

**Soft Draw Investments LLC**

**v.**

**Town of Greenland**

**Docket No.: 21766-05PT**

**and**

**Soft Draw Investments LLC**

**v.**

**Town of Stratham**

**Docket No.: 21767-05PT**

**DECISION**

A consolidated hearing in these appeals was held on March 12, 2009. The “Property” under appeal consists of the Golf Club of New England (the “GCNE”) golf course located partially in the Town of Greenland (“Greenland”) and partially in the Town of Stratham (“Stratham”). The “Taxpayer” appeals the following assessments pursuant to RSA 76:16-a.

**Greenland**

The 2005 Greenland assessment is \$4,793,900 (land \$1,807,400; improvements \$2,986,500) on Map OR/Lot 4-01, a portion of the golf course (approximately 14 full holes and 2 partial holes) and improvements on 148.70 acres. The Taxpayer also owns, but is not appealing: 1) 145.62 acres assessed in current use for \$2,200; and 2) nine (9) vacant residential lots and a 1.04 acre parking lot located on “Arnold Palmer Way” with a total combined assessment of \$1,702,000 identified separately as follows:

<u>Address</u>	<u>Assessment</u>
15 Niblick Lane	\$ 179,000
57 Niblick Lane	\$ 210,800
1 Vardon Lane	\$ 150,400
9 Vardon Lane	\$ 162,500
32 Vardon Lane	\$ 164,500
49 Vardon Lane	\$ 191,500
52 Vardon Lane	\$ 165,600
57 Vardon Lane	\$ 196,200
60 Vardon Lane	\$ 167,900
Arnold Palmer Way	\$ <u>113,600</u>
<b>Total</b>	<b>\$1,702,000</b>

**Stratham**

The 2005 Stratham assessment is \$4,382,500 (land \$441,900; improvements \$3,940,600) on Map 4/Lot 36, a portion of the golf course (2 full holes and 2 partial holes), the clubhouse and a metal garage on 93.070 acres. The Taxpayer also owns, but is not appealing, nine (9) additional lots with a total combined assessment of \$1,999,100 identified separately as follows:

<u>Address</u>	<u>Assessment</u>
7 Leigh Circle	\$ 250,000
9 Leigh Circle	\$ 275,000
2 St. Andrews Way	\$ 275,000
4 St. Andrews Way	\$ 250,000
6 St. Andrews Way	\$ 250,000
8 St. Andrews Way	\$ 250,000
Union Road (Map 6/Lot 42)	\$ 122,500
Union Road (Map 6/Lot 44)	\$ 186,100
Union Road (Map 6/Lot 55)	\$ <u>140,500</u>
<b>Total</b>	<b>\$1,999,100</b>

The Taxpayer has the burden of showing, by a preponderance of the evidence, the assessments were disproportionately high or unlawful, resulting in the Taxpayer paying a disproportionate share of taxes. See RSA 76:16-a; Tax 201.27(f); Tax 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show

the Property's assessments were higher than the general level of assessment in the municipality.

Id. For the reasons discussed below, the board finds the Taxpayer carried this burden, however only to the extent argued at hearing by Greenland and Stratham.

The Taxpayer argued the assessments were excessive because:

- (1) the 2005 market value of the golf course and improvements was \$4,600,000 based on a 2003 appraisal performed by Lawrence A. Hirsh, CRE, MAI, SGA of Golf Property Analysts (the "Hirsh Appraisal," Taxpayer Exhibit No. 1, Tab 5);
- (2) the \$4,600,000 market value estimate should be allocated based on the original proportion of the appealed assessments;
- (3) other than the nonappealed lots, the Property has no further residential subdivision potential due to extensive wetlands and the restrictions placed upon it during the land use planning approval process by Greenland and Stratham;
- (4) further restrictions at the time of approval limited the total number of golf club members to 275 and restricted the use of the clubhouse restaurant to members and guests only;
- (5) the main access to the golf course, Winnicutt Road, is through a residential neighborhood further restricting any redevelopment potential for the Property; and
- (6) the Property's development as a private club limits its economic viability and makes the cost approach and recent historical costs not relevant when estimating the Property's 2005 market value.

