

**2003**

**BOARD OF  
EQUALIZATION**

## BOARD OF EQUALIZATION TO REVIEW PROPERTY VALUES

Kay Brown, Clerk of Christian County, announces that the board of equalization will begin meetings at 9:00 am, July 7, 2003 at the County Court House to hear those who disagree with the values of real estate and personal property established by the assessor for tax year 2003. The board tentatively plans to conclude the hearings by 4:00 pm, July 31, 2003; appointments must be made prior to that date.

According to the assessor, the new assessments were established, notices were sent to owners whose real property increased in value, and, as the law requires, the assessment books were returned to the county clerk. The next step in the property tax process is a review of assessments by the county board of equalization followed by setting of levies by the political subdivisions.

Property owners who wish to appeal their assessments must do so by July 7, 2003 and should contact Dee Cloud, Commission Secretary at 581- 2112 for the necessary forms for such an appeal. Property owners appearing before the board should be prepared to present evidence to establish what they believe to be the correct value of their property. If, after a decision of the board, the property owner is still dissatisfied with the assessment, the appeal may be lodged with the State Tax Commission and thereafter to the circuit court.

**FAXED**  
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 RL

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**Christian County Headliner News • Nixa News-Enterprise**  
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 Phone 417-581-3541

CCC•90742•1x•7/23

**BOARD OF EQUALIZATION TO  
 REVIEW PROPERTY VALUES**

Kay Brown, Clerk of Christian County, announces that the board of equalization will begin meetings at 8:00 am, July 7, 2003 at the County Courthouse to hear those who disagree with the values of real estate and personal property established by the assessor for tax year 2003. The board tentatively plans to conclude the hearings by 4:00 pm, July 31, 2003; appointments must be made prior to that date.

According to the assessor, the new assessments were established, notices were sent to owners whose real property increased in value, and, as the law requires, the assessment books were returned to the county clerk. The next step in the property tax process is a review of assessments by the county board of equalization followed by setting of levies by the political subdivisions.

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CCC•90742•1x•7/23

Proof must be corrected and returned via FAX by: 7/18 - 5 p.m.  
 Cost per week: 27.00 x 1 weeks TOTAL: \$ 27.00

For your convenience and to ensure accuracy please *Email* and Fax a hard copy of all future legals to: kacim@cpimo.com

## OATH OF OFFICE

I, Bill Barnett, do solemnly swear that as  
a member of the Christian County Board of Equalization will fairly  
And impartially equalize the valuation of all real estate and tangible  
personal property taxable by the County.

Bill Barnett

STATE OF MISSOURI

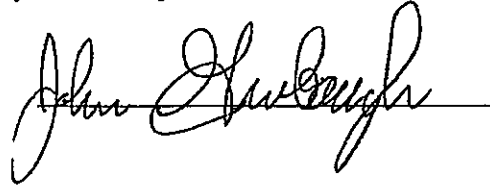
COUNTY OF CHRISTIAN

Subscribed and sworn to before me on this 17<sup>th</sup> day of  
July, 2003. Witness my hand and official seal  
The day above written.

Kay Brown  
Kay Brown, County Clerk

**OATH OF OFFICE**

I, John Grubaugh, do solemnly swear that as  
a member of the Christian County Board of Equalization will fairly  
And impartially equalize the valuation of all real estate and tangible  
personal property taxable by the County.



STATE OF MISSOURI

COUNTY OF CHRISTIAN

Subscribed and sworn to before me on this 17<sup>th</sup> day of  
July, 2003. Witness my hand and official seal  
The day above written.

  
Kay Brown, County Clerk

## OATH OF OFFICE

I, Sandra Bryant, do solemnly swear that as  
a member of the Christian County Board of Equalization will fairly  
And impartially equalize the valuation of all real estate and tangible  
personal property taxable by the County.



STATE OF MISSOURI


COUNTY OF CHRISTIAN

Subscribed and sworn to before me on this 17<sup>th</sup> day of  
July, 2003. Witness my hand and official seal  
The day above written.

  
Kay Brown, County Clerk

## OATH OF OFFICE

I Loyd Todd do solemnly swear that as  
a member of the Christian County Board of Equalization will fairly  
And impartially equalize the valuation of all real estate and tangible  
personal property taxable by the County.

  
\_\_\_\_\_

STATE OF MISSOURI

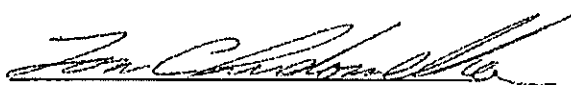
COUNTY OF CHRISTIAN

Subscribed and sworn to before me on this 17<sup>th</sup> day of  
July, 2003. Witness my hand and official seal  
The day above written.

  
\_\_\_\_\_  
Kay Brown, County Clerk

## OATH OF OFFICE

I, Tom Chudomelka, do solemnly swear that as  
a member of the Christian County Board of Equalization will fairly  
And impartially equalize the valuation of all real estate and tangible  
personal property taxable by the County.



STATE OF MISSOURI

COUNTY OF CHRISTIAN

Subscribed and sworn to before me on this 17<sup>th</sup> day of  
July, 2003. Witness my hand and official seal  
The day above written.

  
Kay Brown, County Clerk



Minutes from the Board of Equalization  
Thursday, July 17, 2003.

The Board of Equalization met at 9:00 a.m., Thursday, July 17, 2003. Those present were Presiding Commissioner, John Grubaugh, Eastern Commissioner Tom Chudomelka, Western Commissioner, Bill Barnett, Assessor, Sandra Bryant, County Surveyor, Lloyd Todd, and County Clerk, Kay Brown. The hearing was on The Villas at Forest Park, L.P., and Mary H. Neal did not show up because she had previously sent a letter to the County Clerk in an attempt to resolve the matter. However the letter was overlooked by the Clerk and was not sent to the Assessor.

Board member Tom Chudomelka moved to table any further discussion until Monday, July 21, 2003. Before reconvening the board will view the property and will discuss their findings on July 21, 2003. Tom Chudomelka moved to adjourn the meeting and Lloyd Todd, County Surveyor, seconded the motion, followed by John Grubaugh, and Bill Barnett.

Minutes from the Board of Equalization  
Monday, July 21, 2003

The Board of Equalization met at 9:00 a.m., Thursday, July 21, 2003. Those present were Presiding Commissioner, John Grubaugh, Eastern Commissioner Tom Chudomelka, Western Commissioner, Bill Barnett, Assessor, Sandra Bryant, County Surveyor, Lloyd Todd, and County Clerk, Kay Brown. The Board had not viewed the property of The Villas at Forest Park, L.P., and wanted to adjourn the meeting until after the viewing.

The Board reconvened at 2:30p.m., Thursday, July 21, 2003after viewing the property. Much discussion was raised about the "D-"classification. Eastern Commissioner Tom, Chudomelka, moved to change the classification from "D-" to "D". It was seconded by Western Commissioner, Bill Barnett, followed by John Grubaugh, and Lloyd Todd, County Surveyor. This change in status would change the assessed valuation from \$99,110 to 102,720. In addition the depreciation rate was discussed that the rate could be raised but not at this time.

Minutes by Kay Brown, County Clerk

Minutes From the Board of Equalization  
July 24, 2003

The Board of Equalization met at 9:00 a.m., Thursday, July 24, 2003. Those present were Presiding Commissioner, John Grubaugh, Eastern Commissioner Tom Chudomelka, Western Commissioner, Bill Barnett, Assessor, Sandra Bryant, County Surveyor, Lloyd Todd, and County Clerk, Kay Brown. The Board discussed Missouri Gas Energy's appeal. Tom Chudomelka made a motion to send the appeal to the state and John Grubaugh seconded the motion.

KAY BROWN



100 W. CHURCH ROOM 206  
OZARK, MO 65721

Phone: 581-6360 Fax: 581-8331

**MEMORANDUM**

TO: CHRISTIAN COUNTY TAXPAYER  
FROM: KAY BROWN, CHRISTIAN COUNTY CLERK  
DATE: JULY 15, 2003  
RE: BOARD OF EQUALIZATION NOTICE

PARCEL# \_\_\_\_\_

Enclosed you will find a copy of Change in Assessed Value on the above parcel that has been approved by the Board of Equalization. This notification is being sent to you so that you are aware of the change in assessed value to your property. This notification is required by law. Please note that this form includes the appraised and assessed value of the Assessor on the left and the new value approved by the Board of Equalization on the right. The legal description of your property and the reason for the change is also listed. The Board will meet on the second Monday in August, to hear reason why change by said Board should not be made.

You have a right to appeal your property tax assessment to the State Tax Commission of Missouri. I have enclosed a postcard that you will need to fill out if you wish to file an appeal. You must file appeals to the Commission by September 30<sup>th</sup>, 2003.

Questions regarding this change to your property should be directed to the Christian County Assessor's Office at 581-2440. For further information concerning appealing your property tax assessment and to request an information booklet on Tax Appeals, you may write or call: State Tax Commission of Missouri, 621 East Capitol Ave, Box 146, Jefferson City, MO 65102-0146 - (573) 751-1715 or <http://www.dor.state.mo.us/stc>.



**Jeffrey E. Smith Companies**

206 Peach Way  
P.O. Box 7688  
Columbia, Missouri 65205

573-443-2021  
573-442-4261 fax

May 16, 2003

Christian County Board of Equilization  
c/o Junior Combs  
Secretary to the Board of Equilization  
100 West Church Street, Rm 206  
Ozark, MO 65721

RE: Branson Christian County, L.P.  
Parcel # 100614003001001001

Dear Mr. Combs:

This letter is written to you in your capacity as Secretary to the Board of Equilization and is an appeal to that Board for the assessments of parcels listed above. These parcels have been appealed to the State Tax Commission in the past and the appeals are still pending. It is our position that the Assessor has not used the appropriate method for valuing these parcel(s). For that reason, we are providing you with this appeal. Under the Missouri Statute, 137.275 R.S.Mo., "every person who thinks himself aggrieved by the assessment of his property may appeal to the County Board of Equilization, in person, by attorney or agent, or in writing." We prefer to present this appeal in writing. If the Board requires that we appear, please provide us notice of the date and time when appearance is required. Address that notice to Joey Holmgren, Jeffrey E. Smith Companies, P.O. Box 7688, Columbia, MO 65205. If appearance is necessary, please forward the decision of the Board of Equilization to the same address in writing.

Sincerely,

Joey Holmgren  
Jeffrey E. Smith Companies



Jeffrey E. Smith Companies

206 Peach Way  
P.O. Box 7688  
Columbia, Missouri 65205

573-443-2021  
573-442-4261 fax

May 30, 2003

Christian County Board of Equilization  
c/o Junior Combs  
Secretary to the Board of Equilization  
100 West Church Street, Rm 206  
Ozark, MO 65721

RE: Branson Christian County II, L.P.  
Parcel # 100614003001001002

Dear Mr. Combs:

This letter is written to you in your capacity as Secretary to the Board of Equilization and is an appeal to that Board for the assessments of the parcel listed above. Our desire is to add the above listed parcel (Branson Christian County II, L.P.) to the currently appealed property located in your county (Branson Christian County, L.P.) for 2003. Branson Christian County, L.P. was appealed to the State Tax Commission in the past and a final decision is still pending. It is our position that the Assessor has not used the appropriate method for valuing these parcel(s). For that reason, we are providing you with this appeal. Under the Missouri Statute, 137.275 R.S.Mo., "every person who thinks himself aggrieved by the assessment of his property may appeal to the County Board of Equilization, in person, by attorney or agent, or in writing." We prefer to present this appeal in writing. If the Board requires that we appear, please provide us notice of the date and time when appearance is required. Address that notice to Joey Holmgren, Jeffrey E. Smith Companies, P.O. Box 7688, Columbia, MO 65205. If appearance is necessary, please forward the decision of the Board of Equilization to the same address in writing. Also enclosed are 2002 income / expense statements for both properties along with our position of the fair market value.

Sincerely,

A handwritten signature in cursive script, appearing to read "Joey Holmgren".

Joey Holmgren  
Jeffrey E. Smith Companies

**Income / Expenses**

	Branson Christian County, L.P. (2002 Actual)	Branson Christian County II, L.P. (2002 Actual)
Rental Income	203,520.00	260,160.00
Vacancy Loss	(18,797.89)	(42,208.07)
Rental Loss - HUD	(50.00)	(315.00)
Rental Incentives	(6,600.00)	(11,746.00)
Other Tenant Charges	2,935.46	3,341.38
Damages Charged	7,997.77	10,693.23
Laundry & Vending Income	594.19	581.02
Reimbursed Utilities - Water	-	-
Reimbursed Utilities - Sewer	-	-
Interest Income	4,217.13	588.00
Other Income	138.26	148.99
<b>Effective Gross Income</b>	<b>193,954.92</b>	<b>221,243.55</b>

Operating Expenses from Income Statement	272,796.01	355,530.64
Less: Amortization	-	-
Less: Depreciation	(106,212.79)	(89,167.55)
Less: Asset Management Fees	(1,500.00)	(1,500.00)
Less: Partnership Reporting Fees	(5,000.04)	(5,000.04)
Less: Interest	(14,143.99)	(105,216.63)
Reserves for Replacement	13,900.00	-
<b>Total Operating Expenses</b>	<b>159,839.19</b>	<b>154,646.42</b>

**Net Operating Income**                      \$34,116                      \$66,597

**Capitalization Rate**                                      9.00%                      9.00%

<b>Capitalized Value Method (Rounded)</b>	<b>\$379,100</b>	<b>\$740,000</b>
<b>Alternative Method from Settlement Agreement (Highest Value from 1997 - 2002)</b>	<b>\$604,400</b>	<b>\$620,500</b>

<b>2003 Appraised Value (Maximum of Above Methods)</b>	<b>\$604,400</b>	<b>\$740,000</b>
<b>2003 Assessed Value</b>	<b>114,836</b>	<b>140,600</b>

Branson Christn Cnty, L.P.  
Income Statement-Accrual  
For the Period Ended December 31, 2002

