

BEFORE THE IDAHO BOARD OF TAX APPEALS

NORTHWEST PASSAGE APARTMENTS, LP,)	
)	
Appellant,)	APPEAL NOS. 18-A-1038
)	& 18-A-1039
v.)	
)	FINAL DECISION
VALLEY COUNTY,)	AND ORDER
)	
Respondent.)	
_____)	
)	
)	

COMMERCIAL PROPERTY APPEALS

These appeals are taken from decisions of the Valley County Board of Equalization denying protests of valuation for taxing purposes on properties described by Parcel Nos. RPD00000108562 and RPD00000108575. The appeals concern the 2018 tax year.

These matters came on for hearing October 4, 2018 in Cascade, Idaho before Hearing Officer Cindy Pollock. Vice President Julie Marple appeared at hearing for Appellant. Assessor June Fullmer represented Respondent.

Board Members David Kinghorn, Leland Heinrich and Kenneth Nuhn join in issuing this decision.

The issue on appeal concerns the market value of an apartment complex and an adjoining land parcel.

The decisions of the Valley County Board of Equalization are modified.

FINDINGS OF FACT

Parcel No. RPD00000108562 (Appeal No. 18-A-1038)

The assessed land value of this 2.43 acre parcel is \$149,160, and the improvements' value is \$3,647,165, totaling \$3,796,325. Appellant contends the correct total value is \$1,720,000.

Parcel No. RPD00000108575 (Appeal No. 18-A-1039)

The assessed land value of this vacant .397 acre parcel is \$140,120. Appellant contends the correct land value is \$28,269.

This appeal involves two (2) adjacent parcels located in Donnelly, Idaho. The larger parcel is improved with a 37-unit low-income housing complex constructed in 2017. The improvements have 33,328 square feet, with 32,328 dedicated to rental apartment use and the remainder for office and resident services. The apartments are comprised of ten (10) one-bedroom units, nineteen (19) two-bedroom units, and eight (8) three-bedroom units. The smaller parcel is unimproved and not presently used in connection with the apartments parcel. At the time of purchase in 2016, for roughly \$283,000, subjects were part of a single parcel.

Appellant disagreed with Respondent's reliance on the cost approach to determine the value of the apartments parcel. Appellant contended the income approach was best suited to estimate this property's value because it is an income-producing property. The development is an Internal Revenue Code Section 42 property, otherwise known as a low-income housing project. As such, the property must be operated according to a regulatory agreement. The agreement specifies certain occupancy restrictions related to how many units must be dedicated to low-income tenants at various levels of area median gross income.

For the subject apartments, the regulatory agreement requires not less than two (2) units be occupied by individuals whose incomes are 40% or less of the area median income; not less than four (4) units be occupied by individuals whose incomes are 45% or less of the area median income; not less than thirteen (13) units be occupied by individuals whose incomes are 50% or less than the area median income; and not less than thirteen (13) units be occupied by individuals whose incomes are 55% or less of the area median income. The regulatory

agreement rents are less than market rates. As such, Appellant argued the apartment parcel should be valued using the income approach and the development's actual rents and expenses.

Focusing first on the apartment parcel, Appellant provided an independent fee appraisal with a valuation date of July 19, 2016. Though a couple years old, Appellant maintained the appraisal was useful because many of the assumptions made in the report turned out to be accurate as the development has approached stabilization through the lease-up period. Appellant remarked the development reached stabilization in August 2018. The appraisal noted the apartments had not yet been constructed nor had the tax credits funded at the time of the report. However the value estimates reflected this subject's value as if the construction was finished and the tax credits were funded. Also, the appraisal estimated the apartments' value as both a market rent property and as a rent-restricted complex. In the final reconciliation, the appraisal concluded a hypothetical value of \$1,720,000 for subject as a rent-restricted property and \$1,760,000 as rent-restricted and after stabilization. In similar fashion, the appraisal concluded hypothetical values of \$2,611,000 and \$2,660,000 for this subject as a market value development.

Appellant also pointed to assessed values of two (2) other low-income housing developments located in the county. It was argued the subject apartments should be valued similarly. Both referenced properties were located in McCall and both lots were roughly 3.5 acres in size. No other physical details were offered. Total assessed values for the referenced properties were \$1,745,472 and \$1,924,656.

Respondent explained the apartments were assessed at market value because Appellant failed to provide the annual financial information to the Idaho State Tax Commission by April 1,

2018, as required by Idaho Code § 63-205A. Respondent pointed out the statute and corresponding administrative rule require low-income housing developments be valued at market value if the facility's financial information is not timely provided. Appellant contended the apartments were not stabilized during 2017 so the financial information was incomplete.

