

BEFORE THE IDAHO BOARD OF TAX APPEALS

COLUMBIA GARDENS, INC.,	)	
	)	
Appellant,	)	APPEAL NO. 15-A-1144
	)	
v.	)	FINAL DECISION
	)	AND ORDER
CANYON COUNTY,	)	
	)	
Respondent.	)	
_____	)	
	)	
	)	

**PROPERTY TAX EXEMPTION APPEAL**

This appeal is taken from a decision of the Canyon County Board of Equalization denying the protest of valuation for taxing purposes of property described by Parcel No. 021470000. The appeal concerns the 2015 tax year.

This matter came on for hearing October 27, 2015 in Caldwell, Idaho before Hearing Officer Travis VanLith. Chief Executive Officer C. Fred Cornforth appeared at hearing for Appellant. Chief Deputy Assessor Joseph Cox represented Respondent.

Board Members David Kinghorn, Linda Pike and Leland Heinrich participated in this decision.

**The issue on appeal concerns whether the subject property qualifies for property tax exemption pursuant to Idaho Code § 63-602C, as property belonging to a charitable organization.**

**The decision of the Canyon County Board of Equalization is modified.**

FINDINGS OF FACT

The assessed land value is \$121,100, and the improvements' value is \$1,066,600, totaling \$1,187,700. Appellant contends subject is property belonging to a charitable organization, and thus tax-exempt.

The subject property is a nineteen (19) unit development which provides housing to low income or disabled persons. The facility includes one (1), two (2), and three (3) bedroom units.

Subject was constructed in 2002 and was placed in service the following year. Though it was not clear under which exemption, Appellant reported subject received a property tax exemption since the facility began operations. In 2014, Appellant applied for an exemption under Idaho Code § 63-602GG, as low-income housing owned by a nonprofit organization. The application was denied. For 2015, Appellant applied for exemption pursuant to Idaho Code § 63-602C as property belonging to a charitable organization, which application was also denied.

Appellant explained subject is a United States Department of Housing and Urban Development (HUD) Section 811 project. The HUD 811 housing program is a federally-funded endeavor aimed at providing housing to persons with disabilities. The program's rules include strict income and disability restrictions in order to qualify. HUD 811 also dictates the monthly rental rates for the units in the project. Once the program's requirements are satisfied, HUD provides a grant to construct the proposed facility. In this case, HUD provided roughly \$1.1 million toward constructing subject. Appellant also received a \$25,000 grant from the HOME program to help cover construction costs.

Appellant described the residents of the subject project as being severely disabled and income-restricted. Appellant reported sixteen (16) of the nineteen (19) units were occupied by persons at or below 30% of the median county income level, many of which also suffer from severe physical disabilities or are terminally ill. The rental rate for each unit in the development is \$369 per month, which rate is set by HUD and cannot be increased by Appellant. The rental rate applies universally to all units regardless of a resident's particular income level or size of the unit. The rental rate was also noted by the parties to be below market. Appellant characterized this as a key difference between HUD 811 and other low-income housing projects, which

generally have some flexibility in the rental rates or receive rent subsidies from the government to make up for the difference between the rent charged and market rent. Appellant does not receive government rent subsidies.

Respondent explained the exemption application was denied because Appellant failed to meet all eight (8) factors identified in *In re Sunny Ridge Manor* for determining whether an organization is charitable. Specifically, Respondent contended Appellant did not satisfy the following factors: 1) whether the entity is supported by donations, 2) whether recipients of the services provided are required to pay a fee for such services, and 3) whether the entity provides a general public benefit. Respondent noted subject is not supported by public donations, but rather receives income only from the government and tenant rent payments. Respondent also pointed out recipients are required to pay rent, which rate Respondent argued was the maximum allowed under the program and comparable to rates charged by other low income housing developments. Lastly, Respondent contended a general public benefit is not provided because the government financed the project. Appellant countered subject's rental rates were not truly comparable to other low-income developments because most other projects in the area receive rent subsidies or some other form of ongoing government assistance. Appellant also argued subject does provide an important benefit to one of the most vulnerable segments in society, which housing benefit would have to otherwise be provided by the government.

