



Board of Equalization

100 West Church, Room 200, Ozark, Mo. 65721

Board

<http://ChristianCountyMO.igq2.com>

~ Agenda ~

Kay Brown
417-582-4340

Thursday, July 16, 2015

11:00 AM

The Christian County Courthouse

I. Call to Order

Attendee Name	Present	Absent	Late	Arrived
Presiding Commissioner Ray Weter	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Western Commissioner Bill Barnett	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Surveyor Loyd Todd	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Board Member Brenda Hobbs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Commissioner Sue Ann Childers	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Kyle Estes	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Jason Massengale	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

II. Public Portion

1. Un-Numbered Items (ID # 2390)

B.O.E. Discussion



Christian County Commission

100 West Church St, Room 100
Ozark, MO 65721
<http://ChristianCountyMO.iqm2.com>

July Term

~ Agenda ~

Thursday, July 16, 2015

8:55 AM

The Christian County Courthouse

Posted @ on

Notice is hereby given that the Christian County Commission will meet in regular session at:

100 W. Church Street
Room 100
Ozark, MO 65721
On: July 16, 2015

I. Convene

II. Agenda

All Items on the Agenda include the Opportunity for Board Consideration, Discussion, And Possible Action

- 8:55 AM Christian County Commission
Re: Approve Agenda for July 16, 2015
- 8:58 AM Kay Brown-County Clerk
Re: Approve Minutes and Financials
- 9:00 AM Virginia Roberts-Christian County Master Gardeners
Re: Plants and Landscaping Around the Judicial Facility
- 10:00 AM Christian County Commission
Re: Discussion About GPS Trackers for the Sheriff's Office
- 11:00 AM Danny Gray-Christian County Assessor
Re: Board of Equalization Meets to Approve Minutes and Discuss Cases

III. Adjournment

This notice of meeting was posted at the place of meeting and in the locked box located in the Christian County Courthouse lower level, a place readily accessible to the general public and remained posted at least 24 hours before the scheduled time of said meeting per the requirements of the Missouri Sunshine Law 610.020.1 RSMo.



Board of Equalization

100 West Church, Room 200, Ozark, Mo. 65721

Board

<http://ChristianCountyMO.iqm2.com>

~ Minutes ~

Kay Brown
417-582-4340

Thursday, July 16, 2015

11:00 AM

The Christian County Courthouse

I. Call to Order

Attendee Name	Title	Status	Arrived
Ray Weter	Presiding Commissioner	Present	11:00 AM
Bill Barnett	Western Commissioner	Present	11:00 AM
Loyd Todd	Surveyor	Absent	11:00 AM
Brenda Hobbs	Board Member	Present	11:00 AM
Sue Ann Childers	Commissioner	Present	11:00 AM
Kyle Estes		Present	11:00 AM
Jason Massengale		Present	11:00 AM

II. Public Portion

1. Un-Numbered Items (ID # 2390)

B.O.E. Discussion

COMMENTS - Current Meeting:

The meeting was attended by Mr. Al Berry, Assessor Danny Gray and Deputy Clerk Mary Argiso.

The Commission met with the B.O.E. members to discuss cases and to approve the board minutes for July 06, 2015 and July 09, 2015.

Commissioner Weter entertained a motion for the approval of the board minutes for July 06, 2015.

The Assessor provided copies to the board members and Commissioners the new appraised value calculations for Abby 1 & Abby 2.

Abby 1 parcel # 10-0.6-14-003-001-001.001 new assessed value \$1,491,200.00

Abby 2 parcel # 10-0.6-14-003-001-001.002 new assessed value \$1,838,346.00

The assessor discussed the approach he used calculating the figures.

He stated that today he would like to send a letter with the new figures.

ATTACHMENTS:

- Abby 1 & 2 New Appraised Values (PDF)
- Abby 1& 2 new appraised values (PDF)

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Sue Ann Childers, Commissioner
SECONDER:	Brenda Hobbs, Board Member
AYES:	Weter, Barnett, Hobbs, Childers, Estes, Massengale
ABSENT:	Loyd Todd

2. **Motion To:** Motion to adjourn

COMMENTS - Current Meeting:

Commissioner Weter entertained a motion to adjourn.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Brenda Hobbs, Board Member
SECONDER:	Sue Ann Childers, Commissioner
AYES:	Weter, Barnett, Hobbs, Childers, Estes, Massengale
ABSENT:	Loyd Todd

3. **Motion To:** Motion to send letter re: Abby 2 new assessed value

COMMENTS - Current Meeting:

Commissioner Weter entertained a motion to send a letter with the new figures regarding Abby 2 parcel # 10-0.6-14-003-001-001.002 with the new assessed value \$1,838,346.00.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Sue Ann Childers, Commissioner
SECONDER:	Brenda Hobbs, Board Member
AYES:	Weter, Barnett, Hobbs, Childers, Estes, Massengale
ABSENT:	Loyd Todd

4. **Motion To:** Motion to send letter re: Abby 1 new assessed value

COMMENTS - Current Meeting:

Commissioner Weter entertained a motion to send a letter with the new figures regarding Abby 1 parcel # 10-0.6-14-003-001-001.001 with the new assessed value \$1,491,200.00, and can appeal with the state.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Sue Ann Childers, Commissioner
SECONDER:	Kyle Estes
AYES:	Weter, Barnett, Hobbs, Childers, Estes, Massengale
ABSENT:	Loyd Todd

5. **Motion To:** Motion to approve board minutes for July 09, 2015.

COMMENTS - Current Meeting:

The Commission met with the B.O.E. members to approve the board minutes for July 09, 2015.

Commissioner Weter entertained a motion for approval.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Bill Barnett, Western Commissioner
SECONDER:	Sue Ann Childers, Commissioner
AYES:	Weter, Barnett, Hobbs, Childers, Estes, Massengale
ABSENT:	Loyd Todd



Danny Gray
Christian County Assessor
100 West Church Rm # 301
Ozark MO 65721
Ph (417) 582-4320 Fax (417) 581-3029

Abby I 10-0.6-14-003-001-001.001

EGI	248,532
Expense	
55%	- <u>136,692</u>
NOI	111,840
CAP Rate ÷	<u>7.5%</u>
Value	\$1,491,200

Attachment: Abby 1 & 2 new appraised values (2390 : B.O.E. Discussion)

G Buckley @

10-0-6-14-003-001-001
 BRANSON CHRISTIAN COUNTY L.P.
 C/O RHC
 5435 BROADWAY
 KANSAS CITY MO 64111-0000

LOC IN BEXON LOT SIZE ACREAGE DEEDED ACREAGE CALC. DATE PRINTED
 R - 2.18 3.00 05/07/15

UTIL ROAD TOPO 1111
 1000
 00000

FW. CLASS REVIEW DA. ENT.
 A

TAX YEAR 2015

INFO INFO, BY

APPRaised VALUE		SALES DATA-CONSIDERATION		BOOK	PAGE
IMPROVEMENTS	APPRAISED LAND	TOTAL	ACQUIRED	0	0292-001021
2,018,800	45,000	2,063,800	0771995		
0	0	0			
0	0	0			
2,018,800	45,000	2,063,800			

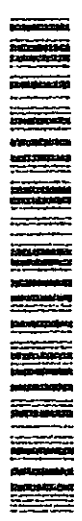
BUILDING PERMITS PROPERTY TYPE
 IT

CLASS	TYPE	LOC	OF	SFF	FFACRES	DEPTH	UNIT PRICE	DEPTH FAC.	ADJ. FAC.	ADJ. AMOUNT	VALUATION	SCHOOL DISTRICT	MISCELLANEOUS DISTRICTS	
													R2	NONE
RES	9		0	0	3.00	0.0	45000.00	0.00	0.00	0.00	45000.00	R2 AME	NX	FIR2

BLDG. (PR. NO.)	STRUCT	YEAR BUILT	YEAR REMODEL	APTS.	STOR.	HI-LO	CLASS	AGE	CLASS	BASE RATE	ADJ. RATE	SQ. FT. COST	BASE AREA	ADJ. AREA	BASE COST	EX FEATURE	REPLACEMENT COST	PRY. ADJ. COND.	APPRaised VALUE	
																				UNITS CONST.
01F	APT	1994	0	5	2	1.0	D	H	0	124	17.76	22.02	51.75	10048	519984	77268	597252	83	83	495720
02R	APT	1994	0	5	2	1.0	D	H	0	124	17.76	22.02	51.75	10048	519984	77268	597252	83	83	495720
03R	APT	1994	0	5	2	1.0	D	H	0	124	17.76	22.02	51.75	10048	519984	77268	597252	83	83	495720
04R	APT	1994	0	1	1	0.0	D	L	0	96	15.72	15.09	35.46	1408	49928	12126	62054	49	22	13650
05R	APT	1996	0	5	2	1.0	D	H	0	124	17.76	22.02	51.75	10048	519984	77268	597252	83	83	495720
06R	CEN	1994	0	0	0	0.0	NA	D	0	0	1.02	1.02	2.40	18554	44530	0	44530	50	50	22260

Handwritten note: 40,800 sq. ft.

NOTES AND MISCELLANEOUS INFO



PROPERTY ADDRESS: 168-396 S TRUMAN

Attachment: Abby 1& 2 new appraised values (2390 : B.O.E. Discussion)



Danny Gray
Christian County Assessor
100 West Church Rm # 301
Ozark MO 65721
Ph (417) 582-4320 Fax (417) 581-3029

Abby II 10-0.6-14-003-001-001.002

· EGI	306,391
Expense	
55%	- <u>168,515</u>
NOI	137,876
CAP Rate ÷	<u>7.5%</u>
Value	\$1,838,346 - <i>New Appraised</i>
	<i>x 19%</i>

Attachment: Abby 1& 2 new appraised values (2390 : B.O.E. Discussion)

MISSOURI UNIFORM PARCEL NUMBER: 10-0.6-14-003-001-001.002

OWNER'S MAILING ADDRESS:
 SMITH, JEFFREY E INV CO L C
 C/O BRANSON CHRISTIAN CD 2 LP
 PO BOX 7688
 COLUMBIA MO 65205-0000

SEC 14 TWN 27 RNG 22
 LEGAL DESCRIPTION
 LOT 14 NIXA CITY CENTER SOUTH PHASE 4, LOT 14

LOC. INDEX: R-2.18
 LOT SIZE: 0100
 ACREAGE DEEDED: 3.00
 ACREAGE CALC.: 3.00
 DATE PRINTED: 08/07/15
 TAX YEAR: 2015
 F.W. CLASS REVIEW DA. ENT.

IMPROVEMENTS	APPROX VALUE	APPROX LAND	TOTAL	ASSESSED TOTAL	AG LAND ACRES	GRADE	PER ACRE	VALUATION	ACQUIRED	SALES DATA-CONSIDERATION	BOOK	PAGE
RES	2,106,400	45,000	2,151,400	408,770					07/1994		0300-001483	
AGR	0	0	0	0							0295-004705	
COM	0	0	0	0								
TOTAL	2,106,400	45,000	2,151,400	408,770								

BUILDING PERMITS PROPERTY TYPE: IT
 ZONING CODES APPRAISED BY:

CLASS	TYPE	LOC	OF	SFF	FF ACRES	DEPTH	UNIT PRICE	DEPTH FAC.	ADJ. FAC.	ADJ. AMOUNT	VALUATION	SCHOOL DISTRICT	MISCELLANEOUS DISTRICTS
RES	9		0	0	3.00	0.0	45000.00	0.00	0.00	0.00	45000.00	R2 AMB	NX F1R2

BLDG. NO.	STRUC. TYPE	YEAR BUILT	YEAR REMODEL	STOR. APTS.	HI-LO	CLASS	BASE RATE	ADJ. RATE	SQ. FT. COST	BASE AREA	ADJ. AREA	BASE COST	EX FEATURE	REPLACEMENT COST	PRY ADJ COND/COND	APPRaised VALUE
01R	APT	1994	0	4	1.0	D	17.74	22.56	53.02	9300	17468	726153	1571421	0833296	83 83	899140
02R	APT	1994	0	4	1.0	D	17.76	22.20	52.17	7150	12726	663915	113566	777422	83 83	645310
03R	APT	1994	0	4	1.0	D	17.76	18.68	43.83	6350	11926	522717	106168	628885	83 83	521970
04R	COND	1994	0	0	0.0	NA	1.02	1.02	2.40	33284	33284	79882	0	79882	50 50	39740

NOTES AND MISCELLANEOUS INFO

PROPERTY ADDRESS: 168-396 TRUMAN ST

Attachment: Abby 1 & 2 new appraised values (2390 : B.O.E. Discussion)



Danny Gray
Christian County Assessor
100 West Church Rm # 301
Ozark MO 65721
Ph (417) 582-4320 Fax (417) 581-3029

Abby I 10-0.6-14-003-001-001.001

EGI 248,532
Expense
55% - 136,692
NOI 111,840
CAP Rate ÷ 7.5%
Value \$1,491,200

G Buckley @

MISSOURI UNIFORM PARCEL NUMBER: 10-0.6-14-003-001-001.001

BRANSON CHRISTIAN COUNTY L.P.
 C/O MHDC
 3435 BROADWAY
 KANSAS CITY MO 64111-0000

SEC 14 TWN 27 RNG 22
 LEGAL DESCRIPTION: LOT 13 NIXA CITY CENTER SOUTH IV

10-0.6-14-003-001-001.001
 ACREAGE DEEDED: 3.00
 DATE PRINTED: 05/07/15

1111
 1000
 00000
 UTIL ROAD TOPO

F.W.
 CLASS REVIEW
 DA. ENT.

SUB CLASS	IMPROVEMENTS		APPRAISED VALUE		AG LAND ACRES	GRADE	PER ACRE	VALUATION	ACQUIRED	SALES DATA-CONSIDERATION	BOOK	PAGE
	LOC	OF	APPRAISED LAND	TOTAL								
RES	2,018.800	0	45,000	2,063,800				077,199	0	0272	001021	
AGR	0	0	0	0								
COM	0	0	0	0								
TOTAL	2,018.800	0	45,000	2,063,800								

BUILDING PERMITS PROPERTY TYPE
 IT ZONING CODES APPRAISED BY:

CLASS	TYPE	LOC	OF	SFF	FF ACRES	DEPTH	UNIT PRICE	DEPTH FAC.	ADJ. FAC.	ADJ. AMOUNT	VALUATION	SCHOOL DISTRICT	MISCELLANEOUS DISTRICTS	
													R2	NONE
RES	9		0	0	3.00	0.0	45000.00	0.00	0.00	0.00	45000.00	AMB	NX	FIR2

BLDG. PR. NO.	STRUCT	YEAR BUILT	YEAR REMODEL	ROOMS	STOR	HI-LO	CLASS	RATE CODE	BASE RATE	ADJ. RATE	SQ. FT. COST	BASE AREA	ADJ. AREA	BASE COST	EX FEATURE	REPLACEMENT COST	PRY. ADJ. COND. COND.	APPRaised VALUE	
																			UNITS CONST.
01R	APT	1994	0	5	2	1.0	D	H	17.76	22.02	51.75	5200	10048	519984	77268	597252	83	83	495720
02R	APT	1994	0	5	2	1.0	D	H	17.76	22.02	51.75	5200	10048	519984	77268	597252	83	83	495720
03R	APT	1994	0	5	2	1.0	D	H	17.76	22.02	51.75	5200	10048	519984	77268	597252	83	83	495720
04R	MHAL	1994	0	1	1	0.0	D	L	15.72	15.09	35.46	1408	1408	49928	12126	62054	49	22	13650
05R	APT	1996	0	5	2	1.0	D	H	17.76	22.02	51.75	5200	10048	519984	77268	597252	83	83	495720
06R	CONC	1994	0	0	0	0.0	NA	D	1.02	1.02	2.40	18554	18554	44530	0	44530	50	50	22260

NOTES AND MISCELLANEOUS INFO

PROPERTY ADDRESS: 168-396 S TRUMAN



Danny Gray
Christian County Assessor
100 West Church Rm # 301
Ozark MO 65721
Ph (417) 582-4320 Fax (417) 581-3029

Abby II 10-0.6-14-003-001-001.002

EGI 306,391
Expense
55% - 168,515
NOI 137,876
CAP Rate ÷ 7.5%
Value \$1,838,346 - *New Appraised*
X 19%

OWNER & MAILING ADDRESS:
 SMITH, JEFFREY E INV CO L C
 C/O BRANSON CHRISTIAN CO 2 LP
 PO BOX 7688
 COLUMBIA MO 65205-0000

SEC 14 TWN 27 RNG 22
 LEGAL DESCRIPTION
 LOT 14 NIXA CITY CENTER SOUTH PHASE 4, LOT 14

ACREAGE DEEDED 3.00
 ACREAGE CALC. 3.00
 DATE PRINTED 05/07/15
 F.W. CLASS REVIEW DA. ENT.

UTIL ROAD TOPO
 0100
 0100
 00000

INFO INFO, BY
 ACQUIRED SALES DATA-CONSIDERATION BOOK PAGE
 07/1994 0 0300-001483
 0295-004705

SCHOOL DISTRICT R2 AMB
 MISCELLANEOUS DISTRICTS NX FIRE

BLDG. NO.	STRUC. TY	YEAR BUILT	YEAR REMODEL	BODYS	STOR	H/L	CLASS	RATE CODE	DEPTH	UNIT PRICE	ADJ. FAC.	ADJ. FAC.	ADJ. AMOUNT	VALUATION	BASE AREA	ADJ. AREA	BASE COST	EX FEATURE	REPLACEMENT COST	PRY COND/COND	ADJ VALUE	
																						APPROX VALUE
RES	9	0	0	0	0	0	3.00	D H	0.0	45000.00	0.00	0.00	0.00	45000.00	9300	17468	926153	1571421	0833296	83	83	899140
AGR		0	0	0	0	0	0	D H	0	0	0	0	0	7150	12726	663915	113566	777482	83	83	83	845310
COM		0	0	0	0	0	0	D H	0	0	0	0	0	6350	11926	522717	106168	628885	83	83	83	521970
TOTAL		2,106,400		45,000		2,151,400		NA 0		408,770		0	0	408,770	33284	33284	79882	0	79882	80	80	39940

20,400 sq ft

NOTES AND MISCELLANEOUS INFO



PROPERTY ADDRESS: 168-396 TRUMAN ST

MISSOURI UNIFORM PARCEL NUMBER: 10-0.6-14-003-001-001.001
 OWNER & MAILING ADDRESS: BRANSON CHRISTIAN COUNTY L.P.
 270 MHDC
 5435 BROADWAY
 KANSAS CITY MO 64111-0000

SEC 14 TWN 27 RNG 22
 LEGAL DESCRIPTION: LOT 13 NIXA CITY CENTER SOUTH IV

Robert Nuclear
 573-443-2021

ACINDEX: R-2.18
 LOT SIZE: 0.25
 ACRES DEEDED: 0
 ACRES CALC: 3.00
 DATE PRINTED: 05/07/15
 TAX YEAR: 2015
 FW. CLASS REVIEW DA. ENT.

SUB. CLASS	APPROX. VALUE		AG LAND ACRES	PER ACRE	VALUATION	ACQUIRED	SALES DATA-CONSIDERATION	BOOK	PAGE
	IMPROVEMENTS	APPRAISED LAND							
RES	2,018,800	45,000	2,063,800			07/1993	0	0292-001021	
AGR	0	0	0						
COM	0	0	0						
TOTAL	2,018,800	45,000	2,063,800						

CLASS	TYPE	LOC	OF	SFE	FF ACRES	DEPTH	UNIT PRICE	DEPTH FAC.	ADJ. FAC.	ADJ. AMOUNT	VALUATION	SCHOOL DISTRICT	EX FEATURE	REPLACEMENT COST	MISCELLANEOUS DISTRICTS
RES	9		0	0	3.00	0.0	45000.00	0.00	0.00	45000.00		R2 AMB	NDNE JC		

BLDG. TYPE	STRUCT	YEAR BUILT	YEAR REMODEL	ROOMS	STOR	H-L-O	CLASS	RATE	CLASS	UNITS	CONST	TOTAL	BASE RATE	ADJ. RATE	SQ. FT. COST	BASE AREA	ADJ. AREA	BASE COST	EX FEATURE	REPLACEMENT COST	PMT ADJ COND	APPRAISED VALUE	
																							CLASS
01H	APT	1994	0	5	2	1.0	D H	0	124	124	124	124	17.76	22.02	51.75	5200	10048	519984	77268	597252	83	83	495720
02H	APT	1994	0	5	2	1.0	D H	0	124	124	124	124	17.76	22.02	51.75	5200	10048	519984	77268	597252	83	83	495720
03H	APT	1994	0	5	2	1.0	D H	0	124	124	124	124	17.76	22.02	51.75	5200	10048	519984	77268	597252	83	83	495720
04H	HAL	1994	0	1	1	0.0	D L	0	96	96	96	96	15.72	15.09	35.46	1408	1408	49928	12126	62054	49	82	13650
05H	APT	1996	0	5	2	1.0	D H	0	124	124	124	124	17.76	22.02	51.75	5200	10048	519984	77268	597252	83	83	495720
05HC	DMC	1994	0	0	0	0.0	NA D	0	0	0	0	0	1.02	1.02	2.40	18554	18554	44530	0	44530	50	50	22260

NOTES AND MISCELLANEOUS INFO

PROPERTY ADDRESS: 168-396 S TRUMAN



SEC 14 TWN 27 RANG 22
 LEGAL DESCRIPTION: LOT 13 NIXA CITY CENTER SOUTH IV
 AC INDEX: R-2.12
 LOT SIZE: 3.00
 ACREAGE DEEDED: 3.00
 ACREAGE CALC: 05/07/15
 DATE PRINTED: 2015

Robert Muehl
 573-443-2021

UTL ROAD TOPO 1111 1000 00000
 F.W. CLASS REVIEW DA. ENT.
 INFO INFO, BY

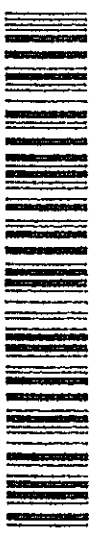
CLASS	TYPE	LOC	OF	SFF	FF ACRES	DEPTH	DEPTH FAC.	ADJ. FAC.	ADJ. AMOUNT	VALUATION	ACQUIRED	SALES DATA-CONSIDERATION	BOOK	PAGE
RES					3.00	0.0	0.00	0.00	0.00	45000.00	07/1995	0	0292-001021	
AGR														
COM														
TOTAL														

BUILDING PERMITS: IT
 ZONING CODES: APPRAISED BY:

BLDG. PR. NO.	STRUC. TY.	YEAR BUILT	YEAR REMODEL	ROOMS	STOR	H.L.O.	CLASS	RATE CODE	CLASS	UNITS CONST.	TOTAL	BASE RATE	ADJ. RATE	SG. FT. COST	BASE AREA	ADJ. AREA	BASE COST	EX FEATURE	REPLACEMENT COST	PRV. ADJ. COND.	APPRASSED VALUE	
01H	APT	1994	0	5	2	1.0	D H	0		124	124	17.76	22.02	51.75	5200	10048	519984	77268	597252	83	83	495720
02H	APT	1994	0	5	2	1.0	D H	0		124	124	17.76	22.02	51.75	5200	10048	519984	77268	597252	83	83	495720
03H	APT	1994	0	5	2	1.0	D H	0		124	124	17.76	22.02	51.75	5200	10048	519984	77268	597252	83	83	495720
04H	HAL	1994	0	1	1	0.0	D L	0		96	96	15.72	15.09	35.46	1408	1408	49728	12126	62054	49	82	13650
05H	APT	1996	0	5	2	1.0	D H	0		124	124	17.76	22.02	51.75	5200	10048	519984	77268	597252	83	83	495720
05H	CINC	1994	0	0	0	0.0	NA	0		0	0	1.02	1.02	2.40	18554	18554	44530	0	44530	50	50	22260

NOTES AND MISCELLANEOUS INFO

PROPERTY ADDRESS: 168-396 S TRUMAN



**Branson Christian County I, LP
d/b/a Abbey Orchard I
10-0.6-14-003-001-001.001**

- Exhibit A Appeal Summary Sheet
- Exhibit B Income and Expense Worksheet
- Exhibit C 2011-2014 Income Statements
- Exhibit D Land Use Restriction Agreement
- Exhibit E Maryville Formula Case Law
- Exhibit F HB No. 613
- Exhibit G Agent Authorization

Branson Christian County I, LP
d/b/a Abbey Orchard I
10-0.6-14-003-001-001.001

EXHIBIT A

Appeal Summary Sheet

**Branson Christian County I, LP
d/b/a Abbey Orchard I
168-396 Truman Street, Nixa
10-0.6-14-003-001-001.001
2015 Board of Equalization Appeal**

Property Description

The subject property is a 48-unit apartment complex built in 1994 located on Truman Street in Nixa. It is subject to rent limitations, operations requirements and other restrictions in exchange for low-income housing tax credits.

Appeal Summary

The \$2,063,800 market value assigned to this property in 2015 by Christian County is excessive. This valuation represents a **302%** increase in the previous \$683,400 value and is not warranted in the marketplace. Taxpayer asserts a value of \$971,000 based on the attached income analysis.

Taxpayer's proposed valuation is based on the methodology established in *Maryville Properties v. Nelson*, 83 S.W.3d 608 (Mo. App. W.D. 2002) for determining market value of low income housing properties. The Maryville Formula was applied by the State Tax Commission in *Lake Ozark Village v. Whitworth*, STC Appeal Nos. 97-47000, 99-47003 and 01-47002 and many subsequent decisions. Most recently, the Commission reaffirmed application of the Maryville Formula in *Farmington Associates II v. Ward*, STC Appeal Nos. 11-84005 and 11-84006. The Maryville Formula for valuation of low income housing has been codified by HB No. 613 passed by the General Assembly and signed by the Governor July 16, 2015. HB No. 613 amends 137.076 RSMo to require use of an income approach with direct capitalization of net operating income of low income housing properties at market capitalization rates without considering tax credits or other subsidies.

**Branson Christian County I, LP
d/b/a Abbey Orchard I
10-0.6-14-003-001-001.001**

EXHIBIT B

Income and Expense Worksheet

INCOME AND EXPENSE WORKSHEET

CHRISTIAN COUNTY

Branson Christian County I, LP
 d/b/a Abbey Orchard I
 Parcel # 10-0.6-14-003-001-001.001
 05-50500, Jeffrey E. Smith Partnerships

	2012	2013	2014	3 Year Avg
Actual Income				
Rental Income	231,908	238,556	241,248	237,237
Rental Subsidy				
Laundry / Vending / Other	14,716	11,303	11,997	12,672
Potential Gross Income	246,624	249,859	253,245	249,909
Less: Actual Vacancy & Collection	479	5,465	4,713	3,552
Effective Gross Income	246,145	244,394	248,532	246,357
Expenses				
Maintenance & Repair	40,916	41,729	54,452	45,699
Utilities	25,811	21,509	25,030	24,117
Administrative	74,068	66,701	68,479	69,749
Insurance	13,624	16,061	15,935	15,207
Reserve for Replacement	17,153	17,667	18,197	17,672
Total Expenses	171,572	163,667	182,093	172,444
Net Operating Income	74,573	80,727	66,439	73,913
Capitalization				
Loan to Value x Interest Rate	0.015508	0.015508	0.015508	0.015508
Equity x Equity Dividend Rate	0.058500	0.058500	0.058500	0.058500
Effective Tax Rate	0.002115	0.002115	0.002115	0.002115
Overall Capitalization Rate	0.076124	0.076124	0.076124	0.076124
Value				
Net Operating Income	\$ 979,600	\$ 1,060,500	\$ 872,800	\$ 971,000
divided by Overall Capitalization Rate				

Equity Dividend Rate	15%
Cost Cert Total	\$ 2,505,645
Original Loan Balance	1,883,200.00
Original Equity Amount	622,445.00
Equity Value	0.39
Loan Value	0.61
Note Interest Rate	1.00%
Amortization Term	600
Mortgage Constant	2.54%
Effective Tax Rate	0.002115

**Branson Christian County I, LP
d/b/a Abbey Orchard I
10-0.6-14-003-001-001.001**

EXHIBIT C

2011-2014 Income Statements

Branson Christian County, LP
 MHDC #RRHP-016
 INCOME STATEMENTS
 For the Years Ended December 31, 2011 and 2012

		<u>12/31/11</u>		<u>12/31/12</u>
	RENT REVENUE			
5120	Rent Revenue - Gross Potential	\$ 228,960	\$	231,908
5100T	TOTAL RENT REVENUE	<u>228,960</u>		<u>231,908</u>
	VACANCIES			
5220	Apartments	(9,926)		(429)
5250	Rental Concessions	(307)		-
5290	Miscellaneous	(13)		(50)
5200T	TOTAL VACANCIES	<u>(10,246)</u>		<u>(479)</u>
5152N	NET RENTAL REVENUE	<u>218,714</u>		<u>231,429</u>
	FINANCIAL REVENUE			
5410	Financial Revenue - Project Operations	186		154
5440	Revenue from Investments - Replacement Reserve	931		579
5400T	TOTAL FINANCIAL REVENUE	<u>1,117</u>		<u>733</u>
	OTHER REVENUE			
5910	Laundry and Vending Revenue	221		281
5920	Tenant Charges	11,625		12,741
5990	Miscellaneous Revenue	633		961
5900T	TOTAL OTHER REVENUE	<u>12,479</u>		<u>13,983</u>
5000T	TOTAL REVENUE	<u>\$ 232,310</u>	\$	<u>246,145</u>

The accompanying notes are an integral part of these financial statements.

Branson Christian County, LP
MHDC #RRHP-016
INCOME STATEMENTS
For the Years Ended December 31, 2011 and 2012

		12/31/11	12/31/12
	ADMINISTRATIVE EXPENSES		
6203	Conventions, Meetings & Training	\$ 1,774	\$ 535
6210	Advertising and Marketing	1,757	1,601
6311	Office Expenses	1,287	1,031
6320	Management Fee/Bookkeeping/Accounting Services	21,490	22,997
6330	Manager or Superintendent Salaries	17,528	18,935
6340	Legal Expenses - Project	4,931	3,341
6350	Audit Expenses	2,770	2,977
6360	Telephone Expense	1,545	2,021
6370	Bad Debts	5,056	8,184
6390	Miscellaneous Administrative Expenses	2,716	2,164
6263T	TOTAL ADMINISTRATIVE EXPENSES	60,854	63,786 <i>X</i>
	UTILITIES		
6450	Electricity	5,153	3,704
6451	Water	8,246	9,020
6453	Sewer	11,531	13,087
6400T	TOTAL UTILITIES	24,930	25,811 <i>W</i>
	OPERATING & MAINTENANCE EXPENSES		
6510	Payroll	17,938	20,901
6515	Supplies	6,899	4,685
6520	Contracts	42,685	11,728
6525	Garbage and Trash Removal	79	60
6546	Heating/Cooling Repairs and Maintenance	570	-
6548	Snow Removal	1,039	156
6573	Exterminating	665	893
6580	Vacant Unit Preparation	3,160	2,493
6500T	TOTAL OPERATING & MAINTENANCE EXPENSES	73,035	40,916 <i>M</i>
	TAXES & INSURANCE		
6710	Real Estate Taxes	8,103	8,012 - <i>N/A</i>
6711	Payroll Taxes (Project's Share)	3,388	3,690 - <i>A</i>
6720	Property and Liability Insurance (Hazard)	7,282	7,532
6721	Fidelity Bond Insurance	165	153
6722	Workmen's Compensation	1,256	1,064
6723	Health Insurance & Other Employee Benefits	3,468	3,453
6790	Miscellaneous Taxes, Licenses, Permits & Insurance	1,016	1,422
6700T	TOTAL TAXES & INSURANCE	24,678	25,326 <i>I</i>
	FINANCIAL EXPENSES		
6820	Interest on Mortgage Payable	11,595	11,300 - <i>N/A</i>
6800T	TOTAL FINANCIAL EXPENSES	11,595	11,300
6000T	TOTAL COST OF OPERATIONS BEFORE DEPRECIATION	195,092	167,139
5060T	PROFIT (LOSS) BEFORE DEPRECIATION	\$ 37,218	\$ 79,006

The accompanying notes are an integral part of these financial statements.

Branson Christian County, LP
MHDC #RRHP-016
INCOME STATEMENTS
For the Years Ended December 31, 2011 and 2012

		12/31/11	12/31/12
	DEPRECIATION & AMORTIZATION		
6600	Depreciation	\$ 111,445	\$ 119,059 - N/A
	TOTAL DEPRECIATION	111,445	119,059
	OPERATING PROFIT OR LOSS	(74,227)	(40,053)
	ENTITY EXPENSES		
7115	Asset Management, Partnership and Incentive Fee	(6,500)	(6,500)
7190	Other Expenses	-	(92)
	TOTAL ENTITY EXPENSES	(6,500)	(6,592) A
3250	NET INCOME (LOSS)	\$ (80,727)	\$ (46,645)

PART II

7001	Total mortgage principal payments required during the audit year (12 monthly payments).	29,341	29,634
7002	Total of 12 monthly deposits in the audit year into the Replacement Reserve account.	16,653	17,153
7003	Replacement Reserve or Residual Receipts releases which are included as expense items on this Profit and Loss Statement	35,046	1,599
7145	Debt Service for other loans (surplus cash/non-mhdc/partner loans)	15,846	-

(46,645) - MUI
 + 8012 - RBR ESTATE TAXES
 + 11,300 - INTEREST
 + 119,059 - DEPRECIATION
(17,153) RESERVES
74,573 MUI per formula

The accompanying notes are an integral part of these financial statements.

Branson Christian County, LP
 MHDC #RRHP-016
 INCOME STATEMENTS
 For the Years Ended December 31, 2013 and 2014

		2013	2014
	RENT REVENUE		
5120	Rent Revenue - Gross Potential	\$ 238,556	\$ 241,248
5100T	TOTAL RENT REVENUE	238,556	241,248
	VACANCIES		
5220	Apartments	(2,732)	(3,600)
5250	Rental Concessions	-	(40)
5260	Rents Loss to Lease	(2,673)	(1,041)
5290	Miscellaneous	(60)	(32)
5200T	TOTAL VACANCIES	(5,465)	(4,713)
5152N	NET RENTAL REVENUE	233,091	236,535
	FINANCIAL REVENUE		
5410	Financial Revenue - Project Operations	145	111
5440	Revenue from Investments - Replacement Reserve	616	639
5400T	TOTAL FINANCIAL REVENUE	761	750
	OTHER REVENUE		
5910	Laundry and Vending Revenue	210	230
5920	Tenant Charges	9,527	10,393
5990	Miscellaneous Revenue	805	624
5900T	TOTAL OTHER REVENUE	10,542	11,247
5000T	TOTAL REVENUE	\$ 244,394	\$ 248,532

The accompanying notes are an integral part of these financial statements.

