

BEFORE THE STATE BOARD OF EQUALIZATION
FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF)	
DOUGLAS WIND RIVER ASSOCIATES)	
LIMITED PARTNERSHIP, FROM)	
A VALUATION DECISION OF THE)	Docket No. 2008-63
CONVERSE COUNTY ASSESSOR)	
2008 PROPERTY VALUATION)	

IN THE MATTER OF THE APPEAL)	
OF COLLEGE HILL LIMITED)	
PARTNERSHIP, FROM A)	Docket No. 2008-64
VALUATION DECISION OF THE)	
FREMONT COUNTY ASSESSOR)	
2008 PROPERTY VALUATION)	

IN THE MATTER OF THE APPEAL)	
OF ROCK SPRINGS FAMILY)	
ASSOCIATES, FROM A VALUATION)	Docket No. 2008-67
DECISION OF THE SWEETWATER)	
COUNTY ASSESSOR 2008)	
PROPERTY VALUATION)	

IN THE MATTER OF THE APPEAL OF)	
SHANDON PARK LIMITED)	
PARTNERSHIP FROM A VALUATION)	Docket No. 2008-82
DECISION OF THE CARBON COUNTY)	
ASSESSOR 2008 PROPERTY VALUATION)	

IN THE MATTER OF THE APPEAL)	
OF RIVERTON PHASE TWO)	
ASSOCIATES LP, FROM A)	Docket No. 2008-87
VALUATION DECISION OF THE)	
FREMONT COUNTY ASSESSOR)	
2007 PROPERTY VALUATION)	

IN THE MATTER OF THE APPEAL)	
OF RIVERTON PHASE TWO)	

ASSOCIATES LP, FROM A) Docket No. **2008-88**
VALUATION DECISION OF THE)
FREMONT COUNTY ASSESSOR)
2008 PROPERTY VALUATION)

FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION AND ORDER

APPEARANCES

F. Scott Peasley, Peasley Law Office, appeared on behalf of Douglas Wind River Associates Limited Partnership [2008-63]; College Hill Limited Partnership [2008-64]; Rock Springs Family Associates [2008-67]; Shandon Park Limited Partnership [2008-82]; and Riverton Phase Two Associates LP [2008-87, 2008-88] (Petitioners or Taxpayers).

Nancy D. Freudenthal, Davis & Cannon LLP, appeared on behalf of Dixie J. Huxtable, Converse County Assessor [2008-63]; Eileen Oakley, Fremont County Assessor [2008-64, 2008-87, 2008-88]; David Rauzi, Sweetwater County Assessor [2008-67]; and Sheryl Snider, Carbon County Assessor [2008-82] (Respondents or Assessors).

Cindy DeLancey, Carbon County and Prosecuting Attorney, appeared on behalf of Sheryl Snider, Carbon County Assessor [2008-82].

JURISDICTION

Objections to local assessments must be filed with the county assessor within 30 days after the date or postmark date of an assessment schedule, whichever is later, and indicate why the assessment is incorrect. *Wyo. Stat. Ann. § 39-13-109(b)(I)*.

The assessment schedule for Douglas Wind River was dated April 25, 2008. The protest by Douglas Wind River was filed with the Converse County Assessor on May 8, 2008 [2008-63].

The assessment schedule for College Hill was dated April 23, 2008. The protest by College Hill was filed with the Fremont County Assessor on May 22, 2008 [2008-64].

The assessment schedule for Rock Springs Family was dated April 23, 2008. The protest by Rock Springs Family was filed with the Sweetwater County Assessor on May 16, 2008 [2008-67].

The assessment schedule for Shandon Park was dated April 18, 2008. The protest by Shandon Park was filed with the Carbon County Assessor on May 12, 2008 [2008-82].

The 2007 tax roll amendment for the Riverton Phase Two property not valued in 2007 was dated May 27, 2008. The protest by Riverton Phase Two of the 2007 amendment was filed with the Fremont County Assessor on June 10, 2008 [2008-87].

The revised 2008 assessment schedule for Riverton Phase Two was dated May 27, 2008. The protest by Riverton Phase Two was filed with the Fremont County Assessor on June 10, 2008 [2008-88].

Each appeal was timely filed.

STATEMENT OF THE CASE

These matters are before the State Board of Equalization (State Board) as the result of requests, pursuant to Rules, Wyoming State Board of Equalization, Chapter 2, § 36, by the Converse County Board of Equalization filed June 4, 2008 [2008-63]; the Fremont County Board of Equalization filed June 24, 2008 [2008-64]; the Sweetwater County Board of Equalization filed July 1, 2008 [2008-67]; the Carbon County Board of Equalization filed July 21, 2008 [2008-82]; and the Fremont County Board of Equalization filed August 15, 2008 [2008-87, 2008-88], asking the appeals by Douglas Wind River Associates Limited Partnership (hereafter Douglas Wind River) [2008-63]; College Hill Limited Partnership (hereafter College Hill) [2008-64]; Rock Springs Family Associates (hereafter Rock Springs Family) [2008-67]; Shandon Park Limited Partnership (hereafter Shandon Park) [2008-82]; and Riverton Phase Two Associates LP (hereafter Riverton Phase Two) [2008-87, 2008-88] be certified to the State Board for its consideration as the finder of fact rather than as an intermediate level of appellate review. *Wyo. Stat. Ann. § 39-11-102.1(c). Compare Rules, Wyoming State Board of Equalization, Chapter 2 and Rules, Wyoming State Board of Equalization, Chapter 3. Laramie County Board of Equalization v. Wyoming State Board of Equalization*, 915 P.2d 1184, 1188 (Wyo. 1996); *Union Pacific Railroad Company v. Wyoming State Board of Equalization*, 802 P.2d 856, 859 (Wyo. 1990). Each appeal challenges the respective Assessor's valuation of "low income housing." The State Board granted certification by orders dated June 30, 2008 [2008-63]; July 2, 2008 [2008-64]; July 11, 2008 [2008-67]; August 6, 2008 [2008-82]; and August 25, 2008 [2008-87, 2008-88]. These appeals are therefore

before this Board the same as an initial appeal pursuant to Rules, Wyoming State Board of Equalization, Chapter 2.

The appeals were consolidated for hearing and consideration by Board Order dated November 3, 2008.

A hearing before the Board consisting of Thomas R. Satterfield, Chairman; Thomas D. Roberts, Vice Chairman; and Board Member Steven D. Olmstead, pursuant to order entered November 3, 2008, and modified January 28, 2009, was held March 4 and 5, 2009.

We affirm, for the reasons noted herein, the 2008 valuation established by the Respondent Assessors for each of the low income housing properties at issue in these consolidated appeals.

CONTENTIONS AND ISSUES

Petitioners, in their prehearing pleadings, stated a single Issue of Fact:

Did the Assessors appropriately use the method of assessment for Petitioners' property? Specifically, were the values included into the CAMA system correct, and did they appropriately factor in depreciation?

[Petitioners' Joint Issues of Fact and Law and Exhibit List, p. 1].

Petitioners stated a single Contested Issue of Law:

Should the Respondents have used the income approach, utilizing and considering the audited financial statements and the low-income rent restrictions that run with the land that are monitored by Wyoming Community Development Authority (WCDA) and the IRS, for the real property and its improvements, when determining the property's fair market value for tax assessment purposes?

[Petitioners' Joint Issues of Fact and Law and Exhibit List, pp. 2-3].

Petitioners' post-hearing briefs, in general overview, urge the income approach to valuation, utilizing the income and expense information provided to the respective Assessors, is the most appropriate method for determining a fair market value for each of the low income housing properties at issue. Petitioners also assert the Low Income Housing Tax Credits provided by Internal Revenue Code Section 42 are exempt as a

“right” granted by a governmental unit, citing Wyo. Stat. Ann. § 39-11-105(b). [*Petitioners’ Closing and Reply Briefs*].

The Assessors, in their prehearing pleadings, stated six issues of fact:

1. Did Assessors appropriately (1) field list the properties, (2) enter the relevant and accurate property characteristics in the Computer Assisted Mass Appraisal System (CAMA), and (3) rely on the CAMA values along with other reliable market-based information in determining an estimate of full value as defined by the legislature for Petitioners’ property?
2. Are the CAMA values for the properties at issue supported by Petitioners’ own books and records given that Petitioners’ cost-based values for their properties are higher than those derived by the Assessors using CAMA?
3. Did Assessors appropriately consider Petitioners’ property-specific income and expense information, along with other information, and appropriately conclude that additional economic or market obsolescence adjustments to the CAMA-derived values were not documented and supported?
4. For Fremont County, is the market adjustment of 20% reduction of cost supported?
5. For Converse County, is the market adjustment of 40% reduction of cost based on both market and market-based income and expense information supported?
6. Considering all factors that relate to value (including both the government restrictions as well as the corresponding government incentives), does Petitioners’ income and expense information generally support the CAMA estimates of value?

[*Assessors’ Issues of Fact and Law and Exhibit Index*, pp. 2-3].

The Assessors stated a single Contested Issue of Law with subparts:

1. Are Wyoming’s Constitution and laws in line with the majority view of jurisdictions to the effect that either:

- a. There is no error in not considering the rent restrictions because valuation is based on the cost approach rather than the income approach;
- b. The taxing authority must consider the restrictions and benefits (e.g. tax credits, interest subsidy payments) of the low-income housing contract when calculating the fair market value of low income housing; or
- c. Market rents and expenses of comparable unsubsidized housing in the open market must be used to the exclusion of actual contract rental income and expenses under the income approach to valuation.

[Assessors' Issues of Fact and Law and Exhibit Index, p. 3].

The Assessors' post hearing brief, as a general overview, urges the cost approach to value utilized by the Assessors is an appropriate methodology to value Petitioners' low income housing properties. The Assessors assert the income and expense information provided by Petitioners is not market based, and therefore does not support an income valuation approach. The Assessors also take issue with Petitioners' argument the Low Income Housing Tax Credits provided by Internal Revenue Code Section 42 are exempt from taxation. *[Assessors' Response Brief]*.

FINDINGS OF FACT

All Dockets

1. Petitioners' low income housing properties are Internal Revenue Code Section 42 projects which provide Low Income Housing Tax Credits (Section 42 credits) for owners and investors, and rent restricted apartments for low-income tenants. In exchange for providing restricted rental properties, investors are entitled to a tax credit, i.e. a dollar for dollar deduction from federal tax liability. Section 42 credits are accrued (or usable) over a 10-year period. *[Updated Summary of Uncontroverted Facts(Revised) (hereinafter Updated Summary), p. 2].*

2. Once Section 42 credits are secured, the credits are typically sold to investors to raise equity capital to acquire, construct, or renovate a property. In exchange for the Section 42 credits and U.S. Department of Housing and Urban Development (HUD) HOME funds, Petitioners are able to complete a project with less debt-service financing

compared to conventional rental properties. Petitioners are, however, required to maintain compliance with the rent-restrictions and audits by WCDA. The Section 42 credits, in most cases, form the equity component of a project's financial structure, and therefore also allow Petitioners to have less debt-service financing. The project's rents, however, must remain reduced to serve households with qualifying low incomes, typically tenants whose income is between 30 percent (30%) to 60 percent (60%) of the county medium income. [*Updated Summary*, p. 2].

