



STATE TAX COMMISSION OF MISSOURI

NATIONAL CHURCH RESIDENCES OF) Appeal No. 19-32042
KANSAS CITY, MO,) Parcel/Locator: 18-115-00-09-002.01
)
Complainant,)
)
v.)
)
CATHY RINEHART¹, ASSESSOR,)
CLAY COUNTY, MISSOURI,)
)
Respondent.)

ORDER AFFIRMING HEARING OFFICER DECISION UPON APPLICATION FOR REVIEW

HOLDING

On February 12, 2021, a State Tax Commission (STC) Senior Hearing Officer (hearing officer) entered a Decision and Order (Decision) setting aside the decision of the Clay County Board of Equalization (BOE) and finding the subject property is exempt from *ad valorem* taxation. Cathy Rinehart, Assessor of Clay County, (Respondent) subsequently filed a timely Application for Review of the Decision of the hearing officer. National Church Residences of Kansas City, MO, (Complainant) filed its Response to Respondent's Application for Review.

¹ Tracy Baldwin currently is Assessor of Clay County, Missouri. The underlying appeal and subsequent Application for Review were filed prior to Mr. Baldwin taking office.

We AFFIRM the Decision of the hearing officer. Segments of the hearing officer's Decision may have been incorporated into our Order without further reference.

FINDINGS OF FACT AND PROCEDURAL HISTORY

The record reveals that the subject property is located at 3711 N. Jackson Ave, Kansas City, MO. The building consists of 59 units with one unit provided for the manager. The property is subject to the terms of the Section 202 Housing Program for low-income elderly under the Department of Housing and Urban Development (HUD) whereby its tenants make an income-based payment towards the market rent for an apartment unit at the property, and HUD subsidizes the balance of the rent. The subject property provides affordable housing for very-low or extremely-low income senior citizens. Complainant is subject to an agreement with HUD for the receipt and expenditure of funds for the subject property.

The property had been tax exempt prior to 2019; however, for tax year 2019, Respondent valued the subject property's true value in money (TVM) at \$1,749,300, classified the subject property as commercial real property to be taxed at 32% of its TVM, and determined the subject property were not exempt from *ad valorem* taxation as of January 1, 2019. Following Complainants' appeal to the BOE, the BOE lowered the TVM of the subject property to \$889,300, reclassified the subject property as residential real property, and found the subject property was not exempt from taxation. Complainant filed a timely appeal to the STC claiming that the subject property were exempt from *ad valorem* property taxation pursuant to Article X, Section 6 of the Missouri Constitution and Section

137.100² for tax year 2019 because Complainant was a not-for-profit organization that owned and operated the property for a charitable purpose. The hearing officer held an evidentiary hearing in which the parties were represented by counsel. Complainant and Respondent each presented evidence in the form of testimony and exhibits.

The evidence established that HUD set the amount of rent Complainant received for each unit. Residents paid 30% of their income toward rent with HUD making up the difference. Pursuant to Complainant's agreement with HUD, the contract rate as of the assessment date was \$577 per month and there was no minimum rent. The combined HUD subsidies exceeded the combined rent payments made by tenants each year. Prospective residents were required to meet HUD's qualifications for age and income: age 62 or older and very-low or extremely-low income as defined by HUD. Although potential residents were required to apply, disqualifications were occasionally made in accordance with HUD regulations. A faith-based organization managed the subject property with the mission to provide high-quality care, services, and residential communities for seniors, people with disabilities, and others in need of care. Residents were provided with personal and social services and educational and wellness programs as part of their residency at the subject property. A paid Service Coordinator assisted residents with these services and programs.

The hearing officer subsequently issued the Decision containing Findings of Fact and Conclusions of Law and setting aside the BOE's determination regarding exemption and finding that Complainant presented substantial and persuasive evidence establishing

² All statutory references are to RSMo. 2000, as amended, unless otherwise indicated.

the subject property was exempt from *ad valorem* taxation as of January 1, 2019.

Respondent filed a timely Application for Review. The STC thereafter issued its Order allowing the Application for Review and granting Complainant time to file a response. Complainant filed a response.

CONCLUSIONS OF LAW

Respondent's Points on Review

Respondent asserts the hearing officer's Decision is erroneous because:

- (1) The subject property does not meet the *Franciscan* test for charitable exemption;
and
- (2) The hearing officer should have found the subject property taxable under Section 137.076.2, which requires the use of the income approach to value subsidized housing.

Standard of Review

A party subject to a decision and order of a hearing officer of the STC may file an application requesting the case be reviewed by the STC. Section 138.432. The STC may then summarily allow or deny the request. Section 138.432. The STC may affirm, modify, reverse, set aside, deny, or remand to the hearing officer the decision and order of the hearing officer on the basis of the evidence previously submitted or based on additional evidence taken before the STC. Section 138.432.

The Commission reviews the hearing officer's decision and order de novo. *Lebanon Properties I v. North*, 66 S.W.3d 765, 770 (Mo. App. 2002); *Union Electric Company, d/b/a Ameren Missouri, v. Estes*, 2020 WL 3867672 (Mo. St. Tax Com., July 2,

2020); *AT&T Mobility, LLC, v. Beverly Alden, Assessor, Caldwell County, Missouri, et al.*, 2020 WL 3867819 (Mo. St. Tax Com., July 2, 2020). “The extent of that review extends to credibility as well as questions of fact.” *Lebanon Properties I*, 66 S.W.3d at 770. The Commission “is free to consider all pertinent facts and estimates and give them such weight as reasonably they may be deemed entitled to.” *St. Louis Cty. v. State Tax Comm'n*, 515 S.W.2d 446, 450 (Mo. 1974).

Commission’s Ruling

For the reasons that follow, the Commission finds Respondent’s arguments to be unpersuasive. The Commission, having reviewed the whole record and having considered the hearing officer’s Decision, the Application for Review of Respondent, and Complainant’s Response affirms the hearing officer’s Decision.

