

**IN THE SUPREME COURT OF OHIO**

Board of Education of the Columbus City Schools, :  
 :  
Appellant, : Case No. 2014-0885  
 :  
v. :  
 :  
Franklin County Board of Revision, : Appeal from the Ohio Board of  
Franklin County Auditor, and Albany Tax Appeal - Case No. 2011-3590  
Commons, Ltd., :  
 :  
Appellees.

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**MERIT BRIEF OF APPELLANT BOARD OF EDUCATION OF THE  
COLUMBUS CITY SCHOOL DISTRICT**

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## STATEMENT OF THE CASE AND FACTS

This is an appeal from the Ohio Board of Tax Appeals (BTA) involving the determination of the true value for tax year 2005 of a new 240-unit apartment complex located on 48 acres of land in the “New Albany area” (Horner appraisal (which will be referred to as “Appraisal”), p. 11; Supp. 7.) The first part of the complex was finished in 2002 and the second part of the complex was finished in 2004 (Appraisal 6, 16, Supp. 4, 8.) The condo-like apartment complex is a “gated community” with units consisting of “1 and 2 bedroom ranch and cottage style homes,” where 130 of the units have attached garages and 58 units have detached garages, all with openers. The units have “upgraded kitchens,” walk in closets, and microwave ovens, and some of the units have “9 foot ceilings and cathedral ceilings” (Appraisal appendix, Supp. 15-17). The units range in size from 817 square feet to 1,100 square feet of space (Appraisal 6, Supp. 4.) The apartment complex includes a clubhouse, swimming pool, laundry facilities, fitness center, and business center, (Appraisal 16, 17, Supp. 8, 9.)

The issue in this appeal is whether the BTA’s reliance on Thomas Horner’s “restricted use appraisal” was unreasonable and unlawful. By virtue of R.C. 4763.12 and R.C. 4763.13, a “restricted use appraisal” is an appraisal setting forth an opinion of value that *does not contain enough information, or market data*, to allow any “third party,” including agencies such as a county board of revision or the BTA, to rely on the appraisal for the purpose of making reasonable *judgments of value*.

### 1. The BOR decision

This appeal has a most curious history. Appellee Albany Commons filed a board of revision complaint for tax year 2005 on March 27, 2006. The Franklin County Board of Revision (BOR) heard the complaint on March 23, 2009. After hearing the matter, the BOR

issued a decision that reduced the true value of the property from \$13,600,000 to \$12,900,000 for tax year 2005 (Apr. 29, 2009 BOR decision, Supp. 18.) The property involved in this appeal was an essentially new apartment complex as of January 1, 2005, as the units were between one and three years old at that time, and the evidence showed that the BOR's first value of \$12,900,000 reflected the costs to acquire the land and to construct the apartment complex in question. At the BTA hearing, Patrick Kelley, who is one of the owners of the property, admitted on cross-examination that the new apartment complex cost about \$12,000,000 *to build* (BTA Tr. 22, Supp. 19) and according to the property record card, the land had been purchased by a corporate predecessor of New Albany Commons for \$992,000, or a total of \$53,750 per-unit. As will be shown below, there is not a single fact or a single item of evidence in the record to show that the property would have *sold on the open market for anything less than \$12,900,000*, which reflected the actual costs of the new property.

After issuing its first decision, however, the BOR was somehow prevailed upon to vacate this decision, and the BOR did so on May 27, 2009. A second hearing was conducted on August 1, 2011, by which time the owner had obtained a "Restricted Use Appraisal" with a transmittal date of July 19, 2011 from James Horner and the appraisal was presented to the BOR along with Horner's testimony. The BOR then relied solely on Horner's "Restricted Use Appraisal" to determine the true value of the property. Horner's "Restricted Use Appraisal" value was \$9,338,000 for tax year 2005, or \$38,900 per unit for the almost brand new units. Horner's "Restricted Use Appraisal" also sets forth a value for the property tax year 2008 using the very same methods and procedures. His value for tax year 2008 was \$11,400,000. However, tax year 2008 is not involved in this appeal.

## 2. Horner's Restricted Use Appraisal

Horner's appraisal report was required by R.C. 4763.12 and R.C. 4763.13 to be identified on its cover page and in other required places in the report as a "restricted use appraisal." As such, the cover page identified the appraisal as a "RESTRICTED USE APPRAISAL" and the cover letter, the description of the report, and the Scope of the Appraisal, all describe the appraisal as a "restricted use appraisal" (Appraisal cover letter, 1, 8, Supp. 1, 2, 3, 5 ). USPAP Standard Rule 2-2(b), which has been incorporated into Ohio law by R.C. 4763.12 and R.C. 4763.13, mandates that: "*The Restricted Appraisal Report is for client use only*"<sup>1</sup> (Appx. 25.) (emphasis added.) In compliance with R.C. 4763.12 and R.C. 4763.13, Horner put the following sentence into his appraisal report that "limits reliance on the report to just the client:"

*A Restricted Appraisal Report limits the reliance on the report to the client and considers anyone else using the report to be an unintended user*" (original emphasis).

and he stated that his appraisal was subject to "a prominent use restriction" that:

*limits reliance on the report to the client and warns that the report cannot be understood properly without additional information in the work file of the appraiser* (emphasis added).

Both of these sentences are set forth on the third page of the cover letter in Horner's report under the title "RESTRICTED USE APPRAISAL REPORT" (Supp. 2.)

Horner was required to place these use restrictions in his appraisal because in 1988 the U.S. Congress outlawed the use of a "restricted use appraisal" by all federal agencies and by any regulated "third party" to make value decisions. The Ohio General Assembly followed Congress in 1989 by placing the exact same restrictions on use of the "restricted use appraisal" by any

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<sup>1</sup> In the 2014-2015 Edition of the *Uniform Standards of Appraisal Practice* changed the name of the "restricted use" report option to Restricted Appraisal Report. See Revision No. 5. (Appx. 19.)

“third party” in Ohio because a “restricted use appraisal” does not contain enough market data to allow any third party or government agency to rely on the opinion of value that is set forth in the report. Under Ohio law, a state certified appraiser is prohibited from giving a “restricted use appraisal” to any “third party,” including a quasi-judicial body (a “third party” being defined as any individual or entity that is not the appraisal’s “client”) and the appraiser is prohibited from appearing before any such “third party” in connection with the appraisal. This is why Horner stated in his appraisal that reliance on the opinion of value set forth in the report is “*limit[ed]* \*\*\* *to the client*” and that “*the report cannot be understood properly without additional information in the work file of the appraiser.*” (Supp. 2.) (emphasis added.) In this case, the BTA actually accepted an appraisal report when the report itself stated that “the report cannot be understood properly without additional information in the work file of the appraiser.”

### 3. Horner’s Income Approach

Horner’s income approach to value for the subject property consisted of only *four operative sentences* set forth on page 22 of his report, which were the following: (1) The “average” actual net operating income for 2004 and 2005 was \$1,105,995; (2) “It has been determined that an 8.5% overall [capitalization] rate is applicable.” (3) “The tax additur for 2005 is 2.38% indicating a total rate with additur of 10.88%”; and (4) “Capitalizing the anticipated net income and real estate taxes at 10.88% indicates a value of \$9,338,189, rounded to \$9,338,000” (Supp. 13.) This is the *entire extent* of Horner’s income approach for the subject property. To emphasize this point, Horner’s appraisal did *not include* any of the following that are essential to determining the true value or market value of the property:

- (A) Horner’s appraisal failed to include an *estimate of stabilized income* that was anticipated to be derived over a future holding period;

(B) Horner's appraisal failed to include an *estimate of economic or market rent* for the property;

(C) Horner's appraisal failed to include any *rent comparables*;

(D) Horner's appraisal failed to include an *estimate of market expenses or stabilized expenses* for the property;

(E) Horner's appraisal failed to include any *expense comparables*; and

(F) Horner's appraisal failed to include any *market vacancy data or make a stabilized vacancy projection*.

Horner himself admitted that the "primary benefit of market data is the determination of economic rent, expenses and overall rates" (Appraisal 8-9, Supp. 5-6), but he failed to include any comparable market rental data or comparable expense data in his report or to use any such data in his income approach to value the subject property.

As stated above, Horner did not make a stabilized income projection for the property. What Horner did do, and which is also consistent with a "restricted use appraisal," was to simply "average" together the *actual* net operating income for the property for 2004 and the *actual* net operating income for the property for 2005 (Appraisal 22, Supp. 13), and he then capitalized the "average" figure into an "indicated value" (Appraisal 23, Supp. 14.) Horner's "average" actual net operating income figure was as \$1,105,995. It will be shown below that Horner's use of the actual 2004 and 2005 income in his income approach substantially undervalued the property because the actual income data showed that the property was becoming more valuable every day from 2004 to 2006 as the brand new units were leased out during 2004 and 2005. Horner included the actual income figures in his report and these were as follows for the three-year period of 2004 to 2006:

<u>Year</u>	<u>Gross Income</u>	<u>Net Operating Income</u>
2004	\$1,693,711	\$1,006,596
2005	\$1,913,357	\$1,147,319
2006	\$2,155,677	\$1,364,018

(Appraisal 21, Supp. 12.)

These figures show that Gross Income for the new property increased by 27.2% from 2004 through 2006, while Net Operating Income increased by 35.5% over the same three-year period. This increase in the income was due to the fact that the brand new units in the property, finished in 2004, were being leased up at this time. Horner wrote in his report that “the 2nd phase of development was currently in a ‘rent up’ stage” during 2004 (Appraisal 22, Supp. 13.)

In fact, Horner admitted that the actual income for 2004 *did not reflect the market value of the property* as he stated that: “We recognize that vacancy factor *during 2004 was higher than at stabilized vacancy* because the 2nd phase of development was currently in a ‘rent up’ stage” (Appraisal 22, Supp. 13.) (emphasis added.) The true value of real property must be based on a “stabilized” vacancy and “stabilized” income estimate, and not on an actual vacancy and actual income figure for a prior year that is substantially different than stabilized vacancy and stabilized income. Horner acknowledged that the 2004 income data was not representative of a *properly stabilized income estimated for purposes of appraising the property*. By using net income for 2004 that was directly based on a vacancy rate that “was higher than at a stabilized occupancy” for purposes of January 1, 2005, Horner’s approach substantially undervalued the property for tax year 2005 for real property tax purposes. By using the artificially low 2004 actual income, Horner valued the property as if it were *permanently in the “rent up stage”* as it existed during 2004. The actual income data show that the income stream from the property was substantially increasing on an annual basis as of January 1, 2005, and any prudent appraiser, prudent seller,

and prudent buyer of the property would have taken this fact into account when valuing the property and no rational seller would have sold the property based upon this limited income figure.

To justify his capitalization rate for the income approach, Horner listed ten sales of apartment complexes that took place from 2003 to 2010. He listed what he called a “going-in cap rate” for the ten properties (Appraisal 19, Supp. 10) and he listed the per-unit sale price of each property, which ranged from \$35,833 per unit to \$87,500 per unit. As is consistent with a “restricted use appraisal,” Horner did not include any data in his report relating to the ten sales that would allow anyone to judge the merits of his choice of a capitalization rate.

## 2. Horner’s market approach

As is also consistent with a “restricted use appraisal,” Horner did not do a valid market approach appraisal of the property. Instead, Horner quite incredibly claimed that it was not possible to do a market or sales comparison approach appraisal of an apartment complex because it was not possible to compare apartment complexes on a “per unit” basis because of the “differences from the standpoint of location and physical characteristics.” According to Horner,

The Sales Comparison Approach, on a per unit basis, is not considered a reliable valuation indicator because of the *myriad of differences with regards to the subject and the ‘Comparables.’* (Appraisal 8, Supp. 5.) (emphasis added.)

A per unit comparison is a ‘weak’ barometer for estimating value because of the numerous *differences from the standpoint of location and physical characteristics.*” For this reason, the Sales Comparison Approach is used as a basis for abstracting overall rates that have been incorporated within the Income Approach and as further support for value. (Appraisal 19, Supp. 14.) (emphasis added.)

Again, only the Income Approach is applicable to an investment property of this type. (Appraisal 23, Supp. 14.)

As will be shown below, the market approach is designed to account for “the myriad of differences with regards to the subject and the ‘Comparables’” and to account for “differences from the standpoint of location and physical characteristics” which Horner claimed cannot be done, and market data can be used to quantify these differences with the proper adjustments. The market approach provides evidence of what similar apartment complexes actually sell for in the real world, which a number crunching desktop income approach cannot show.

Based on the ten sales included in his report for purposes of calculating a cap rate for the income approach referred to in the section above, Horner opined that “the value of the subject at \$40K/unit for tax year 2005 is applicable based on these [cap rate] comparables” which produced a value of \$9,600,000 for the 240 units (Appraisal 20, Supp. 11.)

As in his income approach, the fundamental error in Horner’s market approach was that he did *not provide any information about, or describe in any way, any of the ten comparable properties* that he cited as the source of his “\$40K/unit” opinion of value. For instance, he gave no information about any of the properties in terms of location, amenities, unit-mixes, condition, age, quality of construction, physical characteristics, characteristics of the sale, market conditions at the time of sale, or describe anything else about any of the ten listed properties. Horner made no adjustments to any of the sales and did not include an adjustment grid in his report. Horner simply pronounced that the subject property was inferior to some of the ten listed properties “because of their larger unit [m]ixes, amenities and strong locational attributes.” (Appraisal 20, Supp. 11.) Horner provided no data whatsoever to support any of these naked claims, and it is not possible for anyone to judge the merits of Horner’s opinion based upon the data set forth in his report. This is precisely why Horner’s report was required to be labeled as a “restricted use appraisal” and why reliance upon it was inappropriate.

