

**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. 2014-0885

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

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

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**TABLE OF CONTENTS**

Table of Authorities ..... iii

Reply to Appellee’s Statement of the Case and Facts .....1

    1. Irrelevance of 2008 BOR Decision.....1

    2. Age of Complex as of January 1, 2005.....1

    3. Horner’s Income Approach.....2

Reply to Appellee’s Arguments of Law .....3

    4. Horner’s appraisal contained no market data to support his opinion of value.....3

    5. This Court does not act as a Super-BTA when it requires the BTA to comply with the laws governing the determination of the true value of real property .....8

    6. A state certified appraiser is not permitted by law to identify intended users in a ‘Restricted Use Appraisal’ beyond those contemplated by USPAP.....9

    7. The Appellant Board of Education had no burden of proof at any point in this appeal. ....15

Conclusion .....17

Certificate of service .....19

2nd Appendix 2<sup>nd</sup> Appx P.

USPAP Standards Rule 2-2 (2006).....1

**TABLE OF AUTHORITIES**

**Cases:**

*Dublin City Sch. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 139 Ohio St.3d 212, 2014-Ohio-1940.....15

*Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision*, 75 Ohio St. 3d 552, 664 N.E.2d 922 (1996).....16

*South-Western City Schs. Bd. of Educ. v. Franklin Cty. Bd. of Revision*, BTA No. 2013-5327, 2014 Ohio Tax LEXIS 4303, (Sept. 11, 2014) .....14

*Vandalia Butler City Sch. Bd. of Edn. v. Montgomery Cty. Bd. of Revision*, 130 Ohio St.3d 291, 2011-Ohio-5078 .....16

*Villa Park Ltd. v. Clark Cty. Bd. of Revision*, 68 Ohio St. 3d 215, 218-219, 625 N.E.2d 613 (1994).....16

**Statutes and Rules:**

R.C. 4763.01(D) & (E) .....11

R.C. 4763.12 .....11

R.C. 4763.13 .....11

R.C. 5715.01 .....8

R.C. 5715.10 .....16, 17

R.C. 5717.03 .....13

R.C. 5717.04 .....8

Adm. Code Rule 5703-25-05 .....16

Adm. Code Rule 5703-25-06(A) .....8, 13, 17

USPAP Standards Rule 1-4 .....5

USPAP Standards Rule 2-2 .....10

## Reply to Appellee's Statement of the Case and Facts

1. Irrelevance of 2008 BOR Decision - On page one of its Merit Brief, Appellee Albany Commons, claims that it is of some relevance that the Appellant Board of Education appealed the decision of the Franklin County BOR for tax year 2005, but did not appeal its decision for tax year 2008. However, that fact is of no relevance. The Franklin County Board of Revision placed substantially different values on the property for tax years 2005 and 2008, and this difference would have to be taken into account by any attorney or client in determining whether it was worth while to appeal the tax year 2008 decision. As noted by Appellant in its Merit Brief, the BOR's value for tax year 2008 was \$11,400,000, while the BOR's value for tax year 2005 was only \$9,338,000.

2. Age of Complex as of January 1, 2005 - Appellee appears to suggest on pages 1 and 2 of its Merit Brief that a cost approach could not be used to value the new complex because the units were built at different times and were subject to "different levels of depreciation" (Merit Brief, p. 2). There is no evidence in the record to suggest that any of the apartment units were subject to any measurable degree of "depreciation" and the property owner's appraiser made no claims to the contrary. According to Horner, "[t]he first phase of the development (180-units) was completed in 2002 and the 2<sup>nd</sup> phase (60-units) was finished in the latter part of 2003 or early 2004: (Appraisal, p. 16; Appellant's Supp. p. 8). At issue is tax year 2005. As of January 1, 2005, three-quarters of the units were less than three years old and the remaining units were only a year old. Second, Appellee asserts that "there was no specific testimony at the BOR hearing regarding the exact costs to construct the subject apartment complex" (Merit Brief, p. 2). However, at the BTA hearing, Appellee's witness, Patrick Kelly, testified that the complex cost a total of "about \$12 million" to build (BTA Tr. p. 22; Appellant's Supp. p. 19), and the land had

been purchased by a corporate predecessor of New Albany Commons for \$992,000 according to the property record card included in the appendix of Horner Appraisal.

3. Horner's Income Approach - On page 3 of its Merit Brief, Appellee claims that Horner was correct in his "averaging of the 2004 and 2005 *rental rates*, which he believed based on his research to be reflective of market rents" (emphasis added). However, Horner did not average the "rental rates" for the property. In fact, he made no reference to the actual rental rates or the actual expenses for the property, and he did not even attempt to determine market or economic rents, or market expenses, for the property as of tax lien day. In his income approach, Horner simply used the average of the *actual net operating income* for 2004 and 2005 for the property for appraisal purposes. Horner included no market rental data or expense data in his report, so there is not a single fact in the report to support any claim that Horner's determined that the average actual rents for 2004 and 2005 were equivalent to market rents for the property.

Appellee also claims that Horner was correct in using a stabilized vacancy rate of 15% to value the property as of January 1, 2005 (Merit Brief, p. 3). However, Horner did not use a 15% stabilized vacancy rate in his appraisal: in fact, he did not even calculate or use a stabilized vacancy rate in his appraisal because he simply averaged the *actual net operating income* for 2004 and 2005 together. He admitted that the vacancy rate for 2004 was higher than what would be the proper stabilized vacancy rate for appraisal purposes because Horner 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, p. 22; Appellant's Supp. p. 13; emphasis added). Thus, by his own admission, Horner undervalued the property by using the actual net operating income for 2004 to value the property.

