



ASSESSMENT REVIEW BOARD
THURSDAY, MAY 21, 2015
LISBON TOWN OFFICE
5:00 P.M.

Donald Fellows 2015
Miriam Morgan-Alexander 2015
Clyde Cavender, Chair 2016
Marie Hale 2016
Richard Long 2016

1. **CALL TO ORDER.** Clyde Cavender, Assessment Review Board Chairman, called the meeting to order at 5:00 PM and waived the pledge of allegiance to the flag.
2. **ROLL CALL.** Members present were Clyde Cavender, Richard Long, Miriam Morgan Alexander, and Donald Fellows. Also present were William Van Tuinen, Contracted Assessor for Revaluation; Kathy Malloy, Town Assessor; David Silk, Taxpayer's Attorney from the law firm of Curtis Thaxter, John Hodge, Executive Director of the Brunswick Housing Authority representing the General Partner the Housing Associates of Lisbon, L.P.; Marty Szydlowski, Deputy Director of the Brunswick Housing Authority; Cito Selinger, Esq. Taxpayer's Attorney from Curtis Thaxter; David Harrigan the owner of Maine Land Appraisal Consultants, Councilor Pesce, Councilor Garrison; Steve Warren (arriving at 8:15 p.m.), totaling approximately 12 in the audience.
3. **CHAIRMAN'S REVIEW OF MEETING RULES**

Mr. Cavender explained this board was meeting tonight for the purpose of hearing a property tax abatement appeal filed by Housing Associates of Lisbon L.P. He said the procedures that the Board will follow in this hearing are as follows:

- 1) The Taxpayer will present information that it wishes the Board to consider in connection with its appeal of the Town Assessor's denial of its request for an abatement of taxes assessed for the 2014-2015 tax year.
- 2) Any witnesses presented by the Taxpayer may be questioned by the Assessor, and the Board also will have an opportunity to ask questions of the witnesses.
- 3) After the Taxpayer's presentation is complete, the Assessor will have an opportunity to present evidence and information the Assessor wants the Board to consider. The Taxpayer's attorney may ask questions of witnesses presented by the Assessor, and the Board also will have an opportunity to ask questions of the witnesses.
- 4) After the Assessor's presentation is complete, the Taxpayer will have an opportunity to present responsive information, and the Assessor will then have an opportunity to present information in response to the Taxpayer.
- 5) After all information has been presented, the record will be closed and the Board will deliberate on the issue of whether the Taxpayer is entitled to an abatement of taxes assessed for the 2014-2015 tax year. The Taxpayer and the Assessor will be permitted to be present during the Board's deliberations, if they wish, but they may not participate in that portion of the hearing, unless the Board decides to request additional information in which case both parties will have an opportunity to address the requested information.
- 6) The evidentiary part of this hearing is being recorded so that there is a record of all the information that is being presented.

Mr. Cavender said the Taxpayer filed a request for abatement of 2014-2015 taxes on November 13, 2014. After extensions by consent of the Taxpayer and the Assessor, the

Assessor denied the request for abatement on February 19, 2015. The Taxpayer submitted an abatement appeal application to the Board on March 16, 2015, and an amended application dated March 30, 2015. The Board initially scheduled a hearing on the application for April 28th, and by request of the Taxpayer, the hearing was rescheduled to this evening. As a result, of that extension, the Taxpayer has consented to extend the deadline for the Board to act on the application to June 16, 2015.

Mr. Cavender pointed out this is an administrative hearing and not a court proceeding or trial. Therefore, the formal rules of evidence will not apply. As Chairperson of the Board, I will determine the appropriateness and admissibility of evidence with advice from the Board's attorney.

Mr. Cavender questioned the Board members to see if anyone might have a relationship with the Taxpayer, or have knowledge about this case, that would prevent you from fairly and impartially hearing the facts and deciding the case based on the evidence presented at this hearing. All replied none.

At this time, Mr. Cavender requested that those in attendance for both the Taxpayer and the Assessor introduce themselves.

Mr. Stockford administered the oath and the following were duly qualified to testify Kathy Malloy, Bill Van Tuinen, David Silk, Esq., John Hodge, Cito Selinger, Esq., and David Harrigan.

4. HEARING – Case# 2015-1

Applicant: Housing Associates of Lisbon, L P

Property Location: 4 Campus Avenue, Lisbon Falls

Tax Map and Lot: Map U04 Lot 026

Deed: Book 7986 Page 234

Year of disputed assessment and requested abatement: 2014

Original assessment: \$673,000

Applicant's assessment: \$293,000

Mr. Stockford said there is a stipulation that both parties entered into before the meeting, which should be entered into the record. Mr. Silk said for the 2014 valuation, the town was using the assessment ratio of 86%. Mr. Van Tuinen said it means both of them will be talking about an appraised value and the assessed value is lower than that but rather than referring all the time to the appraised value adjusted down to the assessed value, both agree that they will talk about the assessed value and in the end should the board decided should be the appraised value if you decide that the value should be changed needs to be adjusted by that 85% ratio.

TAXPAYER'S INFORMATION

Mr. Silk said both sides agreed that exhibits submitted from the taxpayer would be labeled using the alphabet and the Assessor's exhibits will be labeled using numbers.

Mr. Silk pointed out he submitted the packet with the green cover which includes the material to be reviewed today.

Mr. Silk gave overview that included the concept of value, fair market value or just value. The valuation of your property is based on what is called just value under Maine law. Just value is defined as fair market value, which is what a willing buyer will pay to a willing seller under normal market conditions for a piece of property. If you sell your house you list it with a broker, it is marketed, and you sell it that typically would be viewed as the range of what the fair market value of the property is. When Mr. Van Tuinen mentioned something called the assessed value, in some municipalities the fair market value does not always equal the fair market value because the town is not assessing properties at full value and when Mr. Van Tuinen mentioned the 86% ratio, which means that if you sold your house for \$100,000 under normal conditions your assessment maybe \$86,000 due to the ratio of the assessed value to the market value being 86%. He said today everything will be addressed as market value and at the end of the day you deem that we have met our burden of proof and we are entitled to an abatement which you determine the amount of it will be in terms of a market value and then after the fact we can apply the assessment ratio and do the math.

Mr. Silk said the actual assessment on this property was \$673,000 and if you correlate that based on the 86% ratio the fair market value was \$811,000. We are here today to present evidence to suggest that the number 811,000 is a substantial overvaluation of the property. He said this is the number we are comparing our evidence to and it is our belief that the fair market value is \$380,000 so the variance is \$380,000 as compared to \$811,000. He explained this old high school was renovated into a beautiful building that provides affordable housing for income eligible individuals. You will hear tonight about different ways to value property like the subject property. You will hear about the income approach. Those properties like Campus Commons are bought and sold based on the income potential based on the property. Typically, when valuing the property a significant amount of weight is given to the income approach. The appraiser determines the net operating income of the property by determining the income from rents, laundry, and whatever else, which they subtracted from the expenses associated with caring for the property. Not the taxes, but the expenses associated with caring for the property and they arrive at what is called the net operating income. They take the net operating income and they take a capitalization number to it and do a multiplication and come up with an indicative value. He pointed out that you should be looking primarily at the income approach on a property like this to arrive at a value.

Mr. Silk said when you buy and sell a property and there is a mortgage on it, typically, when you sell that property you pay off that mortgage and whoever is buying it goes to the bank borrows some money and has a new mortgage placed on the property. Typically, when you do the income approach one of the things both Assessors and appraisers do is they try to figure out what the prevailing interest rate is when you borrow the money as of the date of valuation. If this was as of April 2014 and it was a commercial transaction often an appraiser would call the bank and say what are your terms for financing a shopping center or coffee shop or whatever, which is used to determine the capitalization rate for the income approach. This property has the benefit of the below market financing which means that when this property was developed there were loans made to allow this property to be built that were significantly below but you would have to pay the bank if you were to go borrow the money. If a buyer comes and buys this property as part of that fair market value test the law in Maine assumes for properties like this that the buyer will be able to assume the financing. There is an assumption that the financing runs with the land, which is significant because the majority of the financing here includes two 30 year loans, one for \$1 million and the other for \$730,000 with no payments and zero percent interest with a balloon payment either when the property is sold or at the end of the term. The assumption is that when this property is sold and you are looking at what the property is worth as of April 1, 2014, however the wrinkle is that the buyer is presumed to be able to take advantage of and be able to be assigned to him, her, or it these below market value financing terms in these two zero percent loans with balloon payments at the end of 30 years.

Mr. Silk said the cases he and Mr. Van Tuinen looked at, and we do not disagree on this, also say that in valuing the property there has to be a way to somehow value that value. If you can buy property and take advantage of the low market financing that has a value and so the disagreement in this case when you get down to it is this, the Assessor or Mr. Van Tuinen recognize these two loans having zero percent financing and a term of 30 years. They recognize that they are registered at the registry of

deeds and that they are legal obligations and so he says a buyer is going to be able to take advantage of those things but what the Assessor has also decided to do, which is the heart of why we are here, is the Assessor has said that he doesn't think that these loans have to be repaid so that if someone buys the property and assumes the debt they don't have to pay the money at the end of the term, the \$1.7 million. When Mr. Van Tuinen arrives at a value of \$811,000 he is assuming that this indebtedness does not have to be repaid. He said their appraiser based on the standards they have to go by plus based on his knowledge and experience and based on the fact that these notes are legal obligations and they have not been forgiven, and when you factor in the fact that these notes do have to be paid on a sale or at the end of the term, makes a significant difference at what you arrive at a value conclusion. He said our appraiser's evaluation is \$380,000 which is premised on the fact that if there is a buyer of this property as of April 1, 2014 and assumes this indebtedness that buyer will have to set aside money every month in order to have money at the end of the term to pay the debt. When you pay your mortgage every month you are paying your principal and interest, but these notes do not require any monthly payments because they are zero percent interest, but you still have the fact that at the end of the term you still have a big chunk of cash that has to be paid.

Mr. Silk said we think it arbitrary, with all due respect to Mr. Van Tuinen, for him to look at the note and use the zero percent interest but disregard the fact that the notes have to be paid on a sale, default, or at the end of the term, which is why we are here. Unfortunately it is my burden of proof on behalf of the taxpayer to show that Mr. Van Tuinen has acted arbitrarily, which is why I have brought people here with me to present evidence to show that as a matter of fact and law that it is arbitrary for Mr. Van Tuinen on behalf of the Assessor to reach the conclusion that these notes do not have to be repaid.

