

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

BLACK ROCK GOLF CLUB, LLC v. BOARD OF ASSESSORS OF
THE TOWN OF HINGHAM

Docket Nos. F284357, F288545

Promulgated:
March 1, 2010

These are appeals filed under the formal procedure pursuant to G.L. c. 58A, § 7 and G.L. c. 59, §§ 64 and 65 from the refusal of the appellee to abate real estate taxes assessed to the appellant under G.L. c. 59, §§ 11 and 38 by the Town of Hingham for fiscal years 2006 and 2007.

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

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

Robert E. Brooks, Esq. for the appellant.

Ellen M. Hutchinson, Esq. for the appellee.

FINDINGS OF FACT AND REPORT

I. Jurisdiction

On January 1, 2005 and January 1, 2006, the appellant, The Black Rock Golf Club, LLC ("Black Rock"), was the assessed owner of Unit One, also known as the golf unit, of the Black Rock Condominiums located at 19 and 25 Clubhouse Drive in the Town of Hingham ("subject property").

As of January 1, 2005 and January 1, 2006, the Board of Assessors of Hingham ("assessors") valued the subject property at \$20,000,000 and \$18,600,000, respectively. The assessors assessed taxes thereon at the rate of \$9.20 per \$1,000 for fiscal year 2006 and \$9.00 per \$1,000 for fiscal year 2007, resulting in tax assessments of \$184,000, plus a Community Preservation Act ("CPA") surcharge of \$2,760, for fiscal year 2006 and \$167,400, plus a CPA surcharge of \$2,511, for fiscal year 2007. In accordance with G.L. c. 59, § 57C, the appellant timely paid each fiscal year's taxes without incurring interest.

On January 30, 2006 and January 31, 2007, in accordance with G.L. c. 59, § 59, the appellant timely filed an Application for Abatement with the assessors for fiscal years 2006 and 2007, respectively. The assessors denied the appellant's abatement application for fiscal year 2006 on March 6, 2006, and denied the appellant's

abatement application for fiscal year 2007 on February 12, 2007. In accordance with G.L. c. 58A, § 7 and c. 59, §§ 64 and 65, the appellant seasonably appealed these denials by filing Petitions Under Formal Procedure with the Appellate Tax Board ("Board") on June 5, 2006 for fiscal year 2006, and on May 11, 2007 for fiscal year 2007. On the basis of these facts, the Board found and ruled that it had jurisdiction to hear and decide these appeals.

II. Witnesses

A. Appellant

The appellant presented its case-in-chief through the testimony of three witnesses: Richard Partridge, assessor for the town of Hingham; George McGoldrick, founder and president of Black Rock; and Jeffrey R. Dugas, a licensed real estate appraiser. Mr. Dugas is a Member of the Appraisal Institute ("MAI") and has appraised over 1,000 golf courses nationwide, include 130 in Massachusetts. He has testified before numerous state courts and boards. Based on his education and experience, the Board qualified Mr. Dugas as a real estate valuation expert. The appellant also introduced several exhibits including Mr. Dugas' self-contained appraisal report and an article entitled "Private

Golf Club Memberships: Real or Personal Property?" written by Laurence A. Hirsh.¹

B. Assessors

In defense of their assessments, the assessors presented one witness: Emmet T. Logue, whom the Board qualified as a real estate valuation expert. Mr. Logue testified that he had appraised golf courses over the past few years. The assessors also offered into evidence numerous exhibits, including copies of the deeds for four sales of golf courses which occurred during the period December 2005 and August 2007, a listing of the Black Rock construction costs, Black Rock financial statements for the calendar years ended 12/31/2003, 12/31/2004 and 12/31/2006, an appraisal report prepared by Mr. Dugas in September 2004 for purposes of valuing the owner's interests, and also a copy of the Purchase & Sale Agreement of the members' interests in Black Rock, dated January 1, 2005.

On the basis of all the evidence, the Board made the following findings of fact.

¹ Laurence A. Hirsh is president of Golf Property Analysts, a golf property appraisal, consulting, and brokerage firm. Mr. Hirsh has performed appraisal and consulting assignments on more than 2,000 golf properties. He is a MAI, has taught on the education faculty of the Professional Golfers' Association of America (PGA), and was a founder and the first president of the Society of Golf Appraisers (SGA).

III. Subject Property Description

Black Rock Condominiums was initially developed by George McGoldrick and James L. Reed as a golf and residential community, which was scheduled to contain a total of 138 housing units in addition to an 18-hole private golf course, with various other recreational and social amenities. In 2004, Mr. McGoldrick and Mr. Reed agreed to sell their respective interests in the golf course and the residential development of Black Rock to one another; Mr. McGoldrick purchased Mr. Reed's interest in the golf course and Mr. Reed purchased Mr. McGoldrick's interest in the residential development. The golf course, golf club and amenities are currently known as Unit 1 of the Black Rock Condominiums.

Entrance to Black Rock Condominiums is via a guarded security gate on Black Rock Drive, which is accessible off Ward Street, a paved town road that services residential areas along the west side of Hingham. The entire site contains 357.308 acres of land. The subject property includes a championship 18-hole private golf course, a four-level clubhouse, a recreation center, an outdoor pool, and 5 outdoor tennis courts, as well as other site improvements such as parking lots, maintenance buildings, landscaping, and walkways.

The golf course was designed by Brian Silva, a well-known golf course architect. The course was completed and opened for play on July 4, 2002. The golf course measures approximately 6,960 yards from the back tees with a par of 71. The design of the course is known as a core golf course, which is designed with the front nine holes going out from the clubhouse and the back nine holes returning to the clubhouse. The course provides a variety of open and wooded areas, and many holes display the rock and ledge found on the property in the form of sheer cut rock walls, stone walls, and outcroppings. There are several bridges used to cross wetlands. The course features 107 bunkers of various sizes and shapes situated around the greens and strategically placed in fairways.

The golf course irrigation system has 1,700 sprinkler heads and four deep wells that feed into two large holding ponds that can store up to 20 million gallons of water. These two large ponds come into play as water hazards on the course. A practice area and driving range are located across the driveway near the clubhouse. Some of the features include a large practice putting green, short game center and grass tees. The overall quality level of the course and its layout are consistent with a high-end private facility.

Paved roads throughout the site service the golf course, clubhouse and recreation center. The clubhouse is an excellent quality steel and wood-frame structure with two full stories plus a third floor mezzanine, over a partial basement. The total building area, including basement, is 41,827 square feet. The design of the clubhouse is that of an *Adirondack* lodge structure. The building was completed in 2003 and is in excellent physical condition as of the relevant dates of assessment. The clubhouse was constructed on an embankment so that the first floor is at grade to the rear, and below grade at the front of the building; therefore the main public access to the building is via the second floor formal entry.

