

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

BEACON OREAD LP

v.

BOARD OF ASSESSORS OF¹
THE CITY OF WORCESTER

Docket Nos.

F324268, F324269, F324270,
F324271, F324272, F331858,
F331859, F331860, F331861,
F331862, F331863, F331864,
F331865

KGH LIMITED PARTNERSHIP

v.

BOARD OF ASSESSORS OF
THE CITY OF WORCESTER

Docket Nos.

F324274, F324275, F324276,
F324277, F324278, F324279,
F324280, F331851, F331852,
F331853, F331854, F331855,
F331856, F331857

Promulgated:

May 14, 2020

These are appeals filed under the formal procedure pursuant to G.L. c. 58A, § 7 and G.L. c. 59, §§ 64 and 65, from the refusal of the Board of Assessors of the City of Worcester ("appellee" or "assessor") to abate taxes on real estate located in the City of Worcester, owned by and assessed to Beacon Oread LP ("BOLP") and KGH Limited Partnership ("KGH") (collectively the "appellants") under G.L. c. 59, §§ 11 and 38, for fiscal years 2014 and 2016 ("fiscal years at issue").²

¹ The Board recognizes that the City of Worcester has an assessor and not a board of assessors. However, the Board will use the caption as contained in the appellant's Petition.

² Each parcel was separately assessed for both fiscal years at issue. For convenience of the hearing, the appeals were procedurally consolidated.

Commissioner Rose heard these appeals. Chairman Hammond and Commissioners Scharaffa, Good, and Elliott joined him in the decision for the appellee in Docket No. F331861 and in the decisions for the appellants for the remaining appeals.

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

Kenneth W. Gurge, Esq. for the appellant.

John O'Day, Esq. for the appellee.

FINDINGS OF FACT AND REPORT

On the basis of the testimony and exhibits offered into evidence at the hearing of these appeals, the Appellate Tax Board ("Board") made the following findings of fact.

On both January 1, 2013 and January 1, 2015, the relevant valuation and assessment dates for the fiscal years at issue, the appellants were the assessed owners of two separate scattered-site, affordable housing developments consisting of multiple individually assessed parcels (collectively the "subject properties"). Relevant jurisdictional facts are summarized in the following tables.

**BOLP
FY 2014**

Property Address	Assessed Value	Tax Amount/ Tax Rate (per \$1,000 of value)	Taxes Timely Paid (Y/N)	Abatement Application Filed	Date of Denial	Date Petition Filed With Board
34 Oread St.	\$270,600	\$5,287.52 \$19.54	Y	02/03/2014 ³	04/28/2014	06/26/2014
40 Oread St.	\$242,900	\$4,746.27 \$19.54	Y	02/03/2014	04/28/2014	06/26/2014
56 Oread St.	\$311,200	\$6,080.85 \$19.54	Y	02/03/2014	04/28/2014	06/26/2014
58 Oread St.	\$312,200	\$6,100.39 \$19.54	Y	02/03/2014	04/28/2014	06/26/2014
60 Oread St.	\$312,200	\$6,100.39 \$19.54	Y	02/03/2014	04/28/2014	06/26/2014

³ An abatement application may only be filed with the assessors on or before the due date for payment of the first installment of the actual tax bill. See G.L. c. 59, § 59. For communities like Worcester that bill quarterly, that date is generally February 1. See G.L. c. 59, § 57C. In 2014, February 1 fell on a Saturday. When the last day of a filing period falls on a Saturday, Sunday, or holiday, the due date is extended by operation of law to the following business day. See G.L. c. 4, § 9. Accordingly, the appellants' last day for filing their abatement applications with the assessors was Monday, February 3, 2014.

**BOLP
FY 2016**

Property Address	Assessed Value	Tax Amount/ Tax Rate (per \$1,000 of value)	Taxes Timely Paid (Y/N)	Abatement Application Filed	Date of Denial	Date Petition Filed With Board
24 Oread St.	\$672,600	\$13,862.29 \$20.61	Y	02/01/2016	05/30/2016 ⁴	08/22/2016
30 Oread St.	\$27,600	\$568.84 \$20.61	Y	02/01/2016	05/30/2016	08/22/2016
34 Oread St.	\$270,600	\$5,577.07 \$20.61	Y	02/01/2016	05/30/2016	08/22/2016
40 Oread St.	\$242,900	\$5,006.17 \$20.61	Y	02/01/2016	05/30/2016	08/22/2016
56 Oread St.	\$311,200	\$6,413.83 \$20.61	Y	02/01/2016	05/30/2016	08/22/2016
58 Oread St.	\$312,200	\$6,434.44 \$20.61	Y	02/01/2016	05/30/2016	08/22/2016
60 Oread St.	\$312,200	\$6,434.44 \$20.61	Y	02/01/2016	05/30/2016	08/22/2016
140 Beacon Street	\$280,700	\$5,785.23 \$20.61	Y	02/01/2016	05/30/2016	08/22/2016

⁴ A written extension, which was mutually agreed upon, granted the appellee until May 30, 2016 to act upon the appellants' abatement applications.