TAXPAYER WITNESS TESTIMONY & QUESTIONS

JOHN HODGE, EXECUTIVE DIRECTOR

BRUNSWICK HOUSING AUTHORITY

Mr. Silk asked Mr. Hodge to describe who he is and tell the board a little bit about the project. Mr. Hodge said he represents the Brunswick Housing Authority. Folks in town know you had an old high school that was abandoned and falling into disrepair and the town desired to see it saved. Before this, other developers had looked at it to see how to make the property work and none of those could make it work. Some felt they would have to add 40 units to the building to make sure they had the numbers or revenue necessary to support debt. About that time the program called the neighborhood stabilization program was enacted by the federal government providing funds to provide for relief to neighborhoods that were suffering from foreclosed properties and or blighted properties. Lisbon received an allocation of these neighborhood stabilization program funds and we look at them and the Brunswick Housing Authority being a quasi-municipal entity that provides low income affordable housing decided to create a non-profit entity called the Greater Brunswick Housing Corporation to act as our developer. The Brunswick Housing Authority is created by state statute that operates under a seven-member board of commissioner appointed by the governing body of the municipality in which that housing authority exists. Brunswick appoints the board and hires the executive director; I serve and report to them at their pleasure. We follow the rules and regulations of any program that we are administering. There is a lot of reporting to the federal government and in some instances like this we have funds that are promulgated through the state and sometimes we use local funds. In this case the neighborhood stabilization funds would not be sufficient to renovate that building to a point where you could start leasing it out as apartments. Because it was an historic building we secured federal and historic credits and these credits are sold for a tax liability. They paid whatever the market was at the time, 80 cents or 90 cents on the dollar, and basically pay \$900,000 for a million dollars which they get to write off their taxes, but it only cost them \$900,000 and they make 10% on their money; it is an investment. You needed this financing to renovate that building to meet housing codes that were marketable so people might want to live in it that costs a lot of money, but fortunately we had those historic credits and the neighborhood stabilization program money. The way this deal was structured is done so that the investor is losing money on the deal. If you look a businesses with depreciation they show losses, but investors do not want to show profit. They are not investing in this to make money, but to reduce their tax liability. If it showed profits they would have to account for those gains

and pay taxes on them. It is structure so that all your revenue, expenses, depreciation, shows a loss at the end of the year, which is what any business does with the IRS. The perception is that this was a gift to us and you are not going to have to pay it back. He said we don't know what is going to happen in 30 years, but what we do know is that legally the neighborhood stabilization monies that came to us. The only way to structure this is that they are loans/notes that are due and payable on the Brunswick Housing Authorities books as a receivable, on the Greater Brunswick Housing Corporation books as a payable because they are the General Partner and the state historic credits are on the GBHC's books.

Mr. Silk asked if the renovations were driven by the economics of the project or the department of the interior through the tax credit program. Mr. Hodge said both. Certain renovations need to be accomplished, like the elevator and converting classroom space into inhabitable living space. However a lot of the expenses that were contributed to the project, and we do not have the exact number but it is around \$3 million to build 12 apartments as a private developer you would not do that. No one would invest \$3 million on a property that only generate about \$85,000 a year in revenue. He explained there are two public benefits here, one the affordable housing units and to save a historic building. We report to who is giving us the money and in this case it was the IRS through the issuance of historic tax credits and the interior department that says okay you are going to get this money to do a historic renovation, but you have to follow certain rules so a lot of things had to be done to that building that you normally would not do but we wanted to make that building look the best we could like the day it opened in 1903 which makes is a very special project. The windows are original and had to be taken out re-scraped and put back in with no efficiency there whatsoever so an interior storm window was created. When the historic compliance period ends the windows in the front of that building will be replaced.

Mr. Hodge said there are use agreements in place that require us to house low-income families that can't exceed a certain percentage of the median income. That is typically around 60% of the area median income. Under the state historic credit rules if you designate units as low income you can get an extra 5% bump so in the end we got 25% credits it that property. It is use restricted and the apartment cannot be rented to just anyone. Because there are section 8 vouchers in there we have to show the federal government that these people are living there and are in fact income eligible. These restrictions are also recorded at the registry of deeds and whoever buys the building will have to live with those terms. He said he could not sell them to a private developer to turn around and rent them as high-end units.

CITO SELINGER, ESQUIRE FROM CURTIS THAXTER, LLC

Mr. Silk called another witness forward. Cito Selinger, an attorney with Curtis Thaxter and practicing for about 30 years with 25 of those years in affordable housing and community development. The central part of his practice involves projects like this one that deals with financing through various different tax credits including both state and federal historic credits. He assisted Mr. Hodge's organization in closing on the financing, negotiating its terms, and doing all the things a real estate lawyer does. The Housing Associates of Lisbon, LP is comprised of limited partners and general partners. The General Partner is an affiliate of the Greater Brunswick Housing Corporation and the limited partner is a bank. Their certificate of limited partnership is filed with the Secretary of State and then there is the partnership agreement that sets forth the basic agreement between the partners that is typically not recorded. ***Exhibit A is the First Amended and Restated Limited Partnership Agreement dated July 2011.*** He pointed out Exhibit A3-1 located in the last quarter inch of the document details the loans the partnership took out. The final amount of those mortgage-deferred loans is \$730,000 and the amount of the BHA third mortgage loan is \$1,415,303, which are also in the appraisal report. Copies of the Promissory Notes are in the appraisal and notes were secured by mortgages on the property that give the mortgage holder certain foreclosure rights in the event of default. The loans were made by the Brunswick Housing Authority to the partnership Housing Association of Lisbon, LP. Initial closing took place on July 19, 2011 and 12 or 13 months after a permanent closing would have taken place. There is no provision in those documents that says they may be forgiven. ***Exhibit B is the Declaration of Covenants*** and was recorded in the registry of deeds. The Grantor or developer is the Housing Associates of Lisbon, LP and the receiving party is

the Maine Department of Economic and Community Development and briefly these covenants run with the land, restrict the property, which survive the foreclosure of mortgages on the property, and obligate the developer (HAL, LP) to keep 7 out of the 12 units affordable to folk whose income do not exceed 120% of the area median income.

DAVID HARRIGAN, MAINELAND APPRAISAL CONSULTANTS

David Harrigan said he is the owner of Maineland Appraisal Consultants and a certified general appraiser in the State of Maine. He has been appraising since the 1984. Mr. Silk pointed out the appraisal is located in the green binder. Mr. Harrigan said they value real estate. They are a third party independent appraiser and have no stake in the game unlike some people who are involved in the transaction. They refer to brokers, as being tied to the transaction, but their appraisal is completely independent. They are regulated by the State licensing and certification laws. He explained that he belongs to uniform standards of professional appraisal practice (USPAP) and every appraiser must follow those steps.

Mr. Harrigan explained that Mr. Silk engaged Maineland Appraisal Consultants on behalf of their client, John Hodge, to describe the purpose and intended use and intended users of the appraisal. With that in mind, we stipulated to the agreement that the property owner and the Assessor had come to terms with many of the elements regarding the income approach. Only so much rent can flow to this property because of the restrictions. That would limit the income. The expenses, they also stipulated that they were reasonable upon our own review albeit rather cursory we found it to be consistent with the property type. So from there, with that agreement to some extent they were asked to value the property knowing the rest of the purpose and conditions in terms of the appraisal assignment.

Mr. Silk asked Mr. Harrigan to describe for the Appeals Board the concept of the willing buyer and willing seller as of a certain date and what does that value represent. Mr. Harrigan said every value has an effective date and ours is dated April 1, 2014 so we were looking at that specific point in time. A value can change over a course of a holding period. Common nomenclature is market value, but because of the intended use and user they used just value. There are a lot of similarities to both but in this case there is just value, although there are a lot of similarities to both of those terms, there are definitions that vary somewhat, but they assume a sales transaction takes place on that effective date. He said you can't just have value without a willing buyer and a willing seller; there has to be a transaction involved.

Mr. Silk said in your appraisal Mr. Harrigan you referred to the covenants that went along with the land that limits the ability of the property owner to rent the apartments above a certain rate. He asked if any buyer would succeed and be bound by those covenants. Mr. Harrigan said absolutely.

Mr. Silk asked Mr. Harrigan if he made the assumption that any buyer as of April 1, 2014 would not go out and finance the property, but would be eligible and assume the terms of the two loans previously discussed. Mr. Harrigan said absolutely.

Mr. Silk said you would not have to go out to a bank and find out what the interest rates were as of the date of this hypothetical sale. Mr. Harrigan said that was stipulated as part of the scope of the appraisal in this instance, because the below market rate financing was considered within the bounds of this assessment.

Mr. Silk said so when you were valuing this property you were valuing it with the restrictions on use and with the benefit of the below market financing whatever that benefit may be. Mr. Harrigan said yes.

Mr. Silk said you ultimately reached a fair market value or conclusion that the assessment as of April 1, 2014 would be \$380,000. Mr. Harrigan said yes.

Mr. Silk asked Mr. Harrigan to describe the differences between the way the Assessor and he developed the value. He said it comes down to those two below market rate loans and whether or not that zero percent financing loan(s) needs to be considered or not considered at all. Mr. Silk pointed out the addendum to the appraisal that includes information about these two notes, loans, and

mortgages that insures those loans. He mentioned there is a third loan with Bath Savings Bank that was factored in as well.

Mr. Silk asked Mr. Harrigan if these mortgages and records were registered at the registry of deeds. Mr. Harrigan said yes.

Mr. Silk asked if there were any notations in these records to suggest that these loans were somehow not legally enforceable and would not have to be repaid at the end of their term. Mr. Harrigan said there were no stipulations what so ever in those documents that rendered that type of allowance so with that in mind we have to honor those documents. Mr. Silk pointed out the zero percent financing and repayment. Mr. Harrigan said yes.