Alternatively, Appellant argued subject qualified for property tax exemption pursuant to Idaho Code § 63-602GG, as low-income housing owned by a nonprofit organization. Appellant outlined the general requirements for the exemption, focusing on the fact nearly 85% of subject's units are rented to persons at or below 30% of the area median income, whereas the statute

requires only 25% of the units be reserved for those in the lowest income group. Respondent maintained subject did not qualify for the low-income housing exemption because subject is not managed by a nonprofit owner or a related nonprofit organization. Instead, subject is managed by Somerset Pacific, LLC, which is a for profit company wholly owned by a separate nonprofit company. According to Appellant, Somerset is a “break-even” operation, and any profits realized are remitted to the nonprofit parent company.

Respondent also offered information related to the sales comparison and income approaches to value. The sales comparison approach included four (4) sales of low-income housing projects. Two (2) of the sales transpired in 2014, and two (2) in 2012. The sales properties were not HUD Section 811 projects like subject, however were involved in different HUD programs. Respondent determined a value under the sales comparison approach of \$1,187,700 for subject.

Because subject must cater to those in poverty and thus generally has lower rental rates than other low-income housing projects in the area, Respondent’s income approach utilized subject’s actual gross income. Market rates were used for the other input factors. The analysis yielded a value of \$513,000. Respondent requested subject’s value be reduced accordingly.

#### CONCLUSIONS OF LAW

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

Appellant argued subject qualified for a property tax exemption as either property

belonging to a charitable organization or as low-income housing owned by a nonprofit entity. As for the latter claimed exemption, the Board is unable to rule on the issue. Appellant did not apply for an exemption under Idaho Code § 63-602GG as required by statute. Idaho Code § 63-602 provides in pertinent part;

(3) All exemptions from property taxation claimed shall be approved annually by the board of county commissioners or unless otherwise provided:

(a) Exemptions pursuant to . . . do not require application or approval by the board of county commissioners. For all other exemptions in title 63, Idaho Code, the process of applying is as specified in the exemption statutes or, if no process is specified and application is necessary to identify the property eligible for exemption, *annual application is required*. Exemptions in other titles require no application.

(b) For exemptions that require an application, provided such exemptions are for property otherwise subject to assessment by the county assessor, the *application must be made to the county commissioners by April 15* . . . (emphasis added).

The low-income housing exemption requires annual application and approval by the board of county commissioners. Appellant made no application for exemption pursuant to Idaho Code § 63-602GG for the current tax year. In the context of an ad valorem appeal, this Board does not have jurisdiction to decide a claim not first brought before the board of county commissioners sitting as the board of equalization. In other words, Appellant failed to exhaust its administrative remedies for the low-income housing exemption claim prior to appealing to this Board. As a result, the Board is precluded from considering subject's eligibility for the low-income housing exemption.

We turn now to the question of whether subject qualifies for a tax exemption as property belonging to a charitable organization. Idaho Code § 63-602C reads;

The following property is exempt from taxation: property belonging to any fraternal, benevolent, or charitable limited liability company, corporation or society, the World War veteran organization buildings and memorials of this state, used exclusively for the purposes for which such limited liability company, corporation or society is organized . . . .

As the statute makes clear, an eligible property is one which is owned by a charitable organization and such property is used exclusively to further the charitable purposes of the organization. Subject clearly satisfies the exclusive use requirement, so it is the ownership requirement at issue here.