### 3. Cost approach

Horner claimed that it was not possible to do a cost approach on the new apartment complex. On its face, this makes no sense at all. Horner noted in his appraisal that the cost approach “is not applicable to unimproved land or obsolete improvements or to properties that have high levels of depreciation” (Appraisal 8, Supp. 5), and he then claimed that the cost approach was “not applicable” to the subject property. (Appraisal 8, Supp. 5.) However, there is not a single fact in the record that would support a claim that the subject apartment complex had “obsolete improvements” or that any part of the property had “high levels of depreciation,” and Horner never claimed that the new apartment complex was suffering from any functional or economic obsolescence or physical depreciation. Horner noted that there were “no items of deferred maintenance” and the “overall condition” of the property was “good” (Appraisal 16, Supp. 8.) The fact that the subject property’s actual net operating income *substantially increased, by 35.5%* from 2004 to 2006 shows that there was no obsolescence or depreciation adversely affecting the subject property. Under these circumstances, it is not rational for anyone to conclude that the cost approach was “not applicable” to the subject property. Had Horner done a cost approach on the property, that approach would have no doubt confirmed the County Auditor’s original value of \$13,600,000 or at least the BOR’s first value of \$12,900,000 because the actual costs to construct the property and purchase the land were about \$12,900,000 as Patrick Kelley acknowledged at the BTA. (BTA Tr. 22, Supp. 19.)

### 5. BTA decision

The BOE appealed the second decision of the Board of Revision to the BTA on October 28, 2011. The BTA conducted a hearing on the appeal on September 13, 2013, at which time only Patrick Kelley, one of the owner’s of the property, briefly testified. Kelley confirmed that

the new complex cost about \$12,000,000 *to build* (BTA Tr. 22, Supp. 19.) The property owner did not have its appraiser, Tom Horner, testify at the BTA.

On May 1, 2014, the BTA issued its now standard *two-sentence template form decision* in which it accepted Horner's "restricted use appraisal" without addressing any of the arguments made by the BOE in its brief or paying the least bit of attention to any of its prior precedent. The BTA simply declared that:

Upon review of appellee's [property owner's] appraisal evidence, which provides an opinion of value as of tax lien date, was prepared for tax valuation purposes, and attested to by a qualified expert, we find the appraisal to be competent and probative and the value conclusion reasonable and well-supported (BTA Decision and Order 2). (Appx. 9.)

and then nonsensically declared that:

While we acknowledge the arguments made by the appellant [BOE], inherent in the appraisal process is the fact that an appraiser must necessarily make a wide variety of subjective judgments *in selecting the data to rely upon, effect adjustments deemed necessary to render such data usable, and interpret and evaluate the information gathered in forming an opinion.* (BTA Decision and Order 2, Appx. 9.) (emphasis added.)

In the present case, this last sentence is even more ridiculous than it is in many of the other 100 or so decisions in which the BTA has inserted the sentence because Horner's income approach appraisal does not include any of the selected market data he relied upon. He made no discernable adjustments that could be "deemed necessary to render such data usable," and the report does not demonstrate how or even if he "interpret[ed] and evaluate[d] the information gathered in forming an opinion" because there is no analysis in the Horner report, just unsupported conclusions. Furthermore, he made no "adjustments" of any kind to the ten comparable cap rate sales included in the report that he also used in his market approach, and

other than citing the name of the apartment complex, Mr. Horner failed to identify a single relevant fact about any of these sales.

The BOE appealed to this Court on May 29, 2014.

## **LAW AND ARGUMENT**

### **Introduction**

Horner's "restricted use appraisal" is a classic example of an appraisal that cannot, as a matter of law, be used to determine the true value of real property. Horner's appraisal did not contain sufficient information or market data to allow any third party to make a reasonable or rational judgment as to the true value of the property. Horner's appraisal violated all of the laws governing the determination of the true value of real property, including the "uniform rule" set forth in Article XII, Section 2, of the Ohio Constitution. (Appx. 10.) Horner's income approach violated all of the laws requiring an income approach to set forth comparable rental data, comparable expense data, and market vacancy data; and he did not base his value on a stabilized estimate of income. Horner's market approach valuation was based on nothing more than *unidentified sales* for which he provided no relevant factual information in terms of location, amenities, unit-mixes, condition, age, quality of construction, physical characteristics, characteristics of the sale, market conditions at the time of sale, or describe anything else about any of the ten listed properties. Horner *made no adjustments* to any of the sales and did not include an adjustment grid in his report. Horner's refusal to do a cost approach on what was essentially a brand new property was directly contrary to law and this Court's prior decisions, discussed *infra*.

The BTA's decision in this case to blindly and summarily accept the Horner appraisal and to grant a substantial reduction in value based upon it is nothing less than a disaster for the

real property tax system in this State, and it constitutes a direct threat to the integrity of the system and to the protection of the rest of the taxpayers in this State as well as a complete abdication of the BTA's statutorily mandated duty to independently determine value. Simply put, if an appraisal, with *no market derived data*, can be accepted as *sufficient* competent and *probative* evidence of value of real property, then the need for a full narrative written appraisal report is now eliminated. Mr. Horner could have just as effectively written his conclusions of value on a post-it note and the BTA's nonsensical, irrelevant, self-created standards would equally have applied since the hypothetical post-it note would have contained Mr. Horner's opinion of value which would have: "Provided and opinion of value as of the tax lien date, was prepared for tax valuation purposes, and attested to by a qualified expert." Furthermore, since the BTA now defers to all of the appraiser's "wide variety of subjective judgments in selecting the data to rely upon, effect adjustments deemed necessary to render such data usable, and interpret and evaluate the information gathered in forming an opinion," there is simply no need, at least according to the BTA's position, to include any of this information in the appraisal. There is no fundamental difference between this example and Horner's appraisal in this case because the Horner appraisal contained no relevant market data, adjustments thereto, or rational conclusions therefrom.

The BTA's decision thus creates a paradox that is truly astonishing. In other words, if the BTA's decision is affirmed by this Court, then the common standard practice to challenging valuation of real property will become the presentation of summary appraisal reports with no market data. The BTA's obstinate, but now frequent, refusal to actually review and weigh the evidence and *independently determine* value, or to even acknowledge its own precedent, will now directly cause the real property tax system in Ohio to suffer the same type of chaos that

these types of “restricted appraisals” previously caused and are still causing to both the U.S. and the Ohio economy. In its more careful and thoughtful days, the BTA refused to rely on “restricted use appraisals” based on the USPAP mandates that require the disclosure of the “risk” involved in accepting these types of appraisals because they contain only an “abbreviated analysis indicative of true value.” In *Godwin v. Mercer Cty. Bd. of Revision*, BTA No. 94-P-364, 1995 Ohio Tax LEXIS 141 (Jan. 27, 1995), the BTA stated the following: “Although offered as appraisal evidence, upon closer scrutiny we do not find this abbreviated analysis indicative of true value.” *Id.* at 5. (emphasis added.) In this case the appraisal was a “limited appraisal” which was the predecessor of a “restricted use appraisal,” now referred to as a “restricted appraisal,” in that it did not perform all three approaches to value and involved the Departure Rule to notify the client of this fact. The BTA cited the USPAP descriptions of the “risk” associated with a “limited appraisal” and it concluded that it would not accept the risk. *Id.* at 8-9.<sup>2</sup> In *Weber Holdings, Ltd. vs. Franklin. Cty. Bd. of Revision*, BTA No. 2005-K-1009, 2007 Ohio Tax Lexis 380 (Mar. 2, 2007), the BTA stated the following as to restricted use or limited use appraisals:

As such, information pertinent to the valuation has not been considered and/or the full valuation process has not been applied. The intended user of this report is warned that the reliability of the value conclusion provided may be impacted to the degree that there is departure from specific requirements of the USPAP. *Id.* at 9.

ODOT has also outlawed the use of “restricted use appraisals” in its activities.<sup>3</sup>

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<sup>2</sup> The amendments to USPAP effective July 1, 2006, removed the reference to a limited use appraisal. Instead the appraiser must comply with the “restricted use appraisal” requirements. This term was later changed to Restricted Appraisal Report as detailed in Footnote 1.

<sup>3</sup>See §4000.05(B) of ODOT’s Appraisal Operating Manual where it states: “Restricted Use Appraisal Reports are not permitted to be used when ODOT, or any other acquiring agency subject to ODOT jurisdiction, is acquiring real property for a transportation project.” (Appx. 32.)

In its brief submitted to the BTA, the BOE pointed out every one of the flaws present in Horner's appraisal and cited the BTA's own precedent and this Court's prior decisions that required the BTA to reject Horner's restricted use appraisal as probative evidence of the true value of the property. The BTA blindly responded with its now frequent two sentence decision that accepted Horner's appraisal because it constituted merely competent evidence and because all judgments of an appraiser are now deemed by the BTA to be "subjective judgments" that cannot be subject to criticism. The BTA's decision in this case was totally unreasonable and unlawful in all respects. It is not too much to ask that the BTA respond in some reasonable, rational, and responsible manner to all of the inherent flaws and defects of a proffered "appraisal" that is presented to it before it actually adopts such an appraisal for real property tax purposes.

Proposition of Law No. 1:

An appraisal that fails to include relevant market data and the specific adjustments made thereto is inherently unreliable and cannot be used to determine the true value of real property for real property tax purposes.

The decisions of both the BOR and the BTA to rely on Horner's "restricted use appraisal" violated all of the laws governing the determination of true value. That such laws exist is demonstrated by R.C. 5715.10, which states that "[t]he county board of revision shall be

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(<http://www.dot.state.oh.us/Divisions/Engineering/RealEstate/Documents/Manuals/appraisal/4000%20The%20Appraisal%20Operating%20Manual.pdf>), See also, ODOT Valuation Formats §4200.02(D)(1)(f) of ODOT's Valuation Formats Manual where it states: "Restricted Use Appraisal Reports prepared for the purpose of acquiring rights of way are not permitted at ODOT."(<http://www.dot.state.oh.us/Divisions/Engineering/RealEstate/Documents/Manuals/appraisal/4200%20Valuation%20Formats.pdf>) (Appx. 34.) The reasons for the prohibition are spelled out in §4200.02(D)(1)(g) which states that: "the appraisal reviewer [must] have enough information to understand the appraiser's reasoning, conclusions and value estimates" and "requires adequate support for adjustments, reasoning, conclusions and values and this requirement of adequate support may be more consistent with the requirements for a Self-Contained Report (reference USPAP, reporting options, Standard Rule 2).

governed by the laws concerning the valuation of real property and shall make no change of any valuation except in accordance with such laws.” (Appx. 15.) The laws governing the determination of true value are set forth in R.C. 5715.01 and the Administrative Code Rules adopted thereunder and in the decisions of this Court. All parts of Horner’s appraisal were inconsistent with these laws.

1. Horner’s income approach did not comply with law because it did not contain sufficient data to allow any reasonable decision to be made as to the true value of the property.

As indicated in the Facts, Horner’s appraisal: (1) did not include an estimate of stabilized income that was anticipated to be derived over a given holding period; (2) did not include an estimate of economic or market rent for the property; (3) did not include any rent comparables; (4) did not include an estimate of market expenses or stabilized expenses for the property; (5) did not include any expense comparables; and (6) did not include any market vacancy data or make a stabilized vacancy projection. Horner’s income approach was not based on a stabilized anticipated income estimate because he acknowledged that he relied on the actual 2004 income to value the property, which he admitted was not at a “stabilized” level because the new units were being leased out during 2004.

For purposes of this Brief, Appellant will cite to the USPAP standards for an income approach, which have been codified into Ohio law by R.C. 4763.12 and R.C. 4763.13. (Appx. 12, 13.) The cite is appropriate because USPAP Standard Rule 1-4 sets forth in one codified and convenient place the mandatory requirements of a valid income approach. The USPAP income approach requirements have been part of Ohio law for a long time and all of those requirements have been previously applied by this Court in determining the validity of an income approach appraisal.

Market data must be included in Appraisal Report - Because the income approach is always subject to greatest degree of abuse in that it can be merely an unreliable number-crunching desktop appraisal, the income approach in appraisals is always defined in terms of the *required market data that the report must contain*. First, USPAP requires all appraisers, including those producing a “restricted use appraisal,” to analyze” certain market data in order to produce a valid appraisal. As to an income approach, USPAP Standards Rule 1-4 states the following:

(c) When an *income approach* is necessary for credible assignment results, *an appraiser must*:

(i) *analyze such comparable rental data* as are available and/or the potential earnings capacity of the property to estimate the gross income potential of the property;

(ii) *analyze such comparable operating expense data* as are available to estimate the operating expenses of the property;

(iii) analyze such comparable data as are available to estimate rates of capitalization and/or rates of discount; and

(iv) *base projections of future rent and/or income potential and expenses on reasonably clear and appropriate evidence*. (Appx. 20.) (emphasis added.)

The difference between a standard narrative appraisal report under USPAP and a “restricted use appraisal” is that in a standard appraisal report the appraiser is required *to include the actual market data that was required to be “analyzed” in his appraisal report* (the comparable rental data, expense data, cap rate data, and the “appropriate evidence” that supports the appraiser’s income estimates), while in a “restricted use appraisal” the market data is *not required to be included in the report*, but rather must be included in the “work file” of the appraiser. (See USPAP Standards Rule 2-2, Appx. 22-27.) This is why a restricted use appraisal

without the market data included therein cannot be used by any third party to make a judgment as to the value of the property.