Mr. Silk asked Mr. Harrigan to explain, with those loans in mind, there wasn't any dispute about the rental income and not much if any on the terms of the expenses associated with the property and that the real issue that brought him to the table so to speak was how to value the impact of the below market financing that would be assumable by the buyer as of April 1, 2014. Mr. Harrigan explained they recognized all of those elements in the appraisal found on pages 18 through 19; in other words the "heart of this analysis". He said they used the same basic technique as the Assessor did, however their input assumptions differ because they recognize the debt that goes with the zero percent financing must be accounted for. He said they built that into their capitalization model and they accounted for that through the course of a series of mathematical applications. He said the end result is that our capitalization rate, and that is the relationship between the net income to the property and its overall value; it's a simple ratio. He said if we take NOI and divide it by the cap rate we get a value indicator so our capitalization rate is higher than the Assessors and its because of those two below market rate loans that still has debt outstanding to them. They still have to be repaid even though they have a zero percent rate. He said there is a process whereby we developed a mortgage constant and for each loan and then through that we did a weighted average because each loan represents a different amount to the overall debt and then through that course of application we come up with a capitalization rate. The Assessor used the same procedure but came up with a different rate. He said we differ with the individual steps.

Mr. Harrigan pointed out the Table 3 in the green binder on pages 18 that effectively lists the Assessor's information on each of those loans and how he mathematically calculates the weighted average down to 0.208%, which is the beginning of the capitalization rate that he is building up. He mentioned in the paragraph below that the Assessor recognizes that rate to be abnormally low. He said in the open market we would never really see that type of capitalization rate. He pointed out financing would be driving that number. He said the Assessor recognizes that the 0.208% is below standard and would appear to just acknowledge it and then round up to .5%. He mentioned that quite honestly that rounding up benefits the taxpayer but it seemed a little odd to just arbitrarily do this.

He pointed out on the top of page 19 the table shows you the details about these loans, balance, rate, and terms. He mentioned the few paragraphs below explained how they analyzed each of those loans. Bath Savings loan is traditional with an interest rate and payments are being made so at the end of the term it will have been completely paid. For the other two loans, he explained, they tried to account for that zero percent financing. He said just because you have zero percent financing doesn't mean it's zero. An investor would have to account for that variance. He said considered a safe rate and a build up method to account for the long-term payment to take care of the debt at the end of the full term so when they blend all of those together we end up with a preliminary capitalization rate of .04044% which you will see three quarter of the way down the table. He continued then the final table you see on the same page is the Band of Investment Summary and the first thing you see there is equity. He said following across the line you see 0.9% and he pointed out there is always equity in a property of this nature. This was stipulated with the assignment as well. He mentioned this is the same ratio the Assessor used and consistent with that market segment. He explained the debt part is where we change; there is 90% debt, which is multiplied times the .04044% rate to get the weighted rate that comes to 4.54%. He said finally on page 20 they went through another series because we did and do not know what the proper taxes are we never deducted the tax amount as an expense to arrive at our NOI. The Assessor used the same methodology so to the cap rate we developed we added to the load to the tax rate since we know what the tax rate is (\$23.00 per thousand) and the ratio at that time (85%)

to calculate the impact, which comes out to be 1.96%. He said we add those two factors together (4.54% plus 1.96%) to get our overall loaded cap rate of 6.5%. He explained they took the same NOI the Assessor developed, \$24,370 [\$24,730], which we divide by that cap rate to get our indicated value of \$380,000. The big difference is whether or not the zero percent loans should be counted as zero and or do they have an element that needs to be account for.

Mr. Silk asked Mr. Harrigan to explain the element of payment of principle at the end of the term. Mr. Harrigan said absolutely, built into the cap rate itself. He said if a buyer were to approach the Housing Authority on April 1 and they were going to sell with the financing, they'd get the zero percent financing and also the debt, which is still outstanding. He explained that his process differed slightly from the Assessor in that we included that obligation. He said he's read numerous appraisers that agree with his method.

Mr. Silk asked Mr. Harrigan if this approach was fair when valuing this property. Mr. Harrigan said several articles in the appraisal journals indicate that if you are going to appraise with the financing in place that this is the way to do it so that is how we developed it. Mr. Silk asked for a copy of the article in the Appraisal Journal. ***Exhibit C was given to the board members and filed with the Clerk.*** Mr. Harrigan said this article deals with the below market rate and how to calculate the financing application that is being discussed tonight. The Appraisal Institute encourages articles like these and at the time this was written for the International Association of Assessing Officers. This is the case used on a universal level. It boils down to property rights so if you can't collect \$2,000 per month because of the restrictions, than you can't count that income and if you have to have a certain amount of expenses because your debt obligations say you have to, then it's included with the restrictions and you have to abide by those; that's falls to your property rights. He explained when you transfer this property with this form of financing in place that's a property right. At the time of the transfer you end up with the financing, the good which is the zero percent financing and the bad which is the debt at the end.

Mr. Silk said on page 17 in the appraisal references information. Mr. Harrigan said this is the Assessors summary that we covered in detail on pages 18, 19, and 20.

Mr. Silk pointed out in the top box the Assessor covered gross potential rent, vacancy, miscellaneous income etc totaling \$55,000. Mr. Silk confirmed at the end of the day with the rent restriction there were no issues between the Assessor's number and Mr. Harrigan's number. Mr. Harrigan said that's correct. Mr. Silk said you end up with an NOI of roughly \$24,730 and that's the NOI you used, is that correct Mr. Harrigan? Mr. Harrigan said yes. Mr. Silk said so the difference again comes down to this capitalization rate included property taxes, correct? Mr. Harrigan said correct. Mr. Silk pointed out the Assessor used a capitalization rate of 3.05% and Mr. Harrigan used 4.54%, correct? Mr. Harrigan said well, with the load of the tax rate on top of that. Mr. Silk said the Assessor's rate included that as well. Mr. Harrigan said okay. Mr. Silk said to make this clear the difference between the Assessor's rate and your rate Mr. Harrigan having reviewed his material, is that you accounted for the fact that these loans need to be repaid and he did not. Mr. Harrigan said that is correct; the only other math item that differed was in the bottom box on page 17 the Assessor uses an effective tax rate of 1.7% and you will see that we tabulated the same adjustment on page 20 by taking the \$23.00 of assessed value per thousand and multiplying it times the assessment ratio and we got 1.96% versus his 1.7% so that difference makes up some of the calculations, but the significant part is the below market financing.

Mr. Harrigan reported his employee Dirk Thomas authored most of this report and he co-signed it with him. He explained it's a USPAP regulation that if he reviews it he has to take the responsibility for it and has to co-sign it.

MARTY SZYDLOWSKI, DEPUTY DIRECTOR
BRUNSWICK HOUSING AUTHORITY

Marty Szydlowski, Deputy Director of the Brunswick Housing Authority said he was present as the Finance Director and he works with auditors on our audits for our various entities. Mr. Silk asked Mr.

Szydlowski to tell him a little bit about the housing authority that John mentioned that is a non-profit quasi-municipal corporation created by statute. He asked if it was audited every year. Mr. Szydlowski replied yes, the current auditing firm is Ouellette & Associates out of Lewiston and they perform audits under the generally accepted auditing standards and governmental auditing standard. He said they audit our Federal programs and the Greater Brunswick Housing Corporation, which is included in the umbrella of the overall audit for the housing authority.

Mr. Silk presented *Exhibit D the Brunswick Housing Authority Financial Statement and Supplementary information (audit) for the years ended June 30, 2014 and 2013* to the board and filed a copy with the clerk. They've included the notes to the financial statements. Mr. Szydlowski explained that they provided the notes to the financial statements. He pointed out that Note 3 addresses the receivables, which are the notes that the Housing Associates of Lisbon, LP has as liability on its books, but also the Brunswick Housing Authority does report those balances that have been discussed (\$1,415,303 and \$730,000/promissory notes), which are generally stated in the notes with the terms of their agreements. Mr. Silk said are these the notes that were prepared by the accounting firm that reviewed by the financial records of the Brunswick Housing Authority. Mr. Szydlowski said yes. Mr. Silk said these are public documents created by an independent auditing firm. Mr. Szydlowski said yes. Mr. Silk said that independent auditing firm is noting these notes as notes. He said there is nothing in these notes to suggest that there is no obligation to have to repay them. Mr. Szydlowski said correct.

Mr. Silk presented *Exhibit E the Housing Associates of Lisbon, LP Financial Statements Dated December 31, 2012* to the board and filed a copy with the clerk. Mr. Szydlowski explained this is the audit cover page as performed on the books of the Housing Associates of Lisbon, LP as of December 31, 2012. He said because it is a limited partnership it is an entity separate from the Brunswick Housing Authority; it has a different fiscal year end. It's a calendar year cycle as opposed to the Brunswick Housing Authority that has a July 1 to June 30 fiscal year cycle so at the end of the first year of operations we were required to have an audit and we went through and retained Otis Atwood out of Portland who has a lot of experience with tax credit properties and housing authorities. He said they performed their audit of which there was an unqualified opinion on these statements and if you look on page 4 titled Exhibit A on the Housing Associates of Lisbon LP Balance Sheet there is a line under Long-Term Liabilities there is a Mortgage Note Payable Note 2 for \$2,249,868 that includes the \$2,145,303 or the two notes in question. He said again, the \$730,000 and the \$1,415,303. Mr. Silk said we know that because if you turn to the last page there is a Note 2, again, prepared by the accounting firm as part of their public audit. Mr. Silk pointed out this audit is given to other entities to ensure the tax credit deals are done in compliance with the applicable laws and regulations. Mr. Szydlowski said that's correct.

Mr. Silk mentioned Note 2 describes the indebtedness and terms and whom these notes are owed to. Mr. Szydlowski said that's correct. Mr. Silk asked Mr. Szydlowski if there were any indications as to whether these notes were forgiven or if the promisor is not obligated to pay these notes. Mr. Szydlowski said no.