Admittedly, Appellant is a nonprofit organization pursuant to Internal Revenue Code § 501(c)(3). This fact, however, is not determinative of whether Appellant is a charitable organization under Idaho tax law. The term *charitable* is not defined in statute, however, the Supreme Court of Idaho has had occasion to determine an organization's charitable status. Specifically, the Court identified the following eight (8) guiding factors in evaluating whether an organization is charitable:

(1) the stated purposes of its undertaking, (2) whether its functions are charitable (in the sense just discussed), (3) whether it is supported by donations, (4) whether the recipients of its services are required to pay for the assistance they receive, (5) whether there is a general public benefit, (6) whether the income received produces a profit, (7) to whom the assets would go upon dissolution of the [organization], and (8) whether the "charity" provided is based on need.

*In re Sunny Ridge Manor*, 106 Idaho 98, 100, 675 P.2d 813, 815 (1984).

Respondent argued an applicant must satisfy all eight (8) *Sunny Ridge* factors in order to qualify as a charitable organization. We find Respondent's position in this regard misguided and unsupported. Applicable case law holds the *Sunny Ridge* factors are not an exhaustive checklist, but are rather intended to provide guidance. "Determination of an institution's

charitable status is necessarily an individual matter, to be decided on a case-by-case basis. There may be factors listed above which have no application to particular cases, and factors not listed which would need to be considered.” See *Id.* Further, the Court held, “[t]hese factors do not constitute a formal checklist for deciding if a corporation is ‘charitable’; rather they serve only as guidelines for the court’s application of the definition of ‘charitable’ as to a particular corporation.” *Coeur d’Alene Pub. Golf Club v. Kootenai Bd.*, 106 Idaho 104, 675 P.2d 819 (1984).

We now examine each of the above factors in relation to Appellant.

**1. The stated purpose of Appellant’s undertaking.**

Article II of Appellant’s Articles of Incorporation, identify the organization’s purpose as providing “elderly and physically disabled persons with housing facilities and services specially designed to meet their physical, social, and psychological needs, and to promote their health, security, happiness, and usefulness in longer living . . . on a nonprofit basis.” Appellant is a nonprofit corporation created for the purpose of providing low-income housing to elderly and physically disabled residents in the area, which satisfies this factor.

**2. Whether Appellant’s functions are charitable.**

In addition to identifying the eight (8) factors, the *Sunny Ridge* Court defined charitable activities. “To be classed as charitable, an organization need not provide monetary aid to the needy; it may provide any number of services of public benefit. The word “charitable,” in a legal sense, includes every gift for general public use, whether it be for educational, religious, physical or social benefit.” *Sunny Ridge* at 100.

Appellant provides financial relief by providing housing for needy and disabled persons

for less than market value.

**3. Whether Appellant is supported by donations.**

Appellant is not supported by donations. Rather, Appellant's revenues come from the rents paid by the tenants. Further, the government, in the way of grants, was the funding source for construction of the subject property. Government grants are not donations, as was confirmed by the Court in *Housing Southwest v. Wash. County*, which involved a low-income housing project. In responding to Housing Southwest's argument it met a need that might otherwise have to be met by the government because it provided housing to low-income senior citizens and disabled persons based on need, the Court held, "this argument is circular in that the need Housing Southwest meets is in fact being met by government through tax-supported FHA subsidies . . . Housing Southwest does not perform a function which might otherwise be an obligation of the government, because it provides housing supported by federal tax dollars without private donations." 128 Idaho 335, 913 P.2d 68 (1968). The same holds true here, where the housing provided by Appellant is funded by tax dollars, not private donations.

**4. Whether the recipients of Appellant's service are required to pay for the assistance they receive.**

Undoubtedly, the recipients of Appellant's service are required to pay for the housing assistance they receive. Charging a fee does not necessarily disqualify an organization from being charitable. Fees in the case of a charitable organization, however, are often below market rates. Subject's residents do pay below-market rents, however, such is ". . . not enough, by itself, for [Appellant] to be considered a charity. Otherwise, any landlord renting below market value could potentially claim to be a charity." *Community Action Agency v. Nez Perce County*,

138 Idaho 82, 57 P.3d 793 (2002). The rents charged by Appellant are well below market, which supports Appellant being charitable.

