pond; horizon line view without interesting features
4	1 Starbuck Neck Rd. Edgartown	2.6 A	6,500 sq.' antique home	No, fronts public beach	Edgartown Harbor	Despite size, buyer of Graham's prop. would likely consider this prop.; prop. substantially renovated & then resold; inferior to subject in size & privacy
5	10 Golf Club Rd. Edgartown	3.5 A	House, guest house & pool house	Yes Nantucket Sound	Yes	Small estate; useful to compare to larger estate to evaluate value of excess land
6	Pohogonut Rd. Edgartown	81 A	No	No beach access	Distant ocean views	Suitable for estate on Oyster Pond with two out parcels for guest house or secondary residences; inferior to subject
7	1 Starbuck Neck Rd. Edgartown	2.6 A	6,578 sq.' new dwelling	No, fronts public beach	Edgartown Harbor	Resale (22 mos. later) of sale 4 above; part of price increase due to reno. & part to apprec.
8	104 Old Herring Creek Rd., West Tisbury	5.33 A	2,800 sq.' dwelling	Yes	Yes	"Bishop" sale; abuts subject on west; high on hill overlooking water; inferior to subject re size of parcel, privacy & improvements
9	271 John Cottle Rd. West Tisbury	7.7 A	735 sq.' cottage	Yes	Yes	"Paul's Point property"; "Ziff II prop."; directly on Paul's Point; superior view to subject (extends in 3 directions); otherwise inferior to subject
10	290 John Cottle Rd. West Tisbury	7.2 A	1,400 sq.' home	Yes	Yes	"Meili" property; 2 parcels combined; on bluff overlooking Vineyard Sound; prop. NOT marketed prior to sale; probably at low end of scale; inferior to subject re land area & improvements
11	255-259 John Cottle Rd., West Tisbury	9.7 A	2 small houses	Yes	Yes	"Ziff III" property; 2 adjoining parcels; 2 sm. houses added little to value; shares a common beach with adjoining owner; similar view to subject; rt.-of-way through rear & side of property; inferior to subject re size, privacy, improvements, & beach ownership; not marketed so probably at low end

To properly compare these eleven comparable sales to Graham 6-13, Mr. Croft first adjusted the sale prices associated with these sale properties for time and appreciation, if any, and then for any noteworthy differences in their locations, physical characteristics, and conditions of sale, when compared to Graham 6-13. A summary of these eleven comparable sales and Mr. Croft's adjustments is contained in the following table.

Croft's Adjustments to Comparables²⁵

<u>Sale #</u>	<u>Date of Sale</u>	<u>Sale Price</u> ²⁶	<u>Sale \$/A</u>	<u>Arm's Length</u>	<u>Apprec. %</u>	<u>Apprec. \$</u>	<u>Time Adj. \$</u>	<u>Loc %</u>	<u>Phys. Char. %</u>	<u>Sale Cond. %</u>	<u>Net Adj. %</u>	<u>Net Adj. \$</u>	<u>Adj. Price \$</u>
1	07/99	12M	147,420	Yes	88.77	10,652,055	22,652,055	0	0	0	0	0	22,652,055
2	08/99	10.4M	866,667	Yes	86.47	8,992,438	19,392,438	0	20	0	20	3,878,488	23,270,926
3	09/99	8.5M	607,143	Yes	83.40	7,088,767	15,588,767	0	40	0	40	6,235,507	21,824,274
4	01/00	11M	4,615,192	Yes	67.51	7,425,416	18,424,916	0	20	0	20	3,684,983	22,109,899
5	05/00	9.5M	2,714,286	Yes	56.66	5,382,466	14,882,466	0	50	0	50	7,441,233	22,323,699
6	02/01	15.425M	190,432	Yes	25.64	3,955,562	19,380,562	0	20	0	20	3,876,112	23,256,674
7	10/01	21.893M	8,420,192	Yes	0.00	0	21,892,500	0	0	0	0	0	21,892,500
8	02/02	11.1M	2,082,552	Yes	0.00	0	11,100,000	0	60	0	60	6,660,000	17,760,000
9	07/02	15.25M	1,980,519	Yes	0.00	0	15,250,000	0	30	0	30	4,575,000	19,825,000
10	01/03	11.78M	1,636,382	Not marketed	-0.99	(116,206)	11,665,744	0	40	10	50	5,832,872	17,498,617
11	08/05	18.5M	1,907,216	Not marketed	-31.46	(5,820,658)	12,679,342	0	50	0	50	6,339,671	19,019,014

Relying on the foregoing data, Mr. Croft calculated the comparable properties' average adjusted sale price at \$21,039,332. He considered the best comparable to be sale property 1 with an adjusted value of \$22,652,055. Mr. Croft determined that Graham 6-13 had a fair cash value of \$22,000,000 as of January 1, 2002 and January 1, 2003. Graham 6-13's assessment was \$18,759,400 for the fiscal years at issue.

²⁵ There are several negligible errors contained in Mr. Croft's computations.

²⁶ Some prices are rounded.

The Board found that Mr. Croft's comparable sales data, including his adjustments, which he used for valuing Graham 6-13, were credible. The Board also found that they supported the assessments that the assessors ultimately assigned to Graham 6-13 for the fiscal years at issue. The Board further found that Mr. Croft's use of paired sales to generate his time adjustments constituted an appropriate methodology and the time adjustments themselves appeared reasonable under the circumstances. The Board additionally found that sale 1 was the most comparable property to Graham 6-13 because its views are similar (albeit less spectacular), and it is located in the same neighborhood. This comparable property's greater size is offset by the improvements on Graham 6-13 (even without considering the main house, which was razed). Comparable sale property 1's adjusted value is more than \$22,650,000, which easily supports the \$18,759,400 assessment for Graham 6-13 for the fiscal years at issue. The vast majority of other comparable sale properties' adjusted values support the assessment, as does the average adjusted value, even if comparable sale property 1 is omitted from the analysis as an outlier. In addition, even if all of the "Ziff-related" sales are deleted on the assumption that a premium may have been paid to assemble a family compound, the

remaining comparable sale properties still support the assessment.²⁷

For their part, the appellants relied on purportedly comparable land assessments and their "proposed assessment" to prove Graham 6-13's value for fiscal years 2003 and 2004. The Board's critique of the appellants' approach, which substituted a lower neighborhood factor and carved out thirty acres of supposed wet or unbuildable land at \$500 per acre from the excess land, appears at the end of its discussion on valuation. A summary of the assessors' mass appraisal valuation for Graham 6-13 and the appellants' proposed assessment for this property is contained in the following table.

Assessors' Assessment and Appellants' Proposed Assessment

<u>Assessment As Abated</u>					<u>Proposed Assessment</u>				
<u>Unit</u>	<u>Price</u>		<u>Cond.</u>	<u>Value</u>	<u>Unit</u>	<u>Price</u>		<u>Cond.</u>	<u>Value</u>
<u>Sq.' or A</u>	<u>\$</u>	<u>Nbhd.</u>	<u>Factor</u>	<u>\$</u>	<u>Sq.' or A</u>	<u>\$</u>	<u>Nbhd.</u>	<u>Factor</u>	<u>\$</u>
130,680	0.96	9.5	4	4,767,206	130,680	0.96	5.75	4	2,885,414
47	14,000	9.5	2	12,502,000	17	14,000	5.75	2	2,737,000
					30	500	1	1	15,000
<u>Subtotal</u>				17,269,206					5,637,414
<u>Improvements</u>				1,490,200					1,490,200
<u>Total</u>	50.00			18,759,406	50.00				7,127,614
<u>Assess./Round</u>				18,759,400					7,130,000

Graham 6-14, the "Gazebo Lot," is a 114-acre undeveloped parcel of real estate with spectacular views of Vineyard Sound and the Elizabeth Islands. Its high point is a hill 240 feet above sea level, which is a secondary peak of Indian Hill. A

²⁷ Mrs. Graham's estate valued Graham 6-13 at \$23,000,000 as of January 2002 for estate tax and allocation purposes. The Board did not rely on this evidence or value in finding that Graham 6-13 was not overvalued in fiscal years 2003 and 2004.

gazebo is located at the top of this hill in a park-like setting. There is a gated unpaved road that leads up to the gazebo area from John Cottle Road. There is also a footpath leading up the hill. Graham 6-14 is wooded with grassy meadows and a small amount of wetlands. It touches James Pond on a point, and a small area is subject to the Coastal Overlay District.

