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November 16, 2023

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**RE: THE VILLAS OF SAVANNAH LP V. HARDIN COUNTY ASSESSOR'S OFFICE,
APD Case No. 53.02-232790J**

Enclosed is an *Initial Order*, including a *Notice of Appeal Procedures*, rendered in this case.

Administrative Procedures Division
Tennessee Department of State

Enclosure(s)

**BEFORE THE ADMINISTRATIVE JUDGE ON BEHALF OF
THE TENNESSEE BOARD OF EQUALIZATION**

IN THE MATTER OF:

**THE VILLAS OF SAVANNAH LP,
*Petitioner,***

v.

**HARDIN COUNTY ASSESSOR'S
OFFICE,
*Respondent.***

APD Case No. 53.02-232790J

**No./Parcel: 133969 / 090A A 03103 000
Tax Years 2021, 2022**

INITIAL DECISION AND ORDER

The Hardin County Board of Equalization (“local board”) valued the subject property for tax years 2021 and 2022 as follows:

<u>Land Value</u>	<u>Improvement Value</u>	<u>Total Value</u>	<u>Assessment</u>
\$190,900	\$4,540,000	\$4,730,900	\$1,892,360

The taxpayer, The Villas of Savannah LP, timely filed an appeal with the State Board of Equalization (“State Board”) for tax year 2021 and amended to include tax years 2022 and 2023.

Administrative Judge Leigh Thomas conducted a hearing via Webex on August 24, 2023, for tax years 2021 and 2022 only. Registered taxpayer agent, Daniel Knox, participated on behalf of the taxpayer. Counsel Robert T. Lee represented the Hardin County Assessor (“Assessor”). Gary James, Chief Assessor and Certified General Appraiser, Tennessee Division of Property Assessments (“DPA”), testified on behalf of the Assessor. George Hoch from DPA observed the hearing but did not participate.

Seven (7) exhibits were entered into evidence: EXHIBIT 1 – Taxpayer’s RERC Data; EXHIBIT 2 – Taxpayer’s Collective; EXHIBIT 3 – Taxpayer’s 2021 Valuation; EXHIBIT 4 – Taxpayer’s 2022 Valuation; EXHIBIT 5 – Assessor’s 2021 Property Record Cards; EXHIBIT 6 – Assessor’s 2022 Property Record Cards; EXHIBIT 7 – Assessor’s Valuation. The Assessor also

submitted a corrected valuation report three hours after the exchange deadline that had a change to the tax credits but no change to the income. The corrected valuation report was admitted for demonstrative purposes only based on the taxpayer's vehement objection. The Assessor's witness was allowed to testify regarding the changes between the original valuation and the corrected valuation. EXHIBIT 2, which included information for prior tax years for apartment complexes including the subject property, was admitted solely for the purpose of showing the methodology used by DPA to value properties in prior cases.

ISSUE FOR DETERMINATION

The issue to be determined is whether the taxpayer has proven, by a preponderance of the evidence, that the valuation of the subject property should be lowered from the assessed value for each tax year. Based upon the following findings of fact and conclusions of law, it is determined that the valuation should be reduced for both tax years.

FINDINGS OF FACT

1. The subject property is an apartment complex that includes 6.26 acres of land and a 54,789 square foot apartment complex located at Florence Road in Savannah, Tennessee.
2. The apartment is Section 42 affordable housing built in 2013 and is part of the Low-Income Housing Tax Credit ("LIHTC")¹ program.
3. Properties in the LIHTC program are valued for ad valorem tax purposes based on both the value of the property itself as well as the value of the LIHTC tax credits.
4. This property was awarded \$6,923,560 in tax credits.
5. The apartment complex contains 48 units within three buildings.
6. The value being appealed for both tax years is \$4,730,900.

¹ The LIHTC Program is a credit against federal income tax liability each year for a set period of time for owners and investors in low-income rental housing.

7. The Taxpayer contended that the equalized value of \$3,420,300 should be adopted for tax year 2021 and an equalized value of \$2,569,100 should be adopted for tax year 2022.

8. The Assessor contended that the unequalized value of \$3,746,900 should be adopted for tax year 2021 and an unequalized value of \$3,816,700 adopted for tax year 2022.

9. For tax year 2021, the total rent paid or payable for the 48 units was as follows: 2 x 1 bedrooms at \$390 per month (\$9,360), 10 x 1 bedrooms at \$480 per month (\$57,600), 3 x 2 bedrooms at \$470 per month (\$16,920), 33 x 2 bedrooms at \$505 per month (\$199,980).