In valuing the apartments, Respondent reported there were no recent sales of similar property in the county. Therefore the sales comparison approach was not developed. Respondent considered subject's value under the income and cost approaches. Though the cost approach is common for newer construction, Respondent concluded the income approach was most appropriate in this case. Using market-derived revenue and expense figures, Respondent determined a total value of \$3,101,748 for the apartment parcel, and requested this lower value be adopted.

For the smaller vacant parcel, Appellant's value position was derived from the purchase price. Appellant calculated the percentage of the total 2.827 acres reflected by the .397 acre subject lot. This ratio was then applied to the purchase price, resulting in a value indication of approximately \$28,000.

While noting the smaller parcel is a separate and distinct lot, Respondent determined it was appropriate in this instance to value the lot as part of the apartment parcel. This treatment resulted in a recommended and lower value of \$1,358.

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, hereby enters the following.

Idaho Code § 63-205 requires taxable property be assessed at market value annually on January 1; January 1, 2018 in this case. In the most common instance 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.

Market value is estimated according to recognized appraisal methods and techniques. The three (3) approaches to value include the sales comparison approach, the cost approach, and the income approach. *Merris v. Ada County*, 100 Idaho 59, 63, 593 P.2d 394, 398 (1979). The income approach is often used to value income-producing property, and both parties advocated its use here in valuing subjects. Estimating market value on income producing property normally entails the consideration of market rent. However for certain low-income apartments the estimate of net income for taxation purposes may be based on a different type of income.

As these appeals concern separate parcels, each will be examined in turn beginning with the apartments parcel. Qualifying low-income housing developments are eligible for special assessment treatment under Idaho law provided certain conditions are satisfied. Idaho Code § 63-205A provides in pertinent part,

(1) Section 42 of the Internal Revenue Code and related regulations govern the housing tax credit established under the 1986 tax reform act, as amended, and provides an incentive for developers to provide safe and sanitary housing for individuals and families earning no more than sixty percent (60%) of the area median income as determined by the U.S. department of housing and urban

development (HUD), which income and rent restrictions remain in place as provided for in the tax credit regulatory agreement between the owner and the Idaho housing and finance association.

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

. . .

(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. For 2009, said financial statements shall be provided no later than May 1. In addition, no later than May 1 of 2009 or, for new developments with housing tax credits or new allocations, by April 1 of the first year of any tax credit regulatory agreement, the Idaho housing and finance association shall provide to the Idaho state tax commission statements ascertaining the dollar amounts of housing tax credits that have been allocated to each section 42 property, the year such credits were first paid, and the total number of years in the regulatory agreement. The Idaho state tax commission shall then make the financial statements and tax credit information required under this section available to each county assessor. 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).

As the above statute clearly states, the owner of a Section 42 low-income housing development is required to submit financial statements on an annual basis to the State Tax Commission, by April 1, in order to receive special valuation treatment. Failure to timely submit the information results in the housing being assessed using market-derived revenue and expense estimates. The language of the statute is clear and unambiguous; the requirement to timely file a project's financial information with the State Tax Commission is mandatory.

"This Court has consistently adhered to the primary canon of statutory construction that where the language of the statute is unambiguous, the clear expressed intent of the legislature

must be given effect and there is no occasion for construction. Moreover, unless a contrary purpose is clearly indicated, ordinary words will be given their ordinary meaning when construing a statute." *Corp. of the Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. Ada Cnty.*, 123 Idaho 410, 415, 849 P.2d 83, 86 (1993). Appellant failed to provide the required financial data, therefore the subject apartments must be valued using market revenue and expense data. Respondent's market-rent income approach yielded a value conclusion of \$3,101,748, which was noted to be lower than the county assessed value. Respondent petitioned the Board to accept this lower valuation, which under the circumstances is appropriate in the Board's view.

Turning to the adjacent vacant parcel, we also find an adjustment warranted. Respondent re-worked its valuation of this subject and concluded a value of \$1,358.

In accordance with Idaho Code § 63-511, Appellant bears the burden of establishing subjects' assessed values are erroneous by a preponderance of the evidence. While we did not find Appellant met the requisite burden of proof, Respondent's recommended value reductions were found to be supported and reasonable.

Given the above, the decisions of the Valley County Board of Equalization are modified as detailed below.

FINAL ORDER

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

Parcel No. RPD00000108562

Land	\$ 149,160
Improvements	<u>\$2,952,588</u>
Total	\$3,101,748

Parcel No. RPD00000108575

Land	\$ 1,358
------	----------

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 14th day of November, 2018.