The Board agreed with Mr. Croft's determination that the highest and best use of the subject property would be for residential development into estate-sized lots or for preservation in its natural state. He noted that zoning requires three-acre lots but the Martha's Vineyard Commission ("MVC"), which would have jurisdiction over the development of Graham 6-14, would likely require at least ten- to twelve-acre lots. Mr. Croft also noted that the Martha's Vineyard Land Bank ("MVLB"), which is a quasi-public agency, funded by transfer taxes, is dedicated to, among other things, the preservation of large parcels on the island like Graham 6-14. MVLB often acts like a market participant and would be a potential purchaser of Graham 6-14.

In his comparable sales approach, Mr. Croft compared eleven other properties on Martha's Vineyard, which sold within a

relevant timeframe, to Graham 6-14.²⁸ The physical characteristics of those properties and some other relevant information are summarized in the following table.

Croft's Comparables

<u>Sale #</u>	<u>Property</u>	<u>Acre-age</u>	<u>Improved</u>	<u>Ocean front</u>	<u>View</u>	<u>Other Relevant Information</u>
1	809 State Road West Tisbury	60.2 A	Several small antique farm style structures	No	No	Polly Hill Arboretum; seller retained life estate in dwelling; not arm's-length; inferior to subject; improvements = 3,139 sq.'
2	45-90 Lambert's Cove Road West Tisbury	83.4 A	1,579 sq.' dwelling	Limited pond frontage	Limited pond views	Not marketed; wetlands
3	448 Barnes Road Oak Bluffs	82.3 A	Several older structures 3,039 sq.'	Part of Down Island prop.	No	Formerly Webb Campground; less desirable location; close to Lagoon Pond; hilltop vistas overlook woods; price at lower end of range
4	Lobsterville Road Aquinnah	27 A	No	No	Menemsha Harbor	Similar hilltop view as subject but more distant; bought by MVLB; wetlands in lower portion of site;
5	55 Ben Chase Road West Tisbury	84.5 A (86 A in report)	2 antique farmhouses 3,434 sq.'	No	No	Interior parcel in very remote location; wetlands, water courses & ponds on property; purchased by Trust for Public Land & MVLB
6	West Tisbury Road Edgartown	230.8 A	No	No	No	For development into golf course; fronts busy road; near sewage treatment plant & airport; inferior neighborhood; portion of land unusable due to frost bottoming
7	60 Meetinghouse Rd. Edgartown	100.5 A	2,442 sq.'	On inlet of Great Pond	Narrow inlet	Last sale of 100+ acres before assess. dates in question; purchased for proposed golf devel. (didn't get permits); then sold to Nature Conservancy; inferior neighborhood
8	833 State Road West Tisbury	25 A	Small antique farmhouse	No	No	Purchased by MV Historical Society; 3 abutting non-profits
9	State Road West Tisbury	68.5 A	No	No	No	Mixture of woodlands & farmlands; sold to Land Bank and included conserv. restriction for other land owned by seller; no wetlands
10	Middle Road Chilmark	84 A	No	No	Distant view of So. Beach	Sold to MVLB; was marketed; has wetlands
11	448 Barnes Road Oak Bluffs	190 A	No	Part of Down Island prop.	No	Included land previously sold in sale 3; sold to MVLB; part of assemblage for failed attempt at development into golf course

To properly compare comparable sale properties with Graham 6-14, Mr. Croft first adjusted the sales prices for time and

²⁸ Sale 3 was also part of later sale 11.

appreciation, if any, and then for any noteworthy differences in their locations, physical characteristics, and conditions of sale, when compared to Graham 6-14. A summary of these comparable properties' sale information and Mr. Croft's adjustments is contained in the following table.

Croft's Adjustments to Comparables' Acreage

<u>Sale #</u>	<u>Date of Sale</u>	<u>Sale Price</u> ²⁹	<u>\$/A</u>	<u>Arm's Length</u>	<u>Apprec. %</u>	<u>Apprec. \$</u>	<u>Time Adj. \$/A</u>	<u>Loc. %</u>	<u>Phvs. Char. %</u>	<u>Sale Cond. %</u>	<u>Net Adj. %</u>	<u>Net Adj. \$</u>	<u>Adj. Price \$/A</u>
1	06/97	2M	33,223	No	170.63	56,688	89,910	40	25	5	70	62,937	152,848
2	10/97	2.38M	28,537	Not marketed	158.36	45,190	73,728	25	25	0	50	36,864	110,591
3	10/98	2.5M	30,377	Yes	120.11	36,485	66,862	40	30	0	70	46,803	113,665
4	10/98	1.18M	43,382	Yes	118.58	51,441	94,823	30	15	0	45	42,670	137,494
5	04/00	5.5M	63,953	Yes	57.21	36,585	100,538	15	30	0	45	45,242	145,781
6	07/00	15.93M	69,021	Yes	49.86	34,416	103,437	30	30	-25	35	36,203	139,639
7	10/00	7.996M	79,559	Yes	37.48	29,818	109,377	15	0	0	15	16,407	125,783
8	10/02	2.5M	100,000	Yes	0.00	0	100,000	40	20	0	60	60,000	160,000
9	08/03	6.196M	90,438	Yes	-7.43	(6,720)	83,718	35	30	-10	55	46,045	129,763
10	08/04	8.3M	98,810	Yes	-19.63	(19,394)	79,416	15	20	0	35	27,796	107,211
11	03/05	18.62M	98,015	Yes	-26.76	(26,231)	71,785	40	30	0	70	50,249	122,034

Relying on this data, Mr. Croft determined that Graham 6-14 had a fair cash value of \$135,000 per acre as of January 1, 2002 and January 1, 2003. He then multiplied this figure by Graham 6-14's 114 acres and assigned a value to the subject property of \$15,390,000, which he rounded to \$15,400,000 for both fiscal years 2003 and 2004. The Board found that Mr. Croft's comparable sales data, including adjustments, which he used for valuing Graham 6-14, were credible. The Board also found that they supported the abated assessment for fiscal year 2003 and the assessment for fiscal year 2004 that the assessors

²⁹ Several of these prices are rounded.

assigned to Graham 6-14. The Board further found that Mr. Croft's use of paired sales to generate his time adjustments constituted an appropriate methodology and the time adjustments themselves appeared reasonable under the circumstances. In addition, the Board agreed with Mr. Croft that comparable sale property 4 appeared to be the most comparable property to Graham 6-14 because its views were similar and it also contained wetlands. The adjusted per acre value of comparable sale property 4 is \$137,494, which suggests a value of almost \$15,675,000 for the subject property. The assessments for Graham 6-14, as abated for fiscal year 2003 and as carried over to fiscal year 2004, are \$13,600,600. The Board was mindful, however, that the property associated with comparable sale 4 is only 27 acres compared to Graham 6-14's 114 acres. Considering the relevance of size, comparable sale property 7 is instructive. It is the last sale of 100-plus acres in the area (actually Edgartown) before the relevant assessment dates. After adjustments, Mr. Croft calculated this comparable sale property's value at almost \$126,000 per acre. The Board found that this value also supported the assessments at issue, which have a value of \$119,303.50 per acre.

The appellants relied on purportedly comparable land assessments and their proposed assessment to prove Graham 6-14's value for fiscal years 2003 and 2004. The Board's review of the

appellants' approach, which consisted of changing the neighborhood factor from 9.5 to 3.75 and carving out 6.5 acres from the excess land and valuing it as wetlands at \$500 per acre, appears at the end of its discussion on valuation contained in this section (2). A summary of the assessors' mass appraisal valuation for Graham 6-14 and the appellants' proposed assessment for this property is contained in the following table.

Assessors' Assessment and Appellants' Proposed Assessment

<u>Assessment As Abated</u>					<u>Proposed Assessment</u>				
<u>Unit</u> <u>Sq.' or A</u>	<u>Price</u> <u>\$</u>	<u>Nbhd.</u>	<u>Cond.</u> <u>Factor</u>	<u>Value</u> <u>\$</u>	<u>Unit</u> <u>Sq.' or A</u>	<u>Price</u> <u>\$</u>	<u>Nbhd.</u>	<u>Cond.</u> <u>Factor</u>	<u>Value</u> <u>\$</u>
130,680	0.96	9.5	1.5	1,787,702	130,680	0.96	3.75	1.5	705,672
111	14000	9.5	0.8	11,810,400	104.5	14000	3.75	0.8	4,389,000
					6.5	500	1	1	3,250
<u>Subtotal</u>				13,598,102					5,097,922
<u>Improvements</u>				2,500					2,500
<u>Total</u>	114.00			13,600,602					5,100,422
<u>Assess./Round</u>				13,600,600					5,100,000

Graham 6-14.1, "Mr. Graham's House," is a 45.2 acre estate improved with a five-bedroom, 3.5-bathroom main house built in 1990 and a detached three-vehicle garage with a guest suite above it. This non-waterfront property is elevated and has magnificent views of Vineyard Sound, Lambert's Cove, and the Makonikey Bluffs. It also has deeded beach access. Deed restrictions on further residential development expired in 2005.