The first floor, ground level, contains a pro shop, mens and womens locker rooms, a member services area for golf bag storage, laundry and shoe shining, an employee break room, and mechanical and storage rooms. There are a number of entrances at grade and via stairways from the golf course area. The first floor is accessible to the main level via two stairways and an elevator.

The second floor, which is the main level of the clubhouse, is accessible via the principal entrance which includes a driveway and carport off Clubhouse Drive. This level contains the formal entry foyer, a formal sitting

room, a large function room, the Grill Room for member dining, a private conference room, public restrooms and the kitchen. There are fireplaces in both the sitting room and the Grill Room. The total indoor seating capacity is approximately 300 people. There is additional dining space on the large wrap-around terrace which overlooks the golf course.

Flooring in the clubhouse is primarily carpet, with concrete floors in the kitchen and the basement, and vinyl tile in the employee locker rooms and first floor offices. The interior walls are primarily painted gypsum board with cherry woodwork and trim. Ceilings are finished with a mix of acoustic ceiling tile and painted gypsum board. There are cathedral ceilings in the main floor function room and dining room, with painted sheetrock finish in the function room and knotty pine with steel beams in the dining room.

The subject property is also improved with a multi-purpose recreation center, which is a one-story, steel and wood-frame building, also *Adirondack* in style, with a gross building area of 8,937 square feet. Built in 2002, the recreation center includes an entrance lobby with lounge, juice bar and office, mens and womens shower, locker and washroom areas, a multi-purpose/childcare center, aerobics room, weight room and tennis pro shop. The building is of

good to excellent quality construction and is in excellent physical condition. The recreation complex also contains a large heated in-ground pool plus a separate "kiddy" pool, and five outdoor tennis courts. There are multiple entrances including a double door entrance and vestibule at the front of the building, accessible from the Clubhouse Drive parking lot, an entrance from the pool area to the locker rooms and showers, a separate entrance between the tennis pro shop and the outside tennis courts, and a rear entrance to the aerobics room.

The maintenance complex consists of two adjacent buildings containing a total gross building area of approximately 8,500 square feet. These buildings are used to provide a working shop area, a maintenance office, an employee lounge, and equipment storage.

IV. Membership

Black Rock Country Club is a private, members-only club. Membership is a contractual privilege by which designated persons receive a revocable license which allows them to enter onto the country club premises for the purpose of using and enjoying the available facilities. Memberships are "non-equity," which means that a member cannot sell his or her interest but would receive a share of the proceeds upon sale of the club. There are three

categories of memberships: full golf membership, which includes full golf course, clubhouse and recreational complex access; single golf membership, which is full golf access for one person; and recreational and residential memberships,² which is access only to the non-golf recreational facilities. Pursuant to the membership bylaws, the club may issue a maximum of 325 full-golf memberships. Beginning in 2004, single-golf memberships were offered, with a cap of 25, which does not count against the 325 full-golf membership maximum.

To become a member, an individual is required to pay an initiation fee, annual dues, and also meet club minimum spending requirements in the dining facilities. Each membership has a refundable and non-refundable initiation fee component. For the fiscal years at issue, the membership type, initiation fee, and refundable and non-refundable portions were as follows:

Membership	FY 2006 Fee	Non- Refund	Refund	FY 2007 Fee	Non- Refund	Refund
Full-Golf	\$125,000	\$35,000	\$90,000	\$125,000	\$35,000	\$90,000
Single-Golf	\$125,000	\$35,000	\$90,000	\$125,000	\$35,000	\$90,000
Recreation	\$ 42,000	\$10,000	\$32,000	\$ 42,000	\$12,000	\$30,000
Resident	\$ 35,000	\$10,000	\$25,000	\$ 35,000	\$10,000	\$25,000

Membership history charts reported a total of 310 members as of January 1, 2005, 281 of whom were golf

² Residential memberships are offered at a lower price than recreational memberships to those persons who own condominiums at Black Rock Condominiums.

members and 29 were recreational/residential members, and 343 members as of January 1, 2006, of whom 299 were golf members and 44 were recreational/residential members. Initially, there were 11 "founding" members who paid a fully refundable fee of \$100,000. The Club started selling memberships, before local zoning or approvals were granted. During the period of December 1999 through January 2000 the Club sold 73 fully refundable memberships at the initial price of \$65,000. Subsequently, during the period February 2000 through April 2002, memberships were sold as follows: 61 memberships at \$75,000; 23 memberships at \$80,000; 37 memberships at \$90,000; 19 memberships at \$95,000; 32 memberships at \$100,000; and 20 memberships at \$115,000.

In May 2002, the initiation fee was increased to its current level of \$125,000. The evidence presented suggests that of the total number of golf memberships, only 86 were sold at the current rate of \$125,000. The evidence also indicates that during calendar years 2004 and 2006, two memberships were sold at the substantially lower rates of \$65,000 and \$70,000, the latter of which was non-refundable. Further, it appears that during calendar years 2005 and 2006 some members were not required to pay an initiation fee but rather received their membership as an

incentive for the purchase of one of the residential condominiums.

In addition to the initiation fee, all members are required to pay annual dues of \$8,295 for full-golf memberships, \$6,640 for single-golf memberships, and \$5,400 for recreational and residential memberships, as of January 1, 2005, and \$8,710, \$6,970, and \$5,670, respectively, as of January 1, 2006. Also, members were required to meet annual food expenditure minimums of \$1,200 for full-golf and recreational memberships and \$600 for single-golf memberships for both of the fiscal years at issue.

According to membership documents, the refundable component of the initiation fee was required to be repaid to a resigned member only after three new members had joined the club. During the time period that the member was awaiting the return of his refundable amount, the member was required to pay annual dues and meet club minimum spending requirements in the dining facility, until his fee was refunded, but for no longer than one year from his resignation. No interest accrued on the individual's refundable deposit amounts and Black Rock was not required to segregate the refundable deposits to assure availability to a resigning member.