Greenland argued the assessed value of the golf course should be abated to \$4,034,100 based upon an appraisal performed by Stephen G. Traub, ASA from Property Valuation Advisors (the "Traub Appraisal," Municipality Exhibit A) which estimated the market value of the golf course and golf course land in Greenland at \$5,100,000 and Greenland's 2005 median

ratio of 79.1% ( $\$5,100,000 \times 0.791 = \$4,034,100$ ). The assessed value (\$2,200) of the land in current use is not included in the recommended revised assessed value for the golf course.

Greenland argued, however, the ten (10) nonappealed parcels were underassessed and their nearly \$320,000 underassessment resulted in a partial offset to any abatement given to the Taxpayer.

Greenland argued the revised assessment was proper because:

(1) the Traub Appraisal utilizes the Taxpayer's purchase price for the land as the basis for the land value and a "per hole" cost estimate from Marshall Valuation Service ("MVS") that is significantly below the actual construction costs for the golf course;

(2) the Property's private golf course was constructed in 2002 - 2003 and contains good quality fairways and greens, extensive bridges, ponds, bunkers and irrigation systems reportedly costing \$20,000,000 in total; and

(3) reliance on the historical income of the Property to value it by the income approach is difficult due to its recent construction and the stigma attached to it by three of the original members "losing their prestigious positions, (one a governor and the other two Chairman CEO of a major NYSE company and the CFO of the same)." (Traub Appraisal, p. 11).

Stratham argued the assessed value of the golf course should be abated to \$3,637,800 based on a calculation performed by Mr. Traub (Municipality Exhibits B and C) and stipulated the nine (9) nonappealed lots were reasonably assessed.

Stratham argued the revised assessment was proper because:

(1) it was based upon Mr. Traub's calculation of the replacement cost less depreciation for the clubhouse and metal garage and an estimate of the land value based on the 2001 acquisition costs of the land;

(2) as stated in the Town of Greenland's arguments, the Property's private golf course was constructed in 2002 - 2003 and contains good quality fairways and greens, extensive bridges, ponds, bunkers and irrigation systems costing reportedly \$20,000,000 in total; and

(3) reliance on the historical income of the Property in valuing it by the income approach is difficult due to its recent construction and the stigma attached to it by three of the original members "losing their prestigious positions, (one a governor and the other two Chairman CEO of a major NYSE company and the CFO of the same)." (Traub Appraisal, p. 11).

The parties stipulated the 2005 levels of assessment, based on the department of revenue administration's (the "DRA") median ratios, were: Greenland – 79.1%; and Stratham – 86.0%.

### **Board's Rulings**

#### Overview

Before proceeding to the board's detailed findings and because the valuation of the golf facility, partially located in each of the municipalities, is the focus of the parties' disagreement, a description of the GCNE, its development and history is helpful in understanding the board's conclusions.

According to the GCNE website (See "Exhibit D" of Municipality Exhibit A, [www.golfclubne.com](http://www.golfclubne.com)), the idea for the GCNE was conceived in 2002 by several businessmen. They purchased approximately 450 acres in the Towns of Greenland and Stratham and enlisted the expertise of renowned golf legend Arnold Palmer to design and implement the construction of a "championship golf course"; "[a] course that is one of a kind, the best in the Northeast"; "a course like no other in the entire region!" The course is unique in its setting in that someone playing the course will be "[i]nspired by the notion of no housing along the course." Further, the course is "over 7,400 yards long" and is a "true championship course." Reviewing the GCNE

website reveals each hole on the course has five separate tee areas enabling a golfer to play the course in a variety of ways depending on the degree of difficulty and level of challenge desired. Further, the description of the course is replete with adjectives such as “challenging,” “demanding,” a “tester,” “intimidating” and “world class.” Membership at the GCNE is limited to 275 and described as being for the “elite” and an “exclusive and very private golf facility that is dedicated to a limited number of members.” A further indication the GCNE is a unique golf facility is the mention in several places on the website of the fact “there is never a need to schedule tee times,” an uncommonly rare situation for most golf courses. Additionally, the clubhouse restaurant is only available for the use of the GCNE members and their guests and is not open to the public.