Market Rent and Market Expense Data – Horner’s appraisal failed to include *any* market, economic, or comparable rental data, failed to make an income estimate based on market or economic rents for the property, failed to include any expense comparables or make an estimate of stabilized expenses for the property. As such, Horner’s appraisal did not legally constitute *probative* evidence of the true value of the property because there was no possible way for any tribunal (BOR or BTA) to independently weigh the credibility of Horner’s opinion of value.

Market rent or economic rent is defined to be “[t]he rental income that a property would most probably command in the open market; indicated by current rents paid and asked for comparable space as of the date of the appraisal.” See *Alliance Towers, Ltd. v. Stark Cty. Bd. of Revision*, 37 Ohio St.3d 16, 18; 523 N.E.2d 826 (1988), fn. 2, citing the definition *The Dictionary of Real Estate Appraisal*, American Institute of Real Estate Appraisers (1984), p. 103 and 194. In *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision*, 75 Ohio St.3d 552, 555, 664 N.E.2d 922 (1996), this Court stated that “[w]e require the BTA to make factual findings, *supported by the record, of the appropriate market rents and expenses to be used in the income approach to value*,” (emphasis added), and in *Villa Park Limited v. Clark Cty. Bd. of Revision*, 68 Ohio St.3d 215, 218-219, 625 N.E.2d 613 (1994), this Court required the BTA to:

(2) make *factual findings, that are supported by the record, of the appropriate economic or market rents and expenses to be used in the income approach to value*, [and] (3) *indicate the specific calculations the BTA uses to determine the fair market value or the ‘true value in money’ of the subject property.* (emphasis added.)

Even if the BTA may no longer be required to set forth in its decision its determinations and calculations of “the appropriate economic or market rents and expenses to be used in the

income approach to value,” the market data that would allow the BTA to make these determinations to be made *must still be included in any appraisal report submitted to the BTA*.

Likewise, in *Natl. Church Residence v. Licking Cty. Bd. of Revision*, 73 Ohio St.3d 397, 397; 653 N.E.2d 240, 240 (1995), this Court affirmed a decision of the BTA which required an appraiser to prove that his *stabilized expense estimate* was correct by presenting “comparable market data,” noting that “the BTA found that the expense percentages the witness employed in his income approach *were not reliable because he had not provided any detailed information on the comparable market expenses*” (emphasis added). In *Cambridge Arms v. Hamilton Cty. Bd. of Revision*, 69 Ohio St.3d 337, 338-339, 632 N.E.2d 496 (1994), this Court affirmed the BTA’s decision because the appraiser failed to make the proper “adjustments” to the market data taken from comparable properties:

The BTA found specifically that appellant had not satisfied its requisite burden of proof. The BTA found ‘the market rents used by Mr. Garvin were not clearly comparable and *the adjustments made to those rents were not objective nor rationally used.*’ Moreover, the BTA found that ‘while adjustments downward were made for amenities \* \* \*, in no case were adjustments upwards made based upon the fact that the subject property appears to be newer and appears to have amenities desired by the elderly and necessary for the handicapped.’ Accordingly, the BTA rejected Garvin’s estimate of true value, concluding: ‘This Board is not persuaded that the appellant’s opinion of value is more rationally based than the Board of Revision’s.’

Likewise, the BTA found McDaniel’s testimony not to be persuasive because her comparables were ‘not truly comparable’ and *did not contain appropriate adjustments to rental rates*. (emphasis added.)

In *Cambridge Arms*, the appraiser at least included his selection of market data and made adjustments thereto. In *Cambridge Arms*, the BTA independently reviewed this evidence and found the data and adjustments unwarranted and unreliable. The “new” BTA does none of this analysis. The “new” BTA blindly, summarily, and unlawfully defers to whatever the appraiser

may have relied upon even when the actual data relied upon is not even included in the report with no analysis whatsoever.

Stabilized Income Estimates based on Anticipated Income – Horner’s income approach violated two other fundamental requirements for any appraisal that can be used to determine the true value of real property. First, he failed to base his value on an estimate of the “anticipated” income to be derived from the property as of January 1, 2005, and, second, he failed to use a “stabilized income” approach to determine the income stream. Instead, Horner improperly used an “average” of the un-stabilized “actual net income” for 2004 and 2005 to determine value as of tax lien day (Appraisal 21, 22, Supp. 12, 13.)

R.C. 5715.01 requires the true value of real property to be based on the “income capacity” of the property. (Appx. 14.) Adm. Code Rule 5703-25-05(F), a rule adopted under R.C. 5715.01 by the Tax Commissioner, states the following in defining the “income approach”:

(F) ‘Income approach’ - An appraisal technique in which the *anticipated net income* is processed to indicate the capital amount of the investment which produces the net income. The *reliability of this technique* is dependent upon four conditions:

(1) *The reasonableness of the estimate of the anticipated net annual incomes;* (Appx. 16.) (emphasis added.)

The BTA could not lawfully accept an appraisal that did not contain sufficient data that allowed the BTA to determine “the reasonableness of the estimate of the anticipated net annual incomes” set forth in Horner’s appraisal report. In like manner, USPAP Standards Rule 1-4(c)(iv), quoted above, requires the appraiser to “base projections of *future rent* and/or *income potential* and expenses on *reasonably clear and appropriate evidence.*” (Appx. 20.) (emphasis added.) Both provisions require the income estimate to be based on “*future rent*” and the “*income potential* and expenses” for the property and on a “reasonable[] \*\*\* estimate of the

*anticipated* net annual income.” A reasonable estimate of “anticipated net income” or a reasonable estimate of “income potential” cannot be based either in whole or in part on past or historical income, especially when the past income is clearly shown not to be representative of the future or potential income, as is the case with Horner’s appraisal. The BTA could not possibly determine “the reasonableness of the estimate of the anticipated net annual incomes” set forth in Horner’s appraisal report because Horner included no market data in his report to allow the BTA to do this.

The use of “anticipated net annual incomes” and the “projections of future rent and/or income potential” is based on the fundamental requirement that the “value” of real property is based on “[t]he present worth of the *future benefits* that accrue to real property ownership.” The *Dictionary of Real Estate Appraisal* (1984), published by the American Institute of Real Estate Appraisers,<sup>4</sup> defines the “value” of real property as follows: “The present worth of the future benefits that accrue to real property ownership” *Id.* at 319. (Appx. 31.) The fundamental factor that creates value is the referred to by the American Institute as *the principle of anticipation*. The *Dictionary, supra*, defines “anticipation” as “[t]he perception that value is created by the expectation of benefits to be derived in the future.”<sup>5</sup> *Id.* at 14. (Appx. 28.) The

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<sup>4</sup> This Court has relied on the *Dictionary of Real Estate Appraisal* in numerous decisions. See, for instance, *Hilliard City Schs. Bd. of Educ. v. Franklin Cty. Bd. of Revision*, 139 Ohio St.3d 1, 7; 2014-Ohio-853, 9 N.E.3d 920 (2014) ¶31; and *N. Royalton City Sch. Dist. Bd. of Educ. v. Cuyahoga Cty. Bd. of Revision*, 129 Ohio St.3d 172, 173, 2011-Ohio-3092, 950 N.E.2d 955 (2011) ¶1, fn.1.; and *Alliance Towers, Ltd. v. Stark Cty. Bd. of Revision*, 37 Ohio St.3d 16, 21; 523 N.E.2d 826 (1988). This Court used the Dictionary’s definition of the “income approach” cited in the text above in *Hotel Statler v. Cuyahoga Cty. Bd. of Revision*, 79 Ohio St.3d 299, 301, 681 N.E.2d 425 (1997).

<sup>5</sup> This Court’s decisions in the following cases rely on the use of the principle of anticipation to value real property. *Porter v. Cuyahoga Cty. Bd. of Revision*, 50 Ohio St.2d 307, 364 N.E.2d 261 (1977); *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 73 Ohio St.3d 715, 654

*Dictionary of Real Estate Appraisal* defines the “income approach” and “income capitalization approach” as:

A set of procedures in which an appraiser derives a value indication for income-producing property by converting *anticipated benefits* into property value. This conversion is accomplished either by 1) capitalizing *a single year’s income expectancy* or an *annual average of several years’ income expectancies* \*\*\* or 2) discounting the annual cash flows for the holding period and the reversion at a specified yield rate. Id. at 159. (Appx. 29.) (emphasis added.)

A direct capitalization approach is an approach that “capitalizing a single year’s income expectancy or an annual average of several years’ income expectancies” as referred to in the definition set forth above. In this case, the “single year’s income expectancy” must be *stabilized* to represent an income stream that *fairly represents the anticipated income* to be derived over a period of time in the future. The *Dictionary of Real Estate Appraisal* defines “stabilized income” as follows: “Projected income that is subject to change but has been adjusted to reflect an equivalent, stable annual income.” Id. at 288. (Appx. 30.) Horner acknowledged that the 2004 actual income that he used (in part) to value the property was not based on a “stabilized” vacancy level, and the higher vacancy rate directly produced a lower income stream than the property would actually produce in the future (according to Horner, “[w]e recognize that vacancy factor during 2004 was higher than at stabilized vacancy because the 2nd phase of development was currently in a ‘rent up’ stage.” (Appraisal 22, Supp. 13.) (emphasis added.) The actual income proves this to be a fact, as the actual net operating income from the property increased from \$1,006,596 in 2004 to \$1,364,018 in 2006, or by 35.5% over the three-year period (Appraisal 21, Supp. 21.) In simple point of fact, no prudent person would have sold the

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N.E.2d 1244 (1995); and *Youngstown Sheet & Tube Co. v. Bd. of Revision*, 66 Ohio St.2d 398, 422 N.E.2d 846 (1981).

property for a price based on Horner's income estimate value because the "income capacity" of the property was 35.5% higher as proven by the 2006 net operating income.

This Court rejected precisely the same approach that Horner used in his income estimate in *NFI Metro Ctr. II Assocs. v. Franklin Cty. Bd. of Revision*, 78 Ohio St.3d 105, 107, 676 N.E.2d 881 (1997), where the appraiser based his income estimate on the "actual rental income" *when it was clear that the income from the property was anticipated to increase over the future.*

This Court stated the following:

[The appraisers'] methodologies diverged in their income approach analysis. Mr. Belfrage used as his starting point the *actual rental income from the property*. He determined that the actual rental income provided the most accurate projection of market rental income. Mr. Koon, however, *used a stabilized rental figure*. The preponderance of the evidence supports use of the stabilized rental figure. For instance, although net rental income for suburban office buildings in the Columbus area fell during the late 1980' and early 1990's, they substantially rose from 1992 onward. Net rents in the vicinity of the subject property increased from 1993 to 1994. *The rents at the subject reflected the increases for the general market*. During this same time period occupancy rates remained stable. *Since rents were increasing from tax lien date onward, Mr. Belfrage's use of current rents as of January 1, 1993 undervalued the property.* (emphasis added.)

Horner's income approach clearly and obviously undervalued the property because Horner used actual income for 2004 to value the property when even he knew that the income stream for the property would substantially increase in the near future. No competing appraisal is necessary to arrive at this fatal legal flaw as it is easily derived from Horner's own report.

2. Horner's market approach did not comply with law because it did not contain sufficient data to allow any reasonable decision to be made as to the true value of the property.

Horner's market approach was just as unreliable as his income approach. He simply listed ten sales, ranging in time from September, 2003 to January 2010 for a January 1, 2005 tax lien date, and offered the opinion that the subject property was less valuable than some of the

sales because of “larger unit mixes, amenities and strong locational factors” (Appraisal 20, Supp. 11.) However, Horner failed to provide any information whatsoever on any of his ten sales as to “unit mixes, amenities and locational factors” (or any other factors) so there is no way anyone could possibly judge whether Horner’s conclusions were correct.

On the face of it, none of Horner’s conclusions as to the subject property’s inferior “unit mixes, amenities and locational factors” appear to be justified in any manner. The subject property is located in the “New Albany area” just one-half mile from the State Route 161 freeway interchange (Appraisal 11, Supp. 7), which is the “hub of commercial activity in the region,” (Appraisal 16, Supp. 8), and the subject property had all of the amenities that one could want from a new and top quality apartment complex (see Facts, above). The units were condo-like “ranch and cottage style homes” and most had attached garages and other luxury type amenities. The apartment complex includes a clubhouse, swimming pool, laundry facilities, fitness center, and business center (see Facts). It is obviously an open question as to what Horner could have meant by saying that some of the ten sale properties had better “unit mixes, amenities and locational factors” than the subject property. In any event, Horner did not include a single fact about any of the ten comparable sales that would allow anyone to determine the merits of Horner’s naked opinions and the BTA’s blind deference to Horner’s unsupported opinions was unreasonable and unlawful.

3. Horner’s refusal to perform a cost approach violated Ohio laws governing the determination of the true value of the property.