There is a presumption of validity, good faith and correctness of assessment by the BOE. *Hermel, Inc. v. STC*, 564 S.W.2d 888, 895 (Mo. banc 1978); *Chicago, Burlington & Quincy Railroad Co. v. STC*, 436 S.W.2d 650, 656 (Mo. 1968); *May Department Stores Co. v. STC*, 308 S.W.2d 748, 759 (Mo. 1958). This presumption is a rebuttable rather than a conclusive presumption. The presumption of correct assessment is rebutted when the taxpayer presents substantial and persuasive evidence to establish that the BOE’s assessment is erroneous and what assessment should have been placed on the property. *Id.*

The taxpayer in a STC appeal bears the burden of proof. The taxpayer is the moving party seeking affirmative relief. Therefore, Complainant bears the burden of proving by substantial and persuasive evidence the vital elements of the case, i.e., the assessment was “unlawful, unfair, improper, arbitrary, or capricious.” *See, Westwood Partnership v.*

Gogarty, 103 S.W.3d 152 (Mo. App. E.D. 2003); *Daly v. P.D. George Co.*, 77 S.W.3d 645 (Mo. App. E.D. 2002); *Reeves v. Snider*, 115 S.W.3d 375 (Mo. App. S.D. 2003); *Industrial Development Authority of Kansas City v. State Tax Commission of Missouri*, 804 S.W.2d 387, 392 (Mo. App. W.D. 1991). *Substantial evidence* can be defined as such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Cupples Hesse Corp. v. State Tax Commission*, 329 S.W.2d 696, 702 (Mo. 1959). *Persuasive evidence* is evidence that has sufficient weight and probative value to convince the trier of fact. *Cupples Hesse Corp.*, 329 S.W.2d at 702. The persuasiveness of evidence does not depend on the quantity or amount thereof but on its effect in inducing belief. *Brooks v. General Motors Assembly Division*, 527 S.W.2d 50, 53 (Mo. App. 1975).

The hearing officer is the fact finder and the relative weight to be accorded any relevant factor in a particular case is for the hearing officer to decide. *St. Louis County v. Security Bonhomme, Inc.*, 558 S.W.2d 655, 659 (Mo. banc 1977); *St. Louis County v. STC*, 515 S.W.2d 446, 450 (Mo. 1974); *Chicago, Burlington & Quincy Railroad Company v. STC*, 436 S.W.2d 650 (Mo. 1968).

Article X, Section 6, of the Missouri Constitution sets forth property exempt from *ad valorem* taxation. It states, in part:

1. All property, real and personal, of the state, counties and other political subdivisions, and nonprofit cemeteries, and all real property used as a homestead as defined by law of any citizen of this state who is a former prisoner of war, as defined by law, and who has a total service-connected disability, shall be exempt from taxation; all personal property held as industrial inventories, including raw materials, work in progress and finished work on hand, by manufacturers and refiners, and all personal property held as goods, wares, merchandise, stock in trade or inventory for resale by

distributors, wholesalers, or retail merchants or establishments shall be exempt from taxation; *and all property, real and personal, not held for private or corporate profit and used exclusively for religious worship, for schools and colleges, for purposes purely charitable, for agricultural and horticultural societies, or for veterans' organizations may be exempted from taxation by general law.*

(Emphasis added.)

The Constitution authorizes the legislature to enact exemptions from taxation. Section 137.100 expressly lists properties qualifying for exemptions from taxation for state, county or local purposes, including, in relevant part:

(5) All property, real and personal, actually and regularly used exclusively for religious worship, for schools and colleges, or for purposes purely charitable and not held for private or corporate profit, except that the exemption herein granted does not include real property not actually used or occupied for the purpose of the organization but held or used as investment even though the income or rentals received therefrom is used wholly for religious, educational or charitable purposes

Taxation of property is the rule and exemption from taxation is the exception. *United Cerebral Palsy Ass'n of Greater Kansas City v. Ross*, 789 S.W.2d 798, 799 (Mo. banc 1990). Tax exemptions are not favored in the law and statutes granting exemptions are to be strictly, yet reasonably, construed against the one claiming the exemption. *Missouri Church of Scientology v. State Tax Commission*, 560 S.W.2d 837, 844 (Mo. banc 1987); *State ex rel. Union Electric Co. v. Goldberg*, 578 S.W.2d 921, 923 (Mo. banc 1979). A property owner who claims the exemption bears a substantial burden to prove that his property falls within the exempted class. *United Cerebral Palsy Ass'n of Greater Kansas City*, 789 S.W.2d at 799.

1. The subject property is exempt under the *Franciscan* Test

Section 137.100(5) provides that real and personal property actually and regularly used for purely charitable purposes is exempt from taxation for state, county, or local purposes. The Missouri Supreme Court set forth the test for exemptions in *Franciscan Tertiary Province of Missouri v. State Tax Commission*, 566 S.W.2d 213 (Mo. banc 1978). In order to qualify for an exemption based upon charitable use of the property, it must be established that:

- 1) The property is dedicated unconditionally to the charitable activity;
- 2) The property is owned and operated on a non-for-profit basis; and
- 3) The dominant use of the property is for the benefit of an indefinite number of people and directly or indirectly benefits society.

In *Franciscan*, the Missouri Supreme Court established the criteria for determining whether a property is exempt. The criteria have been restated and reinforced in subsequent cases such as *Pentecostal Church of God v. Hughlett*, 737 S.W.2d 728 (Mo. banc 1987) and *Senior Citizens Bootheel Services, Inc. v. Dover*, 811 S.W.2d 35 (Mo. App. W.D. 1991). *Pentecostal* cited *Franciscan* as the “seminal case for the proposition that the provision of housing for aged and handicapped persons who are unable to bear the full cost is a charitable purpose” entitled to exemption. *Pentecostal*, 737 S.W.2d at 729. In *Pentecostal*, the Court stated, “*Franciscan* was designed to give general approval to housing projects for the elderly and handicapped. It should not be read grudgingly.” *Id.* at 730.

In this case, all three elements of the *Franciscan* were met in these appeals.

The evidence established that as of January 1, 2019, the subject property was dedicated unconditionally to the purpose of providing housing for low-income elderly

persons. The evidence established that the average resident of the subject property was 77.44 years of age and that more than half of the residents had incomes of approximately \$15,000 annually. For 2019, the year in question, HUD required residents to be age 62 or older and defined a single person earning up to \$18,100 as having extremely low income and a single person earning up to \$30,100 as having very-low income. Complainant received payments from HUD in addition to rent from residents depending on residents' income levels. Residents made income-based payments toward the market rent, and HUD subsidized the balance of the rent. Receiving government subsidies does not defeat the charitable use of the property. *See Rolla Apartments/Overall Construction Industries, Inc. v. State Tax Commission*, 797 S.W.2d 781, 792-93 (Mo. App. S.D. 1990). HUD regulations required tenants to meet low-income or extremely low-income standards; tenant rental obligations were based upon ability to pay; HUD approved the rent rates; and HUD's subsidy was based upon the difference between the tenant's obligation and the approved rent. Like the present appeals, the properties in *Franciscan*, *Pentecostal*, *Senior Citizens of Bootheel Services*, and *Rolla Apartments* utilized HUD funding. Accordingly, the first element of the *Franciscan* test was satisfied.