The lot is hilly and U-shaped, with Graham 6-9 forming the center of the "U." The high point is located behind the home and is 164 feet above sea level. The lot slopes down to the

east in the direction of Vineyard Sound and down to the north and west in the direction of Lambert's Cove and James Pond.

The two-story, custom Colonial, 5,234-square-foot home is sited on the northeastern section of the parcel and is surrounded by very well landscaped grounds with manicured lawns, extensive plantings, numerous stone walls, and rail fencing. There is an area of wetlands located near the easterly side lot line, which provides privacy and visual interest. There is also a considerable amount of excess land.

On the first floor of the home, the main entrance features pickled hardwood floors, plastered walls, and an open stairway to the second floor. There is a large kitchen with pickled hardwood cabinets and floors, granite countertops, a decorative tile backsplash, a separate refrigerator and freezer, and a professional quality stove and countertop grill. The master bedroom is on this floor and features a fireplace, a walk-in shower, and a separate enclosure for the toilet and dual sinks. This floor also contains a vaulted ceiling great room overlooking Vineyard Sound, and a formal living room and study. The dining area is located near the windows in the great room.

The second floor has four twin-sized bedrooms and two bathrooms. Each of the bathrooms has tile wainscoting and modern features including a combination tub and shower unit plus a vanity. The second floor also contains a sunroom on the

northeast side of the house. There is a second sunroom in the front of the house over the entry.

The house has central air conditioning and a central vacuum system. The heat is forced hot air by propane. The hot water is furnished by two separate propane heaters.

The exterior of the house is sided with weathered white cedar shakes and wood trim. The windows are modern double-hung units. There is a covered porch attached to the front of the house and two open porches attached to the rear. One of the rear porches serves the main living area, and the other is directly accessible from the master bedroom.

The other improvement on Graham 6-14.1 is a two-story, three-vehicle garage with a three-bedroom and two-bathroom guest suite located on the second floor above the vehicle bays. Each level has an area of 1,056 square feet. The guest suite does not contain a kitchen, but it is heated. The exterior finish is the same as the main house. The improvements on Graham 6-14.1 are of very high quality and are appropriate for an estate setting.

The Board agreed with Mr. Croft's determination that the highest and best use for Graham 6-14.1 was for existing estate use with potential subdivision development for one or more additional estate lots. The size of the parcel and the location of the main house in the northeast corner of the property with

much of the excess land positioned "behind" it physically support this highest and best use. In determining this highest and best use, Mr. Croft also analyzed the likelihood of the relevant regulatory bodies granting subdivision approval. He concluded and the Board found that it was reasonably foreseeable, during the relevant time period, that approval for one or two additional lots could likely be obtained upon the expiration of the deed restriction in 2005. The Board further found that the soon-to-expire deed restriction would have negligible influence on the purchase price negotiated between informed buyers and sellers of Graham 14.1 during the relevant time period.

Mr. Croft employed a two-step analysis in valuing the subject property at \$14,500,000 for the fiscal years at issue. He first valued the primary site composed of ten acres plus the improvements at \$7,500,000 relying on seven comparable sale properties. The average adjusted price for these comparable sale properties is \$6,183,371. Mr. Croft considered comparable sale property 7, described below, to be the most comparable to the ten-acre improved estate portion of Graham 6-14.1. This comparable sale property has an adjusted sale price of \$8,108,818. Mr. Croft then valued the excess land portion of Graham 6-14.1 as thirty-five acres available for subdivision at \$200,000 per acre or \$7,000,000. In determining a value of

\$200,000 per acre for the thirty-five excess acre portion of Graham 6-14.1, Mr. Croft initially relied on the \$135,000 price per acre that he had assigned to the 114-acre parcel, Graham 6-14, and then made adjustments to that price. He upwardly adjusted the \$135,000 price per acre by 50% to account for the subject property's deeded beach access (which, the Board found, he reasonably anticipated would inure to the benefit of any derivative parcels), its closer proximity to the ocean, and its lack of any negative influences, such as stream, back of the hill, and coastal zone issues, as existed on the 114-acre parcel. Finally, Mr. Croft verified the reasonableness of valuing the remaining thirty-five acres of the subject property at \$7,000,000 by comparing this value to the \$5,500,000 value that he ascribed to the six-acre parcel, Graham 6-9, which he considered generally similar. The following table summarizes the physical characteristics of the seven properties, which sold within a relevant time period, that Mr. Croft compared to the ten-acre estate portion of Graham 6-14.1

Croft's Comparables

<u>Sale #</u>	<u>Property</u>	<u>Acre-age</u>	<u>Improved</u>	<u>Ocean front</u>	<u>View</u>	<u>Other Relevant Information</u>
1	38 Cow Bay Road Edgartown	2.60 A	Residence razed	No	Nantucket Sound	Deeded beach access; like vacant land sale
2	48 Menemsha Inn Road, Chilmark	1.5 A	Yes 4 bedroom	No	Vineyard Sound	High elevation; North Shore view; water access; narrow parcel; rt.-of-way through parcel behind dwelling
3	88 Harlock Pond Road, Chilmark	6.90 A	No	No	Harlock Pond distant ocean	Seven Gates Farm area; purchase share in corp. & lease premises 99 years, which is market equivalent to fee-simple

4	14 Golf Club Road Edgartown	5.60 A	Contemporary Cape circa 1984	On Trapp's Pond	Nantucket Sound	2 nd tier ocean; frontage on Trapp's Pond; less privacy & elevation; smaller bldg envelope; owns strip of beach; inferior to subject
5	20 Orr Lane Edgartown	2.3 A ³⁰	2,900 sq.' main house & garage	No	1 st tier view of public beach	Locations comparable; rts. to public (not private) beach; inferior improvements
6	17 Garden Cove Road, Edgartown	1.60 A	New 4,070 sq.' home	Crack- atuxet Cove	Low ocean dune height	No beach access; also has sm. guest hse.; equiv. location to subj. (near Herring Creek); equiv. hse.; inferior views, smaller lot & no access to ocean (beach beyond cove is private)
7	30 Cow Bay Road Edgartown	2.6 A ³¹	No	No	Nantucket Sound	Equiv. to subj. re view & beach access; twice as wide as subj. and therefore superior in that regard; no improvement at time of sale

To properly compare these comparable sale properties with Graham 6-14.1, Mr. Croft first adjusted the sale price associated with these seven properties for time and appreciation, if any, and then for any noteworthy differences in their locations, physical characteristics, and conditions of sale, when compared to the estate portion of Graham 14.1. A summary of these seven comparable properties' sale information and Mr. Crofts' adjustments is contained in the following table.

Croft's Adjustments to Comparables³²

<u>Sale</u> <u>#</u>	<u>Date</u> <u>of</u> <u>Sale</u>	<u>Sale</u> <u>Price</u> <u>\$</u>	<u>Arm's</u> <u>Length</u>	<u>Apprec.</u> <u>%</u>	<u>Apprec.</u> <u>\$</u>	<u>Time</u> <u>Adj.</u> <u>Price \$</u>	<u>Loc.</u> <u>%</u>	<u>Phys.</u> <u>Char</u> <u>%</u>	<u>Sale</u> <u>Cond.</u> <u>%</u>	<u>Net</u> <u>Adj.</u> <u>%</u>	<u>Net Adj.</u> <u>\$</u>	<u>Adj.</u> <u>Price</u> <u>\$</u>
1	02/99	2.75M	Yes	106.41	2,926,301	5,676,301	0	25	0	25	1,419,075	7,095,377
2	01/00	2.0M	Yes	67.18	1,343,562	3,343,562	15	30	0	45	1,504,603	4,848,164
3	04/02	4.0M	Yes	0.00	0	4,000,000	0	30	0	30	1,200,000	5,200,000
4	09/02	4.0M	Yes	0.00	0	4,000,000	0	20	0	20	800,000	4,800,000
5	10/02	7.0M	Yes	0.00	0	7,000,000	0	10	0	10	700,000	7,700,000
6	01/03	5.04M	Yes	-0.23	(11,599)	5,028,401	0	10	0	10	502,840	5,531,241
7	07/03	7.2M	Yes	-6.15	(442,652)	6,757,348	0	20	0	20	1,351,470	8,108,818

The Board found that Mr. Croft's comparable sales data, including his adjustments, which he used for valuing Graham 6-

³⁰ In his report, Mr. Croft incorrectly used 1.44 acres as this property's area.