Horner refused to use a cost approach to value the essentially new apartment complex. The cost approach is a perfectly proper approach to be used to determine the true value of real property that is new or relatively new. See *LTC Properties, Inc. v. Licking Cty. Bd. of Revision*,

133 Ohio St.3d 111, 2012-Ohio-3930, 976 N.E.2d 852; *Meijer Stores, LP v. Franklin Cty. Bd. of Revision*, 122 Ohio St.3d 447, 2009-Ohio-3479; *Dayton-Montgomery County Port Auth. v. Montgomery Cty. Bd. of Revision*, 113 Ohio St.3d 281, 2007-Ohio-1948, 865 N.E.2d 22; *Higbee Co. v. Cuyahoga Cty. Bd. of Revision*, 107 Ohio St.3d 325, 2006-Ohio-2, 839 N.E.2d 385; *Meijer, Inc. v. Montgomery Cty. Bd. of Revision*, 75 Ohio St.3d 181, 661 N.E.2d 1056 (1996) (holding that “[t]he owner, by purchasing the land and constructing the building, evidences a market need for such a property. Therefore, the costs of purchase and construction evidence that a prospective purchaser was willing to pay at least the costs of the property as newly constructed.”); *Dinner Bell Meats, Inc. v. Cuyahoga Cty. Bd. of Revision*, 12 Ohio St.3d 270, 466 N.E.2d 909 (1984).

Administrative Code Rule 5703-25-06(A) requires the cost approach to be considered when valuing real property. This provision reads as follows:

‘True value in money’ shall be determined \*\*\* on consideration of *all facts tending to indicate the current or fair market value of the property* including, but not limited to \*\*\* *its actual cost*, [and] its value as indicated by *reproduction cost* less physical depreciation and all forms of obsolescence if any, [and] *its replacement cost* \*\*\*. (Appx. 17.) (emphasis added.)

Horner summarily claimed that the cost approach was “not applicable” to the subject property, and that it was not applicable to any property that consisted of “obsolete improvements or to properties that have high levels of depreciation” (Appraisal 8, Supp. 5.) However, the new apartment complex involved in this appeal had no such “obsolete improvements” or any measurable depreciation let alone “high levels of depreciation” and Horner himself never claimed that the apartment complex was suffering from any functional or economic obsolescence or depreciation for purposes of tax year 2005. Horner noted that there were “no items of deferred maintenance” and the “overall condition” of the property was “good” (Appraisal 16,

Supp. 8.) The fact that the actual net operating income from the property had *substantially increased, by 35.5%*, from 2004 to 2006 also shows that there was obsolescence or depreciation adversely affecting the property. For these reasons, it was irrational for Horner to conclude that the cost approach was “not applicable” to the subject property for tax year 2005. The evidence shows that had Horner prepared a cost approach on the property that it would have confirmed the County Auditor’s original value of \$13,600,000 or at least the BOR’s first value of \$12,900,000 based upon the testimony of Mr. Kelley.

In summary, Appellant has shown that Horner’s “restricted use appraisal” did not contain any of the essential market data that Ohio law requires to be set forth in an appraisal that can be relied on to determine the true value of the property. As such, Horner’s “restricted use appraisal” was inherently unreliable and misleading and the BOR’s and BTA’s reliance on Horner’s report violated all of the laws that govern the determination of true value.

### **CONCLUSION**

For the reasons set forth herein, Appellant respectfully requests the Court to reverse the decision of the Board of Tax Appeals and to either reinstate the Franklin County Auditor’s original appraised value of the \$13,600,000 for tax year 2005 because no evidence exists which proves that the property has any lower or different true value, or in the alternative to reinstate the BOR’s original decision to value the property at \$12,900,000 based upon the actual cost information provided by the property owner.

In the alternative, Appellant requests the Court to reverse the BTA’s decision and to remand this appeal back to the BTA and instruct the BTA to perform its statutorily required duty to perform a *de novo* review of the evidence, to independently determine value, and to provide the specific bases for its decision.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing merit brief was served on the following via email transmission this 10<sup>th</sup> day of February, 2015:

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ORIGINAL

IN THE SUPREME COURT OF OHIO

Board of Education of the Columbus  
City Schools, :

Appellant, :

v. :

Franklin County Board of Revision,  
Franklin County Auditor, and Albany  
Commons, Ltd.. :

Appellees. :

Case No. 14-0885

Appeal from the Ohio Board of  
Tax Appeals - Case No. 2011-3590

FILED  
MAY 29 2014  
CLERK OF COURT  
SUPREME COURT OF OHIO

NOTICE OF APPEAL OF THE BOARD OF EDUCATION OF THE  
COLUMBUS CITY SCHOOLS

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FILED  
MAY 29 2014  
BOARD OF TAX APPEALS  
COLUMBUS, OHIO

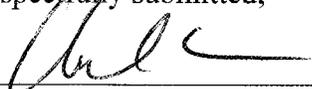
**IN THE SUPREME COURT OF OHIO**

Board of Education of the Columbus City Schools,	:	
	:	Case No. _____
Appellant,	:	
	:	
v.	:	
	:	Appeal from the Ohio Board of Tax Appeals - Case No. 2011-3590
Franklin County Board of Revision, Franklin County Auditor, and Albany Commons, Ltd..	:	
	:	
Appellees.	:	

NOTICE OF APPEAL OF THE BOARD OF EDUCATION OF THE  
COLUMBUS CITY SCHOOLS

Now comes the Appellant, the Board of Education of the Columbus City School District, and gives notice of appeal to the Supreme Court of Ohio from the decision of the Ohio Board of Tax Appeals in the case of *Board of Education of the Columbus City Schools v. Franklin County Board of Revision, Franklin County Auditor, and Albany Commons, Ltd.*, BTA Case No. 2011-3590, rendered on May 1, 2014, a copy of which is attached hereto as Exhibit B. The Errors complained of therein are set forth herein as Exhibit A.

Respectfully submitted,

  
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School District

## EXHIBIT A - STATEMENT OF ERRORS

(1) The Ohio Board of Tax Appeals (BTA) erred in holding that an appraisal is competent and probative evidence of value merely because: (1) “It provides an opinion of value as of tax lien date; (2) “was prepared for tax valuation purposes;” and (3) was “attested to by a qualified expert.”

(2) The BTA erred by failing to conduct a de novo review of the evidence in the record;

(3) The BTA erred by failing to specifically state the facts and figures upon which its decision is based.

(4) The BTA erred by failing to independently determine the true value of the subject property.

(5) The BTA erred by accepting an appraisal for a brand new property that failed to include a cost approach to value.

(6) The BTA erred in holding that Albany Commons’ appraiser “performed the sales comparison” approach to value when said appraiser failed to include any pertinent data for his so-called comparable sales, including information regarding age, condition, unit mix, apartment style, number and size of the units, the amenities included therein, or whether the appraiser had even verified that the so-called comparable sales were sold in arm’s-length transactions.

(7) The BTA erred in holding that Albany Commons’ appraiser “performed the sales comparison” approach to value when said appraiser failed to make any adjustments to any of the so-called comparable sales.

(8) The BTA erred in holding that Albany Commons’ appraiser “performed the sales comparison” approach to value and that said approach was competent and probative evidence of value when said appraiser specifically stated that this “analysis” was a “‘weak’ barometer for

estimating value because of the numerous differences from the standpoint of location and physical characteristics” and yet said appraiser failed to make any adjustments for these “numerous differences.”

(9) The BTA erred in holding that Albany Commons’ appraiser “performed the income capitalization” approach to value and that said approach was competent and probative evidence of value when said appraiser failed to include any market rent or market expense comparables, instead utilizing an average of the subject’s unstabilized actual income and expenses;

(10) The BTA erred in holding that Albany Commons’ appraiser had shown that “the subject property’s actual experience conformed to market conditions at the relevant time” when said appraiser failed to include any market data regarding market rent or market expenses.

(11) The BTA erred by failing to specifically address any of the arguments presented by the Board of Education that demonstrated the flaws in and insufficiency of the evidence presented by the property owners.

(12) The BTA erred when it merely “acknowledge[d] the arguments made by the appellant” and then deferred to Albany Commons’ appraiser’s “subjective judgments” for which there was no detail or justification given.

(13) The BTA erred by failing to accept the Auditor’s original value as the default value of the subject property.

(14) The BTA erred in holding that Albany Commons sustained its burden of proof before the Franklin County Board of Revision to prove that the subject property was over-valued and further failed to prove the true value of the subject property.

PROOF OF SERVICE ON THE OHIO BOARD OF TAX APPEALS

I hereby certify that a true and complete copy of the foregoing notice of appeal was served upon the Clerk of the Ohio Board of Tax Appeals, as is evidenced by its filing stamp set forth hereon.



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Mark Gillis (0066908)  
Attorney for Appellant

CERTIFICATE OF SERVICE BY CERTIFIED MAIL

I hereby certify that a true and complete copy of the foregoing notice of appeal was served on the following by certified mail, return receipt requested, with postage prepaid, this 29 th day of May, 2014.

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Attorney for Appellant

**IN THE SUPREME COURT OF OHIO**

Board of Education of the Columbus :  
City Schools, :  
 : Case No. \_\_\_\_\_  
Appellant, :  
 :  
v. :  
 :  
Franklin County Board of Revision, : Appeal from the Ohio Board of  
Franklin County Auditor, and Albany : Tax Appeals - Case No. 2011-3590  
Commons, Ltd.. :  
 :  
Appellees.

REQUEST TO CERTIFY ORIGINAL PAPERS TO THE SUPREME COURT OF OHIO

TO: The Clerk of the Ohio Board of Tax Appeals:

The Appellant, who has filed a notice of appeal with the Supreme Court, makes this written demand upon the Clerk and this Board to certify the record of its proceedings and the original papers of this Board and statutory transcript of the Board of Revision in the case of *Board of Education of the Columbus City Schools v. Franklin County Board of Revision, Franklin County Auditor, and Albany Commons, Ltd.*, BTA Case No. 2011-3590, rendered on May 1, 2014, to the Supreme Court of Ohio within 30 days of service hereof as set forth in R.C. 5717.04.

Respectfully submitted,



Mark Gillis (0066908)  
Rich & Gillis Law Group, LLC

Attorneys for Appellant Board of Education

**OHIO BOARD OF TAX APPEALS**

Board of Education of the	)	CASE NO. 2011-3590
Columbus City Schools,	)	
	)	(REAL PROPERTY TAX)
Appellant,	)	
	)	DECISION AND ORDER
vs.	)	
	)	
Franklin County Board of Revision, et al.,	)	
	)	
Appellees.	)	

APPEARANCES:

- For the Appellant - Rich & Gillis Law Group  
Kelley A. Gorry  
6400 Riverside Drive, Suite D  
Dublin, Ohio 43017
- For the County Appellees - Ron O'Brien  
Franklin County Prosecuting Attorney  
William J. Stehle  
Assistant Prosecuting Attorney  
373 S. High Street, 20th Floor  
Columbus, Ohio 43215-6310
- For the Appellee Property Owner - Bluestone Law Offices  
Charles L. Bluestone  
141 East Town Street, Suite 100  
Columbus, Ohio 43215

Entered **MAY 01 2014**

Mr. Williamson, Mr. Johrendt, and Mr. Harbarger concur.

Appellant appeals a decision of the board of revision ("BOR") which determined the value of the subject real property, parcel number 010-099937-00, for tax year 2005. This matter is now considered upon the notice of appeal and the transcript<sup>1</sup> certified by the BOR pursuant to R.C. 5717.01. The subject's total true value was initially assessed at \$13,600,000. A decrease complaint was filed with the BOR seeking a reduction in value to \$9,720,000. Appellant filed a countercomplaint in support of maintaining the auditor's values. The BOR issued a decision reducing the total true value to \$9,338,000, which led to the present appeal.

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<sup>1</sup> We remind the BOR that it is required to convene hearings regarding complaints, and take full minutes of all evidence given before the board. R.C. 5715.19(C); R.C. 5715.08. The record shows that the BOR convened two separate hearings more than two years apart on this matter, though no recording or minutes regarding the earlier hearing have been included in the transcript. While it is unfortunate that we do not have the benefit of this hearing, the parties were accorded an opportunity to remedy any deficiencies by appearing at this board's hearing and presenting additional evidence, including testimonial evidence which may have been previously provided. The parties waived the opportunity to appear before this board to offer any additional evidence, thus waiving any objections regarding the adequacy of the record.

As the Supreme Court of Ohio has consistently held, “[t]he best method of determining value, when such information is available, is an actual sale of such property between one who is willing to sell but not compelled to do so and one who is willing to buy but not compelled to do so. \*\*\* However, such information is not usually available, and thus an appraisal becomes necessary.” *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410. Such is the case in this matter, as the record does not indicate that the subject property “recently” transferred through a qualifying sale. Upon review of appellee’s appraisal evidence, which provides an opinion of value as of tax lien date, was prepared for tax valuation purposes, and attested to by a qualified expert, we find the appraisal to be competent and probative and the value conclusion reasonable and well-supported. The appraiser performed the sales comparison and income capitalization approaches to value, though he relied primarily on the income approach. He used market data to develop a capitalization rate and applied it to the subject property’s income and expenses, indicating that the subject property’s actual experience conformed to market conditions at the relevant time. While we acknowledge the arguments made by the appellant, inherent in the appraisal process is the fact that an appraiser must necessarily make a wide variety of subjective judgments in selecting the data to rely upon, effect adjustments deemed necessary to render such data usable, and interpret and evaluate the information gathered in forming an opinion. See, e.g., *Developers Diversified Realty Corp. v. Ashland Cty. Bd. of Revision* (Mar. 17, 2000), BTA Nos. 1998-A-500, et seq., unreported; *Armco Inc. v. Richland Cty. Bd. of Revision* (Nov. 19, 2004), BTA No. 2003-A-1058, unreported. It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2005, were as follows:

TRUE VALUE	TAXABLE VALUE
\$9,338,000	\$3,268,300

It is the order of the Board of Tax Appeals that the subject property be assessed in conformity with this decision and order.