**KGH
FY 2014**

Property Address	Assessed Value	Tax Amount/ Tax Rate (per \$1,000 of value)	Taxes Timely Paid (Y/N)	Abatement Application Filed	Date of Denial	Date Petition Filed With Board
151-157 Beacon St.	\$457,100	\$8,931.73 \$19.54	Y	02/03/2014 ⁵	04/28/2014	06/26/2014
152 Beacon St.	\$290,900	\$5,684.19 \$19.54	Y	02/03/2014	04/28/2014	06/26/2014
156 Beacon St.	\$374,500	\$7,317.73 \$19.54	Y	02/03/2014	04/28/2014	06/26/2014
22 Kilby St.	\$245,600	\$4,799.02 \$19.54	Y	02/03/2014	04/28/2014	06/26/2014
2-8 Tainter St.	\$454,800	\$8,886.79 \$19.54	Y	02/03/2014	04/28/2014	06/26/2014
20-24 Tainter St.	\$344,700	\$6,735.44 \$19.54	Y	02/03/2014	04/28/2014	06/26/2014
10 Gardner St.	\$449,100	\$8,775.41 \$19.54	Y	02/03/2014	04/28/2014	06/26/2014

⁵ See footnote 3.

**KGH
FY 2016**

Property Address	Assessed Value	Tax Amount/ Tax Rate (per \$1,000 of value)	Taxes Timely Paid (Y/N)	Abatement Application Filed	Date of Denial	Date Petition Filed With Board
151-157 Beacon St.	\$457,100	\$9,420.83 \$20.61	Y	02/01/2016	05/30/2016 ⁶	08/22/2016
152 Beacon St.	\$290,900	\$5,995.45 \$20.61	Y	02/01/2016	05/30/2016	08/22/2016
156 Beacon St.	\$374,500	\$7,718.45 \$20.61	Y	02/01/2016	05/30/2016	08/22/2016
22 Kilby St.	\$245,600	\$5,061.82 \$20.61	Y	02/01/2016	05/30/2016	08/22/2016
2-8 Tainter St.	\$454,800	\$9,373.43 \$20.61	Y	02/01/2016	05/30/2016	08/22/2016
20-24 Tainter St.	\$344,700	\$7,104.27 \$20.61	Y	02/01/2016	05/30/2016	08/22/2016
10 Gardner St.	\$449,100	\$9,255.95 \$20.61	Y	02/01/2016	05/30/2016	08/22/2016

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

The issues raised in these appeals are: (1) whether the subject properties owned by each of the appellants should be assessed as separate parcels or collectively as a housing development; and (2) the appropriate valuation method to be employed.

⁶ See footnote 3.

The parcels comprising the subject properties contain the following housing units:

BOLP

Address	Land Area (sf)	Building Area	Total # of Units	1 Bedroom	2 Bedrooms	3 Bedrooms	4 Bedrooms
24 Oread ⁷ St.	19,271	17,664	14	0	10	4	0
30 Oread ⁸ St.	10,200	0	Parking lot	n/a	n/a	n/a	n/a
34 Oread St.	13,490	4,540	3	0	1	2	0
40 Oread St.	12,272	4,783	3	0	0	0	3
56 Oread St.	7,889	4,012	3	0	0	3	0
58 Oread St.	13,381	4,012	3	0	0	3	0
60 Oread St.	13,217	4,012	3	0	0	3	0
140 Beacon St. ⁹	9,300	6,168	5	2	2	0	1

⁷ BOLP did not appeal this parcel's assessment for fiscal year 2014.

⁸ BOLP did not appeal this parcel's assessment for fiscal year 2014.

⁹ BOLP did not appeal this parcel's assessment for fiscal year 2014.

KGH

Address	Land Area	Building Area	Total # of Units	1 Bedroom	2 Bedrooms	3 Bedrooms	4 Bedrooms
151-157 Beacon St	10,593	5,852	4	0	0	4	0
152 Beacon St.	5,468	3,080	2	0	0	2	0
156 Beacon St.	9,589	4,830	3	0	0	3	0
22 Kilby St.	6,276	2,346	2	0	2	0	0
2-8 Tainter St.	9,485	5,808	4	0	0	4	0
20-24 Tainter St.	10,504	4,356	3	0	0	3	0
10 Gardner St.	10,950	4,668	4	0	4	0	0

1. The appellant's evidence

At the hearing of these appeals, the appellants presented three witnesses: Judith Jacobson, Deputy Director and General Counsel to the Massachusetts Housing Partnership ("MHP"), the state agency that finances and regulates affordable-housing properties; Stephen Teasdale, the Executive Director of the non-profit Main South Community Development Corporation ("MSCDC"), the general partner of both appellants that oversees the daily operations of the subject properties; and Marcia Foster Keating, a Massachusetts-licensed real estate appraiser approved by the

MHP and other quasi-public lending agencies to appraise affordable housing properties.