The evidence also established that the subject property was owned by a not-for-profit entity and operated on a not-for-profit basis. Complainant had entered an agreement with HUD in order to receive rental assistance payments. Under the agreement, Complainant was required to establish a project fund account in a HUD-approved depository with deposits of all funds from project operations in the account and withdrawals made only with HUD approval and for project purposes only, including the

reduction of project rental assistance payments. See Complainant's Exhibit L, Project Rental Assistance Contract, Section 2.6, Financial Requirements³. Complainant also was required to establish and maintain a replacement reserve fund for repairs and maintenance of project capital items that is funded through any project "profits." Complainant was further required to remit to HUD any excess funds in the accounts if and when Complainant terminated its agreement with HUD. As noted in Respondent's response to the application for review, "[a]ny profits from the subject property clearly are not 'siphoned off' rather they are used for project operations. Consequently, the second element of the *Franciscan* test was satisfied.

With regard to the third element of the *Franciscan* test, as of January 1, 2019, the evidence established the subject property's dominant use of the property was for the benefit of an indefinite number of people and directly or indirectly benefited society by providing housing for elderly persons with low or extremely low incomes along with supportive services tailored to meet individual resident needs. Providing housing for elderly persons with low or extremely low incomes has been deemed by the courts to be a charitable activity that benefits society. Logic dictates that the residents of the subject property had income levels that would have caused them difficulty in finding decent housing and services if the subject property were not available. A service coordinator was responsible for coordinating programs and services to assist residents to maintain a good quality of life and to age in place. Although a potential resident was required to complete an application

³ This Project Rental Assistance Contract was also admitted by Respondent's as Exhibit 13.

to reside at the subject property, the evidence established that denials of applications were determined by HUD for issues such as criminal history, previous evictions, credit history, or if a recent felony conviction posed a danger to other residents. Further, Complainant was not able to accept a potential resident who could not obtain utilities in his or her unit due to credit history because a lack of utilities could be harmful to Complainant's residents. Like the property in *Rolla Apartments*, the subject property in these appeals are constantly used so that they benefit low-income elderly persons, an indefinite number of people, thereby benefitting society because the occupants of the subject property “are not thrust into public housing or, if not so placed, into substandard housing thereby increasing problems of government and society.” *Rolla Apartments*, 797 S.W.2d. at 792.

2. Section 137.076.2 did not apply.

In her second point on review, Respondent claims that the hearing officer erred in not applying Section 137.076.2, which requires the use of an income based approach to value real property subject to rent limitations or other requirements including receipt of federal subsidies for housing purposes. We disagree.

Article X of the Missouri Constitution provides that “all property . . . not held for corporate profit and used exclusively for religious worship, for schools and colleges [or] for purposes purely charitable . . . may be exempted from taxation by general law”

Section 137.100(5) provides for the exemption of those properties set forth in Article X.

Section 137.076.2 provides:

In establishing the value of a parcel of real property, the county assessor shall use an income-based approach for assessment of parcels of real property with federal or state imposed restrictions in regard to rent limitations, operations

requirements, or any other restrictions imposed upon the property in connection with:

- (1) The property being eligible for any income tax credits under Section 42 of the Internal Revenue Code of 1986, as amended;
- (2) Property constructed with the use of the United States Department of Housing and Urban Development HOME investment partnerships program;
- (3) Property constructed with the use of incentives provided by the United States Department of Agriculture Rural Development; or
- (4) Property receiving any other state or federal subsidies provided with respect to use of the property for housing purposes.

For the purposes of this subsection, the term "income-based approach" shall include the use of direct capitalization methodology and computed by dividing the net operating income of the parcel of property by an appropriate capitalization rate not to exceed the average of the current market data available in the county of said parcel of property. Federal and state tax credits or other subsidies shall not be used when calculating the capitalization rate. Upon expiration of a land use restriction agreement, such parcel of property shall no longer be subject to this subsection.

First, to the extent that Respondent asserts that the enactment of Section 137.076.2 renders Section 137.100(5) unconstitutional in relation to subsidized housing, deciding constitutional issues is beyond the authority of an administrative agency. *Fayne v. Department of Social Services*, 802 S.W.2d 565, 567 (Mo.App.1991); *Duncan v. Missouri Board for Architects, Professional Engineers and Land Surveyors*, 744 S.W.2d 524, 530-31 (Mo.App.1988) "Administrative agencies lack the jurisdiction to determine the constitutionality of statutory enactments." *City of Joplin v. Industrial Commission of Missouri*, 329 S.W.2d 687 (Mo. banc 1959). Furthermore, administrative agencies such as the STC have no authority to declare a statute invalid or to interpret a statute in such a way that is contrary to the plain terms of the statute. *Evans v. Empire Dist. Elec. Co.* 346 S.W.3d 313, 318 (Mo. App. W.D. 2011).

Second, to the extent Respondent argues that Section 137.076.2 implicitly repealed

Section 137.100(5) and therefore required the application of only Section 137.076.2, Respondent's argument is flawed as the plain language of the two statutory provisions are not inconsistent and are not in conflict. The plain language of each statute instructs that each statute is to be applied under different sets of circumstances.

Repeals by implication are disfavored. *Turner v. School Dist of Clayton*, 318 S.W.3d 660, 667 (Mo. banc 2010). "If by any fair interpretation both statutes may stand, there is no repeal by implication and both statutes must be given their effect." *Turner*, 318 S.W.3d at 667, quoting *Silcox v. Silcox*, 6 S.W.3d 899, 903 (Mo. banc 1999). "When two provisions are not irreconcilably inconsistent, both must stand even if 'some tension' exists between them." *Turner*, 318 S.W.3d at 667 (internal quotation omitted). The courts look to the plain language of statutes, and, when the words are clear, will find nothing to construe and will apply the plain meaning of the law. See *Union Elec. Co. v. Missouri Public Service Commission*, 591 S.W.3d 478, 485 (Mo. App. W.D. 2019).