3. Although financing with Section 42 credits is often described as an investor purchasing a tax credit, the investor actually purchases a limited partnership interest which includes an interest in the real estate and associated benefits. The benefits include depreciation and possibly a modest cash flow, if any, although the majority of the properties do not have a positive cash flow. [*Updated Summary*, pp. 2-3].

4. The purchase price for Section 42 credits in Wyoming over the last several years has varied between \$0.75 and \$0.82 per dollar of tax credit. [*Updated Summary*, p. 3].

5. Each property owned by Petitioners operates in accordance with a regulatory agreement signed with WCDA intended to keep the project in compliance with Section 42 of the Internal Revenue Code and qualify for the Section 42 credits. The property must meet the provisions of federal regulations relating to occupant eligibility and unit gross rent in order to remain qualified to receive Section 42 credits. The project property is restricted by a Declaration of Land Use Restrictive Covenants recorded in each county in which project property is located. Any failure of compliance regarding over-income or fair housing as reported by WCDA on Form 8823 may cause the Section 42 credits to be lost or recaptured by the Internal Revenue Service. [*Updated Summary*, p. 3].

6. None of the physical characteristics of any of the buildings owned by any Petitioner was contested. [*Updated Summary*, p. 3].

7. None of the values for any of the land owned by any Petitioner was contested. [*Updated Summary*, p. 3].

8. The computer assisted mass appraisal [CAMA] system is an approved system in the State of Wyoming, used by all counties to value commercial and residential property. Income and sales information is also considered by assessors if such information is available and considered reliable, which may result in adjustments to the CAMA cost indicator of value. Each of the Assessors was provided income information for each Petitioner's property. [*Updated Summary*, p. 3].

9. Certain operating expenses for which Petitioners are responsible tend to be higher for restricted use properties than for conventional rental properties. These expenses

include the cost of audits, the cost of tenant income verification, the cost of regulatory reports, the cost of capital improvements, and the cost of management and developer fees. [*Updated Summary*, p. 4].

10. Ron Tuning, the Director of Asset Management for all Petitioners, was authorized to testify on behalf of all Petitioners at the Board hearing. [*Updated Summary*, p. 4].

11. Mr. Tuning is the asset manager for Pacific West Communities, a construction and development company based in Eagle, Idaho. His responsibilities include compliance issues on all projects, investor reporting, ownership reporting, budgeting, preparation of financials, lease of new properties, and handling tax appeals in eight states. [Transcript Vol. I, pp. 184-186, 190-191].

12. Mr. Tuning has received appraisal training predominantly for lending purposes. [Transcript Vol. II, pp. 239-240].

13. All of the properties owned by Petitioners which have been appealed involve Section 42 tax credits, and HOME funding. None of the properties have Rural Development or Section 8 subsidies. [Transcript Vol. I, p. 187].

14. HOME funding is provided by HUD as partial “gap” financing to build affordable housing, particularly housing which involves Section 42 tax credits. HOME funds are designed to help fund the gap between overall construction costs and the amount of debt service restricted rents will support. [Transcript Vol. I, pp. 187-188].

15. Section 42 tax credits are also designed to supply “gap” funding, usually in conjunction with HOME funds. A developer, in order to raise construction capital, will generally sell its Section 42 credits at a discount to a syndicator. The developer receives from the syndicator, for example, \$.78 for each dollar of tax credit. The syndicator in turn sells the credits to investors who can claim a portion of each dollar of credit purchased on their federal tax returns for ten years. A permanent lender provides the remainder of the necessary construction funding. [Board Exhibit 1; Transcript Vol. I, pp. 187-188, Vol. II, pp. 225-226, 229, 241, 251-252, 262-264, 266-274].

16. A tax credit must be used in the year to which it is allocated. The holder of the tax credit loses use of the credit if the holder has no tax liability in the year to which the credit is allocated. [Transcript Vol. II, p. 289].

17. It is Mr. Tuning’s opinion the Section 42 credits should not be included in the income stream in an income approach to value because they “are sold and the Section 42 credits are gone. The developer gets no use at all of the Section 42 credits. The developer

receives actually no moneys, no interest, anything from the actual Section 42 credits.” [Transcript Vol. I, p. 207, lines 14-17].

18. A person or entity, in order to use the Section 42 credits, must own an interest in the low income housing project. Such projects are thus generally owned by limited partnerships. Petitioners in these appeals are limited partnerships in which the tax credit funds are the limited partners. The limited partnerships are thus the owners of each of Petitioners’ properties. If a project is sold, all that is being sold is the interest of the general partner. The limited partners remain the same. Any sale of Petitioners’ properties requires approval of WCDA. The limited partners must also approve the sale as the general partner has guaranteed to the limited partners the compliance requirements will be fulfilled in order to prevent a recapture of the Section 42 credits. [Transcript Vol. II, pp. 238-239, 263, 270, 273-280, 283-284, 290].

19. The benefits received by the Section 42 credit funds as limited partners in each Petitioner include use of the Section 42 credits to offset tax obligations as well as a specified percentage of depreciation, positive cash flow, if any, and losses for the term of the Section 42 credits which is usually ten years. The limited partners also would receive their specified percentage of depreciation and losses for five years after expiration of the tax credit term. The limited partners, depending on the partnership agreement, could also receive a percentage of any asset management fee. [Transcript Vol. II, pp. 241-242, 286-288].

20. The Section 42 credit funds, as limited partners, pursuant to the partnership agreement, after the 15 year tax credit and depreciation period has ended, generally are not entitled to any of the residual value of a Section 42 property nor to any further benefits such as depreciation, losses, etc. The general partner benefits from the residual value of the property. The Section 42 credits are the primary inducement for investing in Section 42 properties. [Transcript Vol. II, pp. 242-244].

21. Mr. Tuning stated that at the end of the compliance period it is likely the limited partners would relinquish their interest in the partnership since they no longer have a financial incentive to remain in the partnership. The general partner would thus be the complete owner of the property, and would be able to charge market rent when the rent restrictions expire at the end of the compliance period. [Transcript Vol. II, pp. 279-282].

22. The properties financed with Section 42 tax credits and HOME funding, both of which come through WCDA, are subject to rent restriction compliance agreements which may last as long as 50 years. The compliance agreements are recorded with the county clerk in each county wherein a Section 42 or HOME property is located. [Transcript Vol. I, pp. 188-189, 191, 207].

23. The limited partnerships agree to the restrictive covenants in order to receive Section 42 tax credits. [Transcript Vol. II, pp. 246-247].

24. The IRS can revoke any Section 42 credits previously allowed anytime during the entire term of the restrictive covenants and HOME agreements if the compliance requirements of the covenants and agreements are not fulfilled. [Transcript Vol. I, pp. 222-223, Vol. II, pp. 224-225].

25. If a property financed with Section 42 credits is sold, the Section 42 credits are not included in the sale of the property. The Section 42 credits stay with those entities which purchased them from the syndicator. The restrictive covenants and HOME agreements, i.e. the compliance requirements, would still encumber the property financed with Section 42 credits and HOME loans. Mr. Tuning asserted a potential buyer would only be willing to pay what the property would debt service. [Transcript Vol. II, pp. 226-227, 231, 342-343].

26. The compliance requirements for Section 42 and HOME properties, according to Mr. Tuning, run with the land. [Exhibit 102; Transcript Vol. II, pp. 244-245].

27. The compliance agreements require each tenant be recertified each year to ensure the tenant does not exceed the allowed income restrictions. The agreements also cover building maintenance and repair requirements. If a property is in violation of a compliance agreement, WCDA, which monitors compliance, can issue a notice of violation known as a Form 8823, which is copied to the Internal Revenue Service. The Form 8823 indicates a defined time frame in which the property owner must cure the violation. [Transcript Vol. I, pp. 192-194].

28. None of the properties at issue receive any direct subsidy of any kind. [Transcript Vol. I, p. 194].

29. The incentive to build or purchase a rent restricted property is twofold. There is the possibility of positive cash flow. There is also the payment of a developer's fee if there is sufficient cash flow. [Transcript Vol. II, pp. 229-230].

30. Mr. Tuning agreed the receipt of Section 42 tax credits for rent restricted projects allows a developer to, in effect, receive what otherwise would be a future rent stream at a discount at the beginning of the project in order to reduce what must be borrowed to cover construction costs. A developer who does not accept Section 42 tax credits does not have rent restrictions, however, that developer does not get any future rent at a discount at the beginning of the project. The Section 42 tax credits thus provide, at the beginning of the project, in return for rent restrictions, a portion of the future rent stream which a

project without rent restriction would receive over a period of ten years. [Transcript Vol. II, pp. 293-296].

31. Mr. Tuning argued the purchaser of a low income housing project who thus becomes its general partner while the tax credit period is still in effect does not, in its purchase decision, take any Section 42 credits into consideration since those credits have been previously sold to cover construction costs. The purchaser would only consider the amount of the project's cash flow in its purchasing decision. [Transcript Vol. II, pp. 295-296].

32. Mr. Tuning testified the WCDA and investors require each Petitioner to allocate a portion of a project's cash flow each year to a distinct "replacement reserves" account controlled by the permanent lender and the limited partners. The funds in the account are intended to cover emergency expenses. Mr. Tuning treated replacement reserves as an expense. The replacement reserves account is treated as an asset on the balance sheet. [Exhibit 250, p. 103; Exhibit 251, pp. 107-108, 113; Transcript Vol. II, pp. 301-305].

33. Mr. Tuning stated the cost basis value in the audited financial statements for each Petitioner was a value for income tax purposes, to establish depreciation, and was, as a result, greater than the value placed on each Petitioner's property by the respective assessor. [Transcript Vol. II, pp. 259-160].

34. Mr. Tuning asserted Nevada, Arizona, Idaho, and Washington use an income approach to value low income properties owned by Mr. Tuning's employer in those states. [Transcript Vol. I, pp. 208-209].

35. Exhibit 353 is a letter from Jeffrey A. Bachman, Senior Vice President - Asset Management, Alliant Asset Management, LLC, expressing his opinion there are no recorded documents associated with the Douglas Wind River or Rock Springs Family properties which would "indicate or provide for the Section 42 credits running with the land." [Exhibit 353; Transcript Vol. II, pp. 232-237].

36. A capitalization rate (cap rate) is the percentage by which the net operating income of a business is divided in order to project a market value. The calculation of a market value using a cost approach does not require a cap rate. [Transcript Vol. I, pp. 43-44].

37. The capitalization rate is higher for low income housing properties based on the Section 42 tax credit and HOME compliance requirements, and the potential recapture of the Section 42 credits. [Transcript Vol. II, pp. 255-256].