V. Appellant's Case

The appellant's first witness was Lane Partridge, assessor for Hingham. Mr. Partridge testified that he was personally responsible for setting the values for the subject property for each of the fiscal years at issue. He further testified that at the time there was no set methodology in place for valuing golf courses. Through conversations with various appraisers, including Mr. Logue, Mr. Partridge was directed to the Board's recent decision in *The Willows at Westborough v. Board of Assessors of the Town of Westborough*, Mass. ATB Findings of Fact and Reports 2008-469, 506 ("*The Willows*") *aff'd* 441 Mass. 1108 (2004), which involved the valuation of real estate associated with an assisted living facility. In *The Willows*, residents were required to pay a "one-time entrance fee that [was] 90% refundable (without any interest accruing)" in addition to their monthly service fees. *Id.* at 2002-475. In that case, the Board agreed with the assessors' real estate expert, Emmet T. Logue, and also a healthcare industry consultant, Mr. Gregory T. Walsh, that "interest income should be imputed on the 90% refundable portion . . . and included in the income aggregation of the income capitalization methodology" used to value the real estate associated with The Willows. *Id.* at 2002-513. Based on

their determination that the entrance fees in ***The Willows*** were similar to the Black Rock initiation fees in the instant appeals, the assessors determined that the methodology used in ***The Willows*** was the appropriate method to use to value the subject property for the fiscal years at issue. Mr. Partridge conceded, however, that he was not aware of any professional appraisal articles which gave validation to ***The Willows*** concept of valuation for valuing a golf course.

Next, the appellant presented the testimony of its real estate valuation expert, Jeffery Dugas. Mr. Dugas valued the subject property based on its current use as a golf course.³ To value the subject property, Mr. Dugas considered the cost, sales-comparison and income-capitalization methodologies. He determined that the cost approach was not reliable for valuing the subject property, given the difficulty in estimating economic and functional depreciation associated with the improvements. He noted that the sales-comparison approach is generally considered a reliable method of estimating the market value of a

³ Both parties valued the subject property as a golf course/country club. No other potential uses were suggested. Therefore, although Mr. Dugas did not include a highest and best use analysis in his appraisal report, his valuation analysis was based on a highest and best use as a golf course/country club, and the Board found, based on all the evidence, that the subject property's highest and best use was its then-current use as a golf course/country club.

going-concern golf operation, but this approach is not as reliable when valuing only the real estate component as in the present appeal. Therefore, Mr. Dugas valued the subject property using an income approach based on the fair rental value of the golf course. Mr. Dugas testified that, as with most commercial property, the best way to estimate the value of the subject property is to determine the fair market rent that the property would generate. In arriving at his estimate of value, Mr. Dugas relied on the article written by Laurence A. Hirsh, which opined that "membership interests are like stock in a company that owns property. The value of the property is not impacted by the value of the stock, and thus the membership interest would not be included as real property value." Laurence A. Hirsch, *Private Golf Club Memberships: Real or Personal Property?*, JOURNAL OF PROPERTY TAX ASSESSMENT & ADMINISTRATION, VOL. 4, ISSUE 3 at 72.

To begin his income capitalization approach, Mr. Dugas first determined the gross revenue for each of the golf course's four profit centers: golf, merchandise sales, food and beverage, and other. Included in the golf revenue were membership dues, green fees, carts and tournaments.

Mr. Dugas concluded that the actual revenues reported by the appellant for these line items for calendar years 2005 and 2006 were reasonable.

Also included in golf revenue were new member initiation fees. For this line item, however, Mr. Dugas opted to use a higher stabilized amount than that reported by the appellant. To estimate the appropriate value, Mr. Dugas first noted that refunds of so-called refundable initiation fees were "few and far between." As a result, he determined that the subject property is more appropriately valued assuming a non-refundable membership fee. Based on a review of non-refundable initiation fees of comparable golf courses, Mr. Dugas concluded that non-refundable membership fees are, generally speaking, one-half of refundable fees. Therefore, for purposes of valuing the subject property, he assumed a non-refundable initiation fee of \$60,000 based on the actual refundable initiation fee of \$125,000. After reviewing historic trends at the golf club, he further assumed an attrition rate of about 5%, or 15 members, per year. He therefore concluded that the club would generate approximately \$900,000 ($\$60,000 \times 15$) annually in new membership initiation

fees.⁴ With that amount added to the annual membership fees, green fees, carts and tournament fees, Mr. Dugas calculated total golf revenue of \$4,628,252 and \$4,970,810, for fiscal years 2006 and 2007, respectively.

Actual reported merchandise sales for 2005 and 2006 were \$266,015 and \$334,223, respectively. Mr. Dugas testified that merchandise sales for a club of this kind generally range from \$15 to \$20 per round. Black Rock hosted about 19,000 rounds in 2005 and 2006, which equates to merchandise sales that range between \$285,000 and \$380,000. Because the actual merchandise revenue was market supported, Mr. Dugas relied on Black Rock's actual merchandise revenue in his analysis.

After reviewing data from several for-profit country clubs with clubhouses that have seating capacities that range from 327 to 990 and have large banquet operations, Mr. Dugas found a correlation between food and beverage sales and seating capacity. Based on these comparables, Mr. Dugas determined that the average food and beverage sales ranged from \$5,500 to \$7,000, per seat. Further, he determined that the subject property is able to charge a significant premium because of the physical quality of the

⁴ Although he did not explicitly state it, Mr. Dugas apparently assumed that as members left, new members joined so that if an average of 15 members per year left the club, an average of 15 new members joined the club.

club and the service and quality of the food served. Therefore, Mr. Dugas estimated food and beverage sales at the club at the higher end of the range. Using \$6,500 per seat for the 300 indoor seats at the club, he arrived at an estimate of \$1,950,000. Actual food and beverage sales were \$2,014,359 and \$1,915,882 for 2005 and 2006, respectively. Accordingly, Mr. Dugas determined that the actual food and beverage sales reported by the appellant were indicative of the market and were used in his analysis.

Finally, Mr. Dugas relied on the appellant's actual income of \$281,175 in 2005 and \$318,667 in 2006 for the "other" category, which included pool and tennis fees, camps and clinics, babysitting and rentals. Mr. Dugas' total gross revenue for 2005 and 2006 is as follows:

	<u>2005</u>	<u>2006</u>
Golf	\$4,628,252	\$4,970,810
Merchandise	\$ 266,015	\$ 334,233
Food & Beverage	\$2,014,359	\$1,915,882
Other	\$ 477,055	\$ 502,729
Gross Revenue	\$7,385,681	\$7,723,644

Mr. Dugas testified that, generally speaking, golf course rents are based on fixed percentages of the gross revenue generated by the various departments and that the rent payable by the lessee is the real property owner's net operating income ("NOI"). Therefore, to estimate the subject property's NOI, Mr. Dugas reviewed several rental

comparables in the Northeast region with similar climates, as well as labor and utility costs, as the subject property. Mr. Dugas testified that most of his rental comparables are public golf courses, which generally operate at slightly better profit margins and theoretically "could rent for a higher percentage." Therefore, he adjusted downward slightly for the subject property because it was a private club. Based on the rental data, Mr. Dugas determined that market rents were approximately 22% of golf revenue, 6% of merchandise sales, 10% of food and beverage, and 5% of other. He applied these percentages to the subject property's departmental revenues to calculate the subject property's NOI for 2005 and 2006. The following table summarizes Mr. Dugas' calculations.