Ms. Jacobson testified that strong public policy goals support the development of affordable housing. She further explained that affordable housing would not be developed without legislatively created financial incentives, because the costs to develop and maintain affordable housing exceed the income stream that would be realized from restricted rents.

Ms. Jacobson then detailed the common financing programs used to develop affordable housing projects. One such program is called "soft debt," which is provided by various federal and state agencies. Under a soft-debt program, monthly or other regular repayments of principal typically are not required, and interest is deferred. Ultimately, soft debt is generally forgiven or continually rolled over and never collected so long as the property maintains its affordable character. However, Ms. Jacobson explained that soft debt is a "poison pill," because once a project ceases to be operated as affordable housing, the full amount of the soft debt principal and accumulated deferred interest becomes immediately due and payable.

Another funding program involves investors receiving tax credits and depreciation deductions that they can use on their own returns in exchange for their investments. Ms. Jacobson testified that these credits and deductions could be revoked or

terminated if the property fails to be maintained as affordable in accordance with the terms of the governing agreement.

Ms. Jacobson and Mr. Teasdale both testified to the operating restrictions that govern the subject properties. These restrictions are recorded and run with the land, and they have terms ranging from ten to ninety-nine years. The primary restriction is the limitation on per-unit rent, which cannot exceed a certain percentage of the qualifying tenant's median income. Other restrictions include mandatory expenses for maintenance, upkeep, and reserves, which generally exceed the level of similar expenses for market properties, as well as regular inspections, auditing, accounting, certification, and reporting requirements. Ms. Jacobson testified that an affordable-housing project typically needs a minimum of about twenty units in order to be financially worthwhile to entice investors. Therefore, she explained, the restrictions and other requirements applied to the subject properties owned by each of the appellants collectively as an affordable housing development, not on a per-parcel or per-unit basis.

Mr. Teasdale testified that the restricted rents combined with additional expenses create a development-cost gap for affordable-housing projects that must be filled by multiple investors who contribute equity in return for tax credits and deductions. These investors, typically limited partners,

contribute capital and, in return, receive an allocated portion of the project's tax deductions and credits, including depreciation deductions and the low-income housing tax credit, which they can claim on their own tax returns. He testified that, because the housing project's tax deductions flow through to the investors, the investors "do not want to see large profits. They want to take the losses as part of their tax return."

Mr. Teasdale further testified that, while the buildings comprising the subject properties may not be contiguous, they nonetheless are bound by restrictions that apply to each of the subject properties as a single, combined development. For example, the loans and credits given to each owner were based on their guarantee of a set number of units in their project. These restrictions strictly curtail the ability to sell any of the parcels separately: "[w]e cannot take one building out and sell it separately, because if we do that, we are reducing the number of units that we have stated that we will provide to the state in return for that funding to obtain the tax credit. We cannot change the terms of the entity that we have created for funding by parceling out and selling individual properties."

The appellants' last witness was Marcia Foster Keating, a licensed real estate appraiser whom the Board qualified as an expert in the appraisal of affordable-housing developments. The

appellants presented Ms. Keating's testimony and submitted separate appraisal reports for the affordable-housing developments owned by each of the appellants.

Ms. Keating testified that she considered the recorded affordability restrictions governing the subject properties, some of which were for a period of ninety-nine years. Ms. Keating accordingly opined that the highest and best use of each subject property was its current use as a part of a scattered-site affordable-housing development.

Ms. Keating further corroborated Mr. Teasdale's testimony that the affordability restrictions apply to the subject properties in each affordable-housing development collectively, not individually. As Ms. Keating explained in her appraisal reports, "[t]he individual properties owned by [each appellant] cannot operate as a stand-alone unit due to these recorded restrictions. The restriction also does not permit the sale of one of the properties as a stand-alone property." She thus "made the extraordinary assumption" that the parcels owned by BOLP and KGH collectively operated as one economic unit by their respective owner and should therefore be valued as such.

Ms. Keating explained that there were not enough scattered-site apartment buildings with affordability restrictions to justify relying on a comparable-sales approach. She further opined that the replacement-cost method was not applicable here,

because the subject properties' actual rents could not support replacement costs, and furthermore, she cited the challenge of estimating the depreciation for some of the older properties within the developments. Therefore, Ms. Keating relied exclusively on the income-capitalization approach to value the subject properties. Salient points of her analyses are summarized below.