Mr. Silk presented *Exhibit F the Housing Associates of Lisbon, LP Campus Commons Balance Sheet* to the board and filed a copy with the clerk. Mr. Szydlowski said it also shows the secondary statement that shows the annual budget and the actual revenue due and expense, which is internally prepared. He said it is not audited and we are not required at this point to have an annual audit of our financial statements. He pointed out they do provide the investor quarterly a copy of these reports and this particular document is reviewed monthly by the Brunswick Housing Authority's board. It is subject to scrutiny. He pointed out on page 2 where it says on the top Liabilities & Partner's Equity and then look under the Long-term Liability section (line 59) there are two columns (2014 & 2013) and you will see there are Notes payable – BHA (Brunswick Housing Authority) Local Programs totaling \$2,174,868 represents three items including the two in question. He said if you go back to the Brunswick Housing Authority Exhibit D and look at Note 3 again you see that there is a promissory note of \$730,000 and a second promissory note of \$1,415,303, and not really the subject of tonight's decision, but there was an unsecured advance by the Brunswick Housing Authority at the end of this transaction to get the development budget to balance of \$29,565 and so that's how you get these amounts to reconcile.

Mr. Silk said at this point that's all he had to present to the board, indicating that he would like an opportunity to ask questions after the other side has presented their case.

QUESTIONS FROM ASSESSOR

Mr. Van Tuinen said he would like to ask some questions. He said Mr. Szydlowski one of the things you didn't review that was provided, as an exhibit is the third page of what is Exhibit F. He said he was wondering if there is a line on that budget for an actual expense for 2014 that represents a payment to a fund to secure the future repayment obligations for the two mortgages of the Brunswick Housing Authority. Mr. Szydlowski said there is not.

Mr. Van Tuinen said he had questions for Mr. Selinger. He said you are familiar with the partnership agreement and you were instrumental in putting together the partnership. Mr. Selinger said yes. Mr. Van Tuinen said towards the end of the partnership agreement it includes some projected cash flows, a budget of how the project is going to operate for the first five years. He asked if there were any indications that those projected cash flows of money being put aside for the payment of the mortgage obligations to Brunswick Housing Authority. Mr. Selinger said I am assuming you are referring to the statement near the very end that is entitled Operating Cash Flow. Mr. Van Tuinen said yes. Mr. Selinger said there is no such line item in the expense side of that budget.

Mr. Van Tuinen said another provision of the partnership agreement, of which he has a copy he believed to be the same as this, indicates there is another provision and that is for a buyout. He said this buyout provision mentions the limited partner agrees that it can be bought out by the general partner after a certain period of time, can you explain this. Mr. Selinger explained after the historic tax credit holding period has expired, after the six years is up, because during the six years you cannot sell the property, there is what is called the put option, which says the investor has the right to ask the general partner to buy it out. The general partner does not have the right to demand that it be bought out. He said this is something that the investor can exercise on its own.

Mr. Van Tuinen said in the partnership, what are the percentages of ownership; how much of the ownership with the Brunswick Housing Authority or Corporation and how much is with Bath Savings. Mr. Selinger said that information is found in Exhibit A towards the back after 77+ titled at the bottom A-1 and the general partner has .01% and the investment limited partner has 99.99% of the partnership. Mr. Van Tuinen said that does not include any contribution from the mortgages, just the equity contributed by each partner. Mr. Selinger said correct.

Mr. Van Tuinen asked Mr. Selinger to read a statement on page 36 under paragraph (p) and explain how that enters into the partnership agreement. Mr. Selinger read paragraph (p) which says The General Partner reasonably believes that the fair market value of the Project upon completion thereof will exceed the total amount of indebtedness including accrued interest thereon, encumbering the Project and is expected to do so throughout the term of such indebtedness; the Loans each have a fixed maturity date which is prior to the end of the anticipated economic life of the Project. He explained this to be a common representation that investors want to see in these partnership agreements, because they want to know that the debt is true debt and not a sham transaction. He explained at the time there was a 2011 appraisal that was done that in fact demonstrated that when you took into account all of the value items at completion of the project that the total of all the value items did indeed exceed the amount of the debt.

Mr. Van Tuinen said going back to the put provision, is it common in putting these kinds of partnerships together that the limited partner does exercise the option to get out of the partnership after the tax credits are exhausted. Mr. Selinger said this is relatively common, yes, although not universal. He said certainly the developer party hopes that the limited partner will exercise the put right.

Mr. Van Tuinen said he would like to ask Mr. Hodge a question. He said, John, in our discussions that we had back in 2013 perhaps or early 2014, it was his recollection that Mr. Hodge expressed that the mortgages probably would not be repaid, that they were to secure the restrictions placed on the property not to be converted to something else with what he recalled being a grant to the Brunswick Housing Authority of about \$1,500,000 from Department of Economic & Community Development

(DECD). He asked, do you see as the Manager of the corporation that these will have to be repaid. Mr. Hodge said he recalled having a conversation with Mr. Van Tuinen about this and how they worked; what I exactly said I don't recall, but it could have been along those lines but that was based on my limited knowledge and limited understanding of how these transactions worked because I had never done one. He said he did not really understand the legal obligations of these notes and loans and how they are set up. He said going off from his limited understanding that in order to make these deals work there are funds that come in and in order to protect those funds they do not write it as a gift there are certain obligations and expectations of us as the developer and those last a certain amount of time, which is why they put the mortgages in place to make sure that they hold us to those obligations. He said so what is going to happen in 30 years, as a developer I will tell you what I hope happens, and that is that somehow we buy the investor out and that it does not cost us \$1,500,000 because we will not have the money. He said he didn't know how that is going to be, because he didn't know what would happen when these things expired and what is expected of them since under these use agreements there is an expectation that they continue to operate these as low income. He explained they will not want to see them flip it and make a profit. He said, again, that is why we have lawyers and we paid them to structure this deal to make sure that it would go forward and that's how they structure these deals so they do go forward. He said do I want in 30 years when the notes are due to pay \$2.1 million dollars, no, I do not. He said but under the legal terms as these are currently recorded in the registry of deeds as they are listed on our financial statements I have an obligation to pay these and that's why the appraiser uses these in his method to appraise the property because he is bound by certain rules and laws to look at what the legal documents state. He said, I am trying to answer you honestly Bill, I don't know what I am to expect; do I hope, yeah, I hope I don't have to pay it back.

Mr. Van Tuinen said with the structure of this organization that owns and manages what a lot of people refer to as Campus Commons, with the put provision in the partnership agreement which often times results in the limited partner exercising the put and getting out of the deal there is a pretty substantial likelihood is there not, that you would have Brunswick Housing Authority being obligated to repay the mortgage to Brunswick Housing Authority on money that is granted from DECD and how would that be any different from me having a mortgage to myself.

Mr. Selinger addressed the question and said the actual put itself is not an obligation or a right to purchase the property; it is a right if exercised to purchase a partnership interest. The actual real estate interest continues to be owned by the partnership so there is not a transfer of real estate and were there to be a transfer of real estate of course the debt would then become due.

Mr. Van Tuinen restated his question, if the partnership Housing Associates of Lisbon, LP is owned entirely by the Brunswick Housing Authority or Brunswick Housing Corporation, although a different corporate name it is owned by the same entity as the source of the loan.

Mr. Selinger said that is not correct, first off they are different entities. The Brunswick Housing Authority as has been noted a quasi-public organization and the Greater Brunswick Housing Corporation is a private non-profit corporation and the example you have given of the exercise of the put right is simply transfer of a partnership interest and we as lawyers treat that very differently from a real estate transaction. He said one of the questions is what becomes of the partnership and what becomes of the debt. As a quasi-public organization the Brunswick Housing Authority can't tear up this paper, they have certain obligations, and they have got it reported to HUD and others in their financial statements and there would be questions raised if they simply forgave it.

Mr. Van Tuinen said he had no further questions.

After further questions from Mr. Silk and comments by witnesses, Mr. Fellows said if the Housing Associates of Lisbon was setting aside that money in a sinking fund that it would be roughly \$82,000 per year, which would make them in the negative on NOI, which makes taxes all gone.

The Chairman called for a ten minutes recess at 7:10 PM. The Chairman called the meeting back to order at 7:30 PM.

Mr. Van Tuinen handed, *Exhibit 0 a Memo dated May 21, 2015*, to the board and placed on file a copy with the clerk. He said this will cover his view of the point raised. He said whenever you start an abatement appeal it is reasonable to discuss the standard of review and the burden of proof. Most of that is understood by court cases that interpret the statutes and apply it case by case to appeals. The term that one sees is that the burden is on the taxpayer to prove that the assessed valuation is manifestly wrong. He said the way to prove that is to provide credible information about what the valuation should be, but the burden of proof is clearly on the taxpayer to prove that the assessed valuation is manifestly wrong. One way to dispute the valuation is to prove it is fraudulent or illegal, but that doesn't fit in this case. He said that would have to mean that the Assessor developed a fraudulent estimate of value for property tax purposes. There is a basis for requesting an abatement on the property being unjustly discriminated against. That means that a different set of standards were used and that is not the case here either. He referred to the top of page 2 which explains the three reasons. Number 1 being the judgment of the Assessor was irrational or so unreasonable in light of the circumstances that the property was substantially overvalued and an injustice resulted and it's that overvaluation issue that criteria that is the basis of this appeal.

Mr. Van Tuinen said the opinion of the taxpayer is that the assessed valuation that I helped develop for the town last year is too high and that's its overvalued and that an injustice has occurred. He pointed out on page 3 there is a paragraph about the primary issue in this valuation, which is that it's overvalued.

Mr. Van Tuinen said he wanted to discuss a little bit the background and characteristics of the property. The subject property is a 12-unit apartment building resulting from the extensive remodeling of an old brick school building. Due to the way it was constructed certain components of this structure are old; certainly the framing, foundation, and exterior walls are old but many other components of the structure are brand new (heating system, plumbing, and most of the interior wall partitions because they were reconfigured into apartments rather than into classrooms, cabinetry, elevator, some of the windows and many of the finished floors are brand new). The wiring and heating system in the building are new. He said it is hard not to be impressed that it is brand new and reasonably state of the art and in the case of the heating system, very state of the art. The total reported cost of the development project was approximately \$3.1 million dollars and I have that summarized on *Exhibit 1 Housing Associates of Lisbon, LP's Historic Tax Certification dated November 30, 2012* which was handed to the board and a copy filed with the clerk. The qualified cost for the tax credits were a little over \$2.7 million dollars. He said in looking over the project costs, in his opinion, \$2.6 million dollars was real hard construction costs. These were not for a study or feasibility analysis, not a soft cost, but a hard type of construction cost. The redevelopment of the property was done in a way to qualify for historic tax credits. They were part of the funding of the project and John Hodge talked a little about that. The federal tax credits are usually 20% of the eligible projects costs and they can be used within a five-year period of time and typically the developer sells the tax credits to a for-profit business that will benefit from the tax credits. These are a deduction from your taxes. If you have a \$500,000 tax credit and you owe a million dollars in taxes your tax is reduced to \$500,000; so it becomes a credit against the tax that you owe. The taxpayer also presented concluded that often times the limited partner wants to lose money, depreciation, to not show a profit to use that as a way of lowering income tax liability as well. One part of the project's financing is federal tax credits. Another part of the project is State of Maine historic tax credits and generally that with State of Maine historic tax credits are often used by the non-profit partner as direct payments from the government as capital paid to the general partner because they have no tax liability and the state government will pay them the cash for the tax credit rather than using it as an offset income tax liability. He explained that it is not uncommon for that anticipated income from the state historic tax credits to be used as an income source to get a loan with a bank or another financial institution with the agreement that it is going to be paid back by the historic income tax credits that we get paid over the next five or so years.