	Current Activity	Current Budget	Variance	YTD Balance	YTD Budget	YTD Variance
<b>Income</b>						
Rental Income	\$ 16,960.00	\$ 16,960.00		\$ 203,520.00	\$ 203,520.00	
Vacancy Loss	(1,294.00)	(1,384.00)	90.00	(18,797.89)	(16,608.00)	(2,189.89)
Rental Loss - HUD		(12.34)	12.34	(50.00)	(148.00)	98.00
Rental Incentives	(500.00)		(500.00)	(6,600.00)		(6,600.00)
Other Tenant Charges	150.00	291.66	(141.66)	2,935.46	3,500.00	(564.54)
Damages Charged	50.00		50.00	7,997.77		7,997.77
Laundry & Vending Income	<u>9.84</u>	<u>45.84</u>	<u>(36.00)</u>	<u>594.19</u>	<u>550.00</u>	<u>44.19</u>
<b>Total Income</b>	<b>\$ 15,375.84</b>	<b>\$ 15,901.16</b>	<b>\$ (525.32)</b>	<b>\$ 189,599.53</b>	<b>\$ 190,814.00</b>	<b>\$ (1,214.47)</b>
<b>Expenses</b>						
Advertising	\$ 444.27	\$ 333.34	\$ (110.93)	\$ 4,522.31	\$ 4,000.00	\$ (522.31)
Auditing Expense				1,700.00	1,900.00	200.00
Auto - Mileage	39.89		(39.89)	111.43		(111.43)
Bad Debt	250.00		(250.00)	580.00		(580.00)
Depreciation	8,866.54	8,866.66	.12	106,212.79	106,212.90	.11
Employee Benefits - 401K	60.00	92.75	32.75	300.00	1,113.00	813.00
Employee Benefits - Health	250.72	138.00	(112.72)	2,828.58	1,656.00	(1,172.58)
Fees - Asset Management	125.00	125.00		1,500.00	1,500.00	
Fees - Management	1,680.00	1,680.00		20,160.00	20,160.00	
Fees - Partnership Reporting	416.67	416.66	(.01)	5,000.04	5,000.00	(.04)
Furn. & Fixture Replacement	3,613.08	627.09	(2,985.99)	8,592.79	7,525.00	(1,067.79)
Grounds - Contract	92.00	666.64	574.64	4,453.96	6,000.00	1,546.04
Insurance - Fidelity Bond	9.13	9.66	.53	110.00	116.00	6.00
Insurance - Property & Liab.	544.60	494.66	(49.94)	6,385.25	5,936.00	(449.25)
Insurance - Umbrella	70.00	68.09	(1.91)	805.25	817.00	11.75
Insurance - Worker's Comp.	267.43	69.84	(197.59)	1,082.25	838.00	(244.25)
Interest	1,168.41	1,168.41		14,143.99	14,143.99	
Legal Expense	782.45	41.66	(740.79)	854.93	500.00	(354.93)
Licenses, Fees, Permits		16.84	16.84	162.38	202.00	39.62
Maint. & Repair - Contract	1,537.16	713.25	(823.91)	9,788.68	8,559.00	(1,229.68)
Maint. & Repair - Supply	802.30	672.00	(130.30)	5,583.86	8,064.00	2,480.14
Office Equipment		20.84	20.84	23.95	250.00	226.05
Office Supplies	65.44	83.34	17.90	903.57	1,000.00	96.43
Other Administrative Expense		41.66	41.66		500.00	500.00
Painting & Decorating	122.38	375.00	252.62	7,476.69	4,500.00	(2,976.69)
Payroll	2,036.95	2,112.25	75.30	26,173.05	25,347.00	(826.05)
Postage & Freight	(4.73)		4.73	(4.73)		4.73
Services	138.00	36.25	(101.75)	467.00	435.00	(32.00)
Snow Removal	(138.00)	566.66	704.66	164.36	1,700.00	1,535.64
Taxes - Payroll - FUTA		20.28	20.28	67.11	243.33	176.22
Taxes - Payroll - FICA	114.41	149.55	35.14	1,545.32	1,794.57	249.25
Taxes - Payroll - Medicare	26.76	17.98	(8.78)	361.43	215.83	(145.60)
Taxes - Payroll - SUTA		48.16	48.16	249.08	577.91	328.83
Taxes - Real Estate	1,205.06	1,579.25	374.19	18,576.81	18,951.00	374.19
Telephone Expense	83.64	116.66	33.02	970.85	1,400.00	429.15
Damages Expensed				3,731.99		(3,731.99)
Training, Education & Seminar		41.66	41.66	402.54	500.00	97.46
Utilities - Electricity	345.60	201.25	(144.35)	3,144.57	2,415.00	(729.57)
Utilities - Garbage	4.14	10.00	5.86	247.12	120.00	(127.12)
Utilities - Sewer	507.28	494.41	(12.87)	7,748.77	5,933.00	(1,815.77)
Utilities - Water	<u>418.20</u>	<u>507.75</u>	<u>89.55</u>	<u>5,668.04</u>	<u>6,093.00</u>	<u>424.96</u>
<b>Total Expenses</b>	<b>\$ 25,944.78</b>	<b>\$ 22,623.50</b>	<b>\$ (3,321.28)</b>	<b>\$ 272,796.01</b>	<b>\$ 266,218.53</b>	<b>\$ (6,577.48)</b>
<b>Other Income</b>						
Interest Income	\$ 2,045.87	\$ 333.34	\$ 1,712.53	\$ 4,217.13	\$ 4,000.00	\$ 217.13
Other Income				138.26		138.26
<b>Total Other Income</b>	<b>\$ 2,045.87</b>	<b>\$ 333.34</b>	<b>\$ 1,712.53</b>	<b>\$ 4,355.39</b>	<b>\$ 4,000.00</b>	<b>\$ 355.39</b>
<b>Net Income (Loss)</b>	<b>\$ (8,523.07)</b>	<b>\$ (6,382.00)</b>	<b>\$ (2,134.07)</b>	<b>\$ (78,841.09)</b>	<b>\$ (71,404.53)</b>	<b>\$ (7,436.56)</b>

(13,900) paid to reserves for replacement  
for 2002.

Confidential; For Internal Use Only



Branson Christn Cnty II, L.P.  
Income Statement-Accrual  
For the Period Ended December 31, 2002

	Current Activity	Current Budget	Variance	YTD Balance	YTD Budget	YTD Variance
<b>Income</b>						
Rental Income	\$ 21,680.00	\$ 21,680.00		\$ 260,160.00	\$ 260,160.00	
Vacancy Loss	(907.98)	(2,168.00)	1,260.02	(42,208.07)	(26,016.00)	(16,192.07)
Rental Loss - HUD	(115.00)	(12.91)	(102.09)	(315.00)	(155.00)	(160.00)
Rental Incentives	(1,856.00)		(1,856.00)	(11,746.00)		(11,746.00)
Other Tenant Charges	350.00	333.34	16.66	3,341.38	4,000.00	(658.62)
Damages Charged	674.88		674.88	10,693.23		10,693.23
Laundry & Vending Income		45.84	(45.84)	581.02	550.00	31.02
<b>Total Income</b>	<b>\$ 19,825.90</b>	<b>\$ 19,878.27</b>	<b>\$ (52.37)</b>	<b>\$ 220,506.56</b>	<b>\$ 238,539.00</b>	<b>\$ (18,032.44)</b>
<b>Expenses</b>						
Advertising	\$ 506.75	\$ 416.66	\$ (90.09)	\$ 6,361.42	\$ 5,000.00	\$ (1,361.42)
Auditing Expense				2,000.00	2,100.00	100.00
Auto - Mileage				83.98		(83.98)
Bad Debt	1,263.00		(1,263.00)	4,420.57		(4,420.57)
Depreciation	7,541.84	7,478.02	(63.82)	89,167.55	89,103.73	(63.82)
Employee Benefits - 401K	40.00	62.16	22.16	200.00	746.00	546.00
Employee Benefits - Health	212.08	162.00	(50.08)	2,232.20	1,944.00	(288.20)
Fees - Asset Management	125.00	125.00		1,500.00	1,500.00	
Fees - Management	2,240.00	2,240.00		26,880.00	26,880.00	
Fees - Partnership Reporting	416.67	416.66	(.01)	5,000.04	5,000.00	(.04)
Furn. & Fixture Replacement	790.87	541.66	(249.21)	5,813.04	6,500.00	686.96
Grounds - Contract	108.00	630.00	522.00	5,203.48	5,670.00	466.52
Insurance - Fidelity Bond	11.88	11.84	(.04)	143.00	142.00	(1.00)
Insurance - Property & Liab.	538.86	472.59	(66.27)	6,267.25	5,671.00	(596.25)
Insurance - Umbrella	1,061.66	83.25	(978.41)	939.50	999.00	59.50
Insurance - Worker's Comp.	196.09	48.91	(147.18)	794.17	587.00	(207.17)
Interest	18,740.89	18,740.89		105,216.63	105,216.63	
Legal Expense		41.66	41.66	84.55	500.00	415.45
Licenses, Fees, Permits		19.59	19.59	190.62	235.00	44.38
Maint. & Repair - Contract	2,181.37	578.91	(1,602.46)	8,892.19	6,947.00	(1,945.19)
Maint. & Repair - Supply	983.44	514.09	(469.35)	7,356.47	6,169.00	(1,187.47)
Office Equipment		16.66	16.66	30.55	200.00	169.45
Office Supplies	107.41	87.50	(19.91)	1,031.94	1,050.00	18.06
Other Administrative Expense	1.00	12.50	11.50	216.93	150.00	(66.93)
Painting & Decorating	547.50	515.16	(32.34)	10,829.16	6,182.00	(4,647.16)
Payroll	1,739.75	1,730.93	(8.82)	20,589.86	20,771.00	181.14
Grounds Lease	416.67	416.66	(.01)	5,000.04	5,000.00	(.04)
Services		28.91	28.91	536.00	347.00	(189.00)
Snow Removal		600.00	600.00	203.77	1,800.00	1,596.23
Taxes - Payroll - FUTA		16.62	16.62	54.67	199.40	144.73
Taxes - Payroll - FICA	96.35	122.55	26.20	1,209.58	1,470.58	261.00
Taxes - Payroll - Medicare	22.53	29.08	6.55	282.87	348.95	66.08
Taxes - Payroll - SUTA		39.46	39.46	203.03	473.58	270.55
Taxes - Real Estate	1,021.92	1,621.16	599.24	18,854.79	19,454.00	599.21
Telephone Expense	98.18	141.66	43.48	1,139.61	1,700.00	560.39
Damages Expensed	104.88		(104.88)	3,558.68		(3,558.68)
Training, Education & Seminar		50.00	50.00	472.55	600.00	127.45
Utilities - Electricity	357.84	306.25	(51.59)	5,066.13	3,675.00	(1,391.13)
Utilities - Garbage	4.86	8.34	3.48	311.59	100.00	(211.59)
Utilities - Sewer	272.69	258.00	(14.69)	4,206.69	3,096.00	(1,110.69)
Utilities - Water	272.14	243.34	(28.80)	2,985.54	2,920.00	(65.54)
<b>Total Expenses</b>	<b>\$ 42,022.12</b>	<b>\$ 38,828.67</b>	<b>\$ (3,193.45)</b>	<b>\$ 355,530.64</b>	<b>\$ 340,447.87</b>	<b>\$ (15,082.77)</b>
<b>Other Income</b>						
Interest Income	\$ 15.40	\$ 234.00	\$ (218.60)	\$ 588.00	\$ 2,808.00	\$ (2,220.00)
Other Income				148.92		148.92
<b>Total Other Income</b>	<b>\$ 15.40</b>	<b>\$ 234.00</b>	<b>\$ (218.60)</b>	<b>\$ 736.92</b>	<b>\$ 2,808.00</b>	<b>\$ (2,071.08)</b>
<b>Net Income (Loss)</b>	<b>\$ (22,180.82)</b>	<b>\$ (18,716.40)</b>	<b>\$ (3,464.42)</b>	<b>\$ (134,287.02)</b>	<b>\$ (99,100.87)</b>	<b>\$ (35,186.22)</b>

No reserves for replacement paid in 2002

Confidential: For Internal Use Only

Minutes from the Board of Equalization  
Thursday, July 17, 2003.

The Board of Equalization met at 9:00 a.m., Thursday, July 17, 2003. Those present were Presiding Commissioner, John Grubaugh, Eastern Commissioner Tom Chudomelka, Western Commissioner, Bill Barnett, Assessor, Sandra Bryant, County Surveyor, Lloyd Todd, and County Clerk, Kay Brown. The hearing was on The Villas at Forest Park, L.P., and Mary H. Neal did not show up because she had previously sent a letter to the County Clerk in an attempt to resolve the matter. However the letter was overlooked by the Clerk and was not sent to the Assessor.

Board member Tom Chudomelka moved to table any further discussion until Monday, July 21, 2003. Before reconvening the board will view the property and will discuss their findings on July 21, 2003. Tom Chudomelka moved to adjourn the meeting and Lloyd Todd, County Surveyor, seconded the motion, followed by John Grubaugh, and Bill Barnett.

Minutes from the Board of Equalization  
Monday, July 21, 2003

The Board of Equalization met at 9:00 a.m., Thursday, July 21, 2003. Those present were Presiding Commissioner, John Grubaugh, Eastern Commissioner Tom Chudomelka, Western Commissioner, Bill Barnett, Assessor, Sandra Bryant, County Surveyor, Lloyd Todd, and County Clerk, Kay Brown. The Board had not viewed the property of The Villas at Forest Park, L.P., and wanted to adjourn the meeting until after the viewing.

The Board reconvened at 2:30p.m., Thursday, July 21, 2003after viewing the property. Much discussion was raised about the "D-"classification. Eastern Commissioner Tom, Chudomelka, moved to change the classification from "D-" to "D". It was seconded by Western Commissioner, Bill Barnett, followed by John Grubaugh, and Lloyd Todd, County Surveyor. This change in status would change the assessed valuation from \$99,110 to 102,720. In addition the depreciation rate was discussed that the rate could be raised but not at this time.

Minutes by Kay Brown, County Clerk

July 21, 2003

Carmichael, Gardner, & Neal, P.C.  
Attn: Mary Neal  
901 St. Louis Street Ste. 101  
Springfield, MO. 65806

RE: BOE Hearing on The Villas at Forest Park, L.P.

Dear Ms. Neal,

The Christian County Board of Equalization met Thursday, June 17, 2003, and also Monday, July 21, 2003, concerning The Villas at Forest Park, LP. After viewing the property on July 21, 2003, the Board of Equalization determined that the property classification should be changed from a D- to a D. Enclosed is a Property Tax Appeals Book and a self-addressed postcard that you may send to the State Tax Commission if you wish to appeal it.

Sincerely,

Kay Brown



State & Local Tax Services

Three Galleria Tower

13165 Noel Road

12th Floor, LB 72

Dallas, TX 75240-6050

Tel. 972.934.0022

Fax 972.960.9819

www.ryanco.com

LB 72

**FACSIMILE TRANSMISSION COVER SHEET**

Date: July 23, 2003

To: Christian County Assessor

Attn: Sandra Bryant

Phone Number: 417.581.2440

Fax Number: 417.581.3029

From: Nathaniel T. Haskins ↓

Phone Number: 972.934.0022

Fax Number: 972.934.4939

Number of pages, including cover sheet: 20

**Message:**

Sandra,

Attached please find the information to be presented to the Board of equalization. I appreciate all of your help in this matter.

Please give me a call if you have any questions.

Respectfully,

Nathaniel T. Haskins

If all pages are not received, please call 972.934.0022.

**CONFIDENTIALITY NOTICE:**

The documents accompanying this telecopy transmission contain confidential information intended for a specific individual and purpose. This information is private and protected by law. If you are not the intended recipient, you are hereby notified that any disclosure or distribution of the contents of this information is strictly prohibited.

Equal Opportunity Employer

# CHANGE IN ASSESSED VALUE

Christian County  
Missouri

BOE 3

Date 7-21-03

Tax Year 2003

NAME Joe (Nick) Joe Forest Park LP

ADDRESS Carlson - Gardner Prop

205 W Walnut Ste 200  
Spfy 6506

Real Estate Parcel Number 10-6-23-3-2-65-0

School Code	<u>R2</u>	Fire 1	<u>        </u>	JC	<input checked="" type="checkbox"/>
Road Code	<u>NS</u>	Fire 2	<input checked="" type="checkbox"/>	Surtax	<u>        </u>
City Code	<u>NY</u>	Fire 3	<u>        </u>		
Ambulance	<input checked="" type="checkbox"/>	Fire 4	<u>        </u>		
		Fire 5	<u>        </u>		
		Fire 6	<u>        </u>		
		Fire 7	<u>        </u>		
		Fire 8	<u>        </u>		
		Fire 9	<u>        </u>		

REAL PROPERTY:	Assessor Office		Per- cent	Board of Equalization	
	APPRAISED	ASSESSED		APPRAISED	ASSESSED
Residential	117 9800	224 160	19%	128 600	221 530
Agriculture			12%		
Commercial			32%		
TOTAL					

XR 38800  
+ 7370

Legal Description: Lot 82 Forest Park Phase 3

Reason for Change: To correct error

(per Bill)

(F. ... 7/21/03)

Submitted to County Commission 7-21-03

By SL

Computer          Next Year Record 2004 Property Record Card

By          By SL By         

\$          \$

LLOYD JOSEPH CARMICHAEL  
MARK E. GARDNER  
MARY H. NEAL

LAW OFFICES OF  
**CARMICHAEL, GARDNER & NEAL**  
A PROFESSIONAL CORPORATION

901 ST. LOUIS STREET  
SUITE 101  
SPRINGFIELD, MISSOURI 65806  
(417) 864-8000  
FAX (417) 864-8001

LEGAL ASSISTANT:  
SARA JURY

June 23, 2003

Kay Brown  
Christian County Clerk  
206 Courthouse  
100 W. Church St.  
Ozark, MO 65721

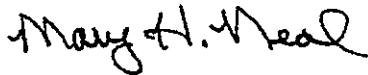
RE: BOE Hearing on The Villas at Forest Park, L.P.