10. The actual vacancy rate for the subject property in 2021 was 2.08% (1 unit).

11. For tax year 2022, the total rent paid or payable for the 48 units was as follows: 2 x 1 bedrooms at \$440 per month (\$10,560), 10 x 1 bedrooms at \$530 per month (\$63,600), 3 x 2 bedrooms at \$520 per month (\$18,720), 33 x 2 bedrooms at \$555 per month (\$219,780). The 2022 rental rates included rent increases effective as of January 1, 2022.

12. The actual vacancy rate for 2022 was 6.25% (3 units).

13. The Taxpayer's valuations for each year were based on actual audited financials to establish an income-in-place valuation. The audited financials matched the rent rolls for 2021 but not for 2022.

14. The Assessor's valuation used stabilized income and expenses for each tax year and a vacancy rate of between 3 and 4%.

15. The Taxpayer's base cap rate for both years was a blend of the RERC Tier 1 and Tier 2 rates. The Assessor relied upon RERC reports, fourth quarter of 2020 (for tax year 2021) or 2021 (for tax year 2022), for first tier investment properties to establish a going-in cap rate that was then loaded with the actual tax rate for each year.

16. Both parties relied upon an income approach plus addition of the value of the unexpired tax credits to value the property as summarized below. Both parties used a 5% discount rate for the tax credits.

17. The Assessor deducted the personal property² value based on the personal property value schedule submitted by the property owner for the relevant tax year while the Taxpayer utilized the previous tax year's personal property value.

18. A prospective buyer would consider the future income a property could generate.

19. In previous LIHTC hearings, the valuation witness from DPA at that time, George Hoch, applied the sales ratio to the value of the properties. For the subject property, Mr. Knox utilized that same methodology. DPA's current witness, Mr. James, did not apply the sales ratio.

20. Mr. James did not apply the appraisal ratio because he did not believe the application was appropriate, acceptable, or legal under USPAP, even though this practice has been accepted in Tennessee.

21. Mr. James contended that, because the subject property was a decreasing asset due to the expiration of the tax credits, applying an appraisal ratio was inappropriate.

22. The Assessor's valuation incorrectly identified the property as having 8 x 1 bedroom, 28 x 2 bedrooms, and 12 x 3 bedrooms. The subject has no 3-bedroom units.

23. The evidence at hearing, as summarized in the following table, supports a reduction in the assessed value for tax year 2021 and 2022.

² While the actual personal property as of January 1, 2021, may not have been known on that date, the hearing in this matter took place more than two years after those actual numbers would have been reported and more than a year after the actual numbers for the January 1, 2022, tax year would be known. Therefore, the judge finds that the actual reported numbers as provided by the Assessor should be utilized. However, the difference in the amounts used by the Assessor and the Taxpayer are negligible for each tax year.

	Tax Year 2021		Tax Year 2022	
	Taxpayer	Assessor	Taxpayer	Assessor
Potential Gross Income/	\$283,860	\$283,860	\$283,860	\$312,660
Other Income	\$2,984	\$2,984	\$990	\$1,085
Vacancy/Collection Loss	\$5,198	\$9,688	\$9,688	\$9,668
Effective Gross Income	\$281,646	\$277,176	\$275,182	\$304,077
Operating Expenses	\$146,850	\$144,241	\$143,159	\$140,581
Total Expenses	\$158,915 (Including reserves \$12,065)	\$156,241 (Including reserves \$12,000)	\$155,229 (Including reserves \$12,070)	\$153,087 (Including reserves \$12,506)
Net Operating Income	\$122,731	\$120,935	\$119,953	\$150,990
Cap Rate	5.85%	5.5%	5.6%	5.1
Effective Tax Rate	1.02%	1.0212%	0.90% ³	1.0212%
Loaded Cap Rate	6.87%	6.52%	6.50%	6.12%
Income Approach Value	\$1,786,165 (\$24,288 personal property)	\$1,854,500 (\$23,686 personal property)	\$1,846,346 (\$23,989 personal property)	\$2,466,700 (\$23,349 personal property)
	\$1,761,700	\$1,830,814	\$1,822,400	\$2,443,351
Tax Credit Value	\$1,935,900 (\$21,372 tax credits property tax)	\$1,935,900 (\$19,769 tax credits property tax)	\$1,341,300 (\$14,797 tax credits property tax)	\$1,341,300 (\$13,687 tax credits property tax)
	\$1,914,528	\$1,916,131	\$1,326,503	\$1,326,613
Total Value (Income Approach + Tax Credits)	\$3,697,600 (r)	\$3,746,900 (r)	\$3,162,700	\$3,816,700
Equalized value	\$3,420,200 after application of 0.9250 appraisal ratio	\$3,465,880 after application of 0.9250 appraisal ratio	\$2,569,100 after application of 0.8123 appraisal ratio	\$3,100,305 after application of 0.8123 appraisal ratio)

³ The actual effective tax rate for tax year 2022 in Hardin County was 1.0212%, which would change the loaded cap rate to 6.62% and further reduce the Taxpayer's contended value.