38. Douglas Wind River Associates Limited Partnership is comprised of one general Partner, Roope LLC (.01%), and two limited partners, Alliant Tax Credit Fund XX, Ltd. (99.98%) and Alliant Tax Credit XX, Inc. (.01%) (collectively “Alliant”). [*Updated Summary*, p. 4].

39. Douglas Wind River was formed to construct, acquire, own, operate, manage, and sell or otherwise dispose of a 42-unit rural rental housing project in Douglas, Wyoming, known as Wind River Apartments. [*Updated Summary*, p. 4].

40. WCDA allocated Section 42 credits to Douglas Wind River in the sum of \$2,990,610 (\$299,061 annually over 10 years). All Section 42 credits will be utilized by 2015. [*Updated Summary*, p. 4; Exhibit 101, p. 116; Transcript Vol. I, pp. 206-207].

41. Alliant contributed equity capital to the project in the amount of \$0.82 per dollar of Section 42 credits over the full 10-year credit period subject to a contribution schedule. In addition to the value of the Section 42 credits, any unpaid tax credit shortfalls may be recaptured by Alliant through an IRS Form 8823 which would be issued by WCDA. In the event Douglas Wind River is at fault for causing the recapture, or in the event of destruction of the property, it is liable to forfeit the Section 42 credits. Alliant, provided there is positive cash flow, also receives an annual asset management fee, and its proportionate share of tax and cash benefits from operations consistent with its limited partnership percentage. The general partner receives a proportionate share of tax and cash benefits from operations, and, provided there is a positive cash flow, an annual supervisory fee. In addition, if there is in fact positive cash flow, an affiliate of the general partner receives a development fee. A separate property management fee of 2.5% is paid to Infinity Management. [*Updated Summary*, p. 5].

42. The Douglas Wind River property also benefits from low interest financing in the form of a WCDA (HOME) loan with interest at 0%. [*Updated Summary*, p. 5].

43. The financing structure of the Douglas Wind River property is:

Partners Equity:	\$2,393,022
Conventional Loan:	\$ 848,719
WCDA HOME	\$ 550,000

[*Updated Summary*, p. 5].

44. The Converse County Assessor, using the CAMA system, valued the Wind River Apartments at \$2,578,797 for 2008. Douglas Wind River asserts the market value is \$1,191,890. [*Updated Summary*, p. 5].

45. The Converse County Assessor, using the CAMA system cost-based values, granted a 20 percent (20%) economic obsolescence adjustment and a 20 percent (20%) “other” adjustment in valuing the Wind River Apartments. [*Updated Summary*, p. 6].

46. Economic obsolescence adjustments have been applied to all rent restricted properties in Converse County for 2008. The obsolescence percentage may vary somewhat from property to property, depending on age, quality, number of units, type of restriction, amount subsidized, etc. The Converse County Assessor has had only two low income property appeals in the past three years. [*Updated Summary*, p. 6].

47. The additional 20% “other” adjustment for the Douglas Wind River properties was based on information provided in 2007 by two affordable housing properties, Conestoga Villages (not a tax credit property) and Douglas Wind River. [*Updated Summary*, p. 6].

48. The audited financial statements of Douglas Wind River, as of December 31, 2007, indicated the cost to construct Wind River Apartments, less depreciation, was \$3,493,753. [*Updated Summary*, p. 6].

49. The audited financial statements for Douglas Wind River as of December 31, 2006, and December 31, 2007, which Mr. Tuning provided to the Converse County Assessor, reference the Section 42 credits in the Notes to the Financial Statement. The Miscellaneous Income indicated for 2007 was an insurance payment for hail damage to the Douglas Wind River property. The offsetting expenses appear under the Maintenance category in 2006 and 2007. Additional expenses will appear under Maintenance in 2008. [Exhibit 100, pp. 108, 116; Transcript Vol. I, pp. 195-197, 199].

50. Wind River Apartments has a complete, self-contained, narrative appraisal report as of January 16, 2003, which shows, in summary form:

- a. Market value of fee simple interest in the property at restricted rents at stabilized occupancy excluding the benefits of the Section 42 credit: \$1,470,000;
- b. Market value of the fee simple interest in the property at market rents at stabilized occupancy: \$1,600,000;
- c. Market value of the fee simple interest in the property at restricted rents including the benefits of the Section 42 credit at stabilized occupancy: \$3,770,000.
- d. A cost approach indicator of value of \$3,840,000. For a conventional market rate property, the cost estimate is \$3,330,000.

[*Updated Summary*, pp. 6-7].

51. The compliance agreements restrict the amount of rent Douglas Wind River is allowed to charge its tenants. The restrictions are based on a tenant's income. Mr. Tuning stated Douglas Wind River has yet to be allowed a rent increase by WCDA on the 12 units designated as HOME units. Douglas Wind River has been allowed some rent increases on the Section 42 tax credit units. [Transcript Vol. I, pp. 197-199].

52. Dixie Huxtable has been the Converse County Assessor for ten years. She has held a permanent certification from the Department of Revenue as a property tax appraiser since 2001. She has attended no special courses in the valuation of low income property. [Transcript Vol. I, pp. 120-122].

53. The original 2008 assessment notice for the Douglas Wind River property was mailed April 25, 2008. Ms. Huxtable noticed, in a review of the property characteristics in response to an appeal by Douglas Wind River, that the 20 percent obsolescence factor she allowed for the property using the cost approach had not been properly applied to all Douglas Wind River buildings. The problem was corrected, and a second assessment notice indicating a 2008 value with a 20 percent obsolescence factor applied to all Douglas Wind River property was mailed May 27, 2008. [Exhibit 500, pp. 002-003; Transcript Vol. I, pp. 122-126].

54. The Douglas Wind River property was inspected and the physical characteristics reviewed as the result of a 2007 appeal. [Transcript Vol. I, p. 125].

55. Ms. Huxtable considered the market approach to valuation, but could find no comparable sales. She did not consider any sales outside of Converse County. She also considered the income approach to value the Douglas Wind River property but did not have sufficient data to use that approach. She thus relied solely on the cost approach which did not include consideration of the Section 42 credits. She did receive 2007 income information for Douglas Wind River along with its appeal of the original April 25, 2008, assessment notice. [Exhibits 100, 101; Transcript Vol. I, pp. 125-128, 141, 158].

56. Ms. Huxtable was aware of both the Section 42 credits and the rent restrictions when she valued the Douglas Wind River property. In arriving at the final 2008 value for the property using the cost approach, she allowed a 20 percent obsolescence adjustment because the property was rent restricted, plus an additional 20 percent obsolescence adjustment based on the non-subsidized prepaid Section 42 credits or prepaid income received up front. [Transcript Vol. I, pp. 128-129, 131, 158].

57. Mr. Tuning provided the Converse County Assessor a proposed 2008 value for the Douglas Wind River property using an income approach to valuation. The capitalization rate developed by Mr. Tuning for use in his income approach analysis was based on four sales of low income housing properties in Wyoming with capitalization rates varying between 7.2 percent and 7.5 percent. He chose to use 7.5 percent in his income approach

valuation of the Douglas Wind River property. The difference between Mr. Tuning's income approach valuation and the Converse County assessed value for 2008 was approximately \$1.6 million. [Exhibit 100, p. 103; Exhibit 502; Transcript Vol. I, pp. 200-206; Vol. II, pp. 306-307].

58. Ms. Huxtable did calculate, after an appeal was filed, a value for the Douglas Wind River property using an income approach and three different tax credit discount amounts included as income simply to verify the obsolescence factors she applied in the cost approach. She used a capitalization rate of eight percent as identified for Cheyenne multifamily apartments in the 2007 edition of Smith and Burbach. She asserted she did not include real estate taxes as an expense as they are typically included in calculation of a capitalization rate. The tax credit information she received was provided by WCDA. [Transcript Vol. I, pp. 129-131, 134-136, 158].

59. Ms. Huxtable stated her opinion that in order to develop and use an income approach model to value the Douglas Wind River property, she would need income and expenses information from a sufficient number of apartments to represent a market, and thus determine whether the Douglas Wind River property was falling in line with the market. [Transcript Vol. I, pp. 133-134].

60. Ms. Huxtable stated the term of the Section 42 credits would not affect the value of the Douglas Wind River property using the cost approach. [Transcript Vol. I, pp. 136-137].

61. Ms. Huxtable stated that to her knowledge there were no other Section 42 properties in Converse County. [Transcript Vol. I, pp. 140-141].

62. Ms. Huxtable has never used the income approach to value property in Converse County. [Transcript Vol. I, p. 141].

63. Ms. Huxtable was not able to review the January 16, 2003, Market Value Appraisal of Wind River Apartments before she determined the 2008 market value. [Exhibit 108; Transcript Vol. I, p. 142].

64. The appeal by Douglas Wind River of the 2007 value of its property was withdrawn after Ms. Huxtable allowed a 40 percent economic obsolescence adjustment. Ms. Huxtable allowed the same 40 percent adjustment in valuing the property in 2008. This economic obsolescence amount is in addition to the depreciation automatically calculated by the CAMA system. [Exhibit 500; Transcript Vol. I, pp. 146-147, 150-153].

65. Ms. Huxtable, based upon her understanding of the tax credit program, offered an opinion the Section 42 credits should be treated as prepaid income. [Transcript Vol. I, pp. 148-149].

66. Ms. Huxtable was provided a listing by WCDA of Tax Credit Projects in Wyoming in Service as of December 31, 2007. The listing, which included Wind River Apartments, provided the total amount of Section 42 credits allocated to each project, as well as an annual allocation, when the allocation was granted, when the project was placed in service, number of units, and when the compliance period ends. [Exhibit 551; Transcript Vol. I, pp. 149-150; Vol. II, pp. 290-292].

67. Ms. Huxtable stated she will continue to use the cost approach to value the Douglas Wind River property even after the Section 42 credits expire because the rent restrictions would still be in effect. [Transcript Vol. I, pp. 154-155].

College Hill Limited Partnership, Docket 2008-64
Riverton Phase II Associates, LP, Dockets 2008-87 & 2008-88

68. The College Hill Limited Partnership is comprised of one general partner, Affordable Housing of Wyoming, LLC (.01%), and one limited partner, Raymond James Tax Credit Fund XVI, LLC (99.99%) (“Raymond James”). [*Updated Summary*, p. 7].

69. College Hill was formed to construct, acquire, own, operate, manage, and sell or otherwise dispose of a 48-unit rural rental housing project in Riverton, Wyoming, known as College Hill Apartments. [*Updated Summary*, p. 7].

70. WCDA allocated Section 42 credits to College Hill in the sum of \$3,415,650 (\$341,565 annually over 10 years). All Section 42 credits will be utilized by 2012. The compliance requirements are in effect for twenty-five (25) years. [*Updated Summary*, p. 7].

71. Raymond James contributed equity capital to the project in the amount of \$0.76 per dollar of Section 42 credits over the full 10-year credit period subject to a contribution schedule. In addition to the value of the Section 42 credits, Raymond James also receives payment up to the amount of the tax credit guarantee as well as an annual asset management fee. Raymond James shares in tax and cash benefits from operations, if there is a positive cash flow, consistent with specific defined percentages. The general partner, in addition to its defined share of tax and cash benefits from operations, receives annual incentive management fees. An affiliate of the general partner receives a development fee. A separate property management fee of 5 percent is paid to Somerset Property Management. [*Updated Summary*, p. 7].