Dear Ms. Brown:

I am currently scheduled to appear before the Board of Equalization on Thursday, July 17 at 9:00 a.m. with regard to the tax appeal filed on behalf of The Villas at Forest Park, L.P. Rather than appearing in person, I would like to present my argument through the enclosed letter to the members of the Board of Equalization. Please let me know if there is a problem with this. Otherwise, please see that the Board members receive the enclosed letter and attachments prior to the hearing date.

Thank you for your assistance.

Sincerely,



Mary H. Neal

Enclosures

LAW OFFICES OF

**CARMICHAEL, GARDNER & NEAL**  
A PROFESSIONAL CORPORATION

901 ST. LOUIS STREET  
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FAX (417) 864-8001

LLOYD JOSEPH CARMICHAEL  
MARK E. GARDNER  
MARY H. NEAL

LEGAL ASSISTANT:  
SARA JURY

June 23, 2003

Christian County Board of Equalization  
206 Courthouse  
100 W. Church Street  
Ozark, MO 65721

RE: The Villas at Forest Park, L.P.  
Assessment of Low-Income Housing Projects

Dear Board Members:

Please accept this letter in lieu of my appearance before the board with regard to the appeal of the assessment against the partnership named above. This partnership owns a low-income apartment project which has received state and federal low-income housing tax credits. Involvement in the Section 42 housing program requires that various restrictions be placed on operation of the project, and it is our contention that these restrictions significantly decrease the value of the property. For instance, the property can only be sold under certain circumstances and cannot be used for anything other than low-income housing for a period of at least 15 years.

As you are probably aware, the State Tax Commission in the Maryville Properties v. Pat Nelson matter has supported use of the capitalization of income approach for valuation of properties such as this and, in similar appeals, has provided a formula for calculation of taxes based on this approach. Copies of the relevant opinions and memoranda are enclosed along with income and expense information for this project for 2002 and a calculation of the appraised value based on this information.

As you can see from the enclosed calculation, the appraised value under this approach is considerably less than the value which has been determined by the assessor. We believe that the Tax Commission will support the use of this method based on its prior determinations. Clearly, this property is different from other traditional housing projects, and the use of the normal valuation process simply doesn't produce an accurate reflection of market value. The



Christian County Board of Equalization

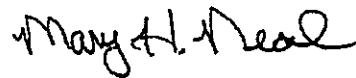
June 23, 2003

Page 2

Commission has approved use of the capitalization of income approach as a more reliable indicator of value for such projects, and we urge you to apply that method at this time.

I appreciate your consideration of this matter.

Sincerely,

A handwritten signature in black ink that reads "Mary H. Neal". The signature is written in a cursive style with a large initial "M".

Mary H. Neal

Enclosures

TAX CALCULATION  
FOR  
VILLAS AT FOREST PARK, L.P.

Based on Capitalization of Income Method as used by State Tax Commission in Maryville Properties, L.P. v. Pat Nelson, Assessor, Nodaway County

.0101802 effective tax rate (from 2002)  
+ .046097 capitalization rate as set forth in November 8, 2002 memorandum of STC  

---

.0562772 total capitalization rate

\$ 155,125.00 total income  
Less 89,498.00 expenses (not including real property taxes, depreciation or mortgage)  
Less 9,244.00 contribution to replacement reserve  

---

\$ 56,383 net income

divided by .0562772 capitalization rate

---

1,001,880 appraised value  
multiplied by .0101802 effective tax rate

---

\$10,199 tax

## INCOME STATEMENT

FOR THE 12 PERIODS ENDED DECEMBER 31, 2002

	PERIOD TO DATE		YEAR TO DATE	
	ACTUAL	PERCENT	ACTUAL	PERCENT
<b>Revenue</b>				
RENTAL INCOME	\$12,135.00	96.1 %	148,065.97	95.4
NON REFUNDABLE SEC DEP INCOME	50.00	.4	500.00	.3
LAUNDRY INCOME	.00	.0	900.00	.6
MISCELLANEOUS	.00	.0	89.66	.1
CABLE INCOME	444.00	3.5	5,570.00	3.6
<b>TOTAL Revenue</b>	<b>12,629.00</b>	<b>100.0</b>	<b>155,125.63</b>	<b>100.0</b>
<b>Gross Profit</b>	<b>12,629.00</b>	<b>100.0</b>	<b>155,125.63</b>	<b>100.0</b>
<b>Expenses</b>				
MANAGEMENT SALARIES	1,022.68	8.1	12,687.18	8.2
MAINTENANCE SALERIES	995.74	7.9	12,190.81	7.9
ACCOUNTING-AUDITING	.00	.0	8,297.00	5.3
ADVERTISING	75.00	.6	825.00	.5
VACANT UNIT PREPARATION	45.00	.4	764.65	.5
REPAIRS	210.23	1.7	2,965.66	1.9
CONTRACTOR SERVICES	250.00	2.0	2,310.26	1.5
GROUNDS	298.00	2.4	1,620.93	1.0
MAINT. SUPPLIES, TOOLS, EQUIP.	91.41	.7	1,324.72	.9
MISC. MAINTENANCE COSTS	15.80	.1	1,007.21	.6
OFFICE SUPPLIES & POSTAGE	19.02	.2	1,273.82	.8
TELEPHONES/PAGERS	242.78	1.9	2,633.22	1.7
COMPUTER EXPENSE	.00	.0	60.00	.0
MISC. ADMINISTRATIVE COSTS	50.00	.4	166.66	.1
EMPLOYEE TRAVEL/MILEAGE	.00	.0	25.92	.0
APPLICATION FEES	.00	.0	15.00	.0
EMPLOYEE RECOGNITION	.00	.0	49.04	.0
LICENSES AND FEES	20.00	.2	235.00	.2
UTILITIES	1,389.36	11.0	15,003.52	9.7
GARBAGE COLLECTION	209.17	1.7	2,599.17	1.7
OWNER SUPPLIED CABLE TV	379.40	3.0	4,176.40	2.7
MISC. OPERATING COSTS	.00	.0	404.31	.3
EXTERMINATING SERVICES	.00	.0	600.00	.4
SECURITY SERVICES	.00	.0	324.50	.2
REAL ESTATE TAXES	12,010.50	95.1	12,010.50	7.7
INSURANCE EXPENSE	494.83	3.9	4,641.44	3.0
MANAGEMENT FEE	2,212.00	17.5	13,296.00	8.6
DEPRECIATION EXPENSE	10,632.43	84.2	63,794.13	41.1
<b>TOTAL Expenses</b>	<b>30,663.35</b>	<b>242.8</b>	<b>165,302.05</b>	<b>106.6</b>
<b>Net Income from Operations</b>	<b>(18,034.35)</b>	<b>(142.8)</b>	<b>(10,176.42)</b>	<b>(6.6)</b>
<b>Other Income &amp; Expense</b>				
MAJOR REPAIRS	.00	.0	(2,865.00)	(1.8)
INTEREST EXPENSE	(1,310.69)	(10.4)	(8,008.69)	(5.2)

Other Income & Expense

PERIOD TO DATE

YEAR TO DATE

ACTUAL

PERCENT

ACTUAL

PERCENT

(Continued)

PRINCIPAL PAYMENTS - MHDC

\$ .00

.0 %

(28,850.70)

(18.6)

DEBT SERVICE

.00

.0

28,850.70

18.6

INTERST INCOME-MHDC

(490.48)

(3.9)

887.78

.6

TOTAL Other Income & Expense

(1,801.17)

(14.3)

(9,985.91)

(6.4)

Earnings before Income Tax

(19,835.52)

(157.1)

(20,162.33)

(13.0)

Net Income (Loss)

\$(19,835.52)

(157.1)%

(20,162.33)

(13.0)

Additional expense - required contribution to replacement reserve

\$ 9244 for 2002

**State Tax Commission of Missouri**

MARYVILLE PROPERTIES, L.P., )  
 Complainant, )  
 v. )  
 PAT NELSON, ASSESSOR, )  
 NODAWAY COUNTY, MISSOURI, )  
 Respondent. )

Appeal Number 97-74500

**DECISION AND ORDER**

**SUMMARY**

This case was heard by Luann Johnson, Hearing Officer, on October 21, 1999, in the Nodaway County Courthouse Annex in Maryville, Missouri. Complainant was represented by Counsel, Cathy J. Dean. Respondent was represented by Counsel, Scott Ross.

The property was originally valued by the Assessor at \$758,300 (assessed value \$144,080). That value was affirmed by the Board of Equalization. Complainant asserts a value of \$350,000 (assessed value \$66,500). Respondent asserts a value of \$770,000 (assessed value \$146,300). The correct value for the property is \$750,000 (assessed value \$142,500).

**ISSUE**

The issue in this case is the true value in money of the subject property on January 1, 1997, and January 1, 1998. Within this issue is the question of whether Section 515 low income housing tax credits (LIHTC) are intangibles separate and apart from the real property or, in the

alternative, are LIHTCs part of the transmissible value which the market recognizes and considers when making purchasing and sales decisions.

The Commission previously discussed valuing subsidized housing when tax credits were not raised as an element of value. In that case we held that interest subsidies run with the land and are a proper consideration in determining market value. This case addresses the new issue of tax credits and their impact on market value of a property.

This decision finds that the tax credits cannot be alienated from the property; they are an integral part of the real property; enhance the market value of the property; and are properly included when determining market value for ad valorem taxation.

**HOLDING**

(1) All factors influencing the sale price of a particular piece of property are properly included in market value; (2) the true value in money of the subject property on January 1, 1997, and January 1, 1998, was \$750,000 (assessed value \$142,500)

**FINDINGS OF FACT**

**The Improvements**

1. The property is a 2.6 acre site improved with a 24-unit apartment complex, built in 1992. The improvements consist of six one story buildings; each containing four two-bedroom units, identified as parcel number 22-9-29-33-04, more commonly known as 308 East Summit Drive, Maryville, Missouri.

The largest building contains an office and laundry. Buildings sit on poured concrete. Exterior walls are frame with stucco panel on three walls and vinyl on the rear wall. Interior walls and ceilings are sheetrock. Floors are covered with

inexpensive carpet and sheet vinyl. Heating is provided by electric baseboard heaters. Air conditioning consists of window units furnished by tenants. Appliances, cabinets and other amenities are consistent with normal apartment units.

The site fronts on Summit Drive. It is further improved with one large concrete parking lot which can accommodate 47 cars, or almost 2 cars per unit. The buildings are connected to the parking area and other buildings by six foot wide sidewalks and five foot wide service walks. The parking area is connected to Summit Drive by one, twenty foot wide concrete driveway.

The topography is gently rolling and well graded. It is improved with attractive landscaping. Each building has 40 or 50 foot side yards. Fronts are set back 24 to 38 feet. Rear yards vary between 24.5 feet and 40 feet.

Other amenities include a recreational area with picnic tables, a charcoal grill, a swing and a basketball goal; three park benches; an eight by eight masonite storage shed; bicycle rack; and good quality metal mail boxes. Security lights are located on the ends of each building and facing the recreational area.

2. Interiors of the units are of "fair" quality while exteriors are of higher, "average" quality.
3. The actual age and the effective age of the development is five years. The remaining economic life is estimated to be 45 years.

#### Obsolescence

4. 'Functional obsolescence' is commonly recognized as being caused by internal property characteristics such as a poor floor plan, inadequate mechanical equipment, or functional inadequacy or superadequacy due to size or other characteristics. *The Appraisal of Real Estate*, 10th Edition, Appraisal Institute, 1992, p. 320.

Functional obsolescence is a loss in value resulting from defects in design. It can also be caused by changes that, over time, have made some aspect of a structure, such as its material or design, obsolete by current standards. The defect may be curable or incurable. To be curable, the cost of replacing the outmoded or unacceptable aspect must be the same as or less than the anticipated increase in value. Curable functional obsolescence is measured as the cost to cure the condition. *The Appraisal of Real Estate*, 10th Edition, Appraisal Institute, 1992, p. 352.

The only observed functional obsolescence is from a shortage of storage space and the lack of garbage disposals and superadequate sidewalks, parking lot, and driveway.

The fact that this property is a Section 515 low income housing project, subject to the benefits and restrictions applicable to such a project, does not create functional obsolescence as that term should be understood in the appraisal industry. The financing of the property does not affect its physical ability to function.

5. "External obsolescence" is commonly recognized as being caused by conditions outside the property such as a lack of demand, changing property uses in the area, or national economic conditions. External obsolescence can be caused by a variety of factors -- e.g., neighborhood decline; the property's location in a community, state, or region; or local market conditions. *The Appraisal of Real Estate*, 10th Edition, Appraisal Institute, 1992, p. 320.

Current market rents are insufficient to provide a competitive return to an owner. Typically, an external obsolescence adjustment for this situation would be required. Here, however, government subsidies compensate for below market rents.

The fact that this property is a Section 515 low income housing project, subject to the benefits and restrictions applicable to such a project, does not create external obsolescence as that term should be understood in the appraisal industry. Financing tools do not create external obsolescence.

#### The Sale

6. The improvements were constructed as a federal Section 515 housing project. The developer syndicated the property as soon as construction was complete. That syndication consisted of the developer selling off a 99% limited partnership in the property to a group of investors for a price that was equivalent to approximately 50% of the value of the tax credits. The limited partners are entitled to utilize 100% of the yearly tax credits for as long as they remain property owners. The developer, Jeffery Smith, remains as the general partner and his organizations manage the property.

7. Immediately following the completion of the project, the developer sold the project to Complainant for a cash payment of \$150,000 and assumption of a mortgage in the amount of \$727,000. This transfer constitutes a sale.

### The Future Sale

8. Any future sale within the next five and one-quarter years would be substantially similar to the initial sale. The purchaser would pay cash for the income tax credits and would assume the balance remaining on the mortgage.

### Section 515 Restrictions and Advantages

9. Section 515 projects have restrictions which include the requirement to charge below-market rents; restrictions on the use of the property to low income housing for 50 years; added management expenses; a limited return on the initial investment to 8% per year; and increased governmental regulation and supervision.

10. Section 515 projects have advantages including a 50 year non-recourse loan at 97% of the project cost which creates high leverage and allows Complainant to turn the project over to the federal government at any time, without personal liability; an interest subsidy on the note reduces the actual interest rate to 1% per annum and offsets the below market rents; federal income tax credits of \$30,765 per year remain for the next five and one-quarter years; state income tax credits of \$6,163 per year remain for the next five and one-quarter years; and Complainant may take accelerated depreciation on the improvements over 27 and one-half years to shelter the income generated by the project.

### The Valuation Date

11. The valuation date is January 1, 1997. Values beyond the period in which tax credits are available are not relevant to a determination of the value of this property on January 1, 1997, because the pool of potential purchasers will change when the tax credits dissipate.

### Tax Credits

12. On the tax day, January 1, 1997, the property still held \$159,899 in federal tax credits and \$32,303 in state tax credits to be used over the remaining five and one-quarter years of the ten year period.