Gross income: Ms. Keating testified that the subject properties' actual rent rolls accounted for the affordability restrictions applied to each unit, which are based on many factors including the household sizes and annual incomes of the specific tenants. She thus determined that the actual rent rolls provided by the appellants were the most informative for developing gross incomes. For both fiscal years at issue, Ms. Keating added together the monthly rent at each parcel owned by either BOLP or KGH to determine one monthly gross income figure for each of the appellants, from which she derived yearly gross income figures.

Vacancy: Ms. Keating noted that affordable-rent properties typically have little to no vacancy, because of high demand and low supply for all sizes of affordable-rent properties, with most developments maintaining a waiting list of qualified tenants. Ms. Keating confirmed that, as of the effective dates, there were no vacancies at the subject properties. After also

considering the market-apartment vacancy rates, Ms. Keating selected a two percent vacancy- and collection-loss expense to account for occasional tenant turnover and collection losses.

Operating expenses: Agreeing with the testimony of Ms. Jacobson and Mr. Teasdale, Ms. Keating testified that expenses for affordable-housing developments tend to be higher than for market-rental properties, because of the many regulations associated with affordable housing, including initial and ongoing tenant income verifications, accounting and reporting requirements related to the tax-credit program, and required inspections. After comparing the actual expenses for the subject properties with those of purportedly comparable apartment units in the vicinity, Ms. Keating found most of the subject properties' actual expenses to be consistent with comparable market-properties' expenses, with the notable exception of the subject properties' higher management expenses. Ms. Keating thus relied primarily on the subject properties' actual expenses for the most accurate depiction of these expenses.

Capitalization rates: Ms. Keating testified that she relied on discussions with local brokers, who apparently reported that capitalization rates for affordable-housing complexes generally carry a premium above the rate for market property. She explained that, while vacancy rates tend to be lower in affordable-housing complexes, the rental restrictions curtail an

investor's income potential. Ms. Keating selected a nine percent base capitalization rate for fiscal year 2014 and an eight percent base capitalization rate for fiscal year 2016 for the subject properties. Ms. Keating's appraisal reports indicate that these base rates were in the middle of the range of capitalization rates extracted from the market of mostly unrestricted apartment-building sales in Worcester. Ms. Keating then loaded her base rates with the appropriate percentage of the tax factor for each of the fiscal years at issue. Her final capitalization rates were 10.954 percent for fiscal year 2014, and 10.061 percent for fiscal year 2016 for the subject properties.

On cross examination, Ms. Keating testified that in developing her capitalization rates, she did not factor in the benefits to the subject properties, including favorable financing, including access to soft debt, as well as tax credits and deductions.

Ms. Keating's income-capitalization analyses thus valued the subject properties on a collective basis to arrive at a single value for each affordable-housing development. Her analyses are summarized below:

**BOLP
FY2014**

Gross income:	\$ 388,584
Rent roll as of 01/01/2013 @ \$32,282/month	
Less vacancy/loss @ 2%	(\$ 7,772)
Less expenses (actual expenses)	(\$ 226,350)
Net operating income	\$ 154,462
Divided by capitalization rate @ 10.954%	\$1,410,100
Rounded value	\$1,410,000

**BOLP
FY2016**

Gross income:	\$ 397,740
Rent roll as of 01/01/2015 @ \$33,145/month	
Less vacancy/loss @ 2%	(\$ 7,955)
Less expenses (actual expenses)	(\$ 243,000)
Net operating income	\$ 146,785
Divided by capitalization rate @ 10.061%	\$1,458,950
Rounded value	\$1,460,000

**KGH
FY2014**

Gross income:	\$ 262,428
Rent roll as of 01/01/2013 @ \$21,869/month	
Less vacancy/loss @ 2%	(\$ 5,249)
Less expenses (actual expenses)	(\$ 134,500)
Net operating income	\$ 122,679
Divided by capitalization rate @ 10.954%	\$1,119,947
Rounded value	\$1,120,000

**KGH
FY2016**

Gross income:	\$ 260,256
Rent roll as of 01/01/2015 @ \$32,282/month	
Less vacancy/loss @ 2%	(\$ 5,205)
Less expenses (actual expenses)	(\$ 134,500)
Net operating income	\$ 120,551
Divided by capitalization rate @ 10.061%	\$1,198,201
Rounded value	\$1,200,000

Because the appellee assessed the subject properties individually by parcel, the final step of Ms. Keating's analysis was to estimate the market value of each individual parcel in order to calculate her opinion of value for each appeal.