Branson Christian County, LP
 MHDC #RRHP-016
INCOME STATEMENTS
 For the Years Ended December 31, 2013 and 2014

	2013	2014
ADMINISTRATIVE EXPENSES		
6203 Conventions, Meetings & Training	\$ 1,060	\$ 1,741
6210 Advertising and Marketing	1,505	1,724
6311 Office Expenses	1,295	1,381
6320 Management Fee/Bookkeeping/Accounting Services	22,776	22,696
6330 Manager or Superintendent Salaries	19,129	18,930
6340 Legal Expenses - Project	670	300
6350 Audit Expenses	3,078	3,077
6360 Telephone Expense	2,167	2,021
6370 Bad Debts	2,999	3,637
6390 Miscellaneous Administrative Expenses	2,169	3,104
6263T TOTAL ADMINISTRATIVE EXPENSES	56,848	58,611 <i>A</i>
UTILITIES		
6450 Electricity	3,990	4,098
6451 Water	7,491	11,689
6453 Sewer	10,028	9,243
6400T TOTAL UTILITIES	21,509	25,030 <i>U</i>
OPERATING & MAINTENANCE EXPENSES		
6510 Payroll	20,683	20,356
6515 Supplies	3,728	6,050
6520 Contracts	13,831	14,352
6525 Garbage and Trash Removal	62	78
6546 Heating/Cooling Repairs and Maintenance	29	301
6548 Snow Removal	775	1,384
6573 Exterminating	834	909
6580 Vacant Unit Preparation	1,787	11,022
6500T TOTAL OPERATING & MAINTENANCE EXPENSES	41,729	54,452 <i>M</i>
TAXES & INSURANCE		
6710 Real Estate Taxes	<i>NIA</i> - 7,973	7,956 - <i>NIA</i>
6711 Payroll Taxes (Project's Share)	<i>A</i> - 3,353	3,368 - <i>A</i>
6720 Property and Liability Insurance (Hazard)	8,303	8,998
6721 Fidelity Bond Insurance	141	106
6722 Workmen's Compensation	871	1,056
6723 Health Insurance & Other Employee Benefits	5,003	4,085
6790 Miscellaneous Taxes, Licenses, Permits & Insurance	1,743	1,690
6700T TOTAL TAXES & INSURANCE	27,387	27,259
FINANCIAL EXPENSES		
6820 Interest on Mortgage Payable	<i>NIA</i> - 11,002	10,701 - <i>NIA</i>
6800T TOTAL FINANCIAL EXPENSES	11,002	10,701
6000T TOTAL COST OF OPERATIONS BEFORE DEPRECIATION	158,475	176,053
5060T PROFIT (LOSS) BEFORE DEPRECIATION	\$ 85,919	\$ 72,479

The accompanying notes are an integral part of these financial statements.

Branson Christian County, LP
MHDC #RRHP-016
INCOME STATEMENTS
For the Years Ended December 31, 2013 and 2014

	2013	2014
DEPRECIATION & AMORTIZATION		
6600 Depreciation	\$ 114,377	\$ 111,107
TOTAL DEPRECIATION	<u>114,377</u>	<u>111,107</u>
OPERATING PROFIT OR LOSS	<u>(28,458)</u>	<u>(38,628)</u>
ENTITY EXPENSES		
7115 Asset Management, Partnership and Incentive Fee	(6,500)	(6,500)
TOTAL ENTITY EXPENSES	<u>(6,500)</u>	<u>(6,500)</u>
3250 NET INCOME (LOSS)	<u>\$ (34,958)</u>	<u>\$ (45,128)</u>

PART II

7001 Total mortgage principal payments required during the audit year (12 monthly payments).	<u>29,933</u>	<u>30,233</u>
7002 Total of 12 monthly deposits in the audit year into the Replacement Reserve account.	<u>17,667</u>	<u>18,197</u>
7003 Replacement Reserve or Residual Receipts releases which are included as expense items on this Profit and Loss Statement	<u>3,103</u>	<u>10,600</u>
7145 Debt Service for other loans (surplus cash/non-mhdc/partner loans)	<u>-</u>	<u>-</u>

<u>2013</u>		<u>2014</u>
(34,958)	- NOI -	(45,128)
+ 7,973	- REAL ESTATE TAXES -	+ 7,956
+ 11,002	- INTEREST -	+ 10,701
+ 114,377	- DEPRECIATION -	+ 111,107
(17,667)	- RESERVE -	(18,197)
<u>80,727</u> ✓	- NOI per formula -	<u>66,439</u> ✓

The accompanying notes are an integral part of these financial statements.

Branson Christian County I, LP
d/b/a Abbey Orchard I
10-0.6-14-003-001-001.001

EXHIBIT D

Land Use Restriction Agreement

1000
48

P. BRUCE HARRIS
RECORDER OF DEEDS
CHRISTIAN COUNTY

LIHTC# 93-034

DECLARATION OF LAND USE RESTRICTION COVENANTS
FOR LOW-INCOME HOUSING TAX CREDITS

File of 21st day
Dec. 1994
12:15 P.M.

THIS DECLARATION OF LAND USE RESTRICTION COVENANTS (this "Agreement"), dated as of the 14th day of December, 1994 by Branson Christian County, L.P. and their grantees, successors and assigns (the "Owner") is hereby granted and declared as a condition precedent to the allocation of low-income housing tax credits by the MISSOURI HOUSING DEVELOPMENT COMMISSION, a governmental instrumentality of the State of Missouri or any successor to its rights, duties and obligations (hereinafter sometimes referred to as the "Authority" or as "MHDC").

WITNESSETH:

WHEREAS, the Owner is the owner in fee simple of a 48 unit rental housing development located on lands in the City of Nixa, County of Christian, State of Missouri, which lands and improvements are more particularly described in Exhibit A attached hereto, and commonly known as Abbey Orchard Apartments (the "Development"); and

WHEREAS, the Development may now or hereafter be financed by mortgage loans (the "Mortgage Loan" whether one or more), the indebtedness of which shall be evidenced by mortgage note(s), secured by mortgage(s) or other security instruments (which shall be mortgage liens on the Development) (said note(s), mortgage(s), or security instruments are collectively hereafter referred to as the "Loan Documents" whether one or more); and

WHEREAS, the "Authority" has been designated by the Governor of the State of Missouri as the housing tax credit agency for the State of Missouri for the allocation of low-income housing tax credit dollars (the "Credit"); and

WHEREAS, the Owner has represented to the Authority in Owner's Low-Income Housing Credit Application (the "Application") that Owner shall lease a minimum of 40 % of the units in the Development to individuals or families ("Low-Income Tenants") whose income is 60 % or less of the area median gross income (including adjustments for family size) as determined in accordance with Section 42 of the Internal Revenue Code (the "Code").

WHEREAS, the Authority has determined the Development would support a Credit allocation in the amount of \$ 212,968 ; and

WHEREAS, the Owner ~~XXXX~~ (has not) represented to the Authority in Owner's application that it will elect to extend the low-income use and rental restrictions beyond the close of the initial fifteen (15) year compliance period, and ~~XXXX~~ (does not) agree to waive the right to early termination at the end of the initial fifteen (15) year compliance period; and

WHEREAS, the Code has required as a condition precedent to the allocation of the Credit that the Owner execute, deliver and record in the official land deed records of the city or county in which the Development is located this Agreement in order to create certain covenants running with the land for the purpose of enforcing the requirements of Section 42 of the Code and the MHDC Occupancy Restrictions found in Section 5 hereof by regulating and restricting the use and occupancy and transfer of the Development as set forth herein; and

WHEREAS, the Owner, under this Agreement, intends, declares and covenants that the regulatory and restrictive covenants set forth herein governing the rents, use, occupancy

and transfer of the Development shall be and are covenants running with the land for the term stated herein and binding upon all subsequent owners of the Development for such term, and are not merely personal covenants of the Owner.

NOW, THEREFORE, in consideration of the mutual premises and covenants hereinafter set forth, and of other valuable consideration, the Owner and the Commission agree as follows:

SECTION 1 - DEFINITIONS.

All words and phrases defined in Section 42 of the Code shall have the same meanings in this Land Use Restriction Agreement.

SECTION 2 - RECORDING AND FILING; COVENANTS TO RUN WITH THE LAND.

- (a) Upon execution and delivery by the Owner, the Owner shall cause this Agreement and all amendments hereto to be recorded and filed in the official public land deed records of the city or county in which the Development is located, and shall pay all fees and charges incurred in connection therewith.
- (b) The Owner intends, declares and covenants, on behalf of itself and all future Owners and operators of the Development during the term of this Agreement, that this Agreement and the covenants and restrictions set forth in this Agreement regulating and restricting the rents, use, occupancy and transfer of the Development (i) shall be and are covenants running with the land and improvements, and encumbering the Development for the term of this Agreement, binding upon the Owner, their grantees, successors and assigns and the grantees and successors and assigns of them, or any of them, and, (ii) are not merely personal covenants of the Owner, and (iii) shall bind the Owner (and the benefits shall inure to the Authority and any past, present or prospective tenant of the Development) and its respective successors and assigns during the term of this Agreement. The Owner hereby agrees that any and all requirements of the laws of the State of Missouri to be satisfied in order for the provisions of this Agreement to constitute deed restrictions and covenants running with the land shall be deemed to be satisfied in full, and that any requirements or privileges of estate are intended to be satisfied, or in the alternative, that an equitable servitude has been created to insure that these restrictions run with the land. For the longer of the period this Credit is claimed or for the term of this Agreement, each and every contract, deed or other instrument hereafter executed conveying the Development or any portion thereof shall expressly provide that such conveyance is subject to this Agreement, provided, however the covenants contained herein shall survive and be effective regardless of whether such contract, deed or other instrument hereafter executed conveying the Development or any portion thereof provides that such conveyance is subject to this Agreement.
- (c) The Owner covenants to obtain the consent of any recorded lienholder on the Development to this Agreement and such consent shall be a condition precedent to the issuance of Internal Revenue Service Form 8609 constituting final allocation of the Credit.

SECTION 3 - REPRESENTATIONS, COVENANTS AND WARRANTIES OF THE OWNER.

The Owner hereby represents, warrants and covenants that:

- (a) The Owner (i) is a Limited Partnership duly organized under the laws of the State of Missouri, and is qualified to transact business under the laws of the State,

- (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted (and as now contemplated) by this Agreement and the Loan Documents, and (iii) has the full legal right, power and authority to execute and deliver this Agreement and to perform all the undertakings of the Owner hereunder.
- (b) The execution and performance of this Agreement and the Loan Documents by the Owner (i) will not violate or, as applicable, have not violated any provision of law, rule or regulation, or any order of any court or other agency or governmental body, state or Federal, and (ii) will not violate or, as applicable, have not violated any provision of any indenture, agreement, mortgage, mortgage note, or other instrument to which the Owner is a party or by which it or its property is bound, and (iii) will not result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature.
- (c) The Owner will, at the time of execution and delivery of this Agreement, have good and marketable title to the premises constituting the Development free and clear of any lien or encumbrance, except the encumbrances created pursuant to this Agreement, the Loan Documents or other permitted encumbrances.
- (d) There is no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending, or, to the knowledge of the Owner, threatened against or affecting it, or any of its properties or rights, which, if adversely determined, would materially impair its right to carry on business substantially as now conducted (and as now contemplated by this Agreement or the Loan Documents) or would materially adversely affect its financial condition.
- (e) The Development constitutes or will constitute a qualified low-income building or qualified low-income Development, as applicable, as defined in Section 42 of the Code and applicable regulations.
- (f) Each unit in the Development contains complete facilities for living, sleeping, eating, cooking and sanitation (unless the Development qualifies as a single-room occupancy Development or transitional housing for the homeless) which are to be used on other than a transient basis.
- (g) During the term of this Agreement, all units subject to the Credit shall be leased and rented or made available to members of the general public who qualify as Low-Income Tenants (or otherwise qualify for occupancy of the low-income units) under the applicable election specified in Section 42(g) of the Code.
- (h) The Owner agrees to comply fully with the requirements of the Fair Housing Act as it may from time to time be amended.
- (i) During the term of this Agreement, the Owner covenants, agrees and warrants that each low-income unit is and will remain suitable for occupancy.
- (j) Subject to the requirements of Section 42 of the Code and this Agreement, the Owner may sell, transfer or exchange the entire Development at any time, but the Owner shall notify in writing and obtain the consent from any buyer or successor or other person acquiring the Development or any interest therein that such acquisition is subject to the requirements of this Agreement and to the requirements of Section 42 of the Code and applicable regulations. This provision shall not act to waive any other restriction on sale, transfer or exchange of the Development or any low-income portion of the Development. The Owner agrees that the Authority may void any sale, transfer

or exchange of the Development if the buyer or successor or other person fails to assume in writing the requirements of this Agreement and the requirements of Section 42 of the Code.

- (k) The Owner agrees to notify the Authority in writing of any sale, transfer or exchange of the entire Development or any low-income portion of the Development.
- (l) The Owner shall not demolish any part of the Development or substantially subtract from any real or personal property of the Development or permit the use of any residential rental unit for any purpose other than rental housing during the term of this Agreement unless required by law.
- (m) The Owner represents, warrants and agrees that if the Development, or any part thereof, shall be damaged or destroyed or shall be condemned or acquired for public use, the Owner will use its best efforts to repair and restore the Development to substantially the same condition as existed prior to the event causing such damage or destruction, or to relieve the condemnation, and thereafter to operate the Development in accordance with the terms of the Loan Documents.
- (n) The Owner warrants that it has not and will not execute any other agreement with provisions contradictory to, or in opposition of, the provisions hereof, and that in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith.
- (o) The Owner shall not sell, transfer to or exchange with any person any portion of the building to which this Agreement applies unless all of the building to which this Agreement applies is disposed of to such person.
- (p) During the term of this Agreement the Owner shall not evict or terminate the tenancy of an existing tenant of any low-income unit other than for good cause and shall not increase the gross rent of any such unit above the maximum allowed under the Code or as may be approved by the Authority from time to time with respect to any such low-income unit.

SECTION 4 - INCOME RESTRICTIONS; RENTAL RESTRICTIONS.

The Owner represents, warrants and covenants throughout the term of this Agreement and in order to satisfy the requirements of Section 42 of the Code ("Section 42 Occupancy Restrictions") that:

- (a) (1) _____ At least 20% or more of the residential units in the Development are both rent-restricted and occupied by individuals whose income is 50% or less of area median income; or
- (2) XX At least 40% or more of the residential units in the Development are both rent-restricted and occupied by individuals whose income is 60% or less of area median income.

(Check applicable percentage election, above)

- (b) The income certification for each low-income tenant on the form shown as Exhibit C to the MHDC Low Income Housing Tax Credit Program Compliance Manual (the "Compliance

Manual"), or on a form substantially similar to Exhibit C in the Compliance Manual as may be approved, from time to time, by MHDC.

- (c) The determination of whether a unit meets the low-income rental requirements shall be made by the Owner at least annually on the basis of the current rental information of such low-income unit. The Owner shall prepare and keep on file with the Owner's records for later review by MHDC or the Internal Revenue Service ("IRS"), the income certification for each low-income tenant on the form shown as Exhibit D to the Compliance Manual, or on a form substantially similar to Exhibit D as may be approved, from time to time, by MHDC.

SECTION 5 - MHDC OCCUPANCY RESTRICTIONS.

This Section is intended to make enforceable those extended use covenants, if any, and base rents which the Owner represented to the Authority during the application process. Attached as Exhibit E are the agreed upon provisions for the initial base rents and any extended use period for the Development.

The Owner represents, warrants and covenants throughout the term of this Agreement that for up to one year following the date a qualified building in the Development is placed in service, the maximum initial base rent for the low-income units will be no higher than the base rent represented to Missouri Housing Development Commission in the Owner's application, all as shown in Exhibit E of this Agreement. The base rent is considered to be the total monthly amount paid by the Tenant to the Owner, or any amount paid to the Owner on behalf of the Tenant in the form of a rental assistance. The Owner further agrees to limit any increases to those approved by Missouri Housing Development Commission upon an annual written request.

The Owner ~~irrevocably elects~~ (does not elect) to extend the low-income use and rental restrictions for 0 years beyond the close of the initial fifteen (15) year compliance period (which extended time period is hereinafter referred to as the "Extended Use Period"), and ~~irrevocably waives~~ (does not waive) Owner's right to early termination at the end of the initial fifteen (15) year compliance period.

The MHDC Occupancy Restrictions as filed with the Secretary of State, State of Missouri, from time to time during the term of this Agreement and shall also commence with, and remain in place for, the term of this Agreement.

SECTION 6 - TERM OF AGREEMENT.

- (a) Except as hereinafter provided, this Agreement, the Low-income use and rental restrictions and the MHDC Occupancy Restrictions specified herein shall commence with the first day of the initial fifteen (15) year compliance period in which any building which is part of the Development is placed in service and shall end on the date which is 15 years after the close of the initial fifteen (15) year compliance period.
- (b) Notwithstanding subsection (a), above, this Agreement, with respect to any building which is part of this Development, shall terminate:
 - (1) On the date the building is acquired by foreclosure or instrument in lieu of foreclosure unless the Secretary of the Department of Housing and Urban Development determines that such acquisition is part of an arrangement with the taxpayer, the purpose of which is to terminate such period; or

(2) On the last day of the one year period beginning on the date:

(i) after the 14th year of the initial fifteen (15) year compliance period, if such initial compliance period is not extended in Section 5, above; or,

(ii) after the 0 year of the Extended Use Period, if the initial fifteen (15) year compliance period has been extended as set forth in Section 5, above;

always provided, however, the Owner has properly requested the Authority to assist Owner in procuring a "Qualified Contract" for the acquisition of the low-income portion of any building or buildings which are a part of the Development, and further provided the Authority is unable to present a Qualified Contract within said one year period described in Section 2 (a) or (b), above.

Note: For the purpose of later determining the "adjusted investor equity" in the Development, Authority acknowledges receipt of Owner's claim of investment of an initial cash equity in the sum of \$ 1,218,179 at the time of this agreement.

- (c) Notwithstanding subsection (b) above, the Low-income use and rental restrictions and MHDC Occupancy Restrictions shall continue for a period of three years following the termination of the Extended Use Period pursuant to the procedures specified in subsection (b) above. During such three year period, the Owner shall not evict or terminate the tenancy of an existing tenant of any low-income unit other than for good cause and shall not increase the gross rent above the maximum allowed under the Code with respect to such low-income unit.
- (d) Owner will not refuse to rent a unit to a tenant because the tenant has a Section 8 certificate or voucher the tenant seeks to use to rent a unit in the property.

SECTION 7 - ENFORCEMENT OF MHDC OCCUPANCY RESTRICTIONS.

- (a) The Owner shall permit, during normal business hours and upon reasonable notice, any duly authorized representative of the Authority, or the IRS, to inspect any books and records of the Owner regarding the Development with respect to the incomes of Low-Income Tenants which pertain to compliance with the MHDC Occupancy Restrictions specified in this Agreement.
- (b) The Owner shall submit a copy of the Annual Development Certification of Continuing Compliance shown as Exhibit B in the Compliance Manual together with the Occupancy Report shown as Exhibit B2 in the Compliance Manual, at least annually, or as requested by the Authority in order to monitor compliance with the provisions specified in this Agreement and IRS Section 42 as amended.
- (c) The Owner shall submit any other information, documents or certifications requested by the Authority which the Authority shall deem reasonably necessary to substantiate the Owner's continuing compliance with the provisions of the MHDC Occupancy Restrictions specified in this Agreement.

SECTION 8 - ENFORCEMENT OF SECTION 42 OCCUPANCY RESTRICTIONS.

- (a) Owner acknowledges receipt of and familiarity with Authority's new requirements and procedures for monitoring compliance with low-income housing credits under Section 42 (m)(1)(B)(iii) of the Code and under new Section 1.42-5 of the IRS monitoring compliance Regulations promulgated thereunder, and Owner agrees to comply with the

requirements of the Authority, as now or hereafter issued from time to time, for monitoring compliance of the Development with the requirements of Section 42 of the Code.

- (b) The Owner covenants that it will not knowingly take or permit any action that would result in a violation of the requirements of Section 42 of the Code and any applicable regulations thereunder or herein contained. Moreover, Owner covenants to take any lawful action (including amendment of this Agreement as may be necessary, in the opinion of the Authority) to comply fully with the Code and with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the United States Department of the Treasury, or the Internal Revenue Service, or the Department of Housing and Urban Development or the Authority from time to time pertaining to Owner's obligations under Section 42 of the Code and affecting the Development.
- (c) The Owner acknowledges that the primary purpose for requiring compliance by the Owner with the restrictions provided in this Agreement is to assure compliance of the Development and the Owner with Section 42 of the Code and the applicable regulations.

AND BY REASON THEREOF, THE OWNER IN CONSIDERATION FOR RECEIVING LOW-INCOME HOUSING CREDITS FOR THIS Development HEREBY AGREES AND CONSENTS THAT THE AUTHORITY AND TO THE EXTENT PERMITTED IN SECTION 42(h)(6)(B)(ii) (1990) ANY INDIVIDUAL WHO MEETS THE INCOME LIMITATION APPLICABLE UNDER SECTION 42 (WHETHER PROSPECTIVE, PRESENT OR FORMER OCCUPANT) SHALL BE ENTITLED, FOR ANY BREACH OF THE PROVISIONS HEREOF, AND IN ADDITION TO ALL OTHER REMEDIES PROVIDED BY LAW OR IN EQUITY, TO ENFORCE BY SPECIFIC PERFORMANCE ALL OF THE OWNER'S OBLIGATIONS UNDER THIS AGREEMENT IN A STATE COURT OF COMPETENT JURISDICTION.

The Owner hereby further specifically acknowledges that the beneficiaries of the Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of any default hereunder.

- (d) The Owner hereby agrees that the representations and covenants set forth herein may be relied upon by the Authority and all persons interested in Development compliance under Section 42 of the Code and the applicable regulations.
- (e) The Owner agrees that if at any point following execution of this Agreement, Section 42 of the Code or regulations implementing said Section requires the Authority to monitor the Section 42 Occupancy Restrictions, or, alternatively, the Authority chooses to monitor Section 42 Occupancy Restrictions or MHDC Occupancy Restrictions, the Owner will take any and all actions reasonably necessary and required by the Authority to substantiate the Owner's compliance with the Section 42 Occupancy Restrictions or MHDC Occupancy Restrictions and will pay a reasonable fee to the Authority for such monitoring activities performed by the Authority.

SECTION 9 - MISCELLANEOUS.

- (a) Successors Bound. This Agreement and the covenants and conditions contained herein shall run with the land and shall bind, and the benefits shall inure to, respectively, the Owner and its successors and assigns and all subsequent owners of the Development or any interest therein, the Authority and its successors and assigns, for the period specified in Section 6(a) hereof unless terminated sooner pursuant to Section 6(b) hereof.

- (b) Interpretation. Any terms not defined in this Agreement shall have the same meaning as terms defined in Section 42 of the Code and the Treasury Regulations promulgated thereunder.
- (c) Amendment. The Owner and MHDC agree that they will take all actions necessary to effect amendment of this Agreement as may be necessary to comply with the Code and any and all applicable rules, regulations, policies, procedures, rulings or other official statements pertaining to the Credit.
- (d) Severability. The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.
- (e) Notices. All notices to be given pursuant to this Agreement shall be in writing and shall be deemed given when mailed to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate in writing.

To the Authority:

Missouri Housing Development Commission
4625 Lindell, Suite 500
St. Louis, Missouri 63108

ATTENTION: Low-Income Housing Credit Program

To the Owner:

Branson Christian County, L.P.
P.O. Box 7688
Columbia, MO 65205

The Commission, and the Owner, may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

- (f) Governing Law. This Agreement shall be governed by the laws of the State of Missouri and, where applicable, the laws of the United States of America.
- (g) Development Decertification. Notwithstanding anything in this entire agreement to the contrary, failure of the Owner to comply fully with the Code, the covenants and agreements contained herein or with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the United States Department of the Treasury or the Internal Revenue Service or Authority--

FROM TIME TO TIME PERTAINING TO THE OBLIGATIONS OF THE OWNER AS SET FORTH THEREIN OR HEREIN, AUTHORITY MAY, AND IN ADDITION TO ALL OF THE REMEDIES PROVIDED BY LAW OR IN EQUITY, REQUEST THE IRS TO DECERTIFY THE Development FOR LOW-INCOME HOUSING TAX CREDITS AND TO IMMEDIATELY COMMENCE RECAPTURE OF THE TAX CREDIT DOLLARS HERETOFORE ALLOCATED TO THE Development.

- (h) Survival of Obligations. The obligations of the Owner as set forth herein and in the Application shall survive the allocation of Tax Credit Dollars and shall not be deemed to terminate or merge with the awarding of the allocation, or the execution, delivery, or recording of this Agreement.

(1) Subordination of Agreement. This Agreement and the restrictions hereunder are subordinate to the loan and loan documents, if any, on the Development except insofar as Section 42 requires otherwise (relating to the three-year vacancy control during the extended use period).

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their respective duly authorized representatives, as of the day and year first written above.

"OWNER"
BRANSON CHRISTIAN COUNTY, L.P.

"AUTHORITY"
MISSOURI HOUSING DEVELOPMENT COMMISSION

By: [Signature]
Jeffrey E. Smith
Printed Name

By: [Signature]
Jane Anderson

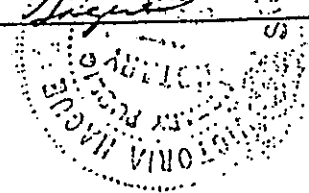
ACKNOWLEDGMENT

STATE OF MISSOURI)
)ss.
COUNTY OF)

ON this 20th day of December, 1994, before me personally appeared Jeffrey E. Smith to me known to be the person described in and who executed the foregoing instrument as the OWNER of BRANSON Christian County, L.P. and acknowledged that he executed the same as the free act and deed of the general Partnership and that the said Jeffrey E. Smith is acting for and on behalf of BRANSON Christian County, L.P.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County of Boone and State aforesaid, the day and year first above written.

[Signature]
Notary Public



STATE OF MISSOURI)
)ss.
COUNTY OF JACKSON)

ON this 14th day of December, 1994, before me appeared Jane Anderson, known to me personally and known to me to be the duly appointed Authorized Agent and the person who executed the aforesaid instrument by virtue of the authority vested in her by Chapter 215, R.S.Mo., 1986, as amended, and acknowledged that he executed the aforesaid instrument for an on behalf of the Missouri Housing Development Commission for the purpose therein expressed.

GIVEN under my hand and seal of office this 14th day of December, 1994.

[Signature]
Notary Public

SHELBA J. HANNUM
Notary Public - Notary Seal
STATE OF MISSOURI
Jackson County
My Commission Expires: Sept. 21, 1998

EXHIBIT A

LEGAL DESCRIPTION

Christian County in the State of Missouri

All of LOT THIRTEEN (13) of the Final Plat of NIXA CITY CENTER SOUTH PHASE 4 - LOT 13, according to plat which is filed for record in the Recorder's Office, Christian County, Mo., in Plat Book "G" at Page 424.

<u>Building</u>	<u>Address</u>	<u>BIN #</u>
1	302-324 S. Truman Blvd., Bldg A-1, Nixa, MO 65714	MO-93-00199
2	326-348 S. Truman Blvd., Bldg A-2, Nixa, MO 65714	MO-93-00200
3	202-224 S. Truman Blvd., Bldg A-3, Nixa, MO 65714	MO-93-00201
4	226-250 S. Truman Blvd., Bldg A-4, Nixa, MO 65714	MO-93-00202

EXHIBIT E

EXTENDED USE AND INITIAL BASE RENT PROVISIONS

The Owner has irrevocably elected to extend the low-income use and rental restrictions for N/A years beyond the close of the initial fifteen (15) year compliance period. The following base rents for the low-income units which were represented to Missouri Housing Development Commission will remain in effect for one year after the date a qualified building in the Development is placed in service, and may only be increased upon application to and receipt of written approval from Missouri Housing Development Commission.

1 Studio _____
Size A _____
Size B _____

1 Bedroom _____
Size A _____
Size B _____

2 Bedroom _____
Size A \$290.00
Size B \$325.00

3 Bedroom _____
Size A _____
Size B _____

4 Bedroom _____
Size A _____
Size B _____

5 Bedroom _____
Size A _____
Size B _____

6 Bedroom _____
Size A _____
Size _____

**Branson Christian County I, LP
d/b/a Abbey Orchard I
10-0.6-14-003-001-001.001**

EXHIBIT E

Maryville Formula Case Law

Justia › U.S. Law › Case Law › Missouri Case Law › Missouri Court of Appeals Decisions › 2002 ›
Maryville Properties, LP v. Nelson

Maryville Properties, LP v. Nelson

[Annotate this Case](#)

83 S.W.3d 608 (2002)

MARYVILLE PROPERTIES, L.P., Appellant, v. Pat NELSON, Assessor, Nodaway County, MO, Respondent.

No. WD 60335.

Missouri Court of Appeals, Western District.

June 25, 2002.

Rehearing Denied July 25, 2002.

Application for Transfer Denied September 24, 2002.

*610 Cathy Joy Pitman Dean, Kansas City, for appellant.

Scott W. Ross, Maryville, for respondent.

RONALD R. HOLLIGER, Judge.

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

Commissioner 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 § 137.010, which defines, inter alia, two constitutionally mandated classifications of taxable property: real property and tangible personal property. Nevertheless, § 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." *611 *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. § 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.

*612 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. § 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, § 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, trees, vines, 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;"

§ 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. Art. 10, § 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. § 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, 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." § 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 *614 "[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.[1] 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.[2] 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, *615 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.[3] 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).[4] 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 "tax credits are intangible personal property and thus are not subject to real property taxation." *Cascade Court Ltd. P'ship v. Noble*, 105 Wash.App. 563, 20 P.3d 997, 1002 (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*. *616 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.[5]

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 *617 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.

HAROLD L. LOWENSTEIN, Presiding Judge, and THOMAS H. NEWTON, Judge, concur.

NOTES

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

[2] 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.

[3] 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.

[4] 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.

[5] 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.

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<h2 style="margin: 0;">Lake Ozark Village v. Whitworth (Camden)</h2>				

April 29th, 2004

LAKE OZARK VILLAGE,)

)

Complainant,)

)

v.) Appeals Number 97-47000, 99-47003

) and 01-47002

EDDIE WHITWORTH, ASSESSOR,)

CAMDEN COUNTY, MISSOURI,)

)

Respondent.)

DECISION AND ORDER

HOLDING

The methodology set forth in *Maryville Properties v. Nelson*, State Tax Commission Appeal No. 97-74500, as modified by the Western District Court of Appeals, is the correct methodology to determine market value of subsidized properties. The values established for the subject property for tax years 1997 through 2002 are **SET ASIDE**. The market value for the subject property on January 1, 1997 and January 1, 1998 was \$813,170 (assessed value \$154,500). The market value for the subject property on January 1, 1999 and January 1, 2000 was \$577,220 (assessed value \$109,670). The market value for the subject property on January 1, 2001 and January 1, 2002 was \$602,770 (assessed value \$114,530).

ISSUE

The Commission takes this appeal to determine the true value in money for the subject property on January 1, 1997, January 1, 1999, and January 1, 2001.

SUMMARY

On November 24, 2003, the above-entitled matter came on regularly for hearing in front of Hearing Officer Luann Johnson in the Camden County Courthouse, Camdenton, Missouri. Complainant was represented by counsel, Cathy Dean. Respondent was represented by counsel, William Icenogle. Both parties submitted post-hearing briefs on January 30, 2004.

The issue on appeal was the true market value of a 24 unit subsidized housing complex for tax years 1997 and 1998; tax years 1999 and 2000; and tax years 2001 and 2002. All exhibits not specifically objected to on the record were entered into evidence.

At the close of the hearing, counsel for Complainant objected to the introduction of a review appraisal prepared by Mr. Loren K. Woodard for use by Respondent as a rebuttal exhibit. Complainant's objection to the introduction of the exhibit was taken under advisement. Said exhibit is not admissible into evidence inasmuch as it was not authenticated by Mr. Woodard at hearing and was not used to cross-examine Complainant's expert.

FINDINGS OF FACT

Jurisdiction Is Proper

1. Jurisdiction over these appeals is proper. The taxpayer timely appealed to the State Tax Commission from the decision of the Camden County Board of Equalization.

Maryville Properties Methodology Applies

2. These appeals revisit the issue of the proper way to value subsidized housing developments. The subject property, parcel number 09-3.0-06.1-000.0-001-058-004, is a 24-unit apartment complex constructed under the same subsidized housing section as Maryville Properties. Like the Maryville Properties case, a portion of the units must be maintained for low-income tenants; the owners are subject to program record keeping requirements; and are eligible to receive a 7% interest reduction on their loan. And, as in Maryville Properties, the promissory note between the partners and the government is a non-recourse loan providing:

ANO PARTNER, EITHER GENERAL OR LIMITED, WILL HAVE ANY PERSONAL LIABILITY FOR THE PAYMENT OF ALL OR ANY PART OF THE INDEBTEDNESS.@ (Respondent Ex. 6, p. 7).

3. On December 14, 1998, by order of the State Tax Commission, the proceedings concerning the subject property and a number of other similar properties were stayed pending the outcome of Maryville Properties v. Nelson, State Tax Commission appeal No. 97-74500. In order to preserve its appeal rights, in addition to its 1997 and 1998 appeal, the taxpayer timely filed an appeal for tax years 1999, 2000, 2001 and 2002. Those appeals were also stayed by order of the State Tax Commission.

4. A decision was issued by the Hearing Officer and affirmed by the State Tax Commission in the Maryville Properties case in 2000.

5. The decision of the State Tax Commission in the Maryville Properties case was appealed. The Western District Court of Appeals rejected the use of tax credits and accelerated depreciation in calculating market value of subsidized properties, but left the remainder of the State Tax Commission's valuation methodology unaltered. The Missouri Supreme Court denied application for transfer.

6. Official notice is taken of the State Tax Commission decision, and the Court of Appeals decision, in the Maryville Properties case.

Industry Standards Modified

7. Valuation of subsidized housing falls outside the industry standards for determining market value. Generally accepted industry standards define market value as being a value where: AFinancing, if any, is on terms generally available in the Community at the specified date and typical for the property type in its locale; and the price represents a normal consideration for the property sold unaffected by special financing amounts and/or terms, services, fees, costs or credits incurred in the transaction.@ Under the factors commonly considered when determining real property value, we would be required to ignore the benefits, restrictions and unique financing experienced by the subject property. However, in Missouri Baptist Children's Home v. State Tax Commission, 867 S.W.2d 510 (Mo. banc 1993), our Supreme Court effectively modified industry standards and guidelines when it determined that the impact of long-term leases must be considered when determining value.

Likewise, in Maryville Properties v. Nelson, 83 S.W.3d 608 (W.D. 2002), our Court of Appeals indicated that we must consider Aeconomic realities@ when valuing property. That court further held that factors which have a direct impact on the income of the property should be considered. The economic realities which have a direct impact on the income producing capabilities of a subsidized property are: low equity requirements, subsidized income, subsidized interest, above market expenses and non-recourse promissory notes.

Thus, we find that we must reject approaches to value that fail to adequately deal with the unique characteristics of the subject property's financing. Market rents, expenses, yield rates and capitalization rates are of no value when determining the income producing capability of subsidized properties. As long as a property remains subsidized, it can never be valued using traditional industry standards and definitions of fair market value which require that we ignore those financing realities. This will, undoubtedly, create problems for appraisers who are accustomed to valuing property based upon industry standards. However, we cannot ignore the dictates of Missouri Baptist Children's Home and Maryville Properties which, in effect, create a definition of Atrue value@ or Amarket value@ that is outside typical appraisal methodology.

