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August 12, 2013

Madison County Board of Supervisors  
125 West North Street  
P.O. Box 608  
Canton, Ms. 39046

Dear Sirs:

The apartment complex appeal presented by Madison County Partners, LP is because of the Tax Assessor's inclusion of listed tax credits for each complex as annual income. Our addition of these tax credits as income is warranted as shown in a recent court case, (cause # 2010-57) which authorizes the Tax Assessor make such inclusions. Even with these additions to income, our taxable value is well below market value and particularly actual costs for these projects.

The Tax Assessor stands behind the values as shown.

Sincerely,

A handwritten signature in black ink, appearing to be "Gerald Barber", written over a horizontal line.

Gerald Barber  
Tax Assessor, Madison County

IN THE CIRCUIT COURT OF HUMPHREYS COUNTY, MISSISSIPPI

WILLOW BEND ESTATES, LLC  
and WOODYARD GARDENS, LLC

APPELLANTS

VS.

CAUSE NO. 2010-57

HUMPHREYS COUNTY BOARD OF SUPERVISORS  
and MARGARET PARKS, TAX ASSESSOR FOR  
HUMPHREYS COUNTY, MISSISSIPPI

**FILED**  
TIMAKA J. JONES, CIRCUIT CLERK APPELLEES

MAR 19 2012

ORDER

BY         JRW         D.C.

335-1969

BEFORE the Court are Appellants, Willow Bend Estates, LLC and Woodyard Gardens, LLC, on a Motion for Summary Judgment pursuant to Mississippi Rules of Civil Procedure 56. Appellants claim there are no genuine issues of material facts in dispute in this matter and they are entitled to judgment as to all claims. In response to the Appellants' motion, Appellees (Humphreys County Board of Supervisors and Margaret Parks, Tax Assessor) filed a cross motion for Declaratory Judgment declaring *Miss. Code Ann. §27-35-50(4)(d)* unconstitutional, or in the alternative, declare that it does not prohibit tax assessors from using tax credits and other federal subsidies in arriving at the true value of Section 42 Housing.

SUMMARY OF ARGUMENTS

The Appellants are apartment complexes that provide affordable houses for low to moderate income renters below the market rent by virtue of a tax credit program established pursuant to federal law, *26 U.S.C. §42 of the Internal Revenue Code*. These types of properties are commonly known as "Section 42 Housing". Section 42 Housing allows the owners of the apartment complexes to rent below the market value in exchange for federal income tax credits which is then sold to third parties at a discounted rate to generate instant income. The purchaser

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becomes part property owner as a limited partner to receive the credit. The money received as rental income is nominal in comparison to the income generated by the sale of tax credit.

Until 2004, county tax assessors calculated the true value of Section 42 properties for purposes of ad valorem taxes by using one or a combination of three statutorily-authorized approaches: the cost method, the market data method and the income method. §27-35-50(2) (1972). This section provides that the tax assessors use the Mississippi Department of Revenue (formerly State Tax Commission) manual as guidance for the appraisal of property for ad valorem taxation purposes.

In January 2004, the Mississippi Department of Revenue revised its manual setting out a methodology for appraisal of subsidized housing properties using the income approach method. This method yielded lower values than the other two methods with regard to the new properties. The Section 42 owners sought to exclude the tax credit revenue as part of the appraisal process. The next year, 2005, the Mississippi Legislature introduced a law called Senate Bill 3100 ("Act") which provided for the valuation of affordable rental housing, including Section 42 Housing. The Act prescribed that the true value of affordable rental housing properties be determined according to actual net operating income attributable to the property. §27-35-50(4)(d) (revised 2005). A few days after introduction, the bill was amended to remove the provision prohibiting the tax assessor from considering federal tax credit income. The final version provided for appraisal to be made according to actual net operating income attributable to the property, capitalized at a market value capitalization rate prescribed by the Department of Revenue but omitting the prohibiting language. However, the Mississippi Department of Revenue later revised its manual to add the prohibiting language back into its appraisal guidelines.

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It is this revision which the Appellees contend is unlawful and caused a financial windfall for Section 42 owners. The revision also caused actual and potential loss for counties, cities, towns and the average taxpayers. Appellees further argue that prohibiting the inclusion of tax credit income constitute an unlawful exercise of power, exceeds its statutory granted authority, as well as violate §27-35-50(4)(d) and Art. 4, §112 of the Mississippi Constitution (1890) which provides that property shall taxed at its assessed value and taxation shall be uniform and equal throughout the state.