### **Reply to Appellee's Arguments of Law**

4. Horner's appraisal contained no market data to support his opinion of value.

As repeatedly emphasized by Appellant in its Merit Brief, Horner's appraisal report contained no market data to support his opinion of value. As to his income approach, 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 did not prepare a market approach to value because he incredibly claimed that it was not possible to do a market or sales comparison approach appraisal of an apartment complex, but he did give a per-unit opinion of value based on the ten sales he included in his report for purposes of determining a capitalization rate. However, these sales ranged in date from 2003 to 2010, and Horner did not provide any information about, or describe in any way, any of the ten comparable properties: the only information he gave about any of these sales was the name of the apartment complex. 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 did not do a cost approach to value the property.

In its defense of the BTA's decision, Appellee's Merit Brief presents the issue involved in this appeal in its most fundamental aspects. As did the BTA, Appellee essentially claims that

the true value of Appellee's property for tax year 2005 was \$9,338,000 solely *because that is what Appellee's appraiser said it was*. This is precisely what the BTA held below: the true value of Appellee's property was \$9,338,000 because that is what the appraiser said it was.<sup>1</sup> According to the BTA, Horner's appraisal was competent evidence and since all of the judgments made by Horner were "subjective judgments" that it now claims are not subject to review or challenge by the Board of Education. According to the Appellee and the BTA, since Horner's private but unsupported opinions cannot be contested, then Horner's value must be correct and the BTA has to accept Horner's value and no actual analysis is required by the BTA.

Appellee does not dispute the fact that Horner included *no market data* in his appraisal report (other than the cap rate sales), which is consistent with the fact that Horner's appraisal was a "Restricted Use Appraisal." Instead, Appellee merely asserts that Mr. Horner "*reviewed*" all of the required appraisal data to be used in an income approach (Appellee's Merit Brief, p. 3; emphasis added), and that Horner "conducted an appropriate *review* of relevant data as the basis for his market-based income capitalization approach." (Appellee's Merit Brief, p. 3; emphasis added.) First, other than Horner's claim that the essential market data was "within our file memorandum," (Appraisal, p. 20; Appellant's Supp. p. 11) there is no evidence in the record to show that Horner actually "reviewed" any market data that was relevant to the appraisal of Appellee's property. Second, the fact that Horner claimed to have "reviewed" all of the required market data, rather than include any of that data in his appraisal report, is legally irrelevant.

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<sup>1</sup> The BTA continues to put forth the unlawful proposition that so long as any appraiser appears and renders an opinion of value that is as of tax lien day and is done for tax purposes, that it has no duty whatsoever to actually review and evaluate the actual data and conclusions contained within the appraisal report and to independently determine value.

It is irrelevant what data an appraiser may have “reviewed” in preparing his appraisal report. USPAP Standards Rule 1-4 states that *all appraisers*, even when preparing a “Restricted Use Appraisal,”<sup>2</sup> “*must collect, verify, and analyze all information necessary for credible assignment results.*” (emphasis added.) This Rule specifically includes the requirements that the appraiser:

- (a) \*\*\* must analyze such comparable sales data as are available to indicate a value conclusion”
- (b) When a cost approach is necessary for credible assignment results, an appraiser must:
  - \*\*\*
  - (ii) analyze such comparable cost data as are available to estimate the cost new of the improvements (if any); and
  - (iii) analyze such comparable data as are available to estimate the difference between the cost new and the present worth of the improvements (accrued depreciation);
- (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.)

Reference to USPAP in this case is merely expository: R.C. 5715.01, the Administrative Code Rules adopted thereunder, and this Court’s decisions have all required *the BTA to analyze all of the above market data in determining the true value of real property* since the 1950s. See

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<sup>2</sup> Now known as a “Restricted Appraisal.”

Appellant's Proposition of Law No. 1 (page 14 of Appellant's Merit Brief and the Rules and cases cited at pages 16 to 19).

Thus, under the law, all appraisers, even those who prepare a "Restricted Use Appraisal" "must collect, verify, and analyze all" the above required market data. The distinction is obviously not whether the appraiser has "reviewed" the data because all appraisers are required to do this, but rather *whether the market data was included in the appraisal report*. If it is not contained within the appraisal report, then it is impossible for the BTA to perform its duty independently review the market data to determine whether the appraisers adjustments (subjective or otherwise) and conclusions are supportable. Existing Ohio laws governing the determination of true value, make it clear that a private "review" of the data by the appraiser cannot possibly be sufficient. Rather, that data must be included in the report so that responsible third parties can judge for themselves whether the appraisal is worth the paper it is written on. By accepting an opinion of value for real property tax purposes that did not contain any market data that was sufficient to support the opinion of value, the BTA did not act as a responsible third party and its blind deference to a "restricted use appraisal" with no analysis is unreasonable and unlawful.