#### Detailed Findings

For the reasons stated below, the appeals for abatement are granted. The board will first summarize its value conclusions for each town and then make detailed findings as to the most appropriate approaches to value<sup>1</sup> and findings of value specific to each town. In making market value findings, the board considers and weighs all of the evidence, including, in these appeals, the respective appraisals submitted for the Taxpayer, Greenland and Stratham, applying the board’s “experience, technical competence and specialized knowledge” to this evidence. See RSA 71-B:1; and former RSA 541-A:18, V(b), now RSA 541-A:33, VI, quoted in Appeal of City of Nashua, 138 N.H. 261, 265 (1994) (the board has the ability, recognized in the statutes, to utilize its “experience, technical competence and specialized knowledge in evaluating the

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<sup>1</sup> While there are three approaches to value, not all three approaches are of equal import in every situation. Appraisal Institute, The Appraisal of Real Estate, 62 (12th ed. 2001); International Association of Assessing Officers, Property Appraisal and Assessment Administration, 108 (1990). In New Hampshire, the supreme court has recognized that no single approach is controlling in all cases. Demoulas v. Town of Salem, 116 N.H. 775, 780 (1979)

evidence before it”). Further, in making findings where there is conflicting evidence, the board must determine for itself the weight to be given each piece of evidence because “judgment is the touchstone.” See, e.g., Appeal of Public Serv. Co. of N.H., 124 N.H. 479, 484 (1984), quoting from New England Power Co. v. Littleton, 114 N.H. 594, 599 (1974), and Paras v. Portsmouth, 115 N.H. 63, 68 (1975); see also Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994).

### Greenland

There are three components to the Taxpayer’s real estate in Greenland which need to be considered in order to determine if the total assessment of the Taxpayer’s “entire estate” in Greenland is proportionate: 1) the value of the golf course; 2) the value of the nonappealed lots; and 3) the value of the land in current use. Based on the evidence, the board finds the proper assessment for the portion of the golf course located in Greenland is \$4,034,100. This includes the value of the golf course improvements as well as the value of the land they occupy (including the parking lot for the clubhouse, identified as Map/Lot R4-1A located on Arnold Palmer Way). This revised assessment is based on a market value finding of \$5,100,000 and Greenland’s 2005 level of assessment of 79.1% ( $\$5,100,000 \times 0.791 = \$4,034,100$ ). The board further finds the combined assessed value for the nine (9), nonappealed, residential lots to be \$1,908,300 based on a market value finding of \$2,412,500 factored by the level of assessment [ $\$2,412,500 \times 0.791 = \$1,908,300$  (rounded)]. The Taxpayer’s 145.62 acres of land in current use in Greenland was assessed at \$2,200 and was not disputed by the parties. Combining the revised assessed values of the first two components with the uncontested current use assessment yields a total abated assessment of \$5,944,600 for the Taxpayer’s real estate in Greenland. The combined appealed assessed values of the three components in Greenland totaled \$6,498,100. Consequently, the

board finds the Taxpayer is entitled to an abatement of \$553,500 ( $\$6,498,100 - \$5,944,600 = \$553,500$ ) for the portion of the Property located in Greenland.

### Stratham

There are two components to the Taxpayer's real estate in Stratham which need to be considered: 1) the value of the golf course; and 2) the value of nine (9) separate lots. The board finds the proper assessed value for the portion of the golf course located in Stratham to be \$3,637,800. This assessed value includes the value of the golf course improvements and the land they occupy, the value of the clubhouse and the value of the metal garage building. The revised assessment is based on a market value finding of \$4,230,000 and Stratham's 86% level of assessment for 2005 ( $\$4,230,000 \times 0.86 = \$3,637,800$ ). Combining the revised assessed value of the golf course of \$3,637,800 with the stipulated lot values of \$1,999,100 yields a total abated assessment of \$5,636,900. The combined assessed values of the golf course and nonappealed lots in Stratham totaled \$6,381,600. Consequently, the board finds the Taxpayer is entitled to an abatement of \$744,700 ( $\$6,381,600 - \$5,636,900 = \$744,700$ ) for the portion of the Property in Stratham.

The Taxpayer, in support of its position, submitted the Hirsh Appraisal. Mr. Hirsh concluded the market value of the real estate component of the entire golf course was \$4,600,000 on April 1, 2003, two years before the effective date of these appeals (April 1, 2005). The Taxpayer testified this value should be allocated between the towns based on the relative magnitude of the appealed assessments.