Mr. Van Tuinen said in addition to the tax credits, this developer of this project was assisted by a grant from the State of Maine Economic & Community Development organization the grant was \$1,529,000. He presented, *Exhibit 2 the Declaration of Covenants*, to the board, filed a copy with the clerk, and pointed out this is a duplicate the taxpayer presented that places restrictions on the property. The declaration states the restrictions are in place for 20 years on page 1 number 3 and is clearly

described in this document in paragraph 1 under “Witneseth” as being a grant to the Brunswick Housing Authority for a bit over \$1.5 million. He pointed out the most notable restriction to be on page 2 in subparagraph b where the developer acknowledges and represents to DECD that the Development consists of 12-units and that throughout the term of this declaration a least 7 of the residential units in the development shall be occupied by individuals or families whose income is at or below 120% of area median income. He said this illustrates that a substantial amount of money (\$1.5 million dollars) was given as a grant to the housing authority, that in exchange of that grant the Housing Authority and Associates of Lisbon had to agree to these restrictions, and that property needed to be operated as an affordable housing as described in subparagraph b page 2. That housing project also operated as Section-8 Housing and John Hodge talked a little bit about that.

Mr. Van Tuinen said there is another set of restrictions or covenants found in ***Exhibit 3 titled Maine State Tax Credit For Rehabilitation of Historic Structures Declaration of Covenants, Conditions and Restrictions*** he presented to the board and filed a copy with the clerk. He said this exhibit he stated when the discussion was going on earlier that he had and would explain the second declaration of Covenants Conditions and Restrictions. He pointed out this exhibit is a recorded document at the registry of deeds. It’s a declaration between the Housing Associates of Lisbon and the Maine State Housing Authority (MSHA), imposing restrictions on the Housing Associates of Lisbon, LP by the Maine State Housing Authority and this outlines the state historic tax credits. He said in the paragraph beginning in the middle of the page with the third Whereas that states Whereas the Developer is allowed a state tax credit equal to 25% of qualified rehabilitation expenditures on a certified historic structure located in Maine, plus an additional 5% of qualified rehabilitation expenditures of a certified state tax historic for a new affordable housing project and it refers to that as an incremental tax credit of 5%. He said the total tax credit for the state historic tax credits is 30% when you combine the basic historic tax credit and the affordable housing project incentive of 5%. These restrictions are in place, as found in the last Whereas on page 1, for 30 years. He explained these restrictions are more substantial and last for a longer period of time then the restrictions by DECD. He pointed out on page 2 under 4 it states that a number of the projects need to be occupied by persons with income at or below 60% of area median income. He said he believed that the provision under the DECD was only 120%. So in exchange for the historic tax credits from the state and in exchange for the grant from DECD has to operate to provide affordable housing with recorded restrictions how the property can be used for in the case of the Maine State Housing Authority document for 30 years. It is used as Section-8 Housing as Mr. Hodge indicated that has some contractual restrictions as well. In Exhibit 3 there is reference to it being subject to housing assistance payments under a contract for Section-8 Housing.

Mr. Van Tuinen said the basic situation with the property that in an old school building recently renovated and converted into a 12-unit apartment building at a hard cost well in excess of \$2 million dollars. The building was construction with assistance of a grant from Maine DECD for about \$1.5 million dollars. The project was financed with assistance from both Federal and State Historic Tax Credits. The state tax credits were augmented by an additional 5% for the project being affordable housing and the project is subject to restrictions from DECD and from Maine State Housing Authority. He said the Maine State Housing Authorities are the more cumbersome and last for 30 years and that 8 of the 12-units have to be occupied by tenants with income at or below 60% of the area median income.

Mr. Van Tuinen said on page 5 he discussed what guidance there is for establishing the assessed valuation for a property like this. There is nothing specific in the statutes itself that says how you value this kind of property. He said he had not been able to find any kind of exact fit from court decisions or State Board of Property Tax Review decisions that give us specific guidance or relevance to this kind of property. He presented, ***Exhibit 4 a decision involving the City of Brewer and the Ellen M Leach Memorial Home***, to the board and filed a copy with the clerk. He explained the State Board of Property Tax Review and the court decisions generally say that the Assessor needs to consider the advantages and disadvantages of the housing assistance program so the restrictions placed on the property in exchange for the historic tax credits from the state and in exchange for the \$1.5 million dollar grant from DECD are very relevant to the appraisal of the property. All the decisions, including this Leach decision, indicate that you have to consider these.

Mr. Van Tuinen explained the Kittery decision and pointed out this subject property has restrictions on it and benefits from tax credits, but those tax credits were historic tax credits. There are a substantial number of properties in the State of Maine that have been developed as low income housing that use what are called low income housing tax credits and those last for a long time period. Those are often implemented not unlike the Housing Associates of Lewiston and often involves a somewhat philanthropic organization who is the general partner and a for profit corporation that wants to benefit from the tax credits. In the Leach decision it was determined that at least on a low income tax credit property that it was very reasonable, and in fact the previous Wood/Kittery decision, the Assessor had to consider the tax credits and restrictions. Buried in the Leach decision there is reference to the low income tax credits being transferable. He said he understood that historic tax credits are not transferrable. He said he did not take the historic tax credits into consideration. He said in the case of the low income tax credits the presidential decision by the State Board of Property Tax Review would be to take them into consideration but where I believe that the tax credits are not transferrable and I did not consider the tax credits which provide a substantial amount of capital to help finance the project and they provide a substantial amount of income by way of avoided income tax to the for-profit partner in the partnership like this one. He said I think that Mr. Silk has done a good job pointing out the real difference in the appraised value that the taxpayer presents as being the just value or fair market value of the property and the value that the Assessor presents.

Mr. Van Tuinen said the big difference is the treatment of the non-interest bearing loans and how they should be utilized to develop the capitalization rate. Our disagreement is on how to develop the capitalization rate on a property like this that has a non-interest loan. He said now I am going to correct Mr. Harrigan, at one point in his opening he said you have to multiply something by the capitalization rate and that was just an easy mistake. The approach that one uses in valuing an income property is presented on page 6 in his memo. This is how he valued the property in 2014. You start out looking at the gross potential rent if every apartment is rented all of the time. Usually there is a loss because of an apartment is vacant once in a while and some people do not pay their rent and you have a collection loss. He said he made a deduction for vacancy and collection of 5%. He added some miscellaneous income which primarily would be laundry income, bringing the total effective gross income to \$79,730. He estimated the stabilized expenses excluding property taxes were \$55,000. He said as Mr. Harrigan said earlier that when you are doing an appraisal for property tax purposes the property taxes hinge on the valuation that you develop so generally we do not include property taxes as an expense on an income approach for tax assessment purposes. He explained he then divided the net operating income and deducted the expenses of \$55,000 and divided the net operating income of just under 25,000 by his capitalization rate which included an allowance for property taxes at 1.7%. He indicated that it was very possible that the difference between the tax component that he utilized and the tax component that was utilized by Maineland Appraisal was that their appraisal is a retrospective appraisal where the tax rate was known what it was for that particular tax year whereas Mr. Van Tuinen's was made before the tax commitment and was just an estimate of what the tax would be in the 2014-2015 fiscal year. He said dividing the net operating income by the capitalization rate of 3.05% results in a value of \$811,000 with a little bit of rounding. He pointed out that this was reduced by an assessment ratio to about \$673,000. He said if you go to page 7 although already covered some during the taxpayer's presentation, but this is the Assessor's calculation. He reported the difference is that he did not account for the repayment of any principle in his capitalization rate. He said he did not use a mortgage constant that represented both payment of interest and principle on the major amount of debt that was related to the interest free mortgage. That's the big difference and why the Assessor's value is substantially higher than the taxpayer's appraiser's value. It is the difference in the development of the debt portion of the Assessor's capitalization rate and as indicated by the testimony of the appraiser by the taxpayer, he said, he added a little bit to the debt rate just to have a debt rate where so much of the indebtedness was in an interest free loan.

Mr. van Tuinen mentioned the focus of this dispute was over his having a lower capitalization rate. He said he had extreme doubts that there is any obligation, in fact, there may be on paper. He said he had his reservations that there is any obligation, in fact, to have to pay the loan. A good part of the loan if not the whole loan was money granted to BHA by DECD which requires the obligation to use it for 20 years, that the grant doesn't require anything for 30 years, it requires it for 20 years. It requires a certain number of apartments be used for 120% of the area median income for housing for 20 years.

He reported he had spent lots of time looking at the partnership agreement and understands a little better some of the provisions after the attorney testifying for the taxpayer explained certain provisions but it is very likely that Bath Savings Institution will not be a partner well into the future that it will want to get out of the partnership that the benefits it joined the partnership for will expire and that it is very likely that BHA will be owning a mortgage to itself.