Appellee also attempts to justify Horner's refusal to do a market approach because "Mr. Horner *believed*, in his professional judgment, that a meaningful market approach to value (sales comparison approach) could not be performed." (Appellee's Merit Brief, p. 4; emphasis added.) Horner provided no support of any kind for his opinion that a market approach could not be used to value an apartment complex. According to Appellee, "an appraisal report does not have to contain an explanation and justification for every single decision that an appraiser makes." (Appellee's Merit Brief, p. 6.) It is not a question of course of whether "every single decision

that an appraiser makes” must be supported by appraisal or market-related data. Under Ohio law an appraisal report must contain *sufficient market data* to support the appraiser’s opinion of value under each of the three methods required by law to be used to value the property (the cost, income, and sales comparison approach). An appraisal that contains no relevant market data cannot satisfy this requirement.

Appellee also attempts to justify an appraisal report that contains *no market data to support the appraiser’s opinion* by reference to the BTA’s nonsensical and unlawful holding that all judgments of an appraiser are “subjective” and thus not subject to challenge. Appellee sets forth this principle as follows: the “BTA held that it is inherent in the appraisal process that an appraiser, like Mr. Horner, who was a ‘qualified expert,’ ‘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.’ (Appellee’s Merit Brief, p. 6; citing the BTA’s decision at p. 3). Whether the judgment of an appraiser in “selecting” the relevant market data to be used to value the property is “subjective” or not is again irrelevant. The BTA’s sole job is to independently evaluate those “subjective judgments” in conjunction with reviewing the relevant market data upon which the judgments were made and determine whether or not the appraiser’s conclusion of value is sufficiently supported. The BTA now refuses to do any of this analysis and simply defers to any appraiser’s value so long as it meets the BTA’s 3-prong test for competency. In the present case, the issue is whether *the actual market data* used by the appraiser to value the property is set forth in the appraisal report so that a responsible third party can judge for itself whether the data does, in fact, support the appraiser’s value. Without any market data in his report, Mr. Horner’s conclusion of value cannot be properly supported.

5. This Court does not act as a Super-BTA when it requires the BTA to comply with the laws governing the determination of the true value of real property.

Appellee asserts that Appellant is asking this Court to act as a “Super BTA” in this appeal, which this Court has refused to do. (Merit Brief, p. 4.) However, this Court is required to determine whether the BTA’s decision was “reasonable and lawful” or was “unreasonable or unlawful” under R.C. 5717.04. Horner’s appraisal violated the law in all respects. His income approach was not based on the market data that the law requires to be used to determine true value (market rents, market expenses, and stabilized vacancy estimates – see Appellant’s Merit Brief, pp. 16-22 and the cases cited therein). Horner failed to perform a market approach (sales comparison), which both R.C. 5715.01 and Adm. Code Rule 5703-25-06(A) require to be used to value real property, and his justification for this failure was not coherent. Horner’s unsupported claim that a market approach cannot be used to value apartment units because of the “numerous differences [between apartments] from the standpoint of location and physical characteristics” would necessarily result in the ridiculous conclusion that no apartment complex could ever be valued using a sales comparison approach.<sup>3</sup> (see Appellant’s Merit Brief, pp 7-8, and p. 22.) Horner failed to perform a cost approach which is specifically required by R.C. 5715.01 and Adm. Code Rule 5703-25-06(A) and this Court’s prior decisions (see Appellant’s Merit Brief p. 9 and 23), and his reasons for this were likewise incoherent. According to Horner, the cost approach was not applicable to any property that consisted of “obsolete improvements or to

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<sup>3</sup> Under Horner’s theory, the property could not be valued under an income approach either because just like a sales comparison approach, an appraiser would be comparing the subject property to other apartment complexes which have the “numerous differences [between apartments] from the standpoint of location and physical characteristics.” A competent appraiser’s job is to make reasonable adjustments for these differences, not claim that they are too hard to do.

properties that have high levels of depreciation.” (appraisal, p. 8; Appellant’s Supp. 5.) No one has ever claimed that the units in the subject property, which were only one to three years old as of January 1, 2005, were “obsolete improvements” or had “high levels of depreciation” (or any level of depreciation for that matter). Finally, Horner failed to include any relevant market data in his appraisal report, which precluded the BOR and the BTA from placing any reliance whatsoever on the report.

6. A state certified appraiser is not permitted by law to identify intended users in a ‘Restricted Use Appraisal’ beyond those contemplated by USPAP.

Appellee claims that Horner’s appraisal complied with USPAP because Horner identified “intended users” in his “Restricted Use Appraisal,” such as the BOR and the Board of Education (Merit Brief, p. 5). In fact, Horner’s identification of “intended users” in his “restricted use appraisal” violated one of the most fundamental provisions of USPAP and R.C. 4763.12 and R.C. 4763.13 which implement the USPAP restrictions and incorporate those restrictions into state statute. Responding to Appellee requires a summary of the USPAP provisions dealing with the prohibitions relating to “restricted use appraisals.”