Department Revenue	Percentage Rent	2005 Revenue	2005 Rent Payable	2006 Revenue	2006 Rent Payable
Golf	22.0%	\$4,628,252	\$1,018,215	\$4,970,810	\$1,093,578
Merchandise	6.0%	\$ 266,015	\$ 15,961	\$ 334,223	\$ 20,053
Food & Beverage	10.0%	\$2,014,359	\$ 201,436	\$1,915,882	\$ 191,588
Other	5.0%	\$ 477,055	\$ 23,853	\$ 502,729	\$ 25,136
Total		\$7,385,681	\$1,259,465	\$7,723,644	\$1,330,356

Finally, Mr. Dugas derived a capitalization rate from a band-of-investment, mortgage-equity analysis. He established his rate by using a 70/30 loan-to-value ratio and an amortization period of twenty years. His mortgage loan rate was 7.0%, resulting in a mortgage constant of 6.51%.

To determine his equity rate, Mr. Dugas reviewed rates published in the spring 2004 PriceWaterhouseCoopers Korpacz Real Estate Investor Survey ("Korpacz Survey") for going-concern golf properties, which ranged from 4.90% to 21.20%, with an average of 10.98%. According to the spring 2005 Korpacz Survey, the rates for golf properties narrowed slightly to between 5.02% and 17.10%, with an average of 10.77%. Mr. Dugas noted that although the subject property is of generally good quality and is within a major metropolitan market, it is weather dependent and industry figures have been declining since 2001. As a result, he determined that an appropriate equity capitalization rate would be 15.0%, which resulted in an equity component of 0.045. Based on the mortgage and equity components, Mr. Dugas calculated an overall capitalization rate of 11.01%. He further determined that a capitalization rate as applied to real estate rent is typically lower than that which would be applied to a going-concern operating income. For this reason, Mr. Dugas selected a capitalization rate of 10.0% for the subject property. Mr. Dugas then added a tax factor to arrive at his overall capitalization rates of

10.996% for fiscal year 2006 and 10.920% for fiscal year 2006.⁵

Relying on these capitalization rates, Mr. Dugas estimated the value of the subject property using the income-capitalization approach for fiscal year 2006 to be \$11,500,000, and for fiscal year 2007 to be \$12,200,000.`

To further support his estimate of value using the income-capitalization method, Mr. Dugas also presented a simplified sales-comparison approach that cited five sales of golf courses that occurred during the period December 15, 2005 through August 31, 2007, with sale prices that ranged from \$7.25 million to \$13.1 million. Four of the five comparables were private clubs located in Massachusetts; the fifth was a semi-private club located in Pennsylvania. Mr. Dugas testified that although three of the sales occurred in 2007, almost two years after the latest date of assessment, the market was soft and stagnant in revenue, rounds and values for the past several years and, therefore, he determined that no adjustment for timing or market conditions was warranted. He did, however, adjust for location and physical condition, and also

⁵ In his calculations, Mr. Dugas erroneously used the fiscal years 2005 and 2006 tax factors instead of the fiscal years 2006 and 2007 tax factors for the fiscal years at issue. However, because the Board did not adopt Mr. Dugas' overall capitalization rates in arriving at its opinion of value for the subject property, this error has no impact on the Board's decision.

personal property and business value associated with the sale of a going-concern golf course. Based on his chosen sales, Mr. Dugas determined a "range of value" for the subject property, using the sales-comparison approach, between \$10,000,000 and \$11,000,000, which, he opined, supported his estimates of value using the income-capitalization approach.

The appellant's last witness was George McGoldrick, president of Black Rock Country Club. Mr. McGoldrick testified that in January 1999, he and Jim Reed formed a partnership for the development of Black Rock Condominiums. Mr. McGoldrick testified that at that time, there was no available bank financing for golf courses such as the subject property and, therefore, as a means of financing the construction of the golf course and the club amenities, the appellant opted to sell memberships. Initially, there were eleven "Founding" members who each paid \$100,000. Subsequently, traditional non-equity memberships were sold ranging in price from \$65,000 in December 1999 to \$125,000 as of May 2002. Prior to 2002, the full amount of the initiation fee, less an administrative fee, was refundable upon resignation. As of January 1, 2005, the appellant had sold 286 full golf memberships. According to the appellant's membership sales' history, only 21 memberships

sold for \$125,000. The majority of memberships sold for considerably less.

Mr. McGoldrick testified that in their sales' negotiations, he and Mr. Reed did not impute an interest value attributable to the membership initiation fees. He testified that the membership deposits were "not sitting in a bank" but were used to "build and operate the business." Therefore, they did not consider those dollars in the transaction.

VI. Assessors' Case

The assessors' valuation expert, Mr. Logue, also relied on the income-capitalization approach to estimate the value of the subject property for the fiscal years at issue because of the income-generating characteristics of the property and also the availability of actual revenue and expense data for the subject property for calendar years 2003 through 2006. He did not use the sales-comparison approach due to the limited number of arms'-length sales for golf course properties with similar quality, dues, initiation fees and overall ownership structure. He also excluded the cost approach due to the subject property's recent construction and excellent condition, and also the fact that the subject property is a condominium unit within a larger development. He

determined that allocating the cost of site improvements and the underlying land value for the entire development to the subject property would be speculative and unreliable. Mr. Logue determined that the highest and best use for the subject property was its present use.

To arrive at his estimates of value for the subject property for the fiscal years at issue, Mr. Logue performed a traditional income-capitalization approach and deducted the operating expenses, excluding real estate taxes, from the annual gross revenues and then deducted reserves for replacements of short-lived realty items and furniture, fixtures, and equipment ("FF&E"), as well as a business enterprise/entrepreneurship return to reach his estimates of NOI attributable to the real estate. He capitalized the resulting NOI using an overall rate plus a tax factor to reach his opinion of value of \$19,900,000 and \$20,900,000 for fiscal years 2006 and 2007, respectively.

In developing his income-capitalization approach, Mr. Logue relied on the income and expense information provided by the appellant for calendar years 2003 through 2006 in order to reconstruct stabilized estimates of income and expenses as of the effective dates of valuation. To calculate his estimates of the subject property's gross revenue as of the relevant assessment dates, Mr. Logue

included amounts for membership dues, food and beverage sales, pro-shop merchandise sales, tournaments, guest fees, lessons and clinics, cart rentals, child care, equipment rental and repair, clubhouse rental, and other miscellaneous income.