As a preliminary step, for the subject properties owned by BOLP, Ms. Keating began with the total value derived under her income-capitalization approach and subtracted from that the \$27,600 assessed value for the 30 Oread Street parcel, which provides parking for the 24 and 34 Oread Street parcels. Ms. Keating opined that the parking lot should be deducted from the subject properties owned by BOLP because it had no independent value, particularly since she was calculating a per-unit value for the subject properties owned by BOLP, and this parcel contained no units. Ms. Keating testified that, in her opinion,

the fair market value of the 30 Oread Street parcel was its assessed value of \$27,600 for both fiscal years at issue.¹⁰

For both affordable-housing developments, Ms. Keating divided the total net value of the subject properties owned by each of the appellants by the total number of units comprising them to arrive at a per-unit value. Ms. Keating then applied this value to each individual parcel based on the number of units at that parcel to arrive at her opinions of value for each individual parcel. Ms. Keating's analysis is summarized below:

¹⁰ BOLP did not file an appeal for this parcel for fiscal year 2014.

Calculation of individual parcel values for BOLP:

	FY2014	FY2016
Estimated Market value	\$1,410,000	\$1,460,000
Less assessed value 30 Oread St.	(\$ 27,600) ¹¹	(\$ 27,600)
Net value	\$1,382,400	\$1,432,400
Number of units	34	34
Market value/unit	\$ 40,659	\$ 42,129

Parcel	Units	Opinion of value FY 2014	Opinion of value FY 2016
24 Oread St.	14	\$570,000 ¹²	\$589,700 ¹³
34 Oread St.	3	\$122,000	\$126,400
40 Oread St.	3	\$122,000	\$126,400
56 Oread St.	3	\$122,000	\$126,400
58 Oread St.	3	\$122,000	\$126,400
60 Oread St.	3	\$122,000	\$126,400
140 Beacon St.	5	\$202,400 ¹⁴	\$210,700

¹¹ BOLP did not file an appeal for this parcel for fiscal year 2014.

¹² BOLP did not file an appeal for this parcel for fiscal year 2014.

¹³ The Board noted a minor discrepancy in the mathematical calculation for this value.

¹⁴ BOLP did not file an appeal for this parcel for fiscal year 2014.

Calculation of individual parcel values for KGH:

	FY2014	FY2016
Estimated Market value	\$1,120,000	\$1,200,000
Number of units	22	22
Market value/unit	\$ 50,909	\$ 54,545

Parcel	Units	Opinion of value FY 2014	Opinion of value FY 2016
151-157 Beacon St.	4	\$203,600	\$218,000 ¹⁵
152 Beacon St.	2	\$101,800	\$109,000
156 Beacon St.	3	\$152,800	\$164,000
22 Kilby St.	2	\$101,800	\$109,000
2-8 Tainter St.	4	\$203,600	\$218,000
20-24 Tainter St.	3	\$152,800	\$164,000
10 Gardner St.	4	\$203,600	\$218,000

The appellants contended that the above values obtained by Ms. Keating through her income-capitalization approach reflected the fair market values for the subject properties for the fiscal years at issue.

2. The appellee's evidence

The appellee presented the testimony of assessor William Ford. Mr. Ford testified that Massachusetts assessors are advised to use a sales approach to assess single-, two-, or three-family residential properties. Mr. Ford testified that he utilized what he referred to as a "hybrid model," which takes

¹⁵ The Board noted a minor discrepancy in the mathematical calculation for this value.

into account recent sales of purportedly comparable properties in Worcester as well as guidelines issued by the Department of Revenue, including a neighborhood adjustment. Mr. Ford explained that he applied this "hybrid model" for most of the subject properties individually, and he used the income-capitalization approach only for the fourteen-unit property at 24 Oread Street. Mr. Ford opined that assessing single-, two-, or three-family residential properties under the income-capitalization approach would give a substantial and unfair benefit by lowering their values vis-à-vis other residential properties that are valued using a sales-comparison approach.

Alternatively, Mr. Ford maintained that, if the subject properties were to be valued using an income-capitalization approach, then the investor benefits of the affordable-housing programs should also be considered. Mr. Ford testified to the financial incentives that entice investment in affordable-housing properties, specifically the tax credits and depreciation deductions that the investors are then able to utilize on their own tax returns. Citing an article from the Appraisal Institute, Mr. Ford testified that capitalization rates for affordable-housing projects tended to be lower than those for market housing. Mr. Ford thus concluded that the subject properties' capitalization rates for the fiscal years at issue should be adjusted downward to reflect the benefits that

entice investors to invest in affordable-housing projects. Mr. Ford espoused a 6.7-percent capitalization rate for the subject properties for the fiscal years at issue.

3. The Board's conclusions

The Board found that the feasibility of the affordable-housing developments comprising the subject properties depended on governmental incentives offered to investors. In return for income restrictions, the investors in the subject properties received favorable financing and the availability of tax deductions and credits. Given the risks associated with transferring the subject properties, including the loss of favorable financing, deductions, and credits, as well as the long-term rental restrictions, the Board found that individual conveyance of an assessed parcel in each affordable-housing development was not a realistic possibility. Accordingly, the Board rejected the assessors' sales approach to valuing the subject properties.