The Appraisal Foundation adopted The Uniform Standards of Professional Appraisal Practice (USPAP) in 1989 and this is recognized throughout the United States as a statement of generally accepted standards of professional appraisal practice. One of the main purposes of USPAP was to prevent any “third party” from relying on what was to be called a “restricted use appraisal”<sup>4</sup> which was determined by Congress to be a contributing cause of the savings and loan

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<sup>4</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. (2<sup>nd</sup> Appx. 1.) The revisions to USPAP for 2012-2013 change the name of the “restricted use appraisal” to “restricted appraisal.” (Appx. 19.)

crises and most recently is said to have contributed to the recession caused by the sub-prime mortgage crises.<sup>5</sup> A “restricted use appraisal” is by definition one that does not contain sufficient market data to allow any “third party” to make a responsible decision based on what is merely an unsupported opinion of an appraiser. USPAP prevents the use of a “restricted use appraisal” by third parties by prohibiting the appraiser from giving or presenting such an appraisal to any “third party” and by preventing the appraiser from appearing before any third party in support of a “restricted use appraisal.” As set forth on page 3 of Appellant’s Merit Brief, USPAP Standards Rule 2-2 implement this prohibition by requiring the appraiser in a *standard appraisal report* (a Self-Contained Appraisal Report and a Summary Appraisal Report) to “(i) state the identity of the client and *any intended users*, by name or type” (emphasis added), and the Comment to this provision states that “Intended users of the report might include parties such as lenders, employees of government agencies, partners of a client, and a client’s attorney and accountant.” (Appx. 23.) On the other hand, USPAP Standards Rule 2-2 states the following as to a “Restricted Appraisal Report” (formerly known as a “Restricted Use Appraisal Report”):

(b) The content of a Restricted Appraisal Report must be consistent with the intended use of the appraisal and, at a minimum:

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<sup>5</sup> See Cherokee W. Wooley, *Regulation Of Real Estate Appraisers And Appraisals: The Effects Of FIRREA*, 43 Emory L.J. 357 (Winter, 1994), and J. Kevin Murray, *Developments In The Law: The Home Mortgage Crisis: Issues In Appraisal Regulation: The Cracks In The Foundation Of The Mortgage Lending Process*, 43 Loy. L.A. L. Rev. 1301 (2010). According to J. Kevin Murray , writing in 43 Loy. L.A. L. Rev. 1301, at 1306, *supra*: “The similarities between the savings and loan crisis and the current home mortgage crisis are troubling. *Inaccurate appraisals played identical roles in both crises*, demonstrating the systemic and recurring nature of the problem. Although well-intentioned, the Title XI [FIRREA] regulatory system failed to ensure *the accuracy and reliability of appraisals*. As such, *appraisal inaccuracy will inevitably continue to cause devastating financial consequences* unless broad and decisive corrective measures are taken” (emphasis added).

(i) state the *identity of the client*, [here there is no reference to an “intended user”] by name or type; and state a *prominent use restriction that limits use of the report to the client* and warns that *the rationale for how the appraiser arrived at the opinions and conclusions set forth in the report may not be understood properly without additional information in the appraiser’s workfile*;

Comment:

*The Restricted Appraisal Report is for client use only.* Before entering into an agreement, the appraiser should establish with the client the situations where *this type of report is to be used* and should ensure that the client understands *the restricted utility of the Restricted Appraisal Report.* (Appx. 25.) (emphasis added.)

R.C. 4763.12 and R.C. 4763.13 then implement the USPAP restrictions and incorporate those restrictions into state statute. R.C. 4763.12(A) states that “[a]n appraisal or appraisal report rendered by a certificate holder or licensee shall comply with this chapter” (Appx. 12.) and R.C. 4763.13(A) also requires appraisers to comply with USPAP:

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 \*\*\*. (Appx. 12.)

When Horner appeared before the Franklin County Board of Revision and testified before the Board in connection with his “restricted use appraisal” he violated USPAP and both R.C. 4763.12 and R.C. 4763.13, because he performed an “appraisal assignment” in violation of both sections. R.C. 4763.01(D) and (E) provide the following definitions:

(D) ‘Appraisal report’ means a *written communication of a real estate appraisal, appraisal review, or appraisal consulting service or an oral communication of a real estate appraisal, appraisal review, or appraisal consulting service* that is documented by a writing that supports the oral communication.

(E) ‘Appraisal assignment’ means an engagement for which a person licensed or certified under this chapter is employed, retained, or engaged to act, *or would be perceived by third parties or the public as acting, as a disinterested third party in rendering an unbiased real estate appraisal.*

Horner performed an “Appraisal assignment” under R.C. 4763.01(E) when he appeared before the Franklin County Board of Revision because he “would be perceived by third parties [the BOR] \*\*\* as acting, as a disinterested third party in rendering an unbiased real estate appraisal.”<sup>6</sup> During the course of that “appraisal assignment,” Horner transmitted his opinion of value based on a “restricted use appraisal” to the BOR and he based his testimony on the “restricted use appraisal” that was presented to the BOR. It is clear that when Horner testified before the BOR on the basis of his “restricted use appraisal,” Horner gave the BOR his “restricted use appraisal” because an “Appraisal report” under R.C. 4763.01(D) includes the “oral communication of a real estate appraisal.” Presenting the BOR with an opinion of value based on a “restricted use appraisal” was a fundamental and clear violation of USPAP and R.C. 4763.12 and R.C. 4763.13, because Horner was prohibited from giving his “restricted use appraisal” to anyone other than his “client.”