The plain language of Section 137.100(5) provides that properties used for charitable purposes and owned by non-profit organizations are exempt from *ad valorem* taxation. The plain language of Section 137.076.2 provides a method for valuing non-exempt subsidized housing. The evidence in this case established that the subject property was properly treated as exempt from *ad valorem* taxation under Section 137.100(5).

The taxpayer in a STC appeal bears the burden of proof. The taxpayer is the moving party seeking affirmative relief. Therefore, in these appeals, Complainant had the burden of proving that the BOE's determination regarding exemption from taxation was erroneous.

The hearing officer found that Complainant presented substantial and persuasive evidence establishing the subject property were exempt as of January 1, 2019. The record supports the hearing officer's findings. The Commission finds that a reasonable mind could have conscientiously reached the same result as the hearing officer based on a review of the entire record. *Hermel*, 564 S.W.2d at 895-96; *Black v. Lombardi*, 970 S.W.2d 378 (Mo. App. E.D. 1998). The hearing officer did not err in setting aside the BOE's determination regarding exemption.

ORDER

The Decision of the hearing officer is AFFIRMED. The Decision of the hearing officer, including the findings of fact and conclusions of law therein, is incorporated by reference, as if set out in full, in this final decision of the Commission.

Judicial review of this Order may be had in the manner provided in Sections 138.432 and 536.100 to 536.140 within 30 days of the mailing date set forth in the Certificate of Service for this Order.

If judicial review of this Order is made, any protested taxes presently in an escrow account in accordance with this appeal shall be held pending the final decision of the courts unless disbursed pursuant to Section 139.031.8.

If no judicial review is made within 30 days, this Order is deemed final and the Collector of Clay County, as well as the collectors of all affected political subdivisions therein, shall disburse the protested taxes presently in an escrow account in accord with the decision on the underlying assessment in this appeal.

SO ORDERED March 10, 2023.

STATE TAX COMMISSION OF MISSOURI

Gary Romine, Chairman

Victor Callahan, Commissioner

Debbi McGinnis, Commissioner

Certificate of Service

I hereby certify that a copy of the foregoing has been sent electronically or mailed postage prepaid this 10th day of March, 2023, to: Complainant(s) and/or Counsel for Complainant(s), the County Assessor and/or Counsel for Respondent and County Collector.

Amy S. Westermann
Chief Counsel



STATE TAX COMMISSION OF MISSOURI

NATIONAL CHURCH RESIDENCES OF) Appeal No. 19-32042
KANSAS CITY, MO) Parcel/Locator: 18-115-00-09-002.01
)
Complainant)
)
v.)
)
CATHY RINEHART, ASSESSOR,)
CLAY COUNTY, MISSOURI,)
)
Respondent)

DECISION AND ORDER HOLDING

The assessment made by the Board of Equalization of Clay County (BOE) is SET ASIDE. Complainant National Church Residences of Kansas City, MO (Complainant) presented substantial and persuasive evidence establishing that the subject property was exempt from ad valorem taxation under Article X, Section 6 of the Missouri Constitution and Section 137.100⁴ as of January 1, 2019.

Complainant appeared by counsel Brian Howes.

Cathy Rinehart, Assessor of Clay County, Missouri (Respondent) appeared by counsel Patricia Hughes.

Case heard and decided by Senior Hearing Officer John Treu (Hearing Officer).

⁴ All statutory references are to RSMo 2000, unless otherwise indicated.

ISSUE

The State Tax Commission (STC) takes this appeal to determine whether the subject property is exempt pursuant to Article X, Section 6 of the Missouri Constitution and Section 137.100 for tax year 2019.

The Hearing Officer, having considered all of the competent evidence upon the whole record, enters the following Decision and Order.

FINDINGS OF FACT

1. **Authority.** Complainant timely appealed to STC.
2. **Evidentiary Hearing.** The issue of tax-exempt status for the subject property was presented at an evidentiary hearing on June 23, 2020.
3. **Identification and Description of Subject property.** The subject property is located at 3711 N. Jackson Ave, Kansas City, MO. (Ex. 1, Tr. pp 15:19 to 16:2). The building has 59 total units, with one unit provided for the manager. (Tr. pp. 21:5 to 21:14) The property is subject to the terms of the Section 202 Housing Program for low-income elderly under the Department of Housing and Urban Development (HUD) whereby its accepted tenants make an income-based payment towards the market rent for an apartment unit at the property, and HUD subsidizes the balance of the rent.
4. **Assessment.** Respondent valued the subject property at a true value in money (TVM) of \$1,749,300, as of January 1, 2019, and denied exemption to the subject property.
5. **BOE.** The BOE valued the subject property at a TVM of \$889,300 and also found the subject property not to be exempt.

6. ***Complainant's Evidence.*** Complainant asserts that the subject property is exempt from ad valorem taxation because Complainant is a not-for-profit organization that owns and operates the property for a charitable purpose. Complainant offered the following evidence to support its assertion:

Exhibit	Description	Ruling
A	Written Direct Testimony Sonya Brown	Admitted
B	Written Direct Testimony Sandy Langendorfer	Admitted
C	Written Direct Testimony DaLonda Laddusaw	Admitted
D	Articles of Incorporation	Admitted
E	Articles of Amended Incorporation	Admitted
F	Certificate of Incorporation – Missouri Nonprofit	Admitted
G	By-Laws of National Church Residences of Kansas City, MO	Admitted
H	Amendment to By-Laws	Admitted
I	IRS 501(c)(3) Status Letter	Admitted
J	HUD Capital Advance Program Regulatory Agreement	Admitted
K	HUD Capital Advance Program Use Agreement	Admitted
L	Project Rental Assistance Contract	Admitted
M	HUD Semi-Annual Performance Report, Multifamily Housing Service Coordinator Program – October 1, 2015 – March 31, 2016	Admitted
N	HUD Semi-Annual Performance Report, Multifamily Housing Service Coordinator Program – April 1, 2016 – September 30, 2016	Admitted
O	HUD Semi-Annual Performance Report, Multifamily Housing Service Coordinator Program – January 1, 2017 – June 30, 2017	Admitted
P	HUD Semi-Annual Performance Report, Multifamily Housing Service Coordinator Program – July 1, 2017 – December 31, 2017	Admitted
Q	HUD Program Performance Form, Multifamily Housing Service Coordinator Program, October 1, 2017 – September 30, 2018	Admitted
R	Audited Financial Statements for Fiscal Year 2019	Admitted
S	Audited Financial Statements for Fiscal Year 2018	Admitted
T	Audited Financial Statements for Fiscal Year 2017	Admitted
U	Audited Financial Statements for Fiscal Year 2016	Admitted
V	Rent Roll as of 1/1/2017	Admitted
W	Rent Roll as of 1/1/2018	Admitted
X	Rent Roll as of 1/1/2019	Admitted
Y	Housing Management Agreement	Admitted
Z	Chouteau Village Sample Lease	Admitted
AA	NCR Marketing Materials – Service Coordination	Admitted