Maryville Properties Methodology

8. With Missouri Baptist Children's Home in mind, the Tax Commission decision in Maryville Properties set forth the methodology for valuing subsidized properties which considers the economic realities of the financing arrangements and the impact of those financing arrangements on the income stream of subsidized housing. Utilization of data derived from something other than the subsidized property fails to consider Aeconomic reality@ and creates a presumption of misvaluation. Maryville Properties defines the methodology to be employed as follows:

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 the taxes should be included in the capitalization rate.

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 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. (Finding of Fact #23).

Complainant's Discounted Cash Flow Unreliable

9. In the Maryville Properties case, the income approach commonly referred to as the Adiscounted cash flow method of valuing subsidized housing was found to be unpersuasive. In the best of circumstances, in order to be valid, a discounted cash flow income approach must be based upon trending substantial historical market data from the subject property or substantially similar properties and must have a very short projection period.

In this case, none of the criteria for a valid discounted cash flow have been met. Although the appraiser mentions income and expenses from 6,750 units (Ex. CC, p. 24), he only uses the actual income and expenses from the subject property and an Aaverage vacancy rate rather than actual vacancy rates. He then uses a 9% interest rate instead of 1% actually paid – after interest subsidies (Ex. CC, p. 31-32). Finally, the appraiser attempts to trend income and expenses for 48 years through the year 2044.

Complainant's appraiser asserts that his 15% vacancy rate is an economic reality, but that is simply false. The actual vacancy rate was not 15%.

Complainant's appraiser does not attempt to characterize his 9% capitalization rate as economic reality but counsel asserts that it is the rate necessary to attract capital investment for this type of property. Again, this is not economic reality.

For these reasons, Complainant's discounted cash flow is not persuasive.

Complainant's Income Approach Unreliable

10. Complainant's appraiser also prepared a more traditional income approach to value. Because there are no market sales of similar properties, Complainant's appraiser used a mortgage/equity formula for determining the capitalization rate. In this methodology, Complainant's appraiser did not use the actual interest paid on the subsidized loan but, instead, used a floating rate which he

testified was necessary to account for the buildup of equity. And, suggesting that the subject property was a high-risk investment, Complainant=s appraiser asserted that an equity yield rate of 20% would be required to attract investors.

There is no reliable data to support Complainant=s assertion that the subject property would be considered a high-risk investment or that the loan to value ratio would change. These conclusions are purely speculative.

Finally, there is no evidence that Complainant=s appraiser made any adjustment for the favorable interest rate running with the property or the non-recourse nature of the promissory note.

Complainant=s Sales Comparison Unreliable

11. For whatever reason, subsidized properties do not sell in the open market. Consequently, there is no basis for a sales comparison approach to value. Complainant=s appraiser did attempt a sales comparison approach but utilized unsubsidized sales and attempted to adjust for external and functional obsolescence due solely to the special financing arrangements for the subject property.

In Maryville Properties we specifically found that A financing tools do not create external obsolescence@ (Finding of Fact #5). Similarly, financing tools do not create A functional obsolescence.@ Rent restrictions and management fees do not limit the ability of the apartment complex to function as an apartment complex.

There is no evidence which suggests that the subject property suffers from any functional or external obsolescence. Complainant=s sales comparison approach is wholly conjecture and is not a reliable indicator of value for the subject property.

Complainant=s Cost Approach Unreliable

12. Complainant=s appraiser also attempted to prepare a cost approach to value.

As in the sales approach, Complainant=s appraiser has attempted to use financing tools to justify a A functional obsolescence@ adjustment of \$160,000 and an A external obsolescence@ adjustment of \$160,927. To the extent that Complainant=s appraiser has attempted to use said financing tools as a justification for a reduction in value under his cost approach, his cost approach fails to state the true value of the subject property.

Maryville Properties Methodology Applied

13. Prior to evidentiary hearing, Hearing Officer Luann Johnson supplied the parties with worksheets for calculating value using the Maryville Properties methodology. Said worksheets are identified as Complainant=s Exhibit AA and Respondent=s Exhibit 26.

14. For tax years 1997 and 1998, the assessor valued the property at \$858,684 (assessed value \$163,150). Upon appeal, the Board of Equalization reduced value of \$700,105 (assessed value \$133,020). In his appraisal report, Complainant=s appraiser, Teddy Blaylock, asserts a value of \$360,000 (assessed value \$68,400). Under the Maryville Properties approach to value, the value for the property on January 1, 1997 was \$813,167 (Respondent=s Ex. 26). Although not agreeing with the Maryville Properties methodology, Mr. Blaylock produced a modified version of the Maryville Properties methodology which resulted in a value for the subject property for tax year 1997 of \$622,755 (Complainant Ex. AA).

15. For tax years 1999 and 2000, the assessor valued the property at \$700,100 (assessed value \$133,020). Upon appeal, the Board of Equalization approved the assessor=s value. In his appraisal report, Blaylock asserts a value of \$365,000 (assessed value \$69,350). Under the Maryville Properties approach to value, the value of the property on January 1, 1999 was \$577,218 (Respondent Ex. 26). Under the Blaylock modified version of the Maryville Properties methodology, the value of the subject property on January 1, 1999 was \$491,700 (Complainant Ex. AA).

16. For tax years 2001 and 2002, the assessor valued the property at \$754,900 (assessed value \$143,430). Upon appeal, the Board of Equalization affirmed the assessor=s value. For tax year 2001, Mr. Blaylock asserts a value of \$350,000 (assessed value \$66,500). Under the Maryville Properties approach to value, the value of the property on January 1, 2001 was \$602,772 (Respondent Ex. 26). Under the Blaylock modified version of the Maryville Properties methodology, the value of the subject property on January 1, 2001 was \$375,000 (Complainant Ex. AA).

17. The values calculated by Complainant=s appraiser in his appraisal report and his modified Maryville Properties approach to value are not reliable indicators of market value for the subject property on the various tax days inasmuch as Mr. Blaylock has failed to correctly apply the Maryville Properties methodology.

18. The Respondent=s calculations of value under the Maryville Properties methodology are correct and correctly state the value for the subject property on the various tax days. The market value for the subject property on January 1, 1997 and January 1, 1998 was \$813,170 (assessed value \$154,500). The market value for the subject property on January 1, 1999 and January 1, 2000 was \$577,220 (assessed value \$109,670). The market value for the subject property on January 1, 2001 and January 1, 2002 was \$602,770 (assessed value \$114,530).

19. Correct calculations are set out in Respondent=s Exhibit 26 as follows:

	1997	1999	2001
Income			
Rental Income	\$ 40,786	\$ 45,558	\$ 49,203
Rental Subsidy	\$ 43,612	\$ 45,162	\$ 44,421
Laundry/Vending	\$ 166	\$ 347	\$ 297
Potential Gross Income	\$ 84,564	\$ 91,067	\$ 93,921
Less: Actual Vacancy & Collection	\$ 5,270	\$ 6,198	\$ 11,689

Effective Gross Income	\$ 79,294	\$ 84,869	\$ 82,232
Expenses			
Maintenance & Repair	\$ 6,600	\$ 8,529	\$ 7,075
Utilities	\$ 14,281	\$ 15,111	\$ 13,796
Administrative	\$ 16,233	\$ 21,580	\$ 27,165
Insurance	\$ 2,399	\$ 1,969	\$ 2,646
Reserve for Replacement	\$ 8,113	\$ 15,135	\$ 7,720
Total Expenses	\$ 47,626	\$ 62,324	\$ 58,402
Net Operating Income	\$ 31,668	\$ 22,545	\$ 23,830
Capitalization			
Loan to Value x Actual Interest Rate	.025402	.025402	.025402
Equity x Equity Dividend Rate	.007500	.007500	.007500
Effective Tax Rate	.006042	.006156	.006632
Overall Capitalization Rate	.038944	.039058	.039534
Value	\$ 813,167	\$ 577,218	\$ 602,772
Net Operating Income	(say \$ 813,170)	(say \$577,220)	(say \$602,770)
divided by Overall Capitalization Rate			

CONCLUSIONS OF LAW

Jurisdiction

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, 138.431 RSMo.

Board of Equalization Presumption

There is a presumption of validity, good faith and correctness of assessment by the Board of Equalization. *Hermel, Inc. v. STC*, 564 S.W.2d 888, 895 (Mo. banc 1978); *Chicago, Burlington & Quincy Railroad Co. v. STC*, 436 S.W.2d 650, 656 (Mo. 1968); *May Department Stores Co. v. STC*, 308 S.W.2d 748, 759 (Mo. 1958).

Standard for Valuation

Section 137.115, RSMo, 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. True value in money is defined in terms of value in exchange and not value in use. Mo. Const. Art. X, Section 4(b); *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). It is the fair market value of the subject property on the valuation date. *Hermel, supra*, at 897.

Complainant=s Burden of Proof

In order to prevail, Complainant must present an opinion of market value and substantial and persuasive evidence that the proposed value is indicative of the market value of the subject property on the tax day. *Hermel, supra*, at 897. Substantial evidence can be defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. See *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).

Duty to Investigate

In order to investigate appeals filed with the Commission, the Hearing Officer has the duty to inquire of the owner of the property or of any other party to the appeal regarding any matter or issue relevant to the valuation, subclassification or assessment of the property. The Hearing Officer=s decision regarding the assessment or valuation of the property may be based solely upon her inquiry and any evidence presented by the parties, or based solely upon evidence presented by the parties. Section 138.430.2, RSMo.

Weight to be Given Evidence

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 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. *St. Louis County v. Boatmen's Trust Co.*, 857 S.W.2d 453, 457 (Mo. App. E.D. 1993); *Vincent by Vincent v. Johnson*, 833 S.W.2d 859, 865 (Mo. 1992); *Beardsley v. Beardsley*, 819 S.W.2d 400, 403 (Mo. App. 1991); *Curnow v. Sloan*, 625 S.W.2d 605, 607 (Mo. banc 1981).

Opinion Testimony by Experts

If specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert on that subject, by knowledge, skill, experience, training, or education, may testify thereto.

The facts or data upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing and must be of a type reasonably relied upon by experts in the field in forming opinions or inferences upon the subject and must be otherwise reliable, the facts or data upon which the expert relies need not be admissible in evidence. Section 490.065, RSMo; *Courtroom Handbook on Missouri Evidence*, Wm. A. Schroeder, Sections 702-705; pp. 325-350; *Wulfin v. Kansas City Southern Industries, Inc.*, 842 S.W.2d 133 (Mo. App. E.D. 1992).

Commission Determines Methodology

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 1977).

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 will 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).

Official Notice

Agencies shall take official notice of all matters of which the courts take judicial note. Section 536.070(6), RSMo.

Courts will take judicial notice of their own records in the same cases. *State ex rel. Horton v. Bourke*, 129 S.W.2d 866, 869 (1939); *Barth v. Kansas City Elevated Railway Company*, 44 S.W. 788, 781 (1898). In addition, courts may take judicial notice of records in earlier cases when justice requires – *Burton v. Moulder*, 245 S.W.2d 844, 846 (Mo. 1952); *Knorp v. Thompson*, 175 S.W.2d 889, 894, transferred 167 S.W.2d 205 (1943); *Bushman v. Barlow*, 15 S.W.2d 329, 332 (Mo. banc 1929) – or when it is necessary for a full understanding of the instant appeal. *State ex rel. St. Louis Public Service Company v. Public Service Commission*; 291 S.W.2d 95, 97 (Mo. banc 1956).

DISCUSSION

Proper Methodology

In this case, and all subsequent subsidized housing cases, the correct methodology for valuing subsidized housing projects is the methodology set out in *Maryville Properties*. That methodology is accurate because (1) rent restrictions are considered through the use of actual income rather than market income; (2) additional management requirements and expenses are accounted for through use of actual expenses which are in excess of market expenses; and (3) the actual loan-to-value ratio and the subsidized interest rate demonstrates and accounts for any and all risks involved in the property as well as the benefits flowing to the property. It is economic reality.

It is within the authority and expertise of the Tax Commission to determine which valuation methodology best represents value in a given situation or for a particular category of properties. *Hermel*, supra. After carefully considering the benefits and risks associated with subsidized housing, the State Tax Commission, in *Maryville Properties*, determined that calculating value based upon actual income, actual expenses, and actual interest and capitalization rates was the best way to recognize all benefits and risks associated with subsidized housing.

Complainant Failed to Meet Burden of Proof

Complainant asserts that the Commission must adopt its appraiser's opinion of value because that is the only evidence presented in this case. However, it is the duty of the Commission to find value and there is more than enough evidence in this case for the Commission to make a determination of value using the *Maryville Properties* methodology. The Commission is not required to adopt the conclusions of the Complainant's appraiser when actual income, actual expenses, actual loan-to-value rates and interest rates are available.

Complainant has failed to present substantial and persuasive evidence in support of its opinion of value. An opinion of value which is based upon improper elements or an improper foundation is without probative value. *Shelby County R-4 School District v. Hermann*, 392 S.W.2d 609, 613 (Sup. 1965). Complainant's appraisal ignores economic realities and, thus, is based upon improper elements and an improper foundation.

Failure to Consider Benefits

Mr. Blaylock made no attempt to calculate the value of the substantial benefits flowing to this property by reason of the favorable financing documents in any of his approaches to value. It is possible to measure the difference in rent obtained from a rent restricted apartment and a non-restricted apartment but that only tells a portion of the story. The benefits of a low interest loan, guaranteed rental subsidies and a non-recourse loan have yet to be measured by an appraiser based upon market-derived data because these properties are not selling. And, without accounting for the benefits associated with the favorable financing and guaranteed income, Mr. Blaylock's calculations under the cost approach, sales approach, and income approach necessarily understate the value of the subject property. Mr. Blaylock's assertions that his adjustments reflect market conditions and economic reality are not well taken.

Discounted Cash Flow Highly Speculative

The discounted cash flow methodology was specifically rejected in the *Maryville Properties* case and we reject it again in this case. To find that a discounted cash flow approach is reliable, the Commission would be required to find that an appraiser can predict a property's income, expense and capitalization rate at a point in the future—in this case, 2044. With substantial verified data it

may be possible to trend or predict income, expenses and capitalization rates in the immediate future. However, a discounted cash flow analysis is extremely speculative. In this case, there is little historical data in that the project came on line in 1995. The tax years in question are 1997, 1999 and 2001. Based upon this very limited information, we again find the discounted cash flow approach to be unreliable and unpersuasive.

Complainant=s Maryville Properties Calculations Unreliable

At the Hearing Officer=s request, both parties prepared income and expense calculations using the Maryville Properties methodology, although Complainant deviated from the methodology at several points.

Complainant asserts that the Maryville Properties methodology is not the correct way to value property but, with some changes, would not be an unreasonable methodology. Complainant asserts that the vacancy rate should be averaged; that partnership management fees should be included in expenses as a third category of management fees; and that the loan to value ratio should be adjusted annually. Such deviations are inappropriate and misrepresent the value of the subject property.

A calculation of actual income includes an adjustment for actual vacancy rate. Applying an artificial vacancy rate results in an understatement of value. Inasmuch as value is calculated every two years, changes in vacancy rates will automatically result in appropriate changes in value. It is not necessary to speculate about vacancy rates when actual rates are available for use in the Maryville formula.

Partnership management fees are clearly not a management fee of the property. The fact that a partnership may only own one asset does not mean that that asset is responsible for paying the costs of maintaining the partnership.

Finally, Complainant=s assertion that a new purchaser would not be able to get a 95% loan for the subject property and might only be able to acquire the property through an assumption of the original loan, is unsubstantiated speculation, is contradicted by the evidence, and is entitled to no weight whatsoever.

Mr. Blaylock testified that, for the Maryville Properties case in 2000, he had spoken with a Mr. Marks from Rural Development and was told that a refinance with a 95% loan would only be available if the property had been Acompletely rehabbed@, i.e. made new. (Tr. 15). Mr. Blaylock later testified that Mr. Marks= exact words were Athey would only make a 95% loan if the property was substantially rehabbed@. (Tr. 58). No evidence was presented which tended to show how Rural Development defined Arehabbed@ or which would tend to clarify when a rehab was required. But, for our purposes, the distinction is immaterial.

The subject property was almost new on the original tax day and, at hearing in 2003, Mr. Blaylock testified that it suffered from very little physical deterioration (Tr. 38) and a reserve for replacement was maintained by the partners. In his appraisal report, Mr. Blaylock states that the purpose of the reserve for replacement was to Areplace roofs, carpets, cabinets, appliances, air conditioning, heating, water heater, tile floors, etc.@ (Complainant=s Ex. CC, p. 25). Even assuming that the government would require rehabilitation, it is obvious from the taxpayer=s testimony little rehabilitation is needed and that the funds have already been earmarked for that rehabilitation.

Respondent=s Maryville Properties Calculations Reliable

The decision of the Commission in this case is based upon the formula set forth in Maryville Properties. And, in particular, the calculations made by Respondent. (Respondent=s Ex. 26). Respondent=s calculations precisely follow the methodology set forth in Maryville Properties. The calculations, as presented by Respondent, are accurate and are adopted by the Commission.

ORDER

The assessed valuation for the subject property as determined by the Board of Equalization for the subject tax days is **SET ASIDE**.

The market value for the subject property on January 1, 1997 and January 1, 1998 was \$813,170 (assessed value \$154,500). The market value for the subject property on January 1, 1999 and January 1, 2000 was \$577,220 (assessed value \$109,670). The market value for the subject property on January 1, 2001 and January 1, 2002 was \$602,770 (assessed value \$114,530).

A party may file with the Commission an application for review of this decision within thirty (3) days of the mailing of such decision. The application shall contain specific 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.** Section 138.432 RSMo.

If an application for review of this decision is made to the Commission, any protested taxes presently in an escrow account in accordance with these appeals 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 Camden 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 these appeals. If any or all 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 or Fact or Conclusion of Law shall be so deemed.

SO ORDERED April 29, 2004.

STATE TAX COMMISSION OF MISSOURI

Luann Johnson

Hearing Officer

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**Farmington Associates II et al v. Dan Ward,
Assessor St Francois County**

January 30th, 2015

State Tax Commission of Missouri

FARMINGTON ASSOCIATES II)	Appeal No. 11-84005
FARMING ASSOCIATES)	Appeal No. 11-84006
)	
Complainants)	
)	
-vs-)	
)	
DAN WARD, ASSESSOR,)	
ST. FRANCOIS COUNTY, MISSOURI)	
)	
Respondent.)	

DECISION AND ORDER

HOLDING

Decisions of the St. Francois County Board of Equalization are SET ASIDE. The Hearing Officer finds that the only valuation methodology fully presented is the Maryville Formula.

Appeal No.	Parcel No.	True Value	Assessed Value
11-84005	09-70-35-00-000-0016.02	\$1,934,000	\$367,460
11-84006	09-70-35-00-000-0016.00	\$651,660	\$123,815

Complainants are represented by Counsel Richard Dvorak.

Respondent is represented by counsel Patrick King.

ISSUE

The Commission takes this appeal to determine the true value in money for the subject properties on January 1, 2011.

SUMMARY

Subject Property

The subject properties were appealed as Farmington Associates and Farmington Associates II. They are also known as Orchard View and Orchard View II. For purposes of the decision, the properties will be referred to in the order they were constructed as the "first property" (11-84006) and the "second property" (11-84005).

The first property was constructed in 2003. It is 3.49 acres improved with an apartment building consisting of 40 units totaling 40,400 square feet of rentable area. The improvements also include an office/clubhouse which includes a central laundry facility.

The second property was constructed in 2009-2010. It is 3.86 acres improved with an apartment building consisting of 56 units totaling 57,008 square feet of rentable area. The residents of this building have access to all the amenities of the first property.

As to both properties a "Low Income Housing Tax Credit Land Use Restriction Agreement" was recorded at the time of their construction. By the terms of the agreement, Missouri Housing Development Commission (MHDC) allocated low income housing tax credits to the project in exchange for the owner's agreement to be regulated by MHDC. The term of the agreement was for 15 years. The owner agreed the units are to be both rent restricted and occupied by individuals or families whose income is 60% or less of the area median gross income. The owner is allowed to charge up to \$675 per month for 2 bedroom units and \$780 per month for 3 bedroom units. The amount of the tax credits given is unknown.

Exhibits

Exhibit A – An appraisal report was submitted for each property. Both appraisals were marked as Exhibit A. The Exhibit was submitted pursuant to the exchange schedule and admitted into evidence prior to the hearing.

Exhibit B – Written direct testimony of appraiser Kenneth Jagers was submitted in each appeal. In both appeals, the exhibit was marked as Exhibit B. The Exhibit was submitted pursuant to the exchange schedule and admitted into evidence prior to the hearing.

Exhibit C – An amendment to the appraisal report, Exhibit A, was offered immediately prior to going on the record the day of hearing. The amendment was marked Exhibit C. This is not the first time Appraiser Jagers has appeared at a State Tax Commission hearing and presented an amendment at the last hour. Respondent graciously agreed to allow Mr. Jagers to amend his report and Exhibit C was admitted into evidence.

Exhibit 1 – A page from the property record card of the first property submitted pursuant to the exchange schedule and admitted into evidence prior to the hearing.

Exhibit 2 – A page from the property record card of the second property submitted pursuant to the exchange schedule and admitted into evidence prior to the hearing.

Exhibit 3 – Calculation of value using the income approach for both properties submitted pursuant to the exchange schedule and admitted into evidence prior to the hearing.

Exhibit 4 – Written direct testimony of Dan Ward submitted pursuant to the exchange schedule and admitted into evidence prior to the hearing.

Exhibit 5 – Order Approving the Stipulation of the Parties for the first property dated January 6, 2007 admitted into evidence without objection.

Exhibit 6 – Submission to MHDC on the Improvements of the subject property. Exhibit was not submitted for admission into evidence.

Exhibit 7 – Application for Building Permit for the second property. Exhibit admitted into evidence without objection.

Exhibit 8 – USPAP 2-2. Exhibit was not submitted for admission into evidence.

Exhibit 9 – Full copy of the property record card of the first property. Exhibit admitted into evidence without objection.

Exhibit 10 - Full copy of the property record card of the second property. Exhibit admitted into evidence without objection.

FINDINGS OF FACT

1. Jurisdiction over this appeal is proper. Complainants timely appealed to the State Tax Commission from the decisions of the St. Francois County Board of Equalization.
2. The property in appeal 11-84005, Farmington Associates II, is also known as Orchard View II and is identified by locator number 09-70-35-00-000-0016. The property in appeal 11-84006, Farmington Associates, is also known as Orchard View, and is identified by locator number 09-07-35-00-000-0016-02.
3. The properties are multi-family residential properties. The first property, built in 2003, consists of 40 units, 40,400 square feet of net rentable area on 3.49 acres. Improvements include an office/clubhouse with laundry facilities and parking. The property is in average condition with above average unit features. The second property, built in 2009, consists of 56 units, 57,008 feet square on 3.86 acres. Improvements also include parking and solar panels. The properties make use of the office and clubhouse located on the first property. The property is above average to market as to age, condition, size, layout, and unit features.

4. The subject properties are designated as low income, rent restricted units for tenants whose income is 60% or less of the "area median gross income", adjusted for family size. Occupancy is at 96%. This is believed to be a stabilized level. Rents have been approved for a maximum of \$675 for 2 bed units and \$788 for 3 bed units.
5. The market rents in the area are \$595 for 2 bedroom units and \$695 for 3 bedroom units.
6. Complainants' appraiser relied only the "Maryville formula" income approach, as a jurisdictional exception to the standard approaches to value. Complainants' appraiser's value determinations were based upon actual income (with market rates applied to the vacant units), projected expenses and a capitalization rate of 9.21% derived from the property funding and market. The appraiser proposed values of \$1,520,000 and \$660,000.
7. The Maryville formula was the only approach fully presented and relied upon by the parties. Using the formula with the actual income, actual expenses and a capitalization rate derived from the information presented, the true value of the first property is \$651,600 and the true value of the second property is \$1,934,000.

Appeal No.	Parcel No.	True Value	Assessed Value
11-84005	09-70-35-00-000-0016.02	\$1,934,000	\$367,460
11-84006	09-70-35-00-000-0016.00	\$651,660	\$123,815

CONCLUSIONS OF LAW AND DECISION

Jurisdiction

The Commission has jurisdiction to hear this appeal and correct any assessment which is shown to be unlawful, unfair, arbitrary or capricious. The Hearing Officer shall issue a decision and order affirming, modifying or reversing the determination of the board of equalization, and correcting any assessment which is unlawful, unfair, improper, arbitrary, or capricious. (Article X, Section 14, Mo. Const. of 1945; Sections 138.430, 138.431, 138.431(4) RSMo.)

Official and Judicial Notice

Agencies shall take official notice of all matters of which the courts take judicial notice. (Section 536.070 (6))

Courts will take judicial notice of their own records in the same cases. *State ex rel. Horton v. Bourke*, 129 S.W.2d 866, 869 (1939); *Barth v. Kansas City Elevated Railway Company*, 44 S.W. 788, 781 (1898). In addition, courts may take judicial notice of records in earlier cases when justice requires (*Burton v. Moulder*, 245 S.W.2d 844, 846 (Mo. 1952); *Knorp v. Thompson*, 175 S.W.2d 889, 894 (1943); *Bushman v. Barlow*, 15 S.W.2d 329, 332 (Mo. banc 1929) or when it is necessary for a full understanding of the instant appeal. *State ex rel St. Louis Public Service Company v. Public Service Commission*, 291 S.W.2d 95, 97 (Mo. banc 1956). Courts may take judicial notice of their own records in prior proceedings involving the same parties and basically the same facts. *In re Murphy*, 732 S.W.2d 895, 902 (Mo. banc 1987); *State v. Gilmore*, 681 S.W.2d 934, 940 (Mo. banc 1984); *State v. Keeble*, 399 S.W.2d 118, 122 (Mo. 1966).

Presumptions In Appeals

There is a presumption of validity, good faith and correctness of assessment by the County Board of Equalization. *Hermel, Inc. v. STC*, 564 S.W.2d 888, 895 (Mo. banc 1978); *Chicago, Burlington & Quincy Railroad Co. v. STC*, 436 S.W.2d 650, 656 (Mo. 1968); *May Department Stores Co. v. STC*, 308 S.W.2d 748, 759 (Mo. 1958).

The presumption in favor of the Board is not evidence. A presumption simply accepts something as true without any substantial proof to the contrary. In an evidentiary hearing before the Commission, the valuation determined by the Board, even if simply to sustain the value made by the Assessor, is accepted as true only until and so long as there is no substantial evidence to the contrary.

The presumption of correct assessment is rebutted when the taxpayer, or respondent when advocating a value different than that determined by the Board, presents substantial and persuasive evidence to establish that the Board's valuation is erroneous and what the fair market value should have been placed on the property. *Hermel, supra*; *Cupples-Hesse Corporation v. State Tax Commission*, 329 S.W.2d 696, 702 (Mo. 1959).

Standard for Valuation

Section 137.115, RSMo, 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). It is the fair market value of the subject property on the valuation date. (Hermel, supra) Market value is the most probable price in terms of money which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeable and assuming the price is not affected by undue stimulus.

Implicit in this definition are the consummation of a sale as of a specific date and the passing of title from seller to buyer under conditions whereby:

1. Buyer and seller are typically motivated.
2. Both parties are well informed and well advised, and both acting in what they consider their own best interests.
3. A reasonable time is allowed for exposure in the open market.
4. Payment is made in cash or its equivalent.
5. Financing, if any, is on terms generally available in the Community at the specified date and typical for the property type in its locale.
6. The price represents a normal consideration for the property sold unaffected by special financing amounts and/or terms, services, fees, costs, or credits incurred in the transaction. Real Estate Appraisal Terminology, Society of Real Estate Appraisers, Revised Edition, 1984; See also, Real Estate Valuation in Litigation, J. D. Eaton, M.A.I., American Institute of Real Estate Appraisers, 1982, pp. 4-5; Property Appraisal and Assessment Administration, International Association of Assessing Officers, 1990, pp. 79-80; Uniform Standards of Professional Appraisal Practice, Glossary.

Weight to be Given Evidence

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).

Methods of Valuation

Proper methods of valuation and assessment of property are delegated to the Commission. It is within the purview of the Hearing Officer to determine the method of valuation to be adopted in a given case. See, *Nance v. STC*, 18 S.W.3d 611, at 615 (Mo. App. W.D. 2000); *Hermel, supra*; *Xerox Corp. v. STC*, 529 S.W.2d 413 (Mo. banc 1975).

Missouri courts have approved the comparable sales or market approach, the cost approach and the income approach as recognized methods of arriving at fair market value. *St. Joe Minerals Corp. v. STC*, 854 S.W.2d 526, 529 (App. E.D. 1993); *Aspenhof Corp. v. STC*, 789 S.W.2d 867, 869 (App. E.D. 1990); *Quincy Soybean Company, Inc., v. Lowe*, 773 S.W.2d 503, 504 (App. E.D. 1989), citing *Del-Mar Redevelopment Corp v. Associated Garages, Inc.*, 726 S.W.2d 866, 869 (App. E.D. 1987); and *State ex rel. State Highway Comm'n v. Southern Dev. Co.*, 509 S.W.2d 18, 27 (Mo. Div. 2 1974).

Opinion Testimony by Experts

If specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert on that subject, by knowledge, skill, experience, training, or education, may testify thereto.

The facts or data upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing and must be of a type reasonably relied upon by experts in the field in forming opinions or inferences upon the subject and must be otherwise reliable, the facts or data need not be admissible in evidence. Section 490.065, RSMo; *State Board of Registration for the Healing Arts v. McDonagh*, 123 S.W.3d 146 (Mo. SC. 2004); *Courtroom Handbook on Missouri Evidence*, Wm. A. Schroeder, Sections 702-505, pp. 325-350; *Wulfing v. Kansas City Southern Industries, Inc.*, 842 S.W.2d 133 (Mo. App. E.D. 1992).

Complainants' Burden of Proof

There is no presumption that the taxpayer's opinion is correct. The taxpayer in a Commission appeal still bears the burden of proof. The taxpayer is the moving party seeking affirmative relief. Therefore, the Complainant bears the burden of proving the vital elements of the case, i.e., the assessment was "unlawful, unfair, improper, arbitrary or capricious." See, Westwood Partnership v. Gogarty, 103 S.W.3d 152 (Mo. App. E.D. 2003); Daly v. P. D. George Co., 77 S.W.3d 645 (Mo. App. E.D. 2002); Reeves v. Snider, 115 S.W.3d 375 (Mo. App. S.D. 2003). Industrial Development Authority of Kansas City v. State Tax Commission of Missouri, 804 S.W.2d 387, 392 (Mo. App. 1991).

Substantial evidence can be defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. See, 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

Section 137.115, RSMo, 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). "Objective standards should be used in determining fair market value in the market place. The particular circumstances of the owner are not a proper consideration . . . Investment value is the value of a property to a particular investor, whereas market value is not related to the needs of the individual investors but is objective, impersonal, and detached; investment value is based on subjective, personal parameters . . ." (Maryville Properties v. Nelson, 83 SW3d 608, 616 WD 2002)

In the past, when valuing subsidized housing, we have attempted to look at actual income, actual expenses, financing terms and market capitalization rates in order to try to account for risks and benefits associated with this unique type of real property, recognizing that subsidized properties do not tend to sell and costs tend to be inflated, making sales and cost approaches difficult. The State Tax Commission referred to this methodology as the Maryville Formula. After Lake Ozark Village v. Whitworth, STC Appeal Nos. 97-47000, 99-47003 and 01-47002, parties to appeals involving subsidized housing properties utilized the Maryville Properties v. Nelson, STC Appeal No.

97-74500 methodology for determining value – as modified by the Western District Court of Appeals. At that time, subsidized housing typically included extremely low interest, low equity loans which had subsidized income, subsidized mortgages, subsidized interest and non-recourse promissory notes. In attempting to follow the directive of Missouri Baptist Children's Home to consider all relevant economic facts, the Commission instructed assessors to value subsidized housing based upon actual income, actual expenses and capitalization rates.

In *Park West v. Pruden*, Bate County STC Appeal No. 11-43000 to 11-43036 and 13-43001 to 13-43002, decision dated 11/4/14, the Hearing Officer found with the facts presented in that appeal that the Maryville formula was not persuasive evidence for determining the true value of the property. The Hearing Officer found that the equity positions were no longer the 3% to 5% found in the Maryville Properties/Lake Ozark cases but had now skyrocketed to over 80%. The Maryville formula methodology contemplated a low equity position with a market return rate and a high financed position with an extremely low interest rate. Under the Maryville formula, an increase in the equity position of the newer improvement resulted in it being valued substantially less than the older improvement.

In *Park West Estates I and II*, the original construction cost of recently completed improvements was presented. The Hearing Officer compared the actual cost of the properties to the indication of value as determined by the Maryville formula. The Hearing Officer asked "Would a typical investor spend almost \$3 million for a property that only had a market value of \$490,000 before it is even completed?" The Hearing Officer concluded:

"[e]ither the benefits and burdens under the Maryville formula are not being measured appropriately; or the income approach substantially distorts market value to a point of no longer being a good indicator of value. Arguably, facts surrounding subsidized housing and its financing have gone so far beyond typical market behavior that an income approach based upon subjective facts associated with these properties can never reasonably capture value."

No information as to the actual cost to construct was presented in this appeal. The Hearing Officer was only provided with the income and expenses of the subject properties.

Maryville formula uses actual rents, actual expenses, actual and market financings. The appraiser used actual rents and referred to market rents for the 1 two bed and 1 three bed vacant units to determine the potential gross income. The appraiser did not use actual expenses but used projections. The appraiser did not provide support or reference for his projections and they are high in comparison to actual. For example in the second property, the actual expenses for repairs was \$19,600 but the appraiser used a projected expense figure of \$28,000. The appraiser

projected advertising cost to increase to \$1400 from \$154, which is suspect given the apartment is near 100% occupied. The appraiser projected administrative costs to increase to \$33,600 from \$28,369; payroll to increase to \$61,600 from \$40,020. If we adjust his formula to reflect actual expenses, the resulting indications of values are:

Farmington Associates

Income		\$199,492	
Vacancy & Collection	5%	(9,975)	
Other Income		\$22,000	
Effective Gross Income			\$211,518
Expenses			
Utilities	\$26,000		
Insurance	\$11,000		
Repairs	\$18,500		
Advertising	\$55		
Administration	\$34,025		
Painting	\$3,250		
Payroll	\$39,600		
Management	\$9,070		
Reserves	\$10,000		
Total Expenses			(\$151,500)
			\$60,018

Capitalization Rate	9.21%
Indication of Value	\$651,660

Farmington Associates II

Income		\$304,140
Vacancy & Collection	5%	(15,552)
Other Income		\$52,802
Effective Gross Income		\$341,390
Expenses		
Utilities	\$21,332	
Insurance	\$15,516	
Repairs	\$19,600	
Advertising	\$154	
Administration	\$28,369	
Painting	\$4,129	
Payroll	\$40,020	
Management	\$20,160	
Reserves	\$14,000	
Total Expenses		(\$163,280)

	\$178,110
Capitalization Rate	9.21%
Indication of Value	\$1,933,876

Conclusion

Commission rejected Maryville Formula in Park West Estates (11-43000 to 11-430036). The properties in those appeals were new construction. The cost approach is an effective approach to develop market value in those circumstances. The reconciliation of cost approach and income approach lead the Hearing Officer to place more weight on the cost approach.