Mr. Van Tuinen presented, *Exhibit 5 Housing Associates of Lisbon, LP Campus Commons Income Statement*, to the board and placed a copy on file with the clerk. He said Mr. Silk included a budget for a fiscal or two. He said he asked the finance manager if there was anything in there that provides for a sinking fund payment to be made and deposited by the partnership to secure eventual repayment of the zero percent loan and he said there was not. In this exhibit 5 of the income statement for the property, although not apparent what year it is for, it certainly does not indicate anywhere that there is a deposit that's made to an account or sinking fund account to secure a future payment of the debt obligation. He said in the partnership agreement you already have a copy of there is a cash flow projection made by the partners on how this is going to operate in its first five or so years. He said he could discern no provision in that cash flow operating statement for projected money to be deposited into a sinking fund to pay for that debt. He said he asked the attorney who helped develop and authored the partnership agreement if he was aware in those projected cash flows of any account that was receiving a deposit to secure a future payment of the mortgage loan by BHA and he could not identify such account and Mr. Hodge testified, well, I hope we really don't have to pay it back. Mr. Van Tuinen said it was not unreasonable for him in his capitalization rate to not have a mortgage constant since there is absolutely nothing in the operating statements of the company that indicate that there is anything being put aside in practice, in fact, to pay that future mortgage obligation. The partnership also has the statement as referred to earlier as Item P on page 36 (Exhibit A), which states that the General Partner reasonably believes that the fair market value of the project upon completion thereof will exceed the total amount of indebtedness including accrued interest thereon, encumbering the project and is expected to do so throughout the term of such indebtedness; the Loans each have a fixed maturity date which is prior to the end of the anticipated economic life of the project. He said the appraiser was asked some questions that related to this statement in the partnership agreement. The statement was or those questions were targeted to, well, maybe that fair market value includes more than just a fair market value of the property itself. The project value might include more than the value of the hard assets and the attorney testified who authored the partnership agreement indicated when he explained this provision that there was an appraisal done some years ago which indicated that the total project was worth a significant amount and it was supportive of this statement.

Mr. Van Tuinen said the last Exhibit he had is that previous appraisal. He presented, *Exhibit 7 Summary Appraisal Report Compus Commons 12-Unit Elderly Housing Multiplex, 4 Campus Avenue, Lisbon Falls dated April 25, 2011*, to the board and filed a copy with the clerk. He said this previous appraisal was done in 2011 by the same Dirk Thomas of Maineland Consultants and co-signed by David Harrigan as the supervisory appraiser. The appraisal separates the value of the tangible hard assets of the property and the intangible components of the project. If you look at the cover letter and then go to second page you will see a Prospective Market Value Opinion as of April 1, 2012 is \$315,000 or the middle number in the list. This number reflects it as a completed project operating as an apartment complex for moderate to low-income tenants. He pointed out on the next page of the cover letter there is an opinion on the contributory value of the below market value financing with separate valuation estimates for intangibles of Federal Historic Tax Credits of \$520,000 and the Maine Historic Tax Credits of \$584,000. He said he didn't put any value on the historic tax credits. He said there was a low income tax credit and there was a precedent for doing so but there is no precedent for federal historic tax credits. The favorable financing that is given to the owner of a low-income affordable housing project is certainly relevant, he said, based on court findings and State Board of Property Tax Review. You can consider the good (favorable financing) and the negative (rent restrictions). He said his appraisal includes a consideration of both of those components, as it should. The disconnect, he said, he sees is the appraisal submitted tonight by the taxpayer values the whole thing, hard assets and favorable financing, very little. He pointed out the previous appraisal

indicated the hard assets at \$315,000 and the favorable financing at \$1,425,000. He said in his opinion there is a big disconnect on how the package was viewed in one appraisal and the other appraisal.

Mr. Van Tuinen said he was not suggesting that the value is nearly as high as that, but that he is suggesting the value of \$811,000 is certainly not an unreasonable value. In conclusion, it is Mr. Van Tuinen's opinion that the appraised value of \$811,000 is fair and equitable. The property costs more than \$2.5 million to put together. The appraised value of \$811,000 certainly reflects that there is a great loss in value from that construction project and that loss in value is a lot of obsolescence because it has to operate under the restrictions that it operates and that it may not have been feasible to develop the project without the favorable financing.

Mr. Van Tuinen said his appraisal is based primarily on an income approach to value and considers the relevant things, restricted income, favorable financing, and there is nothing in the record that indicates these deposits really do have to be made into a sinking fund. He said he could not image that two responsible organizations (BHS and Bath Savings Institute) are going to set up a business model that has to pay a mortgage principle amount of \$2.1 million dollars and they don't provide for any sinking fund if, in fact, they have to pay off the \$2.1 million dollars. He said I think every indication is that this obligation is there at least in paper but it doesn't appear to be there in fact. When you look at the previous appraisal the hard assets were valued at \$315,000, the below market financing which in the court cases they use the description of something like this being inextricably entwined with the property. He said in his opinion when you look at this project you look at the rental restrictions and the financing and it is all inextricably entwined. He said the project wouldn't be there if it were not for the below market financing. He said he had considered both aspects in a reasonable and prudent way. He said he did not think the information presented by the taxpayer meets the burden of proving the town's appraised valuation before adjusted by the ratio of \$811,000 for a project that costs over \$2.5 million dollars is manifestly wrong.

QUESTIONS FROM TAXPAYER

Mr. Silk said he didn't hear the definition of just value and asked Mr. Van Tuinen to paraphrase for purposes of property tax assessment what just value means. Mr. Van Tuinen said in balance you have to consider the statute itself and you have to consider the way the statute has been interpreted by courts and by the State Board of Property Tax Review. The concept of just value in the statute is basically the indication of an arm's length sale, what the property would sell for and it states a consideration of a number of things that have to be at least considered by the Assessor including any recorded restrictions (like the recorded restrictions that apply in this case on the Declaration of Covenants from two different governmental entities/DECD & MSHA) and in the case of not this precise type of housing project but in the case of decisions made by the Appeals Boards and the courts in the State of Maine their interpretation of the just value of this type of property is something that considers the restrictions and the benefits that go along with being that kind of housing project which includes often times financing. Mr. Silk asked Mr. Van Tuinen if it was true that just value is equivalent to market value. Mr. Van Tuinen answered, that's generally my understanding, but one of the things that's very different though in the statutory definition of just value is that just value also requires that the Assessor consider the current use of the property. Usually the definition of market value assume the highest and best use of the property. Mr. Silk said is it fair to say that the main course in looking at the assessments have said that market value means the price a willing buyer would pay a willing seller at a fair public sale in a free a open market. Mr. Van Tuinen said that's his understanding, however, with affordable housing projects the courts have made it legally clear.

Mr. Silk said, as you know our area of disagreement is regarding whether you should be considering these restrictions or you should not be considering these restrictions so I agree with you on that so I am not trying to suggest otherwise. He said I am just trying to make sure we understand taking into account whatever restrictions we are supposed to assume, what benefits would run with the property, and the definition of a market sale, taking into account the restrictions of record is what a willing buyer would pay a willing seller as of a certain date on a fair and open market and that is what you are trying to establish as part of your assessed values for each property and under the law the Assessor is required to do that each year as of April 1, is that correct? Mr. Van Tuinen said correct. Mr. Silk said

so when we ask the question, what's the market value of this property as of April 1, 2014 mindful of including certain restrictions and benefits we agree run with the property, the financing and the restrictions we are asking what a willing buyer would pay for a certain property as of a certain date, isn't that correct? Mr. Van Tuinen said correct.

Mr. Silk said when a buyer looks at this property to make an informed decision as to what they would be willing to pay they would consider the income approach because the State Board of Property Tax Review would say that these properties are bought and sold based on the income approach. Mr. Van Tuinen said I don't disagree with that. Mr. Cavender asked that microphones be used.

Mr. Silk said a buyer would be looking at the same information you would be looking at to determine a price that they would be willing to pay for the property. Mr. Van Tuinen said they would be looking at the same kinds of things that we would be looking at. Mr. Silk said a buyer would be taking into account the benefit of the zero percent financing on the two significant loans but a buyer would assume that they would never have to pay that obligation. Mr. Van Tuinen said if I were buying a project the first thing I would ask for in negotiation for the project is what about these loans. Mr. Silk said you are assuming that a buyer as of April 1, 2014 would be able to assume the zero percent financing but they would not have to pay back the two loans.

Mr. Van Tuinen said this may take a few minutes to explain so I apologize. The loan is from the BHA essentially to BHA and a partner and it is very likely that in the future a partner will not want to own the property any longer and it will just be BHA as the principle of Housing Associates of Lisbon, LP. He said if I were buying the property I would bring up the mortgage and I would say if I am going to buy this property I don't want to have to repay this mortgage that you got a government grant and loaned it to yourself for; I agree to operate the property for the remainder of the 20 years that guarantees not problem with the grant, but I don't want to repay the mortgage. Mr. Silk said Bill, if you said that and the owner said, I'm sorry but those are legally enforceable agreements wouldn't it be that you would reduce what you would be willing to pay for the property because you would have to take into account the fact that you would have to pay the loans at the end of their terms. Mr. Van Tuinen said I wouldn't buy the property. Mr. Silk said, the reason you wouldn't buy the property is because you now know that you have to pay those loans and you feel as though the economic risk isn't appropriate for you to buy the property, is that correct? Mr. Van Tuinen said, as John Hodge very clearly indicated, as the operating statement I presented clearly indicates, as the budget indicated by the finance manager presented clearly indicates, there is no room in the operation of this project to put money aside to pay \$2 million dollars in loans at the end of 30 years. Mr. Van Tuinen said as John Hodge clearly said, I certainly hope we don't have to pay \$2 million dollars to ourselves. He said there is not room for the project to pay \$2 million dollars of principle at the end of 30 years.

Mr. Silk asked if that was the reason Mr. Van Tuinen ignored the terms of the note that require the note to be repaid at the end of the term; just because there is not money available I am going to ignore it. Mr. Van Tuinen said from his perspective it was his opinion looking at everything that two responsible organizations are operating this facility with no demonstrated action to accumulate money to pay off the \$2 million and something debt at the end of 30 years. He said, I have an impossible time looking at that set of facts and concluding that these responsible organizations have any perceived obligation on their part to repay that debt. He said the statement indicates there are deferred loans or interparty obligations of that \$2.1 million. He said he also heard there was another deferred loan of \$25,000 or \$29,000 which made the total on that financial document a little higher than the balance due on the loans.

