

BEFORE THE IDAHO BOARD OF TAX APPEALS

SILVER CREEK INVESTORS, LLC,	)	
	)	
Appellant,	)	APPEAL NOS. 24-A-1126 and
	)	24-A-1127
v.	)	
	)	FINAL DECISION AND ORDER
KOOTENAI COUNTY,	)	
	)	
Respondent.	)	
_____	)	

**COMMERCIAL PROPERTY APPEALS**

These appeals are taken from decisions of the Kootenai County Board of Equalization denying appeals of the valuations for taxing purposes on properties described by Parcel Nos. PK3170010010 and PK3170010020. The appeals concern the 2024 tax year.

These matters came on for hearing October 17, 2024, in Post Falls, Idaho, before Board Member Kenneth Nuhn. Member Wyatt Bridges appeared at hearing for Appellant. Kootenai County Appraisal Manager Troy Steiner represented Respondent.

Board Members Leland Heinrich, Kenneth Nuhn, and Doug Wallis join in issuing this decision.

**The issues on appeal concern the market values of two (2) improved commercial properties.**

**The decisions of the Kootenai County Board of Equalization are modified.**

FINDINGS OF FACT

Parcel No. PK3170010010 (Appeal #24-A-1126)

The assessed land value is \$716,710, and the improvements' value is \$3,158,798, totaling \$3,875,508. Appellant agrees with the land value, but contends the value of the improvements is \$1,755,790, totaling \$2,472,500.

Parcel No. PK3170010020 (Appeal #24-A-1127)

The assessed land value is \$510,092, and the improvements' value is \$3,199,890, totaling \$3,709,982. Appellant agrees with the land value but contends the correct value of the improvements is \$1,672,408, totaling \$2,182,500.

The subject properties are adjacent commercial parcels located in Post Falls, Idaho, and operate jointly as an affordable senior housing development. The development is comprised of two (2) buildings with a total gross building area of 83,214 square feet and a total net rentable area of 62,128 square feet. The facility offers one-, two-, and three-bedroom units, of which seventy-three (73) are held as affordable units, eight (8) as market rent units, and one (1) as a manager's unit. Both subject properties are encumbered by Low-Income Housing Tax Credit (LIHTC) regulatory agreements and one (1) also operates under a Tax Credit Assistance Program (TCAP) agreement. The LIHTC agreements have forty (40) year terms and expire in 2051 and 2052 for the respective subject properties.

The prior owner, a nonprofit organization, operated the subject properties as a low-income senior housing facility according to the terms of the regulatory agreements and adhered to the requirements of Idaho Code § 63-205A, which provides special assessment treatment for low-income housing properties. One (1) requirement to receive the special assessment treatment is that the owner annually provide, by April 1, to the Idaho State Tax Commission (STC), “. . . such financial statements from the prior year as are customarily prepared in the ownership and operation of any section 42 property.” Idaho Code § 63-205A(2)(d).

Appellant explained the prior owner's founder and CEO was suffering ill health, so the organization was hurriedly selling off assets, including the subject properties. The subject properties were listed with a brokerage group specializing in LIHTC properties which began the marketing process in May 2023. By the end of June, six (6) offers were received ranging from \$3,500,000 to \$4,250,000. The group was eventually narrowed to two (2) interested buyers, and on March 19, 2024, Appellant's purchase was complete at a total combined price of \$4,655,000 (\$2,472,500 for Parcel No. PK3170010010 and \$2,182,500 for Parcel No. PK3170010020).

Appellant was generally unaware of the impending April 1 deadline by which to submit financial statements to the STC and did not realize the prior owner had not already done so. Because the financial statements were not submitted, the subject properties did not satisfy the requirements of Idaho Code § 63-205A, so were assessed at full market value as an unrestricted housing complex. Appellant explained the unique circumstances concerning the prior owner's health issues and series of events leading to subjects' purchase to the Kootenai County Board of Equalization (BOE). The BOE initially decided to allow Appellant to submit the necessary financial statements and to specially assess subjects as low-income properties. However, as the properties had just recently been purchased, Appellant only had mid-year financial statements for 2024 available so provided those. Upon learning Appellant had not submitted the 2023 year-end financial statements, the BOE resolved to deny the special assessment treatment provided in Idaho Code § 63-205A, so subjects were assessed at market value.

Appellant pointed out the subject properties have been assessed as a low-income housing development since they were constructed and stressed that, but for the unusual

circumstances surrounding the health of the prior owner, the proper paperwork would have been timely submitted and the properties would have qualified for special assessment treatment. Appellant petitioned the Board to look past the April 1 filing deadline and to value the subject properties as a low-income housing complex because the properties are still bound by the terms of the LIHTC agreements, which run with the land.