In this appeal, the appraiser did not develop the cost approach even though the improvements of the second property were recent. The appraiser developed sales comparison approach but did not place reliance on the method or value developed. The income approach using the Maryville formula was developed. As that information was the only information presented to develop value and since the actual costs and the capitalization rate utilized were not contested; the indications of value using that approach is deemed substantial and persuasive evidence.

ORDER

The Board's market value for the subject properties is SET ASIDE. The following valuations are concluded:

Appeal No.	Parcel No.	True Value	Assessed Value
11-84005	09-70-35-00-000-0016.02	\$1,934,000	\$367,460
11-84006	09-70-35-00-000-0016.00	\$651,660	\$123,815

A party may file with the Commission an application for review of this decision within thirty (30) days of the mailing date shown in the Certificate of Service. The application shall contain specific grounds upon which it is claimed the decision is erroneous. Said application must be in writing

addressed to the State Tax Commission of Missouri, P.O. Box 146, Jefferson City, MO 65102-0146, and a copy of said application must be sent to each person at the address listed below in the certificate of service.

Failure to state specific facts or law upon which the appeal is based will result in summary denial. (Section 138.432 RSMO. 2000)

The Collector of St. Francois County, as well as the collectors of all affected political subdivisions therein, shall continue to hold the disputed taxes pending a filing of an Application for Review, unless said taxes have been disbursed pursuant to a court order under the provisions of 139.031.8 RSMo.

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 this 30th day of January, 2015.

STATE TAX COMMISSION OF MISSOURI

Maureen Monaghan

Hearing Officer

Certificate of Service

I hereby certify that a copy of the foregoing has been mailed postage prepaid on this 30th day of January, 2015, to: Richard Dvorak, 7111 W. 98th Terr., #140, Overland Park, KS 66212, Attorney for Complainant; Patrick King, Assistant Prosecuting Attorney, 1 N. Washington, Suite 301, Farmington, MO 63640, Attorney for Respondent; Dan Ward, Assessor, County Courthouse Annex, 1 W. Liberty, Suite 200, Farmington, MO 63640; Mark Hedrick, Clerk, Courthouse Annex, 1 W. Liberty, Suite 300, Farmington, MO 63640; Pamela Williams, Collector, Courthouse Annex, 1 W. Liberty, Suite 201, Farmington, MO 63640.

Jacklyn Wood

Legal Coordinator

To Top

Branson Christian County I, LP
d/b/a Abbey Orchard I
10-0.6-14-003-001-001.001

EXHIBIT F

HB No. 613

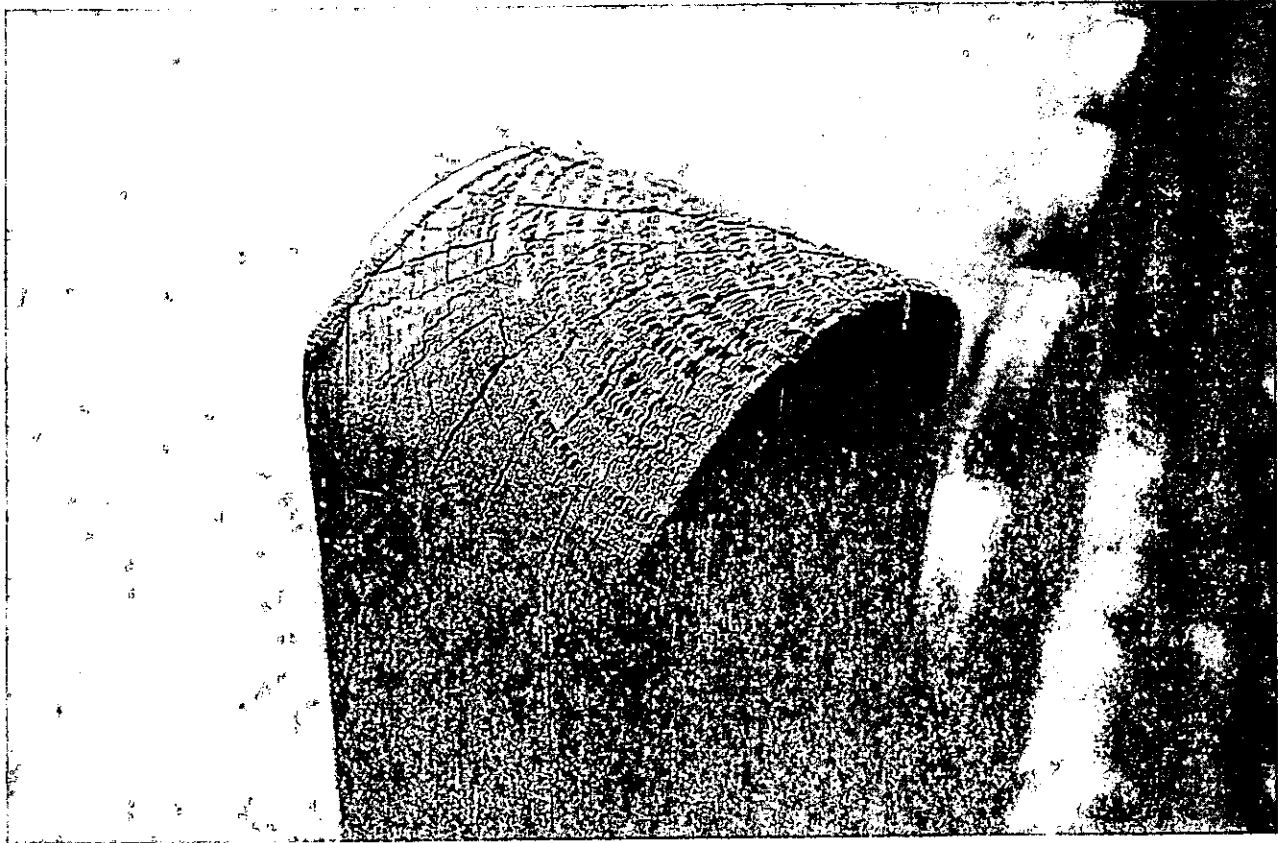
Nixon signs HB 613, will lower housing costs

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20 hours ago



JEFFERSON CITY, Mo. – Gov. Jay Nixon signed HB 613 into law making changes and statutorily codifying existing practices regarding property tax collection. The bill will go into effect on August 28.

Rep. Sandy Crawford, R-Buffalo, sponsored the bill in hopes to streamline and simplify property tax collection.

"These are some technical, but important, changes to our law based on the recommendations of a panel of county collectors who sought to make our statutes reflect recent court decisions and the reality of the way tax sales happen today," said Crawford, R-Buffalo. "I want to thank the governor for signing these changes into law, and thank my colleagues for providing strong bipartisan support to my legislation."

The Governor could have let it become law without signing on July 14th, but chose to sign the bill signifying that he supports the legislation.

The bill is seen as a victory for seniors living in housing developments constructed with tax credits. Currently, the practice was that county assessors would take into account limitations on rent and property use, but some assessors had begun disregarding existing precedence and raising property taxes as they could on unrestricted properties.

"HB 613 clarifies specific merchandise codes relating to electronics, appliance rentals, construction machinery, and more," said Warren County Assessor Wendy Nordwald. "This is a vital clarification needed as an assessor and I applaud the Governor's signature."

Property tax increases were being passed onto residents on fixed incomes, and the new law codifies existing practices which many believe will stem the rising cost of housing due to exorbitant property tax increases.

"The passage of HB 613 is an enormous win for Missouri's affordable housing industry," said Jason Maddox, president of MACO Companies, an affordable housing company. "The bill will prevent huge tax assessments on large, but inevitable, rent increases for Missouri's low income seniors and families."

The bill had no opposition in committee and supporters said the bill further updates, tightens, and otherwise cleans up the statute's chapter, and clarifies areas that frequently led to lawsuits by giving collectors discretion as to what constitutes "reasonable" costs of sale. The bill also repeals a section that operates as a disincentive for keeping properties maintained.

"We applaud Governor Nixon and the state legislature for enacting HB 613," said Beyond Housing President/CEO Chris Krehmeyer. "This new law will prevent great financial damage to those who produce affordable housing across the state of Missouri. The bill is pragmatic and straight forward in assessing taxes to owners of affordable housing based upon the allowable rents and thereby income set forth by federal and state guidelines. We understand the importance of paying taxes to support schools, police and fire protection and other needed services but do not want our properties to fail with an unfair tax burden. In a time when bipartisan agreements seem hard to come by we are thankful for the leadership in the governor's mansion and the state house to have HB 613 passed and signed into law."

HB 613 also raises the amount that County Collector's offices are required to collect to 2.5% on the first \$350,000 to \$3 million. It also streamlines public service fees for abolished townships, allows more counties to propose a special road rock property tax, and adjusts criteria for dealing with delinquent lands.

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HB 613

Changes the laws regarding the collection of property taxes

Sponsor: Crawford, Sandy (129)
Effective Date: Emergency Clause
LR Number: 1344S.06T
Governor Action: 07/06/2015 - Approved by Governor (G)
Last Action: 07/06/2015 - Delivered to Secretary of State (G)
Bill String: SCS HCS HB 613
Next Hearing: Hearing not scheduled
Calendar: Bill currently not on a House calendar

[Co-Sponsors](#) | [Actions](#) | [Hearings](#) | [Fiscal Notes](#) | [Roll Calls](#)

Bill Summaries

[Truly Agreed \(PDF\)](#) [Perfected \(PDF\)](#) [Committee \(PDF\)](#) [Introduced \(PDF\)](#)

Bill Text

[Truly Agreed \(PDF\)](#) [Senate Comm Sub \(PDF\)](#) [Perfected \(PDF\)](#) [Committee \(PDF\)](#) [Introduced \(PDF\)](#)

Amendments

Status	Amendment	Sponsor	Floor Number	Roll Call
	1344S06.01F	Crawford	SENATE AMENDMENTS	
	1344H03.07H	Hinson	HCA 1	

- Distributed** - Amendment has been distributed.
- Adopted** - Amendment has been adopted.
- Defeated** - Amendment has been defeated.
- Returned** - Amendment has been returned by motion and vote.
- Withdrawn** - Amendment has been withdrawn by the amendment's sponsor.
- Offered** - Amendment has been offered on the House floor.
- Pending** - Amendment has been laid over to be taken up on the next legislative day.
- Substitute** - Amendment has been substituted for a different amendment.
- Division** - Amendment has been divided into parts to be voted on and debated separately.

7/8/2015 11:32:06 AM

FIRST REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 613

98TH GENERAL ASSEMBLY

1344S.06T

2015

AN ACT

To repeal sections 52.260, 65.620, 137.076, 140.170, 140.310, 140.340, 140.350, 140.405, 140.410, 140.420, and 231.444, RSMo, and to enact in lieu thereof thirteen new sections relating to the collection of property taxes.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 52.260, 65.620, 137.076, 140.170, 140.310, 140.340, 140.350, 2 140.405, 140.410, 140.420, and 231.444, RSMo, are repealed and thirteen new sections enacted 3 in lieu thereof, to be known as sections 52.260, 65.620, 137.018, 137.076, 140.170, 140.195, 4 140.310, 140.340, 140.350, 140.405, 140.410, 140.420, and 231.444, to read as follows:

52.260. The collector in counties not having township organization shall collect on 2 behalf of the county the following fees for collecting all state, county, bridge, road, school, back 3 and delinquent, and all other local taxes, including merchants', manufacturers' and liquor and 4 beer licenses, other than ditch and levee taxes, and the fees collected shall be deposited in the 5 county general fund:

6 (1) In all counties wherein the total amount levied for any one year exceeds two hundred 7 and fifty thousand dollars and is less than three hundred and fifty thousand dollars, a fee of two 8 and one-half percent on the amount collected;

9 (2) In all counties wherein the total amount levied for any one year exceeds three 10 hundred and fifty thousand dollars and is less than [two] three million dollars, a fee of two and

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

11 one-half percent on the first three hundred and fifty thousand dollars collected and one percent
12 on whatever amount may be collected over three hundred and fifty thousand dollars;

13 (3) In all counties wherein the total amount levied for any one year exceeds [two] three
14 million dollars, a fee of one percent on the amounts collected.

65.620. 1. Whenever any county abolishes township organization the county treasurer
2 and ex officio collector shall immediately settle his accounts as treasurer with the county
3 commission and shall thereafter perform all duties, exercise all powers, have all rights and be
4 subject to all liabilities imposed and conferred upon the county collector of revenue under
5 chapter 52 until the first Monday in March after the general election next following the
6 abolishment of township organization and until a collector of revenue for the county is elected
7 and qualified. The person elected collector at the general election as aforesaid, if that election
8 is not one for collector of revenue under chapter 52, shall serve until the first Monday in March
9 following the election and qualification of a collector of revenue under chapter 52. Upon
10 abolition of township organization a county treasurer shall be appointed to serve until the
11 expiration of the term of such officer pursuant to chapter 54.

12 2. Upon abolition of township organization, title to all property of all kinds theretofore
13 owned by the several townships of the county shall vest in the county and the county shall be
14 liable for all outstanding obligations and liabilities of the several townships.

15 3. The terms of office of all township officers shall expire on the abolition of township
16 organization and the township trustee of each township shall immediately settle his accounts with
17 the county clerk and all township officers shall promptly deliver to the appropriate county
18 officers, as directed by the county commission, all books, papers, records and property pertaining
19 to their offices.

20 4. For a period of one calendar year following the abolition of the townships or
21 until the voters of the county have approved a tax levy for road and bridge purposes,
22 whichever occurs first, the county collector shall continue to collect a property tax on a
23 county-wide basis in an amount equal to the tax levied by the township that had the lowest
24 total tax rate in the county immediately prior to the abolishment of the townships. The
25 continued collection of the tax shall be considered a continuation of an existing tax and
26 shall not be considered a new tax levy.

137.018. 1. As used in this section, the term "merchandise" shall include short term
2 rentals of equipment and other merchandise offered for short term rentals by rental
3 companies under 532412 or 532210 of the 2012 edition of the North American Industry
4 Classification System as prepared by the Executive Office of the President, Office of
5 Management and Budget, which will subsequently or ultimately sell such merchandise or
6 equipment. As used in this section, the term "short term rental" shall mean rentals for a

SCS HCS HB 613 -- COLLECTION OF PROPERTY TAXES

This bill changes the laws regarding the collection of property taxes. In its main provisions, the bill:

(1) Changes the amount of fees a county collector must collect for collecting local taxes. In counties where the total amount levied in a year is between \$350,000 and \$2 million, the fee is 2.5% on the first \$350,000 collected and 1% on any amount over that amount. In counties where the total amount levied exceeds \$2 million, the fee is 1% on all amounts collected. The bill raises the outer threshold amount for a county to be eligible to collect the 2.5% on the first \$350,000 to \$3 million;

(2) Allows counties in which townships have been abolished to continue to collect a property tax on a county-wide basis for road and bridge purposes for either one year following the abolishment of the townships or until the county voters have approved a property tax for such purposes, whichever occurs first. The property tax must be the same amount as the property tax being levied in the township with the lowest total tax rate immediately before the townships were abolished. The collection of the property tax is to be considered a continuation of a tax and not a new tax;

(3) Specifies that certain merchandise whether or not subject to a short term rental and which will ultimately be sold must be considered inventory for property tax purposes and exempt from taxation. The bill is limited to general rental centers and construction, mining, and forestry equipment rental;

(4) Requires a county assessor when establishing the value of real property to consider existing use of the property, restrictions, limitations, existing covenants or restrictions in the deed, and operational requirements or restrictions imposed on the property to be eligible for state and federal credits and subsidies as residential rental property;

(5) Changes the laws regarding the advertisement of delinquent lands. Currently, a county collector may advertise delinquent lands with an assessed valuation of \$1,000 or less without legal descriptions or the names of the record owners when publishing a delinquent land list for delinquent real property tax. The bill increases the assessed valuation to \$1,500 or less;

(6) Changes the laws regarding the advertisement of a delinquent lot. Currently, a county collector may advertise a delinquent lot if in a development of at least 20 or more lots with an assessed valuation of \$1,000 or less without legal descriptions or the names

of the record owners when publishing a delinquent land list for delinquent real property tax. The bill increases the assessed valuation to \$1,500 or less;

(7) Allows a collector, agent of a collector, tax sale purchaser, or an agent of a tax sale purchaser to enter land, without being guilty of trespass, to provide, serve, or post notice of a tax sale or tax sale redemption. Once the reasonable and customary costs of a sale are paid to the county collector, the purchaser, his or her heirs, successors, or assigns; the owner; lienholder; or occupant of any land or lot sold for taxes, or any other persons having an interest therein, must have the absolute right to redeem the land at any time during the following year and must continue to have a defeasible right to redeem the land until the tax sale purchaser acquires the deed. Once the tax sale purchaser acquires the deed, the right to redeem will expire, provided upon the expiration of the lien evidenced by a certificate of purchase under Section 140.410, RSMo, no redemption will be required;

(8) Allows minors and incapacitated and disabled persons to redeem any lands belonging to them sold for taxes within five years of the date of the last payment of taxes encumbering the real estate by the minor, incapacitated or disabled person, the party's predecessors in interest, or any representative of the person in the same manner as provided in Section 140.340 for redemption by other persons;

(9) Specifies that "authorized to acquire the deed" means the date chosen by the tax sale purchaser that is more than the minimum redemption period in Section 140.340 if the tax sale purchaser has complied with the requirements entitling the purchaser to the issuance of a collector's deed including payment of the recording fee for the collector's deed, production of the original of the certificate of purchase as required under Section 140.420 or production of an original affidavit of lost or destroyed certificate approved by the collector as to form and substance, and payment of all subsequent taxes required to be paid under Section 140.440. The bill specifies how any person except a minor or an incapacitated or disabled person may receive notice under the provisions of the bill in a foreign country or outside the United States;

(10) Changes the laws regarding the purchase of delinquent land. Currently, a purchaser of delinquent lands, or his or her heirs or assigns, must pay all subsequent taxes on the property purchased prior to the issuance of any collector's deed and have a deed to be executed and placed on record in the proper county within two years from the date of the sale. The bill shortens the time to 18 months. If no person redeems the lands sold for taxes prior to the

expiration of the right to redeem, at the expiration thereof, and on production of the certificate of purchase and upon proof satisfactory to the collector that a purchaser or his or her heirs, successors, or assigns are authorized to acquire the deed, the collector of the county where the sale of the lands took place must execute to the purchaser, or his or her heirs or assigns, in the name of the state, a conveyance of the real estate sold, which will vest in the grantee an absolute estate in fee simple, subject, however, to all claims thereon for unpaid taxes except the unpaid taxes existing at the time of the purchase of the lands and the lien for which taxes was inferior to the lien for taxes for which the tract or lot of land was sold; and

(11) Authorizes all counties of the third and fourth classifications to impose, upon voter approval, a special road rock fund tax at a rate not to exceed \$1 per acre for property classified as agricultural and horticultural. Currently, only certain counties of the third classification without a township form of government are authorized to impose the tax upon voter approval.

7 period of less than three hundred sixty-five consecutive days, for an undefined period, or
8 under an open-ended contract.

9 2. For the purposes of article X, section 6 of the Constitution of Missouri, all
10 merchandise held or owned by a merchant whether or not currently subject to a short term
11 rental and which will subsequently or ultimately be sold shall be considered inventory and
12 exempt from ad valorem taxes.

137.076. 1. In establishing the value of a parcel of real property the county assessor
2 shall consider current market conditions, and previous decisions of the county board of
3 equalization, the state tax commission or a court of competent jurisdiction that affected the value
4 of such parcel. For purposes of this section, the term "current market conditions", shall include
5 the impact upon the housing market of foreclosures and bank sales.

6 2. In establishing the value of a parcel of real property, the county assessor shall
7 use an income based approach for assessment of parcels of real property with federal or
8 state imposed restrictions in regard to rent limitations, operations requirements, or any
9 other restrictions imposed upon the property in connection with:

10 (1) The property being eligible for any income tax credits under section 42 of the
11 Internal Revenue Code of 1986, as amended;

12 (2) Property constructed with the use of the United States Department of Housing
13 and Urban Development HOME investment partnerships program;

14 (3) Property constructed with the use of incentives provided by the United States
15 Department of Agriculture Rural Development; or

16 (4) Property receiving any other state or federal subsidies provided with respect
17 to use of the property for housing purposes.

18

19 For the purposes of this subsection, the term "income based approach" shall include the
20 use of direct capitalization methodology and computed by dividing the net operating
21 income of the parcel of property by an appropriate capitalization rate not to exceed the
22 average of the current market data available in the county of said parcel of
23 property. Federal and state tax credits or other subsidies shall not be used when
24 calculating the capitalization rate. Upon expiration of a land use restriction agreement,
25 such parcel of property shall no longer be subject to this subsection.

140.170. 1. Except for lands described in subsection 7 of this section, the county
2 collector shall cause a copy of the list of delinquent lands and lots to be printed in some
3 newspaper of general circulation published in the county for three consecutive weeks, one
4 insertion weekly, before the sale, the last insertion to be at least fifteen days prior to the fourth
5 Monday in August.

6 2. In addition to the names of all record owners or the names of all owners appearing on
7 the land tax book it is only necessary in the printed and published list to state in the aggregate
8 the amount of taxes, penalty, interest and cost due thereon, each year separately stated.

9 3. To the list shall be attached and in like manner printed and published a notice of said
10 lands and lots stating that said land and lots will be sold at public auction to discharge the taxes,
11 penalty, interest, and costs due thereon at the time of sale in or adjacent to the courthouse of such
12 county, on the fourth Monday in August next thereafter, commencing at ten o'clock of said day
13 and continuing from day to day thereafter until all are offered.

14 4. The county collector, on or before the day of sale, shall insert at the foot of the list on
15 his or her record a copy of the notice and certify on his or her record immediately following the
16 notice the name of the newspaper of the county in which the notice was printed and published
17 and the dates of insertions thereof in the newspaper.

18 5. The expense of such printing shall be paid out of the county treasury and shall not
19 exceed the rate provided for in chapter 493, relating to legal publications, notices and
20 advertisements, and the cost of printing at the rate paid by the county shall be taxed as part of the
21 costs of the sale of any land or lot contained in the list.

22 6. The county collector shall cause the affidavit of the printer, editor or publisher of the
23 newspaper in which the list of delinquent lands and notice of sale was published, as provided by
24 section 493.060, with the list and notice attached, to be recorded in the office of the recorder of
25 deeds of the county, and the recorder shall not charge or receive any fees for recording the same.

26 7. The county collector may have a separate list of such lands, without legal descriptions
27 or the names of the record owners, printed in a newspaper of general circulation published in
28 such county for three consecutive weeks before the sale of such lands for a parcel or lot of land
29 that:

30 (1) Has an assessed value of one thousand **five hundred** dollars or less and has been
31 advertised previously; or

32 (2) Is a lot in a development of twenty or more lots and such lot has an assessed value
33 of one thousand **five hundred** dollars or less. The notice shall state that legal descriptions and
34 the names of the record owners of such lands shall be posted at any county courthouse within the
35 county and the office of the county collector.

36 8. If, in the opinion of the county collector, an adequate legal description of the
37 delinquent land and lots cannot be obtained through researching the documents available through
38 the recorder of deeds, the collector may commission a professional land surveyor to prepare an
39 adequate legal description of the delinquent land and lots in question. The costs of any
40 commissioned land survey deemed necessary by the county collector shall be taxed as part of the
41 costs of the sale of any land or lots contained in the list prepared under this section.

140.195. Any collector, agent of any collector, tax sale purchaser, or agent of any
2 tax sale purchaser performing duties under this chapter shall have the lawful right to enter
3 upon the land of another without being guilty of trespass, if he or she is in the course of
4 providing or attempting to provide notice of a tax sale or tax sale redemption rights and
5 it is necessary to enter upon such land to provide, serve, or post such notice.

140.310. 1. The purchaser of any tract or lot of land at sale for delinquent taxes,
2 homesteads excepted, shall at any time after one year from the date of sale be entitled to the
3 immediate possession of the premises so purchased during the redemption period provided for
4 in this law, unless sooner redeemed; provided, however, any owner or occupant of any tract or
5 lot of land purchased may retain possession of said premises by making a written assignment of,
6 or agreement to pay, rent certain or estimated to accrue during such redemption period or so
7 much thereof as shall be sufficient to discharge the bid of the purchaser with interest thereon as
8 provided in the certificate of purchase.

9 2. The purchaser, his or her heirs or assigns may enforce his or her rights under said
10 written assignment or agreement in any manner now authorized or hereafter authorized by law
11 for the collection of delinquent and unpaid rent; provided further, nothing herein contained shall
12 operate to the prejudice of any owner not in default and whose interest in the tract or lot of land
13 is not-encumbered by the certificate of purchase, nor shall it prejudice the rights of any occupant
14 of any tract or lot of land not liable to pay taxes thereon nor such occupant's interest in any
15 planted, growing or unharvested crop thereon.

16 3. Any additions or improvements made to any tract or lot of land by any occupant
17 thereof, as tenant or otherwise, and made prior to such tax sale, which such occupant would be
18 permitted to detach and remove from the land under his or her contract of occupancy shall also,
19 to the same extent, be removable against the purchaser, his or her heirs or assigns.

20 4. Any rent collected by the purchaser, his or her heirs or assigns shall operate as a
21 payment upon the amount due the holder of such certificate of purchase, and such amount or
22 amounts, together with the date paid and by whom shall be endorsed as a credit upon said
23 certificate, and which said sums shall be taken into consideration in the redemption of such land,
24 as provided for in this chapter.

25 5. Any purchaser, heirs or assigns in possession within the period of redemption against
26 whom rights of redemption are exercised shall be protected in the value of any planted, growing
27 and/or unharvested crop on the lands redeemed in the same manner as such purchaser, heirs or
28 assigns would be protected in valuable and lasting improvements made upon said lands after the
29 period of redemption and referred to in section 140.360.

30 [6. The one-year redemption period shall not apply to third-year tax sales, but the
31 ninety-day redemption period as provided in section 140.405 shall apply to such sales. There
32 shall be no redemption period for a post-third-year tax sale, or any offering thereafter.]

140.340. 1. Upon paying the reasonable and customary costs of sale to the county
2 collector for the use of the purchaser, his or her heirs, successors, or assigns; the owner;
3 lienholder; or occupant of any land or lot sold for taxes, or any other persons having an interest
4 therein, [may] shall have the absolute right to redeem the same at any time during the one year
5 next ensuing[, in the following manner] and shall continue to have a defeasible right to
6 redeem the same until such time as the tax sale purchaser acquires the deed, at which time
7 the right to redeem shall expire, provided upon the expiration of the lien evidenced by a
8 certificate of purchase under section 140.410 no redemption shall be required.

9 2. The reasonable and customary costs of sale include all costs incurred in selling
10 and foreclosing tax liens under this chapter, and such reasonable and customary costs shall
11 include the following: [by paying to the county collector, for the use of the purchaser, his heirs
12 or assigns,] the full sum of the purchase money named in [his] the certificate of purchase and all
13 the [cost] costs of the sale, including the cost to record the certificate of purchase as required in
14 section 140.290, the fee necessary for the collector to record the release of such certificate of
15 purchase, and the reasonable and customary cost of the title search and [mailings] postage
16 costs of notification required in sections 140.150 to 140.405, together with interest at the rate
17 specified in such certificate, not to exceed ten percent annually, except on a sum paid by a
18 purchaser in excess of the delinquent taxes due plus costs of the sale incurred by the collector,
19 no interest shall be owing on the excess amount, with all subsequent taxes which have been paid
20 thereon by the purchaser, his or her heirs or assigns with interest at the rate of eight percent per
21 annum on such taxes subsequently paid, and in addition thereto the person redeeming any land
22 shall pay the costs incident to entry of recital of such redemption; provided, however, that no
23 costs incurred by tax sale purchasers in providing notice of tax sale redemption rights
24 required by law shall be reimbursable as a reasonable and customary cost of sale unless
25 such costs are incurred after March first following the date of purchase of the tax sale
26 certificate by said tax sale purchaser at a first or second offering delinquent tax sale.

27 [2.] 3. Upon deposit with the county collector of the amount necessary to redeem as
28 herein provided, it shall be the duty of the county collector to mail to the purchaser, his or her
29 heirs or assigns, at the last post office address if known, and if not known, then to the address
30 of the purchaser as shown in the record of the certificate of purchase, notice of such deposit for
31 redemption.

32 [3.] 4. Such notice, given as herein provided, shall stop payment to the purchaser, his
33 or her heirs or assigns of any further interest or penalty.

34 [4. In case the party purchasing said land, his heirs or assigns fails to take a tax deed for
35 the land so purchased within six months after the expiration of the one year next following the
36 date of sale, no interest shall be charged or collected from the redemptioner after that time.]

37 **5. The reasonable and customary costs of sale needed to redeem any land or lot sold**
38 **for taxes under this section shall be determined by the collector.**

140.350. [Infants] Minors and incapacitated and disabled persons as defined in chapter
2 475 may redeem any lands belonging to them sold for taxes, within [one year after the expiration
3 of such disability] five years of the date of the last payment of taxes encumbering the real
4 estate by the minor, incapacitated or disabled person, the party's predecessors in interest,
5 or any representative of such person, in the same manner as provided in section 140.340 for
6 redemption by other persons.

140.405. 1. Any person purchasing property at a delinquent land tax auction shall not
2 acquire the deed to the real estate, as provided for in section 140.250 or 140.420, until the person
3 meets the requirements of this section, except that such requirements shall not apply to
4 post-third-year sales, which shall be conducted under subsection 4 of section 140.250. The
5 purchaser shall obtain a title search report from a licensed attorney or licensed title company
6 detailing the ownership and encumbrances on the property. [Such title search report shall be
7 declared invalid if the effective date is more than one hundred twenty days from the date the
8 purchaser applies for a collector's deed under section 140.250 or 140.420.]

9 2. At least ninety days prior to the date when a purchaser is authorized to acquire the
10 deed, the purchaser shall notify the owner of record and any person who holds a publicly
11 recorded unreleased deed of trust, mortgage, lease, lien, judgment, or any other publicly recorded
12 claim upon that real estate of such person's right to redeem the property. Notice shall be sent by
13 both first class mail and certified mail return receipt requested to such person's last known
14 available address. If the certified mail return receipt is returned signed, the first class mail notice
15 is not returned, the first class mail notice is refused where noted by the United States Postal
16 Service, or any combination thereof, notice shall be presumed received by the recipient. At the
17 conclusion of the applicable redemption period, the purchaser shall make an affidavit in
18 accordance with subsection [4] 5 of this section.

19 3. If the owner of record or the holder of any other publicly recorded claim on the
20 property intends to transfer ownership or execute any additional liens or encumbrances on the
21 property, such owner shall first redeem such property under section 140.340. The failure to
22 comply with redeeming the property first before executing any of such actions or agreements on
23 the property shall require the owner of record or any other publicly recorded claim on the
24 property to reimburse the purchaser for the total bid as recorded on the certificate of purchase
25 and all the costs of the sale required in sections 140.150 to 140.405.

26 4. In the case that both the certified notice return receipt card is returned unsigned and
27 the first class mail is returned for any reason except refusal, where the notice is returned
28 undeliverable, then the purchaser shall attempt additional notice and certify in the purchaser's
29 affidavit to the collector that such additional notice was attempted and by what means.

30 5. The purchaser shall notify the county collector by affidavit of the date that every
31 required notice was sent to the owner of record and, if applicable, any other publicly recorded
32 claim on the property. To the affidavit, the purchaser shall attach a copy of a valid title search
33 report as described in subsection 1 of this section as well as completed copies of the following
34 for each recipient:

35 (1) Notices of right to redeem sent by first class mail;

36 (2) Notices of right to redeem sent by certified mail;

37 (3) Addressed envelopes for all notices, as they appeared immediately before mailing;

38 (4) Certified mail receipt as it appeared upon its return; and

39 (5) Any returned regular mailed envelopes. As provided in this section, at such time the
40 purchaser notifies the collector by affidavit that all the ninety days' notice requirements of this
41 section have been met, the purchaser is authorized to acquire the deed, provided that a collector's
42 deed shall not be acquired before the expiration date of the redemption period as provided in
43 section 140.340.

44 6. If any real estate is purchased at a third-offering tax auction and has a publicly
45 recorded unreleased deed of trust, mortgage, lease, lien, judgment, or any other publicly recorded
46 claim upon the real estate under this section, the purchaser of said property shall within forty-five
47 days after the purchase at the sale notify such person of the person's right to redeem the property
48 within ninety days from the postmark date on the notice. Notice shall be sent by both first class
49 mail and certified mail return receipt requested to such person's last known available
50 address. The purchaser shall notify the county collector by affidavit of the date the required
51 notice was sent to the owner of record and, if applicable, the holder of any other publicly
52 recorded claim on the property, that such person shall have ninety days to redeem said property
53 or be forever barred from redeeming said property.

54 7. If the county collector chooses to have the title search done then the county collector
55 may charge the purchaser the cost of the title search before giving the purchaser a deed pursuant
56 to section 140.420.

57 8. [If the property is redeemed, the person redeeming the property shall pay the costs
58 incurred by the purchaser in providing notice under this section. Recoverable costs on any
59 property sold at a tax sale shall include the title search, postage, and costs for the recording of
60 any certificate of purchase issued and for recording the release of such certificate of purchase and
61 all the costs of the sale required in sections 140.150 to 140.405.

62 9.J Failure of the purchaser to comply with this section shall result in such purchaser's
63 loss of all interest in the real estate except as otherwise provided in sections 140.550 and
64 140.570.

65 9. The phrase "authorized to acquire the deed" as used in this chapter shall mean
66 the date chosen by the tax sale purchaser that is more than the minimum redemption
67 period set forth in section 140.340 if the tax sale purchaser has complied with the following
68 requirements entitling the purchaser to the issuance of a collector's deed:

69 (1) Compliance with the requirements of this section to the satisfaction of the
70 collector;

71 (2) Payment of the recording fee for the collector's deed as required under section
72 140.410;

73 (3) Production of the original of the certificate of purchase as required under
74 section 140.420, or production of an original affidavit of lost or destroyed certificate
75 approved by the collector as to form and substance; and

76 (4) Payment of all subsequent taxes required to be paid under section 140.440.

77 10. Notwithstanding any provision of law to the contrary, any person except a
78 minor or an incapacitated or disabled person may receive notice under this section in a
79 foreign country or outside the United States:

80 (1) By any internationally agreed upon means of service that is reasonably
81 calculated to give notice, such as the Hague Convention on the Service Abroad of Judicial
82 and Extrajudicial Documents;

83 (2) If there is no internationally agreed upon means of service, or if an
84 international agreement allows service but does not specify the means, by a method that
85 is reasonably calculated to give notice;

86 (3) As set forth for the foreign country's acceptable method of service in actions in
87 courts of general jurisdiction;

88 (4) As the foreign country directs in response to a letter of request;

89 (5) Unless prohibited by a foreign country's law, by delivering a copy of the notice
90 to the person personally or using a form of mail that requires a signed receipt; or

91 (6) By any other means not prohibited by international agreement as approved by
92 the collector.