Based on the actual number and trend of memberships, Mr. Logue determined that the average food and beverage sales for calendar years 2004 and 2005 was the most realistic stabilized amount for fiscal year 2006. Because pro shop sales fluctuated in a somewhat irregular pattern between \$269,000 and \$374,000 during calendar years 2003 through 2006, Mr. Logue stabilized pro shop merchandise sales, for both fiscal years at issue, at the average of the four preceding calendar years. He stabilized tournament income for fiscal year 2006 at the average for calendar years 2004, 2005 and 2006. After noting that guest fees for 2003 were \$342,000 but by 2006 had declined to \$300,000, Mr. Logue concluded that a stabilized annual amount for fiscal year 2006 was the approximate average for calendar years 2004 and 2005. He stabilized income from lessons and clinics, cart rentals, child care, and equipment rental and repair at annual amounts based on the average for calendar years 2004 through 2006. Mr. Logue noted that there was a minimal amount of clubhouse rental

income for calendar years 2003 and 2004 because the clubhouse had recently opened, and, therefore, he concluded that the most realistic stabilized clubhouse rental income for his analysis was the average for calendar years 2005 and 2006. Finally, he determined an amount for other/miscellaneous income based on the average annual revenue for calendar years 2004 through 2006.

For fiscal year 2007, he stabilized membership dues and food and beverage revenues at somewhat higher levels than for fiscal year 2006 revenues due to increased membership and greater use of the clubhouse and other facilities. He stabilized guest fees, lessons and clinics, and miscellaneous revenues at slightly lower amounts than for fiscal year 2006 to better reflect the historical trends in these items of revenue, particularly for calendar years 2005 and 2006.

Mr. Logue also included in gross revenue a stabilized income amount attributable to the non-refundable component of the membership initiation fees. Mr. Logue conceded that although the annual non-refundable initiation fee revenue from new members during the time from initial ramp-up to full membership will likely decline as the membership at Black Rock stabilizes and reaches capacity, revenue from this source would continue on an annual basis as a result

of turnover from resigned to new members who will pay an initiation fee. Based on the number of memberships for each category as of January 1, 2005, and the applicable membership initiation fees as of the same date, Mr. Logue determined that total non-refundable membership deposits amounted to \$ 11,180,000.⁶

Membership Type	Number of Members 1/1/05	Initiation Fee 1/1/05	Non-Refundable Portion	Total Non-Refundable
Full golf	286	\$125,000	\$35,000	\$10,010,000
Single golf	24	\$125,000	\$35,000	\$ 840,000
Recreation	21	\$ 42,000	\$10,000	\$ 210,000
Residential	12	\$ 35,000	\$10,000	\$ 120,000
Total	343			\$11,180,000

Mr. Logue then calculated an annual turnover rate of 4.4% for fiscal year 2006, based on membership records which indicated that between 10 and 15 members resign each year. Assuming that the same number of new members join Black Rock each year, Mr. Logue applied his estimated 4.4% annual turnover rate to the total non-refundable deposits of \$11,180,000, and estimated the stabilized annual revenue from non-refundable initiation deposits at \$491,920 for fiscal year 2006.

⁶ Mr. Logue's calculations were based on the number of memberships as provided to him by Peter McEchearn, chief financial officer of Black Rock Country Club, in August 2005. These numbers, however, are higher than those reported in the appellant's answers to interrogatories, which were introduced into evidence, and also reported by the appellant's real estate valuation expert. Based on the 2005 annual dues for each category and the total membership dues revenue reported in the appellant's statements of operations, Mr. Logue determined that the numbers reported by Mr. McEchearn were more reliable.

For fiscal year 2007, Mr. Logue calculated total non-refundable membership deposits at \$11,905,000 as follows:

Membership Type	Number of Members 1/1/06	Initiation Fee 1/1/06	Non-Refundable Portion	Total Non-Refundable
Full golf	299	\$125,000	\$35,000	\$10,465,000
Single golf	26	\$125,000	\$35,000	\$ 910,000
Recreation	34	\$ 42,000	\$10,000	\$ 340,000
Residential	19	\$ 35,000	\$10,000	\$ 190,000
Total	378			\$11,905,000

Again, assuming that 15 members per year resign, Mr. Logue determined an annual turnover rate of 4.0% for fiscal year 2007. Applied to his total non-refundable deposits, he calculated annual revenue from non-refundable initiation deposits at \$476,200 for fiscal year 2007.

The last component of Mr. Logue's gross revenue was imputed interest on both the non-refundable and refundable portions of the membership deposits. Relying on the total number of club memberships for each category as of the relevant dates of assessment, as detailed *supra*, and the existing initiation fees of \$125,000 for full-golf and single-golf memberships, \$42,000 for recreation memberships and \$35,000 for residential memberships, Mr. Logue calculated the total value of the initiation deposits at \$40,052,000 for fiscal year 2006 and \$42,718,000⁷ for fiscal year 2007.

⁷ In his calculation for imputed interest on refundable membership deposits, Mr. Logue applied the wrong initiation fees to the recreational and residential categories. Correction of his calculations would result in an additional imputed interest income of

Mr. Logue testified that the membership deposits are monies paid to the club which can be used for whatever purposes the club decides and that the imputed interest reflects the non-interest bearing nature of these funds. To account for the appellant's use of the deposits and to convert the deposit value into an income stream, Mr. Logue attributed what he determined to be a safe rate of interest of 4.23% for fiscal year 2006 and 4.37% for fiscal year 2007 applied to both the refundable and non-refundable membership deposits, to calculate total imputed interest income of \$1,694,200 and \$1,341,940, for fiscal years 2006 and 2007, respectively.⁸ Neither Mr. Logue nor the assessors commented on or introduced evidence attempting to establish a relationship or correlation between the initiation fees and the annual dues.

Next, Mr. Logue deducted stabilized operating expenses, based on a review of the actual expenses reported for calendar years 2003 through 2005, plus a management fee of 3.5%, from the annual gross revenue to reach his estimate of NOI for each of the fiscal years at issue. Relying on the subject property's projected budgets for calendar years 2004 through 2008, and also the National

\$4,588, but would ultimately have no effect on his final estimate of fair market value.

⁸ See fn. 4.

Golf Market segment of the Korpacz Survey, Mr. Logue determined that an allowance of 3% of total income, excluding imputed interest, would be a realistic allowance for reserve for replacement of short-lived real estate and FF&E.

Finally, Mr. Logue allowed a deduction for entrepreneurship return. He testified that in estimating the value of the Black Rock property for assessment purposes, he is valuing the real estate only and therefore it is appropriate to make a deduction for the business enterprise value. Based on his review of the subject property and also published information, he determined that a deduction of 4% of total gross income, including imputed interest, was realistic.