Before elaborating on the reasons why the board finds the Hirsh Appraisal does not provide a reliable estimate of the Property's market value, the board notes both Mr. Hirsh and Mr. Traub determined the Property's highest and best use was as developed with a golf course.

This is significant because the New Hampshire Supreme Court “has held that property is to be valued at its ‘best and highest use’.” State v. Town of Allenstown, 124 N.H. 487, 491 (1984) citing 590 Realty Co., Ltd. V. City of Keene, 122 N.H. 284, 285 (1982) and Blue Mountain Forest Association v. Town of Croydon, 119 N.H. 202, 203 (1979).

Further, as the Appraisal Institute notes:

In all valuation assignments, opinions of value are based on use. The highest and best use of a property to be appraised provides the foundation for a thorough investigation of the competitive position of the property in the minds of market participants. Consequently, highest and best use can be described as the foundation on which market value rests. (Emphasis added.)

See The Appraisal of Real Estate, 305 (12<sup>th</sup> ed. 2001).

The board concurs with this highest and best use determination and further notes both appraisers considered the Property to be a “special purpose” property. See Traub Appraisal, p. 12 and testimony of Lawrence Hirsh. A special purpose property is defined as a “limited market property with a unique physical design, special construction materials or a layout that restricts its utility to use for which it was built.” Appraisal Institute, The Appraisal of Real Estate, 25 (12<sup>th</sup> ed. 2001). Of the three approaches to value, the cost approach is often the approach that best values the unique rights of a special purpose property that does not often or ever sell. Id. at 354.

The Hirsh Appraisal relied solely on the income approach as the most relevant approach to value the Property. In general, the board finds the uniqueness of the Property, the lack of any historical data regarding the Property’s income and expenses and the number of assumptions Mr. Hirsh utilized in the discounted cash flow methodology he employed, makes his estimate of value by the income approach unreliable. How these factors affect the reliability of Mr. Hirsh’s market value estimate is discussed below.

Most importantly, the Property is developed in a very unique fashion compared to most golf courses, including even most private golf courses, because the course has been constructed with complete privacy as a goal. For example, most new, upscale, signature design golf courses are part of a larger development scheme and have some high-end residential housing as a component offering views all along the course. Frequently, the sale of the residential components offsets some of the construction costs of the golf course and returns, relatively quickly, some of the investors' outlay. As previously stated, the Property was specifically constructed to ensure complete privacy for the members of the GCNE. Mr. Hirsh testified golf clubs similar to the GCNE are sometimes referred to as "big boy" clubs and are usually developed in a manner more for personal or "ego" reasons rather than based on sound business or investment planning decisions and the people who join are frequently members of another golf club.

The board finds the Property, from its inception, was not developed as a for-profit investment by the founders but rather as a special purpose property for the exclusive enjoyment of its members. This finding is supported by Mr. Hirsh's testimony at the hearing that the actual construction cost to develop the Property was approximately \$18,000,000 while the information in his appraisal, at p. 74, indicates "we think \$10,000,000 is appropriate for the subject golf course cost including entrepreneurial incentive." As previously stated, based on the evidence and testimony, it is clear the development of the Property was never considered by the developers as an undertaking that would provide them a return on their investment. This is a special purpose property designed primarily for personal reasons and therefore the income approach is inapplicable.

Even if we were to accept Mr. Hirsh's reasoning that the income approach is the appropriate methodology to value the Property, his appraisal is inaccurate relative to the appeal year of 2005 because it has an effective date of April 1, 2003. The appeals before the board are for the 2005 tax year. By beginning his computations in 2003, Mr. Hirsh has used three years of lower, prestabilized income in his discounted cash flow analysis resulting in a lower estimate of value. It would have been more appropriate for Mr. Hirsh to estimate a market value as of April 1, 2005 using the income and expense projections for subsequent years. "Discounted cash flow analysis can only provide accurate results if the forecasts developed are based on accurate, reliable information." Appraisal Institute, The Appraisal of Real Estate, 570 (12<sup>th</sup> ed. 2001). Mr. Hirsh acknowledges if all his assumptions are incorporated in an income approach "a golf course operation based on these assumptions could be financially feasible." For all the reasons discussed, however, the board finds the Hirsh Appraisal's reliance on the income approach fails as it does not reflect the value of this special purpose property at its highest and best use, a private, uniquely designed, exclusive golf course, as of the date of the appeals and its assumptions were entirely speculative.