BB	Community Health Snapshot for Chouteau Village	Admitted
CC	Resident Rights and Responsibilities Packet	Admitted
DD	NCR Housing Division Service Coordinator – Job Description	Admitted
EE	Chouteau Village Service Coordination – Job Description	Admitted
FF	Service Coordinator Activity Logs	Admitted
GG	Programs & Activities Offered to the Residents of Chouteau Village	Admitted
HH	Resident Programs & Activities – 2019 Weekly Schedule	Admitted
II	Resident Welcome Packet (“Blue Folder”) – 2019	Admitted
JJ	Resident Welcome Packet (“Blue Folder”) – 2020	Admitted
KK	Chouteau Village – Inability to Pay Policy	Admitted
LL	NCR – Rent Collections and Payment Deadlines	Admitted
MM	NCR – Lease Termination & Eviction Policy)	Admitted
NN	Resident Birthday	Admitted
OO	Resident Income Statistics	Admitted
PP	Chouteau Village – Tenant Selection Plan	Admitted
QQ	Chouteau Village – Applications (Parts 1-2)	Admitted
RR	Chouteau Village – Waiting List	Admitted
SS	Mortgage Note	Admitted
TT	Deed	Admitted
UU	Exemption Appeal and Application	Admitted

Complainant is a Missouri not-for-profit corporation, exempt from federal income tax under Section 501(c) (3) of the Internal Revenue Code (Code). (Ex. A, Q/A 6-14; Ex. D-I; SS & TT) Complainant has a contract with HUD, which sets the amount of rent Complainant receives for each unit. (Ex. A, Q/A 15 and 16; Ex. J-L). Residents pay 30% of their income with HUD making up the difference. (Ex. A, Q/A 16). The contract rate as of the assessment date was \$577 per month and there is no minimum rent. (Ex. X). The combined HUD subsidies exceed the combined rent payments made by tenants each year. (Ex. A, Q/A 23; Ex. V-X)

National Church Residences (NCR) manages the subject property. (Ex. U & V). NCR is a faith-based organization closely affiliated with Complainant. Sonya Brown, Vice

President of Property Management with NCR, testified that she leads a team that covers 310 affordable housing communities in 25 states. (Ex. A, Q/A 2). She also testified that 11 of the 14 affordable housing projects she oversees in Missouri were tax exempt. (Tr. 71). NCR's mission is to provide high-quality care, services, and residential communities for seniors, people with disabilities, and others in need of care. It provides safe affordable housing coupled with supportive services tailored to meet individual resident needs. (Ex. A, Q/A 12).

Under the management contract between Complainant and NCR, NCR receives a management fee (set by HUD) of 9% of income. (Tr. 85) Sandy Langendorfer (Langendorfer), the on-site manager, testified funds from management fees go to pay for types of services deemed necessary by HUD. Other operating expenses such as payroll are the obligation of NCR. (Tr 103)

Prospective residents must meet HUD's qualifications to become approved as residents. Those qualifications include being age 62 or older and having very-low or extremely-low income, again as defined by HUD. (Ex. B, Q/A 15 & 16; Ex. PP) For 2019, the year in question, a single person earning up to \$18,100 qualified as having extremely low income, and a single person earning up to \$30,100 qualified as very-low income. (Tr. 26) However, most of the current residents had incomes below \$20,000 per year, with the majority qualifying as extremely-low income. (Ex. OO) The average income level of the residents as of the assessment date was approximately \$16,000, in the extremely-low income category. (Tr. 68)

Potential tenants submit applications. (Ex. B, Q/A 6 & 7; Ex. QQ) The on-site

property manager for the subject property verifies that applicants meet the age and income requirements and places the applicant on that facility's waiting list. (Tr. 98-100) There is a long waiting list. (Ex. RR) When a vacancy occurs, Langendorfer contacts applicants on the waiting list in the order in which their applications were received until she reaches the name of an applicant who is still interested in becoming a resident. (Id.) Once she finds an interested applicant, she enters that information into a screening program. (Id.) The screening program provides an acceptance recommendation or a denial recommendation. (Id.) If the result is to accept, Langendorfer proceeds with meeting the applicant and moving forward. (Id.) If it is a denial, then the person is disqualified in accordance with HUD regulations. However, Langendorfer notifies the applicant and gives that person a chance to explain or address the issue. (Id.) She testified that her recommendation had only been overridden once. (Id.)

Issues that may cause problems for potential residents are criminal history, previous evictions, or credit history. (Tr. 31-36) Those with a recent felony conviction could be dangerous to other residents. Further, Complainant cannot accept someone unable to have utilities in their unit turned on due to credit history since such could be harmful to Complainant's residents. (Id.) A result of denial is always discussed with the prospective resident. (Id.)

DaLanda Luddusaw (Luddasaw), is the subject property's Service Coordinator. She is responsible for coordinating programs and services to assist residents to maintain a good quality of life and age in place. (Ex. C, Q/A 2; Ex. EE) She maintains activity logs and HUD Performance Reports depicting programs and services she provides to residents. (Ex.