³¹ In his report, Mr. Croft incorrectly used 3.80 acres as this property's area.

³² There are several negligible errors contained in Mr. Croft's computations.

14.1, were credible. The Board also found that they supported the abated assessment for fiscal year 2003 and the assessment for fiscal year 2004 that the assessors assigned to Graham 6-14.1. The Board further found that Mr. Croft's use of paired sales to generate his time adjustments constituted an appropriate methodology and the time adjustments themselves appeared reasonable under the circumstances. In addition, the Board agreed with Mr. Croft's determination that Graham 6-14.1 was appropriately analyzed as a small estate of ten acres coupled with developable excess land of about thirty-five acres. His two-step valuation methodology suggested a fair cash value of \$14,500,000 for both of the fiscal years at issue. The assessment was only \$8,710,900 for each of the years. Comparable sale property 7, with an adjusted sale price of \$8,108,818, appears to be the most comparable property to the ten-acre estate portion of Graham 6-14.1 given their equivalence with respect to the view and beach access. The superiority of the comparable property's width is offset by the greater area of Graham 6-14.1 (even when parceled off as a ten-acre estate). The lack of an improvement on the comparable property necessitates an upward adjustment to its sale price. Accordingly, even without considering the added potential value of the developable excess thirty-five acres (as, say, two, or even just one, building site), this comparable sale property's

adjusted price alone almost equals the abated assessment for fiscal year 2003 and the assessment for fiscal year 2004 for Graham 6-14.1.

Even if the projected ten-acre improved portion of Graham 14.1 is valued toward the low end of Mr. Croft's comparable sale properties' adjusted prices (say \$5,500,000) and the excess land is only valued at \$100,000 per acre (for a total of \$3,500,000), which is merely one-half of Mr. Croft's suggested value, the combined value of \$9,000,000 more than supports the \$8,710,900 assessment for the two fiscal years at issue.

The appellants relied on purportedly comparable assessments and their "proposed assessment" to prove Graham 6-14.1's value for fiscal years 2003 and 2004. The Board's evaluation of the appellants' approach, which changes the neighborhood factor from 9.5 to 3.75 and values 10.5 acres of the 42.2 acres of excess land as wetlands at \$500 per acre, appears at the end of its discussion on valuation. A summary of the assessors' mass appraisal valuation for Graham 6-14.1 and the appellants' proposed assessment for this property is contained in the following table.

Assessors' Assessment and Appellants' Proposed Assessment

<u>Assessment As Abated</u>					<u>Proposed Assessment</u>				
<u>Unit</u> <u>Sq.' or A</u>	<u>Price</u> <u>\$</u>	<u>Nbhd.</u>	<u>Cond.</u> <u>Factor</u>	<u>Value</u> <u>\$</u>	<u>Unit</u> <u>Sq.' or A</u>	<u>Price</u> <u>\$</u>	<u>Nbhd.</u>	<u>Cond.</u> <u>Factor</u>	<u>Value</u> <u>\$</u>
130,680	0.96	9.5	2	2,383,603	130,680	0.96	3.75	2	940,896
42.2	14,000	9.5	0.9	5,051,340	31.7	14,000	3.75	0.9	1,497,825

<u>Subtotal</u>		7,434,943	10.5	500	1.00	1	5,250
<u>Improvements</u>		1,276,000					2,443,971
<u>Total</u>	45.20	8,710,943					1,276,000
<u>Assess./Round</u>		8,710,900					3,719,971
							3,720,000

Graham 6-15, or the "Farmhouse" or "Caretaker's Lot," is located off the westerly side of John Cottle Road, just west of Lambert's Cove. This non-waterfront parcel contains 3.7 acres and is improved with a farmhouse, barn, and shed. The parcel is completely surrounded by Graham 6-14 and does not have an ocean view, but could have one if a view corridor were cut through other Graham properties. The lot is generally level, with a slight rise from north to south. An area between the house and John Cottle Road is used for composting. The parcel also has extensive lawns, established trees, and stone walls.

The antique farmhouse, which is situated on Graham 6-15, is a two-story building that was constructed in 1880. The house is a modified salt-box with a Garrison Colonial style front and a dormer on the back. The exterior finish is weathered white cedar shingles, painted wood trim, coupled with double-hung windows.

The house contains 1,899 square feet of living space with three bedrooms and 3.5 bathrooms of varying condition and quality. The kitchen is a modern renovation of an antique style, with wide pine flooring, painted pine paneling on the walls and ceiling, recessed lighting, pine cabinets, a free

standing island countertop, and glass front upper cabinets. The first floor also has a living room, a small office, and a small bedroom. These rooms are finished with wide pine flooring, plaster walls and ceilings, and painted wood moldings. There are two fireplaces on the first floor.

The second floor contains a large master bedroom with wood wainscoting and a smaller bedroom. There is also a fireplace on the second floor as well as an eighteen-by-twenty-foot wood deck off it, overlooking the north side of the property with potential for water views.

Heat is provided by a hot water boiler and baseboard radiation. The farmhouse is in generally fair to good condition with one of the bathrooms on the first floor in poor condition.

The second improvement on Graham 6-15 is a four-stall barn, which provides storage for equipment used on all seven Graham properties. The exterior finish is similar to that of the farmhouse. The barn was constructed in 1996 and is in excellent condition. In addition to the barn, there is also a small shed.

The Board agreed with Mr. Croft's determination that Graham 6-15's highest and best use was its current use. The lot is not large enough to be subdivided or to support an estate-sized structure. The improvements are in good enough condition to give value to the parcel.

In his comparable sales approach, Mr. Croft compared four other properties on Martha's Vineyard, which sold within a relevant timeframe, to Graham 6-15. The physical characteristics of those properties are summarized in the following table.

Croft's Comparables

<u>Sale #</u>	<u>Property</u>	<u>Acre-age</u>	<u>Improved</u>	<u>Ocean front</u>	<u>View</u>	<u>Other Relevant Information</u>
1	75 Ben Chase Road West Tisbury	7.9 A	2 unrenovated antique frmhse. (tot. 3000 sq.') & barn	No	No	Sold by the Trust for Public Land to private party with development restrictions; trail easement; inferior location; physically larger but older than main house; also has barn
2	30 Lookout Hill Road West Tisbury	2.36 A (2.77 A)	Yes 2,000 sq.' contemporary	No	Extensive inland vista	Property on hilltop; location inferior but main improvements equiv. to subj.; useful as paired sale: 06/98 for \$487,500 = 125% apprec. to 09/02
3	18 Dolphine Merry Road, West Tisbury	1.37 A	Modern Victorian 2,900 sq.'	No	No	Recently renov.; location inferior & physical characteristics equiv. to subject; no significant outbuildings
4	21 Norton Farm Road West Tisbury	3.30 A	932 sq.' contemporary Cape-style	No	Hilltop lot very distant water view	House inferior but lot equivalent to subject; no outbuildings; overall is inferior to subject; may be best comparable

To properly compare these comparable sale properties to Graham 6-15, Mr. Croft first adjusted the sale prices associated with these four properties for time and appreciation, if any, and then for any noteworthy differences in their locations, physical characteristics, and conditions of sale, when compared to Graham 6-15. A summary of these four comparable properties' sale information and Mr. Croft's adjustments is contained in the following table.

Croft's Adjustments to Comparables³³

³³ There are several negligible errors contained in Mr. Croft's computations.