The Board found elements of Ms. Keating's income-capitalization approach to be persuasive. Like Ms. Keating, the Board found that the subject properties' actual rental amounts - which took into consideration many factors that affected the permissible rent that could be charged at the subject properties, including the tenants' household incomes and family sizes - were the best evidence of the subject properties'

potential gross incomes. The Board's approach, however, varied slightly from Ms. Keating's. Whereas Ms. Keating calculated one collective monthly gross income figure for each affordable-housing development and later parceled the overall value into a per-unit value, the Board analyzed rental income on a per-parcel basis. The Board found that this approach more accurately accounted for each unit's individual characteristics, like size, location, and number of bedrooms.

Next, the Board found Ms. Keating's two percent vacancy rate to be reasonable, considering the subject properties' operations at full capacity with waiting lists. With respect to operating expenses, the Board agreed with Mr. Teasdale's testimony that the stringent maintenance, reporting, and inspection restrictions placed on the subject properties increased their operating costs. The Board thus found that the subject properties' actual collective expense ratios were the best indication of the operating costs associated with the subject properties.

The Board started with each parcel's gross income, reduced by the vacancy factor, and then deducted an expense amount determined by applying the overall expense ratio for the subject properties to derive a net operating income for each parcel.

The Board rejected Ms. Keating's capitalization rates, which were within the average range for market-rent properties

and thus did not adequately account for the benefits derived from the investment in affordable housing. The Board found that the investors were enticed by various state and federal public-policy incentive programs, particularly the tax credits and deductions that they could use on their own returns. Ms. Keating acknowledged that local brokers agreed that affordable-housing projects tend to have lower capitalization rates than market housing, but she did not adequately adjust her capitalization rates to account for these incentives. On the basis of the evidence in the record, the Board found that the appropriate base capitalization rates were 7.5 percent for fiscal year 2014 and 7 percent for fiscal year 2016, within the range offered by the parties, to which the Board added the applicable tax factor.

Finally, the Board rejected appellant BOLP's opinion that the 30 Oread Street parking parcel should be deducted from the combined value of the subject property owned by BOLP. Ms. Keating failed to present any evidence to support the conclusion that the parcel had no value. Thus, the Board found that, as to the 30 Oread Street parcel, BOLP failed in its burden of proving a lower value than that assessed by the appellee for this parcel.

The following tables reflect the fair cash values as found by the Board and the abatements that the Board ordered for each individual parcel appealed.

**BOLP
FY 2014**

Property Address	Assessed Value	Tax amount/ Tax rate	Board's valuation	Overvaluation	Abatement
34 Oread St.	\$270,600	\$5,287.52 \$19.54	\$163,700	\$106,900	\$2,088.83
40 Oread St.	\$242,900	\$4,746.27 \$19.54	\$179,500	\$63,400	\$1,238.84
56 Oread St.	\$311,200	\$6,080.85 \$19.54	\$159,600	\$151,600	\$2,962.26
58 Oread St.	\$312,200	\$6,100.39 \$19.54	\$162,900	\$149,300	\$2,917.32
60 Oread St.	\$312,200	\$6,100.39 \$19.54	\$162,100	\$150,100	\$2,932.95

**BOLP
FY 2015**

Property Address	Assessed Value	Tax amount/ Tax rate	Board's valuation	Overvaluation	Abatement
24 Oread St.	\$672,600	\$13,862.29 \$20.61	\$666,500	\$6,100	\$125.72
30 Oread St.	\$27,600	\$568.84 \$20.61	\$27,600	None	None
34 Oread St.	\$270,600	\$5,577.07 \$20.61	\$156,300	\$114,300	\$2,355.72
40 Oread St.	\$242,900	\$5,006.17 \$20.61	\$171,400	\$71,500	\$1,473.62.
56 Oread St.	\$311,200	\$6,413.83 \$20.61	\$159,100	\$152,100	\$3,134.78
58 Oread St.	\$312,200	\$6,434.44 \$20.61	\$155,500	\$156,700	\$3,229.59
60 Oread St.	\$312,200	\$6,434.44 \$20.61	\$156,200	\$156,000	\$3,215.16
140 Beacon St.	\$280,700	\$5,785.23 \$20.61	\$214,900	\$65,800	\$1,356.14