In 2006, the Humphreys County Board of Supervisors ("Board") decided not to follow the income capitalization method set forth in the statute and instead adopted an order directing the cost approach to be used in assessing the property at issue. *Appellants' Motion for Summary Judgment*. The Board's argument is that Senate Bill 3100 (codified as §27-35-50(4)(d)) conflicts with the edicts of Art. 4, §112 of the Mississippi Constitution (1890). They specifically argue that the plain language of the statute does not prohibit the use of tax credit and that it was the legislators intent that tax credit be used, hence the direct removal of that language from the bill before adoption. *Mississippi Legislature 2005 Regular Session, Senate Bill 3100, Appellees' Exhibit G*. The Board asserts that the manual had formerly instructed tax assessors to consider monies generated from the sale of tax credits as income attributable to Section 42 properties. In response to the Appellants' Motion for Summary Judgment, Appellees respectfully filed their Motion for Declaratory Judgment asking this Court to declare that the regulations or guidelines in the Mississippi Appraisal Manual are unconstitutional.

#### APPLICABLE LAW

The Mississippi Constitution invests powers in the legislature to prescribe by general laws the method by which taxable property is to be valued. *Art. 4, §112 of the Mississippi*

*Constitution.* It has the responsibility to ensure equal taxation throughout the state of Mississippi. *Art. 4, §112 of the Mississippi Constitution* mandates that taxation shall be uniform and equal throughout the state and all property not exempt from ad valorem taxation shall be taxed at its assessed value. . . . The assessed value of property shall be a percentage of its true value, which shall be known as its assessment ratio. . . . *id.*

**ANALYSIS**

The Mississippi Legislature adopted §27-35-50(6) of the Miss. Code of 1972 which provides that the State Tax Commission shall have the power to adopt, amend or repeal such rules or regulations in a manner consistent with the Constitution of the State of Mississippi to implement the duties assigned to the commission in this section. The rules shall not conflict with the Mississippi Constitution.

In the case *sub judice*, the application of the 2005 amended appraisal manual guideline to Section 42 Housing resulted in the three to four million dollars housing projects paying little or no taxes on their properties as shown below:

	County	Willow Bend	County	Woodyard Gardens
2009 True Value	\$3,632,770	\$0	\$4,868,380	\$43,690
Assessed Value	544,916	\$0	730,257	6,554
Taxes	74,038	\$0	99,220	890

*Appellants' Motion for Summary Judgment, Exhibit A.*

Appellees argue that the Act prevents tax credits from being used to determine the true value of the properties which, in turn, does not promote uniform and equal taxation as mandated by the Mississippi Constitution. Appellees maintain that Senate Bill 3100 does not prohibit the use of tax credit in the appraisal of Section 42 properties; therefore they are not in violation for doing so. Although the guideline is not a rule, it is nevertheless inconsistent with the Act.

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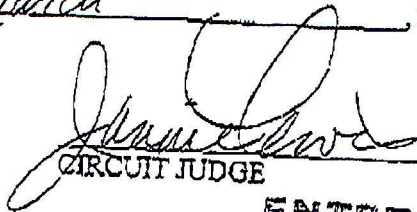
Appellees maintain that the Department of Revenue must not promulgate rules, guidelines, or regulations which alter, amend or negate the effect of the statute and may not exceed its authority by adopting one which alters the statute as adopted by the legislature. *American Federated Life Insurance Company vs. George Dale*, 701 So.2d 809, 812 (Miss.1997). Appellees submit to this Court that the Department of Revenue arbitrarily issued an appraisal guideline which altered the Act. The Appellees therefore seek declaratory judgment that the Act is unconstitutional where the Department of Revenue appraisal guideline is inconsistent with Art. 4, § 112 of the *Mississippi Constitution*.

After hearing the arguments of all parties in this matter, the Court finds that the Department of Revenue amended, altered or negated the intent of §27-35-50(4)(d) by issuing its appraisal guideline which does not promote equal and uniform taxation as required by §112 of the *Mississippi Constitution*.

**IT IS THEREFORE ORDERED** that Appellants' Motion for Summary Judgment is hereby **DENIED**.

**IT IS FURTHER ORDERED** that Appellees' Motion for Declaratory Judgment is hereby **GRANTED**, declaring that §27-35-50(4)(d) does not prohibit tax assessors from using tax credits and other federal subsidies in arriving at the true value of Section 42 Housing. Further, as a result of the above finding, the Court finds that the Mississippi Department of Tax Revenue guideline on the method of obtaining the value of Section 42 property is in conflict with MCA §27-35-50(4)(d) and Art. 4, §112 of the *Mississippi Constitution*.

**SO ORDERED** this the 16 day of March, 2012.

  
CIRCUIT JUDGE

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