Appellee points out that Horner did in fact identify “intended users” of his “restricted use appraisal,” including the BOR and the Board of Education (Horner’s appraisal, p. 8; Appellant’s Supp. p. 5), but this was a direct violation of USPAP and R.C. 4763.12 and R.C. 4763.13, and was precisely what USPAP, and R.C. 4763.12 and R.C. 4763.13 were intended to prohibit. The fact that USPAP and R.C. 4763.12 and R.C. 4763.13 prohibit any “third party” such as the BOR and BTA from relying on a “restricted use appraisal” is nothing more than a *re-codification* of R.C. 5715.01 which requires true value to be based on “all facts and circumstances relating to the

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<sup>6</sup> The BTA has held that an appraiser performs an “appraisal assignment” under R.C. 4763.01(E) when the appraiser appears before the BTA or a board of revision. See *Dan Marchetta and Co. v. Summit County Board of Revision* (July 19, 1996), BTA Case No. 94-P-1268, 1996 Ohio Tax Lexis 886. See also *Lowes Home Centers Inc. vs. Allen County Board of Revision, et al.* (February 6, 2009), BTA Case No. 2006-K-2225, 2009 Ohio Tax Lexis 191, and *Paul T. LaSpina vs. Summit County Board of Revision, et al.* (January 12, 1996), BTA Case No. 94-T-1149, 1996 Ohio Tax Lexis 51.

value of the property” and Administrative Code Rule 5703-25-06(A) which states that ‘True value in money’ shall be determined \*\*\* on consideration of all facts tending to indicate the current or fair market value of the property \*\*\*.’ It is axiomatic that if true value must be based on the actual “facts \*\*\* relating to the value of the property” and the actual “facts tending to indicate the current or fair market value of the property,” which are simply the market data that is used to value the property, then those “facts” must be set forth in any and all appraisal reports given to a county board of revision or the BTA. The BTA could not possibly “determine” the true value of the property as required by R.C. 5717.03 in the absence of the market data needed to justify the opinion of the appraiser. Obviously, no responsible valuation decision can be made by anyone in the absence of the required market data or “facts.” In the present case, and many others for that matter, the BTA does not even feign an attempt to try.

In its Merit Brief at page 13, Appellant cited several BTA cases in which the BTA held that it would not rely on a “restricted use appraisal.” Appellee attempts to distinguish these cases by asserting that these cases dealt with a “limited use appraisal” which contains a “departure from specific guidelines of” USPAP (Appellee’s Merit Brief, p. 6). As indicated above, a “limited use appraisal” was USPAP’s original reference to a “restricted use appraisal” and the permitted “departure” from the USPAP requirements was the failure of the appraiser to use one of the required appraisal approaches or the failure to include the required market data in the appraisal report. According to the BTA, these types of appraisal reports provided only an “abbreviated analysis” of value (cited on page 13 of Appellant’s Merit Brief) and that was why the BTA would not rely on the reports. 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, now known as a “restricted appraisal.”. The “limited use

appraisal” was required to set forth the same warning about the unreliability of the report as is the “restricted use appraisal” which was also a point the BTA noted in its prior decisions. Under the current USPAP provisions, an appraiser cannot “depart” from the USPAP requirements because USPAP and R.C. 4763.12 and R.C. 4763.13 specifically prohibit the appraiser from doing so, so there is no “departure rule” that is allowed to be invoked by the appraiser.

Appellee also cites in its Merit Brief (pages 5 and 6) the BTA’s decision in *South-Western City Schs. Bd. of Educ. v. Franklin Cty. Bd. of Revision*, BTA No. 2013-5327, 2014 Ohio Tax LEXIS 4303 (Sept. 11, 2014) in support of its position. In that case, the BTA applied the very same standards to accept a “restricted use appraisal” that it did in the present case, both of which were incorrectly decided. In *South-Western City Schs. Bd. of Educ.*, *supra*, the BTA first applied its nonsensical principle that all judgments made by an appraiser are “subject judgments” that cannot be subject to challenge by a board of education:

[I]nherent 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. (p. 3)

As indicated above, this principle repeals over 100 years of efforts by the appraisal profession and the Ohio General Assembly to insure that appraisals are based on objective market data and the opinions of appraiser are based on “reasonable” opinions and inferences to be drawn from that data. Second, the BTA appears to have applied its new definition that probative evidence is merely or just competent evidence. According to the BTA in this case:

Here, however, the appraisal was developed for tax valuation purposes as of the tax lien date, and we find that the methodology was sufficiently supported and the evaluation was sufficiently thorough. As such, we find the report is competent and probative evidence of value. (pp. 5-6)

This decision provides no help to Appellee because the BTA relied solely on a “restricted use appraisal” to determine the true value of real property and, as such, the BTA’s decision was just as unlawful and unreasonable as is the decision involved in the present appeal, because a “restricted use appraisal” fails to set forth sufficient market data to support the appraiser’s opinion of value and, thus, no third party could responsibly or reasonably rely on the appraisal.

7. The Appellant Board of Education had no burden of proof at any point in this appeal.

Appellee attempts to illegally shift its burden of proof to Appellant. On page 1 of its Merit Brief, Appellee claims that Appellant should have subpoenaed Horner, the property owner’s appraiser, before the BTA in order to discover all of the missing market data that was not included in his “Restricted Use Appraisal” but was said to be included in his work file (Horner’s appraisal, p. 20; Appellant’s Supp. p. 11). This argument has no merit of any kind and is inconsistent with all of the laws that govern the determination of true value. Appellee is actually putting forth the notion that a board of education has a duty to force the original complainant to supply additional evidence before the BTA in order to assist the original complainant in satisfying its original burden of proof. It must be remembered that as the original complainant in this case, Appellee bore the sole burden to prove the value it sought. Providing an appraisal that is contrary to the laws of Ohio cannot satisfy that burden. See *Dublin City Sch. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 139 Ohio St.3d 212, 2014-Ohio-1940. By accepting that value, the BOR’s decision was unlawful. By rubber stamping the BOR’s decision, the BTA’s decision was likewise unlawful. The Board of Education had no burden of proof of any kind at any point in this appeal because at no point did the original complainant ever satisfy its

initial burden of proof. See *Vandalia Butler City Sch. Bd. of Edn. v. Montgomery Cty. Bd. of Revision*, 130 Ohio St.3d 291, 2011-Ohio-5078.