72. The College Hill property benefits from low interest financing in the form of a WCDA (HOME) loan which bears interest at 1%. [*Updated Summary*, p. 8].

73. The financing structure of the College Hill property is:

Partners Equity:\$2,636,026
Conventional Loan:\$ 706,289
WCDA HOME\$ 563,000
Deferred Interest\$ 34,625

[*Updated Summary*, p. 8].

74. The Fremont County Assessor, using the CAMA system, valued the College Hill Apartments at \$2,978,099 for 2008. College Hill asserts the market value is \$642,540. [*Updated Summary*, p. 8].

75. The Fremont County Assessor has found that sales of rental properties in the Fremont County area have traditionally been lower than cost-derived values. The Assessor, based on sales information, concluded rental properties have been selling for about 20 percent less than the cost value derived by the CAMA system. She, therefore, allowed an economic obsolescence adjustment of 20 percent on the College Hill property. [*Updated Summary*, p. 8].

76. The audited financial statements of College Hill, as of December 31, 2007, indicated the College Hill Apartments had a cost to construct, less physical depreciation, of \$3,301,482. [*Updated Summary*, p. 8].

77. College Hill Apartments has a complete, self-contained, narrative appraisal report as of January 1, 2001, which shows in summary form:

- a. “Unencumbered” market value (without Section 42 credits and rent restrictions): \$1,280,000;
- b. “Encumbered” market value (with Section 42 credits and rent restrictions): \$3,790,000 [This number includes a federal tax credit value of \$2,510,000 (investment value) and \$390,000 for WCDA below market financing and HOME Matching];
- e. A cost approach indicator of value of \$3,900,000.

[*Updated Summary*, pp. 8-9].

78. The Riverton Phase Two Associates, LP is comprised of two general partners, Roope, LLP (.01%) and CDI-Wyoming, Inc. (.01%), and one limited partner, Raymond

James Tax Credit Fund 32-A, LLC (99.98%) (“Raymond James”). [*Updated Summary*, p. 13].

79. Riverton Phase Two was formed to construct, acquire, own, operate, manage, and sell or otherwise dispose of a 32-unit rural rental housing project in Riverton, Wyoming, known as College Hill II Apartments. [*Updated Summary*, p. 13].

80. WCDA allocated Section 42 credits to Riverton Phase Two in the sum of \$2,596,520 (\$259,652 annually over 10 years). All Section 42 credits will be utilized by 2016. [*Updated Summary*, p. 13].

81. Raymond James contributed equity capital to the project in the amount of \$0.76 per dollar of Section 42 credits over the full 10-year credit period subject to a contribution schedule. In addition to the value of the Section 42 credits, Raymond James also receives payment up to the amount of the tax credit guarantee, an annual asset management fee, and shares in tax and cash benefits from operations consistent with specific defined percentages. The Section 42 credits are subject to forfeiture in the event of non-compliance by Riverton Phase Two or by property-destruction, and through an IRS Form 8823 from WCDA. The general partner, in addition to its specific share of tax and cash benefits from operations, receives annual incentive management fees. An affiliate of the general partner receives a development fee. A separate property management fee is paid to Somerset Property Management. [*Updated Summary*, p. 13].

82. The Riverton Phase Two property benefits from low interest financing in the form of a WCDA (HOME) loan which bears interest at 0%. [*Updated Summary*, p. 13].

83. Exhibit 152 is a letter from WCDA which established the income set asides and rents for Riverton Phase Two for HOME and Section 42 credit units. Exhibit 153 is the Section 42 tax credit land use restrictive covenants between Riverton Phase Two and WCDA. Exhibit 154 is the promissory note for the Riverton Phase Two HOME loan. Exhibit 155 is the HOME regulatory agreement between WCDA and Riverton Phase Two. [Exhibits 152, 153, 154, 155; Transcript Vol. I, pp. 212-217].

84. The financing structure of the Riverton Phase Two property is:

Partners Equity:\$2,154,681
Conventional Loan:\$ 835,000
HOME Loan:\$ 281,000

[*Updated Summary*, p. 14].

85. The Fremont County Assessor valued the Riverton Phase Two property at \$2,505,777 for 2007, and \$2,067,692 for 2008. Riverton Phase Two asserts the market value is \$800,023.00 for both 2007 and 2008. [*Updated Summary*, p. 14].

86. The Fremont County Assessor has determined sales of rentals in the Fremont County area have traditionally been lower than cost-derived values. The Assessor, based on sales information, concluded rental properties have been selling for about 20 percent less than the cost value derived by the CAMA system. She, therefore, allowed an economic obsolescence adjustment of 20 percent on the Riverton Phase Two property. [*Updated Summary*, p. 14].

87. The audited financial statements of Riverton Phase Two, as of December 31, 2007, indicated the College Hill II Apartments had a cost to construct, less physical depreciation, of \$3,156,958. [*Updated Summary*, p. 14].

88. Mr. Tuning provided the Fremont County Assessor the audited Financial Statements as of December 31, 2006, and December 31, 2007, for Riverton Phase Two as well as his calculations of value for 2008 using an income valuation approach. [Exhibits 150, 151; Transcript Vol. I, pp. 209-212].

89. College Hill II Apartments has a complete, self-contained, narrative appraisal report as of November 2, 2006, which shows in summary form:

- a. Market value of fee simple interest in the property at restricted rents excluding the benefits of the Section 42 credit and favorable financing: \$1,000,000;
- b. Market value of the fee simple interest in the property at market rents: \$1,300,000;
- c. Value of the benefits attained through favorable financing afforded to the property through the USDA 538 program: \$225,000;
- d. Market value of the fee simple interest in the property at restricted rents including the benefits of the Section 42 credit and favorable financing: \$3,375,000;
- e. A cost approach indicator of value of \$2,770,000.

[*Updated Summary*, pp. 14-15].

90. Eileen Oakley has been the Fremont County Assessor for ten years. She previously worked in the assessor's office for approximately ten years before being elected assessor. She is certified as a property tax appraiser by the State of Wyoming. [Transcript Vol. I, pp. 79-80].

91. Ms. Oakley valued the College Hill property for 2008 “using a cost plus depreciation approach with a negative 20 percent economic factor for rent restricted buildings.” [Exhibit 523; Transcript Vol. I, pp. 81-82].

92. Ms. Oakley had valued only the Riverton Phase Two land, not the improvements, in 2006 and 2007. Ms. Oakley, after Mr. Tuning brought to her attention the fact he had not received an assessment notice which included the Riverton Phase Two improvements, valued those improvements for 2007 by a Tax Roll Correction. The 2007 value also included a 20 percent reduction for rent restricted apartments. [Exhibits 150, 523; Transcript Vol. I, pp.83-85, 95, 117].

93. Ms. Oakley considered all three approaches to value for Riverton Phase Two, although she had no income information at the time she valued those apartments. She stated she does not use the income approach for any property in Fremont County. [Transcript Vol. I, pp. 86-87, 91].

94. Ms. Oakley, based upon the sales comparison approach, placed a negative 20 percent adjustment on Riverton Phase Two. Such a factor was historically necessary to reach market value for large apartment buildings in Fremont County. There have been very few sales of comparable properties. Ms. Oakley did not have any current comparable sales, and did not consider sales outside Fremont County. She stated the rents available and the economic environment in the Riverton/Lander area would not support higher values for larger apartment buildings. [Transcript Vol. I, pp. 87-91, 109].

95. Ms. Oakley was not aware of the Section 42 credits associated with Riverton Phase Two prior to establishing the market value for that property. She first became aware of the Section 42 credits during the appeal process. She was aware at the time she valued the property it was low income housing. [Transcript Vol. I, pp. 90-91].

96. The original 2008 assessment notice for Riverton Phase Two also valued land only. After Mr. Tuning questioned, in his initial protest letter, why the improvements were not valued, the improvements were field listed on May 20, 2008. Ms. Oakley then used the CAMA system to determine the cost values for Riverton Phase Two improvements with a 20 percent economic depreciation factor. [Exhibit 522, p. 057; Exhibit 524, p. 078; Transcript Vol. I, pp. 91-97].

97. The presence of Section 42 credits did not affect Ms. Oakley’s opinion as to how to value the Riverton Phase Two property. She asserted the Section 42 credits and the restrictions on the property must be considered together. She agreed the restrictions would affect the marketability of the property. [Transcript Vol. I, pp. 97-98, 100].

98. Ms. Oakley stated she could not value an income producing property based solely on that property's income as such income may not reflect the market because of management and other conditions. She does not value any property in Fremont County using the income approach based solely on income reported by a taxpayer. [Transcript Vol. I, pp. 99-100, 110].

99. Ms. Oakley applied a 20 percent economic obsolescence factor to the property of both Riverton Phase Two and College Hill in addition to the physical depreciation calculated by the CAMA system. She did not use the CAMA income approach for either property. [Transcript Vol. I, pp. 102-105].

100. Ms. Oakley calculated, after protests were filed, a value for both Riverton Phase Two and College Hill using an income approach and a capitalization rate of 7 percent. She made these calculations to substantiate the value she derived using the cost approach for both properties. She did not include property taxes as an expense as such taxes are included in development of a capitalization rate. She did include a portion of the Section 42 credits as income. [Exhibits 513, 527; Transcript Vol. I, pp. 112-116, 119].

Rock Springs Family Associates, Docket 2008-67

101. The Rock Springs Family Associates Limited Partnership is comprised of two general partners, Roope LLC (.01%) and Sparrow Group LLC (.01%), and two limited partners, Alliant Tax Credit Fund XX, Ltd. (99.97%) and Alliant Tax Credit XX, Inc. (.01%) (collectively "Alliant"). [*Updated Summary*, p. 9].

102. Rock Springs Family was formed to construct, acquire, own, operate, manage, and sell or otherwise dispose of a 60-unit rural rental housing project in Rock Springs, Wyoming, known as Carrington Pointe Apartments. [*Updated Summary*, p. 9].

103. WCDA allocated Section 42 credits to Rock Springs Family in the sum of \$4,447,960 (\$444,796 annually over 10 years). All Section 42 credits will be utilized by 2015. [*Updated Summary*, p. 9].

104. Alliant contributed equity capital to the project in the amount of \$0.82 per dollar of Section 42 credits over the full 10-year credit period subject to a contribution schedule. In addition to the value of the Section 42 credits received by Alliant, any unpaid tax credit shortfalls may be recaptured by Alliant through an IRS Form 8823 which would be issued by WCDA. In the event Rock Springs Family is at fault for causing the recapture for lack of compliance, or in the event of destruction to the property, it is liable to forfeit the Section 42 credits. Alliant, provided there is positive cash flow, also receives an annual asset management fee. It further receives its proportionate share of tax and cash benefits from operations consistent with its limited partnership percentage. The general

partner receives a proportionate share of tax and cash benefits from operations, and, provided there is a positive cash flow, an annual supervisory fee. In addition, if there is positive cash flow, an affiliate of the general partner receives a development fee. A separate property management fee is paid to Infinity Management. [*Updated Summary*, pp. 9-10].