The board finds the testimony of Mr. Richard Anagnost, a real estate broker with more than 30 years experience, lends additional support for its finding that an income approach based on the GCNE's actual income and expenses would indicate it was not financially feasible for investors looking to get a return of and on their investment. Mr. Anagnost testified he and some partners attempted to purchase the Property in 2007 with the idea of adding a residential development component to the Property but were unable to complete the transaction for several reasons. The physical and legal constraints they encountered because of the way the Property was developed with a private, very unique golf course designed and constructed for personal

rather than investment reasons precluded additional or more intense residential development.

Mr. Anagnost testified that, despite their due diligence, the project was determined to not be financially feasible as it would not provide a return on their investment.

Neither party relied on the sales comparison approach to provide an estimate of the Property's market value. The board finds this decision reasonable. The principle of substitution is the basis for this approach and there is scant data available regarding the transfer of similar properties. Without adequate reliable data, it is not possible to develop a meaningful estimate of the Property's market value using the sales comparison approach.<sup>2</sup>

The board now turns to the revised assessments proposed by Greenland and Stratham. The towns' revised assessments are based on market value findings determined utilizing the cost approach. The board finds the towns' use of the cost approach is the most reasonable and appropriate valuation methodology to estimate the market value of this relatively new, special purpose property. For the reasons that follow, the board finds the towns' proposed cost approach revisions are reasonably supported. We address each town's proposed assessments separately.

### Greenland

Greenland was represented by its assessing agent Mr. Todd Haywood. As a preliminary matter, he testified that in order to determine whether the Taxpayer was entitled to any abatement it was necessary to consider and value all the Taxpayer's entire estate although the Taxpayer only appealed the assessment on the golf course. When a taxpayer, as in these appeals, owns more than one taxable property, an abatement can only be granted if that taxpayer's entire estate

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<sup>2</sup> While not analyzed, the towns did present limited information of the sale of the Sterling Country Club in Sterling, MA for \$10,000,000 on December 1, 2005. (Municipality Exhibit B-E)

within the taxing jurisdiction is shown to be disproportionately assessed even if that taxpayer elects to challenge only one property or only a portion of their taxable estate. See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). See also, Appeal of Walsh, 156 N.H. 347, 355-56 (2007).

When a taxpayer challenges an assessment on a given parcel of land, the board must consider assessments on any other of the taxpayer's properties, for a taxpayer is not entitled to an abatement on any given parcel unless the aggregate valuation placed on all of his property is unfavorably disproportionate to the assessment of property generally in the town. Bemis &c. Bag Co. v. Claremont, 98 N.H. 446, 449, 102 A.2d 512, 516 (1954). "Justice does not require the correction of errors of valuation whose joint effect is not injurious to the applicant." Amoskeag Mfg. Co. v. Manchester, 70 N.H. 200, 205, 46 A. 470, 473 (1899) (citations omitted).

This principle is based on Part I, Article 12 of the New Hampshire Constitution which requires each person who is provided the protection of government to contribute his or her share in the expense of such protection. Further, to ensure that each person's share is proportional and reasonable (Part II, Article 5) relative to market value (RSA 75:1), the taxpayer's entire estate, not just a select portion of it, must be considered in determining whether these constitutional requirements have been met. In other words, to prevail in a tax abatement appeal, a taxpayer has the burden of proving by a preponderance of the evidence that he or she is paying more than his or her proportional share of taxes. Porter v. Town of Sanbornton, 150 N.H. 363, 367 (2003).

In order to determine the proportionality of the Taxpayer's total assessment, Mr. Haywood enlisted the professional services of Mr. Traub to estimate the market value, see RSA 75:1, of the various components of the Taxpayer's estate not in current use; namely, the golf course and the residential lots.