13. Tax credits run with the land. They are part of the real property. The market value of the tax credits is \$134,282.

### Tax Shelter

14. Owners are allowed to depreciate the improvements over 27.5 years. This creates a larger than normal offset against income and results in a tax shelter to the owners. The market value of the tax shelter is \$49,128.

### The Market

15. The most likely purchaser of the property during the period when the tax credits are in place is a sophisticated investor in the 39% income tax bracket who needs a one-to-one tax credit. The most likely purchaser of the property after the tax credits are expended would be a not-for-profit organization.

16. On the tax day, the property represented a remarkably safe and lucrative investment opportunity. It was subject to an assumable, non-recourse mortgage with a balance of \$719,799. The lender stood willing to finance 95% of the purchase price. This leverage - the ability of the buyer to use as little as possible of his own money to acquire the property and to pay the loan against it from its earnings - enhances its value. An interest subsidy offsets the portion of the rents that are below market, and the government stands ready to subsidize rents for those tenants whose income does not enable them to pay the base the rents.

17. A prudent purchaser would consider the government regulations, the restrictions on the use of the property, the length of the restrictions and the remote risk that a tenant may not pay overage rent. That purchaser would also consider the availability of 95% financing at a 1% interest rate, the non-recourse nature of the loan, the ability to charge above market management fees for their own management company, the availability of one-to-one tax credits of \$36,928 per year, and the availability of the tax shelter.

### The Sales Approach

18. There is no market involved in the purchase and sale of these properties in Missouri. Only one project has been placed on the market. This fact demonstrates that investors are unwilling to sell. This fact does not demonstrate that the properties are not capable of being sold.

19. Complainant's sales of apartment complexes which are not government subsidized and which are not rent restricted are not good sales comparables for the subject property because no reasonable seller would consider selling this property to a buyer who would not be willing to give value for the income tax credits and the tax shelter.

20. Respondent's comparable subsidized sales in Iowa are useful to demonstrate that subsidized rent-restricted projects are marketable. However, because of the varying degree of subsidy and restriction remaining on each sale, determining the appropriate adjustments for each sale to attempt to estimate the market value for the subject property is speculative. Consequently, the sales approach is not a reliable indicator of value.

#### The Cost Approach

21. The cost approach is not a reliable indicator of value for this property because it does not adequately account for the value enhancing attributes of the property. With the government benefits in place, the value of the project actually exceeds the depreciated cost of construction.

#### The Income Approach

22. An income approach is a reliable indicator of value for the subject property, if properly performed. Complainant's income approach is not a reliable indicator of value because it fails to consider the value of all of the property's attributes and because it incorrectly applies the discounted cash flow. Respondent's direct capitalization income approach correctly represents the value of the property.

23. An income approach for subsidized property should use actual income and expenses realized by the subsidized property; it should use the loan-to-value ratio approved by the subsidizing agency based upon the subsidized mortgage rate; it should allow an appropriate equity dividend rate; and taxes should be included in the capitalization rate. An adjustment should be made to the capitalized net operating income to reflect the market value of the income tax credits and the tax shelter created.

The advantages of using actual income, expenses and financing terms are clear. An investor will look at the benefits and restrictions the property actually carries when making a purchasing decision. Likewise, by using the actual expenses, including the significantly higher management fees, and considering the contributions required for the reserve account, Complainant's concerns about the high costs of operating the project are appropriately addressed.

24. The value of the subject property is calculated as follows:

Actual Income	\$ 74,895
Actual Expenses (68.43%)	\$ 51,252
Net Operating Income	\$ 23,643
Mortgage Constant (95% loan @ 1%) =	0.024152
Equity Dividend (5% @ 15%) =	0.007500
Effective Tax Rate =	0.010735
Total Cap Rate =	0.042387
	Or
	4.20%
Value under direct capitalization	\$562,931
Plus:	
Value of Tax Credit	\$134,282
Value of Tax Shelter	\$ 49,128
True Value in Money	\$746,342
Say	\$750,000

#### Experts



25. Respondent's appraiser was qualified to be an expert. Complainant raised no objection to his testimony prior to or at the hearing. Prefiled direct testimony was received prior to the effective date of Section 339.501, RSMo and, but for delays caused by Complainant, the hearing in this case would have occurred before the effective date of that legislation.

#### Two Year Cycle

26. No new improvements or property changes occurred between January 1, 1997, and January 1, 1998, that would require a change in the assessed value of the property for tax year 1998.

### CONCLUSIONS OF LAW

#### The State Tax Commission had jurisdiction and authority

to determine the proper method to use in valuing the subject property.

The Commission has jurisdiction to hear this appeal and correct any assessment which is shown to be unlawful, unfair, arbitrary or capricious. *Article X, Section 14, Mo. Const. Of 1945; Sections 138.430, 138.432, RSMo.*

It is within the State Tax Commission's discretion to determine what method or approach it shall use to determine the true value in money of property. *Hermel, Inc. v. State Tax Commission, 564 S.W.2d 888, 896; Chicago, Burlington & Quincy Railroad Co. v. State Tax Commission, 436 S.W.2d 650, 657 (Mo. 1968), cert den. 393 U.S. 1092 (1969); St. Louis County v. Security Bonhomme, Inc., 558 S.W.2d 655, 659 (Mo. banc 1997).*

It is also within the State Tax Commission's authority to ascertain the correct or modern means of determining value according to a particular method or approach that it adopts to ascertain valuation, and it is within the Commission's discretion to determine what factors should be considered in fixing the "true value in money" for property under a valuation method or approach adopted for use in a particular case. *Hermel, Inc. v. State Tax Commission, supra*, The relative weight to be accorded any relevant factor in a particular tax assessment case is for the State Tax Commission to determine. *St. Louis County v. State Tax Commission, 515 S.W. 446, 450 (Mo. 1974)*. State Tax Commission decisions must declare the propriety of and the proper elements to consider in adopting a valuation approach, and must provide a definite indication as to the weight accorded each approach or method, i.e., how the final decision is weighed between the various approaches, methods, elements and factors. *St. Louis County v. State Tax Commission, 515 S.W.2d 446, 451 (Mo. 1974)*. The determination of "true value in money" of any property is a factual issue for the State Tax Commission, *O'Flaherty v. State Tax Commission, 698 S.W.2d 2, 3 (Mo. banc 1985)*.

#### Courts defer to State Tax Commission decisions.

The Missouri Supreme Court, in *Savage v. State Tax Commission of Missouri, 722 S.W.2d 72 (Mo. banc 1986)*, observed:

Our review of the Commission's decision is ordinarily limited to whether that decision is "supported by competent and substantial evidence upon the whole record or whether it was arbitrary, capricious, unreasonable, unlawful or in excess of its jurisdiction." *Evangelical Retirement Homes of Greater St. Louis, Inc. v. State Tax Com'n, 669 S.W.2d 548, 552 (Mo. banc 1984); Section 536.140.01, RSMo. 1978*. In matters of property tax assessment, this Court has acknowledged "the wisdom of the General Assembly in providing an administrative agency to deal with this specialized field." *State ex rel Cassilly v. Riney, 576 S.W.2d 325, 328 (Mo. banc 1979)*. Thus we recognize that the courts may not assess property for tax purposes, *Drey v. State Tax Commission, 345 S.W.2d 228, 238-9 (Mo. 1961)*, that proper methods of valuation and assessment of property are delegated to the Commission, *C & D Investment Co. v. Bestor, 624 S.W.2d 835, 838 (Mo. banc 1981)* and that on review, "[t]he evidence must be considered in the light most favorable to the administrative body, together with all reasonable inferences which support it, and if the evidence would support either of two opposed findings, the reviewing court is bound by the administrative determination." *Hermel, Inc. v. State Tax Commission, 564 S.W.2d 888, 894 (Mo. banc 1978)* (citation omitted). When read together, our cases demonstrate that this Court is loathe to substitute its judgment for the expertise of the Commission in matters of property tax assessment. Absent clear cause, we will "stay our hand[s]." *Pierre Chouteau Condominiums v. State Tax Commission, 662 S.W.2d 513, 517 (Mo. banc 1984)*.

#### True Value in Money

The courts have looked at the term "true value" and have concluded that Section 137.115, RSMo 1994 requires that

property be assessed based upon its true value in money which is defined as the price a property would bring when offered for sale by one willing or desirous to sell and bought by one who is willing or desirous to purchase but who is not compelled to do so. *St. Joe Minerals Corp. v. State Tax Commission*, 854 S.W.2d 526, 529 (Mo. App. E.D. 1993); *Missouri Baptist Children's Home v. State Tax Commission*, 867 S.W.2d 510, 512 (Mo. banc 1993). "True value" is an estimate of fair market value on the valuation date. This definition has not changed from case to case. *Hermel, Inc. v. State Tax Commission*, 564 S.W.2d 888, 897 (Mo. banc 1978) (Emphasis supplied). "A tax assessment, though presumed valid, will not be upheld where it is clear that the assessment does not take into account all factors relevant to a determination of "true value in money." *Stephen & Stephen Properties, Inc. v. State Tax Commission*, 499 S.W.2d 798, 803 (1973) (citations omitted).

### Fee Simple

A value assessment of the fee simple for real estate taxes includes every interest or estate therein. *Dorman v. Minnich*, 336 S.W.2d 500, 505 (Mo. banc 1960).

"Real property" includes the land itself . . . and all growing crops, buildings, structures, improvements and fixtures of whatever kind thereon. . . Section 137.010(3), RSMo. Real property includes leasehold interests. *Iron County v. State Tax Commission*, 437 S.W.2d 665 (1968).

"Tangible property" includes every tangible thing being the subject of ownership whether animate or inanimate, other than money, and not forming part or parcel of real property as herein defined. . . Section 137.010(4), RSMo.

"Intangible property" for the purpose of taxation, shall include all property other than real property and tangible personal property, as defined by this section. . . Section 137.010(2).

Words and phrases contained in statutes are construed in their plain or ordinary and usual sense, but technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import. Section 1.090, RSMo.

"Real property" or "premises" or "real estate" or "lands" is coextensive with lands, tenements and hereditaments. Section 1.020(16), RSMo.

Real property is land, and generally whatever is erected or growing upon or affixed to land. Also rights issuing out of, annexed to, and exercisable within or about land. A general term for lands, tenements, and hereditaments; property which, on the death of the owner intestate, passes to his heir. *Black's Law Dictionary*, 5th Edition, 1979. (Emphasis supplied)

The impact of government benefits and restrictions must be considered when determining a property's true value in money. *Jeffery E. Smith, et al. v. Johnny North*, 53 STC Proceedings & Decisions 435 (1998).

In assessing fair market value of low income housing projects for state tax purposes, the court is not constrained to determine market value as though real property ownership lacked tax credits and tax shelter features. *Parkside Townhome Associates v. Board of Assessment Appeals of York County*, 711 A.2d 607, 611 (1998).

Tax credits and interest subsidies affect the value of real estate and should not be ignored. The final estimate of value must represent all the interests, benefits, and rights inherent in ownership of the subject real property. *Deerfield 95 Investor Associates, LLC v. Town of East Lyme*, 25 Conn. L. Rptr. 51 (1999) citing, *Cascade Court Limited Partnership v. Noble*, BTA No. 49295, et al. (Wash 1998), *Folsom v. County of Spokane*, 759 P.2d 1196 (Wash. 1988); *Meadowlanes Ltd. Dividend Housing Assn. v. City of Holland*, 473 N.W.2d 636 (1991).

### Tax Credits Are Not Intangible Property Requiring Segregation

It is not enough for Complainant to label something as "intangible." The burden is upon the Complainant to establish that intangible personal property actually exists. In *Simon Property Group, L.P. v. Robert Boley*, Appeals No. 95-30038 through 95-3 0041, 95-30043 and 95-30044 (51 STC P&D 474, 483), we articulated the test to determine the presence of intangibles. That test is:

- (1) The intangible asset must be identifiable, i.e., legally recognized;
- (2) It must be capable of private ownership;
- (3) It must be marketable, i.e. capable of being financed and/or sold separate and apart from the tangible

property; and

(4) Practically, it must possess value, i.e., have the potential to earn income, or its existence is of no consequence.

Looking at the tax credit in light of the above test, it is clear that tax credits are not a separate right of action. They cannot be bought or sold separate and apart from the real property. In fact, they cannot be alienated in any way from the physical property. While it is true that intangible *personal property* is not taxable, it is not true that everything someone may choose to call an intangible is necessarily intangible personal property.

In a similar case regarding tax abatements, we utilized this test holding:

[I]t is clear that an abatement of real estate taxes cannot be categorized as intangible property. Taxes run with the land and, therefore their abatement must also run with the land. A landowner cannot sell the land and keep the tax abatement. Likewise, the landowner cannot sell the abatement and keep the land. If the abatements can be transferred at all, they must be transferred with the land. There is no property which can be severed from the remainder of the real property. *One Main Plaza First Plat v. Robert Boley*, Appeal No. 95-30118 (February 6, 1997).

There is no dispute that the tax credits at issue here cannot be severed from the real property. They are not intangible personal property. They are a benefit that runs with the land.

#### Complainant failed to meet burden of proof.

In order to prevail, a party must present an opinion of market value and then must present substantial and persuasive evidence that its proposed value is indicative of the market value of the subject property on January 1, 1995, in order to have that value accepted. *Hermel, Inc. v. State Tax Commission*, 564 S.W.2d 888, at 897. "Substantial" evidence can be defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Cupples-Hesse Corporation v. State Tax Commission*, 329 S.W.2d 696, 702 (Mo. 1959). "Persuasive" evidence is that evidence which has sufficient weight and probative value to convince the trier of fact. The persuasiveness of evidence does not depend on the quantity or amount thereof but on its effect in inducing belief. *Brooks v. General Motors Assembly Division*, 527 S.W.2d 50, 53 (Mo. App. 1975).

#### DISCUSSION

Property is assessed based upon its true value. True value is the price the property would sell for on the tax day. True value includes the whole bundle of rights that are transferred when real property is sold. Our Supreme Court has told us to consider the effects of a long-term lease when valuing real property and has even held that "it is often the long-term lease that gives value to the property." *Baptist Children's Home v. Tax Commission*, 867 S.W. 2d 510, 513 (1993). The only real issue here is "What would the property sell for on the tax day?" Complainant's "intangible" arguments merely set up smoke screens to cloud the obvious.

The burden to establish the existence of an intangible asset is on the taxpayer. Intangible assets do not exist merely because an appraiser wants to classify something as intangible. The test for the *existence* of an intangible requires that *there must actually be an asset which can be transferred separate and apart from the real property*. If nothing exists that can be separated from the real property, the alleged asset is merely a part of the real property's value. This is simply common sense.

Rather than utilizing the above test to establish an intangible, Complainant seeks to create a non-taxable intangible by the process of elimination. Complainant asks us to define real property to include only the land, bricks and mortar that form a part of the real property, arguing that this is the only definition allowed by Section 137.010, RSMo and seeking to distinguish between real property and real estate based upon definitions created by the Appraisal Institute.

In requesting this definition, Complainant ignores the fact that, in Missouri, fee simple includes the interests, benefits, rights and restrictions inherent in the ownership of land, bricks and mortar. *Section 1.020(16), RSMo; Iron County, supra* (leasehold interest is within definition of real property). *Missouri Baptist Children's Home, supra* (long term lease may effect value). If we only valued land, bricks and mortar, we would never consider the impact of leases, rent restrictions, or any of the other elements associated with real property.

As shown by Section 1.020(16), RSMo, "real property" and "real estate" are interchangeable terms referring to the same thing. And, this is only reasonable. We cannot answer the question, "What would the property sell for?" unless we look at the bundle of rights that necessarily transfers upon the sale of the property.

To accept Complainant's intangible argument would require that we value the property at something less than its market value. The problem with this argument can be demonstrated by considering all of the components of real property valuation.

