



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

February 19, 2025

Paul B. Watkins, Esq.
Attorney, City of Oxford
David D. O'Donnell, Esq.
Attorney, Lafayette County
2094 Old Taylor Road, Suite 200
Oxford, Mississippi 38655

Re: Tax Assessment of Affordable Housing

Dear Mr. Watkins and Mr. O'Donnell:

The Office of the Attorney General has received your request for an official opinion.

Background

According to your request, Oxford (the "City") has adopted an Affordable Housing Ordinance that makes certain incentives available to developers of affordable housing developments. The ordinance defines "affordable housing" as "housing, available either for rent or purchase, that is affordable to those with household incomes below 80 percent of the standard area median income ("AMI") as defined by the most current AMI schedule published by the U.S. Department of Housing and Urban Development" and "affordable housing development" as a residential development that guarantees "at least ten percent of its dwelling units will be available as affordable housing for at least 15 years." Qualified developments may apply to the City's governing authorities for waivers or reductions of development fees, site restoration bonding, tree mitigation requirements, and stormwater management requirements. The City believes its Affordable Housing Ordinance qualifies as a "similar program," as referenced in Mississippi Code Annotated Section 27-35-50(4)(d), because it is intended to increase the supply of affordable housing within the City and because it restricts the occupancy and rental rates of affordable units.

Question Presented

May the county tax assessor apply the appraisal procedure described in Section 27-35-50(4)(d) to a residential development that qualifies as an "affordable housing development" under the City's Affordable Housing Ordinance, regardless of whether the development is subject to any other housing program listed or described in that statute?

Brief Response

To apply the appraisal procedure set forth in Section 27-35-50(4)(d), a residential development must meet the definition of “affordable rental housing” as set forth in Section 27-35-50(4)(d)(i). Whether a residential development that qualifies as an “affordable housing development” under the City’s Affordable Housing Ordinance would be considered “affordable rental housing” as set forth in Section 27-35-50(4)(d)(i) is a question of fact upon which this office may not opine.

Applicable Law and Discussion

We first note that this office may not interpret municipal ordinances or federal law. *See* MS AG Op., *Tullos* at *1 (Aug. 27, 2018); MS AG Op., *Snell* at *2 (Mar. 16, 2018).

Section 27-35-50(4)(d) provides in part:

In arriving at the true value of affordable rental housing, the assessor shall use the appraisal procedure set forth in land appraisal manuals of the Department of Revenue. Such procedure shall prescribe that the appraisal shall 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 that reflects the prevailing cost of capital for commercial real estate in the geographical market in which the affordable rental housing is located adjusted for the enhanced risk that any recorded land use regulation places on the net operating income from the property. . . . As used in this paragraph:

(i) “Affordable rental housing” means residential housing consisting of one or more rental units, the construction and/or rental of which is subject to Section 42 of the Internal Revenue Code (26 USC 42), the Home Investment Partnership Program under the Cranston-Gonzalez National Affordable Housing Act (42 USC 12741 et seq.), the Federal Home Loan Banks Affordable Housing Program established pursuant to the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) of 1989 (Public Law 101-73), or any other federal, state or *similar program intended to provide affordable housing to persons of low or moderate income and the occupancy and maximum rental rates of such housing are restricted based on the income of the persons occupying such housing.*

(ii) “Land use regulation” means a restriction imposed by an extended low-income housing agreement or other covenant recorded in the applicable land records or by applicable law or regulation restricting the maximum income of residents and/or the maximum rental rate in the affordable rental housing.

(emphasis added). In sum, to apply the appraisal procedure set forth in Section 27-35-50(4)(d), a residential development must meet the definition of “affordable rental housing” as set forth in Section 27-35-50(4)(d)(i).

You ask if the county tax assessor may apply the appraisal procedure described in Section 27-35-50(4)(d) to a residential development that qualifies as an “affordable housing development” under the City’s Affordable Housing Ordinance, regardless of whether the development is subject to any other housing program listed or described in that statute. Pursuant to Section 7-5-25, this office may only opine upon matters of state law. Whether a residential development that qualifies as an “affordable housing development” under the City’s Affordable Housing Ordinance would be considered “affordable rental housing” as set forth in Section 27-35-50(4)(d)(i) is a question of fact upon which this office may not opine. However, if the determination is made that (1) the City’s Affordable Housing Ordinance is a “similar program [to those listed] intended to provide affordable housing to persons of low or moderate income,” *and* (2) “the occupancy and maximum rental rates of [the subject] housing are restricted based on the income of the persons occupying such housing,” then the county tax assessor may apply the appraisal procedure described in Section 27-35-50(4)(d) to the subject residential development.

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: */s/ Maggie Kate Bobo*

Maggie Kate Bobo
Special Assistant Attorney General

OFFICIAL OPINION