105. The Rock Springs Family property benefits from low interest financing in the form of a WCDA (HOME) loan which bears interest at 3%. [*Updated Summary*, p. 10].

106. The Rock Springs Family property is subject to restrictive covenants and a HOME promissory note and mortgage. [Exhibits 252, 253, 254, 255; Transcript Vol. I, p. 221].

107. The financing structure of the Rock Springs Family property is:

Partners Equity:\$3,436,844
Loans:\$2,152,220

[*Updated Summary*, p. 10].

108. The Sweetwater County Assessor, using the CAMA system, valued Carrington Pointe Apartments at \$4,522,718. Rock Springs Family asserts the market value is \$2,546,560. [*Updated Summary*, p. 10].

109. The audited financial statements of Rock Springs Family as of December 31, 2007, indicated Carrington Pointe Apartments had a cost to construct, less physical depreciation, of \$5,350,102. [*Updated Summary*, p. 10].

110. Mr. Tuning provided the Sweetwater County Assessor the audited Financial Statements as of December 31, 2006, and December 31, 2007, for Rock Springs Family Associates as well as his calculations of value for 2008 using an income approach to valuation with a capitalization rate of 7.5 percent. [Exhibits 250, 251; Transcript Vol. I, pp. 218-220].

111. Carrington Pointe Apartments has a complete, self-contained, narrative appraisal report as of January 13, 2003, which shows in summary form:

- a. Market value of fee simple interest in the property at restricted rents at stabilized occupancy excluding the benefits of the Section 42 credit: \$2,220,000;
- b. Market value of the fee simple interest in the property at market rents at stabilized occupancy: \$2,480,000;

- c. Market value of the fee simple interest in the property at restricted rents including the benefits of the Section 42 credit at stabilized occupancy: \$5,430,000;
- d. A cost approach indicator of value of \$5,360,000. For a conventional market rate property, the cost estimate is \$4,980,000.

[*Updated Summary*, pp. 10-11].

112. Dave Rauzi has been the Sweetwater County Assessor, and has been certified as an appraiser by the Department of Revenue, since 1991. He has not received any particular training in valuing low income properties. [Transcript Vol. I, pp. 163-164].

113. Mr. Rauzi used the CAMA system to value the Rock Springs Family property for 2008. He became aware the property was a Section 42 property about a year prior to the State Board hearing. He used the cost approach to value both the Rock Springs Family property as well as the other Section 42 property in Sweetwater County. He did not allow any additional obsolescence other than the physical depreciation calculated by the CAMA system. [Exhibit 530; Transcript Vol. I, pp. 174-175].

114. Mr. Rauzi considered all three approaches to determine the fair market value of the Rock Springs Family property. [Transcript Vol. I, pp. 166-167].

115. Mr. Rauzi received the audited financial statement for Rock Spring Family approximately one month after the original assessment schedule was issued. He used the audited financial information in the income approach through a discounted cash flow analysis to verify the value he derived using the cost approach. He included, based on information received from WCDA (Carrington Pointe), 60 percent of the Section 42 credits as income in his discounted cash flow analysis using discount rates of 9 percent, 10 percent, and 11 percent. He consulted several local banks and other sources concerning appropriate discount rates. The capitalization rate of 8 percent was the Smith and Burbach rate for multifamily apartments in Cheyenne. He has used the income approach with regard to other properties to verify his cost approach values. [Exhibits 551, 533; Transcript Vol. I, pp. 167-174, 176, 180-181].

116. The reversion value indicated in Mr. Rauzi's discounted cash flow analysis is the value of the Rock Springs Family property at the end of the 16-year income stream. It is not a salvage value as Mr. Rauzi considered the property to have a 20-year life. [Exhibit 533; Transcript Vol. I, pp. 181-182].

117. Mr. Rauzi asserted that if you are going to consider the compliance and rent restrictions in valuing a low income property, consideration must also be given to the Section 42 credits. [Transcript Vol. I, p. 175].

118. Mr. Rauzi also considered the sales approach, however, he did not find any comparable sales in Sweetwater County, and did not consider any sales outside of the county. [Transcript Vol. I, p. 173].

119. Mr. Rauzi stated he will continue to use the cost approach to value the Rock Springs Family property even after the Section 42 credits time period has expired. The Section 42 credits are not relevant in a cost approach valuation. [Transcript Vol. I, pp. 176, 178].

Shandon Park Limited Partnership, Docket 2008-82

120. The Shandon Park Limited Partnership is comprised of one general partner, Affordable Housing of Wyoming, LLP (.01%), and one limited partner, Raymond James Tax Credit Fund 32-A, LLC (99.99%) (“Raymond James”). [*Updated Summary*, p. 11].

121. Shandon Park was formed to construct, acquire, own, operate, manage, and sell or otherwise dispose of a 36-unit rural rental housing project in Rawlins, Wyoming, known as Shandon Park Apartments. [*Updated Summary*, p. 11].

122. WCDA allocated Section 42 credits to Shandon Park in the sum of \$1,927,767 (\$192,767 annually over 10 years). All Section 42 credits will be utilized by 2010. [*Updated Summary*, p. 11].

123. Raymond James contributed equity capital to the project in the amount of \$0.76 per dollar of Section 42 credits over the full 10-year credit period subject to a contribution schedule. In addition to the value of the Section 42 credits, Raymond James also receives payment up to the amount of the tax credit, guaranteed due to the possibility of recapture of the Section 42 credits through an IRS Form 8823. Raymond James also receives a \$500 annual fee, and a set percentage share of tax and cash benefits from operations if there is a positive cash flow. The general partner, in addition to its share of tax and cash benefits from operations, receives annual incentive management fees. An affiliate of the general partner receives a development fee. The property is co-managed by Infinity Management and Shandon Park. A separate property management fee is paid to Infinity. Shandon Park has not received any development fees. [*Updated Summary*, p. 11].

124. The Shandon Park property benefits from low interest financing in the form of a WCDA (HOME) loan which bears interest at 1%. [*Updated Summary*, p. 12].

125. The financing structure of the property is:

Partners Equity:\$1,399,533
Loans:\$ 855,000

[*Updated Summary*, p. 12].

126. The Carbon County Assessor, using the CAMA system, valued Shandon Park Apartments at \$1,457,031 for 2008. Shandon Park asserts the market value is \$151,031. [*Updated Summary*, p. 12].

127. The audited financial statements of Shandon Park, as of December 31, 2007, indicated Shandon Park Apartments had a cost to construct, less physical depreciation, of \$1,689,342. [*Updated Summary*, p. 12].

128. Shandon Park Apartments has a complete, self-contained, narrative appraisal report as of December 1, 1998, which shows in summary form:

- a. “Unencumbered” market value of the fee simple interest in the property (without the Section 42 credits or restricted rents): \$1,100,000;
- b. Market value of the fee simple interest in the property at restricted rents: \$760,000;
- c. Additional value of beneficial financing (1% WCDA loan with an amortization of 40 years): \$209,000;
- d. Market value of the fee simple interest in the property at market rents: \$1,085,000;
- e. A cost approach indicator of value of \$2,097,000.

[*Updated Summary*, p. 12].

129. Sheryl Snider has been the Carbon County Assessor since 2006. She was the chief deputy assessor from 1986 to 2006. She has been a certified property tax appraiser since 2005. She has very little training and experience in the valuation of low income housing units. [Transcript Vol. I, pp. 23-25].

130. There is only one other Section 42 low income property, Buffalo Run, in Carbon County. [Transcript Vol. I, pp. 25-26].

131. Ms. Snider used the Carbon County CAMA system to value the Shandon Park improvements at \$1,306,000. She considered all three approaches to value, that is, cost, market, and income, in valuing the Shandon Park property. [Exhibit 540; Transcript Vol. I, pp. 27-29].

132. The Shandon Park property was reviewed by field appraisers from the Carbon County Assessor's office in 2003. The physical characteristics, including dimensions, type of heating system, year built, and condition, were noted for input into the CAMA system. [Transcript Vol. I, pp. 29-31, 44-48].

133. The Shandon Park property has not been field-reviewed since 2003. It was last revalued in 2006 using 2005 cost tables. A value was placed in the current CAMA system which "overrides" the 2008 value developed by that system. This "override" value for the Shandon Park property is the 2006 value as converted from the prior CAMA system. The market value indicated on the 2008 notice of assessment was therefore the 2006 override value. Ms. Snider asserted the 2008 override value actually benefitted Shandon Park as it did not take into account increases in construction costs since 2005. [Exhibit 540, pp. 03-07; Transcript Vol. I, pp. 49-51, 61-62, 68-72].

134. The Shandon Park improvements were thus valued for 2008 by a CAMA system which developed a replacement cost new less depreciation based on the property characteristics using a CAMA system cost tables.[Exhibit 540; Transcript Vol. I, pp. 31-32, 44-48].

135. The physical depreciation allowed by the CAMA system on each apartment unit was 7 percent (7%). [Exhibit 540, pp. 03-07; Transcript Vol. I, pp. 47-48].

136. Ms. Snider developed an income approach calculation of value for Shandon Park after she issued the 2008 assessment notice. She decided to consider the income approach after receiving an appeal letter from Mr. Tuning on behalf of Shandon Park, and reports from WCDA. She did not use the CAMA system to develop the income approach values. [Exhibits 540, 542, 550, 551; Transcript Vol. I, pp. 34-35, 51-54, 60].

137. The information on Exhibit 542 in the columns under the heading "Shandon Park Limited" was taken from a December 31, 2007, financial statement provided by Shandon Park. The information in the columns under the heading "WCDA" was provided by the WCDA. The information in the columns under the heading "Carbon County Assessor - Revised - 50% TC Disc" derives a value for Shandon Park using 50 percent (\$96,384) of the annual allowable Section 42 credit as income. The information in the columns under the heading "Carbon County Assessor - Revised - 60% TC Disc" derives a value for Shandon Park using 60 percent (\$115,661) of the annual allowable Section 42 credit as income. [Exhibits 542, 550, 551; Transcript Vol. I, pp. 34-37, 54-55, 58, 60, 73].

138. Ms. Snider intentionally did not include property taxes as an expense in her income approach calculations. [Exhibit 542; Transcript Vol. I, pp. 66-67].

139. Ms. Snider, in her income approach analysis of Shandon Park, used a cap rate of 8 percent (8%), the rate indicated for Cheyenne for multi-family apartments. [Exhibit 542; Exhibit 554, p. 060; Transcript Vol. I, pp. 43-44, 59, 67-68, 75-76].

