Department of Revenue
Washington State

Property Tax Advisory

Property Tax Advisories (PTA) are interpretive statements issued by the Department of Revenue under authority of RCW 34.05.230. PTAs explain the Department's policy regarding how tax law applies to a specific issue or specific set of facts. They are advisory for taxing officials and taxpayers; however, the Department is bound by these advisories until superseded by Court action, Legislative action, rule adoption, or an amendment to or cancellation of the PTA.

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Valuation of Community Land Trust (Resale Restricted) Properties

Background

This Property Tax Advisory (PTA) assists assessors in determining the true and fair market value of resale-restricted, owner-occupied housing developed or acquired through an organization, such as a Community Land Trust (CLT). This homeownership model promotes low and moderate-income family homeownership opportunities while preserving affordability for future generations.

Although the program specifics vary, CLT properties generally share four distinguishing characteristics:

1. The homes are owner-occupied.

2. The amount of equity appreciation any one homeowner may attain upon property resale is limited. This appreciation restriction enables successive generations of low- and moderate-income homeowners to purchase otherwise unaffordable housing.

3. Individual homeowners share the rights, responsibilities, and benefits of homeownership with a nonprofit organization or a government agency.

4. The properties are subject to long-term contractual controls over resale and subletting designed to maintain their affordability.

The property tax assessment of long-term affordable CLT homeownership is problematic because the physical characteristics of these properties are indistinguishable from conventional residential properties. Like all other properties, assessors must evaluate the benefits and burdens of CLT property ownership on the impact to the true and fair value of these properties in the open and competitive marketplace.

Analysis

Article VII, Section 1 of the Washington State Constitution requires uniform taxation of property. Specifically, it provides:

> All taxes shall be uniform upon the same class of property within the territorial limits of the authority levying the tax ... [a]ll real estate shall constitute one class.

This provision requires both an equal tax rate and equality in valuing the property taxed. *Belas v. Kiga*, 135 Wash.2d 913, 923, 959 P.2d 1037 (1998).

RCW 84.40.030(1) sets forth the basis of valuation and assessment for assessors:

> All property shall be valued at one hundred percent of its true and fair value in money and assessed on the same basis unless specifically provided otherwise by law.

"True and fair value" means "market value and is the amount of money a buyer of property willing but not obligated to buy would pay a seller of property willing but not obligated to sell, taking into consideration all uses to which the property is adapted and might in reason be applied." WAC 458-07-030(1).

The market value of various types of real property is determined uniformly by applying this appraisal principle of the "willing buyer and willing seller." The uniformity question to be asked is what is a willing seller prepared to sell to a willing buyer as a reasonable and agreed price for the restricted property? The assessor is required, regardless of the physical similarity, to consider all factors that affect the market value of property, including any restrictive covenants, long-term leases, and other factors that a willing buyer would consider.

Washington statutory and appellate court case law provide a basis to recognize the many factors that affect any property's market value, including the interests involved (e.g. fee simple, leased fee, and leasehold) and the accepted methods of valuing those interests.

The Washington State Supreme Court states in *Pier 67, Inc. v. King County* 78 Wash. 2d 48, 57, 469 P.2d 902 (1970):

> The market value of a leasehold is to be measured by considering both benefits to be garnered from the use of the property over the term of the lease and the burdens placed upon it. Burdens on the leasehold are restrictions which limit its use. **These burdens may arise from zoning ordinances or other legal limits on**

> **land use or may be restrictions imposed by the terms of the lease itself.** (Emphasis added.)

The court also noted that "... the standards of valuation for assessing leaseholds are the same standards for valuing and assessing taxable property in general." *Id* at 52.

Additionally, in *Cascade Court Limited Partnership v. Noble*, 105 Wash. App. 563, 567, 20 P. 3d 997 (2001), the court instructs:

> Thus, when determining market value, the Assessor must consider all factors that can, within reason, affect the price in negotiations between a willing buyer and a willing seller. This includes "restrictions which may arise from zoning regulations **or other legal limitations on the use of land.** (Emphasis added.)

Furthermore, the court stated that "[e]ven a voluntary transaction burdening real property will have economic consequences that must be considered in assessing the property." *Id.* at 568.

Legal limitations on the use of land include long-term deed restrictions and long-term leases at below-market rates that would be considered by a "willing buyer" of this type of property. In *Folsom v. County of Spokane*, 106 Wash. 2d 760, 768, 725 P. 2d 987 (1986), the court observed that " … [a] willing buyer would not pay full market value for property burdened by a long-term lease at below-market rates."

CLT Property Valuation

No single method is mandatory and assessors are allowed wide discretion in property valuation. It is mutually beneficial for the property owner(s) to provide any necessary data at the request of the assessor in order for the assessor to recognize the shared ownership, deed restrictions, and resale requirements of these properties. Without cooperation from the property owner(s), the assessor may not be able to estimate market value accurately. The valuation approach or approaches used depend on the quality and quantity of the data available as well as whether the approach(s) used are the most applicable given the unique circumstances of the property being assessed.

Summary

When estimating a CLT property's true and fair value, statute and court interpretations require assessors to consider all factors that willing sellers and willing buyers consider. These factors include benefits and burdens of zoning, other legal land use limits, resale formulas, and lease terms. The value of a CLT property may be much different from physically similar, conventional properties because the ownership benefits and burdens differ.

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