APPLICABLE LAW

A party challenging the current assessment of a property bears the burden of proof. STATE BOARD RULE 0600-01-.11(1). To meet the burden of proof, the party seeking to change the assessed value must show that a preponderance of the evidence supports that change. A preponderance of the evidence means that, considering all relevant evidence, a party's contention of value is more likely than not.

Pursuant to TENN. CODE ANN. § 67-5-601(a), "The value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ." Merely disproving assumptions underlying the current valuation or pointing out "the likelihood that a more accurate value is possible" - without more - neither invalidates the levy or judgment under appeal nor constitutes a prima facie case for a change. *Coal Creek Company* (Final Decision & Order, Anderson, Campbell, and Morgan Counties, Tax Years 2009-2013, issued June 25, 2015).

To value LIHTC properties, the Tennessee State Board of Equalization, Subsidized Affordable Housing, chapter 0600-10-.03 provides:

0600-10-.03 DETERMINING VALUE FOR LIHTC PROPERTY.

(1) The taxable value of LIHTC property shall consist of a restricted use component and a component representing the economic benefit of the subsidy to the property owners.

(2) The restricted use component shall be the income approach value resulting from using actual rents paid or payable by needy tenants and by such factors for vacancy, collection loss, expenses, reserves, and capitalization rates as are typically experienced by comparable properties in the area in which the property is located or economically comparable areas.

(3) With regard to the value of the subsidy component, a taxpayer of low-income housing tax credit property shall elect to either:

(a) Have the assessor include in the assessor's annual appraisal the present value of all future tax credits for each of the unused tax credit years remaining on the property; or

(b) Have the assessor include in the assessor's annual appraisal, instead of the present value of all future tax credits, the average annual present value of the credit as calculated in (3)(a) above, based on the Compliance Period provided for in the Land Use Restriction Agreement for the particular property being valued.

ANALYSIS and CONCLUSIONS OF LAW

Upon a thorough review of the evidence submitted in this matter, it is determined that the assessed value for tax years 2021 and 2022 should be reduced. It is significant to note that the evidence presented by *both* parties supported a value significantly lower than the assessed value. Even the Assessor's valuations were close to a million dollars less than the assessed values. As explained below, the Assessor's values, after application of the appraisal ratio for the relevant tax years, is adopted.

Much of the evidence offered by both the Assessor and the Taxpayer was substantially similar. Both parties relied upon the same potential gross income for tax year 2021. Both parties found similar operating expenses and replacement reserves for both tax years. The loaded cap rate utilized by both parties for tax year 2021 (Taxpayer 6.87/Assessor 6.53) and tax year 2022 (Taxpayer 6.5/Assessor 6.12) varied only slightly between the parties. There were two significant points of contention: (1) whether the potential gross income for tax year 2022 should take into consideration that some tenants were under lease agreements that forestalled a rent increase and utilize only the rent rate applicable to the actual tenants as of January 1, 2022, versus utilizing the rental rates in place including any rent increase and (2) whether the sales ratio should be applied to the determined value of the property for each tax year.

Regarding the rental rates, a plain language reading of the relevant State Board rule regarding valuing subsidized housing states, "The restricted use component shall be the income approach value resulting from using *actual rents paid or payable* by needy tenants..." The question then becomes whether the actual rents due from specific tenants as of the valuation date

of each tax year should be used as the basis for valuation or whether the rental rates (including any rent increases) for the entirety of the tax year under appeal should be utilized. The judge finds that the valuation should include the rents payable in the tax year under appeal pursuant to the “actual rents paid or payable” language in Rule 0600-10-.03(2) cited above. While certain tenants may have terms left on their lease where any rent increase would be delayed until further into a particular tax year, the value of the rent that is paid or payable is not determined by particular tenants. Rather, the value is determined by the potential income of each apartment unit within the LIHTC property. By utilizing the prior year rates, the Taxpayer effectively valued the property using a historical gross income rather than a prospective gross income.