<u>Sale #</u>	<u>Date of Sale</u>	<u>Sale Price \$</u>	<u>Arm's Length</u>	<u>Apprec. %</u>	<u>Apprec. \$</u>	<u>Time Adj. Price</u>	<u>Loc. %</u>	<u>Phys. Char. %</u>	<u>Sale Cond. %</u>	<u>Net Adj. %</u>	<u>Net Adj. \$</u>	<u>Adj. Price \$</u>
1	03/01	1.7M	Yes	21.81	370,740	2,070,740	15	-10	0	5	103,537	2,174,277
2	09/02	1.1M	Yes	0.00	0	1,100,000	15	10	0	25	275,000	1,375,000
3	12/02	1.3M	Yes	0.00	0	1,300,000	15	0	0	15	195,000	1,495,000
4	12/03	1.404M	Yes	-11.31	(158,787)	1,245,213	15	25	0	40	498,085	1,743,299

The Board found that the comparable sales data introduced by a credible Mr. Croft supports a value close to the assessment as abated for fiscal year 2003 and the assessment for fiscal year 2004. In particular, comparable sale property 4 has an equivalent lot, but an inferior house and no barn. Comparable sale properties 2 and 3, which have lower percentage adjustments than comparable sale property 4, support a small abatement, while comparable sale property 1 supports the assessment, but is the least comparable to Graham 6-15 of the four comparable sale properties. Based on the Board's additional finding that Mr. Croft's adjustments to comparable sale properties 2, 3, and 4 appear to be reasonable, the Board found that a small abatement was appropriate here. The average adjusted value for these three comparable sale properties is \$1,537,766, which the Board then rounded to a value of \$1,540,000 for Graham 6-15 for fiscal years 2003 and 2004. This value reduced the assessed value as abated for fiscal year 2003 and the assessed value for fiscal year 2004 by \$96,900.

The appellants relied on purportedly comparable land assessments and their "proposed assessment" to prove Graham 6-

15's value for fiscal years 2003 and 2004. The Board's review of the appellants' approach, which consisted of changing the neighborhood condition factor from 9.5 to 3.75, appears at the end of its discussion on valuation in this section (2). A summary of the assessors' mass appraisal valuation for Graham 6-15 and the appellants' proposed assessment for this property is contained in the following table.

Assessors' Assessment and Appellants' Proposed Assessment

<u>Assessment As Abated</u>					<u>Proposed Assessment</u>				
<u>Unit</u>	<u>Price</u>		<u>Cond</u>	<u>Value</u>	<u>Unit</u>	<u>Price</u>		<u>Cond</u>	<u>Value</u>
<u>Sq' or A</u>	<u>\$</u>	<u>Nbhd</u>	<u>Factor</u>	<u>\$</u>	<u>Sq' or A</u>	<u>\$</u>	<u>Nbhd</u>	<u>Factor</u>	<u>\$</u>
130,680	0.96	9.5	1	1,191,802	130,680	0.96	3.75	1	470,448
0.7	14,000	9.5	1	93,100	0.7	14,000	3.75	1	36,750
<u>Subtotal</u>				1,284,902					507,198
<u>Improvements</u>				352,000					352,000
<u>Assess/Round</u>				1,636,900³⁴					860,000

Graham 6-18, the "Spring Lot," consists of two tracts of land that contain a total of 15.52 acres of vacant land. It is located in the neighborhood west of Lambert's Cove, around Paul's Point. Three acres are wetlands. The lot is wooded and rises from the north to the south. The parcel is accessed by John Cottle Road, which is off Lambert's Cove Road. John Cottle Road traverses Graham 6-14 and Graham 6-14.1 and intersects with Simon Athern Road, which crosses through the northwest corner of Graham 6-18.

Mr. Croft initially performed his valuations of the Graham properties without the benefit of the Hoehn plans which better

³⁴ Actual total is \$1,636,902.

defined and described the topography and wetland areas on these parcels. After reviewing the plans, Mr. Croft determined that the information contained in them did not necessitate any alterations to his earlier valuations of the Graham properties, with the exception of Graham 6-18.

For Graham 6-18, Mr. Croft initially determined that its highest and best use was as a single, estate-sized, improved parcel with a substantial building envelope. After incorporating the information gleaned from the Hoehn plan, Mr. Croft determined that Graham 6-18's highest and best use would remain the same but with a smaller building envelope and yard area. He accounted for this change and difference, and the superiority of his comparable sale properties, by adding a negative thirty-percent adjustment to his initial comparable sales analysis for Graham 6-18. In his comparable sales approach, Mr. Croft compared seven other properties on Martha's Vineyard, which sold within a relevant time period, to Graham 6-18. The physical characteristics of those properties are summarized in the following table.

Croft's Comparables

<u>Sale #</u>	<u>Property</u>	<u>Acre-age</u>	<u>Improved</u>	<u>Ocean front</u>	<u>View</u>	<u>Other Relevant Information</u>
1	Lobsterville Road Aquinnah	27 A	No	No	Menemsha Harbor	Superior to subject in size & views; inferior in terms of market conditions and location; Aquinnah generally has lower values; best comparable (according to Croft)
2	271 Middle Road Chilmark	28.1 A	No	No	No	Legally divided into 2 home sites (21A & 7A) and restricted by deed to only 2 homesites; lacks water

							view and high-end neighboring property; considered inferior to subject
3	31 Beetlebung Road Chilmark	3.8 A	No	No	Distant "horizontal band" ocean view		Located in a subdivision off Middle Rd; good neighborhood but still inferior to subject; water view equivalent; smaller lot
4	274 Indian Hill Road West Tisbury	34.1 A	Antique frmhse. in poor cond.	No	No		Improvement contributed minimally to value so was considered a land sale; neighborhood inferior to subject
5	833 State Road West Tisbury	25 A	Small antique farmhouse	No	No		Purchased by MV Historical Society; 3 abutting non-profits; subdivided to facilitate conservation not development; lacks privacy
6	10 The Aerie Chilmark	21.5 A	No	No	Yes distant water view		Near sales 2 & 3; sold to MVLB; was marketed before sale to land bank
7	40 Pepperbush Way West Tisbury	22.4 A	No	No	No		Limited frontage on Lambert's Cove Road; burdened by right-of-way running through middle of it; inferior to subject

To properly compare these comparable sale properties to Graham 6-18, Mr. Croft initially adjusted the sale prices associated with his seven comparable sale properties for time and appreciation, if any, and then for any noteworthy differences, in their locations, physical characteristics, and conditions of sale, when compared to Graham 6-18. He then further adjusted his comparable sale properties by an additional negative thirty percent to reflect the information contained in the Hoehn plans. A summary of these seven comparable properties' sale information and Mr. Croft's adjustments is contained in the following table.

Croft's Adjustments to Comparables³⁵

<u>Sale #</u>	<u>Date of Sale</u>	<u>Sale Price \$</u>	<u>Arm's Length</u>	<u>Apprec. %</u>	<u>Apprec. \$</u>	<u>Time Adj. Price</u>	<u>Loc. %</u>	<u>Phys. Char. %</u>	<u>Sale Cond. %</u>	<u>Net Adj. %</u>	<u>Net Adj. \$</u>	<u>Adj. Price \$</u>
1	08/98	1.18M	Yes	125.26	1,478,071	2,658,071	30	-40	0	-10	(265,807)	2,392,264
2	09/00	2.46M	Yes	41.97	1,032,526	3,492,526	15	-40	0	-25	(873,132)	2,619,395
3	03/01	1.35M	Yes	21.04	284,055	1,634,055	15	20	0	35	571,919	2,205,974
4	06/01	2.562M	Yes	11.84	303,228	2,865,228	25	-20	0	5	143,261	3,008,490
5	10/02	2.5M	Yes	0.00	0	2,500,000	40	-5	0	35	875,000	3,375,000

³⁵ There are several negligible errors contained in Mr. Croft's computations.

6	12/02	1.9M	Yes	0.00	0	1,900,000	15	-30	0	-15	(285,000)	1,615,000
7	10/03	2.0M	Yes	-9.24	(184,767)	1,815,233	25	-5	0	20	363,047	2,178,279

The Board found that the comparable sales data introduced by a credible Mr. Croft supports a value lower than the assessment as abated for fiscal year 2003 and the assessment for fiscal year 2004. Originally, before taking the Hoehn plans for Graham 6-18 into consideration, Mr. Croft valued the subject property at \$3,200,000. Once the extent of the wetlands was brought to his attention, he lowered his comparable properties' physical character factor by thirty percent, which concomitantly lowered his opinion of value for Graham 6-18 to \$2,400,000. The abated assessment for fiscal year 2003 and the assessment for fiscal 2004 are \$2,431,600.