For instance, the location of a property could be labeled "intangible" yet no one questions that location adds value. Likewise, the view a property has or the availability of services can be called intangibles, but there is no question that these factors add value.

Taking this train of thought to the next step, the building permits that were required to start a project can be labeled "intangible" but a project would have no value without the existence of the permits. Likewise, the skilled labor necessary to construct the project can be called "intangible" but no one questions that labor is a factor in the value of any property.

And, going one step further, the existence of competent management may be an "intangible" yet it is assumed to exist in any valuation of income producing property. Finally, what about the rents received from the property? The right to receive a rental payment may be "intangible" but is always considered when valuing rental property.

The tax credits are a benefit which run with the land, which the current owners utilize, and which a purchaser would be entitled to receive. Tax credits accrue to the owner's benefit as an incident of ownership. They are just another attribute of the property. They are no different from the rents which an owner is entitled to receive.

The fact that the general partner sold the tax credits to the limited partners is not a relevant factor. By analogy, the general partner could have just as easily assigned the rents to the limited partners. We would not have assumed that the property had diminished value because he had assigned the rental income. Likewise, we will not assume that the property has lost some of its value merely because he sold and assigned the tax credits.

It is obvious that Complainant's argument must fail because it fails to address the true value or market value of the property. Having failed to present any substantial and persuasive evidence in support of a lower value or in support of its argument that Respondent was improperly valuing an intangible, Complainant has failed to meet its burden of proof. Therefore, the correct value for the subject property on January 1, 1997, and January 1, 1998, was \$750,000.

#### ORDER

The assessed valuation for the subject property for tax years 1997 and 1998, as determined by the Board of Equalization, is hereby SET ASIDE. The Clerk is HEREBY ORDERED to place a new market value of \$750,000 (assessed value \$142,500 ) on the books for tax year 1997. The same value shall be placed on the tax books for tax year 1998.

A party may file with the Commission an application for review of a hearing officer decision within thirty (30) days of the mailing of such decision. The application shall contain specific detailed grounds upon which it is claimed the decision is erroneous. *Failure to state specific facts or law upon which the appeal is based will result in summary denial.*

If an application for review of a hearing officer decision is made to the Commission, any protested taxes presently in an escrow account in accordance with this appeal shall be held pending the final decision of the Commission. If no application for review is received by the Commission within thirty (30) days, this decision and order is deemed final and the Collector of Nodaway County as well as the collectors of all affected political subdivisions therein, shall disburse the protested taxes presently in an escrow account in accord with the decision on the underlying assessment in this appeal. If any protested taxes have been disbursed pursuant to Section 139.031(8), RSMo, either party may apply to the circuit court having jurisdiction of the cause for disposition of the protested taxes held by the taxing authority.

Any Finding of Fact which is a Conclusion of Law or Decision shall be so deemed. Any Decision which is a Finding of Fact or Conclusion of Law shall be so deemed.

SO ORDERED April 27, 2000.

STATE TAX COMMISSION OF MISSOURI

Luann Johnson

Hearing Officer

**ORDER**  
**DENYING APPLICATION FOR REVIEW**  
**OF HEARING OFFICER DECISION**

On April 27, 2000, Hearing Officer, Luann Johnson, entered her Decision and Order (Decision) setting aside the assessment by the Nodaway County Board of Equalization and finding value for the subject property.

**Complainant's Grounds for Review**

Complainant filed its Application for Review of the Decision. The grounds stated in the Application for Review were:

1. The Hearing Officer erred in equating real property tax abatement with personal income tax credits.
2. The Hearing Officer erred with respect to what constitutes real property and what constitutes intangible personal property.
3. The Hearing Officer erred in valuing the owner's interest in the property rather than valuing the property itself.
4. The Hearing Officer erred with respect to whether the Complainant carried its burden of proof.
5. The Hearing Officer erred in valuing the property resulting in an incorrect assessed value for the property.

\*\*\*

*Commission Response*

The Commission's review of the Decision is upon the record and will ordinarily be limited to whether the findings, conclusions and decision of the Hearing Officer are supported by substantial and persuasive evidence and is not arbitrary, capricious or contrary to law. *Hermel, Inc. v. STC*, 564 S.W.2d 888 (Mo. 1978); *Black v. Lombardi*, 970 S.W.2d 378 (Mo. App. E.D. 1998); *Holt v. Clarke*, 965 S.W.2d 241 (Mo. App. W.D. 1998); *Smith v. Morton*, 890 S.W.2d 403 (Mo. App. E.D. 1995). The Commission will review the Decision to determine whether facts found by the Hearing Officer are supported by substantial evidence upon the whole record and whether a reasonable mind could have conscientiously reached the same result based on a review of the entire record. *Phelps v. Metropolitan St. Louis Sewer Dist.*, 598 S.W.2d 163 (Mo. App. E.D. 1980).

The Hearing Officer is not bound by any single formula, rule or method in determining true value in money, but is free to consider all pertinent facts and estimates and give them such weight as reasonably they may be deemed entitled. The relative weight to be accorded any relevant factor in a particular case is for the Hearing Officer to decide. *St. Louis County v. Security Bonhomme, Inc.*, 558 S.W.2d 655, 659 (Mo. banc 1977); *St. Louis County v. STC*, 515 S.W.2d 446, 450 (Mo. 1974); *Chicago, Burlington & Quincy Railroad Company v. STC*, 436 S.W.2d 650 (Mo. 1968).

The Hearing Officer as the trier of fact may consider the testimony of an expert witness and give it as much weight and credit as she may deem it entitled to when viewed in connection with all other circumstances. The Hearing Officer is not bound by the opinions of experts who testify on the issue of reasonable value, but may believe all or none of the expert's testimony and accept it in part or reject it in part. *Beardsley v. Beardsley*, 819 S.W.2d 400, 403 (Mo. App. 1991); *Curnow v. Sloan*, 625 S.W.2d 605, 607 (Mo. banc 1981).

The Commission will not lightly interfere with the Hearing Officer's Decision and substitute its judgment on the credibility of witnesses and weight to be given the evidence for that of the Hearing Officer as the trier of fact. *Black v. Lombardi*, 970 S.W.2d 378 (Mo. App. E.D. 1998); *Lowe v. Lombardi*, 957 S.W.2d 808 (Mo. App. W.D. 1997); *Forms World, Inc. v. Labor and Industrial Relations Com'n*, 935 S.W.2d 680 (Mo. App. W.D. 1996); *Evangelical Retirement Homes v. STC*, 669 S.W.2d 548 (Mo. 1984); *Pulitzer Pub. Co. v. Labor and Indus. Relations Commission*, 596 S.W.2d 413 (Mo. 1980); *St. Louis County v. STC*, 562 S.W.2d 334 (Mo. 1978); *St. Louis County v. STC*, 406 S.W.2d 644 (Mo. 1966).

A review of the record in the present appeals provides support for the determinations made by the Hearing Officer for each of the points raised by Complainant's Application for Review. A reasonable mind could have conscientiously reached the result which the Hearing Officer reached on each of the points. There is competent and substantial evidence to

establish a sufficient foundation for the Decision. The Hearing Officer did not act in an arbitrary or capricious manner nor abuse her discretion as the trier of fact and concluder of law in this appeal.

The Hearing Officer did not err in her determinations as challenged by Complainant. The Complainant's points are not well taken.

\*\*\*

### Commission Order

The Commission upon review of the record and Decision in this appeal, finds no grounds upon which the Decision of the Hearing Officer should be reversed or modified. Accordingly, the Decision is affirmed.

Judicial review of this Order may be had in the manner provided in Sections 138.470 and 536.100 to 536.140, RSMo within thirty days of the date of the mailing of this Order.

SO ORDERED July 17, 2000.

STATE TAX COMMISSION OF MISSOURI

Douglas W. Burnett, Chairman

Bruce E. Davis, Commissioner

Sam D. Leake, Commissioner

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*This slip opinion is subject to revision and may not reflect the final opinion adopted by the Court.*

# Opinion

## Missouri Court of Appeals Western District

**Case Style:** Maryville Properties, L.P., Appellant v. Pat Nelson, Assessor, Nodaway County, MO, Respondent.

**Case Number:** WD60335

**Handdown Date:** 06/25/2002

**Appeal From:** Circuit Court of Nodaway County, Hon. Roger M. Prokes

**Counsel for Appellant:** Cathy Joy Pitman Dean

**Counsel for Respondent:** Scott W. Ross

### Opinion Summary:

Maryville Properties, L.P. appeals from a decision of the state tax commission including low income housing tax credits received by Maryville Properties' limited partners in the valuation of a rent restricted apartment complex for real property tax purposes. Maryville Properties also appeals the inclusion of accelerated depreciation tax benefits in the calculation of the property's value.

**REVERSED.**

**Division holds:** (1) Whether the tax credits are to be included in the valuation of the real property for property tax purposes turns on whether they are to be considered intangible property or part of the real property.

(2) The tax credits are not characteristics of the real property. Rather, they are instead intangible assets belonging to and having direct value for the property owner.

(3) The owner's particular circumstances are not a proper consideration in the valuation of real property. Determination of market value must turn on objective criteria, not the subjective criteria utilized in determining a property's investment value.

(4) Similarly, the capitalized value of accelerated depreciation was erroneously included in the valuation of the property. That tax benefit was personal to the owners and not directly tied to the real estate.

**Citation:**

**Opinion Author:** Ronald R. Holliger, Judge

**Opinion Vote:** REVERSED. Lowenstein, P.J., and Newton, J., concur.

**Opinion:**

Maryville Properties, L.P. (Maryville Properties) appeals from a decision of the State Tax Commission (Commission) including Low Income Housing Tax Credits (LIHTCs) received by Maryville Properties's limited partners in the valuation of a rent restricted apartment complex for real property tax purposes. Maryville Properties contends that 1) the tax credits and accelerated depreciation passed through to limited partners are intangible property not properly considered by statute in valuations for real estate tax assessments; 2) the Commission's decision violated the Missouri Constitution by valuing the property based upon the interest of the individual limited partners of Maryville Properties rather than the property's fair market value; and 3) the Commission arbitrarily deviated from its own prior decision that such tax credits were not properly included in valuing real property.

### Jurisdiction

We must first address the issue of our jurisdiction because Article V, Section 3 of the Missouri Constitution grants exclusive appellate jurisdiction to the Missouri Supreme Court of all cases involving the constructions of revenue laws of the state.

*Alumax Foils, Inc. v. City of St. Louis*, 939 S.W.2d 907, 910 (Mo. banc. 1997). The Supreme Court does not have exclusive jurisdiction unless each of the three separate elements is met: 1) construction; 2) of the revenue laws; 3) of this state.

"Construction" differs from "application," and if the Supreme Court has already decided an issue, the Court of Appeals applies the Supreme Court precedent. *Branson Scenic Ry. v. Dir. of Revenue*, 3 S.W.3d 788, 789 (Mo. App. 1999). This case is one of first impression, and this court, therefore, has no Supreme Court precedent to apply. Construction is required. The law in question, however, is not a "revenue law of this state." We are required to interpret section 137.010, which defines, *inter alia*, two constitutionally mandated classifications of taxable property: real property and tangible personal property. Nevertheless, section 137.010 does not constitute a revenue law:

A "revenue law" directly creates or alters an income stream to the government that imposes a tax or fee on property owned or used or an activity undertaken in that government's area of authority. Thus, a revenue law either establishes or abolishes a tax or fee, changes the rate of an existing tax, broadens or narrows the base or activity against which a tax or fee is assessed, or excludes from or creates exceptions to an existing tax or fee . . .

A revenue law "of the state" is a law adopted by the general assembly to impose, amend or abolish a tax or fee on all similarly-situated persons, properties, entities or activities in this state, *the proceeds of which are deposited in the state treasury*.

*Alumax Foils*, 939 S.W.2d at 910. (Emphasis added).

This court has previously held that cases involving property taxes imposed by a county and paid to the treasury of the county are not "revenue laws of this state." *Two Pershing Square, L.P. v. Boley*, 981 S.W.2d 635, 638 (Mo. App. 1998). This case does involve construction of a law adopted by the general assembly. The proceeds of the *ad valorem* tax on real property are deposited in the treasury of Nodaway County, rather than in the state treasury. None of the other issues involved are reserved for the exclusive jurisdiction of the Supreme Court. Jurisdiction, therefore, properly lies with this court. *Id.*

#### **Background of Rent Restricted Federal Housing and Low Income Housing Tax Credits**

Since the 1930's, the federal government has utilized a number of approaches to provide higher quality and more affordable housing to lower income individuals and families. These efforts have ranged from government constructed and operated projects to various incentives for private investors to provide such housing. The FmHA Section 515 Program is intended to provide more affordable housing in rural areas to low to moderate income families and senior citizens by providing favorable long term financing to private developers. In return for this financing, the project owner restricts occupancy to qualified families and charges rent at rates set by FmHA.

The LIHTC program is intended to motivate private investment by providing income tax credits which directly offset the federal income tax obligation of the individual investor. The individual investors in the Maryville property received such income tax credits through the Missouri Housing Development Commission (MHDC), a state agency established pursuant to RSMo. section 215.020. This program also supplied state income tax credits to the investors.

According to the testimony, the individual investor is motivated solely by the tax benefits. The tax credits expire after ten years. The tax credits are "sold" to the individual investor on a discounted basis.

Maryville Properties developed the rent-restricted apartment complex in 1992. For the tax years 1997 and 1998, the assessor valued this property at \$758,300. Maryville Properties contested that the actual value was \$350,000.

The property is subject to FmHA Section 515, which means that the owner must restrict occupancy to low-income tenants and must comply with various regulations in return for a favorable interest rate. The limited partners of Maryville Properties also received federal income tax credits under the LIHTC Program as a result of their investment in the property.

After development, Maryville Properties syndicated the project. The syndication process consisted of Maryville Properties creating a limited partnership in which a company under its control was the general partner. It then sold the ninety-nine percent limited partnership interest to a consortium of investors for between \$138,000 and \$169,000. The project cost was \$748,647, but after syndication the value was \$898,437. At the hearing, Maryville Properties' appraiser, Mr. Blaylock, testified that he could not explain the \$149,790 increase in value except by way of the money paid during syndication. This appraiser testified that the income tax credits were not part of the real property. Another appraiser, Robert Cowan, testified for the assessor. His estimation of the value of the property included "the value a taxpayer in a 39% tax bracket would pay for the property," and assumed that person would sell the property as soon as the tax credit expired. The assessor also included in the value of the property accelerated depreciation that the federal program allows to be passed through to each limited partner.

The hearing officer's decision included the value a person in a thirty-nine percent tax bracket would place on the tax credits and deductions. Maryville Properties appealed the hearing officer's decision, and the Commission denied review, adopting the hearing officer's decision as its own. Maryville Properties appealed to the Nodaway County Circuit Court, which affirmed the Commission's decision. This appeal follows. Other facts will be stated as the issues are considered.

#### **Analysis**



We generally review the Commission's decision to determine whether it was supported by competent and substantial evidence on the record as a whole, whether it was arbitrary, capricious or unreasonable, or whether the Commission abused its discretion. *Evangelical Ret. Homes of Greater St. Louis, Inc. v. State Tax Comm'n of Mo.*, 669 S.W.2d 548, 552 (Mo. banc 1984). A reviewing court is not to substitute its opinion as to the value of a property for that of the Commission. *John Calvin Manor, Inc. v. Aylward*, 517 S.W.2d 59, 63 (Mo. 1974). However, if the question involves the application of law to the facts, the reviewing court must weigh the evidence for itself and determine the facts accordingly. section 536.140(3). Maryville Properties argues that the Commission erroneously applied the law.