Turning to application of the appraisal ratio, the judge notes the Taxpayer’s representative followed the same methodology utilized by various assessors’ offices in Tennessee and the DPA witness who testified in prior hearings on other LIHTC cases. Mr. James, the Assessor’s witness in this matter, did not follow that prior methodology, refusing to apply the appraisal ratio to reach an equalized value. The appraisal ratio for the county reflects how the level of valuation of its locally assessed real property compares to that of its property that is assessed at its current-year value. In Tennessee, application of the sales ratio is appropriate when, as here, through the appeals process, a party has established market value of a property as of a particular year. As both the Assessment Appeals Commission in Laurel Hills and the Attorney General opined, “Since the value of property under appeal will be determined as of the year being appealed, the *appraisal ratio for that county must be applied* to values determined for non-reappraisal years to bring them in line with other real property in the county.” Tenn. Att’y Gen. Op. No. 20-10 (May 20, 2020) at 5. (Emphasis added). *See Appeals of Laurel Hills Apartments, et al.* (Davidson County, Tax Years 1981 and 1982, Final Decision and Order, April 10, 1984). Under this theory, an owner of property

is entitled to equalization of its demonstrated market value by a ratio which reflects the overall level of appraisal in the jurisdiction for the tax year in controversy.

The Assessor's witness argued that LIHTC properties are an asset that decrease in value as tax credits expire and therefore application of the appraisal ratio is inappropriate, and application is not the practice in other states. However, the judge finds no support for Mr. James' position in any relevant Tennessee statute, rule, regulation, or case. To the contrary, application of the appraisal ratio is the practice in Tennessee.

However, while the judge is cognizant that the Taxpayer attempted to mimic the methodology used in other hearings to determine a value, the record in this matter reflects that the Taxpayer did not perform any independent market analysis to support the market value contended. The Taxpayer could give no explanation as to why it utilized certain cap rates other than he was mimicking evidence from prior hearings. By his own testimony, the Taxpayer's witness did not perform any analysis to determine an appropriate cap rate but instead utilized a cap rate from prior appeals for the same property. It is determined that the lower base cap rate utilized by the Assessor is appropriate based on the relative newness of the subject property and Mr. James' analysis. In addition, the Assessor's 2022 income analysis properly included the increased rental rates for each unit.

Therefore, the Assessor's valuation is adopted after application of the appropriate appraisal ratio for each year.

DETERMINATION

It is, therefore, **ORDERED** that the following **equalized values** are adopted for the subject property:

	<u>Tax Year 2021</u>		
<u>Land Value</u>	<u>Improvement Value</u>	<u>Total Value</u>	<u>Assessment</u>
\$190,900	\$3,274,980	\$3,465,880	\$1,386,352

<u>Land Value</u>	<u>Improvement Value</u>	<u>Total Value</u>	<u>Assessment</u>
\$190,900	\$2,909,405	\$3,100,305	\$1,240,122

It is so **ORDERED**.

This INITIAL ORDER entered and effective this the **16th day of November, 2023**.



LEIGH THOMAS
ADMINISTRATIVE JUDGE
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

Filed in the Administrative Procedures Division, Office of the Secretary of State, this the **16th day of November, 2023**.

NOTICE OF APPEAL PROCEDURES

REVIEW OF INITIAL ORDER

The Administrative Judge's decision in your case **BEFORE THE ADMINISTRATIVE JUDGE ON BEHALF OF THE TENNESSEE BOARD OF EQUALIZATION (the State Board)**, called an Initial Order, was entered on **November 16, 2023**. The Initial Order is not a Final Order but shall become a Final Order unless:

1. **A party files a Petition for Reconsideration of the Initial Order:** You may ask the Administrative Judge to reconsider the decision by filing a Petition for Reconsideration with the Administrative Procedures Division (APD). Your Petition should include your name, the above APD case number, and state the specific reasons why you think the decision is incorrect. APD must **receive** your written Petition no later than 15 days after entry of the Initial Order, which is **December 1, 2023**. A new 15 day period for the filing of an appeal to the State Board of Equalization (the State Board) (as set forth in paragraph (2), below) starts to run from the entry date of an order ruling on a Petition for Reconsideration, or from the twentieth day after filing the Petition if no order is issued. Filing instructions are included at the end of this document.