 140.410. In all cases where lands have been or may hereafter be sold for delinquent
2 taxes, penalty, interest and costs due thereon, and a certificate of purchase has been or may
3 hereafter be issued, it is hereby made the duty of such purchaser, his or her heirs or assigns, to
4 cause all subsequent taxes to be paid on the property purchased prior to the issuance of any
5 collector's deed, and the purchaser shall further cause a deed to be executed and placed on record

6 in the proper county all within [two years] **eighteen months** from the date of said sale; provided,
7 that on failure of said purchaser, his **or her** heirs or assigns so to do, then and in that case the
8 amount due such purchaser shall cease to be a lien on said lands so purchased as herein
9 provided. Upon the purchaser's forfeiture of all rights of the property acquired by the certificate
10 of purchase issued, and including the nonpayment of all subsequent years' taxes as described in
11 this section, it shall be the responsibility of the collector to record the cancellation of the
12 certificate of purchase in the office of the recorder of deeds of the county. Certificates of
13 purchase cannot be assigned to nonresidents or delinquent taxpayers. However, any person
14 purchasing property at a delinquent land tax sale who meets the requirements of this section,
15 prior to receiving a collector's deed, shall pay to the collector the fee necessary for the recording
16 of such collector's deed to be issued. It shall be the responsibility of the collector to record the
17 deed before delivering such deed to the purchaser of the property.

140.420. If no person shall redeem the lands sold for taxes [within the applicable
2 redemption period of one year from the date of the sale or within the ninety-day notice as
3 specified in section 140.405 for a third-year tax sale] **prior to the expiration of the right to**
4 **redeem**, at the expiration thereof, and on production of the certificate of purchase **and upon**
5 **proof satisfactory to the collector that a purchaser or his or her heirs, successors, or assigns**
6 **are authorized to acquire the deed**, the collector of the county in which the sale of such lands
7 took place shall execute to the purchaser, his **or her** heirs or assigns, in the name of the state, a
8 conveyance of the real estate so sold, which shall vest in the grantee an absolute estate in fee
9 simple, subject, however, to all claims thereon for unpaid taxes except such unpaid taxes existing
10 at time of the purchase of said lands and the lien for which taxes was inferior to the lien for taxes
11 for which said tract or lot of land was sold.

231.444. 1. In addition to other levies authorized by law, the governing body of any
2 county of the third **or fourth** classification [without a township form of government having a
3 population of less than six thousand inhabitants according to the most recent decennial census]
4 may by ordinance levy and impose a tax pursuant to this section which shall not exceed the rate
5 of one dollar on each acre of real property in the county which is classified as agricultural and
6 horticultural property pursuant to section 137.016.

7 2. The proceeds of the tax authorized pursuant to this section shall be collected by the
8 county collector and remitted to the county treasurer who shall deposit such proceeds in a special
9 fund to be known as the "Special Road Rock Fund". All moneys in the special road rock fund
10 shall be appropriated by the county governing body for the sole purpose of purchasing road rock
11 to be placed on county roads within the boundaries of the county.

12 3. The ordinance levying and imposing a tax pursuant to subsection 1 of this section shall
13 not be effective unless the county governing body submits to the qualified voters of the county

14 a proposal to authorize the county governing body to levy and impose the tax at an election
15 permitted pursuant to section 115.123. The ballot of submission proposing the tax shall be in
16 substantially the following form:

17 Shall the county of (county's name) be authorized to levy and impose a tax on all
18 real property in the county which is classified as agricultural or horticultural property at a rate
19 not to exceed (rate of tax) cents per acre with all the proceeds of the tax to be placed in
20 the "Special Road Rock Fund" and used solely for the purpose of purchasing road rock to be
21 placed on county roads within the boundaries of the county?

22 YES NO

23 4. If a majority of the qualified voters of the county voting on the proposal vote "YES",
24 then the governing body of the county may by ordinance levy and impose the tax authorized by
25 this section in an amount not to exceed the rate proposed in the ballot of submission. If a
26 majority of the qualified voters of the county voting on the proposal vote "NO", then the
27 governing body of the county shall not levy and impose such tax. Nothing in this section shall
28 prohibit a rejected proposal from being resubmitted to the qualified voters of the county at an
29 election permitted pursuant to section 115.123.

✓

Branson Christian County I, LP
d/b/a Abbey Orchard I
10-0.6-14-003-001-001.001

EXHIBIT G

Agent Authorization

AUTHORIZATION FOR ANOTHER PARTY TO REPRESENT TAXPAYER AT THE
CHRISTIAN COUNTY ASSESSOR MEETING & THE RELATED BOARD OF
EQUALIZATION HEARING

I (We), Jeffrey E. Smith Partnerships, LC,

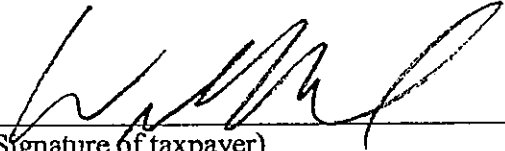
Authorize - Robert J Muchow & Brian T Howes

To represent me (us) at the property tax appeal meeting with the Christian County Assessor & the related Board of Equalization Hearing regarding the properties listed below.

Notices and Correspondence are to be sent to:
(Check only one)

_____ Taxpayer

 X Authorized Representative/Agent



(Signature of taxpayer)

6/24/15
(Date)

Regarding all appeals listed below:

Branson Christian County, LP
Branson Christian County II, LP

**Branson Christian County II, LP
d/b/a Abbey Orchard II
10-0.6-14-003-001-001.002**

- Exhibit A Appeal Summary Sheet
- Exhibit B Income and Expense Worksheet
- Exhibit C 2011-2014 Income Statements
- Exhibit D Land Use Restriction Agreement
- Exhibit E Maryville Formula Case Law
- Exhibit F HB No. 613
- Exhibit G Agent Authorization

**Branson Christian County II, LP
d/b/a Abbey Orchard II
10-0.6-14-003-001-001.002**

EXHIBIT A

Appeal Summary Sheet

**Branson Christian County II, LP
d/b/a Abbey Orchard II
168-396 Truman Street, Nixa
10-0.6-14-003-001-001.002
2015 Board of Equalization Appeal**

Property Description

The subject property is a 56-unit apartment complex built in 1994 located on Truman Street in Nixa. It is subject to rent limitations, operations requirements and other restrictions in exchange for low-income housing tax credits.

Appeal Summary

The \$2,151,400 market value assigned to this property in 2015 by Christian County is excessive. This valuation represents a 461% increase in the previous \$466,100 value and is not warranted in the marketplace. Taxpayer asserts a value of \$892,200 based on the attached income analysis.

Taxpayer's proposed valuation is based on the methodology established in *Maryville Properties v. Nelson*, 83 S.W.3d 608 (Mo. App. W.D. 2002) for determining market value of low income housing properties. The Maryville Formula was applied by the State Tax Commission in *Lake Ozark Village v. Whitworth*, STC Appeal Nos. 97-47000, 99-47003 and 01-47002 and many subsequent decisions. Most recently, the Commission reaffirmed application of the Maryville Formula in *Farmington Associates II v. Ward*, STC Appeal Nos. 11-84005 and 11-84006. The Maryville Formula for valuation of low income housing has been codified by HB No. 613 passed by the General Assembly and signed by the Governor July 16, 2015. HB No. 613 amends 137.076 RSMo to require use of an income approach with direct capitalization of net operating income of low income housing properties at market capitalization rates without considering tax credits or other subsidies.

**Branson Christian County II, LP
d/b/a Abbey Orchard II
10-0.6-14-003-001-001.002**

EXHIBIT B

Income and Expense Worksheet

INCOME AND EXPENSE WORKSHEET

CHRISTIAN COUNTY

Branson Christian County II, LP
 d/b/a Abbey Orchard II
 Parcel # 10-0.6-14-003-001-001.002
 05-50501, Jeffrey E. Smith Partnerships

	2012	2013	2014	3 Year Avg
Actual Income				
Rental Income	279,400	292,160	312,024	294,528
Rental Subsidy				
Laundry / Vending / Other	11,235	9,995	9,495	10,241
Potential Gross Income	290,635	302,155	321,519	304,769
Less: Actual Vacancy & Collection	761	7,822	15,128	7,903
Effective Gross Income	289,874	294,333	306,391	296,866
Expenses				
Maintenance & Repair	35,987	44,741	59,388	46,705
Utilities	16,916	15,708	19,629	17,418
Administrative	80,276	86,200	94,560	87,012
Insurance	13,590	9,531	10,499	11,207
Reserve for Replacement	6,000	6,000	6,000	6,000
Total Expenses	152,769	162,181	190,076	168,342
Net Operating Income	137,105	132,152	116,315	128,524
Capitalization				
Loan to Value x Interest Rate	0.065138	0.065138	0.065138	0.065138
Equity x Equity Dividend Rate	0.076794	0.076794	0.076794	0.076794
Effective Tax Rate	0.002115	0.002115	0.002115	0.002115
Overall Capitalization Rate	0.144047	0.144047	0.144047	0.144047
Value				
Net Operating Income	\$ 951,800	\$ 917,400	\$ 807,500	\$ 892,200
divided by Overall Capitalization Rate				

Equity Dividend Rate	15%
Cost Cert Total	\$ 2,382,686
Original Loan Balance	1,162,850.00
Original Equity Amount	1,219,836.00
Equity Value	0.51
Loan Value	0.49
Note Interest Rate	10.61%
Amortization Term	180
Mortgage Constant	13.35%
Effective Tax Rate	0.002115

Branson Christian County II, LP
d/b/a Abbey Orchard II
10-0.6-14-003-001-001.002

EXHIBIT C

2011-2014 Income Statements

**Branson Christian County II, LP
2013-2014 Income Statements**

Description	Income Statement 12/31/2013	Income Statement 12/31/2014
Rental Income	292,160.00	312,024.00
Vacancy Loss	(2,135.66)	(6,731.59)
Rental Loss - HUD	(1,140.00)	
Gain or Loss to Lease	(4,546.00)	(8,396.00)
Other Tenant Charges	8,650.02	11,996.75
Laundry & Vending Income	123.96	154.11
Reimb. Application Screens	1,080.50	1,462.50
Gain/Loss On Sale Of Assets		(5,339.15)
Interest Income	114.63	58.53
Interest Income - Reserves	0.39	0.86
Other Income	25.00	1,160.94
Total Income	294,332.84	306,390.95
Advertising	1,765.56	2,023.18
Application Screens	1,012.64	1,395.21
Auditing Expense	3,078.00	1,377.00
Bad Debt - Damages	2,410.00	3,862.99
Bad Debt - Rent	599.04	2,419.31
Employee Benefits - 401K	729.00	1,027.53
Employee Benefits - Health	2,759.24	2,529.24
Employee Benefits - Health	921.02	2,662.85
Employee Benefits - Other	6.81	
Fees - Asset Management	1,500.00	1,500.00
Fees - Management	26,880.00	30,240.00
Fees - Partnership Reporting	5,000.00	5,000.00
Grounds Lease	5,000.00	5,000.00
Legal Expense	20.25	225.00
Licenses, Fees, Permits	1,665.38	1,968.05
Office Equipment	1,040.00	1,323.94
Office Supplies	291.04	166.14
Other Administrative Expense	1,363.76	2,019.77
Other Administrative Expense	11.12	
Payroll - Site Manager	23,225.13	21,948.02
Postage & Freight	104.37	156.60
Telephone Expense	1,833.32	1,797.86
Taxes - Payroll - FUTA	22.66	22.69
Taxes - Payroll - FUTA	53.17	48.51
Taxes - Payroll - FICA	1,676.04	1,601.06
Taxes - Payroll - FICA	1,525.19	1,772.34
Taxes - Payroll - SUTA	169.78	146.31
Taxes - Payroll - SUTA	294.63	319.77
Training, Education & Seminar	1,243.13	2,006.31
Total Administrative Expense	86,200.28	94,559.68

Branson Christian County II, LP
2013-2014 Income Statements

Description	Income Statement 12/31/2013	Income Statement 12/31/2014
Furn. & Fixture Replacement	791.86	5,160.00
Furn. & Fixture Repl - Appliances	2,972.51	5,473.01
Grounds - Contract	4,687.54	5,248.91
Maint. & Repair - Contract	4,322.36	4,774.60
Maint. & Rpr - Cntrct Htng/Cng	517.78	546.44
Maint. & Rpr - Cntrct Cng/Jntr	2,495.61	4,752.30
Maint. & Repair - Supply	5,702.68	5,424.18
Painting & Decorating	779.70	1,550.64
Payroll - Maintenance	20,556.64	23,896.41
Services	1,032.00	957.00
Snow Removal	882.45	1,604.76
Total Repairs & Maintenance Expense	44,741.13	59,388.25
Insurance - Fidelity Bond	141.06	105.95
Insurance - Property & Liab.	7,971.01	8,614.08
Insurance - Umbrella	616.04	526.31
Insurance - Worker's Comp.	803.25	1,252.58
Total Insurance Expense	9,531.36	10,498.92
Utilities - Electricity		137.64
Utilities - Electricity	4,759.31	4,670.48
Utilits - Electrcty - Vacnt Unts	524.03	982.08
Utilities - Garbage	72.43	76.26
Utilities - Sewer	5,801.94	6,367.83
Utilities - Water	4,550.76	7,394.38
Total Utility Expense	15,708.47	19,628.67
Depreciation	44,378.61	40,085.14
Interest	13,350.74	31,476.31
Taxes - Real Estate	5,198.29	5,190.76
Total Non Applicable Expenses	62,927.64	76,752.21
TOTAL EXPENSES	219,108.88	260,827.73
NET INCOME	75,223.96	45,563.22
Add Back Non Applicable Expenses	62,927.64	76,752.21
Deduct Transfers to Reserves	(6,000.00)	(6,000.00)
NOI Per Formula	132,151.60	116,315.43

Branson Christian County II, LP
INCOME STATEMENTS
For the Years Ended December 31, 2011 and 2012

		<u>12/31/11</u>		<u>12/31/12</u>
	RENT REVENUE			
5120	Rent Revenue - Gross Potential	\$ 274,000	\$	279,400
5100T	TOTAL RENT REVENUE	<u>274,000</u>		<u>279,400</u>
	VACANCIES			
5220	Apartments	(8,042)		(756)
5250	Rental Concessions	(333)		-
5290	Miscellaneous	-		(5)
5200T	TOTAL VACANCIES	<u>(8,375)</u>		<u>(761)</u>
5152N	NET RENTAL REVENUE	<u>265,625</u>		<u>278,639</u>
	FINANCIAL REVENUE			
5410	Financial Revenue - Project Operations	115		134
5440	Revenue from Investments - Replacement Reserve	2		7
5400T	TOTAL FINANCIAL REVENUE	<u>117</u>		<u>134</u>
	OTHER REVENUE			
5910	Laundry and Vending Revenue	52		158
5920	Tenant Charges	11,304		9,141
5990	Miscellaneous Revenue	197		1,802
5900T	TOTAL OTHER REVENUE	<u>11,553</u>		<u>11,101</u>
5000T	TOTAL REVENUE	<u>\$ 277,295</u>	\$	<u>289,874</u> ✓

The accompanying notes are an integral part of these financial statements.

Branson Christian County II, LP
INCOME STATEMENTS
For the Years Ended December 31, 2011 and 2012

		12/31/11		12/31/12
	ADMINISTRATIVE EXPENSES			
6203	Conventions, Meetings & Training	\$ 2,081	\$	610
6210	Advertising and Marketing	1,935		1,879
6311	Office Expenses	1,321		1,080
6320	Management Fee/Bookkeeping/Accounting Services	26,880		26,880
6330	Manager or Superintendent Salaries	19,906		23,323
6340	Legal Expenses - Project	232		353
6350	Audit Expenses	3,795		2,977
6360	Telephone Expense	1,768		1,461
6370	Bad Debts	3,165		5,207
6390	Miscellaneous Administrative Expenses	2,211		1,783
6263T	TOTAL ADMINISTRATIVE EXPENSES	63,294		65,553 <i>A</i>
	UTILITIES			
6450	Electricity	5,749		4,708
6451	Water	4,495		5,219
6453	Sewer	5,788		6,989
6400T	TOTAL UTILITIES	16,032		16,916 <i>U</i>
	OPERATING & MAINTENANCE EXPENSES			
6510	Payroll	18,391		12,651
6515	Supplies	7,042		5,114
6520	Contracts	20,631		12,745
6525	Garbage and Trash Removal	92		70
6546	Heating/Cooling Repairs and Maintenance	205		-
6548	Snow Removal	1,217		184
6573	Exterminating	600		1,003
6580	Vacant Unit Preparation	4,549		4,220
6500T	TOTAL OPERATING & MAINTENANCE EXPENSES	52,727		35,987 <i>M</i>
	TAXES & INSURANCE			
6710	Real Estate Taxes	5,228		5,240 <i>-N/A</i>
6711	Payroll Taxes (Project's Share)	3,329		3,223 <i>A</i>
6720	Property and Liability Insurance (Hazard)	7,010		7,205
6721	Fidelity Bond Insurance	165		153
6722	Workmen's Compensation	1,044		644
6723	Health Insurance & Other Employee Benefits	2,787		3,928
6790	Miscellaneous Taxes, Licenses, Permits & Insurance	1,354		1,660
6700T	TOTAL TAXES & INSURANCE	20,917		22,053 <i>I</i>
	FINANCIAL EXPENSES			
6820	Interest on Mortgage Payable	10,837		12,979 <i>-N/A</i>
6800T	TOTAL FINANCIAL EXPENSES	10,837		12,979
6000T	TOTAL COST OF OPERATIONS BEFORE DEPRECIATION	163,807		153,488
5060T	PROFIT (LOSS) BEFORE DEPRECIATION	\$ 113,488	\$	136,386

The accompanying notes are an integral part of these financial statements.

Branson Christian County II, LP
INCOME STATEMENTS
For the Years Ended December 31, 2011 and 2012

		<u>12/31/11</u>	<u>12/31/12</u>
	DEPRECIATION & AMORTIZATION		
6600	Depreciation	\$ 94,879	\$ 97,391
	TOTAL DEPRECIATION	<u>94,879</u>	<u>97,391</u>
	OPERATING PROFIT OR LOSS	<u>18,609</u>	<u>38,995</u>
	ENTITY EXPENSES		
7115	Asset Management, Partnership and Incentive Fee	(6,500)	(6,500) A
7190	Other Expenses	(5,000)	(5,000) A
	TOTAL ENTITY EXPENSES	<u>(11,500)</u>	<u>(11,500) A</u>
3250	NET INCOME (LOSS)	<u>\$ 7,109</u>	<u>\$ 27,495</u>

PART II

7001	Total mortgage principal payments required during the audit year (12 monthly payments).	<u>44,212</u>	<u>43,574</u>
7002	Total of 12 monthly deposits in the audit year into the Replacement Reserve account.	<u>6,000</u>	<u>6,000</u>
7003	Replacement Reserve or Residual Receipts releases which are included as expense items on this Profit and Loss Statement	<u>9,469</u>	<u>2,268</u>
7145	Debt Service for other loans (surplus cash/non-mhdc/partner loans)	<u>18,265</u>	<u>69,919</u>

27,495 - NET INCOME
+ 5,240 REAL ESTATE TAX
+ 12,979 INTEREST
+ 97,391 DEPRECIATION
(6,000) REPLACEMENT RESERVES

137,105 NOI AFTER N/A EXPENSES
+ RESERVES

The accompanying notes are an integral part of these financial statements.

**Branson Christian County II, LP
d/b/a Abbey Orchard II
10-0.6-14-003-001-001.002**

EXHIBIT D

Land Use Restriction Agreement

P. BRUCE HARRIS
RECORDER OF DEEDS
CHRISTIAN COUNTY

LIHTC No. 94-031

DECLARATION OF LAND USE RESTRICTION COVENANTS Filed this 24th day
FOR LOW-INCOME HOUSING TAX CREDITS of Oct. 1994
12:47 PM

THIS DECLARATION OF LAND USE RESTRICTION COVENANTS (this "Agreement"), dated as of the 3rd day of October, 1994, by Branson Christian County II, L.P. and their grantees, successors and assigns (the "Owner") is hereby granted and declared as a condition precedent to the allocation of low-income housing tax credits by the MISSOURI HOUSING DEVELOPMENT COMMISSION, a governmental instrumentality of the State of Missouri or any successor to its rights, duties and obligations (hereinafter sometimes referred to as the "Authority" or as "MHDC").

WITNESSETH:

WHEREAS, the Owner is the owner in fee simple of a 56 unit rental housing development located on lands in the City of Nixa, County of Christian, State of Missouri, which lands and improvements are more particularly described in Exhibit "A" attached hereto, and commonly known as Abbey Orchard Apartments II (the "Project"); and

WHEREAS, the Project may now or hereafter be financed by mortgage loans (the "Mortgage Loan" whether one or more), the indebtedness of which shall be evidenced by mortgage note(s), secured by mortgage(s) or other security instruments (which shall be mortgage liens on the Project) (said note(s), mortgage(s), or security instruments are collectively hereafter referred to as the "Loan Documents" whether one or more); and

WHEREAS, the "Authority" has been designated by the Governor of the State of Missouri as the housing tax credit agency for the State of Missouri for the allocation of low-income housing tax credit dollars (the "Credit"); and

WHEREAS, the Owner has represented to the Authority in Owner's Low-Income Housing Credit Application (the "Application") that Owner shall lease a minimum of 40 % of the units in the Project to individuals or families ("Low-Income Tenants") whose income is 60 % or less of the area median gross income (including adjustments for family size) as determined in accordance with Section 42 of the Internal Revenue Code (the "Code").

WHEREAS, the Authority has determined the Project would support a Credit allocation in the maximum amount of \$ 203,404; and

WHEREAS, the Owner ~~has~~ (has not) represented to the Authority in Owner's application that it will elect to extend the Low-Income use and rental restrictions beyond the close of the initial fifteen (15) year compliance period, and ~~does~~ (does not) agree to waive the right to early termination at the end of the initial fifteen (15) year compliance period; and

WHEREAS, the Code has required as a condition precedent to the allocation of the Credit that the Owner execute, deliver and record in the official land deed records of the city or county in which the Project is located this Agreement in order to create certain covenants running with the land for the purpose of enforcing the requirements of Section 42 of the Code and the MHDC Occupancy Restrictions found in Section 5 hereof by regulating and restricting the rents, use and occupancy and transfer of the Project as set forth herein; and

WHEREAS, the Owner, under this Agreement, intends, declares and covenants that the regulatory and restrictive covenants set forth herein governing the rents, use, occupancy and transfer of the Project shall be and are covenants running with the land for the term stated herein and binding upon all subsequent owners of the Project for such term, and are not merely personal covenants of the Owner.

NOW, THEREFORE, in consideration of the mutual premises and covenants hereinafter set forth, and of other valuable consideration, the Owner and the Commission agree as follows:

SECTION 1 - DEFINITIONS.

All words and phrases defined in Section 42 of the Code shall have the same meanings in this Land Use Restriction Agreement.

SECTION 2 - RECORDING AND FILING; COVENANTS TO RUN WITH THE LAND.

- (a) Upon execution and delivery by the Owner, the Owner shall cause this Agreement and all amendments hereto to be recorded and filed in the official public land deed records of the city or county in which the Project is located, and shall pay all fees and charges incurred in connection therewith.
- (b) The Owner intends, declares and covenants, on behalf of itself and all future Owners and operators of the Project during the term of this Agreement, that this Agreement and the covenants and restrictions set forth in this Agreement regulating and restricting the rents, use, occupancy and transfer of the Project (i) shall be and are covenants running with the land and improvements, and encumbering the Project for the term of this Agreement, binding upon the Owner, their grantees, successors and assigns and the grantees and successors and assigns of them, or any of them, and, (ii) are not merely personal covenants of the Owner, and (iii) shall bind the Owner (and the benefits shall inure to the Authority and any past, present or prospective tenant of the Project) and its respective successors and assigns during the term of this Agreement. The Owner hereby agrees that any and all requirements of the laws of the State of Missouri to be satisfied in order for the provisions of this Agreement to constitute deed restrictions and covenants running with the land shall be deemed to be satisfied in full, and that any requirements or privileges of estate are intended to be satisfied, or in the alternative, that an equitable servitude has been created to insure that these restrictions run with the land. For the longer of the period this Credit is claimed or for the term of this Agreement, each and every contract, deed or other instrument hereafter executed conveying the Project or any portion thereof shall expressly provide that such conveyance is subject to this Agreement, provided, however the covenants contained herein shall survive and be effective regardless of whether such contract, deed or other instrument hereafter executed conveying the Project or any portion thereof provides that such conveyance is subject to this Agreement.
- (c) The Owner covenants to obtain the consent of any recorded lienholder on the Project to this Agreement and such consent shall be a condition precedent to the issuance of Internal Revenue Service Form 8609 constituting final allocation of the Credit.

SECTION 3 - REPRESENTATIONS, COVENANTS AND WARRANTIES OF THE OWNER.

The Owner hereby represents, warrants and covenants that:

- (a) The Owner (i) is a Limited Partnership duly organized under the laws of the State of Missouri, and is qualified to transact business under the laws of the State, (ii) has the power

and authority to own its properties and assets and to carry on its business as now being conducted (and as now contemplated) by this Agreement and the Loan Documents, and (iii) has the full legal right, power and authority to execute and deliver this Agreement and to perform all the undertakings of the Owner hereunder.

(b) The execution and performance of this Agreement and the Loan Documents by the Owner (i) will not violate or, as applicable, have not violated any provision of law, rule or regulation, or any order of any court or other agency or governmental body, state or Federal, and (ii) will not violate or, as applicable, have not violated any provision of any indenture, agreement, mortgage, mortgage note, or other instrument to which the Owner is a party or by which it or its property is bound, and (iii) will not result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature.

(c) The Owner will, at the time of execution and delivery of this Agreement, have good and marketable title to the premises constituting the Project free and clear of any lien or encumbrance, except the encumbrances created pursuant to this Agreement, the Loan Documents or other permitted encumbrances.

(d) There is no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending, or, to the knowledge of the Owner, threatened against or affecting it, or any of its properties or rights, which, if adversely determined, would materially impair its right to carry on business substantially as now conducted (and as now contemplated by this Agreement or the Loan Documents) or would materially adversely affect its financial condition.

(e) The project constitutes or will constitute a qualified low-income building or qualified low-income project, as applicable, as defined in Section 42 of the Code and applicable regulations.

(f) Each unit in the Project contains complete facilities for living, sleeping, eating, cooking and sanitation (unless the Project qualifies as a single-room occupancy project or transitional housing for the homeless) which are to be used on other than a transient basis.

(g) During the term of this Agreement, all units subject to the Credit shall be leased and rented or made available to members of the general public who qualify as Low-Income Tenants (or otherwise qualify for occupancy of the low-income units) under the applicable election specified in Section 42(g) of the Code.

(h) The Owner agrees to comply fully with the requirements of the Fair Housing Act as it may from time to time be amended.

(i) During the term of this Agreement, the Owner covenants, agrees and warrants that each low-income unit is and will remain suitable for occupancy.

(j) Subject to the requirements of Section 42 of the Code, and this Agreement, the Owner may sell, transfer or exchange the entire Project at any time, but the Owner shall notify in writing and obtain the consent from any buyer or successor or other person acquiring the Project or any interest therein that such acquisition is subject to the requirements of this Agreement and to the requirements of Section 42 of the Code and applicable regulations. This provision shall not act to waive any other restriction on sale, transfer or exchange of the Project or any low-income portion of the Project. The Owner agrees that the Authority may void any sale, transfer or exchange of the Project if the buyer or successor or other person fails to assume in writing the requirements of this Agreement and the requirements of Section 42 of the Code.

(k) The Owner agrees to notify the Authority in writing of any sale, transfer or exchange of the entire Project or any low-income portion of the Project.

(l) The Owner shall not demolish any part of the Project or substantially subtract from any real or personal property of the Project or permit the use of any residential rental unit for any purpose other than rental housing during the term of this Agreement unless required by law.

(m) The Owner represents, warrants and agrees that if the Project, or any part thereof, shall be damaged or destroyed or shall be condemned or acquired for public use, the Owner will use its best efforts to repair and restore the Project to substantially the same condition as existed prior to the event causing such damage or destruction, or to relieve the condemnation, and thereafter to operate the Project in accordance with the terms of the Loan Documents.

(n) The Owner warrants that it has not and will not execute any other agreement with provisions contradictory to, or in opposition of, the provisions hereof, and that in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith.

(o) The Owner shall not sell, transfer to or exchange with any person any portion of the building to which this Agreement applies unless all of the building to which this Agreement applies is disposed of to such person.

(p) During the term of this Agreement the Owner shall not evict or terminate the tenancy of any existing tenant of any low-income unit other than for good cause and shall not increase the gross rent of any such unit above the maximum allowed under the Code or as may be approved by the Authority from time to time with respect to any such low-income unit.

SECTION 4 - INCOME RESTRICTIONS; RENTAL RESTRICTIONS.

The Owner represents, warrants and covenants throughout the term of this Agreement and in order to satisfy the requirements of Section 42 of the Code ("Section 42 Occupancy Restrictions") that:

- (a) (1) _____ At least 20% or more of the residential units in the Project are both rent-restricted and occupied by individuals whose income is 50% or less of area median income; or
- (2) XX _____ At least 40% or more of the residential units in the Project are both rent restricted and occupied by individuals whose income is 60% or less of area median income.

(Check applicable percentage election, above)

(b) The determination of whether a tenant meets the low-income rental requirements shall be made by the Owner at least annually on the basis of the current income of such Low-Income Tenant. The Owner shall prepare and keep on file with the Owner's records for later review by MHDC or the Internal Revenue Service ("IRS"), the income certification for each low-income tenant on the form shown as Exhibit C to this Agreement, or on a form substantially similar to Exhibit C as may be approved, from time to time by MHDC.

(c) The determination of whether a unit meets the low-income rental requirements shall be made by the Owner at least annually on the basis of the current rental information of such low-income unit. The Owner shall prepare the unit certification for each low-income unit on the form shown as

Exhibit D of this Agreement, or on a substantially similar form approved by MHDC, and maintain this information in file for later review.

SECTION 5 - MHDC OCCUPANCY RESTRICTIONS.

This Section is intended to make enforceable those extended use covenants, if any, and base rents which the Owner represented to the Authority during the application process. Attached as Exhibit E are the agreed upon provisions for the initial base rents and any extended use period for the Project.

The Owner represents, warrants and covenants throughout the term of this Agreement that for up to one year following the date a qualified building in the Project is placed in service, the maximum initial base rent for the low-income units will be no higher than the base rent represented to Missouri Housing Development Commission in the Owner's application, all as shown in "Exhibit E" of this Agreement. The base rent is considered to be the total monthly amount paid by the Tenant to the Owner, or any amount paid to the Owner on behalf of the Tenant in the form of a rental assistance. The Owner further agrees to limit any increases to those approved by Missouri Housing Development Commission upon an annual request.

The Owner ~~(hereby elects)~~ (does not elect) to extend the low-income use and rental restrictions for 0 years beyond the close of the initial fifteen (15) year compliance period (which extended time period is hereinafter referred to as the "Extended Use Period"), and ~~thereby waives~~ (does not waive) Owner's right to early termination at the end of the initial fifteen (15) year compliance period.

The MHDC Occupancy Restrictions are filed with the Secretary of State, State of Missouri, from time to time during the term of this Agreement and shall also commence with and remain in place for the term of this Agreement.

SECTION 6 - TERM OF AGREEMENT.

(a) Except as hereinafter provided, this Agreement, the Low-Income use and rental restrictions and the MHDC Occupancy Restrictions specified herein shall commence with the first day of the initial fifteen (15) year compliance period in which any building which is part of the Project is placed in service and shall end on the date which is 15 years after the close of the initial fifteen (15) year compliance period.

(b) Notwithstanding subsection (a), above, this Agreement, with respect to any building which is part of this Project, shall terminate:

- (1) On the date the building is acquired by foreclosure or instrument in lieu of foreclosure unless the Secretary of the Department of Housing and Urban Development determines that such acquisition is part of an arrangement with the taxpayer, the purpose of which is to terminate such period; or
- (2) On the last day of the one year period beginning on the date:
 - (i) after the 14th year of the initial fifteen (15) year compliance period, if such initial compliance period is not extended in Section 5, above; or

(ii) after the 0 year of the Extended Use Period, if the initial fifteen (15) year compliance period has been extended as set forth in Section 5, above;

always provided, however, the Owner has properly requested the Authority to assist Owner in procuring a "Qualified Contract" for the acquisition of the low-income portion of any building or buildings which are a part of the Project, and further provided the Authority is unable to present a Qualified Contract within said one year period described in Section 2 (a) or (b), above.

Note: For the purpose of later determining the "adjusted investor equity" in the Project, Authority acknowledges receipt of Owner's claim of investment of any initial cash equity in the sum of \$ 1,281,444 at the time of this agreement.

(c) Notwithstanding subsection (b) above, the Low-Income use and rental restrictions and MHDC Occupancy Restrictions shall continue for a period of three years following the termination of the Extended Use Period pursuant to the procedures specified in subsection (b) above. During such three year period, the Owner shall not evict nor terminate the tenancy of any existing tenant of any low-income unit other than for good cause, and shall not increase the gross rent above the maximum allowed under the Code with respect to such low-income unit.

SECTION 7 - ENFORCEMENT OF MHDC OCCUPANCY RESTRICTIONS.

(a) The Owner shall permit, during normal business hours and upon reasonable notice, any duly authorized representative of the Authority, or the IRS, to inspect any books and records of the Owner regarding the Project with respect to the incomes of Low-Income Tenants which pertain to compliance with the MHDC Occupancy Restrictions specified in this Agreement.

(b) The Owner shall submit a copy of the Annual Development Certification of Continuing Compliance shown as Exhibit B to this Agreement together with the Occupancy Report shown as Exhibit B2, to MHDC annually, or as required by MHDC in order to monitor compliance with the provisions specified in this Agreement and IRS Section 42 as amended.

(c) The Owner shall submit any other information, documents or certifications requested by MHDC which MHDC shall deem reasonably necessary to substantiate the Owner's continuing compliance with the provisions of the MHDC Occupancy Restrictions specified in this Agreement.

SECTION 8 - ENFORCEMENT OF SECTION 42 OCCUPANCY RESTRICTIONS.

(a) Owner acknowledges receipt of and familiarity with Authority's new requirements and procedures for monitoring compliance with low-income housing credits under Section 42 (m)(1)(B)(iii) of the Code and under new Section 1.42-5 of the Internal Revenue Service monitoring compliance Regulations promulgated thereunder, and Owner agrees to comply with the requirements of the Authority, as now or hereafter issued from time to time, for monitoring compliance of the Project with the requirements of Section 42 of the Code.

(b) The Owner covenants that it will not knowingly take or permit any action that would result in a violation of the requirements of Section 42 of the Code and any applicable regulations thereunder or herein contained. Moreover, Owner covenants to take any lawful action (including amendment of this Agreement as may be necessary, in the opinion of the Authority) to comply fully with the Code

and with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the United States Department of the Treasury, or the Internal Revenue Service, or the Department of Housing and Urban Development or the Authority from time to time pertaining to Owner's obligations under Section 42 of the Code and affecting the Project.