Mr. Silk pointed out that an abatement request was previously granted for 2013 that included the historical tax credits so after receiving information you concluded the value of the historic tax credits should not have been included in the commitment of the assessment for April 1, 2013. Mr. Van Tuinen said he would like to expand upon that a little bit instead of saying that's correct. He said in 2013 I used as my primary guidance document in developing the assessed valuation of Housing Associates of Lisbon, LP decisions similar and including the Leach decision that indicated that in the case of low-income housing tax credit properties it was reasonable to develop an evaluation based on the contributory value of the tax credits, the operating income, and restrictions placed on the property. He explained at that time Mr. Hodge, Mr. Silk and himself as the Assessor then, discussed those three

components extensively and by reference to the Leach decision which doesn't really discuss the historic tax credits but certainly emphasized the fact that the low-income tax credits were transferrable. He said it appeared that historic tax credits were not transferrable so for last year the evaluation was revised the property for 2013 by removing that consideration of the historic tax credits and granted a substantial reduction in valuation. Mr. Silk pointed out that much of the analysis generated for the income approach was done in connection with the 2013 value and you carried your revised value forward for April 1, 2014. Mr. Van Tuinen said that's correct.

Mr. Silk handed out *Exhibit G replacement pages and H memo dated June 16, 2014* to the board and placed copies on file with the clerk. He said that in your written narrative you provided a page and half of your income analysis which was pretty much taken from Exhibit H, correct. Mr. Van Tuinen said page 4 corresponds with page 7 of his summary (Exhibit 0) today; I see the development of the capitalization rate very clearly. He said I don't see the development of the income approach. Mr. Silk said you mean the NOI. Mr. Van Tuinen said the NOI and the application of the capitalization rate for the NOI in Exhibit H. Mr. Silk said on Exhibit H on page 4 references the \$811,000 value. Mr. Van Tuinen said yes it does with a little narrative, but not with what's presented on page 6. Mr. Silk said all he was trying to get at is that this is the analysis that you employed to arrive at your \$811,000 value. Mr. Van Tuinen said correct.

Mr. Silk said at the bottom of page 3 there are some column. He pointed out that the weighted rate of .208% was disregarded in Mr. Van Tuinen analysis and he actually didn't use that. Mr. Van Tuinen said I don't know that I disregarded it but I thought it was so insignificant that I would use .5% instead. Mr. Silk said so you did not use .208%. Mr. Van Tuinen said I did not. Mr. Silk asked why Mr. Van Tuinen would disregard a number that was generated through a recognized approach to determine a weighted rate. Mr. Van Tuinen said I thought it was a very low rate for the debt and I used a bit higher rate. He said I changed it by about a little more than a quarter of a percent. Mr. Silk said what information did you use to decide to change it by a quarter of a percent. Mr. Van Tuinen said, I used exactly what I state in the paragraph below that says this is a very unique situation to this and perhaps a few other similar projects; the weighted rate of debt is pretty close to nothing and in order to be at least a little closer to a more typical situation, I used a debt rate of .50% multiplied by a debt percentage of 90% as presented below on the next page. He said this is not totally unusual; it is very useful sometimes to look at the actual weighted cost of the capital in a project and not unusual to round it a little bit or to alter it a little bit to reflect a more typical situation. He said this .5% is far less than the typical situation. Rounding depends upon the type of project. There were more in the past than there are right now and there were a great deal financed with subsidized mortgages with rates of interest at one percent. He indicated this number was based on his experience and on what he has seen for other projects that were developed with very subsidized financing, although not zero percent financing. Mr. Silk asked Mr. Van Tuinen if in other projects he disregarded the repayment of those loans. Mr. Van Tuinen said no he did not; other projects were not a principle loaning money to its own related corporation and there was a clear obligation to pay the principle in the operating statements of the complex would indicate that there were mortgage payments made for principle and interest unlike this project, which shows no commitment by the corporate entity owning the property or the partnership entity owning the property to pay any principle on the these loans. Ms. Morgan-Alexander asked what relevance questions about other projects had on this case. The Chairman asked that the discussion stay on track, that we not discuss some other town's appeal, or dealings. Mr. Van Tuinen said in his experience that he has never encountered zero percent and so zero percent interest is certainly non-typical.

Mr. Silk pointed out on page 7 in Mr. Van Tuinen's memo dated May 21, 2015 that the partnership was formed with BHA as its general partner and Bath Savings Institution as the limited partner (Exhibit 0) is not correct. While Mr. Van Tuinen checked the document the Chairman asked for a ten minutes break at approximately 8:40 PM

The Chairman called the meeting back to order at approximately 8:50 PM.

Mr. Van Tuinen pointed out in his memo where Mr. Silk mentioned the partnership was formed Mr. Van Tuinen said the partnership agreement or Mr. Silk's Exhibit A says that it's a partnership agreement with Lisbon School, LLC a Maine limited liability company as the sole General Partner and

the Brunswick Housing Authority as the Withdrawing Limited Partner and Bath Savings Institution as the Investment Limited Partner so if I said it was just BHA and the Bath Savings Institution then I would have to say based on this agreement that I was technically incorrect although I think all the discussions over the extended period of a couple of years that I had with John Hodge and David Silk always referred to it as a partnership, at least in common terms but this piece of paper says clearly says it involves three entities.

Mr. Silk said it is clear that the BHA is not the general partner. Mr. Van Tuinen said it says that Lisbon School LLC is the General Partner, interestingly enough it says the principal place of business, office of the partnership (on page 2) is located at BHA, and it indicates that the registered agent is John Hodge at the address of the BHA. Mr. Silk said on page 9 of the memo Mr. Van Tuinen you refer to these mortgages from BHA. Mr. Van Tuinen said although not technically correct any mail would have to go to John Hodge at BHA.

Mr. Van Tuinen recalled John Hodge to see who Lisbon School, LLC is. Mr. Hodge said when you set up a limited partnership, with the advice of counsel, you set up a limited partnership before you know who the partnership is so you establish a limited partnership and then identify the partners. Before you know who the partners are going to be it is just a transaction to create the entity so you file some paperwork and initially it was the BHA and then once the deal progresses and you identify who the partners are going to be, Bath Savings Institution (BSI), and also the Greater Brunswick Housing Corporation, in order to limit your liability, all of these transactions created a limited liability company, which has members and in this case has the limited liability company that is the partner in the LP is another creation that the lawyers form called the Lisbon School, LLC and the sole member of that LLC is the Greater Brunswick Housing Corporation. He said it was simply created to allow us to create the limited partnership and shields liability to what is eventually the General Partner and in this case the Greater Brunswick Housing Corporation. Mr. Van Tuinen asked if the staff of the Brunswick Housing Authority and the Greater Brunswick Housing Corporation (GBHC) the same staff. Mr. Hodge said that is not the way to characterize it; the Greater Brunswick Housing Corporation has no staff, but they have a management agreement an enforceable contract with the BHA to provide services through a management fee. He indicated there were technically no employees at the GBHC.

APPEALS BOARD COMMENTS & QUESTIONS

Mr. Fellows asked what the total project indebtedness Mr. Van Tuinen. Mr. Van Tuinen said I think it is summarized in a couple of places. Although some things were restated or renegotiated a bit; on Exhibit H that is a memo to Mr. Silk and Mr. Hodge from the Assessor it reports the total for 2014 as stated on the first page is or was \$2,220,303. He said some of the \$75,000 owed to the Bath Savings Institution has been repaid so that \$75,000 today would be modestly lower.

Mr. Fellows said Mr. Van Tuinen you pointed out under article P the General Partnership we understand to be Lisbon School, LLC believes that the fair market value of the project upon completion will exceed the total amount of indebtedness. He said so the fair market value of the General Partner believes is going to exceed \$2 million dollars, what is your opinion Mr. Van Tuinen of that statement. Mr. Van Tuinen said my opinion is tempered by some qualifications that were made by Mr. Silk and his colleague who worked on the partnership agreement. He said the author of the partnership agreement when asked about this referenced the appraisal from 2011 (Exhibit 7), which appraises the tangible and intangible assets that are described. He said he would think that the value of the below market financing which is a product of the housing program that this project is operated under and the hard asset value indicated by the ongoing stabilized income components of value that are relevant for tax assessment purposes on a project like this. The situation with the housing tax credits is that they only last for five years so even if one considered the housing tax credits as part of the project value it would be hard to say that it would have much of an influence beyond the five years that they are relevant. He said he pointed this out because it certainly does appear accurate or why would you put that in there if you didn't think it was correct.

Mr. Cavender asked what the assessed value was for 2013-2014 and what the abatement was. Mr. Silk said each year is a separate and distinct year under Maine Assessment law. Mr. Silk said he objected

and said that doesn't apply and has no relevance to this 2014 appeal. He said we are looking at the 2014 appeal and looking to determine if that is manifestly wrong. He said I do not think it should be put into the record. Mr. Cavender said so noted.

Mr. Van Tuinen said the only thing he had was the assessed values. He said he did not have the appraised value before the adjustment ratio but the assessed valuation in 2013 was \$1 million dollars and the abatement granted was \$327,000 down to an assessed value of \$673,000; essentially the same as it was for 2014.

Mr. Cavender asked for summary statements. Mr. Silk asked to call Mr. Harrigan to testify to one more question. Mr. Cavender said we need to cut this short. Mr. Silk asked Mr. Harrigan to discuss the appraisal for 2011. He said in that opinion Mr. Van Tuinen pointed out there is an appraisal of that below market financing value of roughly \$1.4 million and he was questioning why there would be such a variance between that value in 2011 and 2014 of that below market financing value. Mr. Harrigan said this is the first time he has looked at his 2011 report since 2011 but quickly when I did review it back there I noted that each one of the debts that were quoted in the 2011 report are not what took place. He pointed out the current report each of those debts on page 46 of the 2011 appraisal, \$120,000 to BSI, \$584,000 from DECD, and \$1,379,000 you can see that each one of these amounts differ from the report we developed for the current assessment, they change. The other change is the term and the current is different, somewhat similar to your own mortgage if you converted and those elements come into play. He said the other element here in this calculation we did 100% of debt and in 2014 we did 90% of debt. He pointed out that interest rates in 2011 were at 6% and today the relative interest rate is for this type of property is around 4.5%. This is a substantial movement in interest rates and that has a compounding effect on all of the calculations. He said Mr. Van Tuinen would not necessarily disagree with how we developed the current appraisal and the application we used. He said we used 1.7% and Mr. Van Tuinen used 1.96%, but if you apply that quarter of a basis point against the NOI that he developed it has a \$65,000 impact so you can see how the movement from 2011 to what they ultimately became can have a very large impact.