The Administrative Judge has 20 days from receipt of your Petition to grant, deny, or take no action on your Petition for Reconsideration. If the Petition is granted, you will be notified about further proceedings, and the timeline for appealing (as discussed in paragraph (2), below) will be adjusted. If no action is taken within 20 days, the Petition is deemed denied. As discussed below, if the Petition is denied, you may file an appeal of the Initial Order within 30 days after an Order denying the Petition for Reconsideration is sent or 30 days after the 20th day after the Petition is filed if no Order has issued, whichever comes first. *See* TENN. CODE ANN. § 4-5-317.

2. **A party files an appeal to the State Board:** A party may appeal the Administrative Judge's decision to the State Board pursuant to TENN. CODE ANN. §§ 67-5-1501 and 67-5-1506, and TENN. COMP. R. & REGS. 0600-01-.12. TENN. CODE ANN. § 67-5-1501(c) provides that an appeal "must be filed within thirty (30) days from the date the initial decision is sent." TENN. COMP. R. & REGS. 0600-01-.12(2) provides that the appeal be filed with the Executive Secretary of the State Board at the address indicated below and that the appeal must "identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order; and identify how the rights of the petitioner have allegedly been prejudiced because the administrative findings, inferences, conclusions, or decisions are: (1) in violation of constitutional or statutory provisions; (2) made upon unlawful procedure; (3) arbitrary and capricious or characterized by abuse of discretion; or (4) unsupported by evidence that is both substantial and material in light of the entire record." Any appeal to the State Board should also be filed with APD.
3. **The State Board of Equalization may decide on its own motion to review the Initial Order:** The State Board may affirm, reverse, or modify the Initial Order. The State Board may also remand the case to the Administrative Judge for further proceedings.

If either of the actions set forth in paragraphs (2) or (3) above occurs prior to the Initial Order becoming a Final Order, there is no Final Order until the State Board renders a Final Order.

If none of the actions set forth in paragraphs (1), or (2) or (3), are taken, then the Initial Order will become a Final Order. **In that event, YOU WILL NOT RECEIVE FURTHER NOTICE OF THE INITIAL ORDER BECOMING A FINAL ORDER.**

NOTICE OF APPEAL PROCEDURES

STAY

In addition to the above actions, you may file a Petition asking the Administrative Judge for a stay that will delay the effectiveness of the Initial Order. A Petition for stay must be **received** by the APD within 7 days of the date of entry of the Initial Order, which is no later than **November 27, 2023**. See TENN. CODE ANN. § 4-5-316. A reviewing court may also order a stay of the Initial Order upon appropriate terms. See TENN. CODE ANN. § 4-5-322 and 4-5-317.

REVIEW OF A FINAL ORDER

When an Initial Order becomes a Final Order, a person who is aggrieved by a Final Order may seek judicial review of the Final Order by filing a Petition for Review in the chancery court where the disputed assessment was made or in the chancery court of Davidson, Washington, Knox, Hamilton, Madison or Shelby Counties, whichever county is closest in mileage to the situs of the property. If the property is located in Knox, Hamilton or Shelby County, the Petition for Review may alternatively be filed in the chancery court of Davidson County. See TENN. CODE ANN. § 67-5-1511(b). The Petition for Review must be filed within 60 days of (a) the date of entry of a Final Order; (b) the date the Initial Order becomes a Final Order; or (c) the date of a notice or certificate sent by the State Board when it has taken a final action, whichever date is latest. See TENN. CODE ANN. §§ 4-5-322 and 67-5-1506(b). A Petition for Review of the final decision of the State Board in a contested case involving centrally assessed utility property assessed in accordance with title 67, chapter 5, part 13, shall be filed with the middle division of the Tennessee court of appeals.

The filing of a Petition for Reconsideration is not required before appealing. See TENN. CODE ANN. § 4-5-317. A reviewing court also may order a stay of the Final Order upon appropriate terms. See TENN. CODE ANN. §§ 4-5-322 and 4-5-317.

FILING

Documents should be filed with the Administrative Procedures Division by email *or* fax:

Email: APD.Filings@tn.gov

Fax: 615-741-4472

In the event you do not have access to email or fax, you may mail or deliver documents to:

Secretary of State
Administrative Procedures Division
William R. Snodgrass Tower
312 Rosa L. Parks Avenue, 6th Floor
Nashville, TN 37243-1102

Documents to be filed with the Executive Secretary of the State Board of Equalization should be filed by email *or* regular mail:

Email: sb.web@cot.tn.gov

Executive Secretary of the State Board of Equalization
State Board of Equalization
425 Rep. John Lewis Way N.
Nashville, TN 37243