(c) The Owner acknowledges that the primary purpose for requiring compliance by the Owner with the restrictions provided in this Agreement is to assure compliance of the Project and the Owner with Section 42 of the Code and the applicable regulations. AND BY REASON THEREOF, THE OWNER IN CONSIDERATION FOR RECEIVING LOW-INCOME HOUSING CREDITS FOR THIS PROJECT HEREBY AGREES AND CONSENTS THAT THE AUTHORITY AND TO THE EXTENT PERMITTED IN SECTION 42(h)(6)(B)(ii) (1990) ANY INDIVIDUAL WHO MEETS THE INCOME LIMITATION APPLICABLE UNDER SECTION 42 (WHETHER PROSPECTIVE, PRESENT OR FORMER OCCUPANT) SHALL BE ENTITLED, FOR ANY BREACH OF THE PROVISIONS HEREOF, AND IN ADDITION TO ALL OTHER REMEDIES PROVIDED BY LAW OR IN EQUITY, TO ENFORCE BY SPECIFIC PERFORMANCE ALL OF THE OWNER'S OBLIGATIONS UNDER THIS AGREEMENT IN A STATE COURT OF COMPETENT JURISDICTION. The Owner hereby further specifically acknowledges that the beneficiaries of the Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of any default hereunder.

(d) The Owner hereby agrees that the representations and covenants set forth herein may be relied upon by the Authority and all persons interested in Project compliance under Section 42 of the Code and the applicable regulations.

(e) The Owner agrees that if at any point following execution of this Agreement, Section 42 of the Code or regulations implementing said Section requires the Authority to monitor the Section 42 Occupancy Restrictions, or, alternatively, the Authority chooses to monitor Section 42 Occupancy Restrictions or MHDC Occupancy Restrictions, the Owner will take any and all actions reasonably necessary and required by the Authority to substantiate the Owner's compliance with the Section 42 Occupancy Restrictions or MHDC Occupancy Restrictions and will pay a reasonable fee to the Authority for such monitoring activities performed by the Authority.

SECTION 9 - MISCELLANEOUS.

(a) Successors Bound. This Agreement and the covenants and conditions contained herein shall run with the land and shall bind, and the benefits shall inure to, respectively, the Owner and its successor and assigns and all subsequent owners of the Project or any interest therein, the Authority and its successors and assigns, for the period specified in Section 6(a) hereof unless terminated sooner pursuant to Section 6(b) hereof.

(b) Interpretation. Any terms not defined in this Agreement shall have the same meaning as terms defined in Section 42 of the Code and the Treasury Regulations promulgated thereunder.

(c) Amendment. The Owner and MHDC agree that they will take all actions necessary to effect amendment of this Agreement as may be necessary to comply with the Code and any and all applicable rules, regulations, policies, procedures, rulings, or other official statements pertaining to the Credit.

(d) Severability. The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.

(e) Notices. All notices to be given pursuant to this Agreement shall be in writing and shall be deemed given when mailed to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate in writing.

To the Authority: Missouri Housing Development Commission
4625 Lindell, Suite 500
St. Louis, MO 63108

Attention: Low-Income Housing Credit Program

To the Owner: Branson Christian County II, L.P.
P.O. Box 7688
Columbia, MO 65205

The Commission, and the Owner, may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

(f) Governing Law. This Agreement shall be governed by the laws of the State of Missouri and, where applicable, the laws of the United States of America.

(g) Project Decertification. Notwithstanding anything in this entire agreement to the contrary, failure of the Owner to comply fully with the Code, the covenants and agreements contained herein or with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the United States Department of the Treasury or the Internal Revenue Service or the Authority FROM TIME TO TIME PERTAINING TO THE OBLIGATIONS OF THE OWNER AS SET FORTH THEREIN OR HEREIN, AUTHORITY MAY, AND IN ADDITION TO ALL OF THE REMEDIES PROVIDED BY LAW OR IN EQUITY, REQUEST THE IRS TO DECERTIFY THE PROJECT FOR LOW-INCOME HOUSING TAX CREDITS AND TO IMMEDIATELY COMMENCE RECAPTURE OF THE TAX CREDIT DOLLARS HERETOFORE ALLOCATED TO THE PROJECT.

(h) Survival of Obligations. The obligations of the Owner as set forth herein and in the Application shall survive the allocation of Tax Credit Dollars and shall not be deemed to terminate or merge with the awarding of the allocation, or the execution, delivery or recording of this agreement.

(i) Subordination of Agreement. This Agreement and the restrictions hereunder are subordinate to the loan and loan documents, if any, on the Project except insofar as Section 42 requires otherwise (relating to the three-year vacancy control during the extended use period).

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their respective duly authorized representatives, as of the day and year first written above.

"OWNER"

Branson Christian County II, L.P.

By [Signature]

Printed Name Jeffrey E. Smith

"AUTHORITY"

Missouri Housing Development Commission

[Signature]
Steve K. Sillimon

ACKNOWLEDGMENT

STATE OF Missouri)
CITY OF Columbia)ss.
COUNTY OF BOONE)

On this 13th day of October, 1994, before me personally appeared Jeffrey E. Smith, to me known to be the person described in and who executed the foregoing instrument as the OWNER of BLANSON Christian County II, L.P., and acknowledged that he executed the same as the free act and deed of General Partner and that the said Jeffrey E. Smith is acting for and on behalf of BLANSON Christian County II, L.P.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the City and State aforesaid, the day and year first above written.

Victoria Hagus
Notary Public
Printed Name Victoria Hagus

County Commissioned in BOONE
My Commission Expires 11/3/94

STATE OF Missouri)
CITY OF Kansas City)
COUNTY OF Jackson)

On this 3rd day of October, 1994, before me appeared Steve K. Sillimon known to me personally and known to me to be the duly appointed Authorized Agent and the person who executed the aforesaid instrument by virtue of the authority vested in him by Chapter 215, R.S.Mo., 1986, as amended, and acknowledged that he executed the aforesaid instrument for an on behalf of the Missouri Housing Development Commission for the purpose therein expressed.

GIVEN under my hand and seal of office this 3rd day of October, 1994..

Jane Anderson
Notary Public- Jane Anderson

My Commission Expires: June 3, 1995
Commissioned in Jackson County

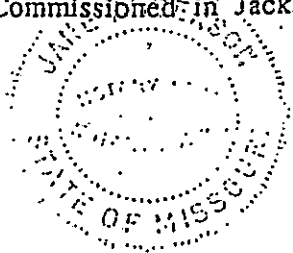


EXHIBIT A

All of Lot Fourteen (14) of the Final Plat of Nixa City Center South Phase 4, Lot 14, according to plat which is filed for record in the Recorder's Office, Christian County, Missouri, in Plat Book "G" at Page 438.

<u>Building</u>	<u>Address</u>	<u>BIN#</u>
1	<u>168-198 S. Truman Blvd. Building B-1, Nixa, MO 65714</u>	<u>MO-94-00002</u>
2	<u>252-282 S. Truman Blvd. Building B-2, Nixa, MO 65714</u>	<u>MO-94-00003</u>
3	<u>350-396 S. Truman Blvd. Building B-3, Nixa, MO 65714</u>	<u>MO-94-00004</u>
4	_____	_____
5	_____	_____
6	_____	_____
7	_____	_____
8	_____	_____
9	_____	_____
10	_____	_____
11	_____	_____
12	_____	_____

EXHIBIT B

Annual Development Certification of Continuing Compliance

Project Name: _____ LIHTC No. _____

Federal B.I.N.(s) _____ through _____

Certification Period: From _____ through _____

The Undersigned, _____, on behalf of _____ (the "Owner"), hereby certified under penalty of perjury that the above referenced Project met the following requirements as shown in the final monitoring regulations in the Federal Register/Vol. 57, No. 171/Wednesday, September 2, 1992, Dept. of the Treasury, Internal Revenue Service, 26 CFR Part 1 and 602:

- 1. The Project met the requirements of the 20-50 test under Section 42(g)(1)(A), or the 40-60 test under Section 42(g)(1)(B), or the 15-40 test under Sections 42(g)(4) and 142(d)(4)(B) for "deep rent skewed" Projects, whichever minimum set-aside is applicable: (check one) 20-50 40-60 15-40
- 2. The Owner has received an annual income certification and documentation to support the certification, and a unit certification from each low-income tenant: yes no
- 3. Each low-income unit in the Project was rent restricted under Section 42(g)(2): yes no
- 4. All units in the Project were for use by the general public and were used on a nontransient basis: yes no
- 5. Each building in the Project was suitable for occupancy, taking into account local health, safety and building codes: yes no
- 6. There was no change in the eligible basis (as defined in Section 42(d)) of any building in the Project: yes no. If "no", state the nature of the change: _____
- 7. All tenant facilities included in the eligible basis under Section 42(d) of any building in the Project, such as swimming pools, other recreational facilities and parking areas, were provided on a comparable basis without charge to all tenants in the building: yes no
- 8. If a low-income unit in the Project became vacant during the year, reasonable attempts were made to rent that unit to tenants having a qualifying income and while the unit was vacant no units of comparable or smaller size were rented to tenants not having a qualifying income: yes no
- 9. If the income of tenants of a low-income unit in the Project increased above the limit allowed in Section 42(g)(2)(D)(ii), the next available unit of comparable or smaller size in the Project was rented to tenants having a qualifying income: yes no

Exhibit B
(continued)

10. The rent collected during the period of this certification for the low-income units was either approved by Missouri Housing Development Commission during the application period or as a result of an annual request from the Owner per the provisions of Section 5 of the declaration of land use restriction covenants for low-income housing tax credits which was filed of record in the county recorder's office for the referenced Project: ___yes ___no

If "no", indicate the highest monthly per unit rent that was collected for the various bedroom sizes of the low-income units during this period:

0-BR ___ 1-BR ___ 2-BR ___ 3-BR ___ 4-BR ___ 5-BR ___

11. If this Project was exempt from compliance reviews because of:

___ Financing under FmHA 515 Program;

___ 50% or more of the aggregate basis being financed with proceeds of obligations, the interest on which is exempt from tax under Section 103 of the Code;

The Owner certifies that the Project complied with the requirements for FmHA assistance or tax-exempt financing, as applicable, and that the buildings in the Project also met the minimum set-aside, income, rent and suitability-for-occupancy requirements of Section 42. ___yes ___no

If "no", or if the Owner of an exempted Project could not certify affirmatively to one or more of certifications 1-10, please explain the reason(s) below:

In witness whereof, the Owner has caused this certification to be duly executed in its name on this ___ day of _____, 1993.

Legal Name of Owner

By: _____
Name
Title:

State of Missouri)
)ss.
County of Jackson)

Signed and sworn to before me, the undersigned authority, on this ___ day of _____, 1993.

Notary Public

My Commission Expires:

EXHIBIT B2

Occupancy Report
Month/Year _____

Project LIHTC # _____ Federal B.I.N. _____

Building Address _____

Report prepared by: _____

Phone number: _____

Total number of residential units in the building _____

Total number of LIHTC units in the building _____

If the building contains any areas that are not residential (laundry, or other tenant facilities) described the character of the area(s): _____

Compliance monitoring regulations require that the owner keep the first year occupancy records (certifications, etc.) of this building for six years beyond the tax filing date of the final year of the development's compliance period. All other year occupancy records are to be retained for at least six years after the due date (with extensions) for filing federal income tax for that year.

LIHTC No. _____

EXHIBIT C

TENANT INCOME CERTIFICATION

Building Name _____ Initial Certification _____
 Assigned Unit No. _____ Bedroom Size _____ Annual Recertification _____

PART 1 - HOUSEHOLD COMPOSITION

*Member No.	Last Name	First Name	**Race/National Origin of Tenant (enter code)	Relationship to Head	Age	Occupation	Full-Time Student, Disabled, Handicapped?
Head			/ /				
2			/ /				
3			/ /				

PART 2 - PROJECTED HOUSEHOLD INCOME FOR NEXT TWELVE-MONTH PERIOD***

*Member No	Gross Salary or Wages	Net Self-Employment Income	Rental Inc., Interest, Stock Div.	Retirement, Pension, Annuities	Social Security	Unemployment Disability Compensation	Alimony Child Support	Other
Head								
2								
3								

COMBINED TOTAL INCOME FOR ALL HOUSEHOLD MEMBERS: \$ _____

* Attach additional sheets if necessary to provide information on additional household members:

** 1/ White, non-Hispanic 2/ Black, non-Hispanic 3/ Asian, Pacific Island 4/ American Indian - Alaskan Native 5/ Hispanic

*** Give projections of future household earnings for the next twelve-month period based on current earnings or benefits. Income must include at least that percentage of net family assets based on HUD-determined passbook savings rate. Include under "Other": withdrawal of cash or assets exceeding amount invested. Do not include: (1) income from family members under age 18; (2) payments for care of foster children; (3) medical expense reimbursements; (4) amount of educational scholarships used for tuition or books; (5) income of live-in aide who provides essential care to a family member; (6) lump sum inheritances, insurance, or worker's compensation settlements or bodily injury or property damage; (7) HUD training program payments; or (8) gifts.

PART 3 - TENANT'S CERTIFICATION

I/We certify that all information I/we have provided for the purpose of completing this form is true and complete to the best of my/our knowledge and belief.

Head of Household _____ Date _____ Spouse/Co-Head _____ Date _____

PRIVACY ACT NOTICE: This information is to be used by the agency collecting it in determining whether you qualify as a prospective mortgagor or borrower under its program. It will not be disclosed outside the agency without your consent except to your employer(s) for verification of employment and as required and permitted by law. You do not have to give us this information, but if you do not your application for approval as a prospective mortgagor or borrower may be delayed or rejected. The information requested in this form is authorized by Title 38, U.S.C., Chapter 37 (if VA); by 12 U.S.C., Section 1701 et seq. (if HUD/FHA); by 42 U.S.C., Section 1452b (if HUD/CPD); and Title 42, U.S.C., 1471 et seq., or 7 U.S.C., 1921 et seq. (if U.S.D.A., FmHA).

VETERANS ADMINISTRATION,
U.S.D.A., FARMERS HOME ADMINISTRATION, AND
U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT -
(Community Planning and Development, and
Housing - Federal Housing Commissioner)

**REQUEST FOR VERIFICATION
OF EMPLOYMENT**

INSTRUCTIONS

LENDER OR LOCAL PROCESSING AGENCY (LPA): Complete Items 1 through 7. Have the applicant complete Item 8. Forward the completed form directly to the employer named in Item 1. **EMPLOYER:** Complete either Parts II and IV or Parts III and IV. Return form directly to the Lender or Local Processing Agency named in Item 2 of Part I.

PART I - REQUEST

1. TO: (Name and Address of Employer)		2. FROM: (Name and Address of Lender or Local Processing Agency)	
3. I certify that this verification has been sent directly to the employer and has not passed through the hands of the applicant or any other interested party. (Signature of Lender, Official of LPA, or FmHA Loan Packager)		4. TITLE OF LENDER, OFFICIAL OF LPA, OR FmHA LOAN PACKAGER	5. DATE 6. HUD/FHA/CPD, VA, OR FmHA NO.
7. NAME AND ADDRESS OF APPLICANT		I have applied for a mortgage loan or a rehabilitation loan and stated that I am/was employed by you. My signature in the block below authorizes verification of my employment information. 8. EMPLOYEE'S IDENTIFICATION SIGNATURE OF APPLICANT	

PART II - VERIFICATION OF PRESENT EMPLOYMENT

EMPLOYMENT DATA		PAY DATA			
9. APPLICANT'S DATE OF EMPLOYMENT	12A. BASE PAY (Current) \$ _____ <input type="checkbox"/> Annual \$ _____ <input type="checkbox"/> Hourly \$ _____ <input type="checkbox"/> Monthly \$ _____ <input type="checkbox"/> Weekly \$ _____ <input type="checkbox"/> Other (Specify)	FOR MILITARY PERSONNEL ONLY			
10. PRESENT POSITION		Type	Monthly Amount		
11. PROBABILITY OF CONTINUED EMPLOYMENT		BASE PAY	\$		
13. IF OVERTIME OR BONUS IS APPLICABLE, IS ITS CONTINUANCE LIKELY? OVERTIME <input type="checkbox"/> Yes <input type="checkbox"/> No BONUS <input type="checkbox"/> Yes <input type="checkbox"/> No	12B. EARNINGS			FLIGHT OR HAZARD	\$
	Type	Year to Date	Past Year	CLOTHING	\$
	BASE PAY	\$	\$	QUARTERS	\$
	OVERTIME	\$	\$	PRO PAY	\$
	COMMISSIONS	\$	\$	OVERSEAS OR COMBAT	\$
	BONUS	\$	\$		

14. REMARKS (If paid hourly, please indicate average hours worked each week during current and past year)

PART III - VERIFICATION OF PREVIOUS EMPLOYMENT

15. DATES OF EMPLOYMENT	16. SALARY/WAGE AT TERMINATION PER <input type="checkbox"/> YEAR <input type="checkbox"/> MONTH <input type="checkbox"/> WEEK			
	BASE PAY	OVERTIME	COMMISSIONS	BONUS
	\$	\$	\$	\$
17. REASONS FOR LEAVING	18. POSITION HELD			

PART IV - CERTIFICATION

Federal statutes provide severe penalties for any fraud, intentional misrepresentation, or criminal connivance or conspiracy purposed to influence the issuance of any guaranty or insurance by the VA Administrator, the U.S.D.A., FmHA Administrator, the HUD/FHA Commissioner, or the HUD/CPD Assistant Secretary.

19. SIGNATURE	20. TITLE OF EMPLOYER	21. DATE
---------------	-----------------------	----------

LIHTC No. _____

EXHIBIT D
UNIT CERTIFICATION

The undersigned hereby (certify)(certifies) that:

1. This Unit Certification is being delivered in connection with the undersigned's application for occupancy of Apartment No. _____ in the _____ project. The address of the particular building where the unit is located is _____, in the City of _____, County of _____, State of Missouri and has been issued Building Identification Number of _____ by Missouri Housing Development Commission.

2. The information indicated below is an accurate description of the physical and financial conditions of the unit as of the date occupied by the _____ household.

- (a) Term of Lease: _____
- (b) Number of Rooms _____ Bedrooms _____ Baths _____
- (c) Approximate square feet of rental area: _____
- (d) Equipment (check if applicable):

Stove _____	Air Cond. _____	Garage _____	Refrigerator _____
Carpet _____	Clubhouse _____	Dishwasher _____	Drapes/Blinds _____
Pool _____	Disposal _____	Fireplace _____	Washer/Dryer _____
Other: _____			

(e) Services included in rent: _____

(f) Utilities (indicate if paid by Owner):

Heating _____	Hot Water _____
Air Cond. _____	Cold Water _____
Cooking _____	Sewer _____
Lighting _____	Trash _____

(g) The following boxes should be checked if the parties agree that the unit appears to satisfy local health, safety and building codes:

Owner _____ Tenant _____

3. List the following financial information for the unit:

- (a) Actual rent charged for the unit _____.
- (b) Actual rent paid by Tenant _____.
- (c) Amount of rental assistance, if any _____.
- (d) Type of rental assistance, if any _____.
- (e) Estimated utility allowance _____.

"OWNER"

"TENANT"

By: _____

Date

Date

Date

EXHIBIT "E"

EXTENDED USE AND INITIAL BASE RENT PROVISIONS

The Owner has irrevocably elected to extend the low-income use and rental restrictions for N/A years beyond the close of the initial fifteen (15) year compliance period. The following base rents for the low-income units which were represented to Missouri Housing Development Commission will remain in effect for one year after the date a qualified building in the project is placed in service, and may only be increased upon application to and receipt of written approval from Missouri Housing Development Commission.

1 Studio _____
Size A _____
Size B _____

1 Bedroom \$320.
Size A _____
Size B _____

4 Bedroom _____
Size A _____
Size B _____

2 Bedroom \$370.
Size A _____
Size B _____

5 Bedroom _____
Size A _____
Size B _____

3 Bedroom _____
Size A _____
Size B _____

6 Bedroom _____
Size A _____
Size B _____

**Branson Christian County II, LP
d/b/a Abbey Orchard II
10-0.6-14-003-001-001.002**

EXHIBIT E

Maryville Formula Case Law

Justia › U.S. Law › Case Law › Missouri Case Law › Missouri Court of Appeals Decisions › 2002 ›
Maryville Properties, LP v. Nelson

Maryville Properties, LP v. Nelson

Annotate this Case

83 S.W.3d 608 (2002)

MARYVILLE PROPERTIES, L.P., Appellant, v. Pat NELSON, Assessor, Nodaway County, MO, Respondent.

No. WD 60335.

Missouri Court of Appeals, Western District.

June 25, 2002.

Rehearing Denied July 25, 2002.

Application for Transfer Denied September 24, 2002.

*610 Cathy Joy Pitman Dean, Kansas City, for appellant.

Scott W. Ross, Maryville, for respondent.

RONALD R. HOLLIGER, Judge.

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

Commissioner 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 § 137.010, which defines, inter alia, two constitutionally mandated classifications of taxable property: real property and tangible personal property. Nevertheless, § 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." **611 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. § 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.

*612 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. § 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, § 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;"

§ 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. Art. 10, § 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. § 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, 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." § 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 *614 "[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.[1] 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.[2] 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, *615 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.[3] 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).[4] 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 "tax credits are intangible personal property and thus are not subject to real property taxation." *Cascade Court Ltd. P'ship v. Noble*, 105 Wash.App. 563, 20 P.3d 997, 1002 (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*. *616 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.[5]

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 *617 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.

HAROLD L. FLOWENSTEIN, Presiding Judge, and THOMAS H. NEWTON, Judge, concur.

NOTES

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

[2] 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.

[3] 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.

[4] 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.

[5] 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.

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<h2 style="margin: 0;">Lake Ozark Village v. Whitworth (Camden)</h2>				

April 29th, 2004

LAKE OZARK VILLAGE,)

)

Complainant,)

)

v.) Appeals Number 97-47000, 99-47003

) and 01-47002

EDDIE WHITWORTH, ASSESSOR,)

CAMDEN COUNTY, MISSOURI,)

)

Respondent.)

DECISION AND ORDER

HOLDING

The methodology set forth in *Maryville Properties v. Nelson*, State Tax Commission Appeal No. 97-74500, as modified by the Western District Court of Appeals, is the correct methodology to determine market value of subsidized properties. The values established for the subject property for tax years 1997 through 2002 are **SET ASIDE**. The market value for the subject property on January 1, 1997 and January 1, 1998 was \$813,170 (assessed value \$154,500). The market value for the subject property on January 1, 1999 and January 1, 2000 was \$577,220 (assessed value \$109,670). The market value for the subject property on January 1, 2001 and January 1, 2002 was \$602,770 (assessed value \$114,530).

ISSUE

The Commission takes this appeal to determine the true value in money for the subject property on January 1, 1997, January 1, 1999, and January 1, 2001.

SUMMARY

On November 24, 2003, the above-entitled matter came on regularly for hearing in front of Hearing Officer Luann Johnson in the Camden County Courthouse, Camdenton, Missouri. Complainant was represented by counsel, Cathy Dean. Respondent was represented by counsel, William Icenogle. Both parties submitted post-hearing briefs on January 30, 2004.

The issue on appeal was the true market value of a 24 unit subsidized housing complex for tax years 1997 and 1998; tax years 1999 and 2000; and tax years 2001 and 2002. All exhibits not specifically objected to on the record were entered into evidence.

At the close of the hearing, counsel for Complainant objected to the introduction of a review appraisal prepared by Mr. Loren K. Woodard for use by Respondent as a rebuttal exhibit. Complainant's objection to the introduction of the exhibit was taken under advisement. Said exhibit is not admissible into evidence inasmuch as it was not authenticated by Mr. Woodard at hearing and was not used to cross-examine Complainant's expert.

FINDINGS OF FACT

Jurisdiction Is Proper

1. Jurisdiction over these appeals is proper. The taxpayer timely appealed to the State Tax Commission from the decision of the Camden County Board of Equalization.

Maryville Properties Methodology Applies

2. These appeals revisit the issue of the proper way to value subsidized housing developments. The subject property, parcel number 09-3.0-06.1-000.0-001-058-004, is a 24-unit apartment complex constructed under the same subsidized housing section as Maryville Properties. Like the Maryville Properties case, a portion of the units must be maintained for low-income tenants; the owners are subject to program record keeping requirements; and are eligible to receive a 7% interest reduction on their loan. And, as in Maryville Properties, the promissory note between the partners and the government is a non-recourse loan providing:

ANO PARTNER, EITHER GENERAL OR LIMITED, WILL HAVE ANY PERSONAL LIABILITY FOR THE PAYMENT OF ALL OR ANY PART OF THE INDEBTEDNESS.@ (Respondent Ex. 6, p. 7).

3. On December 14, 1998, by order of the State Tax Commission, the proceedings concerning the subject property and a number of other similar properties were stayed pending the outcome of Maryville Properties v. Nelson, State Tax Commission appeal No. 97-74500. In order to preserve its appeal rights, in addition to its 1997 and 1998 appeal, the taxpayer timely filed an appeal for tax years 1999, 2000, 2001 and 2002. Those appeals were also stayed by order of the State Tax Commission.

4. A decision was issued by the Hearing Officer and affirmed by the State Tax Commission in the Maryville Properties case in 2000.

5. The decision of the State Tax Commission in the Maryville Properties case was appealed. The Western District Court of Appeals rejected the use of tax credits and accelerated depreciation in calculating market value of subsidized properties, but left the remainder of the State Tax Commission's valuation methodology unaltered. The Missouri Supreme Court denied application for transfer.

6. Official notice is taken of the State Tax Commission decision, and the Court of Appeals decision, in the Maryville Properties case.

Industry Standards Modified

7. Valuation of subsidized housing falls outside the industry standards for determining market value. Generally accepted industry standards define market value as being a value where: AFinancing, if any, is on terms generally available in the Community at the specified date and typical for the property type in its locale; and the price represents a normal consideration for the property sold unaffected by special financing amounts and/or terms, services, fees, costs or credits incurred in the transaction.@ Under the factors commonly considered when determining real property value, we would be required to ignore the benefits, restrictions and unique financing experienced by the subject property. However, in Missouri Baptist Children's Home v. State Tax Commission, 867 S.W.2d 510 (Mo. banc 1993), our Supreme Court effectively modified industry standards and guidelines when it determined that the impact of long-term leases must be considered when determining value.

Likewise, in Maryville Properties v. Nelson, 83 S.W.3d 608 (W.D. 2002), our Court of Appeals indicated that we must consider Aeconomic realities@ when valuing property. That court further held that factors which have a direct impact on the income of the property should be considered. The economic realities which have a direct impact on the income producing capabilities of a subsidized property are: low equity requirements, subsidized income, subsidized interest, above market expenses and non-recourse promissory notes.

Thus, we find that we must reject approaches to value that fail to adequately deal with the unique characteristics of the subject property's financing. Market rents, expenses, yield rates and capitalization rates are of no value when determining the income producing capability of subsidized properties. As long as a property remains subsidized, it can never be valued using traditional industry standards and definitions of fair market value which require that we ignore those financing realities. This will, undoubtedly, create problems for appraisers who are accustomed to valuing property based upon industry standards. However, we cannot ignore the dictates of Missouri Baptist Children's Home and Maryville Properties which, in effect, create a definition of Atrue value@ or Amarket value@ that is outside typical appraisal methodology.

Maryville Properties Methodology

8. With Missouri Baptist Children's Home in mind, the Tax Commission decision in Maryville Properties set forth the methodology for valuing subsidized properties which considers the economic realities of the financing arrangements and the impact of those financing arrangements on the income stream of subsidized housing. Utilization of data derived from something other than the subsidized property fails to consider Aeconomic reality@ and creates a presumption of mis-valuation. Maryville Properties defines the methodology to be employed as follows:

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 the taxes should be included in the capitalization rate.

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 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. (Finding of Fact #23).

Complainant's Discounted Cash Flow Unreliable

9. In the Maryville Properties case, the income approach commonly referred to as the Adiscounted cash flow method@ of valuing subsidized housing was found to be unpersuasive. In the best of circumstances, in order to be valid, a discounted cash flow income approach must be based upon trending substantial historical market data from the subject property or substantially similar properties and must have a very short projection period.

In this case, none of the criteria for a valid discounted cash flow have been met. Although the appraiser mentions income and expenses from 6,750 units (Ex. CC, p. 24), he only uses the actual income and expenses from the subject property and an Aaverage@ vacancy rate rather than actual vacancy rates. He then uses a 9% interest rate instead of 1% actually paid – after interest subsidies (Ex. CC, p. 31-32). Finally, the appraiser attempts to trend income and expenses for 48 years through the year 2044.

Complainant's appraiser asserts that his 15% vacancy rate is an economic reality, but that is simply false. The actual vacancy rate was not 15%.

Complainant's appraiser does not attempt to characterize his 9% capitalization rate as economic reality but counsel asserts that it is the rate necessary to attract capital investment for this type of property. Again, this is not economic reality.

For these reasons, Complainant's discounted cash flow is not persuasive.

Complainant's Income Approach Unreliable

10. Complainant's appraiser also prepared a more traditional income approach to value. Because there are no market sales of similar properties, Complainant's appraiser used a mortgage/equity formula for determining the capitalization rate. In this methodology, Complainant's appraiser did not use the actual interest paid on the subsidized loan but, instead, used a floating rate which he

testified was necessary to account for the buildup of equity. And, suggesting that the subject property was a high-risk investment, Complainant=s appraiser asserted that an equity yield rate of 20% would be required to attract investors.

There is no reliable data to support Complainant=s assertion that the subject property would be considered a high-risk investment or that the loan to value ratio would change. These conclusions are purely speculative.

Finally, there is no evidence that Complainant=s appraiser made any adjustment for the favorable interest rate running with the property or the non-recourse nature of the promissory note.

Complainant=s Sales Comparison Unreliable

11. For whatever reason, subsidized properties do not sell in the open market. Consequently, there is no basis for a sales comparison approach to value. Complainant=s appraiser did attempt a sales comparison approach but utilized unsubsidized sales and attempted to adjust for external and functional obsolescence due solely to the special financing arrangements for the subject property.

In Maryville Properties we specifically found that A financing tools do not create external obsolescence@ (Finding of Fact #5). Similarly, financing tools do not create A functional obsolescence.@ Rent restrictions and management fees do not limit the ability of the apartment complex to function as an apartment complex.

There is no evidence which suggests that the subject property suffers from any functional or external obsolescence. Complainant=s sales comparison approach is wholly conjecture and is not a reliable indicator of value for the subject property.

Complainant=s Cost Approach Unreliable

12. Complainant=s appraiser also attempted to prepare a cost approach to value.

As in the sales approach, Complainant=s appraiser has attempted to use financing tools to justify a A functional obsolescence@ adjustment of \$160,000 and an A external obsolescence@ adjustment of \$160,927. To the extent that Complainant=s appraiser has attempted to use said financing tools as a justification for a reduction in value under his cost approach, his cost approach fails to state the true value of the subject property.

Maryville Properties Methodology Applied

13. Prior to evidentiary hearing, Hearing Officer Luann Johnson supplied the parties with worksheets for calculating value using the Maryville Properties methodology. Said worksheets are identified as Complainant=s Exhibit AA and Respondent=s Exhibit 26.

14. For tax years 1997 and 1998, the assessor valued the property at \$858,684 (assessed value \$163,150). Upon appeal, the Board of Equalization reduced value of \$700,105 (assessed value \$133,020). In his appraisal report, Complainant=s appraiser, Teddy Blaylock, asserts a value of \$360,000 (assessed value \$68,400). Under the Maryville Properties approach to value, the value for the property on January 1, 1997 was \$813,167 (Respondent=s Ex. 26). Although not agreeing with the Maryville Properties methodology, Mr. Blaylock produced a modified version of the Maryville Properties methodology which resulted in a value for the subject property for tax year 1997 of \$622,755 (Complainant Ex. AA).

15. For tax years 1999 and 2000, the assessor valued the property at \$700,100 (assessed value \$133,020). Upon appeal, the Board of Equalization approved the assessor=s value. In his appraisal report, Blaylock asserts a value of \$365,000 (assessed value \$69,350). Under the Maryville Properties approach to value, the value of the property on January 1, 1999 was \$577,218 (Respondent Ex. 26). Under the Blaylock modified version of the Maryville Properties methodology, the value of the subject property on January 1, 1999 was \$491,700 (Complainant Ex. AA).

16. For tax years 2001 and 2002, the assessor valued the property at \$754,900 (assessed value \$143,430). Upon appeal, the Board of Equalization affirmed the assessor=s value. For tax year 2001, Mr. Blaylock asserts a value of \$350,000 (assessed value \$66,500). Under the Maryville Properties approach to value, the value of the property on January 1, 2001 was \$602,772 (Respondent Ex. 26). Under the Blaylock modified version of the Maryville Properties methodology, the value of the subject property on January 1, 2001 was \$375,000 (Complainant Ex. AA).

17. The values calculated by Complainant=s appraiser in his appraisal report and his modified Maryville Properties approach to value are not reliable indicators of market value for the subject property on the various tax days inasmuch as Mr. Blaylock has failed to correctly apply the Maryville Properties methodology.

18. The Respondent=s calculations of value under the Maryville Properties methodology are correct and correctly state the value for the subject property on the various tax days. The market value for the subject property on January 1, 1997 and January 1, 1998 was \$813,170 (assessed value \$154,500). The market value for the subject property on January 1, 1999 and January 1, 2000 was \$577,220 (assessed value \$109,670). The market value for the subject property on January 1, 2001 and January 1, 2002 was \$602,770 (assessed value \$114,530).

19. Correct calculations are set out in Respondent=s Exhibit 26 as follows:

	1997	1999	2001
Income			
Rental Income	\$ 40,786	\$ 45,558	\$ 49,203
Rental Subsidy	\$ 43,612	\$ 45,162	\$ 44,421
Laundry/Vending	\$ 166	\$ 347	\$ 297
Potential Gross Income	\$ 84,564	\$ 91,067	\$ 93,921
Less: Actual Vacancy & Collection	\$ 5,270	\$ 6,198	\$ 11,689

Effective Gross Income	\$ 79,294	\$ 84,869	\$ 82,232
Expenses			
Maintenance & Repair	\$ 6,600	\$ 8,529	\$ 7,075
Utilities	\$ 14,281	\$ 15,111	\$ 13,796
Administrative	\$ 16,233	\$ 21,580	\$ 27,165
Insurance	\$ 2,399	\$ 1,969	\$ 2,646
Reserve for Replacement	\$ 8,113	\$ 15,135	\$ 7,720
Total Expenses	\$ 47,626	\$ 62,324	\$ 58,402
Net Operating Income	\$ 31,668	\$ 22,545	\$ 23,830
Capitalization			
Loan to Value x Actual Interest Rate	.025402	.025402	.025402
Equity x Equity Dividend Rate	.007500	.007500	.007500
Effective Tax Rate	.006042	.006156	.006632
Overall Capitalization Rate	.038944	.039058	.039534
Value	\$ 813,167	\$ 577,218	\$ 602,772
Net Operating Income	(say \$ 813,170)	(say \$577,220)	(say \$602,770)
divided by Overall Capitalization Rate			

CONCLUSIONS OF LAW

Jurisdiction

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, 138.431 RSMo.

Board of Equalization Presumption

There is a presumption of validity, good faith and correctness of assessment by the Board of Equalization. *Hermel, Inc. v. STC*, 564 S.W.2d 888, 895 (Mo. banc 1978); *Chicago, Burlington & Quincy Railroad Co. v. STC*, 436 S.W.2d 650, 656 (Mo. 1968); *May Department Stores Co. v. STC*, 308 S.W.2d 748, 759 (Mo. 1958).