140. Ms. Snider stated her reason for creating Exhibit 542 was to substantiate and confirm the cost approach value she sent out in the assessment notice, Exhibit 540. She chose 50 percent and 60 percent based on conversations with other assessors, as well as her review of some treatises and articles. [Exhibits 552, 553; Transcript Vol. I, pp. 37-38, 55-56, 60, 77].

141. Ms. Snider, before issuing the 2008 assessment notice, was aware Shandon Park was a rent restricted property but was not aware of the Section 42 credits nor had she received the financial statement. [Exhibit 540; Transcript Vol. I, pp. 38-39, 76].

142. Ms. Snider did consider the market approach to valuing Shandon Park. There were, however, no rent restricted properties which had sold in Carbon County. She does not, as a matter of practice, look for sales outside of Carbon County, and did not do so for any rent restricted properties. [Transcript Vol. I, pp. 39-40].

143. Ms. Snider has not used the income approach for any properties in Carbon County, and to her knowledge, the income portion of both the current and prior CAMA systems has not been used by any county assessor. [Transcript Vol. I, pp. 40, 58, 63].

144. Ms. Snider used the same cost approach to value Buffalo Run, the other Section 42 property in Carbon County, as she used to value Shandon Park. [Transcript Vol. I, p. 41].

All Dockets

145. Mark Sunderman is the Morris Fogelman Real Estate Chair of Excellence at the University of Memphis. He was previously a professor at the University of Wyoming for 22 years. He has a Ph.D. in finance from the University of Illinois, Champaign Urbana, with a concentration in real estate and insurance. The bulk of his research has been in real estate as well as property tax and valuation. He is not a Wyoming certified property tax assessing officer, and has not done an appraisal of the properties at issue. He has had no special training, education, or experience with Section 42 low income housing. He was accepted as an expert witness. [Exhibit 351; Transcript Vol. II, pp. 308-314].

146. Dr. Sunderman reviewed the audited financial statements and the appraisals done by independent appraisers as well as the assessments by the respective county assessors for each of Petitioners' properties. [Transcript Vol. II, pp. 314-315].

147. Dr. Sunderman stated the generally accepted methods of valuing property are the sales comparison or market approach, the income approach, and the cost approach. All three can be used to obtain a market value for a property. Dr. Sunderman asserted the best approach to value property is “always sales comparison” because it considers comparable sales, and thus provides a good indication of the market. [Transcript Vol. II, pp. 315-317].

148. If there is insufficient comparable sales data to determine a market value, Dr. Sunderman stated his opinion the next best method for income producing property is, without exception, the income approach. The income approach, by definition, through either direct capitalization with a capitalization rate, or discounted cash flow with a discount rate, derives the present value of a future cash flow based on net operating income. [Transcript Vol. II, pp. 317-319, 324].

149. The direct capitalization approach divides the estimated net operating income of a property by an overall capitalization rate. The discounted cash flow approach discounts the cash flows over the life of a project as well as the reversion value to a present value using a discount rate. [Transcript Vol. II, p. 319].

150. Dr. Sunderman asserted the cost approach is the fall back valuation method if there are no comparable sales and the property does not produce income. The cost approach is, however, the least desirable approach to use. “Cost works when nothing else does.” [Transcript Vol. II, pp. 319-320, p. 320, line 1, 322].

151. Dr. Sunderman asserted the problem with the cost approach is that it assumes the property market is in equilibrium, that is, there is an equal number of buyers and sellers. For example, if a single family residential market is in equilibrium, houses placed on the market sell fairly quickly because there are sufficient buyers to purchase them. [Transcript Vol. II, pp. 320-321].

152. The cost approach calculates a replacement cost new for improvements, subtracts accrued depreciation, and then adds the land value to arrive at a market value for the property. The cost approach does not require sales of comparable properties. [Transcript Vol. II, pp. 321-322].

153. Dr. Sunderman stated his opinion the income approach should be used to value Petitioners’ properties employing either a capitalization rate or a discount rate. [Transcript Vol. II, pp. 324-325].

154. An example of a discounted cash flow approach is the income approach developed by Dave Rauzi, Sweetwater County Assessor. [*Supra*, ¶¶ 115, 116]. His calculation discounted at 11 percent the cash flow for 16 years. The reversion value was calculated

by capitalizing at 8 percent the net operating income in year 2023, less 10 percent for selling costs. Dr. Sunderman asserted the reversion value is actually a 2023 value which must be discounted to present value. An appropriate discount of the 2023 reversion value would make the indicated value of the Rock Springs Family property approximately \$3 million rather than \$4,505,192. [Exhibit 533; Transcript Vol. II, pp. 325-328].

155. Dr. Sunderman, based on his training and experience in real estate, offered his opinion that Section 42 low income housing projects are unique properties in light of the Section 42 credits, the limited partnership aspects, and the requirements placed on owners because of the Section 42 credits. The rent restrictions and compliance requirements affect the market value. Dr. Sunderman suggested there is a very limited market for sale of Section 42 low income housing properties. [Transcript Vol. II, pp. 332-333].

156. The International Association of Assessing Officers (IAAO) recommends property tax be excluded when using the income approach to valuation, and the capitalization rate be adjusted to include the effective tax rate. Each of the income approaches developed by the assessors excluded property tax. There was not, however, an adjustment for the effective tax rate in their capitalization rates. [Transcript Vol. II, pp. 334-335].

157. Capitalization rates can be developed using a buildup rate which adds together different types of rates; using a band of investment; or using the Elwood approach. [Transcript Vol. II, pp. 335-336].

158. Dr. Sunderman offered his opinion Petitioners' properties were too unique to valued using a mass appraisal system. The best method for valuation would be the income approach even if there were comparable sales. [Transcript Vol. II, pp. 336-337, 347-348, 358].

159. Dr. Sunderman asserted an assessor is required to determine fair market value, that is, the amount a willing buyer would pay for one of Petitioners' properties. A buyer of any of Petitioners' properties would be purchasing a property encumbered by rent restrictions, but with no Section 42 credits which have been sold. A buyer would thus not be able to add the Section 42 credits to cash flow as, for example, the Converse County Assessor did in developing her income approach valuation. [Exhibit 502; Transcript Vol. II, pp. 343-345].

160. Dr. Sunderman agreed a replacement reserve account is an asset. [Transcript Vol. II, pp. 348-350].

161. Dr. Sunderman pointed out a major error in the income method calculation by Mr. Tuning for each of Petitioners' properties, an error which he asserts the Assessors made as well. Mr. Tuning and the Assessors incorrectly added land value to the value derived

by the income approach. The income approach establishes a value for a property as a whole, land and improvements, thus the addition of land value overstates the value of the property. See, for example, Mr. Tuning's income approach, Exhibit 100, p. 103, and the Converse County Assessor's income approach, Exhibit 502, for the Douglas Wind River property. Dr. Sunderman asserted the correct value for tax purposes for the Douglas Wind River property should be \$802,333.33, as shown on Exhibit 100, p. 103.[Exhibits 100, 502; Transcript Vol. II, pp. 352-356].

162. Dr. Sunderman stated his opinion two almost identical properties could, in theory, have different market values if one is subject to rent restrictions and the other is not. He stated the differences in cash flow between a rent restricted property and the property able to charge market rent could result in different market values. [Transcript Vol. II, pp. 360-361].

163. Dr. Sunderman agreed that if, in fact, Section 42 credits are to be included as income in an income approach to valuation, the amount include should be the discounted amount actually received for the Section 42 credits, not the full amount of the credits. [Transcript Vol. II, pp. 367-368].

164. Jim Felton has been a principal appraiser for the Department of Revenue for seven years in charge of valuing primarily railroads, electric utilities, and private railroad cars. He previously was the CAMA supervisor in the local assessment section of the Department. He has been continuously certified by the Department as a property tax appraiser since inception of the certification program in the late 1980's, or early 1990's. [Transcript Vol. II, pp. 317-373].

165. Mr. Felton has appraisal responsibility for privately owned wind generation "merchant" power facilities. These types of facilities produce power through wind generation and sell it wholesale at the generation site. They are not part of an integrated generation and distribution system. [Transcript Vol. II, pp. 373-374].

166. The merchant wind generation facilities are eligible to receive a Renewable Energy Tax Credit (REC) which is a form of income tax credit. The credits are predicated on the amount of "green" power produced each year. [Transcript Vol. II, pp. 373-374, 379-383].

167. Mr. Felton is required, as an appraiser, to consider all three approaches to valuing a property, i.e., cost, income, and sales. He has the authority, as a Department appraiser of state assessed property, to request income and cost information from property owners. [Transcript Vol. II, pp. 375-376].

168. Mr. Felton stated that in valuing wind generation merchant facilities, he uses primarily the cost approach, as there are no sales of comparable properties, and the income information is not market driven. The merchant facilities usually sell power at less than market rate in return for long term power purchase agreements. In addition, the RECs are not used by the merchant facilities but instead are used by the holding company which owns the merchant facility. The result is less than market income and overstated expenses because the merchant plants themselves do not take advantage of the RECs that they receive. [Transcript Vol. II, pp. 376-379, 384-385, 389-390].

169. Any portion of the Statement of the Case or Contentions and Issues set forth above, or any portion of the Conclusions of Law - Principles of Law or the Conclusions of Law - Application of Principles of Law set forth below which includes a finding of fact, may also be considered a Finding of Fact and, therefore, is incorporated herein by reference.

CONCLUSIONS OF LAW: PRINCIPLES OF LAW

170. The Board is required to “[d]ecide all questions that may arise with reference to the construction of any statute affecting the assessment, levy and collection of taxes, in accordance with the rules, regulations, orders and instructions prescribed by the department.” *Wyo. Stat. Ann. § 39-11-102.1(c)(iv)*.

171. The Board, in interpreting a statute, follows the same guidelines as a court:

We read the text of the statute and pay attention to its internal structure and the functional relationship between the parts and the whole. We make the determination as to meaning, that is, whether the statute’s meaning is subject to varying interpretations. If we determine that the meaning is not subject to varying interpretations, that may end the exercise, although we may resort to extrinsic aids to interpretation, such as legislative history if available and rules of construction, to confirm the determination. On the other hand, if we determine the meaning is subject to varying interpretations, we must resort to available extrinsic aids.

General Chemical v. Unemployment Ins. Comm’n, 902 P.2d 716, 718 (Wyo. 1995).

172. The Board considers the omission of certain words intentional on the part of the Legislature, and we may not add omitted words. “[O]mission of words from a statute is considered to be an intentional act by the legislature, and this court will not read words into a statute when the legislature has chosen not to include them.” *BP America Production Co. v. Department of Revenue*, 2005 WY 60, ¶ 22, 112 P.3d 596, 607 (Wyo. 2005), quoting *Merrill v. Jansma*, 2004 WY 26, ¶ 29, 86 P.3d 270, 285 (Wyo. 2004). *See*

also *Parker v. Artery*, 889 P.2d 520 (Wyo. 1995); *Fullmer v. Wyoming Employment Security Comm'n.*, 858 P.2d 1122, 1124 (Wyo. 1993). The language which appears in one section of a statute but not another, will not be read into the section where it is absent. *Matter of Adoption of Voss*, 550 P.2d 481, 485 (Wyo. 1976).