Mr. Van Tuinen said if you had been doing a full appraisal and not just reviewing my work on capitalization rate on page 19 in the top box of the new appraisal I would have assumed you would have used a lower interest rate on the BSI component of debt. Mr. Harrigan said, no, you are assuming this loan and there are specific terms. If there was no financing to deal with and I was building a mortgage constant I would use current day terms. Mr. Van Tuinen said then you are assuming that a buyer would assume a loan at a little more than a percent higher than it needed to be. Mr. Harrigan said that was the scope of the work. Mr. Van Tuinen said if you were developing the rate yourself now you would have used the current rate just as you said there was a difference between 2011 and 2014 in commenting on the intangible value of the mortgage. Mr. Harrigan said, yes, you would be comparing it to like the 6% in the original appraisal because that's what the below market rate financing was weighed against but today that's 4.5% so in fact that asset that was described in 2011 is no longer worth that amount. Mr. Van Tuinen said if you were putting the project together today and you were looking at that institutional financing from a financial organization you would look at for the BSI a lower rate than the 5.4% that was negotiated in 2011 or 2012. Mr. Harrigan said today you would be looking at 4.5% with a 20 or 30-year amortization scenario.

After a couple more questions, Mr. Stockford perhaps the board would like to defer deliberation to another meeting due to the late hour. He suggested both side prepare written closing arguments instead of oral closings right now. You are not obligated to do that but you have that opportunity. You could decide to deliberate right now. Ms. Morgan-Alexander said we are here, let's do it now and get it done. She said asked that they take 5 minutes to do summary statements.

TAXPAYER'S CLOSING ARGUMENTS

Mr. Silk said Mr. Van Tuinen agreed with me that the crux of this case is whether the repayment terms of the two notes when valuing the property. Our position is that it should be and arbitrary for Mr. Van Tuinen not to do so. The reason for that is that Mr. Van Tuinen seems to suggest that the corporate identities of the Brunswick Housing Authority and the Greater Brunswick Housing Corporation should

be disregarded, that they are a sham, one in the same, and several times in his memo to you he misspeaks and says the BHA in fact the General Partner of this project, which is not true. He agrees technically that it is not true, but in fact legally and factually that it is not true. Under Maine law there is significant facts that have to be shown if you are going to disregard separate corporate identities. He said they include some type of fraud, misrepresentation, and there is none of that here. He said you have heard that the Greater Brunswick Housing Corporation has its own checking account, board, and own legal responsibilities so there is no basis to disregard that relationship between GBHC and BHA. He explained that because the lynch pin of his view at the end of the day he thinks the loan will be forgiven; we don't know what's going to happen in 28 years and what we are looking at is what would happen if this property is sold as of April 1, 2014. What would a buyer pay? He said Mr. Van Tuinen said as a buyer the first thing he would do is find out do I have to pay the notes and if I do I am not interested in buying it. He said even in his own mind Mr. Van Tuinen is not crystal clear that you don't have to pay the notes because if it was clear to him from the start then he would not have to ask that question. The reason for that is that you have at the registry of deeds mortgages that references the notes, five accountants that are referencing the notes as legal obligations, and if you are going to accept the fact that the notes have a zero percent interest and take that into account there is no basis at the same time to disregard the payment obligations in the note. You can't take the good and leave out the bad of the same legal document. He said Mr. Van Tuinen agrees that if you included the repayment obligation of the note at the end of the 30 years, then the value the appraiser is a sound value conclusion. He said it is just a question of whether you are going to include it or not. He explained, we do not think there is a rational basis for him to do so, there is no legal basis, and he doesn't dispute what the legal documents say, and you heard a lawyer licensed in Maine tell you those are legal binding obligations imposed and Mr. Van Tuinen is going to say that is fiction and you should disregard that. He said we have accounts that provided accounting reports to important governmental entities and Mr. Van Tuinen is saying you should disregard that. He reported the premise of his argument that you should disregard it because it is not listed in the cash flow projections for the project, well Mr. Fellows pointed out that the cash flow projections for the project are a negative and if you recognize it you would be just creating more negative. He said there is no way you can actually set aside the money because there is not enough money to set aside right now, which means as a buyer you are not going to disregard the fact that the obligation is there. It means there is a buyer who is going to take that into account and pay you for the value, which is what the appraiser did and that is why we think the appraiser's conclusion of value is sound.

Mr. Silk said here is no rational basis for the Assessor to disregard the payment obligations in the note and had that been considered properly we think that the value of the property should have been \$380,000 versus \$811,000 which is why today we ask that you find the Assessor is manifestly wrong because he made an arbitrary decision to disregard the payment terms of the notes. Mr. Silk said Mr. Van Tuinen used the interested rate which is what he wanted to use, but he didn't want to use the payment terms. He said we appreciate your time and attention.

ASSESSOR'S CLOSING ARGUMENTS

Mr. Van Tuinen said he appreciates the board's time and attention; it's been a long evening. He said, I do not think the evaluation placed by the town by me as the Assessor up until July 1st last year is manifestly wrong. He said I do not think the taxpayer has proven it to be manifestly wrong. He said I have to tell you that as a layman I may not have as much familiarity with the establishment of legal entities that are considered separate and distinct from each other even when they seem to have a great deal of overlap. He said the testimony of John Hodge basically was that the partner in the project of Lisbon School, LLC a Maine limited partnership is really very overlapped with BHA and GBHC. He said if you look at this property and you say those mortgage principal amounts that don't have any interest have to be repaid have to accept the premise that these legal entities (BSI/BHA) set it up to fail. There is no way that the income from the property can support the repayment of \$2 million dollars of debt based on its operating income. He said there is no evidence whatsoever in the documentation that has been looked at that any payments are being set aside into a sinking fund to provide for that future's payment obligation of debt. He said, you would have to believe that these institutions set it up to fail, but I don't think that, I think they set it up to provide a very modest return

and to operate low-income housing and not for it to go bankrupt or be foreclosed upon because it can't repay its debt. He mentioned there is nothing on the record that indicates anything is being put into a sinking fund as assumed in the appraisal for the payment of debt. He said, again, I am going to revisit the appraisal from 2011 and 2014. The restrictions are represented by the income used to develop the evaluation by the income approach. The below market debt is appraised at a tangible asset of \$1.4 million dollars in 2011. He said he would expect that the appraisal is absolutely correct that this might be a little lower value now because the debt rates are lower now than they were projected to be in 2011. They certainly have not gone away, there still are interest rates and zero percent beats them all.

Mr. Van Tuinen said he did not think the taxpayer has overcome the burden of proof of proving that the town's appraised value of \$811,000 on a project that costs \$2.5 million dollars is manifestly wrong.

Mr. Stockford recommended the board deliberate to decide which way they want to go and then direct him to provide findings of fact for the board to come back and approve.

Mr. Fellows said he was personally stuck on the appraisers or reappraiser's statement that a proper technique would be to indicate that there be a sinking fund factor. He said based on real life that if you are going to have a sinking fund factor that you need to have a sinking fund. He said it is proof to me is \$24,000 +/- that there is no way you can reserve \$82,000 per year and make any money. He said not only they wouldn't report it that way it seems obvious and it is clear to me that there is no intention to do it that way. He said, so if there is no intention to do it that I don't understand why an appraisal would have to include it in the value. He explained that coupled with page 36 in the partnership agreement and you couple that with an appraisal that was done previously he personally believed that have not meet the requirement that it is manifestly wrong. Ms. Morgan-Alexander said she agreed with Mr. Fellows.

Mr. Cavender said he agreed with Mr. Fellows also. He referenced Exhibit 5 and said, I don't know of any company that would give a loan to a company that was losing money.

Ms. Morgan-Alexander said in the business world that would never have been approved. She said you have what is called retained earnings to do company things. In the case of the non-profit they cannot have retained earnings which are profits so they have a sinking fund which is then dedicated to do non-profit things and in the particular case it would be to pay back the debt. She said although this may sound harsh, you have a quasi-public entity and they get some of our free federal government money, and we have heard this term before, but with free federal money they can only do certain things with it so you get free federal strings so they limit what can be done. She said, however, if they form a private corporation that they can then hand this money over to which is permitted to do so many more things like rebuild a school and most of the federal strings are taken away. She said, basically, they loaned themselves some money to build this project without a sinking fund built to repay those notes. She said the paperwork says that they have to repay those notes. She said they don't say how; it's a balloon payment. She said, however, if there is no mechanism seen anywhere, I don't think they ever intended to repay the notes and I recommend that we do not grant this abatement.

Mr. Fellows said, we don't mean to insinuate that they are doing anything illegal. Mr. Long said the project is very commendable and much appreciated, but I cannot believe why the entities would want to undertake a project of this enormity and lose money and not regain the money back that you put into it or at least a certain percentage of it. He said, I don't think you proved it; not to me.

Mr. Fellows asked if the board needed to make a motion. Mr. Stockford said you can continue or I think I know the desire of the board and I can come back with a decision that you can then consider and vote on. Mr. Cavender said, all right, we will do that. No objections were noted.

Mr. Fellows said we need to set a date. Mr. Long said the second Thursday is the Planning Board meeting. June 4 was suggested. Ms. Morgan-Alexander said June 11 was fine for her. She said if their meeting starts at 4:00 pm or 5:00 pm then it should be over in time before the Planning Board meeting. Mr. Long said June 4 was his 54th wedding anniversary and that he would rather meet June 11. Mr. Fellows said how about June 11 at 4:00 p.m. No objections were noted.

Mr. Van Tuinen confirmed the board is going to meet on June 11 at 4:00 PM to review and finalize the board's decision.

5. WRITTEN COMMUNICATIONS

VOTE (2015-01) Ms. Morgan-Alexander, seconded by Mr. Long, moved to approve the minutes of June 26, 2014. **Order passed – Vote: 4-0.**

6. ADJOURNMENT

The board agreed to meet on June 11 at 4:00 pm to sign the paper work and adopt the minutes.

VOTE (2015-02) Ms. Morgan-Alexander, seconded by Mr. Fellows, moved to adjourn the meeting at 9:45 PM.

Richard Long, Secretary
Date approved: 6-11-2015