I hereby certify the foregoing to be a true and complete copy of the action taken by the Board of Tax Appeals of the State of Ohio and entered upon its journal this day, with respect to the captioned matter.



A.J. Groeber, Board Secretary

ty days for persons to change residence in order to be eligible for election.

The governor shall give the persons responsible for apportionment two weeks advance written notice of the date, time, and place of any meeting held pursuant to this section.

(1967)

***CONTINUATION OF PRESENT DISTRICT BOUNDARIES.***

§14 The boundaries of House of Representatives districts and Senate districts from which representatives and senators were elected to the 107th General Assembly shall be the boundaries of House of Representatives and Senate districts until January 1, 1973, and representatives and senators elected in the general election in 1966 shall hold office for the terms to which they were elected. In the event all or any part of this apportionment plan is held invalid prior to the general election in the year 1970, the persons responsible for apportionment by a majority of their number shall ascertain and determine a plan of apportionment to be effective until January 1, 1973, in accordance with section 13 of this Article.

(1967)

***SEVERABILITY PROVISION.***

§15 The various provisions of this Article XI are intended to be severable, and the invalidity of one or more of such provisions shall not affect the validity of the remaining provisions.

(1967)

**ARTICLE XII: FINANCE AND TAXATION**

***POLL TAXES PROHIBITED.***

§1 No poll tax shall ever be levied in this state, or service required, which may be commuted in money or other thing of value.

(1851, am. 1912)

***LIMITATION ON TAX RATE; EXEMPTION.***

§2 No property, taxed according to value, shall be so taxed in excess of one per cent of its true value in money for all state and local purposes, but laws may be passed authorizing additional taxes to be levied outside of such limitation, either when approved by at least a majority of the electors of the taxing district voting on such proposition, or when provided for by the charter of a municipal corporation. Land and improvements thereon shall be taxed by uniform rule according to value, except that laws may be passed to reduce taxes by providing for a reduction in value of the homestead of permanently and totally disabled residents, residents sixty-five years of age and older, and residents sixty years of age or older who are surviving spouses of deceased residents who were sixty-five years of age or older or permanently and totally disabled and receiving a reduction in the value of their homestead at the time of death, provided the surviving spouse continues to reside in a qualifying homestead, and providing for income and other qualifications to obtain such reduction. Without limiting the general power, subject to the provisions of Article I of this constitution, to determine the subjects and methods of taxation or exemptions therefrom,

general laws may be passed to exempt burying grounds, public school houses, houses used exclusively for public worship, institutions used exclusively for charitable purposes, and public property used exclusively for any public purpose, but all such laws shall be subject to alteration or repeal; and the value of all property so exempted shall, from time to time, be ascertained and published as may be directed by law.

(1851, am. 1906, 1912, 1918, 1929, 1933, 1970, 1974, 1990)

*AUTHORITY TO CLASSIFY REAL ESTATE FOR TAXATION; PROCEDURES.*

§2a (A) Except as expressly authorized in this section, land and improvements thereon shall, in all other respects, be taxed as provided in Section 36, of Article II and Section 2 of this article

(B) This section does not apply to any of the following:

(1) Taxes levied at whatever rate is required to produce a specified amount of tax money or an amount to pay debt charges;

(2) Taxes levied within the one per cent limitation imposed by Section 2 of this article;

(3) Taxes provided for by the charter of a municipal corporation.

(C) Notwithstanding Section 2 of this article, laws may be passed that provide all of the following:

(1) Land and improvements thereon in each taxing district shall be placed into one of two classes solely for the purpose of separately reducing the taxes charged against all land and improvements in each of the two classes as provided in division (C)(2) of this section.

The classes shall be:

(a) Residential and agricultural land and improvements;

(b) All other land and improvements.

(2) With respect to each voted tax authorized to be levied by each taxing district, the amount of taxes imposed by such tax against all land and improvements thereon in each class shall be reduced in order that the amount charged for collection against all land and improvements in that class in the current year, exclusive of land and improvements not taxed by the district in both the preceding year and in the current year and those not taxed in that class in the preceding year, equals the amount charged for collection against such land and improvements in the preceding year.

(D) Laws may be passed to provide that the reductions made under this section in the amounts of taxes charged for the current expenses of cities, townships, school districts, counties, or other taxing districts are subject to the limitation that the sum of the amounts of all taxes charged for current expenses against the land and improvements thereon in each of the two classes of property subject to taxation in cities, townships, school districts, counties, or other types of taxing districts, shall not be less than a uniform per cent of the taxable value of the property in the districts to which the limitation applies. Different but uniform percentage limitations may be established for cities, townships, school districts, counties, and other types of taxing districts.

(1980)

## **4763.12 Certified appraisal or certified appraisal report.**

(A) A person licensed or certified under this chapter may be retained or employed to act as a disinterested third party in rendering an unbiased valuation or analysis of real estate or to provide specialized services to facilitate the client or employer's objectives. An appraisal or appraisal report rendered by a certificate holder or licensee shall comply with this chapter. A certified appraisal or certified appraisal report represents to the public that it satisfies the standards set forth in this chapter.

(B) No certificate holder or licensee shall accept a fee for an appraisal assignment that is contingent, in whole or in part, upon the reporting of a predetermined estimate, analysis, or opinion or upon the opinion, conclusion, or valuation reached, or upon consequences resulting from the appraisal assignment. A certificate holder or licensee who enters into an agreement to provide specialized services may charge a fixed fee or a fee that is contingent upon the results achieved by the specialized services, provided that this fact is clearly stated in each oral report rendered pursuant to the agreement, and the existence of the contingent fee arrangement is clearly stated in a prominent place on each written report and in each letter of transmittal and certification statement made by the certificate holder or licensee within that report.

(C) Every written report rendered by a certificate holder or licensee in conjunction with an appraisal assignment or specialized service performed shall include the following information:

(1) The name of the certificate holder or licensee;

(2) The class of certification or licensure held by and the certification or licensure number of the certificate holder or licensee;

(3) Whether the appraisal or specialized service is performed within the scope of the certificate holder's or licensee's certification or licensure;

(4) Whether the appraisal or specialized service is provided by a certificate holder or licensee as a disinterested and unbiased third party or as a person on an interested and biased basis or as an interested third party on a contingent fee basis;

(5) The signature of the person preparing and reporting the appraisal or specialized service. If the certificate holder or licensee provides an oral real estate appraisal or specialized service, the certificate holder or licensee shall send, within seven days of providing the oral report, a form to the client containing the appropriate information specified in this division and the rules adopted pursuant to this division.

(D) Nothing in this chapter shall be construed as requiring a certificate holder or licensee to provide a client with a copy of any writing prepared in support of an oral appraisal report except as provided in division (C) of this section or as agreed to between the certificate holder or licensee and the certificate holder's or licensee's client.

(E) No person, directly or indirectly, shall knowingly compensate, instruct, induce, coerce, or intimidate, or attempt to compensate, instruct, induce, coerce, or intimidate, a certificate holder or licensee for the purpose of corrupting or improperly influencing the independent judgment of the certificate holder or licensee with respect to the value of the dwelling offered as security for repayment of a mortgage loan.

Effective Date: 03-05-1996; 01-01-2007

## **4763.13 Compliance with standards.**

(A) In engaging in appraisal activities, a person certified, registered, or licensed under this chapter shall comply with the applicable standards prescribed by the board of governors of the federal reserve system, the federal deposit insurance corporation, the comptroller of the currency, the office of thrift supervision, the national credit union administration, and the resolution trust corporation in connection with federally related transactions under the jurisdiction of the applicable agency or instrumentality. A certificate holder, registrant, and licensee also shall comply with the uniform standards of professional appraisal practice, as adopted by the appraisal standards board of the appraisal foundation and such other standards adopted by the real estate appraiser board, to the extent that those standards do not conflict with applicable federal standards in connection with a particular federally related transaction.

(B) The terms "state-licensed residential real estate appraiser," "state-certified residential real estate appraiser," "state-certified general real estate appraiser," and "state-registered real estate appraiser assistant" shall be used to refer only to those persons who have been issued the applicable certificate, registration, or license or renewal certificate, registration, or license pursuant to this chapter. None of these terms shall be used following or in connection with the name or signature of a partnership, corporation, or association or in a manner that could be interpreted as referring to a person other than the person to whom the certificate, registration, or license has been issued. No person shall fail to comply with this division.

(C) No person, other than a certificate holder, a registrant, or a licensee, shall assume or use a title, designation, or abbreviation that is likely to create the impression that the person possesses certification, registration, or licensure under this chapter, provided that professional designations containing the term "certified appraiser" and being used on or before July 26, 1989, shall not be construed as being misleading under this division. No person other than a person certified or licensed under this chapter shall describe or refer to an appraisal or other evaluation of real estate located in this state as being certified.

(D) The terms "state-certified or state-licensed real estate appraisal report," "state-certified or state-licensed appraisal report," or "state-certified or state-licensed appraisal" shall be used to refer only to those real estate appraisals conducted by a certificate holder or licensee as a disinterested and unbiased third party provided that the certificate holder or licensee provides certification with the appraisal and provided further that if a licensee is providing the appraisal, such terms shall only be used if the licensee is acting within the scope of the licensee's license. No person shall fail to comply with this division.

(E) Nothing in this chapter shall preclude a partnership, corporation, or association which employs , retains, or engages the services of a certificate holder or licensee to advertise that the partnership, corporation, or association offers state-certified or state-licensed appraisals through a certificate holder or licensee if the advertisement clearly states such fact in accordance with guidelines for such advertisements established by rule of the real estate appraiser board.

(F) Except as otherwise provided in section 4763.19 of the Revised Code, nothing in this chapter shall preclude a person who is not licensed or certified under this chapter from appraising real estate for compensation.

Amended by 128th General Assembly File No.9, HB 1, §101.01, eff. 10/16/2009.

Effective Date: 03-05-1996; 01-01-2007

## **5715.01 Tax commissioner to supervise assessments by county auditors - rules and procedure - county board of revision.**

(A) The tax commissioner shall direct and supervise the assessment for taxation of all real property. The commissioner shall adopt, prescribe, and promulgate rules for the determination of true value and taxable value of real property by uniform rule for such values and for the determination of the current agricultural use value of land devoted exclusively to agricultural use. The uniform rules shall prescribe methods of determining the true value and taxable value of real property and shall also prescribe the method for determining the current agricultural use value of land devoted exclusively to agricultural use, which method shall reflect standard and modern appraisal techniques that take into consideration: the productivity of the soil under normal management practices; the average price patterns of the crops and products produced to determine the income potential to be capitalized; the market value of the land for agricultural use; and other pertinent factors. The rules shall provide that in determining the true value of lands or improvements thereon for tax purposes, all facts and circumstances relating to the value of the property, its availability for the purposes for which it is constructed or being used, its obsolete character, if any, the income capacity of the property, if any, and any other factor that tends to prove its true value shall be used. In determining the true value of minerals or rights to minerals for the purpose of real property taxation, the tax commissioner shall not include in the value of the minerals or rights to minerals the value of any tangible personal property used in the recovery of those minerals.

(B) The taxable value shall be that per cent of true value in money, or current agricultural use value in the case of land valued in accordance with section [5713.31](#) of the Revised Code, the commissioner by rule establishes, but it shall not exceed thirty-five per cent. The uniform rules shall also prescribe methods of making the appraisals set forth in section [5713.03](#) of the Revised Code. The taxable value of each tract, lot, or parcel of real property and improvements thereon, determined in accordance with the uniform rules and methods prescribed thereby, shall be the taxable value of the tract, lot, or parcel for all purposes of sections [5713.01](#) to [5713.26](#) , 5715.01 to [5715.51](#) , and [5717.01](#) to [5717.06](#) of the Revised Code. County auditors shall, under the direction and supervision of the commissioner, be the chief assessing officers of their respective counties, and shall list and value the real property within their respective counties for taxation in accordance with this section and sections [5713.03](#) and [5713.31](#) of the Revised Code and with such rules of the commissioner. There shall also be a board in each county, known as the county board of revision, which shall hear complaints and revise assessments of real property for taxation.

(C) The commissioner shall neither adopt nor enforce any rule that requires true value for any tax year to be any value other than the true value in money on the tax lien date of such tax year or that requires taxable value to be obtained in any way other than by reducing the true value, or in the case of land valued in accordance with section [5713.31](#) of the Revised Code, its current agricultural use value, by a specified, uniform percentage.

Effective Date: 09-27-1983; 06-30-2005

## **5715.10 Valuation of real property - county board of revision may summon and examine persons as to property.**

The county board of revision shall be governed by the laws concerning the valuation of real property and shall make no change of any valuation except in accordance with such laws.

The board may call persons before it and examine them under oath as to their own or another's real property to be placed on the tax list and duplicate for taxation, or the value thereof. If a person notified to appear before the board refuses or neglects to appear at the time required, or appearing, refuses to be sworn or answer any question put to him by the board or by its order, the chairman of the board shall make a complaint thereof in writing to the probate judge of the county, who shall proceed against such person in the same manner as provided in section 5711.37 of the Revised Code.

Effective Date: 10-01-1953

(F) "Income approach" - An appraisal technique in which the anticipated net income is processed to indicate the capital amount of the investment which produces the net income. The reliability of this technique is dependent upon four conditions:

- (1) The reasonableness of the estimate of the anticipated net annual incomes;
- (2) The duration of the net annual income, usually the economic life of the building;
- (3) The capitalization (discount) rate;
- (4) The method of conversion (income to capital).