The Commission stated under Finding of Fact 13: "Tax credits run with the land. They are part of the real property." However, whether LIHTCs constitute real property or intangible personal property, and whether a valuation of property that includes an assumption that the owner would be in a thirty-nine percent tax bracket values the property according to the owner's interest in it are questions of law. "It is well-settled that administrative agency decisions based on the agency's interpretation of law are matters for the independent judgment of the reviewing court." *Morton v. Brenner*, 842 S.W.2d 538, 540 (Mo. banc 1992). (Internal citations omitted).

Maryville Properties raises three points on appeal. In its first point it argues that the Commission erroneously applied the law because the income tax benefits to the individual limited partners are not real property for the purposes of valuation for real estate tax purposes. In its second point, Maryville Properties claims that the inclusion of the tax benefits to the individual limited partners amounted to a violation of Article X, Section 4(a) of the Missouri Constitution prohibiting the classification of real property based on the owner's interest in the property. In its third point, Maryville Properties argues that the Commission failed to follow its own precedent in the valuation of a similar low-income housing project.

### Constitutional and Statutory Scheme

For ad valorem tax purposes there are three classes of property: (1) real property, (2) tangible personal property and (3) intangible personal property. Mo. Const. Art. X, section 4(a). Each class of property is defined by statute:

#### Class One (Real Property)

"Real property" includes land itself, whether laid out in town lots or otherwise, and all growing crops, buildings, structures, improvements and fixtures of whatever kind thereon . . ."

#### Class Two (Tangible Personal)

"Tangible personal property" includes every tangible thing being the subject of ownership or part ownership whether animate or inanimate, other than money, and not forming part or parcel of real property as herein defined, but does not include household goods, furniture, wearing apparel and articles of personal use and adornment, as defined by the state tax commission, owned and used by a person in his home or dwelling place.

#### Class Three (Intangible Personal)

"Intangible personal property," for the purpose of taxation, shall include all property other than real property and tangible personal property, as defined by this section;"

section 137.010, RSMo. 2000. The definitions and proper classification are important because the Missouri Constitution prohibits the inclusion of intangible personal property in real property values. Mo.Const.aArt. 10, section 4(b).

#### **Are LIHTCs and Accelerated Depreciation Benefits received by the Owner Intangible Personal Property?**

Maryville Properties argues that Missouri law prohibits the taxation of intangible personal property as real property. section 137.010, RSMo. The parties agree that the classification of the tax benefits including LIHTCs provided to investors in subsidized low income housing is at issue. The parties do not agree on the proper test for intangible personal property. Maryville Properties states the test for intangibility as "property which has no intrinsic and marketable value, but is merely representative or evidence of value." *Norris v. Norris*, 731 S.W.2d 844, 845 (Mo. banc 1987). *Norris* involved a probate court's determination that a testator's intent was clear when he used the term "tangible personal property." The court held that intangible personal property "is that which has no intrinsic and marketable value, but is merely the representative or evidence of value, such as certificates of stock, bond, promissory notes, and franchises." *Id.* at 845. The *Norris* court was comparing intangible personal property to tangible personal property. *Norris* does not discuss the classifications of property for tax purposes.

The assessor argues that the test for whether an item is tangible or intangible property is "whether the disputed value is appended to the property and, thus transferable with the property or is it independent of the property so that it either stays

with the seller or dissipates upon sale." *Main Plaza First Plat v. Boley*, 1997 WL 49304, at \*4 (Mo. State Tax Comm'n Feb. 6, 1997). Maryville Properties argues that *Main Plaza First Plat* concerned the abatement of a real property tax rather than an income tax credit and is, therefore, inapplicable.

The assessor argues that because LIHTCs are transferable only with the land, they constitute "transmissible value." Transmissible value is a concept discussed in several Tax Commission decisions. *Simon Property Group, L.P. v. Boley*, 1996 WL 600855 (Mo. State Tax Comm'n Oct. 17, 1996); *Main Plaza First Plat v. Boley*, 1997 WL 49304 (Mo. State Tax Comm'n Feb. 6, 1997); *John Hancock Mutual Life v. Stanton*, 1996 WL 663128 (Mo. State Tax Comm'n Nov. 14, 1996). Commercial property is to be assessed at its "true value in money." section 137.115. In *Missouri Baptist Children's Home v. State Tax Commission*, 867 S.W.2d 510 (Mo. 1993), the court was presented with the question of whether a below market lease could be considered in determining the value in money of the property. The Tax Commission took the position that a long term below market lease should not be considered in determining the value of the property. The court said, "True value in money is the price which the property would bring from a willing buyer when offered for sale by a willing seller." *Id.* at 512. After considering positions taken by several states, the court concluded that "[t]he more recent and better-reasoned approach is to authorize the assessing authority to utilize actual as well as potential income in determining true value." *Id.* The Commission, therefore, erred in refusing to consider the below market long term lease as reducing the value of the property because it did not comport with economic reality under the circumstances to use only potential rather than actual income in determining value. The court also observed that "[p]lacing a value on real property is not an exact science. When relying on the income capitalization method to determine value, the factfinder necessarily has some discretion to decide what weight will be given to actual rent, as opposed to potential market rent, in reaching its decision." *Id.* at 513. Despite the permissible discretion, the assessment should not "have the effect . . . of punishing the entrepreneur whose efforts created the environment for the market" and should not "ignore economic realities." *Id.*

In *Main Plaza First Plat*, the Commission held that the tax abatements allowed under the statute could be considered in assessing the value in part because they directly contributed to increase net operating income of the property and, thus, its fair market value in an income capitalization method of appraisal. 1997 WL 49304, at \*5. The Commission argues that the LIHTCs at issue here run with the land like the tax abatements considered in *Main Plaza First Plat*. Maryville Properties responds that the LIHTCs do not affect the income of the property itself. Maryville Properties's argument, however, ignores the economic reality that the tax credits are in effect a substitute for the income the investors will not receive from their investment as a result of normal operations.(FN1) Because of the low rate of return from operations, other incentives to potential investors are deemed necessary. The tax credits provide one of those incentives.

In a related argument, Maryville Properties asserts that the fallacy of including tax credits in the determination of value is further demonstrated by the need of the Commission to assume a thirty-nine percent tax bracket for the investor to determine the value. Maryville Properties is correct both that a potential investor may not be in that tax bracket and that, in addition, the upper bracket may change from time to time and correspondingly affect the economic value of the tax credit to the investor. However, we need not ignore economic reality and assume that a lower bracket investor would make this kind of investment. (FN2) Likewise, tax brackets may change but the valuation here is for the true value of the property on tax day 1997 and not at some future date when tax changes may affect the resale value of the credits and consequently that of the property. Somewhat more troublesome is the fact that the tax credits will have been fully taken in ten years (the record reflects sometime in 2002). The assessor did consider only the remaining credits available after the tax year in question. Presumably the property will have less value after the credits are exhausted than it did when credits were available. But the same phenomenon would occur where tax abatements ended as in *Main Plaza First Plat* (although in the case of tax abatements, net operating income would decrease when full tax payments were being made). We also observe that a potential buyer would arguably not pay a Maryville Properties limited partner dollar-for-dollar for the tax credits. Like the original investor, most of a new investor's return on his investment would be in the form and value of the remaining tax credits rather than potential income from the project.(FN3) We cannot determine if the assessor's appraiser considered this factor, but, in any event, no argument is made in a point on appeal that the Commission erred in determining the fair market value of the tax credits.

All of the arguments made above are set forth by Maryville Properties in support of its contention that 1) it would be bad policy to include the tax credits, and 2) that the tax credits are simply not the kind of benefits particular to the land (as opposed to the owner) that can be considered part of the real estate under law.

Other states have also considered the inclusion or exclusion of LIHTCs in determining real property values. Many of the arguments for and against consideration of the credits and the various views of other states are set forth in "Fairness in Valuation of Low-Income Housing Tax Credit Properties: An Argument for Tax Exemption," Jonathan Pena, 11 *Affordable Housing & Community Development Law* 53 (Fall 2001).(FN4) A contrary view is taken in "Another Ad Valorem View of Low-Income Housing Tax Credit Properties," Michael W. Collins, 67 *APPRAISAL J.* 306 (1999). Review of other states' decisions for precedential value in this area is difficult because of varying constitutional and legislative differences. The Tax Commission relied upon and the assessor cites to a decision by the Washington Board of Tax Appeals, *Cascade Court Limited Partnership v. Noble*, BTA No. 49295 (Wash. 1998). There, Washington State's equivalent of our Commission held that LIHTCs were properly considered in valuing real estate. However, the Washington Court of Appeals reversed the Board's decision, holding that "[t]ax credits are intangible personal property and thus are not subject to real property taxation." *Cascade Court Ltd. P'ship v. Noble*, 20 P. 3d 997, 1002 (Wash. Ct. App. 2001). The assessor and Commission also relied upon *Deerfield 95 Investor Associates v. Town of East Lyme*, 1999 WL 391099 (Conn. Super. Ct. May 26, 1999), which also held that LIHTCs could be considered in valuing the project. Maryville Properties points out, correctly, that the

Connecticut court relied in part upon the subsequently reversed decision in *Cascade*, discussed above. More importantly, however, for our purposes is the finding in *Deerfield* that "LIHTCs, although intangibles, do have an effect on the valuation of real estate for assessment purposes . . ." *Id.* at \*6. (emphasis added). LIHTCs are also described as intangible assets in Advisory Opinion 14 of the 2001 *Uniform Standards Professional Appraisal Practice*.

Although the assessor argues that intangible factors affecting the value of real estate should be included in the valuation, he apparently agrees that intangible personal property is not includible in the value of real estate. The assessor points to no foreign case holding that these types of tax credits are not intangibles. Rather, the assessor suggests that LIHTCs do not pass the test for intangibility set forth by the Commission in *Simon Property Group*. He suggests that the test is (1) the intangible asset must be identifiable, i.e. legally recognized; (2) it must be capable of private ownership; (3) it must be marketable, i.e. capable of being financed and/or sold separate and apart from the tangible property; and (4) practically, it must possess value, i.e. have the potential to earn income, or its existence is of no consequence. The assessor's argument about this test focuses entirely on the non-severability of the tax credit from the land under the reasoning for tax abatements used in *One Main Plaza First Plat*. The assessor's brief does not discuss the other elements of the test.

First, we do not believe that transferability alone is a sufficient test, although it is certainly a significant factor. We believe that another important factor is the potential to add or detract from the value of the property, i.e. to affect the income of the property. Below market leases and tax abatements have direct effects on the income of a property. LIHTCs do not. And although they would appear to add value to a property, the literature dealing with these projects suggests that most prudent investors will stay in the project for fifteen years.(FN5)

Secondly, because the original limited partner investor achieves much of his return through the tax credits, his rate of return is sharply reduced if he sells the property before receiving the full value of tax credits. This is particularly significant when considering that, while some tax credits remain, a potential purchaser of the investor's interest will likewise be looking for a discount from face value of the unused tax credits.

Finally, after the fifteenth year the investment may not be viable at all for the limited partner investor. This fact is recognized by the owner's right to return the property to the government at his will and without recourse after ten years. All of these factors result in a situation where there is little incentive to sell until the tax credits are exhausted and not subject to recapture, and there is little incentive to buy the interest of the partner unless it can be done at a substantial discount. The value of the tax credits is to the owner of the property and not to the property itself.

It is difficult to construct a satisfactory definition of intangible property for real estate valuation purposes, but certain important distinctions can be made. The assessor argues that zoning and location are intangible and yet they are obviously proper factors for consideration. Zoning and location, however, are characteristics of the property itself, not characteristics of the owners of the property. Likewise, just as with a below market lease or a tax abatement, zoning and location have a direct effect on the income or income producing potential of the property regardless of the identity or characteristics of the individual owner. LIHTCs are not characteristics of the property. Rather they are assets having direct monetary value. Their restricted transferability does not destroy their essential status as intangible property having value primarily to their owner. Objective standards should be used for determining fair market value in the market place. The particular circumstances of the owner are not a proper consideration. Even in *Deerfield*, which approved the use of LIHTCs in valuation, the court noted the difference in the concepts of "investment value" and "market value." "Investment value is the value of a property to a particular investor, whereas market value is not related to the needs of individual investors but 'is objective, impersonal, and detached; investment value is based on subjective, personal parameters.'" 1999 WL 391099, at \*2 (quoting in part The Appraisal Institute, *The Appraisal of Real Estate* 413 (10th ed. 1992).

True value in money for ad valorem tax purposes in Missouri refers to the hypothetical price that could be agreed upon between a willing seller and buyer. *Baptist Children's Home*, 867 S.W.2d at 512. LIHTCs make no direct contribution to the market value of these housing projects. They are intangible property. There is no statutory authority for the consideration of these tax credits in real estate tax appraisal in Missouri. The Commission erroneously applied the law.

The same reasoning compels that we reverse the Commission's inclusion of the capitalized value of the accelerated depreciation to the partners in the valuation. Again, this tax benefit is personal to the owner and not directly tied to the real estate.

For the reasons stated, the decision of the Commission is reversed and remanded to the circuit court for entry of an order directing the Commission to redetermine its assessment of the Maryville property in accordance with this opinion.

#### Footnotes:

FN1. Investors are only allowed to receive eight percent of their initial investment per year. Often the return does not reach eight percent.

FN2. Even if such an investor were interested, he would prudently pay less for the tax credits because of the lesser benefit to him and would have to compete for the investment opportunity with a higher tax bracket investor to whom the credits were more valuable.

FN3. Although the tax credits are exhausted after ten years the rent limitations and other restrictions on the property last for a

term of fifty years.

**FN4.** Cases holding for particular states should be verified because of the effect of subsequent judicial decisions in some states and legislation addressing the issue in others.

**FN5.** The tax credits are taken over a ten year period. However, if a subsequent purchase in year fourteen changed the use of the property, the tax credits would then be subject to recapture plus penalties even though the beneficiary of the credit no longer had any interest in the property.

**Separate Opinion:**

None

*This slip opinion is subject to revision and may not reflect the final opinion adopted by the Court.*

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# State Tax Commission of Missouri

SOUTHERN MISSOURI HOUSING I, )  
 )  
 Complainant, )  
 )  
 v. )  
 )  
 BRUCE WILSON, ASSESSOR, )  
 TEXAS COUNTY, MISSOURI, )  
 )  
 Respondent. )

Appeals No. 02-90001 through 02-90006

## MEMORANDUM

The Missouri Supreme Court has denied the Application for Transfer in the case of *Maryville Properties, L. P. v. Nelson*, 2002 WL 1362987 (Mo. App. W.D.). This means the decision of the Western District Court of Appeals stands. Under the Western District decision, tax credits and accelerated depreciation are not to be considered when arriving at the fair market value of federally subsidized housing.

The *Maryville* decision rendered by Hearing Officer Luann Johnson (4/27/00), which was sustained by the Commission, relied upon the direct capitalization income approach. Complainant's discounted cash flow was not found to be persuasive as presented. Under the direct capitalization methodology, the actual income and expenses were utilized to arrive at the actual net operating income. The capitalization rate was calculated based on the actual 95% loan at 1% for the subject apartment complex(es), with the 5% equity at 15%. This produced a capitalization rate of .031652 before adding the effective tax rate to establish the overall capitalization rate for calculation of the indicated value.

Neither party challenged this methodology on appeal; therefore, the Court of Appeals did not strike down this methodology. The Court only held that an indicated value for tax credits and accelerated depreciation could not be added to the indicated value under the direct capitalization approach.