Mr. Logue reviewed the Korpacz survey, golf supplement, and also prepared a mortgage equity analysis and arrived at a capitalization rate of 9.5%, which is 0.590 less than that used by Mr. Dugas. Adding the appropriate tax factors for fiscal years 2006 and 2007, Mr. Logue arrived at overall capitalization rates of 10.42% and 10.40%, respectively, which he applied to the net real estate income to estimate the value of the subject property for the fiscal years at issue.

A summary of Mr. Logue's income capitalization methodology is contained in the following table.

	Fiscal Year <u>2006</u>	Fiscal Year <u>2007</u>
Revenue		
Membership ("Memb.") Dues	\$ 2,705,000	\$ 2,990,000
Food and Beverage	\$ 1,850,000	\$ 1,965,000
Pro Shop Merchandise Sales	\$ 330,000	\$ 330,000
Tournament Income	\$ 392,000	\$ 410,000
Guest Fees	\$ 330,000	\$ 310,000
Lessons and Clinics	\$ 196,000	\$ 190,000
Cart Rentals	\$ 124,000	\$ 124,000
Child Care Income	\$ 22,000	\$ 22,000
Equipment Rental and Repair	\$ 6,100	\$ 6,100
Clubhouse Rental	\$ 73,000	\$ 73,000
Other/Misc.	\$ 182,000	\$ 182,000
Amortization of Non-Refundable Memb. Deposits	\$ 491,920	\$ 476,200
Imputed Interest on Non-Refundable Memb. Deposits	\$ 472,914	\$ 520,249
Imputed Interest on Refundable Memb. Deposits	<u>\$ 1,221,288</u>	<u>\$ 1,346,528⁹</u>
Gross Revenue	<u>\$ 8,396,220</u>	<u>\$ 8,945,077</u>
Operating Expenses		
Food and Beverage	\$ 1,700,000	\$ 1,990,000
General and Administrative	\$ 975,000	\$ 1,045,000
Building Maintenance	\$ 680,000	\$ 665,000
Golf Course Maintenance	\$ 870,000	\$ 918,000
Golf Operations	\$ 520,000	\$ 527,000
Fitness, Pool and Tennis	\$ 502,000	\$ 548,000
Pro Shop	\$ 240,000	\$ 208,000
Child Care	\$ 60,000	\$ 50,000
Management* 3.5%	<u>\$ 234,571</u>	<u>\$ 247,741</u>
Total Operating Expenses	<u>\$ 5,781,571</u>	<u>\$ 6,198,741</u>
Net Operating Income	<u>\$ 2,614,649</u>	<u>\$ 2,746,337</u>
Reserves for Replacement* 3.0%	<u>\$ 201,061</u>	<u>\$ 212,349</u>
Entrepreneurship Return** 4.0%	<u>\$ 335,849</u>	<u>\$ 357,803</u>
Net Real Estate Income to be Capitalized	<u>\$ 2,077,740</u>	<u>\$ 2,176,184</u>
Capitalization Rate	9.50%	9.50%
Tax Factor	0.920%	0.900%
Overall Rate	10.420%	10.400%
Indicated Fair Cash Value	<u>\$19,939,922</u>	<u>\$20,924,850</u>
Rounded Fair Cash Value	<u>\$19,900,000</u>	<u>\$20,900,000</u>

*Based on % of gross revenue excluding imputed interest.

**Based on % of total gross revenue.

⁹ At the hearing of these appeals, Mr. Logue made adjustments to his income-capitalization pro forma. These adjustments, however, did not alter his final estimate of value.

VII. Board's Valuation Findings

Both the parties' real estate valuation experts valued the subject property using an income-capitalization analysis. Their methodologies, however, differed. Mr. Dugas estimated the value of the subject property based on a "market rent" analysis. Applying this methodology, Mr. Dugas first determined the gross income from each of the golf course's four profit centers and then determined an appropriate percentage representing the appellant's rent payable, or net operating income, for each category. He then divided the results by the capitalization rates he thought appropriate to yield the estimated market value of the subject property for each of the fiscal years at issue.

In contrast, Mr. Logue valued the subject property by deducting the country club's operating expenses from its annual gross revenues and then deducting reserves for replacements for FF&E, as well as a business enterprise/entrepreneurship return, to reach his estimates of NOI attributable to the real estate. He then capitalized the resulting NOIs to arrive at his opinion of fair market value for the fiscal years at issue.

Mr. Logue attempted to justify his income-capitalization approach by stating that it was similar to the methodology used by the Board in valuing the real

estate associated with a senior congregate housing facility in *The Willows*. Based on overwhelming evidence, including the testimony of Gregory Walsh, a healthcare consultant, industry-wide entrance fee and monthly service fee payment schedules, and also the owner's pricing charts, the Board found in *The Willows* that the amount of monthly service fees and the amount of entrance fees "are directly related to the overall amount charged to a resident for the right or privilege to live there. They are both components of the cost of occupancy at the facility." *The Willows* at 505. In the present appeals, however, the record is devoid of any evidence correlating the initiation deposit to a lower annual dues.

Furthermore, in *The Willows* the Board found, based on extensive evidence, that the entrance deposits were "part and parcel of the monthly service fees." *Id.* at 508. The amount of the entrance fees and the monthly service fees were directly, although inversely, related because monthly service fees were higher where entrance fees were lower or non-existent and *visa versa*. The entrance and service fees were, therefore, directly related to the "earning capacity" of the real estate and appropriate considerations in determining the value of the real estate. See *Pepsi-Cola Bottling Co. v. Assessors of Boston*, 397 Mass. 447, 451

(1986). In contrast, in the present appeals, the Board did not find any of "*The Willows*" type correlations between the entrance or initiation fees and the annual dues.

Moreover, assuming *arguendo* that the Board adopted the methodology used in *The Willows* in the present appeals, Mr. Logue's computations were flawed. First, Mr. Logue's imputed interest income was based on the full amount of the initiation fees, both refundable and non-refundable, whereas in *The Willows* imputed interest was applied only to the non-refundable portion of the resident deposit. Furthermore, in deriving the imputed income, Mr. Logue applied the initiation fees of \$125,000 for full and single golf memberships to the full compliment of club members as of the relevant date of assessment despite the fact that he had not related them to the market and the evidence showed that a majority of members had paid significantly lower initiation fees.

Initially, there were 11 "founding" members who paid a fully refundable fee of \$100,000. During the period of December 1999 through January 2000 the Club sold 73 fully refundable memberships at the initial price of \$65,000. Further, during the period of February 2000 through April 2002, memberships were sold as follows: 61 memberships at \$75,000; 23 memberships at \$80,000; 37 memberships at

\$90,000; 19 memberships at \$95,000; 32 memberships at \$100,000; and 20 memberships at \$115,000. In May 2002, the initiation fee was increased to its current level of \$125,000.