C, Q/A 4-8; Ex. FF; Ex. M-Q) Residents are provided with materials describing the service coordination program that includes navigation of health care systems, assistance with legal issues, educational and emotional support, and homemaker assistance. (Ex. AA; Ex. CC; Ex. GG) Laddusaw assists residents in numerous, substantial ways at no cost to the residents. (Ex. EE) NCR presented substantial evidence of the services that Laddusaw provided to residents. (Id.) NCR offered several HUD semi-annual performance reports documenting services relating to advocacy, benefits/entitlements, conflict resolution, crisis intervention/support counseling, family support, general info/referral, homemaker, education, and other services routinely offered (Ex. M-Q) The reports documented health care services, including helping residents find a Medicaid doctor and communicating with residents' doctors and/or health insurers. (Id.) She also described some of the numerous services she performs for residents and produced her log notes that document many such services in specific cases. (Ex. FF)

Laddusaw also assists in scheduling social events for residents. (Ex. GG) These activities include weekly bingo, monthly birthday celebrations, coffee and discussion, annual garage sale, holiday parties, monthly pot luck dinners, monthly grill-outs, weekly bible study, weekly exercise programs, and weekly card games. She assists with all of these activities, scheduling them, publishing them on the calendars and in the newsletters, making sure new residents learn about them, even picking up or providing food for the gatherings. (Id.)

Educational and wellness programs are also offered to residents. These programs include recognition of depression in the elderly, bimonthly blood pressure checks, diabetes

education, visiting nurses, annual free flu shot clinic, fall prevention with home safety, insurance question and answer, bimonthly blood sugar checks, fire with personal safety, and exercise for the elderly. (Ex GG) Laddusaw assists with all of these activities, scheduling them, publishing them on the calendars and in the newsletters, making sure new residents learn about them.

Laddusaw coordinates many of the programs and services with outside organizations. (Ex. C, Q/A 14) The Visiting Nurse Association checks residents' blood pressure (monthly), blood sugar (odd months only), and cholesterol (yearly). The Northland Shepherd's Center provides resident transportation services, education/wellness opportunities, and, most recently, food items. Additionally, The Harvesters Food Program provides commodity boxes and a senior mobile food pantry to residents; Panera Bread offers a bread program; and Kansas City Community Gardens provides free garden education/guidance and discounted plants/supplies for the property's community garden. The Visiting Physicians Association does a lunch-and-learn or activity every month for the residents, and it also offers many in-home services including primary care, short-term episodic care, lab, mobile x-ray, and ultrasound.

Laddusaw also reaches out to various community organizations including the Salvation Army, Northland Shepherd's Center, and local Catholic charities as sources for additional funding for residents having difficulty paying their rent. (Ex. C, Q/A 15)

Laddusaw testified that although she may not have directly performed the services offered to residents, she was directly responsible for coordinating them and was “pretty much the middle of everything.” (Tr. 115) She also testified that “pretty much everything

they (residents) need they can come to me and I can find something to help them.”

7. ***Respondent’s Evidence.*** Respondent offered the following evidence to support her assertion:

Exhibit	Description	Ruling
1	Property Record Card for the subject property	Admitted
2	Photos of the subject property	Admitted
3	Initial application for exemption dated 2/20/19	Admitted
4	Section 137.067, which Respondent requests that the Commission take official notice	Admitted
5	Section 137.100, which Respondent asks the Commission to take official notice	Admitted
6	Public information about the owner/Advertising and web site information about the property	Admitted
7	Subsidized Housing Worksheet, of which Respondent requests that the Commission take official notice	Admitted
8	Assessor manual instructions for Subsidized Housing Worksheet, of which Respondent requests that the Commission take official notice	Admitted
9	Income and expense records of Complainant with information for completion of Subsidized Housing Worksheet	Admitted
10	Completed Subsidized Housing Worksheets	Admitted
11	Sample lease for tenant	Admitted
12	HUD reimbursement record – rent roll	Admitted
13	HUD Project Rental Assistance Contract	Admitted
14	HUD Regulatory Agreement	Admitted
15	IRS Form 990 of Owner for 2016, 2017, and 2018	Admitted
16	House Rules	Admitted
17	Lease Termination and Eviction Policy	Admitted
18	Rent Collection and Payment Deadlines	Admitted
19	Tenant Selection Plan	Admitted
20	Service Coordinator Activity Report	Admitted
21	HUD Service Coordinator Snapshot	Admitted

Respondent's exhibits and testimony assert that other organizations provide services to the residents of the subject property and that Complainant is reimbursed by HUD for a large portion of the total rent that Complainant receives. Respondent’s exhibits and

testimony also emphasize the fact that credit history, previous evictions, and criminal history are utilized in evaluating potential residents. Finally, Respondent asserts that Section 137.076 conflicts with or repeals Section 137.100.

8. ***Tax-Exempt Status Established.*** Complainant's evidence was substantial and persuasive to establish that the subject property were tax-exempt as of the date of assessment on January 1, 2019.

CONCLUSIONS OF LAW

Authority

The STC has authority to hear this appeal and correct any assessment which is shown to be unlawful, unfair, arbitrary, or capricious, including the application of any abatement. The Hearing Officer shall issue a decision and order affirming, modifying, or reversing the determination of the BOE and correcting any assessment which is unlawful, unfair, improper, arbitrary, or capricious. Mo. Const. art. X, sec. 14, Sections 138.430, 138.431, 138.431.4.

Basis of Assessment

The Constitution mandates that real property and tangible personal property be assessed at its value or such percentage of its value as may be fixed by law for each class and for each subclass. Article X, Sections 4(a) and 4(b), Mo. Const. of 1945. The constitutional mandate is to find the true value in money for the property under appeal. By statute residential property at 19%; commercial property at 32%; and agricultural property at 12%. Section 137.115.5.

Presumption in Appeal

There is a presumption of validity, good faith, and correctness of assessment by the BOE. *Hermel, Inc. v. State Tax Comm'n*, 564 S.W.2d 888, 895 (Mo. banc 1978); *Chicago, Burlington & Quincy Railroad Co. v. State Tax Comm'n*, 436 S.W.2d 650, 656 (Mo. 1968); *May Department Stores Co. v. STC*, 308 S.W.2d 748, 759 (Mo. 1958).

Property Exempt from Taxation

The following subjects are exempt from taxation for state, county, or local purposes:

All property, real and personal, actually and regularly used exclusively for religious worship, schools, and colleges, for purposes purely charitable and not held for private or corporate profit, except that the exemption herein granted does not include real property not actually used or occupied for the purpose of the organization but held or used as investment even though the income or rentals received, therefore, is used wholly for religious, educational or charitable purposes.

Section 137.100(5).