(G) "Market data approach" - An appraisal technique in which the market value estimate is predicated upon prices paid in actual market transactions and current listings, the former fixing the lower limit of value in a static or advancing market (price wise), and fixing the higher limit of value in a declining market; and the latter fixing the higher limit in any market. It is a process of correlation and analysis of similar recently sold properties. The reliability of this technique is dependent upon:

- (1) The degree of comparability of each property with the property under appraisal;
- (2) The time of sale;
- (3) The verification of the sale data;
- (4) The absence of unusual conditions affecting the sale.

## **5703-25-06 Equalization procedures.**

(A) "True value in money" shall be determined, in the first instance, by the county auditor as the assessor of real property in the county on consideration of all facts tending to indicate the current or fair market value of the property including, but not limited to, the physical nature and construction of the property, its adaptation and availability for the purpose for which it was acquired or constructed or for the purpose for which it is or may be used, its actual cost, the method and terms of financing its acquisition, its value as indicated by reproduction cost less physical depreciation and all forms of obsolescence if any, its replacement cost, and its rental income-producing capacity, if any. The assessor shall likewise take into consideration the location of the property and the fair market value of similar properties in the same locality.

(B) At least once each six-year period the county auditor of each county, in conformity with the provisions of section [5713.01](#) of the Revised Code, shall view and appraise each parcel of real property and the improvements thereon in the county and this appraisal shall reflect the one hundred per cent true value in money of each parcel appraised, and the auditor shall place each parcel of real property on the tax duplicate at its "taxable value" which is thirty-five per cent of its true value in money.

(C) In the update year the county auditor shall determine whether each parcel of real property and the improvements thereon is appraised at its true value in money, as defined in paragraph (A) of rule 5705-25-05 of the Administrative Code, as of tax lien date of said year. If the auditor finds that there has been either an increase or decrease in value, the auditor shall adjust the tax records to show the true value in money of each parcel and the improvements thereon as well as the "taxable value" thereof, which "taxable value" shall be thirty-five per cent of the true value in money thereof as redetermined by the county auditor as of tax lien date.

(D) In making this triennial update of the true value in money and the "taxable value" of each parcel of real property, the county auditor shall be guided by sales of comparable property for a like use; the sales ratio and other related studies compiled by the tax commissioner for the three calendar years immediately preceding the update year; by the increase or decrease in current building costs and changes in construction technique both after the proper application of depreciation and obsolescence; by the increase or decrease in the net rental income, expenses, and services for comparable property since the year in which the preceding sexennial reappraisal had been completed; and such other indications of increase or decrease in value as may be pertinent, such as test or sample appraisals on a current basis, where sales of real property are limited or in question.

(E) In implementing any increase or decrease in valuation of real property pursuant to this rule or ordered by the tax commissioner pursuant to section [5715.24](#) of the Revised Code, the county auditor shall, when practicable, increase or decrease the taxable valuation of parcels in accordance with actual changes in valuation of real property which occur in different subdivisions, neighborhoods, or among classes of real property in the county. The auditor may increase or decrease the true or taxable value of any lot or parcel of real estate in any township, municipal corporation, or other taxing district by an amount which will cause all real property on the tax list to be valued as required by law, or the auditor may increase or decrease the aggregate value of all real property, or any class of real property, in the county, township, municipal corporation, or other taxing district, or in any ward or other division of a municipal corporation by a per cent or amount which will cause all property to be properly valued and assessed for taxation in accordance with section 36, Article II and section 2, Article XII, Ohio Constitution, and sections [5713.03](#) and [5715.01](#) of the Revised Code, and this rule.

(F) In determining the true value in the year of the sexennial reappraisal or update year of any tract, lot, or parcel of real estate if such tract, lot or parcel has been the subject of an arm's length sale between a willing seller and a willing buyer within a reasonable length of time, either before or after the tax lien date, the auditor shall consider the sale price of such tract, lot, or parcel to be the true value for taxation purposes. However, the sale price in an arm's length transaction between a willing seller and a willing buyer shall not be considered the true value of the property sold if subsequent to the sale:

(1) The tract, lot, or parcel of real estate loses value due to some casualty;

(2) An improvement is added to the property.

(G) The lien for taxes attaches to all real property on the first day of January. If a building, structure, fixture or other improvement to land is under construction on January first of any year, its valuation shall be based upon its value or percentage of completion as it existed on January first.

(H) When the county auditor revalues real property, notifications of the change in value shall be made as provided in section [5713.01](#) of the Revised Code.

Eff 12-28-73; 11-1-77; 9-18-03

Rule promulgated under: RC [5703.14](#)

Rule authorized by: RC [5703.05](#)

Rule amplifies: RC [5713.01](#) , [5715.01](#)

Replaces: 5705-3-02

R.C. [119.032](#) review dates: 09/18/2008

### REVISIONS TO USPAP AND USPAP ADVISORY OPINIONS

After the publication of the 2012-13 edition of USPAP, a series of two requests for comment papers and three exposure drafts were released to obtain feedback on possible modifications for the 2014-15 edition. On February 1, 2013, the Appraisal Standards Board (ASB) adopted modifications for the 2014-15 edition of the *Uniform Standards of Professional Appraisal Practice* (USPAP). These modifications include:

- 1. Revisions to the DEFINITIONS of “Assignment Results” and “Scope of Work”** – Based on comments received, there was a need to clarify the definition of “Assignment Results.” In an appraisal assignment, assignment results currently include more than just the appraiser’s opinion of value, as the appraiser is responsible not only for the opinion of value, but for the other opinions formed as part of an appraisal or appraisal review assignment. The change to the definition was made to clarify this point. The change to the definition of Scope of Work makes it consistent with the application of the SCOPE OF WORK RULE.
- 2. Revisions to the PREAMBLE - When Do USPAP Rules and Standards Apply?** - A section was added to clearly state when the Rules and Standards apply.
- 3. Certification Requirement Related to Current or Prospective Interest and Prior Services** – The ETHICS RULE was edited to clarify that in assignments in which there is no appraisal or appraisal review report, only the initial disclosure to the client is required - a certification is required only for appraisal and appraisal review assignments.
- 4. Revisions to the COMPETENCY RULE** – The COMPETENCY RULE has always required that an appraiser be competent to perform the assignment, or acquire the necessary competency to perform the assignment, or withdraw from the assignment. However, the COMPETENCY RULE previously did not expressly require the appraiser to act competently in the given assignment. The change to the COMPETENCY RULE now clearly states that the appraiser must perform competently when completing the assignment.
- 5. Report Options in STANDARDS 2, 8, and 10** – USPAP previously had three written report options for real property and personal property appraisal assignments: Self-Contained Appraisal Report, Summary Appraisal Report, and Restricted Use Appraisal Report. USPAP now has two written report options, Appraisal Report and Restricted Appraisal Report, for real property and personal property appraisal assignments; this is similar to STANDARD 10 Business Appraisal Reporting. In STANDARDS 2, 8, and 10, the “restricted use” report option name was changed to Restricted Appraisal Report.

An Appraisal Report must summarize the appraiser’s analysis and the rationale for the conclusions. A Restricted Appraisal Report might not include sufficient information for the client (no other intended users are allowed) to understand either the appraiser’s analyses or rationale for the appraiser’s conclusions.

Additional edits were made to the minimum report requirements. In Standards Rule 2-2(a)(i), clarifying changes were made regarding intended users. The order of the requirements in subsections (iii) and (iv) within Standards Rule 2-2(a) were rearranged. In Standards Rule 2-2(a)(vi), the date of report was defined. In Standards Rule 2-2(a)(vii) and 2-2(b)(vii) the statement, “The signing appraiser must also state the name(s) of those providing the significant real estate assistance” was edited. The new statement eliminates “the signing appraiser, and states “The name(s) of those providing the significant real property appraisal assistance must be stated in the certification.” In Standards Rule 2-2(a)(viii), “agreements of sale” was added. In Standards Rule 2-2(a)(ix) and 2-2(b)(ix), the statement was divided with the last part of the statement becoming Standards Rule 2-2(a)(x) and 2-2(b)(x). The remaining items under these Standards Rules were renumbered. Similar changes were made to Standards Rules 8-2 and 10-2.

Lastly, to be consistent with items identified in the development requirements of Standards Rule 1-2(e)(i), an edit was made to Standards Rule 2-2(a)(iii) to include the summarization of legal

573 (a) identify and analyze the effect on use and value of existing land use regulations, reasonably  
 574 probable modifications of such land use regulations, economic supply and demand, the physical  
 575 adaptability of the real estate, and market area trends; and

576 Comment: An appraiser must avoid making an unsupported assumption or premise about  
 577 market area trends, effective age, and remaining life.

578 (b) develop an opinion of the highest and best use of the real estate.

579 Comment: An appraiser must analyze the relevant legal, physical, and economic factors to the  
 580 extent necessary to support the appraiser's highest and best use conclusion(s).

#### 581 Standards Rule 1-4

582 In developing a real property appraisal, an appraiser must collect, verify, and analyze all information  
 583 necessary for credible assignment results.

584 (a) When a sales comparison approach is necessary for credible assignment results, an appraiser  
 585 must analyze such comparable sales data as are available to indicate a value conclusion.

586 (b) When a cost approach is necessary for credible assignment results, an appraiser must:

587 (i) develop an opinion of site value by an appropriate appraisal method or technique;

588 (ii) analyze such comparable cost data as are available to estimate the cost new of the  
 589 improvements (if any); and

590 (iii) analyze such comparable data as are available to estimate the difference between the  
 591 cost new and the present worth of the improvements (accrued depreciation).

592 (c) When an income approach is necessary for credible assignment results, an appraiser must:

593 (i) analyze such comparable rental data as are available and/or the potential earnings  
 594 capacity of the property to estimate the gross income potential of the property;

595 (ii) analyze such comparable operating expense data as are available to estimate the  
 596 operating expenses of the property;

597 (iii) analyze such comparable data as are available to estimate rates of capitalization and/or  
 598 rates of discount; and

599 (iv) base projections of future rent and/or income potential and expenses on reasonably clear  
 600 and appropriate evidence.<sup>13</sup>

601 Comment: In developing income and expense statements and cash flow projections,  
 602 an appraiser must weigh historical information and trends, current supply and  
 603 demand factors affecting such trends, and anticipated events such as competition  
 604 from developments under construction.

605 (d) When developing an opinion of the value of a leased fee estate or a leasehold estate, an appraiser  
 606 must analyze the effect on value, if any, of the terms and conditions of the lease(s).

<sup>13</sup> See Statement on Appraisal Standards No. 2, *Discounted Cash Flow Analysis*.

## STANDARD 1

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607 (e) **When analyzing the assemblage of the various estates or component parts of a property, an**  
608 **appraiser must analyze the effect on value, if any, of the assemblage. An appraiser must refrain**  
609 **from valuing the whole solely by adding together the individual values of the various estates or**  
610 **component parts.**

611 Comment: Although the value of the whole may be equal to the sum of the separate estates or  
612 parts, it also may be greater than or less than the sum of such estates or parts. Therefore, the  
613 value of the whole must be tested by reference to appropriate data and supported by an  
614 appropriate analysis of such data.

615 A similar procedure must be followed when the value of the whole has been established and  
616 the appraiser seeks to value a part. The value of any such part must be tested by reference to  
617 appropriate data and supported by an appropriate analysis of such data.

618 (f) **When analyzing anticipated public or private improvements, located on or off the site, an**  
619 **appraiser must analyze the effect on value, if any, of such anticipated improvements to the extent**  
620 **they are reflected in market actions.**

621 (g) **When personal property, trade fixtures, or intangible items are included in the appraisal, the**  
622 **appraiser must analyze the effect on value of such non-real property items.**

623 Comment: When the scope of work includes an appraisal of personal property, trade fixtures  
624 or intangible items, competency in personal property appraisal (see STANDARD 7) or  
625 business appraisal (see STANDARD 9) is required.

### 626 Standards Rule 1-5

627 **When the value opinion to be developed is market value, an appraiser must, if such information is**  
628 **available to the appraiser in the normal course of business:<sup>14</sup>**

629 (a) **analyze all agreements of sale, options, and listings of the subject property current as of the**  
630 **effective date of the appraisal; and**

631 (b) **analyze all sales of the subject property that occurred within the three (3) years prior to the**  
632 **effective date of the appraisal.<sup>15</sup>**

633 Comment: See the Comments to Standards Rules 2-2(a)(viii) and 2-2(b)(viii) for  
634 corresponding reporting requirements relating to the availability and relevance of information.

### 635 Standards Rule 1-6

636 **In developing a real property appraisal, an appraiser must:**

637 (a) **reconcile the quality and quantity of data available and analyzed within the approaches used;**  
638 **and**

639 (b) **reconcile the applicability and relevance of the approaches, methods and techniques used to**  
640 **arrive at the value conclusion(s).**

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<sup>14</sup> See Advisory Opinion 24, *Normal Course of Business*.

<sup>15</sup> See Advisory Opinion 1, *Sales History*.

641 **STANDARD 2: REAL PROPERTY APPRAISAL, REPORTING**

642 **In reporting the results of a real property appraisal, an appraiser must communicate each analysis,**  
 643 **opinion, and conclusion in a manner that is not misleading.**

644 Comment: STANDARD 2 addresses the content and level of information required in a report  
 645 that communicates the results of a real property appraisal.