In particular, Mr. Croft suggested that comparable sale property 1, with a newly adjusted sale price of \$2,392,264, was the most comparable property to the subject property. The Board agreed. Comparable sale property 6 has no time adjustment, and, other than the negative thirty-percent adjustment for physical characteristics, has only a fifteen-percent adjustment for location. The adjusted sale price for comparable sale property 6 is \$1,615,000. Relying on these comparable sale properties and adjustments, the Board determined that small abatements for Graham 6-18 for the fiscal years at issue were appropriate. The average adjusted value for these two comparable sale properties is \$2,003,632, which the Board rounded to a value of \$2,000,000

for Graham 6-18 for fiscal years 2003 and 2004. This value reduced the assessment as abated for fiscal year 2003 and the assessment for fiscal year 2004 by \$431,600. This value also appears consistent with the \$1,540,000 value that the Board found for Graham 6-15, the "Farmhouse Lot," which is smaller than the subject property and has no view presently, but has valuable improvements and could conceivably have a view.

The appellants relied on purportedly comparable land assessments and their proposed assessment, which consisted of changing the neighborhood condition factor from 9.5 to 3.75 and valuing nine of the 12.42 acres of excess land as wetlands at \$500 per acre, to prove Graham 6-18's value for fiscal years 2003 and 2004. The Board's consideration of the appellants' approach appears at the end of its discussion on valuation in this section (2). A summary of the assessors' mass appraisal valuation for Graham 6-18 and the appellants' proposed assessment for this property is contained in the following table.

Assessors' Assessment and Appellants' Proposed Assessment

<u>Assessment As Abated</u>					<u>Proposed Assessment</u>					<u>Relevant Info.</u>
<u>Unit Sq' or A</u>	<u>Price \$</u>	<u>Nbhd.</u>	<u>Cond. Factor</u>	<u>Value \$</u>	<u>Unit Sq.' or A</u>	<u>Price \$</u>	<u>Nbhd.</u>	<u>Cond. Factor</u>	<u>Value \$</u>	
130,680	0.96	9.5	1	1,191,802	130,680	0.96	3.75	1	470,448	Condition factor for 12.42 acres reduced from orig. 0.95 to 0.75
12.42	14,000	9.5	0.75	1,238,895	3.42	14,000	3.75	0.75	134,663	
					9	500	1.00	1	4,500	
				2,430,697					605,111	
<u>Total Assess./Round</u>				2,431,600					610,000	

The appellants' approach. The Board found that the appellants' comparable assessment methodology was riddled with conceptual errors. For example, in many instances, the appellants improperly compared their "proposed assessment" for the Graham properties' land value to the fiscal year 2003 and 2004 land assessments for their purportedly comparable properties. The Board found that, in these situations, the appellants should have, but failed to, compare the Graham properties' actual assessments to the purportedly comparable properties actual assessments. In addition, the appellants' comparable assessment methodology contained few, if any, adjustments to account for differences between the purportedly comparable properties' relevant characteristics and the subject Graham properties' relevant characteristics.³⁶ Moreover, for the improved Graham parcels, the appellants often neglected to compare the total assessments of each of the purportedly comparable properties to the total assessments on the relevant Graham property. Lastly, the appellants never provided the Board with an actual analysis or comparable assessment study or report. The information regarding comparable assessments was scattered throughout the record and not assembled into any semblance of a coherent whole. Consequently, the Board found

³⁶ When testifying about purportedly comparable properties, Mr. Graham invoked only one adjustment, and that was spontaneous. Other witnesses called by the appellants, apparently to compare the assessments of certain properties to the Graham properties' assessments, offered few, if any, adjustments.

that the appellants' comparable assessment methodology was spurious and any values derived from it were hollow and unfounded.

With respect to the appellants' "proposed assessment[s]," themselves, the Board found that they were nothing more than Mr. Graham's layman representations of how each of the Graham properties should have been assessed if his suggested altered version of the assessors' mass appraisal methodology were implemented. The Board found that his changes to the appraisal methodology were for the most part inappropriate and not well-supported. More specifically, the Board found that his placement of waterfront Graham properties into assessing neighborhood 145 with its 5.75 factor and non-waterfront Graham properties into assessing neighborhood 105 with its 3.75 factor, as well as his equating the assessment for all unbuildable land on the Graham properties with the \$500-per-acre assessment for ascertained wetlands, were without adequate foundation or support. In addition, for some Graham parcels, such as Graham 6-14, 6-14.1, and 6-18, wetlands and unbuildable land were already considered in the assessors' methodology by a chosen condition factor and, in those instances, by adopting the same condition factor, Mr. Graham's approach appeared to double count wetlands and unbuildable land.

Moreover, the Board found that while Mr. Graham possessed the requisite knowledge necessary to opine regarding the fair market value of the Graham properties (which he neglected to do), he did not demonstrate the expertise to propose meaningful changes in the assessors' mass appraisal methodology. To the extent he relied on Mr. Closser's presentation, the Board found, for the reasons previously enumerated, that such reliance was misplaced. At any rate, the Board found no direct link from Mr. Closser's presentation to the appellants' "proposed assessment[s]."

The assessors provided considerably more support for the need of assessing neighborhood 200 with its 9.5 multiplier and the Graham properties inclusion in that neighborhood than the appellants provided for their exclusion and reassignment of the Graham properties into other neighborhoods. The assessors' location of neighborhood boundaries appeared to be appropriately based on hard data and facts, as well as the assessors' expertise and experience. The Board's observations from its view further substantiated the appropriateness of neighborhood 200.

Finally, and perhaps most importantly, unlike the assessors, the appellants simply failed to offer credible evidence of the Graham properties' fair cash value for the fiscal years at issue. Substituting neighborhood factors based

on properties in different neighborhoods, or carving out alleged wetlands and unbuildable land from excess land, does not constitute evidence of fair cash value. The appellants never sought to ascertain whether their approach, which was essentially a form of mass appraisal without benefit of the necessary statistical analyses or DOR review and certification, resulted in market values.

Based on these findings, the Board found that Graham properties 6-9, 6-12, 6-13, 6-14, and 6-14.1 were not overvalued for fiscal years 2003 and 2004. The Board further found that Graham properties 6-15 and 6-18 were overvalued in the amounts of \$96,900 and \$431,600, respectively, for fiscal years 2003 and 2004.

(3)

The appellants alleged disproportionate assessment in their petitions and in their post-trial submissions. They also introduced some evidence arguably relating to disproportionate assessment at trial. Some additional evidence potentially relating to disproportionate assessment was entered into the trial record. Notwithstanding these allegations and the data and information contained in the record, the appellants completely failed to offer a cogent, detailed, and organized presentation, either at trial or in their post-trial

submissions, supporting their claim of disproportionate assessment.

More explicitly, the appellants failed to establish that the assessors undertook an intentional policy or scheme of valuing properties, or classes of properties, at a lower percentage of fair cash value than the appellants' properties. To succeed on this theory, the appellants, among other things, should have identified a statistically significant number of and type(s) or class(es) of properties in West Tisbury to which they were comparing the Graham properties and then compared these other properties' assessment-to-fair-cash-value ratios to the Graham properties' assessment-to-fair-cash-value ratios. The appellants did not perform or otherwise provide the Board with this fundamental statistical analysis. Moreover, it is not clear to the Board on what, if anything, the appellants would rely for their fair cash values for the Graham properties. As the Board previously found, the appellants' "proposed assessment[s]" do not fit that bill.

In addition, the appellants did not rely on the proposed fiscal year 2002 equalized valuation ("EQV") study or the final fiscal year 2004 EQV study in evidence to establish disproportionate assessment in fiscal years 2003 or 2004,

respectively.³⁷ The proposed fiscal year 2002 EQV study revealed an assessment-to-sales ratio of 98% for all properties in West Tisbury. The final fiscal year 2004 EQV showed an assessment-to-sales-ratio of 85% for residential and commercial property and 86% for industrial. While the introduction of these EQVs constitutes *prima facie* evidence of the assessment practices and the assessment-to-sales ratios in West Tisbury for fiscal years 2003 and 2004, the appellants did not rely on them in any way to establish disproportionate assessment. The appellants did not offer any comparison of the Graham properties' assessment-to-fair market-value ratios to those in the relevant EQVs. In fact, the Board could not discern from the voluminous record on what specific factors the appellants were relying for the Graham properties' fair cash value. The Board found that the ratios of the Graham properties' assessments compared to their fair cash values as found by Mr. Croft and, where relevant, by the Board, did not appear to render the Graham properties disproportionately assessed when compared to the relevant ratios found in the EQVs and the ratios available in the record from property record cards and sale information.

³⁷ Pursuant to G.L. c. 59, §§ 9-10C, DOR must determine a proposed "equalized valuation" for each city and town every two years. Under § 9, the equalized valuation is the "fair cash value of all property in such city or town subject to local taxation as of January first in such year." Under § 10, DOR must, among other things, make and issue studies of the ratio of assessments to sale prices of particular properties and types of properties.