Standard for Valuation

Section 137.115, RSMo, 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. True value in money is defined in terms of value in exchange and not value in use. Mo. Const. Art. X, Section 4(b); *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). It is the fair market value of the subject property on the valuation date. *Hermel, supra*, at 897.

Complainant=s Burden of Proof

In order to prevail, Complainant must present an opinion of market value and substantial and persuasive evidence that the proposed value is indicative of the market value of the subject property on the tax day. *Hermel, supra*, at 897. Substantial evidence can be defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. See *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).

Duty to Investigate

In order to investigate appeals filed with the Commission, the Hearing Officer has the duty to inquire of the owner of the property or of any other party to the appeal regarding any matter or issue relevant to the valuation, subclassification or assessment of the property. The Hearing Officer=s decision regarding the assessment or valuation of the property may be based solely upon her inquiry and any evidence presented by the parties, or based solely upon evidence presented by the parties. Section 138.430.2, RSMo.

Weight to be Given Evidence

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 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. *St. Louis County v. Boatmen's Trust Co.*, 857 S.W.2d 453, 457 (Mo. App. E.D. 1993); *Vincent by Vincent v. Johnson*, 833 S.W.2d 859, 865 (Mo. 1992); *Beardsley v. Beardsley*, 819 S.W.2d 400, 403 (Mo. App. 1991); *Curnow v. Sloan*, 625 S.W.2d 605, 607 (Mo. banc 1981).

Opinion Testimony by Experts

If specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert on that subject, by knowledge, skill, experience, training, or education, may testify thereto.

The facts or data upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing and must be of a type reasonably relied upon by experts in the field in forming opinions or inferences upon the subject and must be otherwise reliable, the facts or data upon which the expert relies need not be admissible in evidence. Section 490.065, RSMo; *Courtroom Handbook on Missouri Evidence*, Wm. A. Schroeder, Sections 702-705; pp. 325-350; *Wulfing v. Kansas City Southern Industries, Inc.*, 842 S.W.2d 133 (Mo. App. E.D. 1992).

Commission Determines Methodology

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).

Official Notice

Agencies shall take official notice of all matters of which the courts take judicial note. Section 536.070(6), RSMo.

Courts will take judicial notice of their own records in the same cases. *State ex rel. Horton v. Bourke*, 129 S.W.2d 866, 869 (1939); *Barth v. Kansas City Elevated Railway Company*, 44 S.W. 788, 781 (1898). In addition, courts may take judicial notice of records in earlier cases when justice requires – *Burton v. Moulder*, 245 S.W.2d 844, 846 (Mo. 1952); *Knorp v. Thompson*, 175 S.W.2d 889, 894, transferred 167 S.W.2d 205 (1943); *Bushman v. Barlow*, 15 S.W.2d 329, 332 (Mo. banc 1929) – or when it is necessary for a full understanding of the instant appeal. *State ex rel. St. Louis Public Service Company v. Public Service Commission*, 291 S.W.2d 95, 97 (Mo. banc 1956).

DISCUSSION

Proper Methodology

In this case, and all subsequent subsidized housing cases, the correct methodology for valuing subsidized housing projects is the methodology set out in *Maryville Properties*. That methodology is accurate because (1) rent restrictions are considered through the use of actual income rather than market income; (2) additional management requirements and expenses are accounted for through use of actual expenses which are in excess of market expenses; and (3) the actual loan-to-value ratio and the subsidized interest rate demonstrates and accounts for any and all risks involved in the property as well as the benefits flowing to the property. It is economic reality. @

It is within the authority and expertise of the Tax Commission to determine which valuation methodology best represents value in a given situation or for a particular category of properties. *Hermel, supra*. After carefully considering the benefits and risks associated with subsidized housing, the State Tax Commission, in *Maryville Properties*, determined that calculating value based upon actual income, actual expenses, and actual interest and capitalization rates was the best way to recognize all benefits and risks associated with subsidized housing.

Complainant Failed to Meet Burden of Proof

Complainant asserts that the Commission must adopt its appraiser's opinion of value because that is the only evidence presented in this case. However, it is the duty of the Commission to find value and there is more than enough evidence in this case for the Commission to make a determination of value using the *Maryville Properties* methodology. The Commission is not required to adopt the conclusions of the Complainant's appraiser when actual income, actual expenses, actual loan-to-value rates and interest rates are available.

Complainant has failed to present substantial and persuasive evidence in support of its opinion of value. An opinion of value which is based upon improper elements or an improper foundation is without probative value. *Shelby County R-4 School District v. Hermann*, 392 S.W.2d 609, 613 (Sup. 1965). Complainant's appraisal ignores economic realities and, thus, is based upon improper elements and an improper foundation.

Failure to Consider Benefits

Mr. Blaylock made no attempt to calculate the value of the substantial benefits flowing to this property by reason of the favorable financing documents in any of his approaches to value. It is possible to measure the difference in rent obtained from a rent restricted apartment and a non-restricted apartment but that only tells a portion of the story. The benefits of a low interest loan, guaranteed rental subsidies and a non-recourse loan have yet to be measured by an appraiser based upon market-derived data because these properties are not selling. And, without accounting for the benefits associated with the favorable financing and guaranteed income, Mr. Blaylock's calculations under the cost approach, sales approach, and income approach necessarily understate the value of the subject property. Mr. Blaylock's assertions that his adjustments reflect market conditions and economic reality are not well taken.

Discounted Cash Flow Highly Speculative

The discounted cash flow methodology was specifically rejected in the *Maryville Properties* case and we reject it again in this case. To find that a discounted cash flow approach is reliable, the Commission would be required to find that an appraiser can predict a property's income, expense and capitalization rate at a point in the future—in this case, 2044. With substantial verified data it

may be possible to trend or predict income, expenses and capitalization rates in the immediate future. However, a discounted cash flow analysis is extremely speculative. In this case, there is little historical data in that the project came on line in 1995. The tax years in question are 1997, 1999 and 2001. Based upon this very limited information, we again find the discounted cash flow approach to be unreliable and unpersuasive.

Complainant's Maryville Properties Calculations Unreliable

At the Hearing Officer's request, both parties prepared income and expense calculations using the Maryville Properties methodology, although Complainant deviated from the methodology at several points.

Complainant asserts that the Maryville Properties methodology is not the correct way to value property but, with some changes, would not be an unreasonable methodology. Complainant asserts that the vacancy rate should be averaged; that partnership management fees should be included in expenses as a third category of management fees; and that the loan to value ratio should be adjusted annually. Such deviations are inappropriate and misrepresent the value of the subject property.

A calculation of actual income includes an adjustment for actual vacancy rate. Applying an artificial vacancy rate results in an understatement of value. Inasmuch as value is calculated every two years, changes in vacancy rates will automatically result in appropriate changes in value. It is not necessary to speculate about vacancy rates when actual rates are available for use in the Maryville formula.

Partnership management fees are clearly not a management fee of the property. The fact that a partnership may only own one asset does not mean that that asset is responsible for paying the costs of maintaining the partnership.

Finally, Complainant's assertion that a new purchaser would not be able to get a 95% loan for the subject property and might only be able to acquire the property through an assumption of the original loan, is unsubstantiated speculation, is contradicted by the evidence, and is entitled to no weight whatsoever.

Mr. Blaylock testified that, for the Maryville Properties case in 2000, he had spoken with a Mr. Marks from Rural Development and was told that a refinance with a 95% loan would only be available if the property had been completely rehabbed, i.e. made new. (Tr. 15). Mr. Blaylock later testified that Mr. Marks' exact words were "they would only make a 95% loan if the property was substantially rehabbed." (Tr. 58). No evidence was presented which tended to show how Rural Development defined "rehabbed" or which would tend to clarify when a rehab was required. But, for our purposes, the distinction is immaterial.

The subject property was almost new on the original tax day and, at hearing in 2003, Mr. Blaylock testified that it suffered from very little physical deterioration (Tr. 38) and a reserve for replacement was maintained by the partners. In his appraisal report, Mr. Blaylock states that the purpose of the reserve for replacement was to replace roofs, carpets, cabinets, appliances, air conditioning, heating, water heater, tile floors, etc. (Complainant's Ex. CC, p. 25). Even assuming that the government would require rehabilitation, it is obvious from the taxpayer's testimony little rehabilitation is needed and that the funds have already been earmarked for that rehabilitation.

Respondent=s Maryville Properties Calculations Reliable

The decision of the Commission in this case is based upon the formula set forth in Maryville Properties. And, in particular, the calculations made by Respondent. (Respondent=s Ex. 26). Respondent=s calculations precisely follow the methodology set forth in Maryville Properties. The calculations, as presented by Respondent, are accurate and are adopted by the Commission.

ORDER

The assessed valuation for the subject property as determined by the Board of Equalization for the subject tax days is **SET ASIDE**.

The market value for the subject property on January 1, 1997 and January 1, 1998 was \$813,170 (assessed value \$154,500). The market value for the subject property on January 1, 1999 and January 1, 2000 was \$577,220 (assessed value \$109,670). The market value for the subject property on January 1, 2001 and January 1, 2002 was \$602,770 (assessed value \$114,530).

A party may file with the Commission an application for review of this decision within thirty (3) days of the mailing of such decision. The application shall contain specific 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.** Section 138.432 RSMo.

If an application for review of this decision is made to the Commission, any protested taxes presently in an escrow account in accordance with these appeals 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 Camden 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 these appeals. If any or all 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 or Fact or Conclusion of Law shall be so deemed.

SO ORDERED April 29, 2004.

STATE TAX COMMISSION OF MISSOURI

Luann Johnson

Hearing Officer

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**Farmington Associates II et al v. Dan Ward,
Assessor St Francois County**

January 30th, 2015

State Tax Commission of Missouri

FARMINGTON ASSOCIATES II) Appeal No. 11-84005

FARMING ASSOCIATES) Appeal No. 11-84006

Complainants)

-vs-)

DAN WARD, ASSESSOR,)

ST. FRANCOIS COUNTY, MISSOURI)

Respondent.)

DECISION AND ORDER

HOLDING

Decisions of the St. Francois County Board of Equalization are SET ASIDE. The Hearing Officer finds that the only valuation methodology fully presented is the Maryville Formula.

Appeal No.	Parcel No.	True Value	Assessed Value
11-84005	09-70-35-00-000-0016.02	\$1,934,000	\$367,460
11-84006	09-70-35-00-000-0016.00	\$651,660	\$123,815

Complainants are represented by Counsel Richard Dvorak.

Respondent is represented by counsel Patrick King.

ISSUE

The Commission takes this appeal to determine the true value in money for the subject properties on January 1, 2011.

SUMMARY

Subject Property

The subject properties were appealed as Farmington Associates and Farmington Associates II. They are also known as Orchard View and Orchard View II. For purposes of the decision, the properties will be referred to in the order they were constructed as the "first property" (11-84006) and the "second property" (11-84005).

The first property was constructed in 2003. It is 3.49 acres improved with an apartment building consisting of 40 units totaling 40,400 square feet of rentable area. The improvements also include an office/clubhouse which includes a central laundry facility.

The second property was constructed in 2009-2010. It is 3.86 acres improved with an apartment building consisting of 56 units totaling 57,008 square feet of rentable area. The residents of this building have access to all the amenities of the first property.

As to both properties a "Low Income Housing Tax Credit Land Use Restriction Agreement" was recorded at the time of their construction. By the terms of the agreement, Missouri Housing Development Commission (MHDC) allocated low income housing tax credits to the project in exchange for the owner's agreement to be regulated by MHDC. The term of the agreement was for 15 years. The owner agreed the units are to be both rent restricted and occupied by individuals or families whose income is 60% or less of the area median gross income. The owner is allowed to charge up to \$675 per month for 2 bedroom units and \$780 per month for 3 bedroom units. The amount of the tax credits given is unknown.

Exhibits

Exhibit A – An appraisal report was submitted for each property. Both appraisals were marked as Exhibit A. The Exhibit was submitted pursuant to the exchange schedule and admitted into evidence prior to the hearing.

Exhibit B – Written direct testimony of appraiser Kenneth Jagers was submitted in each appeal. In both appeals, the exhibit was marked as Exhibit B. The Exhibit was submitted pursuant to the exchange schedule and admitted into evidence prior to the hearing.

Exhibit C – An amendment to the appraisal report, Exhibit A, was offered immediately prior to going on the record the day of hearing. The amendment was marked Exhibit C. This is not the first time Appraiser Jagers has appeared at a State Tax Commission hearing and presented an amendment at the last hour. Respondent graciously agreed to allow Mr. Jagers to amend his report and Exhibit C was admitted into evidence.

Exhibit 1 – A page from the property record card of the first property submitted pursuant to the exchange schedule and admitted into evidence prior to the hearing.

Exhibit 2 – A page from the property record card of the second property submitted pursuant to the exchange schedule and admitted into evidence prior to the hearing.

Exhibit 3 – Calculation of value using the income approach for both properties submitted pursuant to the exchange schedule and admitted into evidence prior to the hearing.

Exhibit 4 – Written direct testimony of Dan Ward submitted pursuant to the exchange schedule and admitted into evidence prior to the hearing.

Exhibit 5 – Order Approving the Stipulation of the Parties for the first property dated January 6, 2007 admitted into evidence without objection.

Exhibit 6 – Submission to MHDC on the improvements of the subject property. Exhibit was not submitted for admission into evidence.

Exhibit 7 – Application for Building Permit for the second property. Exhibit admitted into evidence without objection.

Exhibit 8 – USPAP 2-2. Exhibit was not submitted for admission into evidence.

Exhibit 9 – Full copy of the property record card of the first property. Exhibit admitted into evidence without objection.

Exhibit 10 - Full copy of the property record card of the second property. Exhibit admitted into evidence without objection.

FINDINGS OF FACT

1. Jurisdiction over this appeal is proper. Complainants timely appealed to the State Tax Commission from the decisions of the St. Francois County Board of Equalization.
2. The property in appeal 11-84005, Farmington Associates II, is also known as Orchard View II and is identified by locator number 09-70-35-00-000-0016. The property in appeal 11-84006, Farmington Associates, is also known as Orchard View, and is identified by locator number 09-07-35-00-000-0016-02.
3. The properties are multi-family residential properties. The first property, built in 2003, consists of 40 units, 40,400 square feet of net rentable area on 3.49 acres. Improvements include an office/clubhouse with laundry facilities and parking. The property is in average condition with above average unit features. The second property, built in 2009, consists of 56 units, 57,008 feet square on 3.86 acres. Improvements also include parking and solar panels. The properties make use of the office and clubhouse located on the first property. The property is above average to market as to age, condition, size, layout, and unit features.

4. The subject properties are designated as low income, rent restricted units for tenants whose income is 60% or less of the "area median gross income", adjusted for family size. Occupancy is at 96%. This is believed to be a stabilized level. Rents have been approved for a maximum of \$675 for 2 bed units and \$788 for 3 bed units.
5. The market rents in the area are \$595 for 2 bedroom units and \$695 for 3 bedroom units.
6. Complainants' appraiser relied only the "Maryville formula" income approach, as a jurisdictional exception to the standard approaches to value. Complainants' appraiser's value determinations were based upon actual income (with market rates applied to the vacant units), projected expenses and a capitalization rate of 9.21% derived from the property funding and market. The appraiser proposed values of \$1,520,000 and \$660,000.
7. The Maryville formula was the only approach fully presented and relied upon by the parties. Using the formula with the actual income, actual expenses and a capitalization rate derived from the information presented, the true value of the first property is \$651,600 and the true value of the second property is \$1,934,000.

Appeal No.	Parcel No.	True Value	Assessed Value
11-84005	09-70-35-00-000-0016.02	\$1,934,000	\$367,460
11-84006	09-70-35-00-000-0016.00	\$651,660	\$123,815

CONCLUSIONS OF LAW AND DECISION

Jurisdiction

The Commission has jurisdiction to hear this appeal and correct any assessment which is shown to be unlawful, unfair, arbitrary or capricious. The Hearing Officer shall issue a decision and order affirming, modifying or reversing the determination of the board of equalization, and correcting any assessment which is unlawful, unfair, improper, arbitrary, or capricious. (Article X, Section 14, Mo. Const. of 1945; Sections 138.430, 138.431, 138.431(4) RSMo.)

Official and Judicial Notice

Agencies shall take official notice of all matters of which the courts take judicial notice. (Section 536.070 (6))

Courts will take judicial notice of their own records in the same cases. *State ex rel. Horton v. Bourke*, 129 S.W.2d 866, 869 (1939); *Barth v. Kansas City Elevated Railway Company*, 44 S.W. 788, 781 (1898). In addition, courts may take judicial notice of records in earlier cases when justice requires (*Burton v. Moulder*, 245 S.W.2d 844, 846 (Mo. 1952); *Knorp v. Thompson*, 175 S.W.2d 889, 894 (1943); *Bushman v. Barlow*, 15 S.W.2d 329, 332 (Mo. banc 1929) or when it is necessary for a full understanding of the instant appeal. *State ex rel St. Louis Public Service Company v. Public Service Commission*, 291 S.W.2d 95, 97 (Mo. banc 1956). Courts may take judicial notice of their own records in prior proceedings involving the same parties and basically the same facts. *In re Murphy*, 732 S.W.2d 895, 902 (Mo. banc 1987); *State v. Gilmore*, 681 S.W.2d 934, 940 (Mo. banc 1984); *State v. Keeble*, 399 S.W.2d 118, 122 (Mo. 1966).

Presumptions In Appeals

There is a presumption of validity, good faith and correctness of assessment by the County Board of Equalization. *Hermel, Inc. v. STC*, 564 S.W.2d 888, 895 (Mo. banc 1978); *Chicago, Burlington & Quincy Railroad Co. v. STC*, 436 S.W.2d 650, 656 (Mo. 1968); *May Department Stores Co. v. STC*, 308 S.W.2d 748, 759 (Mo. 1958).

The presumption in favor of the Board is not evidence. A presumption simply accepts something as true without any substantial proof to the contrary. In an evidentiary hearing before the Commission, the valuation determined by the Board, even if simply to sustain the value made by the Assessor, is accepted as true only until and so long as there is no substantial evidence to the contrary.

The presumption of correct assessment is rebutted when the taxpayer, or respondent when advocating a value different than that determined by the Board, presents substantial and persuasive evidence to establish that the Board's valuation is erroneous and what the fair market value should have been placed on the property. *Hermel, supra*; *Cupples-Hesse Corporation v. State Tax Commission*, 329 S.W.2d 696, 702 (Mo. 1959).

Standard for Valuation

Section 137.115, RSMo, 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). It is the fair market value of the subject property on the valuation date. (Hermel, supra) Market value is the most probable price in terms of money which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeable and assuming the price is not affected by undue stimulus.

Implicit in this definition are the consummation of a sale as of a specific date and the passing of title from seller to buyer under conditions whereby:

1. Buyer and seller are typically motivated.
2. Both parties are well informed and well advised, and both acting in what they consider their own best interests.
3. A reasonable time is allowed for exposure in the open market.
4. Payment is made in cash or its equivalent.
5. Financing, if any, is on terms generally available in the Community at the specified date and typical for the property type in its locale.
6. The price represents a normal consideration for the property sold unaffected by special financing amounts and/or terms, services, fees, costs, or credits incurred in the transaction. Real Estate Appraisal Terminology, Society of Real Estate Appraisers, Revised Edition, 1984; See also, Real Estate Valuation in Litigation, J. D. Eaton, M.A.I., American Institute of Real Estate Appraisers, 1982, pp. 4-5; Property Appraisal and Assessment Administration, International Association of Assessing Officers, 1990, pp. 79-80; Uniform Standards of Professional Appraisal Practice, Glossary.

Weight to be Given Evidence

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).

Methods of Valuation

Proper methods of valuation and assessment of property are delegated to the Commission. It is within the purview of the Hearing Officer to determine the method of valuation to be adopted in a given case. See, *Nance v. STC*, 18 S.W.3d 611, at 615 (Mo. App. W.D. 2000); *Hermel, supra*; *Xerox Corp. v. STC*, 529 S.W.2d 413 (Mo. banc 1975).

Missouri courts have approved the comparable sales or market approach, the cost approach and the income approach as recognized methods of arriving at fair market value. *St. Joe Minerals Corp. v. STC*, 854 S.W.2d 526, 529 (App. E.D. 1993); *Aspenhof Corp. v. STC*, 789 S.W.2d 867, 869 (App. E.D. 1990); *Quincy Soybean Company, Inc., v. Lowe*, 773 S.W.2d 503, 504 (App. E.D. 1989), citing *Del-Mar Redevelopment Corp v. Associated Garages, Inc.*, 726 S.W.2d 866, 869 (App. E.D. 1987); and *State ex rel. State Highway Comm'n v. Southern Dev. Co.*, 509 S.W.2d 18, 27 (Mo. Div. 2 1974).

Opinion Testimony by Experts

If specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert on that subject, by knowledge, skill, experience, training, or education, may testify thereto.

The facts or data upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing and must be of a type reasonably relied upon by experts in the field in forming opinions or inferences upon the subject and must be otherwise reliable, the facts or data need not be admissible in evidence. Section 490.065, RSMo; *State Board of Registration for the Healing Arts v. McDonagh*, 123 S.W.3d 146 (Mo. SC. 2004); *Courtroom Handbook on Missouri Evidence*, Wm. A. Schroeder, Sections 702-505, pp. 325-350; *Wulfin v. Kansas City Southern Industries, Inc.*, 842 S.W.2d 133 (Mo. App. E.D. 1992).

Complainants' Burden of Proof

There is no presumption that the taxpayer's opinion is correct. The taxpayer in a Commission appeal still bears the burden of proof. The taxpayer is the moving party seeking affirmative relief. Therefore, the Complainant bears the burden of proving the vital elements of the case, i.e., the assessment was "unlawful, unfair, improper, arbitrary or capricious." See, *Westwood Partnership v. Gogarty*, 103 S.W.3d 152 (Mo. App. E.D. 2003); *Daly v. P. D. George Co.*, 77 S.W.3d 645 (Mo. App. E.D. 2002); *Reeves v. Snider*, 115 S.W.3d 375 (Mo. App. S.D. 2003). *Industrial Development Authority of Kansas City v. State Tax Commission of Missouri*, 804 S.W.2d 387, 392 (Mo. App. 1991).

Substantial evidence can be defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. See, *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

Section 137.115, RSMo, 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). "Objective standards should be used in determining fair market value in the market place. The particular circumstances of the owner are not a proper consideration . . . Investment value is the value of a property to a particular investor, whereas market value is not related to the needs of the individual investors but is objective, impersonal, and detached; investment value is based on subjective, personal parameters . . ." (*Maryville Properties v. Nelson*, 83 SW3d 608, 616 WD 2002)

In the past, when valuing subsidized housing, we have attempted to look at actual income, actual expenses, financing terms and market capitalization rates in order to try to account for risks and benefits associated with this unique type of real property, recognizing that subsidized properties do not tend to sell and costs tend to be inflated, making sales and cost approaches difficult. The State Tax Commission referred to this methodology as the Maryville Formula. After *Lake Ozark Village v. Whitworth*, STC Appeal Nos. 97-47000, 99-47003 and 01-47002, parties to appeals involving subsidized housing properties utilized the Maryville Properties v. Nelson, STC Appeal No.

97-74500 methodology for determining value – as modified by the Western District Court of Appeals. At that time, subsidized housing typically included extremely low interest, low equity loans which had subsidized income, subsidized mortgages, subsidized interest and non-recourse promissory notes. In attempting to follow the directive of Missouri Baptist Children's Home to consider all relevant economic facts, the Commission instructed assessors to value subsidized housing based upon actual income, actual expenses and capitalization rates.

In *Park West v. Pruden*, Bate County STC Appeal No. 11-43000 to 11-43036 and 13-43001 to 13-43002, decision dated 11/4/14, the Hearing Officer found with the facts presented in that appeal that the Maryville formula was not persuasive evidence for determining the true value of the property. The Hearing Officer found that the equity positions were no longer the 3% to 5% found in the Maryville Properties/Lake Ozark cases but had now skyrocketed to over 80%. The Maryville formula methodology contemplated a low equity position with a market return rate and a high financed position with an extremely low interest rate. Under the Maryville formula, an increase in the equity position of the newer improvement resulted in it being valued substantially less than the older improvement.

In *Park West Estates I and II*, the original construction cost of recently completed improvements was presented. The Hearing Officer compared the actual cost of the properties to the indication of value as determined by the Maryville formula. The Hearing Officer asked "Would a typical investor spend almost \$3 million for a property that only had a market value of \$490,000 before it is even completed?" The Hearing Officer concluded:

"[e]ither the benefits and burdens under the Maryville formula are not being measured appropriately; or the income approach substantially distorts market value to a point of no longer being a good indicator of value. Arguably, facts surrounding subsidized housing and its financing have gone so far beyond typical market behavior that an income approach based upon subjective facts associated with these properties can never reasonably capture value."

No information as to the actual cost to construct was presented in this appeal. The Hearing Officer was only provided with the income and expenses of the subject properties.

Maryville formula uses actual rents, actual expenses, actual and market financings. The appraiser used actual rents and referred to market rents for the 1 two bed and 1 three bed vacant units to determine the potential gross income. The appraiser did not use actual expenses but used projections. The appraiser did not provide support or reference for his projections and they are high in comparison to actual. For example in the second property, the actual expenses for repairs was \$19,600 but the appraiser used a projected expense figure of \$28,000. The appraiser

projected advertising cost to increase to \$1400 from \$154, which is suspect given the apartment is near 100% occupied. The appraiser projected administrative costs to increase to \$33,600 from \$28,369; payroll to increase to \$61,600 from \$40,020. If we adjust his formula to reflect actual expenses, the resulting indications of values are:

Farmington Associates

Income		\$199,492
Vacancy & Collection	5%	(9,975)
Other Income		\$22,000
Effective Gross Income		\$211,518
Expenses		
Utilities	\$26,000	
Insurance	\$11,000	
Repairs	\$18,500	
Advertising	\$55	
Administration	\$34,025	
Painting	\$3,250	
Payroll	\$39,600	
Management	\$9,070	
Reserves	\$10,000	
Total Expenses		(\$151,500)
		\$60,018

Capitalization Rate		9.21%
Indication of Value		\$651,660

Farmington Associates II

Income		\$304,140
Vacancy & Collection	5%	(15,552)
Other Income		\$52,802
Effective Gross Income		\$341,390
Expenses		
Utilities	\$21,332	
Insurance	\$15,516	
Repairs	\$19,600	
Advertising	\$154	
Administration	\$28,369	
Painting	\$4,129	
Payroll	\$40,020	
Management	\$20,160	
Reserves	\$14,000	
Total Expenses		(\$163,280)

	\$178,110
Capitalization Rate	9.21%
Indication of Value	\$1,933,876

Conclusion

Commission rejected Maryville Formula in Park West Estates (11-43000 to 11-430036). The properties in those appeals were new construction. The cost approach is an effective approach to develop market value in those circumstances. The reconciliation of cost approach and income approach lead the Hearing Officer to place more weight on the cost approach.

In this appeal, the appraiser did not develop the cost approach even though the improvements of the second property were recent. The appraiser developed sales comparison approach but did not place reliance on the method or value developed. The income approach using the Maryville formula was developed. As that information was the only information presented to develop value and since the actual costs and the capitalization rate utilized were not contested; the indications of value using that approach is deemed substantial and persuasive evidence.

ORDER

The Board's market value for the subject properties is SET ASIDE. The following valuations are concluded:

Appeal No.	Parcel No.	True Value	Assessed Value
11-84005	09-70-35-00-000-0016.02	\$1,934,000	\$367,460
11-84006	09-70-35-00-000-0016.00	\$651,660	\$123,815

A party may file with the Commission an application for review of this decision within thirty (30) days of the mailing date shown in the Certificate of Service. The application shall contain specific grounds upon which it is claimed the decision is erroneous. Said application must be in writing

addressed to the State Tax Commission of Missouri, P.O. Box 146, Jefferson City, MO 65102-0146, and a copy of said application must be sent to each person at the address listed below in the certificate of service.

Failure to state specific facts or law upon which the appeal is based will result in summary denial. (Section 138.432 RSMO. 2000)

The Collector of St. Francois County, as well as the collectors of all affected political subdivisions therein, shall continue to hold the disputed taxes pending a filing of an Application for Review, unless said taxes have been disbursed pursuant to a court order under the provisions of 139.031.8 RSMo.

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 this 30th day of January, 2015.

STATE TAX COMMISSION OF MISSOURI

Maureen Monaghan

Hearing Officer

Certificate of Service

I hereby certify that a copy of the foregoing has been mailed postage prepaid on this 30th day of January, 2015, to: Richard Dvorak, 7111 W. 98th Terr., #140, Overland Park, KS 66212, Attorney for Complainant; Patrick King, Assistant Prosecuting Attorney, 1 N. Washington, Suite 301, Farmington, MO 63640, Attorney for Respondent; Dan Ward, Assessor, County Courthouse Annex, 1 W. Liberty, Suite 200, Farmington, MO 63640; Mark Hedrick, Clerk, Courthouse Annex, 1 W. Liberty, Suite 300, Farmington, MO 63640; Pamela Williams, Collector, Courthouse Annex, 1 W. Liberty, Suite 201, Farmington, MO 63640.

Jacklyn Wood

Legal Coordinator

To Top

**Branson Christian County II, LP
d/b/a Abbey Orchard II
10-0.6-14-003-001-001.002**

EXHIBIT F

HB No. 613

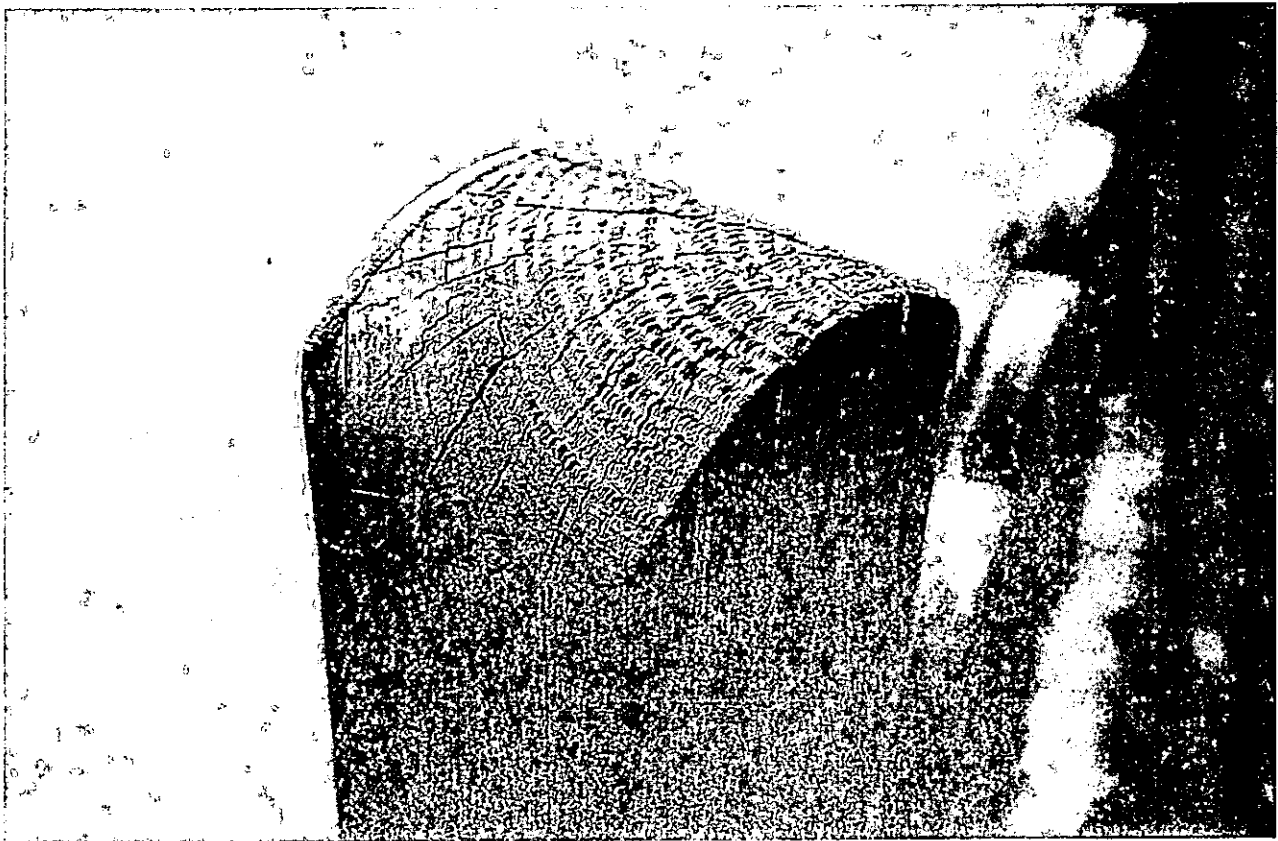
Nixon signs HB 613, will lower housing costs

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TMT-Blog (<http://themissouritimes.com/category/tmt-blog/>)

20 hours ago



JEFFERSON CITY, Mo. – Gov. Jay Nixon signed HB 613 into law making changes and statutorily codifying existing practices regarding property tax collection. The bill will go into effect on August 28.

Rep. Sandy Crawford, R-Buffalo, sponsored the bill in hopes to streamline and simplify property tax collection.

"These are some technical, but important, changes to our law based on the recommendations of a panel of county collectors who sought to make our statutes reflect recent court decisions and the reality of the way tax sales happen today," said Crawford, R-Buffalo. "I want to thank the governor for signing these changes into law, and thank my colleagues for providing strong bipartisan support to my legislation."

The Governor could have let it become law without signing on July 14th, but chose to sign the bill signifying that he supports the legislation.

The bill is seen as a victory for seniors living in housing developments constructed with tax credits. Currently, the practice was that county assessors would take into account limitations on rent and property use, but some assessors had begun disregarding existing precedence and raising property taxes as they could on unrestricted properties.

"HB 613 clarifies specific merchandise codes relating to electronics, appliance rentals, construction machinery, and more," said Warren County Assessor Wendy Nordwald. "This is a vital clarification needed as an assessor and I applaud the Governor's signature."

Property tax increases were being passed onto residents on fixed incomes, and the new law codifies existing practices which many believe will stem the rising cost of housing due to exorbitant property tax increases.

"The passage of HB 613 is an enormous win for Missouri's affordable housing industry," said Jason Maddox, president of MACO Companies, an affordable housing company. "The bill will prevent huge tax assessments on large, but inevitable, rent increases for Missouri's low income seniors and families."

The bill had no opposition in committee and supporters said the bill further updates, tightens, and otherwise cleans up the statute's chapter, and clarifies areas that frequently led to lawsuits by giving collectors discretion as to what constitutes "reasonable" costs of sale. The bill also repeals a section that operates as a disincentive for keeping properties maintained.

"We applaud Governor Nixon and the state legislature for enacting HB 613," said Beyond Housing President/CEO Chris Krehmeyer. "This new law will prevent great financial damage to those who produce affordable housing across the state of Missouri. The bill is pragmatic and straight forward in assessing taxes to owners of affordable housing based upon the allowable rents and thereby income set forth by federal and state guidelines. We understand the importance of paying taxes to support schools, police and fire protection and other needed services but do not want our properties to fail with an unfair tax burden. In a time when bipartisan agreements seem hard to come by we are thankful for the leadership in the governor's mansion and the state house to have HB 613 passed and signed into law."