**KGH
FY 2014**

Property Address	Assessed Value	Tax amount/ Tax rate	Board's valuation	Overvaluation	Abatement
151-157 Beacon St.	\$457,100	\$8,931.73 \$19.54	\$251,800	\$205,300	\$4,011.56
152 Beacon St.	\$290,900	\$5,684.19 \$19.54	\$123,600	\$167,300	\$3,269.04
156 Beacon St.	\$374,500	\$7,317.73 \$19.54	\$201,400	\$173,100	\$3,382.37
22 Kilby St.	\$245,600	\$4,799.02 \$19.54	\$108,300	\$137,300	\$2,682.84
2-8 Tainter St.	\$454,800	\$8,886.79 \$19.54	\$247,200	\$207,600	\$4,056.50
20-24 Tainter St.	\$344,700	\$6,735.44 \$19.54	\$184,200	\$160,500	\$3,136.17
10 Gardner St.	\$449,100	\$8,775.41 \$19.54	\$209,600	\$239,500	\$4,679.83

**KGH
FY 2016**

Property Address	Assessed Value	Tax amount/ Tax rate	Board's valuation	Overvaluation	Abatement
151-157 Beacon St.	\$457,100	\$9,420.83 \$20.61	\$263,500	\$193,600	\$3,990.10
152 Beacon St.	\$290,900	\$5,995.45 \$20.61	\$129,300	\$161,600	\$3,330.58
156 Beacon St.	\$374,500	\$7,718.45 \$20.61	\$210,800	\$163,700	\$3,373.86
22 Kilby St.	\$245,600	\$5,061.82 \$20.61	\$113,400	\$132,200	\$2,724.64
2-8 Tainter St.	\$454,800	\$9,373.43 \$20.61	\$258,000	\$196,800	\$4,056.05
20-24 Tainter St.	\$344,700	\$7,104.27 \$20.61	\$192,200	\$152,500	\$3,143.03
10 Gardner St.	\$449,100	\$9,255.95 \$20.61	\$211,800	\$237,300	\$4,890.75

OPINION

The assessors are required to assess real estate at its fair cash value. G.L. c. 59, § 38. Fair cash value is defined as the price on which a willing seller and a willing buyer will agree if both of them are fully informed and under no compulsion. ***Boston Gas Co. v. Assessors of Boston***, 334 Mass. 549, 566 (1956). Additionally, the purpose for which a property is adapted is a relevant consideration in determining its fair market value. ***Boston Gas Co.***, 334 Mass. at 566.

Understanding the "unique status" of affordable-housing property provided the Board with a framework for analyzing the subject properties' fair cash values for assessment purposes. ***Community Development Co. v. Assessors of Gardner***, 377 Mass. 351, 354 (1979). In the specific area of affordable-housing developments, the Board has held that "when determining fair cash value, the unique status of governmentally regulated affordable-housing units, and the restrictions and benefits attendant thereto, must be considered." ***Koppelman v. Assessors of Amesbury***, Mass. ATB Findings of Fact and Reports 2012-950, 963. See also ***Hampton Associates v. Assessors of Northampton***, Mass. ATB Findings of Fact and Reports 1998-770, 791 ("Thus, Massachusetts considers contributions of rental subsidies, accelerated depreciation and special financing as well as

restrictions imposed on properties as affecting the overall values of such properties").

In the instant appeals, the assessor relied primarily on a sales-comparison approach to value the subject properties, opining that it was not appropriate to value single-, two-, or three-family residential properties under an income-capitalization approach. However, given the commitment made to various government agencies to maintain the subject properties as a set number of affordable-housing units or else risk "poison pill" accelerated-payment penalties as well as revocation of investors' tax benefits, the Board found that it was highly unlikely that any of the individual parcels comprising the subject properties would be conveyed separately. The Board thus found and ruled that the assessor's method of valuing the subject properties did not produce a reliable indication of their fair market value.

The Board agreed with the appellants that the use of the income-capitalization approach was the appropriate method to value the subject properties. The use of the income-capitalization approach is appropriate when reliable market data are not available, and it is specifically applicable when valuing income-producing property whose rental income is subject to governmental restrictions. See, e.g., **Assessors of Weymouth v. Tammy Brook Co.**, 368 Mass. 810, 811 (1975) (citation

omitted). The Board has previously utilized the income-capitalization approach to value affordable-housing developments that were comprised of multiple residential buildings of various sizes. See, e.g., **Hampton Associates**, Mass. ATB Findings of Fact and Reports at 1998-770 (following the income-capitalization approach to value an affordable-housing development comprised of twenty-six two-story buildings with a total of 207 units).

Under the income-capitalization approach, valuation is determined by dividing net operating income by a capitalization rate. See **Assessors of Brookline v. Buehler**, 396 Mass. 520, 522-23 (1986). After accounting for vacancy and rent losses, the net operating income is obtained by deducting the appropriate expenses. **Pepsi-Cola Bottling Co. v. Assessors of Boston**, 397 Mass. 447, 451-53. The capitalization rate should reflect the return on investment necessary to attract investment capital. **Taunton Redev. Assocs. v. Assessors of Taunton**, 393 Mass. 293, 295 (1984).