R.C. 5715.10 states that “[t]he 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*” (Appx. 15.) (emphasis added.) The laws that govern the determination of true value include R.C. 5715.01 and Adm. Code Rule 5703-25-05, a rule adopted under R.C. 5715.01 by the Tax Commissioner. Division (F) of the latter provision defines the “income approach, which states the following: “The *reliability of this technique* is dependent upon \*\*\* (1) *The reasonableness of the estimate of the anticipated net annual incomes* (emphasis added). Division (G) of this Rule states that the “Market data approach” \*\*\* 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*” (emphasis added). The framework established by R.C. 5715.01, 5715.10, and the administrative code rules is simple and crystal clear. Under these laws, the BOR could not legally have accepted Horner’s appraisal under R.C. 5715.10 and made a “change of any valuation” without first determining whether Horner’s appraisal contained sufficient market data to allow it to judge the “reasonableness of the estimate of the anticipated net annual incomes” and to judge “[t]he degree of comparability of each property with the property under appraisal.” These statutory requirements were applied by this Court in *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision*, 75 Ohio St.3d 552, 555, 664 N.E.2d 922 (1996), and in *Villa Park Ltd. v. Clark Cty. Bd. of Revision*, 68 Ohio St.3d 215, 218-219, 625 N.E.2d 613 (1994), and the other authorities cited on pages 16 to 22 of Appellant’s Merit Brief.

There were no facts or market data of any kind in Horner's appraisal that would have allowed anyone to make these judgments. Furthermore, Administrative Code Rule 5703-25-06(A) also requires the cost approach to be considered when valuing real property, and the BOR could not have changed the value of the property without first determining whether Horner's refusal to use a cost approach made any sense based on the market data set forth in his appraisal report, such as *data sufficient to prove* of the existence of obsolescence or depreciation in the almost new property. Horner made no attempt, and in fact really makes no claim, that any such obsolescence or depreciation actually existed for the subject property. A county board of revision is simply prohibited by R.C. 5715.10 from making a "change of any valuation except in accordance with such laws," which is to say that *if it cannot determine that there is sufficient market data in the appraisal to satisfy all of the above requirements*, then it cannot change the value of the property. What could be simpler than this?

The only *possible or relevant issue on appeal* in such a case is whether the BOR violated R.C. 5715.10 because it made a "change of any valuation" that was not "in accordance with" the laws governing the determination of the true value of the property. These statutes and laws place no burden of proof of any kind on the Appellant Board of Education, except to show that the BOR made a "change of any valuation" that was not "in accordance with" the laws governing the determination of the true value of the property. The Appellant Board of Education in this appeal has surely shown that both the BOR and the BTA made a change in value of Appellee's property in violation of the laws that govern the determination of true value.

### **CONCLUSION**

For the reasons set forth herein, this Court is respectfully requested 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 cost information provided by the property owner.

In the alternative, Appellant requests 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 and 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 regular mail and/or email transmission this 20<sup>th</sup> day of April, 2015:

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\_\_\_\_\_  
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668 **STANDARD 2: REAL PROPERTY APPRAISAL, REPORTING**

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

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

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

676 **Standards Rule 2-1**

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

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

683 **Standards Rule 2-2**

684 **Each written real property appraisal report must be prepared under one of the following three**  
 685 **options and prominently state which option is used: Self-Contained Appraisal Report, Summary**  
 686 **Appraisal Report, or Restricted Use Appraisal Report.<sup>16</sup>**

687 Comment: When the intended users include parties other than the client, either a Self-  
 688 Contained Appraisal Report or a Summary Appraisal Report must be provided. When the  
 689 intended users do not include parties other than the client, a Restricted Use Appraisal  
 690 Report may be provided.

691 The essential difference among these three options is in the content and level of  
 692 information provided. The appropriate reporting option and the level of information  
 693 necessary in the report are dependent on the intended use and the intended users.

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

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

<sup>16</sup> See Advisory Opinion 11, *Content of the Appraisal Report Options of Standards Rules 2-2 and 8-2*, and Advisory Opinion 12, *Use of the Appraisal Report Options of Standards Rules 2-2 and 8-2*. References to Advisory Opinions are for guidance only and do not incorporate Advisory Opinions into USPAP.

702 A party receiving a copy of a Self-Contained Appraisal Report, Summary Appraisal  
 703 Report, or Restricted Use Appraisal Report in order to satisfy disclosure requirements  
 704 does not become an intended user of the appraisal unless the appraiser identifies such  
 705 party as an intended user as part of the assignment.

706 **(a) The content of a Self-Contained Appraisal Report must be consistent with the intended use**  
 707 **of the appraisal and, at a minimum:**

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

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

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

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

717 **(iii) describe information sufficient to identify the real estate involved in the appraisal,**  
 718 **including the physical and economic property characteristics relevant to the**  
 719 **assignment;<sup>19</sup>**

720 Comment: The real estate involved in the appraisal can be specified, for  
 721 example, by a legal description, address, map reference, copy of a survey or  
 722 map, property sketch and/or photographs or the like. The information can  
 723 include a property sketch and photographs in addition to written comments  
 724 about the legal, physical, and economic attributes of the real estate relevant to  
 725 the type and definition of value and intended use of the appraisal.