To determine the total market value of the portion of the golf course located in Greenland, Mr. Traub utilized the cost approach to estimate the value of the 15 (effective) golf

holes located in the town (14 full holes and 2 essentially half holes, Traub Appraisal, p. 10) and then added the land value including the value of the parking lot on Arnold Palmer Way associated with the golf course clubhouse (which is in Stratham). In his appraisal, Mr. Traub estimated a \$325,000 per hole value to be applied to the 15 holes (Traub Appraisal, p. 14). To arrive at this per hole value, Mr. Traub compared the actual replacement cost new (“RCN”), based on historical construction data of GCNE, time trended to April 1, 2005 (\$420,000 per hole), with the towns’ prior RCN assessments time trended to April 1, 2005 (\$232,000 per hole). Mr. Traub testified he believed the assessors underrated the golf course when they made their initial assessments based on his review of the MVS costs (a nationally recognized cost estimating service frequently used by real estate professionals). Further, in his appraisal, he writes: “it appears the assessment under-rated the quality of the course and/or the developer/owner overpaid. Assuming both were true, the appraiser will use the average of the time adjusted actual costs and the underrated replacement cost estimate.” *Id.* As Mr. Traub noted, his \$325,000 per hole value is less than both the actual, as built, replacement cost of \$362,000 per hole and the time trended historical costs of \$420,000 per hole. After determining the RCN of the 15 holes to be \$4,875,000, he applied a 5% physical depreciation factor to reflect the fact the holes were two years old and an additional 25% functional and economic depreciation factor to recognize the overbuilt nature of the facility and the likelihood the long term membership and income will be 25% below what is necessary to support the overbuilt or superadequate course improvements. Thus, the superadequacy of the excellent quality and extensive golf course construction is reflected in both the replacement cost of \$325,000 per hole being lower than the actual or time trended reproduction costs and by the additional 25% functional depreciation applied to the

replacement cost. These adjustments resulted in a RCN less depreciation of \$3,473,000 ( $15 \times \$325,000 \times 0.95 \times 0.75 = \$3,473,000$ ) for the 15 holes located in Greenland (Traub Appraisal, p. 16).

To this value Mr. Traub added the value of the land in Greenland associated with the golf course which he estimated to be \$1,625,000. To develop his estimate, he calculated a per acre value (\$10,853) based on the Property's February 2001 purchase price (450 acres purchased for \$3,300,000, Traub Appraisal, p. 17) time trended to the effective date of these appeals of April 1, 2005. The board finds the individual per acre value is reasonable given its experience and given the Taxpayer presented no evidence of land value to the contrary. Mr. Traub then applied this value to the 149.74 acres in Greenland to arrive at his land value estimate [ $\$10,853/\text{acre} \times 149.74 \text{ acre} = \$1,625,000$  (rounded)] (Traub Appraisal, p. 17). The board finds Mr. Traub's methodology is reasonable for several reasons. The land was purchased for a special purpose: to develop a unique, private, exclusive golf course which the parties have agreed is its highest and best use. Although a significant area (145± acres) of the Property is wetlands which restrict and limit development, the acreage was used as buffers, water hazards and ponds to enhance the beauty, challenge and private nature of the course. The board did not receive any contradictory evidence to refute Mr. Traub's estimate and, therefore, we adopt his land value determination. Combining the land value with the value of the golf course improvements yields a \$5,100,000 market value of the first component of the Taxpayer's estate in Greenland (Traub Appraisal, p. 17). Next, Mr. Traub estimated the market value of the nine (9) nonappealed lots to be \$2,412,500 (Traub Appraisal, p. 18). His estimate is based on sale data of nearby properties. A vacant lot sale on Niblick Lane and two improved sales on Niblick Lane and Vardon Lane were used to estimate an unadjusted vacant lot value of \$250,000. He then applied adjustments to the

base lot value of each individual lot to account for any factors, such as proximity to the golf course or the presence of a power line easement, which affected their value. Based on the limited market data presented, we find Mr. Traub's estimate of the value of the nine (9) nonappealed lots to be reasonable. The board noted Mr. Anagnost's testimony that the nine (9) lots were overassessed, however, he did not present any documented market derived data to support his opinion and we give his testimony no weight.

Using the Traub Appraisal market value determination for the two components of the Property not in current use of \$7,512,500 ( $\$5,100,000 + \$2,412,500 = \$7,512,500$ ) and multiplying that value by the 2005 stipulated ratio of 79.1% yields a revised combined assessed value of \$5,942,400 [ $\$7,512,500 \times 0.791 = \$5,942,400$  (rounded)] for those two components. Adding the \$2,200 assessed value of the land in current use yields the total revised assessment for the Property's three components in Greenland of \$5,944,600. Subtracting the revised total assessed value from the appealed total assessed value of \$6,498,100 results in the Taxpayer being entitled to an abatement of \$553,500 for the Taxpayer's "entire estate" in Greenland.