The evidence presented, however, suggested that of the total number of golf memberships, only 86 were sold at the current rate of \$125,000. Moreover, during calendar years 2004 and 2006, two memberships were sold at the substantially lower rates of \$65,000 and \$70,000, the latter of which was non-refundable. Further, it appears that during calendar years 2005 and 2006 some members were not required to pay an initiation fee but rather received their membership as an incentive for the purchase of one of the residential condominiums. Therefore, the Board found that Mr. Logue's calculation of imputed interest income was likely overstated and so inflated his estimates of value as to render them unreliable.

The Board further found, under the circumstances present in these appeals and for the reasons more fully explained in the following Opinion, that Mr. Dugas' market-rental approach is the more appropriate methodology to value the subject golf course and country club. Employing Mr. Dugas' market-rental methodology, the Board first determined the gross revenue for each of the golf course's

four profit centers: golf revenue; food and beverage; pro shop sales; and other. Noting the similarities in the parties' gross revenues, excluding Mr. Logues' imputed interest income and including Mr. Dugas' market adjusted new member initiation fees, the Board estimated gross revenue for the four profit centers as follows:

	FY 2006 Revenue	FY 2007 Revenue
Golf Revenue		
Dues	\$2,860,000	\$3,115,000
Guest Fee	\$ 320,000	\$ 320,000
Cart Rental	\$ 128,000	\$ 150,000
Tournament Fees	\$ 400,000	\$ 400,000
New Member Initiation Fees	\$ 900,000	\$ 900,000
Total Golf Revenue	\$4,608,000	\$4,885,000
Food/Beverage	\$2,000,000	\$2,000,000
Merchandise	\$ 325,000	\$ 325,000
Other	\$ 478,100	\$ 495,000

Based on the subject property's increased earning capacity attributable to the country club and recreational facilities, the Board determined that 25%, the higher end of Mr. Dugas' rental range, was the more appropriate rental rate applicable to the golf revenue. The Board further found that Mr. Dugas' market rental percentages applicable to food and beverage, merchandise and other income were reasonable and appropriate. Finally, the Board found that based on the subject property's high quality new construction and also the increased earning capacity attributable to the function and recreation facilities, a capitalization rate of 9.5%, plus the applicable tax

factor, was appropriate. A summary of the Board's market-rental approach is contained in the following table.

		FY 2006 Revenue	FY 2006 NOI	FY 2007 Revenue	FY 2007 NOI
Golf Revenue	25%	\$4,608,000	\$1,152,000	\$4,885,000	\$1,221,250
Food/Beverage	10%	\$2,000,000	\$200,000	\$2,000,000	\$200,000
Merchandise	6%	\$ 325,000	\$19,500	\$ 325,000	\$19,500
Other	5%	\$ 478,100	423,905	\$ 495,000	\$24,750
Total Net Operating Inc.			\$1,395,405		\$1,465,500
Capitalization Rate			9.5%		9.5%
Tax Factor			0.92%		0.90%
Total Capitalization Rate			10.42%		10.40%
Indicated Fair Market Value			\$13,391,603		\$14,091,346
Fair Cash Value			\$13,390,000		\$14,090,000

On the basis of these findings, the Board found that the appellant met its burden of proving that the subject property was overvalued for fiscal years 2006 and 2007. The Board determined that the fair cash value of the subject property was \$13,390,000 for fiscal year 2006 and \$14,090,000 for fiscal year 2007. Accordingly, the Board decided these appeals for the appellant and granted abatements of \$61,724.18 for fiscal year 2006 and \$41,198.85 for fiscal year 2007.¹⁰

OPINION

The assessors are required to assess real estate at its fair cash value. G.L. c. 59, § 38. Fair cash value is defined as the price on which a willing seller and a

¹⁰ The abatement amounts include a 1.5% CPA Tax.

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). Accordingly, fair cash value means its fair market value. ***Id.***

"Prior to valuing the subject property, its highest and best use must be ascertained, which has been defined as the use for which the property would bring the most." ***Tennessee Gas Pipeline Co. v. Assessors of Agawam***, Mass. ATB Findings of Fact and Reports 2000-859, 875 (citing ***Conness v. Commonwealth***, 184 Mass. 541, 542-43 (1903)); ***Irving Saunders Trust v. Assessors of Boston***, 26 Mass. App. Ct. 838, 843 (1989) and the cases cited therein. A property's highest and best use must be legally permissible, physically possible, financially feasible, and maximally productive. APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE 305-308 (12th ed., 2001). See also ***Skyline Homes, Inc. v. Commonwealth***, 362 Mass. 684, 87 (1972); ***DiBaise v. Town of Rowley***, 33 Mass. App. Ct. 928 (1992). In determining the property's highest and best use, consideration should be given to the purpose for which the property is adapted. THE APPRAISAL OF REAL ESTATE at 315-16; ***Tennessee Gas Pipeline Co.***, *supra* at 235. In the present appeals, both parties' valuation experts and this Board

valued the subject property based on its existing use as a golf course and country club.

Generally, real estate valuation experts, the Massachusetts courts, and this Board rely upon three approaches to determine the fair cash value of property: income-capitalization, sales-comparison, and cost reproduction. See **Correia v. New Bedford Redevelopment Authority**, 375 Mass. 360, 362 (1978). The courts and the appraising community as well as some state legislatures have adopted varying methods or combination of methods for valuing golf courses for *ad valorem* tax purposes. While some relatively older cases rely exclusively upon the cost approach, see, e.g., **Old Oaks Country Club v. State**, 35 AD2d 71, *aff'd* 30 NY2d 611; **Matter of County of Suffolk [Great River]**, 70 Misc. 2d 232, that method is now usually given weight only in a reconciliation of values derived by other means, see, e.g., **Russell L. Wenkster Trust/Burl Golf Course v. County of Hennepin**, 1990 Minn. Tax LEXIS 225, *6-9, or is used to establish a maximum value, see, e.g., **Matter of River House-Bronxville v. Gallaway**, 79 AD2d 990.