173. It is an elementary rule of statutory interpretation that all portions of an act must be read *in pari materia*, and every word, clause and sentence of it must be considered so that no part will be inoperative or superfluous. Also applicable is the oft-repeated rule it must be presumed the Legislature did not intend futile things. *Hamlin v. Transcon Lines*, 701 P.2d 1139, 1142 (Wyo. 1985). See also *TPJ v. State*, 2003 WY 49, ¶ 11, 66 P.3d 710, 713 (Wyo. 2003).

174. The Wyoming Constitution, article 15 § 11, provides in pertinent part:

(a) All property, except as in this constitution otherwise provided, shall be uniformly valued at its full value as defined by the legislature, in three (3) classes as follows:

(I) Gross production of minerals and mine products in lieu of taxes on the land where produced;

(ii) Property used for industrial purposes as defined by the legislature; and

(iii) All other property, real and personal.

* * *

(c) The legislature shall not create new classes or subclasses or authorize any property to be assessed at a rate other than the rates set for authorized classes.

(d) All taxation shall be equal and uniform within each class of property. The legislature shall prescribe such regulations as shall secure a just valuation for taxation of all property, real and personal.

175. The determination of fair market value involves a degree of discretion:

Early on, Justice Blume recognized a truth inherent in the area of property valuation: "There is no such thing as absolute value. A stone cannot be other than a stone, but one man may give a different valuation to a piece of land than another." *Bunten v. Rock Springs Grazing Ass'n*, 29 Wyo. 461, 475, 215 P. 244, 248 (1923). Accordingly, this court has consistently interpreted Wyo. Const. art. 15, § 11 to require "only a rational method [of appraisal], equally applied to all property which results in essential fairness."

Basin Electric Power Coop. v. Dept. of Revenue, 970 P.2d 841, 857 (Wyo.1998) quoting *Holly Sugar Corp. v. State Board of Equalization*, 839 P.2d 959, 964 (Wyo.1992). The Wyoming Supreme Court has recently reiterated the “rational method” standard. *Britt v. Fremont County Assessor*, 2006 WY 10, ¶ 18, 126 P.3d 117, 124 (Wyo. 2006).

176. Broken into its component parts, the constitutional standard requires: (1) a rational method; (2) equally applied to all property; and (3) essential fairness. It is the burden of one challenging an assessment to prove by a preponderance of the evidence that at least one of these elements has not been fulfilled. *Basin Electric Power Coop.*, 970 P.2d at 852.

177. “Basis of tax. The following shall apply:

* * *

(ii) All taxable property shall be annually valued at its fair market value. Except as otherwise provided by law for specific property, the department shall prescribe by rule and regulation the appraisal methods and systems for determining fair market value using generally accepted appraisal standards;”

Wyo. Stat. Ann. § 39-13-103(b)(ii).

178. Fair market value is defined as:

[T]he amount in cash, or terms reasonable equivalent to cash, a well informed buyer is justified in paying for a property and a well informed seller is justified in accepting, assuming neither party to the transaction is acting under undue compulsion, and assuming the property has been offered in the open market for a reasonable time.

Wyo. Stat. Ann. § 39-11-101(a)(vi); See Rules, Wyoming Department of Revenue, Chapter 9 § 4(f.).

179. The Department of Revenue is required to “[p]rescribe the system of establishing the fair market value of all property valued for property taxation to ensure that all property within a class is uniformly valued.” *Wyo. Stat. Ann. § 39-11-102(c)(xv)*. In particular, the Department of Revenue “shall prescribe by rule and regulation the appraisal methods and systems for determining fair market value using generally accepted appraisal standards.” *Wyo. Stat. Ann. § 39-13-103(b)(ii)*. The Department of Revenue has promulgated rules to fulfill this statutory mandate. The acceptable appraisal methods include a sales comparison approach, a cost approach, and an income or capitalized earning approach. The rules also authorize the use of the CAMA system. *Rules, Wyoming Department of Revenue, Chapter 9, § 6(a.)–(d.).*

180. The Department of Revenue is required to confer with, advise and give necessary instructions and directions to the county assessors as to their duties, and to promulgate rules and regulations necessary for the enforcement of all tax measures. *Wyo. Stat. Ann. § 39-11-102(c)(xvi) and (xix)*.

181. A county assessor has a corresponding duty to annually value property within their respective county, and in doing so to “[f]aithfully and diligently follow and apply the orders, procedures and formulae of the department of revenue or orders of the state board of equalization for the appraisal and assessment of all taxable property.” *Wyo. Stat. Ann. § 18-3-204(a)(ix)*.

182. An assessor, in valuing real property and improvements for tax purposes, must take into consideration depreciation. *Rules, Wyoming Department of Revenue, Chapter 9 § 6(b)(iv)*. Depreciation is defined as:

“Depreciation” means a loss of utility and hence value from any cause. Depreciation may take the form of physical depreciation, functional obsolescence, or economic obsolescence.

(I.) “Physical Depreciation” means the physical deterioration as evidenced by wear and tear, decay or depletion of the property.

(ii.) “Functional Obsolescence” means the impairment of functional capacity or efficiency, which reflects a loss in value brought about by such factors as defects, deficiencies, or super adequacies, which affect the property item itself or its relation with other items comprising a larger property.

(iii.) “Economic Obsolescence” means impairment of desirability or useful life arising from factors external to the property, such as economic forces or environmental changes which affect supply-demand relationships in the market. The methods to measure economic obsolescence may include, but are not limited to:

(A.) Capitalization of the income or rent loss attributable to the negative influence;

(B.) Comparison of sales of similar properties which are subject to the negative influence with others which are not.

Rules, Wyoming Department of Revenue, Chapter 9 § 4(d).

183. The State Board’s Rules provide:

[T]he Petitioner shall have the burden of going forward and the ultimate burden of persuasion, which burden shall be met by a preponderance of the evidence....

Rules, Wyoming State Board of Equalization, Chapter 2 § 20.

184. The Wyoming Supreme Court has described the burden of proof for a taxpayer challenging a county assessor's valuation:

A strong presumption favors the Assessor's valuation. "In the absence of evidence to the contrary, we presume that the officials charged with establishing value exercised honest judgment in accordance with the applicable rules, regulations, and other directives that have passed public scrutiny, either through legislative enactment or agency rule-making, or both." *Amoco Production Co. v. Dept. of Revenue*, 2004 WY 89, ¶ 7, 94 P.3d 430, 435 (Wyo. 2004). The Britts [i.e., the protesting taxpayers] had the initial burden of presenting evidence sufficient to overcome the presumption. *Id.*, ¶ 8. If the Britts successfully overcame the presumption, then the county board was "required to equally weigh the evidence of all parties and measure it against the appropriate burden of proof." *CIG v. Wyoming Dept. of Revenue*, 2001 WY 34, ¶ 10, 20 P.3d 528, 531 (Wyo. 2001). The burden of going forward would then have shifted to the Assessor to defend her valuation. *Id.* Above all, the Britts bore "the ultimate burden of persuasion to prove by a preponderance of the evidence that the valuation was not derived in accordance with the required constitutional and statutory requirements for valuing...property." *Id.*

Britt, supra, 2006 WY 10, ¶ 23, 126 P.3d at 125. *See also Thunder Basin Coal Co. v. Campbell County, Wyoming Assessor*, 2006 WY 44, ¶ 13, 132 P.3d 801, 806 n.1. (Wyo. 2006).

185. A mere difference of opinion as to value is not sufficient to overcome the presumption in favor of an assessor's valuation. *J. Ray McDermott & Co. v Hudson*, 370 P.2d 364, 370 (Wyo. 1962); *Thunder Basin Coal Co. v. Campbell County, Wyoming Assessor*, 2006 WY 44, ¶ 13, 132 P.3d 801, 806 (Wyo. 2006).

186. The State Board's "task is not to determine which of various appraisal methods is best or most accurately estimates FMV; rather, it is to determine whether substantial evidence exists to support usage of the RCNLD method of appraisal, and, if so, whether substantial evidence exists to support the manner in which it was used. *See Teton Valley Ranch v. State Bd. of Equalization*, 735 P.2d 107 (Wyo.1987)." *Holly Sugar Corp. v. State Board of Equalization*, 839 P.2d 959, 963 (Wyo. 1992).

187. Administrative rules have the force and effect of law. *Wyo. Dep't of Revenue v. Union Pacific Railroad Co.*, 2003 WY 54, ¶ 18, 67 P.3d 1176, 1184 (Wyo. 2003); *Painter v. Abels*, 998 P.2d 931, 939 (Wyo. 2000).

CONCLUSIONS OF LAW: APPLICATION OF PRINCIPLES OF LAW

188. The Board has jurisdiction to consider and decide these combined appeals. *Wyo. Stat. Ann. § 39-11-102.1(c)*.

189. Petitioners do not contest (1) the Assessors used the CAMA system and (2) the CAMA system is designed to arrive at an estimate of value for improvements based on typical replacement or reproduction costs less physical depreciation assuming accurate, pertinent data regarding the improvements was entered into the systems correctly. Petitioners contend the Assessors may not have accurately measured the value, including functional and/or economic depreciation, and that the income approach more fairly and accurately reflects the actual value of the properties. [*Updated Summary*, pp. 3-4].

190. The Wyoming Constitution requires all taxable property in Wyoming “shall be uniformly valued at its full value as defined by the legislature....” *Wyo. Const., art. 15, § 11(a); Conclusions*, ¶ 174.

191. The Wyoming Legislature has determined “full value” shall be “fair market value” which is statutorily defined for purposes of taxation. *Wyo. Stat. Ann. §§ 39-13-103(b)(ii); 39-11-101(a)(vi); Conclusions*, ¶¶ 174, 177, 178.

192. The Wyoming Legislature has furthered specified the Department shall prescribe both the system for establishing fair market value as well as the approved methods and systems for determining fair market value using generally accepted appraisal standards. *Wyo. Stat. Ann. §§ 39-11-102(c)(xv); 39-13-103(b)(ii); Conclusions*, ¶ 179.

193. The Department, by Rule, has defined three acceptable methodologies for determining fair market value, i.e., sales comparison, cost, and income. *Rules, Wyoming Department of Revenue, Chapter 9, §§ 6(a)-(d.); Conclusions*, ¶¶ 177, 179.

194. The Department, by statute, is also required to give instruction and direction to the county assessors, which the assessors are statutorily required to “faithfully and diligently follow.” *Wyo. Stat. Ann. §§ 39-11-102(c)(xvi), (xix); 18-3-204(a)(ix); Conclusions*, ¶¶ 180, 181.

195. The evidence and testimony presented in these combined appeals clearly establishes each Assessor valued, for 2008 taxation purposes, the properties at issue

utilizing the cost approach, a methodology approved by the Department, and even recognized as an acceptable valuation technique by Petitioners' expert. The 2008 valuation indicated on each assessment notice sent by each Assessor was thus developed using a Department approved valuation methodology. *Facts*, ¶¶ 8, 44, 45, 55, 74, 86, 91, 93, 96, 99, 108, 113, 119, 126, 131, 133, 143, 145, 147, 150, 152; [Exhibits 100, 101, 530, 532, 540]; *Conclusions*, ¶ 193.