The Board adopted many elements of Ms. Keating's income-capitalization approach. The Board found that the appellants successfully established that, in the context of affordable housing, unique situations exist that affect the amounts of rent and expenses. The Board thus found and ruled that using the actual rent rolls for each parcel and the actual expense ratios

for the subject properties yielded the most accurate net operating incomes in each appeal.

However, the Board disagreed with Ms. Keating's approach with respect to her selection of capitalization rates for the subject properties. Ms. Keating admitted that, in selecting her capitalization rates for the subject properties, she did not consider any of the benefits of affordable housing, including tax deductions and credits that are passed through to the investors. The Board in *Hampton Associates* acknowledged that "[s]pecial incentives are needed to induce an investor or sponsor to invest in a project the market would probably not support," such as tax advantages to the investors, and that these incentives comprise "intangible components of the value of such properties [that] must be considered in the valuation process." Mass. ATB Findings of Fact and Reports at 1998-788.

The Board in *Hampton Associates* thus ruled that, "[i]n determining the capitalization rate of low-income housing, the Board considers both the restrictions and benefits arising from financing and its conditions." *Id.* at 1998-790. See also *President Village Company v. Assessors of Fall River*, Mass. ATB Findings of Fact and Reports 1987-23 (ruling that, in arriving at a capitalization rate for an affordable-income property, consideration should be given not only to restrictions on the investors' rate of return but also to the favorable federally-

guaranteed mortgage terms; *Cummins Towers Company v. Assessors of Boston*, Mass. ATB Findings of Fact and Reports 1984-291 (giving more weight to assessor's capitalization rate because the assessor considered the benefits, like income tax advantages, as well as the restrictions imposed on the affordable property).

In the instant appeals, the Board determined that neither the appellants nor the assessor adequately considered both the benefits and the restrictions associated with affordable-housing properties in the development of their respective capitalization rates. Upon analyzing the evidence presented, the Board determined that base capitalization rates of 7.5 percent and 7 percent, plus the applicable tax factors, were appropriate in valuing the subject properties for fiscal years 2014 and 2016, respectively.

Applying these capitalization rates to each parcel's net operating incomes yielded overvaluations for each appeal at issue with one notable exception - 30 Oread Street, the parking lot parcel. Ms. Keating advocated deducting the entire assessed value of this parcel from the composite value of the remaining parcels owned by BOLP; however, she offered no evidence to support a finding that this parcel was devoid of fair market value. Moreover, the Board recognizes the inherent value in real estate, and it has previously ruled against a taxpayer's

assertion that real estate had no fair market value. See e.g., **Abdella v. Assessors of Oxford**, Mass. ATB Findings of Fact and Reports 2009-1175. The appellants have the burden of proving that a property has a lower value than that assessed. “The burden of proof is upon the petitioner to make out its right as [a] matter of law to [an] abatement of the tax.” **Schlaiker v. Assessors of Great Barrington**, 365 Mass. 243, 245 (1974) (quoting **Judson Freight Forwarding Co. v. Commonwealth**, 242 Mass. 47, 55 (1922)). “[T]he board is entitled to ‘presume that the valuation made by the assessors [is] valid unless the taxpayers . . . prov[e] the contrary.’” **General Electric Co. v. Assessors of Lynn**, 393 Mass. 591, 598 (1984) (quoting **Schlaiker**, 365 Mass. at 245). Absent specific evidence proving a lower fair market value, the Board found and ruled that the 30 Oread Street parcel was not overvalued for fiscal year 2016.¹⁶

In reaching its opinion of fair cash value in these appeals, the Board was not required to believe the testimony of any particular witness or to adopt any particular method of valuation that an expert witness suggested. Rather, the Board could accept those portions of the evidence that the Board determined had more convincing weight. **Foxboro Associates v. Assessors of Foxborough**, 385 Mass. 679, 683 (1982); **Assessors of Lynnfield v. New England Oyster House, Inc.** 362 Mass. 696, 701-02

¹⁶ BOLP did not appeal the 30 Oread Street parcel for fiscal year 2014.

(1972). "The credibility of witnesses, the weight of evidence, the inferences to be drawn from the evidence are matters for the board." *Cumington School of the Arts, Inc. v. Assessors of Cumington*, 373 Mass. 597, 605 (1977).

The Board applied these principles in reaching its determination that the subject properties were overvalued for the fiscal years at issue, with the exception of the 30 Oread Street parcel in fiscal year 2016. Accordingly, the Board ordered abatements for the appellants in the following total amounts:

Appellant	Fiscal year 2014	Fiscal year 2016
BOLP	\$12,140.20	\$14,890.73
KGH	\$25,218.31	\$25,509.01

THE APPELLATE TAX BOARD

By: /s/ Thomas W. Hammond
Thomas W. Hammond., Jr., Chairman

A true copy,

Attest: /s/ William J. Doherty
Clerk of the Board