Appellant alternatively argued that if subjects did not qualify under Idaho Code § 63-205A, the assessed values should match their respective recent purchase prices. As part of the highly competitive bidding process to acquire the subject properties, Appellant commissioned an independent fee appraisal with an effective date of valuation of November 15, 2023. The appraisal evaluated subjects as a single affordable senior housing complex and developed an “as-is” value as encumbered by the rent restrictions, as well as a value based on the hypothetical condition that the subject properties are not encumbered. The appraisal considered all three (3) valuation approaches but concluded the cost approach had limited applicability due to the age of the subject improvements and the inherent difficulty in accurately estimating accrued depreciation.

For the sales comparison approach, the appraisal analyzed five (5) sales of affordable housing developments, some of which were subject to tax credit agreements. Two (2) of the sale properties were located in Wyoming, one (1) was located just across the border in Washington, and two (2) were located in Idaho, including one (1) in Post Falls. The sale facilities were constructed between 1992 and 2008 and varied in unit count from 23 to 55 units. Three (3) of the sales transpired during 2023, one (1) occurred in 2022, and the sale in Post Falls closed in December 2021. Sale prices ranged from

\$1,650,000 to \$3,362,240, or roughly \$58,500 to \$72,000 per unit. The appraisal made quantitative and qualitative adjustments to the sales for purposes of comparison with the subject development, resulting in adjusted price indications from approximately \$53,000 to \$70,000 per unit. The appraisal's sales analysis suggested a value of \$4,800,000, or \$58,537 per unit, for the subject facility.

The appraisal's income approach model began with an analysis of market rents for each type of unit in the subject facility, including a separate market analysis for the eight (8) units with unrestricted rents. The appraisal noted subject's contract rents were well below market rents for similar type unrestricted units in the marketplace, but because the subject facility was being valued "as-is" with the encumbrances in place, the income model utilized subject's contract rents in estimating potential gross income. A 3% vacancy and collection loss factor was applied to arrive at an effective gross income figure of nearly \$685,000. In analyzing operating expenses, the appraisal utilized a market rate of 56.6%, which was noted to be lower than subject's actual operating expense rate of 61.7%. After a lengthy discussion, a capitalization rate of 5.75% was concluded, which was on the low end of the range indicated by the numerous sources cited by the appraisal. The end result was a value conclusion of \$4,800,000, or \$58,537 per unit, for the subject facility.

In the final reconciliation, the appraisal emphasized the income approach due to the difficulty in adjusting for differences in the regulations governing the various sale properties included in the sales comparison approach. Ultimately, the appraisal concluded an "As Is Market Value – As Encumbered" figure of \$4,800,000 for the subject facility. After a similar analysis, the appraisal also concluded a "Market Value Based on a

Hypothetical Condition – As If Unencumbered” figure of \$18,400,000, reflecting the subject facility’s market value free from any low-income regulatory restrictions.

Though Appellant relied on the appraisal during the process leading up to the purchase of the subject properties, Appellant contended subjects’ actual combined purchase price of \$4,655,000 was the best evidence of the facility’s current market value and petitioned the Board to reduce subjects’ valuations accordingly.

Respondent acknowledged the subject properties had historically been specially assessed as a low-income housing development, but were assessed at full market value for 2024 because Appellant did not file timely the required 2023 year-end financial statements for the subject facility. Respondent maintained the current valuation was proper because the requirements necessary for the special assessment treatment afforded to low-income housing properties in Idaho Code § 63-205A were not satisfied.

#### CONCLUSIONS OF LAW

This Board's goal in its hearings is the acquisition of sufficient, accurate evidence to support a determination of market value in fee simple interest or, as applicable, a property's exempt status. This Board, giving full opportunity for all arguments and having considered all the testimony and documentary evidence submitted by the parties, hereby enters the following.

Idaho Code § 63-205 requires taxable property be assessed at market value annually on January 1; January 1, 2024, in this case. Market value is always estimated as of a precise point in time. Idaho Code § 63-201 provides the following definition,

“Market value” means the amount of United States dollars or equivalent for which, in all probability, a property would exchange hands between a willing seller, under no compulsion to sell, and an informed,

capable buyer, with a reasonable time allowed to consummate the sale, substantiated by a reasonable down or full cash payment.

Market value is estimated according to recognized appraisal methods and techniques. The sales comparison approach, the cost approach, and the income approach comprise the three (3) primary methods for determining market value. *Merris v. Ada Cnty.*, 100 Idaho 59, 63, 593 P.2d 394, 398 (1979). The income approach is commonly used to estimate the value of commercial property, as such property is typically transacted in the marketplace based on its potential to generate income.

The first issue is whether the subject properties are entitled to special assessment treatment as a low-income housing development. Idaho Code § 63-205A reads in relevant part,

(2) The market value for assessment purposes of section 42 low-income properties shall be determined by the county assessor using the following criteria:

(a) The sales comparison approach using similar rent restricted properties, the cost approach, and the income approach, shall be considered in valuing section 42 low-income properties . . . The three (3) approaches will be reconciled into a single property value.

(b) Net operating income to be capitalized in the income approach shall not include the amount of housing tax credits . . .