HB 613 also raises the amount that County Collector's offices are required to collect to 2.5% on the first \$350,000 to \$3 million. It also streamlines public service fees for abolished townships, allows more counties to propose a special road rock property tax, and adjusts criteria for dealing with delinquent lands.

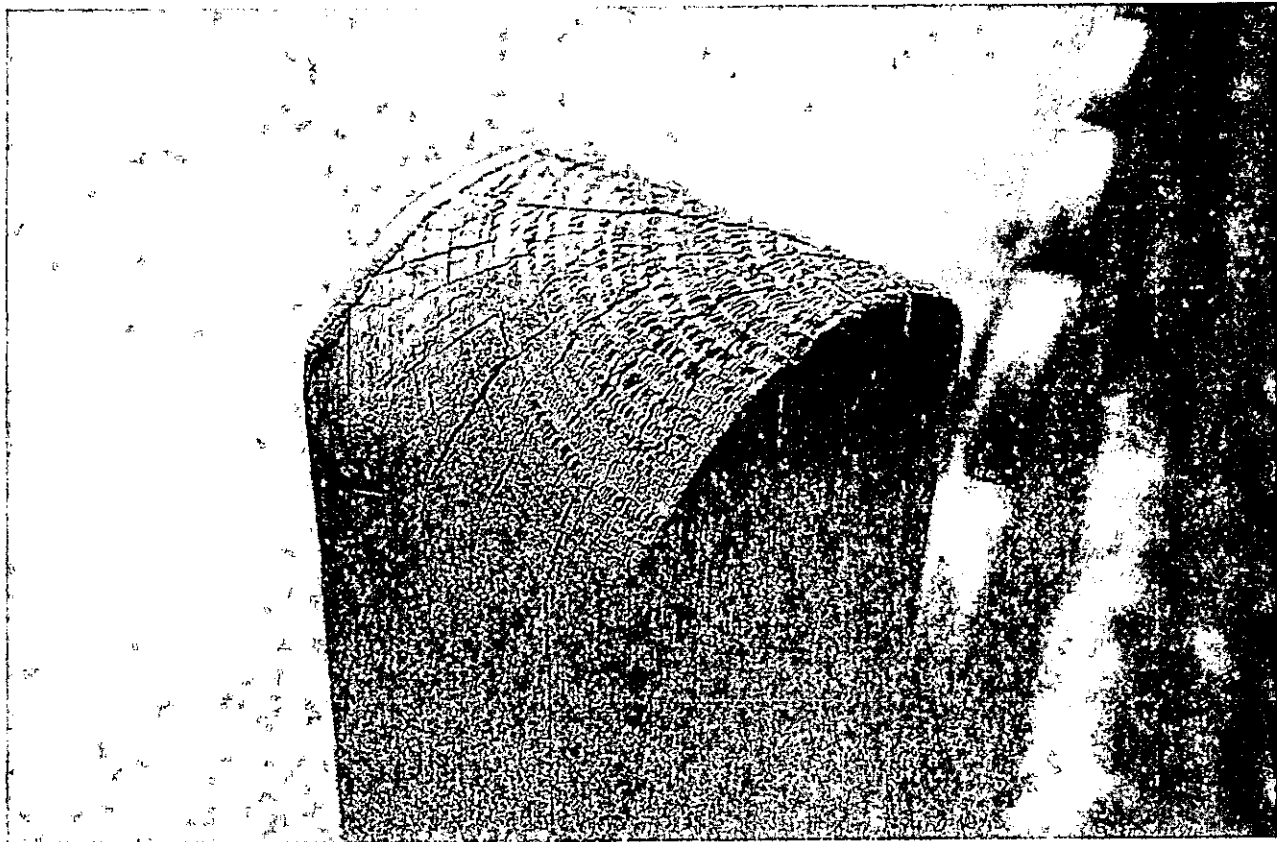
Nixon signs HB 613, will lower housing costs

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House Home Page :: House Bill List :: HB613

HB 613

Changes the laws regarding the collection of property taxes

Sponsor: Crawford, Sandy (129)
Effective Date: Emergency Clause
LR Number: 1344S.06T
Governor Action: 07/06/2015 - Approved by Governor (G)
Last Action: 07/06/2015 - Delivered to Secretary of State (G)
Bill String: SCS HCS HB 613
Next Hearing: Hearing not scheduled
Calendar: Bill currently not on a House calendar

[Go Sponsors](#) | [Actions](#) | [Hearings](#) | [Fiscal Notes](#) | [Roll Calls](#)

Bill Summaries

[Truly Agreed \(PDF\)](#) [Perfected \(PDF\)](#) [Committee \(PDF\)](#) [Introduced \(PDF\)](#)

Bill Text

[Truly Agreed \(PDF\)](#) [Senate Comm Sub \(PDF\)](#) [Perfected \(PDF\)](#) [Committee \(PDF\)](#) [Introduced \(PDF\)](#)

Amendments

Status	Amendment	Sponsor	Floor Number	Roll Call
	1344S06.01F	Crawford	SENATE AMENDMENTS	
	1344H03.07H	Hinson	HCA 1	

- Distributed** - Amendment has been distributed.
- Adopted** - Amendment has been adopted.
- Defeated** - Amendment has been defeated.
- Returned** - Amendment has been returned by motion and vote.
- Withdrawn** - Amendment has been withdrawn by the amendment's sponsor.
- Offered** - Amendment has been offered on the House floor.
- Pending** - Amendment has been laid over to be taken up on the next legislative day.
- Substitute** - Amendment has been substituted for a different amendment.
- Division** - Amendment has been divided into parts to be voted on and debated separately.

7/8/2015 11:32:06 AM

FIRST REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 613

98TH GENERAL ASSEMBLY

1344S.06T

2015

AN ACT

To repeal sections 52.260, 65.620, 137.076, 140.170, 140.310, 140.340, 140.350, 140.405, 140.410, 140.420, and 231.444, RSMo, and to enact in lieu thereof thirteen new sections relating to the collection of property taxes.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 52.260, 65.620, 137.076, 140.170, 140.310, 140.340, 140.350, 2 140.405, 140.410, 140.420, and 231.444, RSMo, are repealed and thirteen new sections enacted 3 in lieu thereof, to be known as sections 52.260, 65.620, 137.018, 137.076, 140.170, 140.195, 4 140.310, 140.340, 140.350, 140.405, 140.410, 140.420, and 231.444, to read as follows:

52.260. The collector in counties not having township organization shall collect on 2 behalf of the county the following fees for collecting all state, county, bridge, road, school, back 3 and delinquent, and all other local taxes, including merchants', manufacturers' and liquor and 4 beer licenses, other than ditch and levee taxes, and the fees collected shall be deposited in the 5 county general fund:

6 (1) In all counties wherein the total amount levied for any one year exceeds two hundred 7 and fifty thousand dollars and is less than three hundred and fifty thousand dollars, a fee of two 8 and one-half percent on the amount collected;

9 (2) In all counties wherein the total amount levied for any one year exceeds three 10 hundred and fifty thousand dollars and is less than [two] three million dollars, a fee of two and

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

11 one-half percent on the first three hundred and fifty thousand dollars collected and one percent
12 on whatever amount may be collected over three hundred and fifty thousand dollars;

13 (3) In all counties wherein the total amount levied for any one year exceeds [two] three
14 million dollars, a fee of one percent on the amounts collected.

65.620. 1. Whenever any county abolishes township organization the county treasurer
2 and ex officio collector shall immediately settle his accounts as treasurer with the county
3 commission and shall thereafter perform all duties, exercise all powers, have all rights and be
4 subject to all liabilities imposed and conferred upon the county collector of revenue under
5 chapter 52 until the first Monday in March after the general election next following the
6 abolishment of township organization and until a collector of revenue for the county is elected
7 and qualified. The person elected collector at the general election as aforesaid, if that election
8 is not one for collector of revenue under chapter 52, shall serve until the first Monday in March
9 following the election and qualification of a collector of revenue under chapter 52. Upon
10 abolition of township organization a county treasurer shall be appointed to serve until the
11 expiration of the term of such officer pursuant to chapter 54.

12 2. Upon abolition of township organization, title to all property of all kinds theretofore
13 owned by the several townships of the county shall vest in the county and the county shall be
14 liable for all outstanding obligations and liabilities of the several townships.

15 3. The terms of office of all township officers shall expire on the abolition of township
16 organization and the township trustee of each township shall immediately settle his accounts with
17 the county clerk and all township officers shall promptly deliver to the appropriate county
18 officers, as directed by the county commission, all books, papers, records and property pertaining
19 to their offices.

20 4. For a period of one calendar year following the abolition of the townships or
21 until the voters of the county have approved a tax levy for road and bridge purposes,
22 whichever occurs first, the county collector shall continue to collect a property tax on a
23 county-wide basis in an amount equal to the tax levied by the township that had the lowest
24 total tax rate in the county immediately prior to the abolishment of the townships. The
25 continued collection of the tax shall be considered a continuation of an existing tax and
26 shall not be considered a new tax levy.

137.018. 1. As used in this section, the term "merchandise" shall include short term
2 rentals of equipment and other merchandise offered for short term rentals by rental
3 companies under 532412 or 532210 of the 2012 edition of the North American Industry
4 Classification System as prepared by the Executive Office of the President, Office of
5 Management and Budget, which will subsequently or ultimately sell such merchandise or
6 equipment. As used in this section, the term "short term rental" shall mean rentals for a

SCS HCS HB 613 -- COLLECTION OF PROPERTY TAXES

This bill changes the laws regarding the collection of property taxes. In its main provisions, the bill:

- (1) Changes the amount of fees a county collector must collect for collecting local taxes. In counties where the total amount levied in a year is between \$350,000 and \$2 million, the fee is 2.5% on the first \$350,000 collected and 1% on any amount over that amount. In counties where the total amount levied exceeds \$2 million, the fee is 1% on all amounts collected. The bill raises the outer threshold amount for a county to be eligible to collect the 2.5% on the first \$350,000 to \$3 million;
- (2) Allows counties in which townships have been abolished to continue to collect a property tax on a county-wide basis for road and bridge purposes for either one year following the abolishment of the townships or until the county voters have approved a property tax for such purposes, whichever occurs first. The property tax must be the same amount as the property tax being levied in the township with the lowest total tax rate immediately before the townships were abolished. The collection of the property tax is to be considered a continuation of a tax and not a new tax;
- (3) Specifies that certain merchandise whether or not subject to a short term rental and which will ultimately be sold must be considered inventory for property tax purposes and exempt from taxation. The bill is limited to general rental centers and construction, mining, and forestry equipment rental;
- (4) Requires a county assessor when establishing the value of real property to consider existing use of the property, restrictions, limitations, existing covenants or restrictions in the deed, and operational requirements or restrictions imposed on the property to be eligible for state and federal credits and subsidies as residential rental property;
- (5) Changes the laws regarding the advertisement of delinquent lands. Currently, a county collector may advertise delinquent lands with an assessed valuation of \$1,000 or less without legal descriptions or the names of the record owners when publishing a delinquent land list for delinquent real property tax. The bill increases the assessed valuation to \$1,500 or less;
- (6) Changes the laws regarding the advertisement of a delinquent lot. Currently, a county collector may advertise a delinquent lot if in a development of at least 20 or more lots with an assessed valuation of \$1,000 or less without legal descriptions or the names

of the record owners when publishing a delinquent land list for delinquent real property tax. The bill increases the assessed valuation to \$1,500 or less;

(7) Allows a collector, agent of a collector, tax sale purchaser, or an agent of a tax sale purchaser to enter land, without being guilty of trespass, to provide, serve, or post notice of a tax sale or tax sale redemption. Once the reasonable and customary costs of a sale are paid to the county collector, the purchaser, his or her heirs, successors, or assigns; the owner; lienholder; or occupant of any land or lot sold for taxes, or any other persons having an interest therein, must have the absolute right to redeem the land at any time during the following year and must continue to have a defeasible right to redeem the land until the tax sale purchaser acquires the deed. Once the tax sale purchaser acquires the deed, the right to redeem will expire, provided upon the expiration of the lien evidenced by a certificate of purchase under Section 140.410, RSMo, no redemption will be required;

(8) Allows minors and incapacitated and disabled persons to redeem any lands belonging to them sold for taxes within five years of the date of the last payment of taxes encumbering the real estate by the minor, incapacitated or disabled person, the party's predecessors in interest, or any representative of the person in the same manner as provided in Section 140.340 for redemption by other persons;

(9) Specifies that "authorized to acquire the deed" means the date chosen by the tax sale purchaser that is more than the minimum redemption period in Section 140.340 if the tax sale purchaser has complied with the requirements entitling the purchaser to the issuance of a collector's deed including payment of the recording fee for the collector's deed, production of the original of the certificate of purchase as required under Section 140.420 or production of an original affidavit of lost or destroyed certificate approved by the collector as to form and substance, and payment of all subsequent taxes required to be paid under Section 140.440. The bill specifies how any person except a minor or an incapacitated or disabled person may receive notice under the provisions of the bill in a foreign country or outside the United States;

(10) Changes the laws regarding the purchase of delinquent land. Currently, a purchaser of delinquent lands, or his or her heirs or assigns, must pay all subsequent taxes on the property purchased prior to the issuance of any collector's deed and have a deed to be executed and placed on record in the proper county within two years from the date of the sale. The bill shortens the time to 18 months. If no person redeems the lands sold for taxes prior to the

expiration of the right to redeem, at the expiration thereof, and on production of the certificate of purchase and upon proof satisfactory to the collector that a purchaser or his or her heirs, successors, or assigns are authorized to acquire the deed, the collector of the county where the sale of the lands took place must execute to the purchaser, or his or her heirs or assigns, in the name of the state, a conveyance of the real estate sold, which will vest in the grantee an absolute estate in fee simple, subject, however, to all claims thereon for unpaid taxes except the unpaid taxes existing at the time of the purchase of the lands and the lien for which taxes was inferior to the lien for taxes for which the tract or lot of land was sold; and

(11) Authorizes all counties of the third and fourth classifications to impose, upon voter approval, a special road rock fund tax at a rate not to exceed \$1 per acre for property classified as agricultural and horticultural. Currently, only certain counties of the third classification without a township form of government are authorized to impose the tax upon voter approval.

7 period of less than three hundred sixty-five consecutive days, for an undefined period, or
8 under an open-ended contract.

9 2. For the purposes of article X, section 6 of the Constitution of Missouri, all
10 merchandise held or owned by a merchant whether or not currently subject to a short term
11 rental and which will subsequently or ultimately be sold shall be considered inventory and
12 exempt from ad valorem taxes.

137.076. 1. In establishing the value of a parcel of real property the county assessor
2 shall consider current market conditions and previous decisions of the county board of
3 equalization, the state tax commission or a court of competent jurisdiction that affected the value
4 of such parcel. For purposes of this section, the term "current market conditions", shall include
5 the impact upon the housing market of foreclosures and bank sales.

6 2. In establishing the value of a parcel of real property, the county assessor shall
7 use an income based approach for assessment of parcels of real property with federal or
8 state imposed restrictions in regard to rent limitations, operations requirements, or any
9 other restrictions imposed upon the property in connection with:

10 (1) The property being eligible for any income tax credits under section 42 of the
11 Internal Revenue Code of 1986, as amended;

12 (2) Property constructed with the use of the United States Department of Housing
13 and Urban Development HOME investment partnerships program;

14 (3) Property constructed with the use of incentives provided by the United States
15 Department of Agriculture Rural Development; or

16 (4) Property receiving any other state or federal subsidies provided with respect
17 to use of the property for housing purposes.

18
19 For the purposes of this subsection, the term "income based approach" shall include the
20 use of direct capitalization methodology and computed by dividing the net operating
21 income of the parcel of property by an appropriate capitalization rate not to exceed the
22 average of the current market data available in the county of said parcel of
23 property. Federal and state tax credits or other subsidies shall not be used when
24 calculating the capitalization rate. Upon expiration of a land use restriction agreement,
25 such parcel of property shall no longer be subject to this subsection.

140.170. 1. Except for lands described in subsection 7 of this section, the county
2 collector shall cause a copy of the list of delinquent lands and lots to be printed in some
3 newspaper of general circulation published in the county for three consecutive weeks, one
4 insertion weekly, before the sale, the last insertion to be at least fifteen days prior to the fourth
5 Monday in August.

6 2. In addition to the names of all record owners or the names of all owners appearing on
7 the land tax book it is only necessary in the printed and published list to state in the aggregate
8 the amount of taxes, penalty, interest and cost due thereon, each year separately stated.

9 3. To the list shall be attached and in like manner printed and published a notice of said
10 lands and lots stating that said land and lots will be sold at public auction to discharge the taxes,
11 penalty, interest, and costs due thereon at the time of sale in or adjacent to the courthouse of such
12 county, on the fourth Monday in August next thereafter, commencing at ten o'clock of said day
13 and continuing from day to day thereafter until all are offered.

14 4. The county collector, on or before the day of sale, shall insert at the foot of the list on
15 his or her record a copy of the notice and certify on his or her record immediately following the
16 notice the name of the newspaper of the county in which the notice was printed and published
17 and the dates of insertions thereof in the newspaper.

18 5. The expense of such printing shall be paid out of the county treasury and shall not
19 exceed the rate provided for in chapter 493, relating to legal publications, notices and
20 advertisements, and the cost of printing at the rate paid by the county shall be taxed as part of the
21 costs of the sale of any land or lot contained in the list.

22 6. The county collector shall cause the affidavit of the printer, editor or publisher of the
23 newspaper in which the list of delinquent lands and notice of sale was published, as provided by
24 section 493.060, with the list and notice attached, to be recorded in the office of the recorder of
25 deeds of the county, and the recorder shall not charge or receive any fees for recording the same.

26 7. The county collector may have a separate list of such lands, without legal descriptions
27 or the names of the record owners, printed in a newspaper of general circulation published in
28 such county for three consecutive weeks before the sale of such lands for a parcel or lot of land
29 that:

30 (1) Has an assessed value of one thousand **five hundred** dollars or less and has been
31 advertised previously; or

32 (2) Is a lot in a development of twenty or more lots and such lot has an assessed value
33 of one thousand **five hundred** dollars or less. The notice shall state that legal descriptions and
34 the names of the record owners of such lands shall be posted at any county courthouse within the
35 county and the office of the county collector.

36 8. If, in the opinion of the county collector, an adequate legal description of the
37 delinquent land and lots cannot be obtained through researching the documents available through
38 the recorder of deeds, the collector may commission a professional land surveyor to prepare an
39 adequate legal description of the delinquent land and lots in question. The costs of any
40 commissioned land survey deemed necessary by the county collector shall be taxed as part of the
41 costs of the sale of any land or lots contained in the list prepared under this section.

140.195. Any collector, agent of any collector, tax sale purchaser, or agent of any tax sale purchaser performing duties under this chapter shall have the lawful right to enter upon the land of another without being guilty of trespass, if he or she is in the course of providing or attempting to provide notice of a tax sale or tax sale redemption rights and it is necessary to enter upon such land to provide, serve, or post such notice.

140.310. 1. The purchaser of any tract or lot of land at sale for delinquent taxes, homesteads excepted, shall at any time after one year from the date of sale be entitled to the immediate possession of the premises so purchased during the redemption period provided for in this law, unless sooner redeemed; provided, however, any owner or occupant of any tract or lot of land purchased may retain possession of said premises by making a written assignment of, or agreement to pay, rent certain or estimated to accrue during such redemption period or so much thereof as shall be sufficient to discharge the bid of the purchaser with interest thereon as provided in the certificate of purchase.

2. The purchaser, his or her heirs or assigns may enforce his or her rights under said written assignment or agreement in any manner now authorized or hereafter authorized by law for the collection of delinquent and unpaid rent; provided further, nothing herein contained shall operate to the prejudice of any owner not in default and whose interest in the tract or lot of land is not encumbered by the certificate of purchase, nor shall it prejudice the rights of any occupant of any tract or lot of land not liable to pay taxes thereon nor such occupant's interest in any planted, growing or unharvested crop thereon.

3. Any additions or improvements made to any tract or lot of land by any occupant thereof, as tenant or otherwise, and made prior to such tax sale, which such occupant would be permitted to detach and remove from the land under his or her contract of occupancy shall also, to the same extent, be removable against the purchaser, his or her heirs or assigns.

4. Any rent collected by the purchaser, his or her heirs or assigns shall operate as a payment upon the amount due the holder of such certificate of purchase, and such amount or amounts, together with the date paid and by whom shall be endorsed as a credit upon said certificate, and which said sums shall be taken into consideration in the redemption of such land, as provided for in this chapter.

5. Any purchaser, heirs or assigns in possession within the period of redemption against whom rights of redemption are exercised shall be protected in the value of any planted, growing and/or unharvested crop on the lands redeemed in the same manner as such purchaser, heirs or assigns would be protected in valuable and lasting improvements made upon said lands after the period of redemption and referred to in section 140.360.

30 [6. The one-year redemption period shall not apply to third-year tax sales, but the
31 ninety-day redemption period as provided in section 140.405 shall apply to such sales. There
32 shall be no redemption period for a post-third-year tax sale, or any offering thereafter.]

140.340. 1. **Upon paying the reasonable and customary costs of sale to the county
2 collector for the use of the purchaser, his or her heirs, successors, or assigns; the owner;
3 lienholder; or occupant of any land or lot sold for taxes, or any other persons having an interest
4 therein, [may] shall have the absolute right to redeem the same at any time during the one year
5 next ensuing[, in the following manner] and shall continue to have a defeasible right to
6 redeem the same until such time as the tax sale purchaser acquires the deed, at which time
7 the right to redeem shall expire, provided upon the expiration of the lien evidenced by a
8 certificate of purchase under section 140.410 no redemption shall be required.**

9 **2. The reasonable and customary costs of sale include all costs incurred in selling
10 and foreclosing tax liens under this chapter, and such reasonable and customary costs shall
11 include the following: [by paying to the county collector, for the use of the purchaser, his heirs
12 or assigns,] the full sum of the purchase money named in [his] the certificate of purchase and all
13 the [cost] costs of the sale, including the cost to record the certificate of purchase as required in
14 section 140.290, the fee necessary for the collector to record the release of such certificate of
15 purchase, and the reasonable and customary cost of the title search and [mailings] postage
16 costs of notification required in sections 140.150 to 140.405, together with interest at the rate
17 specified in such certificate, not to exceed ten percent annually, except on a sum paid by a
18 purchaser in excess of the delinquent taxes due plus costs of the sale incurred by the collector,
19 no interest shall be owing on the excess amount, with all subsequent taxes which have been paid
20 thereon by the purchaser, his or her heirs or assigns with interest at the rate of eight percent per
21 annum on such taxes subsequently paid, and in addition thereto the person redeeming any land
22 shall pay the costs incident to entry of recital of such redemption; provided, however, that no
23 costs incurred by tax sale purchasers in providing notice of tax sale redemption rights
24 required by law shall be reimbursable as a reasonable and customary cost of sale unless
25 such costs are incurred after March first following the date of purchase of the tax sale
26 certificate by said tax sale purchaser at a first or second offering delinquent tax sale.**

27 [2.] 3. Upon deposit with the county collector of the amount necessary to redeem as
28 herein provided, it shall be the duty of the county collector to mail to the purchaser, his or her
29 heirs or assigns, at the last post office address if known, and if not known, then to the address
30 of the purchaser as shown in the record of the certificate of purchase, notice of such deposit for
31 redemption.

32 [3.] 4. Such notice, given as herein provided, shall stop payment to the purchaser, his
33 or her heirs or assigns of any further interest or penalty.

34 [4. In case the party purchasing said land, his heirs or assigns fails to take a tax deed for
35 the land so purchased within six months after the expiration of the one year next following the
36 date of sale, no interest shall be charged or collected from the redemptioner after that time.]

37 **5. The reasonable and customary costs of sale needed to redeem any land or lot sold**
38 **for taxes under this section shall be determined by the collector.**

140.350. [Infants] **Minors** and incapacitated and disabled persons as defined in chapter
2 475 may redeem any lands belonging to them sold for taxes, within [one year after the expiration
3 of such disability] **five years of the date of the last payment of taxes encumbering the real**
4 **estate by the minor, incapacitated or disabled person, the party's predecessors in interest,**
5 **or any representative of such person, in the same manner as provided in section 140.340 for**
6 **redemption by other persons.**

140.405. 1. Any person purchasing property at a delinquent land tax auction shall not
2 acquire the deed to the real estate, as provided for in section 140.250 or 140.420, until the person
3 meets the requirements of this section, except that such requirements shall not apply to
4 post-third-year sales, which shall be conducted under subsection 4 of section 140.250. The
5 purchaser shall obtain a title search report from a licensed attorney or licensed title company
6 detailing the ownership and encumbrances on the property. [Such title search report shall be
7 declared invalid if the effective date is more than one hundred twenty days from the date the
8 purchaser applies for a collector's deed under section 140.250 or 140.420.]

9 2. At least ninety days prior to the date when a purchaser is authorized to acquire the
10 deed, the purchaser shall notify the owner of record and any person who holds a publicly
11 recorded unreleased deed of trust, mortgage, lease, lien, judgment, or any other publicly recorded
12 claim upon that real estate of such person's right to redeem the property. Notice shall be sent by
13 both first class mail and certified mail return receipt requested to such person's last known
14 available address. If the certified mail return receipt is returned signed, the first class mail notice
15 is not returned, the first class mail notice is refused where noted by the United States Postal
16 Service, or any combination thereof, notice shall be presumed received by the recipient. At the
17 conclusion of the applicable redemption period, the purchaser shall make an affidavit in
18 accordance with subsection [4] 5 of this section.

19 3. If the owner of record or the holder of any other publicly recorded claim on the
20 property intends to transfer ownership or execute any additional liens or encumbrances on the
21 property, such owner shall first redeem such property under section 140.340. The failure to
22 comply with redeeming the property first before executing any of such actions or agreements on
23 the property shall require the owner of record or any other publicly recorded claim on the
24 property to reimburse the purchaser for the total bid as recorded on the certificate of purchase
25 and all the costs of the sale required in sections 140.150 to 140.405.

26 4. In the case that both the certified notice return receipt card is returned unsigned and
27 the first class mail is returned for any reason except refusal, where the notice is returned
28 undeliverable, then the purchaser shall attempt additional notice and certify in the purchaser's
29 affidavit to the collector that such additional notice was attempted and by what means.

30 5. The purchaser shall notify the county collector by affidavit of the date that every
31 required notice was sent to the owner of record and, if applicable, any other publicly recorded
32 claim on the property. To the affidavit, the purchaser shall attach a copy of a valid title search
33 report as described in subsection 1 of this section as well as completed copies of the following
34 for each recipient:

- 35 (1) Notices of right to redeem sent by first class mail;
- 36 (2) Notices of right to redeem sent by certified mail;
- 37 (3) Addressed envelopes for all notices, as they appeared immediately before mailing;
- 38 (4) Certified mail receipt as it appeared upon its return; and
- 39 (5) Any returned regular mailed envelopes. As provided in this section, at such time the
40 purchaser notifies the collector by affidavit that all the ninety days' notice requirements of this
41 section have been met, the purchaser is authorized to acquire the deed, provided that a collector's
42 deed shall not be acquired before the expiration date of the redemption period as provided in
43 section 140.340.

44 6. If any real estate is purchased at a third-offering tax auction and has a publicly
45 recorded unreleased deed of trust, mortgage, lease, lien, judgment, or any other publicly recorded
46 claim upon the real estate under this section, the purchaser of said property shall within forty-five
47 days after the purchase at the sale notify such person of the person's right to redeem the property
48 within ninety days from the postmark date on the notice. Notice shall be sent by both first class
49 mail and certified mail return receipt requested to such person's last known available
50 address. The purchaser shall notify the county collector by affidavit of the date the required
51 notice was sent to the owner of record and, if applicable, the holder of any other publicly
52 recorded claim on the property, that such person shall have ninety days to redeem said property
53 or be forever barred from redeeming said property.

54 7. If the county collector chooses to have the title search done then the county collector
55 may charge the purchaser the cost of the title search before giving the purchaser a deed pursuant
56 to section.140.420.

57 8. [If the property is redeemed, the person redeeming the property shall pay the costs
58 incurred by the purchaser in providing notice under this section. Recoverable costs on any
59 property sold at a tax sale shall include the title search, postage, and costs for the recording of
60 any certificate of purchase issued and for recording the release of such certificate of purchase and
61 all the costs of the sale required in sections 140.150 to 140.405.

62 9.] Failure of the purchaser to comply with this section shall result in such purchaser's
63 loss of all interest in the real estate except as otherwise provided in sections 140.550 and
64 140.570.

65 9. The phrase "authorized to acquire the deed" as used in this chapter shall mean
66 the date chosen by the tax sale purchaser that is more than the minimum redemption
67 period set forth in section 140.340 if the tax sale purchaser has complied with the following
68 requirements entitling the purchaser to the issuance of a collector's deed:

69 (1) Compliance with the requirements of this section to the satisfaction of the
70 collector;

71 (2) Payment of the recording fee for the collector's deed as required under section
72 140.410;

73 (3) Production of the original of the certificate of purchase as required under
74 section 140.420, or production of an original affidavit of lost or destroyed certificate
75 approved by the collector as to form and substance; and

76 (4) Payment of all subsequent taxes required to be paid under section 140.440.

77 10. Notwithstanding any provision of law to the contrary, any person except a
78 minor or an incapacitated or disabled person may receive notice under this section in a
79 foreign country or outside the United States:

80 (1) By any internationally agreed upon means of service that is reasonably
81 calculated to give notice, such as the Hague Convention on the Service Abroad of Judicial
82 and Extrajudicial Documents;

83 (2) If there is no internationally agreed upon means of service, or if an
84 international agreement allows service but does not specify the means, by a method that
85 is reasonably calculated to give notice;

86 (3) As set forth for the foreign country's acceptable method of service in actions in
87 courts of general jurisdiction;

88 (4) As the foreign country directs in response to a letter of request;

89 (5) Unless prohibited by a foreign country's law, by delivering a copy of the notice
90 to the person personally or using a form of mail that requires a signed receipt; or

91 (6) By any other means not prohibited by international agreement as approved by
92 the collector.

140.410. In all cases where lands have been or may hereafter be sold for delinquent
2 taxes, penalty, interest and costs due thereon, and a certificate of purchase has been or may
3 hereafter be issued, it is hereby made the duty of such purchaser, his or her heirs or assigns, to
4 cause all subsequent taxes to be paid on the property purchased prior to the issuance of any
5 collector's deed, and the purchaser shall further cause a deed to be executed and placed on record

6 in the proper county all within [two years] **eighteen months** from the date of said sale; provided,
7 that on failure of said purchaser, his **or her** heirs or assigns so to do, then and in that case the
8 amount due such purchaser shall cease to be a lien on said lands so purchased as herein
9 provided. Upon the purchaser's forfeiture of all rights of the property acquired by the certificate
10 of purchase issued, and including the nonpayment of all subsequent years' taxes as described in
11 this section, it shall be the responsibility of the collector to record the cancellation of the
12 certificate of purchase in the office of the recorder of deeds of the county. Certificates of
13 purchase cannot be assigned to nonresidents or delinquent taxpayers. However, any person
14 purchasing property at a delinquent land tax sale who meets the requirements of this section,
15 prior to receiving a collector's deed, shall pay to the collector the fee necessary for the recording
16 of such collector's deed to be issued. It shall be the responsibility of the collector to record the
17 deed before delivering such deed to the purchaser of the property.

140.420. If no person shall redeem the lands sold for taxes [within the applicable
2 redemption period of one year from the date of the sale or within the ninety-day notice as
3 specified in section 140.405 for a third-year tax sale] **prior to the expiration of the right to**
4 **redeem**, at the expiration thereof, and on production of the certificate of purchase **and upon**
5 **proof satisfactory to the collector that a purchaser or his or her heirs, successors, or assigns**
6 **are authorized to acquire the deed**, the collector of the county in which the sale of such lands
7 took place shall execute to the purchaser, his **or her** heirs or assigns, in the name of the state, a
8 conveyance of the real estate so sold, which shall vest in the grantee an absolute estate in fee
9 simple, subject, however, to all claims thereon for unpaid taxes except such unpaid taxes existing
10 at time of the purchase of said lands and the lien for which taxes was inferior to the lien for taxes
11 for which said tract or lot of land was sold.

231.444. 1. In addition to other levies authorized by law, the governing body of any
2 county of the third **or fourth** classification [without a township form of government having a
3 population of less than six thousand inhabitants according to the most recent decennial census]
4 may by ordinance levy and impose a tax pursuant to this section which shall not exceed the rate
5 of one dollar on each acre of real property in the county which is classified as agricultural and
6 horticultural property pursuant to section 137.016.

7 2. The proceeds of the tax authorized pursuant to this section shall be collected by the
8 county collector and remitted to the county treasurer who shall deposit such proceeds in a special
9 fund to be known as the "Special Road Rock Fund". All moneys in the special road rock fund
10 shall be appropriated by the county governing body for the sole purpose of purchasing road rock
11 to be placed on county roads within the boundaries of the county.

12 3. The ordinance levying and imposing a tax pursuant to subsection 1 of this section shall
13 not be effective unless the county governing body submits to the qualified voters of the county

14 a proposal to authorize the county governing body to levy and impose the tax at an election
15 permitted pursuant to section 115.123. The ballot of submission proposing the tax shall be in
16 substantially the following form:

17 Shall the county of (county's name) be authorized to levy and impose a tax on all
18 real property in the county which is classified as agricultural or horticultural property at a rate
19 not to exceed (rate of tax) cents per acre with all the proceeds of the tax to be placed in
20 the "Special Road Rock Fund" and used solely for the purpose of purchasing road rock to be
21 placed on county roads within the boundaries of the county?

22 YES NO

23 4. If a majority of the qualified voters of the county voting on the proposal vote "YES",
24 then the governing body of the county may by ordinance levy and impose the tax authorized by
25 this section in an amount not to exceed the rate proposed in the ballot of submission. If a
26 majority of the qualified voters of the county voting on the proposal vote "NO", then the
27 governing body of the county shall not levy and impose such tax. Nothing in this section shall
28 prohibit a rejected proposal from being resubmitted to the qualified voters of the county at an
29 election permitted pursuant to section 115.123.

✓

**Branson Christian County II, LP
d/b/a Abbey Orchard II
10-0.6-14-003-001-001.002**

EXHIBIT G

Agent Authorization

AUTHORIZATION FOR ANOTHER PARTY TO REPRESENT TAXPAYER AT THE
CHRISTIAN COUNTY ASSESSOR MEETING & THE RELATED BOARD OF
EQUALIZATION HEARING

I (We), Jeffrey E. Smith Partnerships, LC,

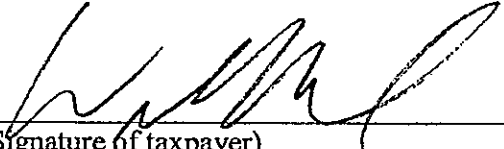
Authorize - Robert J Muchow & Brian T Howes

To represent me (us) at the property tax appeal meeting with the Christian County Assessor & the related Board of Equalization Hearing regarding the properties listed below.

Notices and Correspondence are to be sent to:
(Check only one)

 Taxpayer

 X Authorized Representative/Agent



(Signature of taxpayer)

 6/24/15
(Date)

Regarding all appeals listed below:

Branson Christian County, LP
Branson Christian County II, LP