If the parties in the present appeal(s) wish to settle the case(s) relying on the methodology used in the *Maryville Properties* case, the formula to be used is as follows:

Actual Income	\$
Actual Expenses (%)	-\$
Net Operating Income	_____
Mortgage Constant (95% loan @ 1%)	= 0.024152
Equity Dividend (5% @ 15%)	= 0.007500
Effective Tax Rate	=
Total Cap Rate	= _____

$$\text{Value} = \text{Net Operating Income} \div \text{Cap Rate}$$

Further proceedings are stayed to provide the parties an opportunity to reach a stipulated settlement. Counsel for Complainant(s) is to report to the Commission in writing on or before December 31, 2002, as to the status of settlement negotiations. If settlement has not been reached by said date, a scheduling order will be issued for exchange of exhibits and written direct testimony.

SO ORDERED: October 3, 2002.

STATE TAX COMMISSION OF MISSOURI



W. B. Tichenor  
Chief Hearing Officer

# State Tax Commission of Missouri

SOUTHERN MISSOURI HOUSING I, )  
 )  
 Complainant, )  
 )  
 v. )  
 )  
 BRUCE WILSON, ASSESSOR, )  
 TEXAS COUNTY, MISSOURI, )  
 )  
 Respondent. )

Appeals No. 02-90001 through 02-90006

## MEMORANDUM

In a prior memorandum sent to the parties relating to the capitalization rate utilized in the Maryville Properties v. Nelson appeal, the mortgage constant was for a 95% loan at 1% over 50 years. It has come to my attention that there may be some projects that were 95% loans at 1% over 30 years. Where such is the case, the mortgage constant would be .038597, with the equity dividend of .007500 for a total capitalization rate, before adding the individual effective tax rate, of .046097.

Please feel free to contact the Chief Hearing Officer if you have any questions at 573-751-1712 or [btichenor@mail.state.mo.us](mailto:btichenor@mail.state.mo.us).

SO ORDERED: November 8, 2002.

STATE TAX COMMISSION OF MISSOURI



W. B. Tichenor  
Chief Hearing Officer

KAY BROWN

*Clerk of the County Commission*  
OF  
CHRISTIAN  
COUNTY

100 W. CHURCH ROOM 206

OZARK, MO 65721

Phone: 581-6360

Fax: 581-8331

August 8, 2003

Carmichael, Gardner, & Neal, P.C.

Attn: Mary Neal

901 St. Louis Street Ste. 101

Springfield, MO. 65806

RE: BOE Hearing on The Villas at Forest Park, L.P.

Dear Ms. Neal,

Pursuant to your request, enclosed is the Court Order of the Change in Assessed Valuation concerning The Villas at Forest Park, LP. I have also enclosed an additional card for appealing the decision of the Board to the State Tax Commission.

If you should have any questions, please contact me.

Sincerely,

*Kay Brown*

Kay Brown



# State Tax Commission of Missouri

THE VILLAS AT FOREST PARK,     )  
  )  
                          Complainant,     )  
  )  
                          v.                     ) Appeal Number 03-50500  
  )  
SANDRA BRYANT, ASSESSOR,     )  
CHRISTIAN COUNTY, MISSOURI,     )  
  )  
                          Respondent.     )

ORDER

APPROVING STIPULATION OF PARTIES

The parties in this appeal have reached an agreed settlement by stipulation. Pursuant to Section 536.060, V.A.M.S., the Commission confirms this stipulation and enters an order thereon.

The clerk for Christian County is hereby ordered to place upon the assessment roll for that county and for the years 2003 and 2004 an assessed valuation of \$197,904.

The collector of Christian County, as well as the collectors of all affected political subdivisions therein, shall disburse the protested taxes presently in an escrow account in accord with the decision on the underlying assessment in this appeal. If any or all protested taxes have been disbursed pursuant to §139.031.8, RSMo, either party may apply to the circuit court having jurisdiction of the cause for disposition of the protested taxes held by the taxing authority.

SO ORDERED December 31, 2003.

STATE TAX COMMISSION OF MISSOURI



Sam D. Leake, Chairman



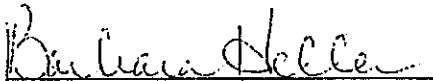
Bruce E. Davis, Commissioner



Jennifer Tidwell, Commissioner

Certificate of Service

I hereby certify that a copy of the foregoing has been mailed postage prepaid on this 31st day of December, 2003, to: Lloyd Carmichael, 901 St. Louis, Suite 101, Springfield, MO 65806, Attorney for Complainant; Ron Cleek, Prosecuting Attorney, 110 W. Elm St., Room 109, Ozark, MO 65721, Attorney for Respondent; Sandra Bryant, Assessor, 100 W. Church, Room 301, Ozark, MO 65721-0334; Kay Brown, Clerk, 100 W. Church, Room 206, Ozark, MO 65721-0549; Ted Nichols, Collector, P.O. Box 579, Ozark, MO 65721.



Barbara Heller, Legal Coordinator

## APPEAL PROCESS

DUTIES/STATUTORY REFERENCE	3rd & 4th CLASS	2nd CLASS	1st CLASS	CITY OF ST. LOUIS
TAXPAYER CHANGE NOTICE: 137.180	PRIOR TO INF. HEARINGS	PRIOR TO INF. HEARINGS	PRIOR TO INF. HEARINGS	PRIOR TO INF. HEARINGS
INFORMAL HEARINGS: Needed only in odd numbered years	PRIOR TO BOE	PRIOR TO BOE	PRIOR TO BOE	PRIOR TO BOE
APPEALS TO BOE DUE: To be in writing on forms provided by county			THIRD MONDAY IN JUNE 137.385	SECOND MONDAY IN MAY 138.180
BOE CONVENES: In a year of general reassessment, BOE may being meeting after May 31st	SECOND MONDAY IN JULY 138.010	SECOND MONDAY IN JULY 138.010	FIRST MONDAY IN JUNE 138.090	THIRD MONDAY IN MAY 138.170
BOE ADJOURNS			LAST SATURDAY IN JULY 138.120	FOURTH FRIDAY AFTER START 138.170
BOE RECONVENES: To hear appeals on action taken by that BOE	SECOND MONDAY IN AUGUST 138.050	SECOND MONDAY IN AUGUST 138.050		
STATE TAX COMMISSION APPEALS: Complaints for review of assessment due at State Tax Commission office (138.430)	SEPT. 30 138.460	SEPT. 30 138.460	AUGUST 15 138.110	AUGUST 15

**NOTES:**

**APPOINTMENT TO BOE**

- 138.010 - GENERAL
- 138.015 - CHARTER CITIES
- 138.085 - APPOINTED MEMBERS
- 138.140 - CITY OF ST. LOUIS
- 55.191 - AUDITOR IN 2nd CLASS COUNTIES

137.270 - ERRONEOUS ASSESSMENTS

LAW OFFICES OF

**CARMICHAEL, GARDNER & NEAL**  
A PROFESSIONAL CORPORATION

LEGAL ASSISTANT:  
SARA JURY

LLOYD JOSEPH CARMICHAEL  
MARK E. GARDNER  
MARY H. NEAL

901 ST. LOUIS STREET  
SUITE 101  
SPRINGFIELD, MISSOURI 65806  
(417) 864-8000  
FAX (417) 864-8001

FACSIMILE TRANSMISSION

DATE: 6-26-03  
TO: Sandra Bryant  
TELECOPY NO.: 581-3029  
FROM: Mary Neal

*ATTN: DE LOVINE  
AS 4/6*

TOTAL PAGES: 1 (including cover sheet)

REMARKS/DELIVERY INSTRUCTIONS:

The Villas at Forest Park, L.P. loan is for a period of 25 years at 1%. Let me know if you need additional information.

(To contact sender call: 417-864-8000)

CONFIDENTIALITY NOTICE: The documents accompanying this telecopy transmission contain confidential information belonging to the sender which is legally privileged. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or the taking of any action in reliance on the contents of this telecopied information is strictly prohibited. If you have received this telecopy in error, please immediately notify us by telephone to arrange for return of the original documents to us.

File No. 278

TAX CALCULATION  
FOR  
VILLAS AT FOREST PARK, L.P.

Based on Capitalization of Income Method as used by State Tax Commission in Maryville Properties, L.P. v. Pat Nelson, Assessor, Nodaway County

.0101802 effective tax rate (from 2002)  
+ .046097 capitalization rate as set forth in November 8, 2002 memorandum of STC  

---

 .0562772 total capitalization rate

\$ 155,125.00 total income  
Less 89,498.00 expenses (not including real property taxes, depreciation or mortgage)  
Less 9,244.00 contribution to replacement reserve  

---

 \$ 56,383 net income

divided by .0562772 capitalization rate

---

 1,001,880 appraised value  
multiplied by .0101802 effective tax rate

---

 \$10,199 tax ?

2002 taxes pd 12,010.<sup>50</sup>

2002 - Levy 5.3580

INCOME STATEMENT

FOR THE 12 PERIODS ENDED DECEMBER 31, 2002

	PERIOD TO DATE		YEAR TO DATE	
	ACTUAL	PERCENT	ACTUAL	PERCENT
<b>Revenue</b>				
RENTAL INCOME	\$12,135.00	96.1 %	148,065.97	95.4
NON REFUNDABLE SEC DEP INCOME	50.00	.4	500.00	.3
LAUNDRY INCOME	.00	.0	900.00	.6
MISCELLANEOUS	.00	.0	89.66	.1
CABLE INCOME	444.00	3.5	5,570.00	3.6
<b>TOTAL Revenue</b>	<b>12,629.00</b>	<b>100.0</b>	<b>155,125.63</b>	<b>100.0</b>
<b>Gross Profit</b>	<b>12,629.00</b>	<b>100.0</b>	<b>155,125.63</b>	<b>100.0</b>
<b>Expenses</b>				
MANAGEMENT SALARIES	1,022.68	8.1	+ 12,687.18	8.2
MAINTENANCE SALERIES	995.74	7.9	+ 12,190.81	7.9
ACCOUNTING-AUDITING	.00	.0	- 8,297.00	5.3
ADVERTISING	75.00	.6	- 825.00	.5
VACANT UNIT PREPARATION	45.00	.4	- 764.65	.5
REPAIRS	210.23	1.7	- 2,965.66	1.9
CONTRACTOR SERVICES	250.00	2.0	- 2,310.26	1.5
GROUPS	298.00	2.4	- 1,620.93	1.0
MAINT. SUPPLIES, TOOLS, EQUIP.	91.41	.7	- 1,324.72	.9
MISC. MAINTENANCE COSTS	15.80	.1	- 1,007.21	.6
OFFICE SUPPLIES & POSTAGE	19.02	.2	- 1,273.82	.8
TELEPHONES/PAGERS	242.78	1.9	- 2,633.22	1.7
COMPUTER EXPENSE	.00	.0	- 60.00	.0
MISC. ADMINISTRATIVE COSTS	50.00	.4	- 166.66	.1
EMPLOYEE TRAVEL/MILEAGE	.00	.0	- 25.92	.0
APPLICATION FEES	.00	.0	- 15.00	.0
EMPLOYEE RECOGNITION	.00	.0	- 49.04	.0
LICENSES AND FEES	20.00	.2	- 235.00	.2
UTILITIES	1,389.36	11.0	- 15,003.52	9.7
GARBAGE COLLECTION	209.17	1.7	- 2,599.17	1.7
OWNER SUPPLIED CABLE TV	379.40	3.0	- 4,176.40	2.7
MISC. OPERATING COSTS	.00	.0	- 404.31	.3
EXTERMINATING SERVICES	.00	.0	- 600.00	.4
SECURITY SERVICES	.00	.0	- 324.50	.2
REAL ESTATE TAXES	12,010.50	95.1	- 12,010.50	7.7
INSURANCE EXPENSE	494.83	3.9	+ 4,641.44	3.0
MANAGEMENT FEE	2,212.00	17.5	+ 13,296.00	8.6
DEPRECIATION EXPENSE	10,632.43	84.2	- (63,794.13)	41.1
<b>TOTAL Expenses</b>	<b>30,663.35</b>	<b>242.8</b>	<b>165,302.05</b>	<b>106.6</b>
<b>Net Income from Operations</b>	<b>(18,034.35)</b>	<b>(142.8)</b>	<b>(10,176.42)</b>	<b>(6.6)</b>

*Net Oper. Income*

*OE*

*156,013.41*

*12,629.00*

*89512.64*

*(NOT 66500.77)*

*105,111.91*

*062905*

<b>Other Income &amp; Expense</b>				
MAJOR REPAIRS	.00	.0	(2,865.00)	(1.8)
INTEREST EXPENSE	(1,310.69)	(10.4)	(8,008.69)	(5.2)

FOR THE 12 PERIODS ENDED DECEMBER 31, 2002

	PERIOD TO DATE		YEAR TO DATE	
	ACTUAL	PERCENT	ACTUAL	PERCENT
Other Income & Expense	(Continued)			
PRINCIPAL PAYMENTS - MHDC	\$ .00	.0 %	(28,850.70)	(18.6)
DEBT SERVICE	.00	.0	28,850.70	18.6
INTERST INCOME-MHDC	(490.48)	(3.9)	(887.78)	.6
TOTAL Other Income & Expense	(1,801.17)	(14.3)	(9,985.91)	(6.4)
Earnings before Income Tax	(19,835.52)	(157.1)	(20,162.33)	(13.0)
Net Income (Loss)	\$(19,835.52)	(157.1)%	(20,162.33)	(13.0)

Additional expense - required contribution to replacement reserve

\$ 9244 for 2002

MISSOURI UNIFORM PARCEL NUMBER: 10-0.6-23-003-002-065.000  
 OWNER & MAILING ADDRESS: THE VILLAS AT FOREST PARK LP  
 CARLSON-CARDNER PROP  
 801 W HAWKNT  
 SITE 200  
 SPRINGFIELD MO 65806-0000

MISSOURI UNIFORM PARCEL NUMBER: 10-0.6-23-003-002-065.000  
 SEC 23 T4N 27 R10 E2  
 LEGAL DESCRIPTION: LOT 82, FOREST PARK PHASE 1.  
 DATE: 23-27-22

APPRASSED VALUE: 1,079,800  
 ZONING CODES: R1  
 APPRAISED BY: [Signature]  
 DEPTH: 0.00  
 AREA: 1057.162

CLASS	TYPE	LOC	OR	EFF	FR ACRES	DEPTH	UNIT PRICE	DEPTH FAC	TOTL ACRES	AREA	PER ACRES	VALUATION	APPROX	SALTS	NON-C	CONSERVATION	BOOK	PAGE	TAX YEAR
RES					100.0000	1.179.800	224.160					07/19/97	0312	8242					2003
AGR						1.179.800	224.160												
CON																			

NOT REBILES AND MISCELLANEOUS INFO  
 PROPERTY ADDRESS:  
 936 ARROW WOOD LN  
 NIXA

Handwritten notes: "No tax credit written to us cost comp." and "Home & Street frontage" with a circled 'B'.



**8. Basis for Land Value**

Basis for value is a market comparison of the following 3 land sales

- Sale #10 Sterling Road, Nixa, MO south side at end of road  
 2.36 acres sold for \$9,703 per acre on 5/31/01 to Geno Middleton  
 requires upward adjustment for all public utilities  
 requires upward adjustment for platting and zoning
- Sale #11 1522 S Gregg Road, Nixa, MO  
 3 acres sold for \$10,000 per acre on 4/14/00 to Bert & Deborah Adams  
 requires an upward adjustment for time  
 requires upward adjustment for all public utilities  
 requires upward adjustment for platting and zoning
- Sale #13 722 S Gregg Road, Nixa, MO  
 2 acres sold for \$15,000 per acre on 4/23/99 to Lawrence Hedgpath  
 requires an upward adjustment for time

Indicated value range is then \$13,584 to \$15,600 per acre. Preponderance of weight is on sale #3, which required no adjustment and is in close proximity, influenced by sale #1 and #2. Estimated value is then \$15,000 per acre. Subject size of 1.99 acres @ \$15,000 per acre is \$29,850.