In addition, the Board found that while the inclusion of the Graham properties in neighborhood 200 was certainly a knowing act, and not the result of an isolated mistake or inadvertence, it was clearly not discriminatory and was, in fact, justifiable when considering relevant sales, the assessors' past assessing practices with respect to these properties, the physical boundaries of the Graham properties, and the similarities between the Graham properties and the other properties in neighborhood 200. The Board was also mindful of the existence of another neighborhood 200 on West Tisbury's South Shore.

Finally, the Board found that the assessors' treatment of wetlands was not discriminatory with respect to the Graham properties. When presented for the first time with the Hoehn plans, which detailed the Graham properties' topography and wetland areas, the assessors abated the fiscal year 2003 assessment for Graham 6-14 in the amount of \$1,655,600 and carried that abatement forward into fiscal year 2004. The abatement resulted from the assessors placing or keeping any wetlands in the excess land category and then reducing the condition factor for excess land. The assessors made similar adjustments to Graham 6-14.1 and Graham 6-18, which resulted in substantial abatements. The assessors did not reduce the assessment on Graham 6-13 for wetlands because of ambiguities on

the Hoehn plans, their determination that the presence of wetlands did not negatively impact this property given its highest and best use, and, according to Ms. Resendes, Mr. Graham's earlier statement to her that the land associated with Graham 6-13 was not overvalued.

In their treatment of wetlands on the Graham properties through the abatement process, the assessors evaluated the extent to which the wetlands were ascertained and the extent to which they negatively impacted a property's fair cash value, if at all, and then adjusted their original assessments accordingly. In rendering its decisions in these appeals, the Board was mindful that the valuation of property is not an exact science and recognized that the assessors' ultimate treatment of wetlands on the Graham properties did not cause the Graham properties to be overvalued or disproportionately assessed.

On this basis, the Board found that the assessors did not discriminate against the Graham properties with respect to creating and including the Graham properties in neighborhood 200 or valuing their wetlands.

Conclusion

In sum, the Board concluded that: (1) the appellants failed to prove that the fiscal year 2002 revaluation and certification process for West Tisbury, upon which the assessed values for fiscal years 2003 and 2004 were based, was so compromised by any

underlying errors that it resulted in unreliable assessed values, which overvalued any of the Graham properties for fiscal years 2003 and 2004; (2)(a) the appellants failed to adequately demonstrate that the assessments as abated by the assessors for fiscal year 2003 and as carried forward for fiscal year 2004 for Graham properties 6-9, 6-12, 6-13, 6-14, and 6-14.1 exceeded their fair market values; (2)(b) but the evidence did show that the abated assessments for fiscal year 2003 and as carried forward for fiscal year 2004 for Graham properties 6-15 and 6-18 exceeded their fair cash values by \$96,900 and \$431,600, respectively, for both of the fiscal years at issue; and (3) the appellants failed to prove that any Graham properties were disproportionately assessed in fiscal years 2003 or 2004.

Accordingly, the Board issued decisions for the appellee in docket numbers F271689-F271693, F273052, F273054, and F273056-273058, and granted abatements in docket numbers F271688, 271694, 273053, and F273055, in the amounts of \$2,136.42, \$479.56, \$521.32, and \$2,322.01, respectively.

OPINION

The assessors have a statutory and constitutional obligation to assess all real property at its full and fair cash value. Part II, c. 1, § 1, art. 4, of the Constitution of the Commonwealth; art. 10 of the Declaration of Rights; G.L. c. 59,

§§ 38, 52. See **Coomey v. Assessors of Sandwich**, 367 Mass. 836, 837 (1975)(citations omitted). Fair cash value means fair market value, which is defined as the price on which a willing seller and a willing buyer 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).

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 [an] 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 [B]oard is entitled to 'presume that the valuation made by the assessors [is] valid unless the taxpayer[] . . . prov[es] 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**, 393 Mass. at 600 (quoting **Donlon v. Assessors of Holliston**, 389 Mass. 848, 855 (1983)).

With respect to "exposing flaws or errors in assessors' method of valuation," taxpayers do not conclusively establish a

right to abatement merely by showing that their land, or a portion of it, is overvalued. "The tax on a parcel of land and the building thereon is one tax . . . although for statistical purposes they may be valued separately." **Assessors of Brookline v. Prudential Insurance Co.**, 310 Mass. 300, 316-17 (1941). In abatement proceedings, "the question is whether the assessment for the parcel of real estate, including both the land and the structures thereon, is excessive. The component parts, on which that single assessment is laid, are each open to inquiry and revision by the appellate tribunal in reaching the conclusion whether that single assessment is excessive." **Massachusetts General Hospital v. Belmont**, 238 Mass. 396, 403 (1921). See also **Buckley v. Assessors of Duxbury**, ATB Findings of Fact and Reports 1990-110, 119; **Jernegan v. Assessors of Duxbury**, ATB Findings of Fact and Reports 1990-39, 48-49; **Everhart v. Assessors of Dalton**, ATB Findings of Fact and Reports 1985-49, 54.

In the present appeals, the appellants failed to adequately demonstrate that the DOR certified values from the fiscal year 2002 revaluation, and the subsequent adjustments made to those values for fiscal years 2003 and 2004, were unsound or erroneous. The appellants also failed to adequately show that the underlying data and methodology, which the assessors employed in the revaluation process, and to value the Graham

properties for fiscal years 2003 and 2004, were significantly flawed and unreliable. For their part, the assessors effectively illustrated the need for neighborhood 200 in their assessing methodology and the propriety of their methodology, despite some mistakes, for the fiscal years at issue. They also exposed the fallacies in Mr. Closser's opinions and the appellants' "proposed assessment[s]." Accordingly, the Board found and ruled that the appellants did not prove that the assessed values attributed to the Graham properties, as abated for fiscal year 2003 and as carried forward for fiscal year 2004, were unreliable or excessive as a result of errors or mistakes in the assessors' valuation methodology.

In determining a property's fair cash value, it is important initially to consider all uses to which the property was or could reasonably be adapted on the relevant assessment dates. ***Newton Girl Scout Council, Inc. v. Massachusetts Turnpike Authy.***, 335 Mass. 189, 193 (1956); ***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. ***Id.*** The Board found that Mr. Croft's determinations regarding the highest and best uses of the individual Graham properties were credible and well-supported. The appellants submitted little evidence in this regard. The Board also considered its own observations from its

view in adopting Mr. Croft's determinations of the Graham properties' highest and best uses for the fiscal years at issue.

Real estate valuation experts, the Massachusetts courts, and this Board rely primarily upon three approaches to determine a property's fair cash value: income-capitalization, sales comparison, and depreciated reproduction or replacement cost. ***Correia v. New Bedford Redevelopment Authority***, 375 Mass. 360, 362 (1978). "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). The fair cash value of property may often best be determined by recent sales of comparable properties in the market. See ***Correia***, 375 Mass. at 362; ***McCabe v. Chelsea***, 265 Mass. 494, 496 (1929). Actual sales generally "furnish strong evidence of market value, provided they are arm's-length transactions and thus fairly represent what a buyer has been willing to pay for the property to a willing seller." ***Foxboro Associates v. Assessors of Foxborough***, 385 Mass. 679, 682 (1982); ***New Boston Garden Corp. v. Assessors of Boston***, 383 Mass. 456, 469 (1981); ***First National Stores, Inc. v. Assessors of Somerville***, 358 Mass. 554, 560 (1971). Sales of comparable realty in the same geographic area and within a reasonable time of the assessment date contain credible data and information for determining the value of the property at issue. See ***McCabe***, 265 Mass. at 496. "[T]he market

value of a property is related to the [sale] prices of comparable, competitive properties." APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE 417 (12th ed., 2001). When comparable sales are used, however, allowance must be made for various factors which would otherwise cause disparities in the comparable prices. See *Pembroke Industrial Park Co., Inc. v. Assessors of Pembroke*, ATB Findings of Fact and Reports 1998-1072, 1082. "Adjustments for differences are made to the price of each comparable property to make that property equivalent to the subject in market appeal on the effective date of the opinion of value." APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE at 430.