Investigation by Hearing Officer

To investigate appeals filed with the STC, the Hearing Officer may inquire of the owner of the property or of any other party to the appeal regarding any matter or issue relevant to the valuation, subclassification, or assessment of the property. Section 138.430.2. The Hearing Officer's decision regarding the assessment or valuation of the property may be based solely upon his inquiry and any evidence presented by the parties or based solely upon evidence presented by the parties. *Id.*

Weight to be Given Evidence

The Hearing Officer is not bound by any single formula, rule, or method in determining true value in money and is free to consider all pertinent facts and estimates and give them such weight as reasonable they may be deemed entitled. The relative weight to be accorded any relevant factor in a particular case is for the Hearing Officer to decide. *St. Louis County v. Security Bonhomme, Inc.*, 558 S.W.2d 655, 659 (Mo. banc 1977); *St. Louis County v. State Tax Comm'n*, 515 S.W.2d 446, 450 (Mo. 1974).

The Hearing Officer, as the trier of fact, may consider the testimony of an expert witness and give it as much weight and credit as deemed necessary when viewed in connection with all other circumstances. *Beardsley v. Beardsley*, 819 S.W.2d 400, 403 (Mo. App. W.D. 1991). The Hearing Officer, as the trier of fact, is not bound by the opinions of experts but may believe all or none of the expert's testimony or accept it in part or reject it in part. *Exchange Bank of Missouri v. Gerlt*, 367 S.W.3d 132, 135-36 (Mo. App. W.D. 2012)

Complainant's Burden of Proof

A presumption exists that the exemption status and assessed value fixed by the BOE is correct. *Rinehart*, 363 S.W.3d at 367; *Cohen*, 251 S.W.3d at 348; *Hermel, Inc.*, 564 S.W.2d at 895. "Substantial and persuasive controverting evidence is required to rebut the presumption, with the burden of proof resting on the taxpayer." *Cohen*, 251 S.W.3d at 348. Substantial evidence can be defined as such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Cupples Hesse Corp. v. State Tax Comm'n*, 329 S.W.2d 696, 702 (Mo. 1959). Persuasive evidence is evidence that has sufficient weight and probative value to convince the trier of fact. *Id.* The

persuasiveness of evidence does not depend on the quantity or amount thereof but on its effect in inducing belief. *Brooks v. General Motors Assembly Division*, 527 S.W.2d 50, 53 (Mo. App. 1975). See also *Westwood Partnership v. Gogarty*, 103 S.W.3d 152 (Mo. App. E.D. 2003); *Daly v. P.D. George Co.*, 77 S.W.3d 645 (Mo. App E.D. 2002); *Reeves v. Snider*, 115 S.W.3d 375 (Mo. App. S.D. 2003).

There is no presumption that the taxpayer's opinion is correct. The taxpayer in an appeal bears the burden of proof. The taxpayer is the moving party seeking affirmative relief. Therefore, the Complainant bears the burden of proving the vital elements of the case, i.e., the assessment was “unlawful, unfair, improper, arbitrary or capricious.” *Westwood Partnership*, 103 S.W.3d at 152; *Daly*, 77 S.W.3d at 645; *Reeves*, 115 S.W.3d at 375; *Industrial Development Authority of Kansas City v. State Tax Comm'n*, 804 S.W.2d 387, 392 (Mo. App. W.D. 1991).

Exemptions

Taxation of property is the rule and exemption from taxation is the exception. *United Cerebral Palsy Ass'n of Greater Kansas City v. Ross*, 789 S.W.2d 798, 799 (Mo. banc 1990). Tax exemptions are not favored in the law, and statutes granting exemptions are to be strictly, yet reasonably, construed against the one claiming the exemption. *Missouri Church of Scientology v. State Tax Comm'n*, 560 S.W.2d 837, 844 (Mo. banc 1987), *State ex rel. Union Electric Co. v. Goldberg*, 578 S.W.2d 921, 923 (Mo. banc 1979). A property owner who claims the exemption bears a substantial burden to prove that his property falls within the exempted class. *United Cerebral Palsy Ass'n of Greater Kansas City*, 789 S.W.2d at 799.

Article X, Section 6 of the Missouri Constitution exempts from taxation all real and personal property of the state, counties, and other political subdivisions and nonprofit cemeteries. The Constitution also provides that all real and personal property, not held for private or corporate profit and used exclusively for religious worship, for schools and colleges, for purposes purely charitable, or for agricultural and horticultural societies may be exempted from taxation by general law. The legislature, by enactment of Section 137.100, has exempted property not held for private or corporate profit and used exclusively for religious worship, for schools and colleges, for purposes purely charitable, and for agricultural and horticultural societies.

Charitable Exemption

The legal test for a charitable exemption is whether:

- (1) The property is dedicated unconditionally to the charitable activity;
- (2) The property is owned and operated on a not-for-profit basis; and
- (3) The dominant use of the property is for the benefit of an indefinite number of people and directly or indirectly benefits society generally. *Franciscan Tertiary Province of Missouri v. State Tax Comm'n*, 566 S.W.2d 213, 224 (Mo. banc 1978); *Twitty v. State Tax Comm'n*, 896 S.W.2d 680, 684 (Mo. App. S.D. 1995).

In *Franciscan Tertiary Province of Missouri v. State Tax Comm'n*, 566 S.W.2d 213, 224 (Mo. banc 1978) the entire Missouri Supreme Court analyzed multiple types of situations for exemption. However, the Court explicitly stated:

[t]he general nature of the owning organization other than that it is not-for-profit cannot be said to determine whether the use of the particular property is charitable or not and that the property must be owned and operated on a not-for-profit basis. It must be dedicated unconditionally to the charitable activity in such a way that there will be no profit, presently or prospectively, to individuals or corporations.

It is manifestly clear that by using the word “and” instead of “or” in the “owned and operated” terminology the court was stating very clearly that for the property to be exempt it has to both be “owned” and “operated” on a not-for-profit basis.

I. Owned and Operated on a Not-for-Profit Basis

The property must be owned and operate on a not-for-profit basis. The property also "must be dedicated unconditionally to the charitable activity in such a way that there will be no profit, presently or prospectively, to individuals or corporations. Any gain achieved in the use of the building must be devoted to the achievement of the charitable objective of the project." *Franciscan Tertiary Province*, 566 S.W.2d at 244. This does not mean that the property or charity cannot operate “in the black.”