**5. Whether there is a general public benefit.**

This factor is closely tied to whether the organization at issue is supported by private donations, and specifically considers whether Appellant provides a service which would otherwise be an obligation of the government. *Id.* at 86. As noted earlier, Appellant is not supported by private donations. Rather, subject is supported by taxpayer money. As such, the Board does not see where Appellant is relieving or lessening the burden on government to provide low-income housing to the elderly and disabled. Indeed, the government fully financed Appellant's project.

**6. Whether the income received produces a profit.**

Appellant is a nonprofit organization. Though no financial statements were offered, there was no indication by either party subject generates a profit.

**7. To whom the assets would go upon dissolution of the corporation.**

Article VII of Appellant's Articles of Incorporation provide for the assets to go to a qualifying IRC section 501(c)(3) entity organized for charitable purposes. This factor weighs in favor of granting a charitable exemption.

**8. Whether the service provided is based on need.**

The services provided by Appellant are based on need. The HUD Section 811 program imposes strict income requirements on qualified housing projects. Of the nineteen (19) available units, Appellant reported sixteen (16) units were occupied by persons at or below 30% of the area median income level.

While the majority of the above factors were met, Appellant failed to satisfy two (2) critical factors. Specifically, Appellant is not supported by donations, and Appellant does not provide a general public benefit. “If the general public does not receive a direct benefit from a corporation's donations, then the question presented by the ‘general public benefit’ factor is whether the corporation fulfills a need which the government might otherwise be required to fill.” See *Owyhee Motorcycle Club*, 123 Idaho at 965, 855 P.2d at 50; *Sunny Ridge*, 106 Idaho at 100, 675 P.2d at 815. It is difficult in this case to find Appellant is providing a service the government would otherwise have to provide because the project was funded by taxpayers. Federal grants and subsidies are not donations. “In fact the burden is merely shifted from one group of taxpayers to another, and government is not relieved of an obligation it would otherwise have.” *Housing Southwest* at 337. Failing to satisfy these two (2) key factors tipped the balance in favor of Respondent’s contention that Appellant is not a charitable entity.

A well-established legal principle is tax exemptions are to be construed strictly against the taxpayer. “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). While the Board applauds Appellant’s efforts to provide housing to low-income and disabled persons, we cannot grant the requested exemption based on the facts in this particular case. Appellant may well qualify for a different property tax exemption, but not the charitable exemption.

What remains is the question of subject's assessed value. Idaho Code § 63-205 requires taxable property be assessed at market value annually on January 1; January 1, 2015 in this case. Market value is defined in Idaho Code § 63-201, as,

“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.

The three (3) primary methods for determining market value are the cost approach, the sales comparison approach, and the income approach. *Merris v. Ada County*, 100 Idaho 59, 63, 593 P.2d 394, 398 (1979). Respondent considered both the income and sales comparison approaches. Giving attention to subject being a unique low-income housing development in the area, Respondent offered an income approach based on subject's actual income. The analysis indicated a total value of \$513,000, which Respondent contended was a reasonable estimate of subject's market value. The Board agrees. Respondent's consideration under the income approach was supported and gave adequate consideration to subject's particular circumstances. As such, the decision of the Canyon County Board of Equalization is modified to reflect a reduction in subject's total value to \$513,000.

#### FINAL ORDER

In accordance with the foregoing Final Decision, IT IS ORDERED that the decision of the Canyon County Board of Equalization concerning the subject parcel be, and the same hereby is, MODIFIED to reflect a decrease in subject's total value to \$513,000, with Respondent to determine the value allocation between the land and the improvements.

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 value for the current tax year shall not be increased in the subsequent assessment year.

DATED this 29<sup>th</sup> day of March, 2016.