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

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

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

731 Comment: Stating the definition of value also requires any comments needed to  
 732 clearly indicate to intended users how the definition is being applied.<sup>20</sup>

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

<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*. References to Advisory Opinions are for guidance only and do not incorporate Advisory Opinions into USPAP.

<sup>20</sup> See Statement on Appraisal Standards No. 6, *Reasonable Exposure Time in Real Property and Personal Property Market Value Opinions*. See also Advisory Opinion 7, *Marketing Time Opinions*, and Advisory Opinion 22, *Scope of Work in Market Value Appraisal Assignments, Real Property*. References to Advisory Opinions are for guidance only and do not incorporate Advisory Opinions into USPAP.

- 735 • in terms of cash or of financing terms equivalent to cash, or  
 736 • based on non-market financing or financing with unusual conditions or  
 737 incentives.

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

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

742 Comment: The effective date of the appraisal establishes the context for the  
 743 value opinion, while the date of the report indicates whether the perspective of  
 744 the appraiser on the market or property use conditions as of the effective date of  
 745 the appraisal was prospective, current, or retrospective.

746 Reiteration of the date of the report and the effective date of the appraisal at  
 747 various stages of the report in tandem is important for the clear understanding of  
 748 the reader whenever market or property use conditions on the date of the report  
 749 are different from such conditions on the effective date of the appraisal.

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

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

756 When any portion of the work involves significant real property appraisal  
 757 assistance, the appraiser must describe the extent of that assistance. The signing  
 758 appraiser must also state the name(s) of those providing the significant real  
 759 property appraisal assistance in the certification, in accordance with SR 2-3.

760 **(viii) describe the information analyzed, the appraisal methods and techniques employed,  
 761 and the reasoning that supports the analyses, opinions, and conclusions; exclusion of  
 762 the sales comparison approach, cost approach, or income approach must be  
 763 explained;**

764 Comment: A Self-Contained Appraisal Report must include sufficient  
 765 information to indicate that the appraiser complied with the requirements of  
 766 STANDARD 1. The amount of detail required will vary with the significance of  
 767 the information to the appraisal.

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

<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*. References to Advisory Opinions are for guidance only and do not incorporate Advisory Opinions into USPAP.

772 When reporting an opinion of market value, a summary of the results of  
 773 analyzing the subject sales, options, and listings in accordance with Standards  
 774 Rule 1-5 is required. If such information is unobtainable, a statement on the  
 775 efforts undertaken by the appraiser to obtain the information is required. If such  
 776 information is irrelevant, a statement acknowledging the existence of the  
 777 information and citing its lack of relevance is required.

778 **(ix) state the use of the real estate existing as of the date of value and the use of the real**  
 779 **estate reflected in the appraisal; and, when an opinion of highest and best use was**  
 780 **developed by the appraiser, describe the support and rationale for that opinion;**

781 **(x) clearly and conspicuously:**

- 782 • state all extraordinary assumptions and hypothetical conditions; and
- 783 • state that their use might have affected the assignment results; and

784 **(xi) include a signed certification in accordance with Standards Rule 2-3.**

785 **(b) The content of a Summary Appraisal Report must be consistent with the intended use of the**  
 786 **appraisal and, at a minimum:**

787 Comment: The essential difference between the Self-Contained Appraisal Report and the  
 788 Summary Appraisal Report is the level of detail of presentation.

789 **(i) state the identity of the client and any intended users, by name or type;<sup>23</sup>**

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

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

797 **(ii) state the intended use of the appraisal;<sup>24</sup>**

798 **(iii) summarize information sufficient to identify the real estate involved in the**  
 799 **appraisal, including the physical and economic property characteristics relevant to**  
 800 **the assignment;<sup>25</sup>**

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

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

<sup>23</sup> See Statement on Appraisal Standards No. 9, *Identification of Intended Use and Intended Users*.

<sup>24</sup> See Statement on Appraisal Standards No. 9, *Identification of Intended Use and Intended Users*.

<sup>25</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*. References to Advisory Opinions are for guidance only and do not incorporate Advisory Opinions into USPAP.

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

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

812 Comment: Stating the definition of value also requires any comments needed to  
 813 clearly indicate to the intended users how the definition is being applied.<sup>26</sup>

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

- 816 • in terms of cash or of financing terms equivalent to cash, or
- 817 • based on non-market financing or financing with unusual conditions or
- 818 incentives.

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

822 **(vi) state the effective date of the appraisal and the date of the report;<sup>27</sup>**

823 Comment: The effective date of the appraisal establishes the context for the  
 824 value opinion, while the date of the report indicates whether the perspective of  
 825 the appraiser on the market or property use conditions as of the effective date of  
 826 the appraisal was prospective, current, or retrospective.

827 Reiteration of the date of the report and the effective date of the appraisal at  
 828 various stages of the report in tandem is important for the clear understanding of  
 829 the reader whenever market or property use conditions on the date of the report  
 830 are different from such conditions on the effective date of the appraisal.

831 **(vii) summarize the scope of work used to develop the appraisal;<sup>28</sup>**

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

837 When any portion of the work involves significant real property appraisal  
 838 assistance, the appraiser must summarize the extent of that assistance. The  
 839 signing appraiser must also state the name(s) of those providing the significant  
 840 real property appraisal assistance in the certification, in accordance with SR 2-3.