(c) The Idaho state tax commission shall gather market data to determine market derived capitalization rates for section 42 low-income properties . . .

(d) Beginning in 2010, the owners of properties described in this section *shall provide* to the Idaho state tax commission *no later than April 1 of each year*, such financial statements from the prior year as are customarily prepared in the ownership and operation of any section 42 property . . . If such information is not made available to the Idaho state tax commission and county assessors, each county shall substitute market rent apartment derived expenses and income for section 42 low-income properties.

(Emphasis added).

The statute mandates an owner of a low-income property annually provide financial statements to the Idaho State Tax Commission by April 1; it is not discretionary. The parties agree, and the record is clear, Appellant did not provide the necessary financial statements by the deadline. And as the Idaho Supreme Court has repeatedly expressed, “[a] statute granting tax exemption cannot be extended by judicial construction so as to create an exemption not specifically authorized. Exemptions are never presumed. The burden is on a claimant to establish clearly a right to exemption. It must be in terms so specific and certain as to leave no room for doubt.” *Sunset Memorial Gardens, Inc. v. Idaho State Tax Comm’n*, 80 Idaho 206, 219, 327 P.2d 766, 774 (1958). Here, the requirements of Idaho Code § 63-205A were not satisfied, and where the statute does not provide for a waiver of the filing deadline, the Board must find the subject properties are not entitled to special assessment as low-income properties for 2024.

Having resolved the first issue, the remaining question concerns whether the subject properties were assessed at market value. Nothing was offered regarding the methodology used to determine subjects’ combined assessed value of \$7,585,490, other than Respondent’s comment that the properties were valued as an unrestricted apartment complex. In Appellant’s view, the best evidence of market value in this case is subjects’ purchase in March 2024 for a combined price of \$4,655,000. While the Board generally agrees a recent arm’s-length purchase of a property is strong evidence of that property’s market value, a proper consideration of market value generally requires more than a single data point. As observed by the Idaho Supreme Court, “‘market value’ cannot be established by a single arm's length transaction in which a unique property . . . is sold for



cash . . . ‘market value’ becomes an important standard of measurement in the valuation of property only after there have been numerous sales or exchanges of similar property.” *Janss Corp. v. Bd. of Equalization of Blaine Cnty.*, 93 Idaho 928, 931, 478 P.2d 878, 881 (1970).

Another concern with relying solely on subjects’ purchase is the transaction did not occur until mid-March, roughly two and one-half (2½) months after the relevant date of valuation in this appeal. Developing a value opinion as of a certain date is inherently dependent on sales and market data from prior to such date of valuation, as market participants cannot evaluate sales and events which have not yet occurred. That being said, a retrospective appraisal may incorporate sales from after the effective date of valuation, but proper appraisal practice would be to time-adjust such sale prices back to the date of valuation. Here the record is void of any information related to market conditions during early 2024, so there is nothing upon which to determine an appropriate time-adjustment factor to apply to subjects’ purchase prices.

Though nothing in the record suggested subjects’ combined purchase price was below market or that the purchase was not otherwise an arm’s-length transaction, the Board was hesitant to place too much emphasis on subjects’ purchase, particularly where there was an abundance of timely sales and market data in the form of an independent fee appraisal. The appraisal developed value opinions for the subject development under both the income and sales comparison approaches. The methodologies were found to be consistent with accepted standards of appraisal, and the resulting value conclusion of \$4,800,000 was well supported by recent sales and other relevant market information.

Idaho Code § 63-511 places the burden on Appellant to establish subjects' valuations are erroneous by a preponderance of the evidence. While Appellant did demonstrate error in subjects' assessed values, the Board did not find sufficient support for the values petitioned by Appellant. In the Board's view, the appraisal represented the best evidence of subjects' market values in this instance, particularly given the absence of any competing sales or market data from Respondent.

Based on the above, the decision of the Kootenai County Board of Equalization is modified.

#### FINAL ORDER

In accordance with the foregoing Final Decision, IT IS ORDERED that the decisions of the Kootenai County Board of Equalization concerning the subject parcels be, and the same hereby are, MODIFIED, as follows:

Parcel No. PK3170010010 (Appeal No. 24-A-1126)

Land:	\$ 716,710
<u>Improvements:</u>	<u>\$1,735,661</u>
Total Value:	\$2,452,371

Parcel No. PK3170010020 (Appeal No. 24-A-1127)

Land:	\$ 510,092
<u>Improvements:</u>	<u>\$1,837,537</u>
Total Value:	\$2,347,629

IT IS FURTHER ORDERED, pursuant to Idaho Code § 63-1305, any taxes which have been paid in excess of those determined to have been due be refunded or applied against other *ad valorem* taxes due from Appellant.

Idaho Code § 63-3813 provides that under certain circumstances the above-ordered values for the current tax year shall not be increased in the subsequent assessment year.

DATED this 30<sup>th</sup> day of December, 2024.