Exclusive use of the sales-comparison or market approach is ordinarily limited to those situations when there either is no data to support the use of income-

capitalization methodology, see, e.g., **Salem Country Club v. Assessors of Peabody**, Mass. ATB Decision Docket No. 166714, etc. (December 8, 1994), or the data underpinning it is so flawed that it renders the values derived from that income approach unreliable. See, e.g., **Golf Course Properties, LLC v. Tyrone Township**, Michigan Tax Tribunal Docket No. 301974, p. 15 (November 17, 2006). Otherwise, and primarily because golf course properties rarely sell as real estate alone, reliance on the sales-comparison or market approach, like the cost approach, is now usually limited to those instances when it serves as a check on, or in a reconciliation of values derived using, other methodologies. See, e.g., **Minnetonka Country Club Association, Inc. v. County of Hennepin**, 1990 Minn. Tax LEXIS 203, *13.

Further, some state legislatures and administrative bodies recognize the difficulty in valuing golf courses and have attempted to codify standardized approaches. See, e.g., Nevada Department of Taxation. *Golf Course Open-Space Classification and Valuation Manual*. 9/11/2006. (<http://www.Tax.state.nv.us/documents/Golf%20Course%20Manual.pdf/>); A.R.S. 42-13152 (Arizona's uniform assessment measures for golf courses).

In Massachusetts, the preferred method for valuing income-producing property, like a golf course, is the income-capitalization approach. The income-capitalization method "is frequently applied with respect to income-producing property." **Taunton Redev. Assocs. v. Assessors of Taunton**, 393 Mass. 293, 295 (1984). Other jurisdictions concur. See e.g. **Deschutes County Assessors and Dept. of Revenue v. Broken Top Club, LLC**, Oregon Tax Court BV: 15 OTR Advance Sheets 2002 #3; **Russell L. Wenkstern Trust/Burl Golf Course v. Country of Hennepin**, 1990 Minn. Tax LEXIS 203, *13. The market-rental approach, which Mr. Dugas employed in these appeals, is one of the court-approved income-capitalization methods for valuing the real estate improved with a golf course and country club. See **Ardasley Country Club v. Assessor of the Town of Greenburgh**, 879 N.Y.S.2d 319, 324 (2009) (citing **Mill River Club v. Board of Assessors**, 847 N.Y.S.2d 670 (2007)). In **Mill River Club**, the taxpayer challenged the real property tax assessments of four parcels of real estate which the taxpayer owned and operated as a private golf course and country club. **Id.** at 672. The New York Appellate Court found that "because most golf courses are run by specialized companies under operating leases, the net income a course's owner is likely to derive corresponds to

the rent a tenant-operator will be willing to pay and that rent, in turn, depends on the revenue the golf course is likely to produce." *Id.* at 673. "Once that revenue was estimated, it would be converted into a 'hypothetical rent,'" based on a "percentage of the revenue derived from each source." *Id.* at 674-75. The resulting net-operating income is then capitalized using an appropriate capitalization rate to estimate the subject property's fair market value. *Id.* at 673; **Ardsley Country Club**, 879 N.Y.S.2d at 325.

Under the circumstances present in these appeals, the Board found that Mr. Dugas' market-rental, income-capitalization analysis was the more appropriate valuation methodology to use to value the subject property. It is an accepted method for valuing real property improved with a golf course (see e.g., **Mill River Club**, *supra*, and **Ardsley Country Club**, *supra*) and most closely measures the earning capacity of the real property. See, e.g., **Marketplace Center II Limited Partnership v. Assessors of Boston**, Mass. ATB Findings of Fact and Reports 2000-258, 266; see also **Pepsi-Cola**, 397 Mass. at 451. The Board further found that with the exception of Mr. Logue's imputed interest income and Mr. Dugas' market adjusted initiation deposits, the parties' revenues attributable to the four

profit centers were similar. The Board also found that the capitalization rate used by the assessors' real estate valuation expert were more appropriate given the earning capacity of the subject property and also the subject property's excellent quality and construction.

In addition, the Board found that Mr. Logue did not demonstrate that his income-capitalization approach, based on the approach adopted by the Board in ***The Willows at Westborough v. Board of Assessors of the Town of Westborough***, Mass. ATB Findings of Fact and Reports 2008-469, 506 ("***The Willows***") *aff'd* 441 Mass. 1108 (2004), which dealt with real estate associated with a senior congregate housing facility and included imputed interest income for the residents' entrance fees, was the more appropriate valuation methodology in the present appeals. In ***The Willows***, there was a direct and proven correlation, albeit inverse, between the entrance fee paid and the resident's monthly service therefore suggesting that the entrance fee was in fact a disguised occupancy payment. In the present appeals, however, the Board found that the record is devoid of any evidence correlating the initiation deposit to a lower annual dues. Moreover, the Board found that Mr. Logue's estimate of imputed interest was unreliable. In the Board's view, it is Mr. Dugas' approach that more

closely reflects the earning capacity of the subject property here and is therefore the more appropriate method to determine fair cash value in these appeals. **Pepsi-Cola Bottling Co.**, 397 Mass. at 451 (finding that it is the earning capacity of real estate that is relevant for determining fair cash value under the income approach).

The mere qualification of a person as an expert does not endow his testimony with any magic qualities. **Boston Gas Co.**, 334 Mass. at 579.

The board [is] not required to believe the testimony of any particular witness but it [can] accept such portions of the evidence as appear to have the more convincing weight. The market value of the property [can] not be proved with mathematical certainty and must ultimately rest in the realm of opinion, estimate, and judgment . . . (citations omitted). The board [can] select the various elements of value as shown by the record and from them form . . . its own independent judgment.

Assessors of Quincy, 309 Mass. at 72. See also **North American Philips Lighting Corp. v. Assessors of Lynn**, 392 Mass. 296, 300 (1984); **New Boston Garden Corp. v. Assessors of Boston**, 383 Mass. 456, 473 (1981); **Jordan Marsh Co. v. Assessors of Malden**, 359 Mass. 106, 110 (1971).

The burden of proof is upon the appellant 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). "By holding that the assessment is entitled to a presumption of validity, we are only restating that the taxpayer bears the burden of persuasion of every material fact necessary to prove that its property has been overvalued." **General Electric Co. v. Assessors of Lynn**, 393 Mass. 591, 599 (1984). 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." **Id.** at 600 (quoting **Donlon v. Assessors of Holliston**, 389 Mass. 848, 855 (1983)).

On the basis of these findings, the Board found that the appellant met its burden of proving that the subject property was overvalued for fiscal years 2006 and 2007. The Board determined that the fair cash value of the subject property was \$13,390,000 for fiscal year 2006 and \$14,090,000 for fiscal year 2007.

Accordingly, the Board decided these appeals for the appellant and granted abatements of \$61,724.18 for fiscal year 2006 and \$41,198.85 for fiscal year 2007.¹¹

APPELLATE TAX BOARD

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

A true copy,

Attest: _____
Clerk of the Board

¹¹ The abatement amounts include a 1.5% CPA tax.