II. Actual and Regular Use for Charitable Purpose

In order for a property to be exempt from taxation for state, county, or local purposes, the property must be actually and regularly used exclusively for a charitable purpose as defined by *Salvation Army v. Hoehn*, 188 S.W.2d 826 (Mo. banc 1945). “Charity” is therein defined as “... a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their hearts under the influence of education or religion, by relieving their bodies of disease, suffering or constraint, by assisting them to establish themselves for life, or by erecting or maintaining the public buildings or works or otherwise lessening the burdens of government.” *Salvation Army*, 188 S.W.2d at 830. Exemption rests on the use of the property, not merely the charitable character of the owner. The phrase “regularly used

exclusively” has been interpreted to mean the primary, inherent, and dominate use of the property as opposed to a mere secondary and incidental use. See *Bethesda Barclay House v. Ciarleglio*, 88 S.W.3d 85 (Mo. App. E.D. 2002); *Home Builders Ass’n of Greater St. Louis v. St. Louis Co. BOE*, 803 S.W.2d 636 (Mo. App. E.D. 1991); *Pentecostal Church of God of America v. Hughlett*, 601 S.W. 2d 666 (Mo. App. S.D. 1980); *Barnes Hospital v. Leggett*, 589 S.W.2d 241 (Mo. 1979); *Missouri United Methodist Retirement Homes v. State Tax Comm’n*, 522 S.W.2d 745 (Mo. 1975).

III. Dedicated Unconditionally to the Charitable Activity

The property must be used such that it is available to an indefinite group of people, rendered at cost or less, which brings their hearts under the influence of education or lessens the burden of government. “The public nature of a charity is diminished when it is systematically denied to those who need and can least afford the service.” *Evangelical Retirement Homes of Greater St. Louis, Inc. v. State Tax Comm’n*, 669 S.W.2d 548, 554 (Mo. banc 1984).

IV. Benefit to Society

To fulfill the *Franciscan* test, the subject property must benefit society in general. Complainant has the burden to put forth substantial and persuasive evidence of how the subject property benefit society.

Discussion

The Hearing Officer is persuaded that Complainant meets all requirements of the *Franciscan* test. The subject property is both owned and operated on a not-for-profit basis. The fact that Complainant coordinates and solicits free outside services for its residents does not change this fact.

Like the subject property in the present appeal, the properties in *Franciscan*, *Pentecostal Church of God v. Hughlett*, 737 S.W.2d 728 (Mo. 1990), and *Senior Citizens of Bootheel Services, Inc. v. Dover*, 811 S.W.2d 35 (Mo. App. 1991), utilized HUD funding. The residential facilities in those cases were utilized for housing the elderly and disabled pursuant to an agreement with HUD. The Court cited *Franciscan* as the “seminal case for the proposition that the provision of housing for aged and handicapped persons who are unable to bear the full cost is a charitable purpose” is entitled to exemption. *Id.* In *Pentecostal*, the Court stated “Franciscan was designed to give general approval to housing projects for the elderly and handicapped. It should not be read grudgingly.” The Court rejected an argument that because the corporate entity did not make any gift it was not entitled to exemption.

The Hearing Officer is persuaded the evidence in the record as a whole established that the subject property is dedicated unconditionally to charitable activity. The subject property provides low-cost housing to low-income seniors. A service coordinator assists the subject property's residents in obtaining outside services, connecting residents with community resources, and assisting the residents to maintain a good quality of life and to age in place. The aforementioned includes navigating health care systems, assistance

with legal issues, educational and emotional support, and homemaker assistance. The service coordinator also reaches out to various community organizations for financial assistance for residents having difficulty paying rent. The cost to the tenants is limited to tenants as set forth above. Reasonable screening procedures are undertaken to maintain the safety, security, and welfare of the residents. No resident has been removed from the subject property for failure to pay rent when the resident did not have the financial income to pay rent.

Finally, the Hearing Officer is persuaded the dominant use of the subject property is charitable and that the charitable activities of Complainant benefit an indefinite number of people and directly or indirectly benefit society generally. Respondent asserts that no gift is given by Complainant, namely any monetary gift directly from Complainant. Charities may receive donations including money, goods, volunteer services, and outside services. Any money spent by a charity ultimately derives from the donation of another entity or person. Any services offered by a charity ultimately are paid for by the charity utilizing the donated money of another or donated by volunteers or other charities. A charity could solicit funds and then pay for services for the benefit of others or the charity could simply solicit the services at no charge to the charity. This is a distinction without a practical difference.

Complainant's evidence was substantial and persuasive to establish the subject property met the charitable purposes test set forth above and to support exemption of the subject property as of January 1, 2019, for purposes of *ad valorem* taxation.

ORDER

The subject property was exempt from ad valorem taxation under Article X Section 6 of the Missouri Constitution and Section 137.100 as of January 1, 2019, and the BOE decision is therefore SET ASIDE.

Application for Review

A party may file with the STC an application for review of this decision within 30 days of the mailing date set forth in the Certificate of Service for this Decision. The application shall contain specific facts or law as grounds upon which it is claimed the decision is erroneous. Said application must be in writing addressed to the State Tax Commission of Missouri, P.O. Box 146, Jefferson City, MO 65102-0146, or emailed to Legal@stc.mo.gov, and a copy of said application must be sent to each person listed below in the certificate of service.

Failure to state specific facts or law upon which the application for review is based will result in summary denial. Section 138.432.

Disputed Taxes

The Collector of Clay County, as well as the collectors of all affected political subdivisions therein, shall continue to hold the disputed taxes pending the possible filing of an Application for Review, unless said taxes have been disbursed pursuant to a court order under the provisions of Section 139.031.8.

Any Finding of Fact which is a Conclusion of Law or Decision shall be so deemed. Any Decision which is a Finding of Fact or Conclusion of Law shall be so deemed.

SO ORDERED February 12, 2021.

STATE TAX COMMISSION OF MISSOURI

John Treu⁵
Senior Hearing Officer

Certificate of Service

I hereby certify that a copy of the foregoing has been sent electronically or mailed postage prepaid this 12th day of February, 2021, to: Complainant(s) and/or Counsel for Complainant(s), the County Assessor and/or Counsel for Respondent and County Collector.

Elaina McKee
Legal Coordinator

⁵ The Hearing Officer heard the appeal and drafted this Decision and Order prior to his departure from employment with the STC.