**9. Calculation of Value of Land to be acquired**

R/W Acquisition	.05 acres @ \$15,000 per acre x 1.00	\$ 750
Trees		0
Fence		<u>0</u>
total		\$ 750

Value before acquisition:	
Land	\$29,850
Improvements, not available	<u>0</u>
Total	\$29,850
Value after acquisition:	<u>\$29,100</u>
Difference	\$ 750

Difference in value before acquisition and value after acquisition is \$750, the estimated compensation.

**JURISDICTIONAL EXCEPTION**

Under the heading of Jurisdictional Exception the current edition of Uniform Standards of Professional Appraisal Practice states, "If any part of these standards is contrary to the law or public policy of any jurisdiction, only that part shall be void and of no force or effect in that jurisdiction."

As designed for the internal use of a Local Public Agency under the direction of the Missouri Department of Transportation, the Payment Estimate departs from Uniform Standards Rules 2-2 (b), (c), (d), (f), (i) and (j). This Payment Estimate was prepared for the internal use of my client, a Local Public Agency. Though not complying with all provisions of the Uniform Standards of Appraisal Practice, the document does conform to Local Public Agency Land Acquisition regulations.

Prepared by: Norma J. Vinson date 11/09/01  
 Norma J. Vinson, SRA, SR/WA  
 Missouri Certified General RA001152



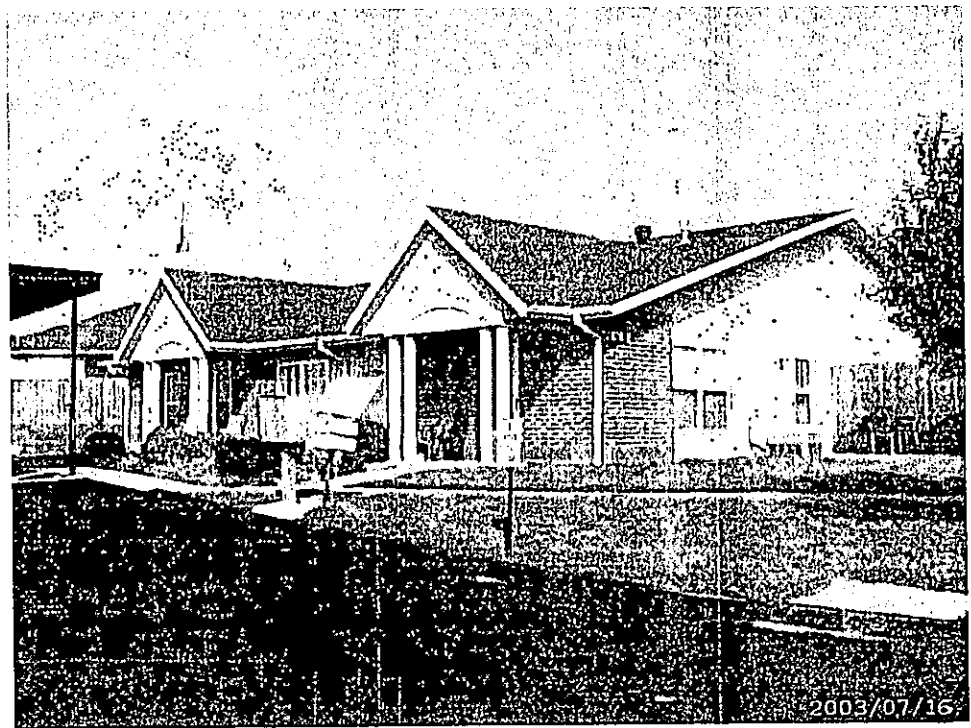


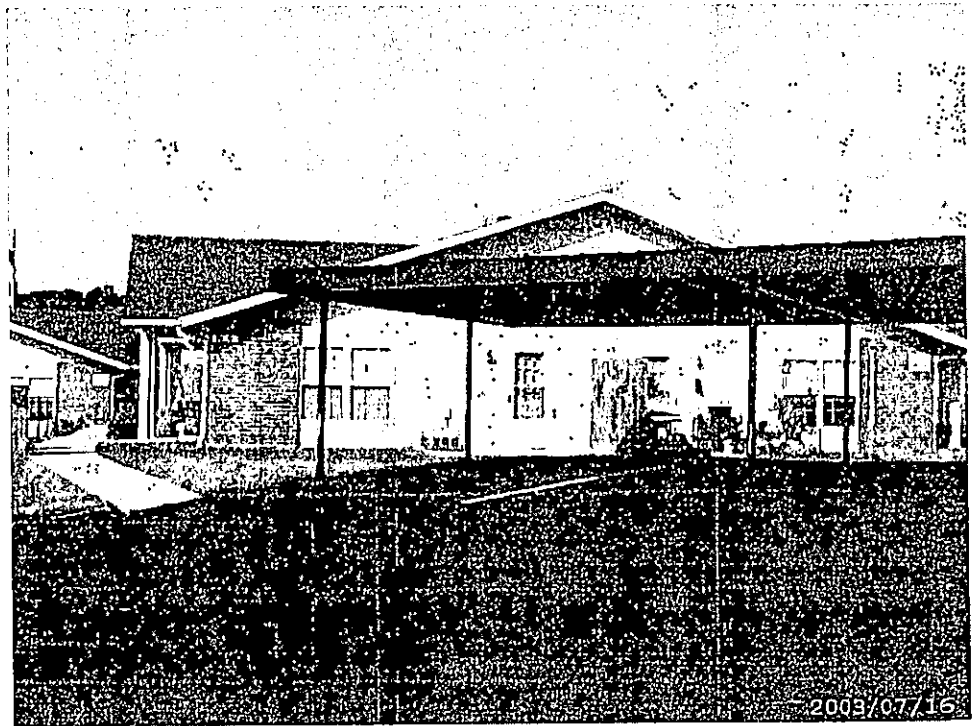


2003/07/16

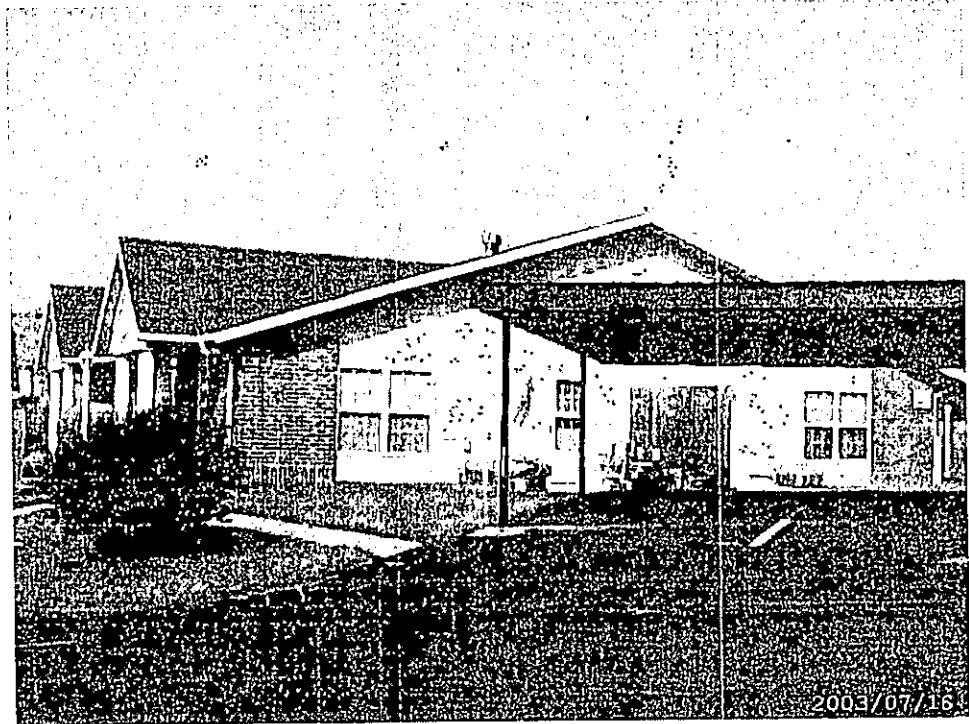


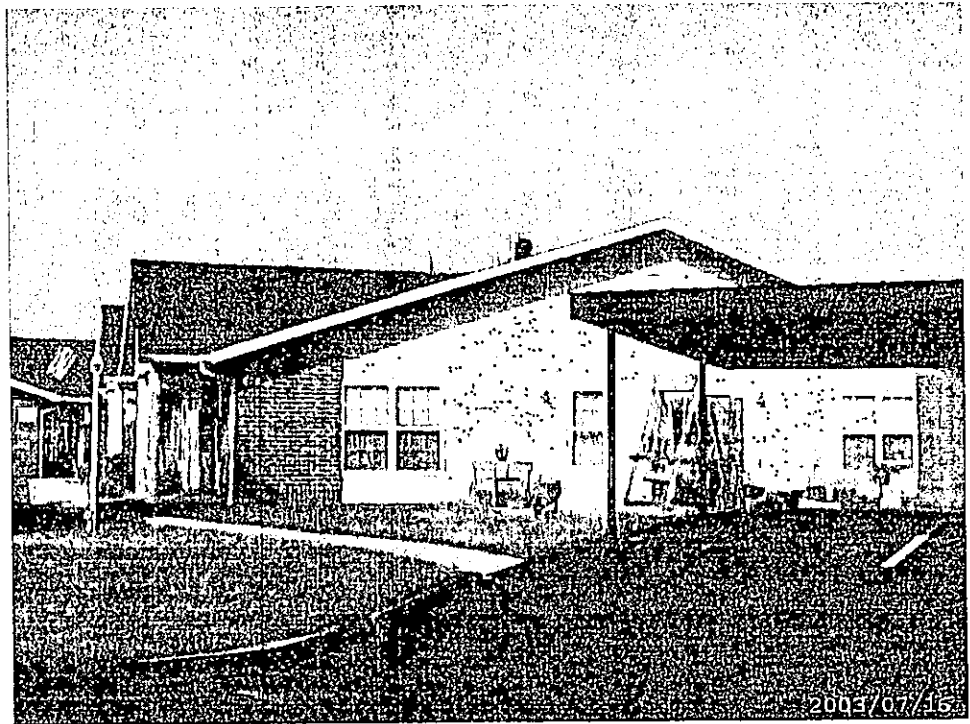


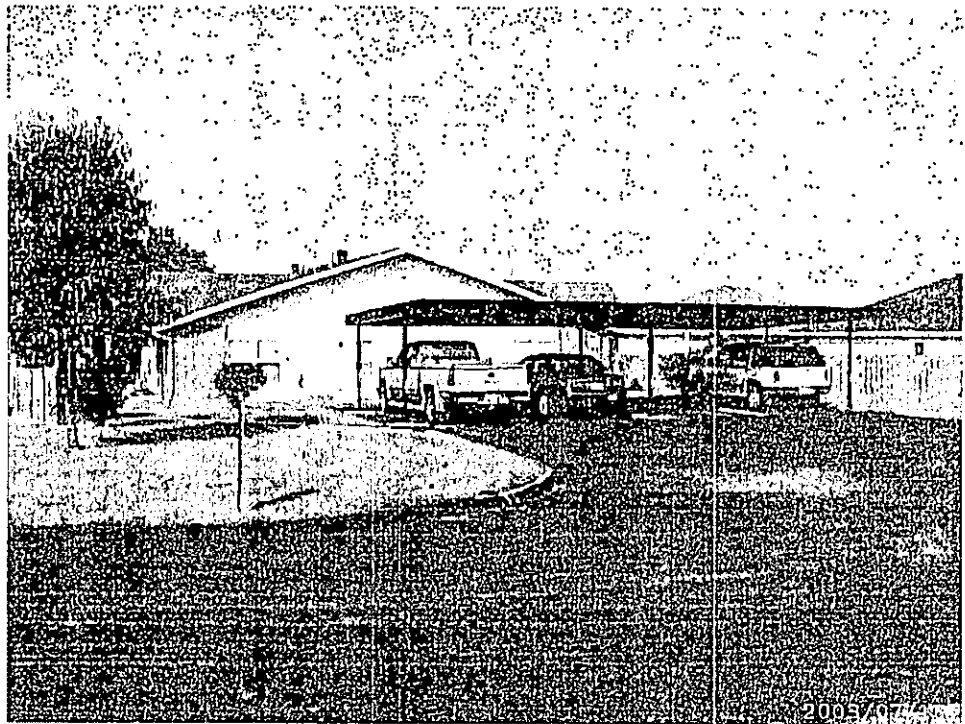












KAY BROWN



100 W. CHURCH ROOM 206  
OZARK, MO 65721

Phone: 581-6360 Fax: 581-8331

July 21, 2003

Carmichael, Gardner, & Neal, P.C.

Attn: Mary Neal

901 St. Louis Street Ste. 101

Springfield, MO. 65806

RE: BOE Hearing on The Villas at Forest Park, L.P.

Dear Ms. Neal,

The Christian County Board of Equalization met Thursday, June 17, 2003, and also Monday, July 21, 2003, concerning The Villas at Forest Park, LP. After viewing the property on July 21, 2003, the Board of Equalization determined that the property classification should be changed from a D- to a D. Enclosed is a Property Tax Appeals Book and a self-addressed postcard that you may send to the State Tax Commission if you wish to appeal it.

Sincerely,

  
Kay Brown

KAY BROWN



100 W. CHURCH ROOM 206  
OZARK, MO 65721  
Phone: 581-6360 Fax: 581-8331


July 31, 2003

Jeffrey E. Smith Companies  
Attn: Joey Holmgren  
206 Peach Way P.O. Box 7688  
Columbia, MO. 65205

Dear Joey,

The Christian County Board of Equalization met Thursday, July 31, 2003, concerning Branson Christian County, L.P, Parcel #100614003001001001, and Branson Christian County II, L.P., Parcel # 100614003001001002. It was the decision of the Board to send the matter to the State Tax Commission. If you have any question, please call us.

Thank you,

  
Kay Brown

KAY BROWN

*Clerk of the County Commission*  
OF  
CHRISTIAN  
COUNTY

100 W. CHURCH ROOM 206  
OZARK, MO 65721

Phone: 581-6360 Fax: 581-8331

July 31, 2003

AT&T Wireless PCS, LLC  
Attn: Vincent Cheng  
c/o Ernst & Young, LLP  
1401 McKinney Street, Suite 1200  
Houston, Texas 77010

Dear Vincent,

The Christian County Board of Equalization met Thursday, July 31, 2003, concerning AT&T Wireless PCS, LLC. It was the decision of the Board to send it to the State Tax Commission. If you have any question, please call us.

Thank you,

*Kay Brown*

Kay Brown

KAY BROWN



100 W. CHURCH ROOM 206  
OZARK, MO 65721

Phone: 581-6360 Fax: 581-8331

July 25, 2003

Ryan & Company  
Attn: Nathaniel T. Haskins  
13155 Noel Road, 12<sup>th</sup> Fl. LB 72  
Dallas, Texas 75240-0022

Dear Nathaniel,

The Christian County Board Of Equalization met Thursday, July 24, 2003, concerning Missouri Gas Energy. It was the decision of the Board to send it to the State Tax Commission. If you have any questions, please call us.

Thank you,

Kay Brown

August 8, 2003

Carmichael, Gardner, & Neal, P.C.  
Attn: Mary Neal  
901 St. Louis Street Ste. 101  
Springfield, MO. 65806

RE: BOE Hearing on The Villas at Forest Park, L.P.

Dear Ms. Neal,

Pursuant to your request, enclosed is the Court Order of the Change in Assessed Valuation concerning The Villas at Forest Park, LP. I have also enclosed an additional card for appealing the decision of the Board to the State Tax Commission.

If you should have any questions, please contact me.

Sincerely,

  
Kay Brown