196. The 2008 value assigned to the Shandon Park property located in Carbon County was the 2006 value for the property as captured during conversion to a new CAMA system as required by the Department of Revenue. The testimony by Ms. Snider, the Carbon County Assessor, clearly indicates the 2006 value was derived utilizing the 2005 cost tables in the previous CAMA system. The "override" 2008 CAMA value for Shandon Park was thus the 2006 cost method value which arguably benefitted the owner, Shandon Park Limited Partnership, since that 2008 value does not take into account any construction cost increase between 2005 and 2008. *Facts*, ¶¶ 133, 134.

197. A significant issue raised by Petitioners in these combined appeals was their assertion the Assessors should not have used the cost approach, but rather should have used the income valuation approach without inclusion of the Section 42 credits as income to value the properties at issue. [*Petitioners' Closing and Reply Briefs*].

198. The testimony and evidence presented at the hearing for these combined appeals clearly indicates each Assessor gave consideration to use of the income methodology, but concluded use of that method was not appropriate based on a lack of reliable market-wide income and expense data. It was only after Petitioners filed appeals with the respective county boards of equalization, and supplied income and expense information for each project, that the Assessors performed an income analysis, with inclusion of the Section 42 credits in some manner in their calculations, to "verify" the value derived by their use of the cost method. None of the Assessors used the income method to determine the 2008 fair market value placed on Petitioners' properties for tax purposes. Most Assessors do not value property using an income method based on a lack of income and expense data. *Facts*, ¶¶ 58, 59, 62, 93, 98, 100, 115, 136, 140, 143.

199. The Assessors, in determining a fair market value for the properties at issue for 2008 tax purposes, used the cost valuation method as approved by the Department. The cost methodology allows consideration of functional and economic obsolescence which most Assessors took into consideration in arriving at their cost values. *Facts*, ¶¶ 45, 46, 47, 53, 56, 75, 86, 91, 94, 96, 99; [Exhibit 500]; *Conclusions*, ¶ 182.

200. Petitioners assert the income method is a better valuation approach than the cost method for determining the value of low income housing projects. The Assessors obviously disagree. A mere difference of opinion between a taxpayer and an assessor as to what is the better method, and even what is the better fair market value, is not

sufficient to overcome the well established presumption in favor of an assessor's value which, as in these appeals, has been determined using a valuation method approved by the Department. *Conclusions*, ¶¶ 184, 185, 195, 196.

201. It is, as well, not within the purview of this Board to attempt a determination of "which of various appraisal methods is best or most accurately estimates" fair market value. It is our responsibility to ensure use of the cost method was authorized, and that substantial evidence supports the manner in which it was used. It is our conclusion the cost method as used by the Assessors was authorized, and there is substantial evidence to support the value determined using that method for each of the projects at issue. *Conclusions*, ¶¶ 178, 186, 195, 196.

202. It is interesting to note the audited financial statements for each of Petitioners' properties supplied to the Assessors, dated December 31, 2007, the day before the assessment date for 2008, January 1, 2008, indicate a "cost to construct, less depreciation" greater than the 2008 fair market value placed on each respective property by the Assessors. While we recognize an audited financial statement may well have functions other than the determination of fair market value for ad valorem tax purposes, the fact each fair market value determined by the Assessors is lower than the audited financial statement value reinforces the validity of each Assessor's cost method values. *Facts*, ¶¶ 33, 44, 48, 74, 76, 85, 87, 108, 109, 126, 127.

203. Petitioners did not overcome the presumption in favor of the Assessors' valuations. *Conclusions*, ¶¶ 184, 185, 186.

204. The affirmance of the Assessors' cost method values for Petitioners' Section 42 projects places into the category of *dicta* any discussion by the Board of the issue, as thoroughly discussed and briefed by both parties, of whether Section 42 credits should be considered in an income valuation method, if that method is, in fact, appropriate for valuing Section 42 projects. The same conclusion applies to the assertion by Petitioners the Section 42 credits are exempted under Wyo. Stat. Ann. § 39-11-105(b) as a "right" granted by a governmental unit. [*Petitioners' Closing and Reply Briefs*].

205. The valuation of Section 42 housing raises a number of complex questions, especially in the context of the income valuation method. Should Section 42 credits and rental restrictions be factored into a project's income stream? Should only rental restrictions but not Section 42 credits be considered? Do Section 42 credits fit the definition of intangible property, and if so, are they exempt from valuation and taxation? Should only market rents rather than restricted rents be the measure of income potential for a Section 42 property? Should only cost or sales comparison methods be used to value Section 42 property? These questions and others may well be relevant in any discussion of how to value Section 42 property.

206. A thorough, in depth discussion of the appropriate valuation method for Section 42 projects would obviously benefit from participation by persons and entities beyond the parties to these consolidated appeals. One possibility for such discussion and presentation of varying viewpoints would be the adoption by the Department of Revenue, pursuant to its statutory authority, of rules for valuation of Section 42 projects. *Conclusions*, ¶¶ 179, 180.

207. The precedential value of court and administrative decisions in other states may well be somewhat limited in light of the varying state constitutional and legislative differences. *Mayville Properties v. Nelson*, 83 S.W. 3d 608, 614 (Mo. Ct. App. 2002). The Board would nonetheless offer the following by no means complete listing of court decisions with regard to valuation of low income property as presented by counsel for Petitioners and the Assessors, and as developed by the Board during consideration of these consolidated appeals.

208. There is no error in failing to consider the rent restrictions because the valuation was based on the cost approach rather than the income approach.

Maine: *Glenridge Development v. City of Augusta*, 662 A.2d 928 (Me. 1995).

209. A taxing authority should consider the restrictions and the benefits (e.g. tax credits, interest subsidy payments) of the low-income housing contract when calculating the fair market value of low income housing:

Connecticut: *Executive Square Ltd. Partnership v. Board of Tax Review*, 528 A.2d 409 (Conn. 1987) and *Deerfield 95 Investor Assoc., LLC v. Town of East Lyme*, 1999 Conn. Super. EXIS 1747 (Conn. Super Ct. 1999)

DC: *Pennsylvania v. Lynn*, 501 F.2d 848 (DC Cir. 1974).

Idaho: *Greenfield Village Apts. v. Ada County*, 938 P.2d 1245 (Idaho 1997) and *Brandon Bay, Ltd. Partnership v. Payette County*, 132 P.3d 438 (Id 2006).

Illinois: *Kankakee County Board of Review v. Property Tax Appeal Board*, 544 N.E. 2d 762 (Ill. 1989) and *Rainbow Apartments v. Illinois Property Tax Appeals Bd.*, 762 N.E.2d 534 (Ill. App. 2001).

Indiana: *Pedcor Investments v. State Bd.*, 715 N.E.2d 432 (Ind. Tax 1999).

Kansas: *In Re Equalization Appeal of Ottawa Housing Assoc., L.P.*, 10 P.3d 777 (Kan. 2000).

Louisiana: *Walnut Square Ltd., Partnership v. Louisiana Tax Commission*, 626 So.2d 430 (La App. 1993).

Maine: *Glenridge Development Co. v. City of Augusta*, 662 A.2d 928 (Me 1995).

Maryland: *Supervisor of Assessments of Baltimore City of Har Sinai West Corp.*, 622 A.2d 786 (Md 1993).

Michigan: *Huron Ridge, L.P. v. Township of Ypsilanti*, 737 N.W.2d 187 (Mich. App. 2007).

Mississippi: *Rebelwood, Ltd. V. Hids County*, 544 So.2d 1356 (Miss. 1989).

New Jersey: *Penns Grove Gardens, Ltd. v. Penns Grove Borough*, 18 N.J. Tax 253 (1999) (3% cap rate).

Pennsylvania: *Parkside Townhomes v. Board of Assess.*, 711 A.2d 607 (Pa 1998).

Rhode Island: *Ferland Corporation v. Bauchard*, 626 A.2d 210 (RI 1993).

South Dakota: *Town Square Limited Partnership v. Clay County Bd. Of Equal.*, 704 N.W.2d 896 (SD 2005).

Tennessee: *Spring Hill, LP v. Tennessee State Bd. Of Equal.*, 2003 WL 23099679 (Tenn. Ct. of Appeals 2003).

Utah: *Alta Pacific v. Utah State Tax Com'n*, 931 P.2d 103 (Utah 1997).

210. Market rents and expenses of comparable unsubsidized housing in the open market must be used to the exclusion of actual contract rental income and expenses under the income approach to valuation.

Ohio: *Delhi Estates Ltd. v. Hamilton County Bd of Revision*, 625 N.E. 2d 594 (Ohio 1994).

211. A taxing authority should consider the restrictions associated with the low income housing contract (silent or unclear on whether to consider the benefits):

Massachusetts: *Community Dev. Co. of Gardner v. Board of Assessors of Gardner*, 385 N.E.2d 1376 (Mass. 1979).

Wisconsin: *Metro Holding v. Milwaukee Review Bd.*, 495 N.W. 2d 314 (Wisconsin 1993).

212. The participation in a low income housing program under 26 USC §42 constitutes a governmental restriction as to use of property requiring a reduction in value for assessment purposes. There should be no consideration of the benefits of the low income housing contract.

Oregon: *Bayridge Assoc. Ltd. Partnership v. Department of Revenue*, 892 P.2d 1002 (Or. 1995).

213. Section 42 credits are not subject to consideration in the assessment of Section 42 low income property in reliance on state laws which prohibit the real property taxation of intangibles.

Arizona: *Cottonwood Affordable Housing v. Yavapai Co.*, 72 P.2d 357 (Ariz. 2003).
Missouri: *Maryville Properties, L.P. v. Nelson*, 83 S.W.3d 608 (Mo. Ct. App. 2002).
Washington: *Cascade Court Ltd. V. Noble*, 20 P.3d 997 (Wash. Ct App. 2001).

214. Alaska, California, Florida, Georgia, Iowa, Montana, Nebraska, Nevada, New Hampshire, New York, North Carolina, South Carolina, Texas, and Vermont appear to have adopted legislation which provides specific assessment methods for low income housing.

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ORDER

IT IS THEREFORE HEREBY ORDERED the 2008 valuation of each Petitioner's property by each Respondent Assessor using the cost method is **affirmed**.

Pursuant to Wyo. Stat. Ann. § 16-3-114 and Rule 12, Wyoming Rules of Appellate Procedure, any person aggrieved or adversely affected in fact by this decision may seek judicial review in the appropriate district court by filing a petition for review within 30 days of the date of this decision.

DATED this day of September, 2009.

STATE BOARD OF EQUALIZATION

Thomas D. Roberts, Chairman

Steven D. Olmstead, Vice-Chairman

ATTEST:

Wendy J. Soto, Executive Secretary