646 STANDARD 2 does not dictate the form, format, or style of real property appraisal reports.  
 647 The form, format, and style of a report are functions of the needs of intended users and  
 648 appraisers. The substantive content of a report determines its compliance.

649 **Standards Rule 2-1**

650 **Each written or oral real property appraisal report must:**

- 651 **(a) clearly and accurately set forth the appraisal in a manner that will not be misleading;**  
 652 **(b) contain sufficient information to enable the intended users of the appraisal to understand the**  
 653 **report properly; and**  
 654 **(c) clearly and accurately disclose all assumptions, extraordinary assumptions, hypothetical**  
 655 **conditions, and limiting conditions used in the assignment.**

656 **Standards Rule 2-2**

657 **Each written real property appraisal report must be prepared under one of the following options and**  
 658 **prominently state which option is used: Appraisal Report or Restricted Appraisal Report.<sup>16</sup>**

659 Comment: When the intended users include parties other than the client, an Appraisal Report  
 660 must be provided. When the intended users do not include parties other than the client, a  
 661 Restricted Appraisal Report may be provided.

662 The essential difference between these two options is in the content and level of information  
 663 provided. The appropriate reporting option and the level of information necessary in the  
 664 report are dependent on the intended use and the intended users.

665 An appraiser must use care when characterizing the type of report and level of information  
 666 communicated upon completion of an assignment. An appraiser may use any other label in  
 667 addition to, but not in place of, the label set forth in this Standard for the type of report  
 668 provided.

669 The report content and level of information requirements set forth in this Standard are  
 670 minimums for each type of report. An appraiser must supplement a report form, when  
 671 necessary, to ensure that any intended user of the appraisal is not misled and that the report  
 672 complies with the applicable content requirements set forth in this Standards Rule.

673 A party receiving a copy of an Appraisal Report or Restricted Appraisal Report in order to  
 674 satisfy disclosure requirements does not become an intended user of the appraisal unless the  
 675 appraiser identifies such party as an intended user as part of the assignment.

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<sup>16</sup> See Advisory Opinion 11, *Content of the Appraisal Report Options of Standards Rules 2-2, 8-2, and 10-2* and Advisory Opinion 12, *Use of the Appraisal Report Options of Standards Rules 2-2, 8-2, and 10-2*.

## STANDARD 2

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676 (a) **The content of an Appraisal Report must be consistent with the intended use of the appraisal**  
677 **and, at a minimum:**

678 (i) **state the identity of the client and any intended users, by name or type;**<sup>17</sup>

679 Comment: An appraiser must use care when identifying the client to ensure a clear  
680 understanding and to avoid violations of the Confidentiality section of the ETHICS  
681 RULE. In those rare instances when the client wishes to remain anonymous, an  
682 appraiser must still document the identity of the client in the workfile but may omit  
683 the client's identity in the report.

684 Intended users of the report might include parties such as lenders, employees of  
685 government agencies, partners of a client, and a client's attorney and accountant.

686 (ii) **state the intended use of the appraisal;**<sup>18</sup>

687 (iii) **summarize information sufficient to identify the real estate involved in the appraisal,**  
688 **including the physical, legal, and economic property characteristics relevant to the**  
689 **assignment;**<sup>19</sup>

690 Comment: The real estate involved in the appraisal can be specified, for example, by  
691 a legal description, address, map reference, copy of a survey or map, property sketch,  
692 and/or photographs or the like. The summarized information can include a property  
693 sketch and photographs in addition to written comments about the legal, physical,  
694 and economic attributes of the real estate relevant to the type and definition of value  
695 and intended use of the appraisal.

696 (iv) **state the real property interest appraised;**

697 Comment: The statement of the real property rights being appraised must be  
698 substantiated, as needed, by copies or summaries of title descriptions or other  
699 documents that set forth any known encumbrances.

700 (v) **state the type and definition of value and cite the source of the definition;**

701 Comment: Stating the definition of value also requires any comments needed to  
702 clearly indicate to the intended users how the definition is being applied.

703 When reporting an opinion of market value, state whether the opinion of value is:

- 704 • in terms of cash or of financing terms equivalent to cash, or  
705 • based on non-market financing or financing with unusual conditions or  
706 incentives.

707 When an opinion of market value is not in terms of cash or based on financing terms  
708 equivalent to cash, summarize the terms of such financing and explain their  
709 contributions to or negative influence on value.

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<sup>17</sup> See Statement on Appraisal Standards No. 9, *Identification of Intended Use and Intended Users*.

<sup>18</sup> See Statement on Appraisal Standards No. 9, *Identification of Intended Use and Intended Users*.

<sup>19</sup> See Advisory Opinion 2, *Inspection of Subject Property*, and Advisory Opinion 23, *Identifying the Relevant Characteristics of the Subject Property of a Real Property Appraisal Assignment*.

710 When an opinion of reasonable exposure time has been developed in compliance  
711 with Standards Rule 1-2(c), the opinion must be stated in the report.<sup>20</sup>

712 **(vi) state the effective date of the appraisal and the date of the report;**<sup>21</sup>

713 Comment: The effective date of the appraisal establishes the context for the value  
714 opinion, while the date of the report indicates whether the perspective of the  
715 appraiser on the market and property as of the effective date of the appraisal was  
716 prospective, current, or retrospective.

717 **(vii) summarize the scope of work used to develop the appraisal;**<sup>22</sup>

718 Comment: Because intended users' reliance on an appraisal may be affected by the  
719 scope of work, the report must enable them to be properly informed and not misled.  
720 Sufficient information includes disclosure of research and analyses performed and  
721 might also include disclosure of research and analyses not performed.

722 When any portion of the work involves significant real property appraisal assistance,  
723 the appraiser must summarize the extent of that assistance. The name(s) of those  
724 providing the significant real property appraisal assistance must be stated in the  
725 certification, in accordance with Standards Rule 2-3.<sup>23</sup>

726 **(viii) summarize the information analyzed, the appraisal methods and techniques employed,  
727 and the reasoning that supports the analyses, opinions, and conclusions; exclusion of the  
728 sales comparison approach, cost approach, or income approach must be explained;**

729 Comment: An Appraisal Report must include sufficient information to indicate that  
730 the appraiser complied with the requirements of STANDARD 1. The amount of  
731 detail required will vary with the significance of the information to the appraisal.

732 The appraiser must provide sufficient information to enable the client and intended  
733 users to understand the rationale for the opinions and conclusions, including  
734 reconciliation of the data and approaches, in accordance with Standards Rule 1-6.

735 When reporting an opinion of market value, a summary of the results of analyzing  
736 the subject sales, agreements of sale, options, and listings in accordance with  
737 Standards Rule 1-5 is required.<sup>24</sup> If such information is unobtainable, a statement on  
738 the efforts undertaken by the appraiser to obtain the information is required. If such  
739 information is irrelevant, a statement acknowledging the existence of the information  
740 and citing its lack of relevance is required.

741 **(ix) state the use of the real estate existing as of the date of value and the use of the real  
742 estate reflected in the appraisal;**

<sup>20</sup> See Statement on Appraisal Standards No. 6, *Reasonable Exposure Time in Real Property and Personal Property Opinions of Value*. See also Advisory Opinion 7, *Marketing Time Opinions*, and Advisory Opinion 22, *Scope of Work in Market Value Appraisal Assignments, Real Property*.

<sup>21</sup> See Statement on Appraisal Standards No. 3, *Retrospective Value Opinions*, and Statement on Appraisal Standards No. 4, *Prospective Value Opinions*.

<sup>22</sup> See Advisory Opinion 28, *Scope of Work Decision, Performance, and Disclosure*, and Advisory Opinion 29, *An Acceptable Scope of Work*.

<sup>23</sup> See Advisory Opinion 31, *Assignments Involving More than One Appraiser*.

<sup>24</sup> See Advisory Opinion 1, *Sales History*.

## STANDARD 2

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- 743 (x) when an opinion of highest and best use was developed by the appraiser, summarize the  
744 support and rationale for that opinion;
- 745 (xi) clearly and conspicuously:
- 746 • state all extraordinary assumptions and hypothetical conditions; and
  - 747 • state that their use might have affected the assignment results; and
- 748 (xii) include a signed certification in accordance with Standards Rule 2-3.
- 749 (b) The content of a Restricted Appraisal Report must be consistent with the intended use of the  
750 appraisal and, at a minimum:
- 751 (i) state the identity of the client, by name or type;<sup>25</sup> and state a prominent use restriction  
752 that limits use of the report to the client and warns that the rationale for how the  
753 appraiser arrived at the opinions and conclusions set forth in the report may not be  
754 understood properly without additional information in the appraiser's workfile;
- 755 Comment: An appraiser must use care when identifying the client to ensure a clear  
756 understanding and to avoid violations of the Confidentiality section of the ETHICS  
757 RULE. In those rare instances when the client wishes to remain anonymous, an  
758 appraiser must still document the identity of the client in the workfile but may omit  
759 the client's identity in the report.
- 760 The Restricted Appraisal Report is for client use only. Before entering into an  
761 agreement, the appraiser should establish with the client the situations where this  
762 type of report is to be used and should ensure that the client understands the  
763 restricted utility of the Restricted Appraisal Report.
- 764 (ii) state the intended use of the appraisal;<sup>26</sup>
- 765 Comment: The intended use of the appraisal must be consistent with the limitation  
766 on use of the Restricted Appraisal Report option in this Standards Rule (i.e., client  
767 use only).
- 768 (iii) state information sufficient to identify the real estate involved in the appraisal;<sup>27</sup>
- 769 Comment: The real estate involved in the appraisal can be specified, for example, by  
770 a legal description, address, map reference, copy of a survey or map, property sketch,  
771 and/or photographs or the like.
- 772 (iv) state the real property interest appraised;
- 773 (v) state the type of value and cite the source of its definition;<sup>28</sup>

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<sup>25</sup> See Statement on Appraisal Standards No. 9, *Identification of Intended Use and Intended Users*.

<sup>26</sup> See Statement on Appraisal Standards No. 9, *Identification of Intended Use and Intended Users*.

<sup>27</sup> See Advisory Opinion 2, *Inspection of Subject Property*.

<sup>28</sup> See Statement on Appraisal Standards No. 6, *Reasonable Exposure Time in Real Property and Personal Property Opinions of Value*. See also Advisory Opinion 7, *Marketing Time Opinions*, and Advisory Opinion 22, *Scope of Work in Market Value Appraisal Assignments, Real Property*.

774 Comment: When an opinion of reasonable exposure time has been developed in  
775 compliance with Standards Rule 1-2(c), the opinion must be stated in the report.

776 **(vi) state the effective date of the appraisal and the date of the report;**<sup>29</sup>

777 Comment: The effective date of the appraisal establishes the context for the value  
778 opinion, while the date of the report indicates whether the perspective of the  
779 appraiser on the market and property as of the effective date of the appraisal was  
780 prospective, current, or retrospective.

781 **(vii) state the scope of work used to develop the appraisal;**<sup>30</sup>

782 Comment: Because the client's reliance on an appraisal may be affected by the scope  
783 of work, the report must enable them to be properly informed and not misled.  
784 Sufficient information includes disclosure of research and analyses performed and  
785 might also include disclosure of research and analyses not performed.

786 When any portion of the work involves significant real property appraisal assistance,  
787 the appraiser must state the extent of that assistance. The name(s) of those providing  
788 the significant real property appraisal assistance must be stated in the certification, in  
789 accordance with Standards Rule 2-3.<sup>31</sup>

790 **(viii) state the appraisal methods and techniques employed, state the value opinion(s) and  
791 conclusion(s) reached, and reference the workfile; exclusion of the sales comparison  
792 approach, cost approach, or income approach must be explained;**

793 Comment: An appraiser must maintain a specific, coherent workfile in support of a  
794 Restricted Appraisal Report. The contents of the workfile must include sufficient  
795 information to indicate that the appraiser complied with the requirements of  
796 STANDARD 1 and for the appraiser to produce an Appraisal Report.

797 When reporting an opinion of market value, a summary of the results of analyzing  
798 the subject sales, agreements of sale, options, and listings in accordance with  
799 Standards Rule 1-5 is required. If such information is unobtainable, a statement on  
800 the efforts undertaken by the appraiser to obtain the information is required. If such  
801 information is irrelevant, a statement acknowledging the existence of the information  
802 and citing its lack of relevance is required.

803 **(ix) state the use of the real estate existing as of the date of value and the use of the real  
804 estate reflected in the appraisal;**

805 **(x) when an opinion of highest and best use was developed by the appraiser, state that  
806 opinion;**

807 **(xi) clearly and conspicuously:**

808 **• state all extraordinary assumptions and hypothetical conditions; and**

<sup>29</sup> See Statement on Appraisal Standards No. 3, *Retrospective Value Opinions*, and Statement on Appraisal Standards No. 4, *Prospective Value Opinions*.

<sup>30</sup> See Advisory Opinions 28, *Scope of Work Decision, Performance, and Disclosure*, and Advisory Opinion 29, *An Acceptable Scope of Work*.

<sup>31</sup> See Advisory Opinion 31, *Assignments Involving More than One Appraiser*.