The appellants introduced little affirmative evidence of the Graham properties' fair cash values as of the relevant assessment dates. They offered no opinions of fair cash value of their own, and they did not introduce testimony or an appraisal report from an expert real estate valuation witness proposing fair cash values for the individual Graham properties for fiscal years 2003 and 2004. In stark contrast, the assessors provided credible testimony and an appraisal report from a reliable real estate valuation expert who used a viable comparable sales approach to value the individual Graham properties for the fiscal years at issue. Relying on the information and opinions contained in his testimony and report, as well as those in the record as a whole, including its view,

the Board found that Graham properties 6-9, 6-12, 6-13, 6-14, and 6-14.1 were not overvalued, while Graham properties 6-15 and 6-18 were overvalued in the amounts of \$96,900 and \$431,600, respectively, for fiscal years 2003 and 2004.

General Laws Chapter 58A, § 12B provides in pertinent part that "at any hearing relative to the assessed fair cash valuation or classification of property, evidence as to fair cash valuation or classification of property at which assessors have assessed other property of a comparable nature or class shall be admissible." *Id.* "The introduction of ample and substantial evidence in this regard may provide adequate support for abatement." *Chouinard v. Assessors of Natick*, ATB Findings of Fact and Reports 1998-299, 307-308 (citing *Garvey v. Assessors of West Newbury*, ATB Findings of Fact and Reports 1995-129, 135-36; *Swartz v. Assessors of Tisbury*, ATB Findings of Fact and Reports 1993-271, 279-80); see *Turner v. Assessors of Natick*, ATB Findings of Fact and Reports 1998-309, 317-18. The assessments in a comparable assessment analysis, like the sale prices in a comparable sales analysis, must also be adjusted to account for differences with the subject. See *Heitin v. Assessors of Sharon*, ATB Findings of Fact and Reports 2002-323, 334 ("Further, the appellant did not adjust for differences between the comparable properties and the subject property in order to properly impute a value to the

subject property using the assessed values of the comparables.").

In the present appeals, the appellants did provide some disjointed but sparse comparable assessment data. They did not, however, provide a coherent and detailed comparable sales analysis. In most instances, they failed to make any adjustments for their purportedly comparable assessment properties' obvious differences with the juxtaposed Graham properties and often failed to properly compare Graham property assessments, for land and improvement values, to comparable property assessments, for land and improvement values. Consequently, the Board found and ruled that the appellants' comparable assessment methodology was spurious and any values derived from it were hollow and unfounded.

Moreover, reliable comparable sales data will ordinarily trump comparable assessment information for purposes of finding a property's fair cash value. See ***Buckley v. Assessors of Cambridge***, ATB Findings of Fact and Reports 2006-227, 236-37. In the present appeal, the Board found and ruled that the comparable sales information and valuations in the record were the preeminent tools for determining the fair cash values of the Graham properties for fiscal years 2003 and 2004 and whether the Graham properties were overvalued for these two fiscal years.

The appellants failed to offer substantial evidence in this regard.

The appellants also alleged that their property was disproportionately assessed in fiscal years 2003 and 2004. "If the taxpayer can demonstrate in an appeal to the [B]oard that he has been a victim of a scheme of discriminatory, disproportionate assessment, he 'may be granted an abatement . . . which will make . . . [his] assessment proportional to other assessments, on a basis which reaches results as close as is practicable to those which would have followed application by the assessors of the proper statutory assessment principles.'" *Coomey*, 367 Mass. at 838 (quoting *Shoppers' World, Inc. v. Assessors of Framingham*, 348 Mass. 366, 377-78 (1965)). The burden of proof as to existence of a "scheme of discriminatory, disproportionate assessment" is on the taxpayer. *First National Stores*, 358 Mass. at 559; see *Schlaiker*, 365 Mass. at 245. If a taxpayer successfully demonstrates improper assessment of such a number of properties to establish an inference that such a scheme exists, the burden of going forward to disprove such a scheme shifts to the assessors. *Shoppers' World*, 348 Mass. at 377. "The ultimate burden of persuasion, of course, will remain upon the taxpayer." *First National Stores*, 358 Mass. at 562.

In the present appeal, the appellants failed to meet their burden of proving that a deliberate discriminatory scheme of disproportionate assessment existed. The evidence submitted was simply inadequate to prove that the assessors engaged in an "intentional widespread scheme of discrimination." **Stilson v. Assessors of Gloucester**, 385 Mass. 724, 727-28 (1982). The appellants never successfully showed intent on the part of the assessors to discriminate against the Graham properties or any other real estate, residential or otherwise, in West Tisbury. The appellants also failed to introduce the necessary comparison of assessment-to-market-value ratios to demonstrate disproportionate assessment. The appellants never even presented a cogent and complete argument or study using a statistically significant number of properties to the Board for its consideration of their disproportion theory. See **Beardsley v. Assessors of Foxborough**, 369 Mass. 855, 859 n.6 (1976). Accordingly, the Board found and ruled that the appellants failed to meet their burden of showing that a deliberate discriminatory scheme of disproportionate assessment existed for the fiscal years at issue. "Where assessments, even if wrong, are 'consistent with honest mistake or oversight on the part of the assessors' as opposed to a 'deliberate scheme of disproportionate assessment' no relief for disproportionate assessment is appropriate." **Gargano v. Board of Assessors of**

Barnstable, ATB Findings of Fact and Reports 2003-1, 22 (quoting **Stilson**, 385 Mass. at 728). To the extent that there is an error in determining fair cash value in a given year due to the assessors' use of a value certified by DOR, the appropriate remedy is an abatement claim based on overvaluation, not on disproportionate assessment. See **Brown v. Assessors of Brookline**, ATB Findings of Fact and Reports 1996-1, 20, *aff'd*, 43 Mass. App. Ct. 327 (1997). After considering all of the evidence submitted in these appeals, the Board found and ruled that while Graham 6-15 and 6-18 were overvalued for fiscal years 2003 and 2004, none of the Graham properties were disproportionately assessed.

In reaching its opinion of fair cash value, the Board was not required to believe the testimony of any particular witness or to adopt any particular method of valuation that a witness suggested. Rather, the Board could accept those portions of the evidence that the Board determined had more convincing weight. See **Foxboro Associates**, 385 Mass. at 683; **New Boston Garden Corp.**, 383 Mass. at 473; **Board of Assessors of Lynnfield v. New England Oyster House, Inc.**, 362 Mass. 696, 701-702 (1972). In evaluating the evidence before it in this appeal, the Board selected among the various elements of value and formed its own independent judgment of fair cash value. See **General Electric**,

393 Mass. at 605; **North American Philips Lighting Corp. v. Assessors of Lynn**, 392 Mass. 296, 300 (1984).

In considering whether, and to what extent, a property is overvalued, the Board may take its view of the premises and its view of comparable properties into account. **Westport v. Bristol County Commissioners**, 246 Mass. 556, 563 (1923); **Avco Manufacturing Corp. v. Assessors of Wilmington**, ATB Findings of Fact and Reports 1990-142, 165-66; **Arthur D. Little, Inc. v. Assessors of Cambridge**, ATB Findings of Fact and Reports, 1982-363, 374. Given the unique character of Martha's Vineyard, West Tisbury, and neighborhood 200, the Board found its view particularly helpful in determining the Graham properties' highest and best uses, the propriety of neighborhood 200, and the actual comparability of purportedly comparable properties.

The Board need not specify the exact manner in which it arrived at its valuation. **Jordan Marsh Co. v. Assessors of Malden**, 359 Mass. 106, 110 (1971). The fair cash value of property cannot be proven with "mathematical certainty and must ultimately rest in the realm of opinion, estimate and judgment." **Assessors of Quincy v. Boston Consol. Gas Co.**, 309 Mass. 60, 72 (1941). "The credibility of witnesses, the weight of evidence, and inferences to be drawn from the evidence are matters for the [B]oard." **Cummington School of the Arts, Inc. v. Assessors of Cummington**, 373 Mass. 597, 605 (1977).

In the present appeals, the Board found and ruled that the appellants met their burden of proving that the Graham properties 6-15 and 6-18 were overvalued for fiscal years 2003 and 2004, but they failed to demonstrate that Graham properties 6-9, 6-12, 6-13, 6-14, and 6-14.1 were overvalued or that any Graham properties were disproportionately assessed. On this basis, the Board issued decisions for the appellants in docket numbers F271688, F271694, F273053, and F273055, and decisions for the appellee in docket numbers F271689-F271693 and F273052, F273054, and F273056-F273058.

THE APPELLATE TAX BOARD

By: _____
Thomas W. Hammond, Jr., Chairman

A true copy,

Attest: _____
Assistant Clerk of the Board