### Stratham

Stratham was represented by its assessing agent Ms. Andrea Lewy. Stratham also employed the services of Mr. Traub to estimate the market value of the portion of the Property located in that town. As previously mentioned, the Taxpayer's estate consisted of: 1) the land and improvements associated with the golf course; and 2) the nine (9) nonappealed lots. The parties stipulated the nine (9) lots were reasonably assessed. Mr. Traub used the same methodology he employed in Greenland to estimate the market value of the portion of the Property located in Stratham (Municipality Exhibit C). He used the same per hole value and applied the same depreciation factors to estimate the RCN less depreciation of the three (3) golf

holes located in Stratham at \$695,000 [ $3 \times \$325,000 \times 0.95 \times 0.75 = \$695,000$  (rounded)]. He estimated the values of the golf course clubhouse and the metal storage building using the MVS to be \$2,420,000 and \$294,000, respectively. Combining these three values yields a total value for the improvements of \$3,409,000. To estimate the value of the Property's land in Stratham, Mr. Traub applied the same \$10,853 per acre value he used in Greenland to the 75.63 acres in Stratham resulting in a land value of \$821,000 [ $\$10,853 \times 75.63 = \$821,000$  (rounded)]. Adding the value of the land to the previously determined values of the improvements, results in a total market value finding of \$4,230,000 for the golf course improvements and the land they occupy. Multiplying this value by the 2005 stipulated ratio of 86% for Stratham yields a revised assessment of \$3,637,800. Based on the previous assessment for the golf course of \$4,382,500 and the Town's \$3,637,800 proposed revised assessment, the board finds the Taxpayer is entitled to an abatement of \$744,700 for that portion of the Property located in Stratham.

The towns also submitted an appraisal performed by Wellspeak Dugas and Kane, L.L.C. ("Wellspeak Appraisal," Municipality Exhibit B, exhibit F) which estimated the market value as of May 15, 2004 at \$12,400,000 with a liquidation value of \$10,000,000. The Wellspeak Appraisal was performed for "legal proceedings regarding a bankruptcy filing." It valued the golf course in both towns and 15 residential lots. While the board is unable to place extensive weight on the Wellspeak Appraisal because its preparer was not present to testify, we would note its value conclusions are significantly higher than what the Taxpayer now argues and more in line with the towns' revisions.

In summary, the board finds the cost approach provides the most reliable estimate of market value for this unique, special purpose property. In his cost approach, Mr. Traub was able to capture the high end quality of the golf course in his per hole value while at the same time

recognize the need to apply some depreciation to account for the age and overbuilt nature of the facility. Because the Property was developed in such a unique manner and not primarily intended to provide a return on the founders' investment, the income approach employed by Mr. Hirsh, regardless of the fact that his effective date of value was two years prior to the tax year under appeal, was speculative and could not reliably estimate this special purpose Property's market value.

If the taxes have been paid, the amount paid on the value in excess of \$5,944,600 in Greenland and \$3,637,800 in Stratham shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Until the towns undergo a general reassessment or in good faith reappraise the Property pursuant to RSA 75:8, the towns shall use the ordered assessments for subsequent years. RSA 76:17-c, I and II.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within thirty (30) days of the clerk's date below, not the date this decision is received. RSA 541:3; Tax 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; Tax 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or in law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule Tax 201.37(g). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial with a copy provided to the board in accordance with supreme court rule 10(7).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

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Michele E. LeBrun, Member

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Douglas S. Ricard, Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: John G. Cronin, Esq., Cronin & Bisson, P.C., 722 Chestnut Street, Manchester, NH 03104, counsel for the Taxpayer; Chairman, Board of Selectmen, Town of Greenland, PO Box 100, Greenland, NH 03840; Chairman, Board of Selectmen, Town of Stratham, 10 Bunker Hill Avenue, Stratham, NH 03885 and Stephen G. Traub, Property Valuation Advisors, 63 Hill Street, Newburyport, MA, 10950, representative for the Town of Stratham.

Date:

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Anne M. Stelmach, Clerk