## STANDARD 2

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- 809                   •   state that their use might have affected the assignment results; and
- 810           (xii)   include a signed certification in accordance with Standards Rule 2-3

### 811   Standards Rule 2-3

812   Each written real property appraisal report must contain a signed certification that is similar in content  
813   to the following form:

814   **I certify that, to the best of my knowledge and belief:**

- 815           —       the statements of fact contained in this report are true and correct.
- 816           —       the reported analyses, opinions, and conclusions are limited only by the reported  
817           assumptions and limiting conditions and are my personal, impartial, and unbiased  
818           professional analyses, opinions, and conclusions.
- 819           —       I have no (or the specified) present or prospective interest in the property that is the  
820           subject of this report and no (or the specified) personal interest with respect to the  
821           parties involved.
- 822           —       I have performed no (or the specified) services, as an appraiser or in any other capacity,  
823           regarding the property that is the subject of this report within the three-year period  
824           immediately preceding acceptance of this assignment.
- 825           —       I have no bias with respect to the property that is the subject of this report or to the  
826           parties involved with this assignment.
- 827           —       my engagement in this assignment was not contingent upon developing or reporting  
828           predetermined results.
- 829           —       my compensation for completing this assignment is not contingent upon the  
830           development or reporting of a predetermined value or direction in value that favors  
831           the cause of the client, the amount of the value opinion, the attainment of a stipulated  
832           result, or the occurrence of a subsequent event directly related to the intended use of  
833           this appraisal.
- 834           —       my analyses, opinions, and conclusions were developed, and this report has been  
835           prepared, in conformity with the *Uniform Standards of Professional Appraisal Practice*.
- 836           —       I have (or have not) made a personal inspection of the property that is the subject of  
837           this report. (If more than one person signs this certification, the certification must  
838           clearly specify which individuals did and which individuals did not make a personal  
839           inspection of the appraised property.)<sup>32</sup>
- 840           —       no one provided significant real property appraisal assistance to the person signing  
841           this certification. (If there are exceptions, the name of each individual providing  
842           significant real property appraisal assistance must be stated.)

843   Comment: A signed certification is an integral part of the appraisal report. An appraiser who  
844   signs any part of the appraisal report, including a letter of transmittal, must also sign this  
845   certification.

846   In an assignment that includes only assignment results developed by the real property  
847   appraiser(s), any appraiser(s) who signs a certification accepts full responsibility for all  
848   elements of the certification, for the assignment results, and for the contents of the appraisal  
849   report. In an assignment that includes personal property, business or intangible asset  
850   assignment results not developed by the real property appraiser(s), any real property  
851   appraiser(s) who signs a certification accepts full responsibility for the real property elements

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<sup>32</sup> See Advisory Opinion 2, *Inspection of Subject Property*.

**animal unit month (AUM).** The quantity of feed that one animal unit needs for one month to sustain life and achieve good growth.

**annualizer (*a*).** An element in yield and change formulas that converts the total change in capital value over the projection period to an annual percentage; varies with the pattern of the income stream.

**annual percentage rate.** The effective annual interest rate. Truth in lending legislation requires that loan instruments and advertising show the interest cost to the borrower in the form of an annual rate.

**annuals.** A type of range vegetation in which annual forbs or annual grasses constitute the dominant vegetation.

**annuity.** Annual income; a program or contract requiring regular payments of stipulated amounts. *See also* annuity certain; annuity payable in advance; constant dollar change per period annuity; constant ratio change per period annuity; decreasing annuity; deferred annuity; increasing annuity; Inwood annuity; level annuity; life annuity; ordinary annuity; reverse annuity mortgage (RAM); step-down annuity; step-up annuity; variable annuity.

**annuity capitalization.** *See* yield capitalization.

**annuity certain.** An annuity that is assured for a specified period of time, as distinguished from a life annuity, which terminates with the death of an individual.

**annuity due.** *See* annuity payable in advance.

**annuity payable in advance.** A type of level annuity in which payments are received at the beginning of each period.

**anodized aluminum.** Aluminum that is covered with a hard, corrosion-resistant, oxide film using an electrochemical process.

**anticipated use procedure.** *See* development procedure.

**anticipation.** The perception that value is created by the expectation of benefits to be derived in the future.

**inadequate improvement.** *See* underimprovement.

**incentive zoning.** An agreement between public officials and private developers concerning rentable building bulk and the minimum building bulk specified by the zoning ordinance. In this arrangement, a desirable public improvement or open-space objective is established by government officials and developers are offered an incentive, greater usable building bulk, to provide the desired amenity. Planned unit developments and voluntary cluster developments are forms of incentive zoning. [9]

**incinerator.** A device that burns waste material and rubbish.

**income.** Money or other benefits that are assumed to be received periodically.

**income approach.** *See* income capitalization approach.

**income capitalization approach.** A set of procedures in which an appraiser derives a value indication for income-producing property by converting anticipated benefits into property value. This conversion is accomplished either by 1) capitalizing a single year's income expectancy or an annual average of several years' income expectancies at a market-derived capitalization rate or a capitalization rate that reflects a specified income pattern, return on investment, and change in the value of the investment; or 2) discounting the annual cash flows for the holding period and the reversion at a specified yield rate.

**income participation.** The right of the mortgagee to share some portion of the future income generated by the property, usually over the term of the underlying mortgage. *See also* equity participation.

**income-producing life.** A period of time that begins when a plant or crop achieves peak production and ends when production declines; refers specifically to orchard or vineyard crops that require a long start-up period before cash flow is realized; varies with the type of crop and the effectiveness of management.

**income-producing property.** A type of property created primarily to produce monetary income.

**spur track.** A segment of track that serves an industrial site or plant with no regular train service; generally connected to the main track at only one end; may be applied to trackage of the railroad company used for siding purposes.

**square.** In roofing, a finished roof area of 100 square feet.

**square foot cost.** The cost of one square foot of an improvement; obtained by dividing the actual, or estimated, cost of a building by its gross floor area, or the actual, or estimated, cost of a land improvement by its square foot area; can also be multiplied by the number of square feet in a building or land improvement to produce the actual or estimated cost.

**square foot method.** *See* comparative-unit method; quantity survey method; unit-in-place method.

**squatter's rights.** Rights to the occupancy of land that are created by long, undisturbed use, but held without legal title or arrangement; in the nature of a right at common law.

**SRS.** Specialist in Real Estate Securities. *See also* Real Estate Securities and Syndication Institute (RESSI).

**stabilized expense.** A projected expense that is subject to change but has been adjusted to reflect an equivalent, stable annual expense.

**stabilized income.** Projected income that is subject to change but has been adjusted to reflect an equivalent, stable annual income.

**stack.** A vertical waste or vent pipe.

**staging.** A temporary scaffolding used to support workers and materials during construction.

**stainless steel.** An alloy of steel that contains a large percentage of chromium combined with nickel, copper, or other alloys; a hard, corrosion-resistant steel that retains a polish.

# V

**VA.** *See* Veterans Administration.

**vacancy.** Unrented space.

**vacancy rate**

1. The relationship between the amount of vacant space and total space in a building.
2. The relationship between the rent estimated for vacant building space and the total rent estimated for all the space in the building.

**vacant land.** *See* unimproved land.

**valley**

1. The line where two sloping roofs intersect.
2. The lowland that lies between two hills.

**valley flashing.** Pieces of lead, tin, or sheet metal that are placed along the valley of a roof to make the roof intersection waterproof.

**valuation.** The process of estimating the market value, investment value, insurable value, or other properly defined value of an identified interest or interests in a specific parcel or parcels of real estate as of a given date.

**valuation accounts.** In accounting, reserves for depreciation or amortization. To the appraiser, they represent a reduction in the cost of the assets to which they apply. [12]

**valuation process.** A systematic procedure employed to provide the answer to a client's question about real property value.

**valuator.** *See* appraiser.

**value**

1. The monetary worth of property, goods, services, etc.
2. The present worth of future benefits that accrue to real property ownership.

# THE APPRAISAL OPERATING MANUAL

2. The allocation of these components is not required for the Value Analysis Report or the Value Finding Report.

## E. Definition of Market Value from Ohio Jury Instruction (OJI):

The definition of market value used by the Ohio Department of Transportation is taken from Ohio Jury Instruction. This statement is the charge given to a jury by the judge in an eminent domain trial just before the jury is sequestered to consider the evidence and render a verdict. The definition of market value used by ODOT in the acquisition of rights of way is: Ohio Jury Instruction [CV 609.05]:

*“You will award to the property owner(s) the amount of money you determine to be the fair market value of the property taken. Fair market value is the amount of money which could be obtained on the market at a voluntary sale of the property. It is the amount a purchaser who is willing, but not required to buy, would pay and that a seller who is willing, but not required to sell, would accept, when both are fully aware and informed of all the circumstances involving the value and use of the property. You should consider every element that a buyer would consider before making a purchase. You should take into consideration the location, surrounding area, quality and general condition of the premises, the improvements thereon and everything that adds to or detracts from the value of the property.”*

## F. Interrelating Laws, Regulations, and Standards:

There are many laws, regulations and standards governing the acquisition and valuation of real estate by entities having the power of eminent domain. Some of these laws and regulations originate with the Federal government and some originate with the State of Ohio. Some Federal laws and regulations are repeated in State laws and regulations because some state agencies, i.e. ODOT, utilize Federal funding in transportation projects. Noncompliance with Federal and/or State laws, rules and regulations risk forfeiture of Federal funding for the project. These appraisal and appraisal review procedures implement these laws into ODOT’s procedural practices.

### **4000.05      USPAP**

#### A. USPAP Compliance:

All appraisal reports and formats used by ODOT are to be compliant with the USPAP standards. USPAP is the Uniform Standards for Professional Appraisal Practice.

#### B. Restricted Use Appraisal Report:

# THE APPRAISAL OPERATING MANUAL

Restricted Use Appraisal Reports are not permitted to be used when ODOT, or any other acquiring agency subject to ODOT jurisdiction, is acquiring real property for a transportation project.

## C. Jurisdictional Exception:

1. The Jurisdictional Exception provision was rewritten in the 2010 edition of USPAP. As revised, certified and licensed appraisers may invoke the jurisdictional exception provision only if the appraiser is precluded by a law or regulation from complying with a part of USPAP and only that part of USPAP becomes void for that assignment.
2. The Ohio Administrative Code [section 5501:2-5-06 (B)(3)(b)(ii)(a)] was revised on September 27, 2010. This revision allows certified or licensed appraisers to cite regulation precluding compliance from certain parts of USPAP, thereby, allowing these appraisers to prepare and/or review the Value Analysis Report. This revised section of regulation is provided as follows:

*When an appraisal is determined to be unnecessary, the agency shall prepare a waiver valuation. Persons preparing or reviewing a waiver valuation are precluded from complying with standard rules 1, 2 and 3 of the "Uniform Standards of Professional Appraisal Practice" (USPAP), as in effect in the 2010-2011 Edition, as promulgated by the "Appraisal Standards Board of the Appraisal Foundation, which can be found at [http://www.uspap.org/2010USPAP/USPAP/frwrdrd/uspap\\_toc.htm](http://www.uspap.org/2010USPAP/USPAP/frwrdrd/uspap_toc.htm)*

3. In order to comply with USPAP while still performing a Value Analysis Report, the certified or licensed appraiser must comply with the rules established by ODOT for the Value Analysis, clearly and conspicuously disclose the parts of USPAP that are voided by the regulation and cite the regulation.

## D. Extraordinary Assumptions:

1. USPAP defines extraordinary assumptions as an assumption, directly related to a specific assignment, which, if found to be false, could alter the appraiser's opinions or conclusions. [USPAP, Definitions, Page U-3]

Before an appraiser can use an extraordinary assumption in an appraisal report the appraiser has to satisfy the following conditions: "An extraordinary assumption may be used in an assignment only if: it is required to properly develop credible opinions and conclusions; the appraiser has a reasonable basis for the extraordinary assumption; use of the extraordinary assumption results in a credible analysis; and the appraiser complies with the disclosure requirements set forth in USPAP for extraordinary assumptions." [USPAP SR1-2(f), page U-18]

## VALUATION FORMATS

Any cost to cure must be feasible and supported by a feasibility analysis within the appraisal report. This analysis requires the appraiser to value the residue property as uncured and report damages, if any, resulting from the uncured residue. The appraiser is then required to re-analyze and value the residue as cured and report the damages cured and any remaining damages that are uncured. The appraiser must then analyze and determine if the cure is feasible and based on this analysis, estimate compensation based on the residue either being uncured or cured. A complete discussion of the cost-to-cure process is found in section 4400.45 of the Real Estate Manual

- d. The District may, in the scope of work decision, limit the analysis in the Summary R/W Report to only land and any site improvements in the take area. The District shall make this decision (not a consultant), document the decision in writing, and the appraiser shall include this letter in the appraisal report. (See Section 4000.10 of these procedures for further discussion).

When the acquisition takes the entire property (leaving no residue), the District may use the “Before the Taking Valuation” section of the Summary R/W Report. This part of the appraisal analyzes the larger property before the take. The second half of the appraisal does not need to be completed as there is no residue property to analyze.

- e. ODOT requires all relevant approaches to value be considered so the appraisal is not misleading.
- f. The Summary Report must be compliant with USPAP. Restricted Use Appraisal Reports prepared for the purpose of acquiring rights of way are not permitted at ODOT.
- g. Requirements to support the appraiser’s conclusions
  - i. The appraisal is to have reasonable support for adjustments and conclusions. Reasonable means the appraisal reviewer has enough information to understand the appraiser’s reasoning, conclusions and value estimates.
  - ii. The reporting option under USPAP may be that of a Summary Report, but this procedure requires adequate support for adjustments, reasoning, conclusions and values and this requirement of adequate support may be more consistent with the requirements for a Self-Contained Report (reference USPAP, reporting options, Standard Rule 2).
- h. The person who prepares the Summary Report is required to physically view the larger parcel and the take area.