<sup>26</sup> See Statement on Appraisal Standards No. 6, *Reasonable Exposure Time in Real Property and Personal Property Market Value Opinions*. See also Advisory Opinion 7, *Marketing Time Opinions*, and Advisory Opinion 22, *Scope of Work in Market Value Appraisal Assignments, Real Property*. References to Advisory Opinions are for guidance only and do not incorporate Advisory Opinions into USPAP.

<sup>27</sup> See Statement on Appraisal Standards No. 3, *Retrospective Value Opinions*, and Statement on Appraisal Standards No. 4, *Prospective Value Opinions*.

<sup>28</sup> See Advisory Opinion 28, *Scope of Work Decision, Performance, and Disclosure*, and Advisory Opinion 29, *An Acceptable Scope of Work*. References to Advisory Opinions are for guidance only and do not incorporate Advisory Opinions into USPAP.

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

845 Comment: A Summary Appraisal Report must include sufficient information to  
 846 indicate that the appraiser complied with the requirements of STANDARD 1.  
 847 The amount of detail required will vary with the significance of the information  
 848 to the appraisal.

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

853 When reporting an opinion of market value, a summary of the results of  
 854 analyzing the subject sales, options, and listings in accordance with Standards  
 855 Rule 1-5 is required. If such information is unobtainable, a statement on the  
 856 efforts undertaken by the appraiser to obtain the information is required. If such  
 857 information is irrelevant, a statement acknowledging the existence of the  
 858 information and citing its lack of relevance is required.

859 (ix) **state the use of the real estate existing as of the date of value and the use of the real**  
 860 **estate reflected in the appraisal; and, when an opinion of highest and best use was**  
 861 **developed by the appraiser, summarize the support and rationale for that opinion;**

862 (x) **clearly and conspicuously:**

- 863 • **state all extraordinary assumptions and hypothetical conditions; and**
- 864 • **state that their use might have affected the assignment results; and**

865 (xi) **include a signed certification in accordance with Standards Rule 2-3.**

866 (c) **The content of a Restricted Use Appraisal Report must be consistent with the intended use of**  
 867 **the appraisal and, at a minimum:**

868 (i) **state the identity of the client, by name or type;<sup>29</sup> and state a prominent use**  
 869 **restriction that limits use of the report to the client and warns that the appraiser's**  
 870 **opinions and conclusions set forth in the report may not be understood properly**  
 871 **without additional information in the appraiser's workfile;**

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

877 The Restricted Use Appraisal Report is for client use only. Before entering into  
 878 an agreement, the appraiser should establish with the client the situations where  
 879 this type of report is to be used and should ensure that the client understands the  
 880 restricted utility of the Restricted Use Appraisal Report.

<sup>29</sup> See Statement on Appraisal Standards No. 9, *Identification of Intended Use and Intended Users*.

881 (ii) **state the intended use of the appraisal;**<sup>30</sup>

882 Comment: The intended use of the appraisal must be consistent with the limitation on  
883 use of the Restricted Use Appraisal Report option in this Standards Rule (i.e., client  
884 use only).

885 (iii) **state information sufficient to identify the real estate involved in the appraisal;**<sup>31</sup>

886 Comment: The real estate involved in the appraisal can be specified, for  
887 example, by a legal description, address, map reference, copy of a survey or  
888 map, property sketch, and/or photographs or the like.

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

890 (v) **state the type of value, and cite the source of its definition;**<sup>32</sup>

891 (vi) **state the effective date of the appraisal and the date of the report;**<sup>33</sup>

892 Comment: The effective date of the appraisal establishes the context for the  
893 value opinion, while the date of the report indicates whether the perspective of  
894 the appraiser on the market or property use conditions as of the effective date of  
895 the appraisal was prospective, current, or retrospective.

896 (vii) **state the scope of work used to develop the appraisal;**<sup>34</sup>

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

902 When any portion of the work involves significant real property appraisal  
903 assistance, the appraiser must state the extent of that assistance. The signing  
904 appraiser must also state the name(s) of those providing the significant real  
905 property appraisal assistance in the certification, in accordance with SR 2-3.

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

909 Comment: An appraiser must maintain a specific, coherent workfile in support  
910 of a Restricted Use Appraisal Report. The contents of the workfile must include  
911 sufficient information to indicate that the appraiser complied with the  
912 requirements of STANDARD 1 and for the appraiser to produce a Summary

<sup>30</sup> See Statement on Appraisal Standards No. 9, *Identification of Intended Use and Intended Users*.

<sup>31</sup> See Advisory Opinion 2, *Inspection of Subject Property*. References to Advisory Opinions are for guidance only and do not incorporate Advisory Opinions into USPAP.

<sup>32</sup> See Statement on Appraisal Standards No. 6, *Reasonable Exposure Time in Real Property and Personal Property Market Value Opinions*. See also Advisory Opinion 7, *Marketing Time Opinions*, and Advisory Opinion 22, *Scope of Work in Market Value Appraisal Assignments, Real Property*. References to Advisory Opinions are for guidance only and do not incorporate Advisory Opinions into USPAP.

<sup>33</sup> See Statement on Appraisal Standards No. 3, *Retrospective Value Opinions*, and Statement on Appraisal Standards No. 4, *Prospective Value Opinions*.

<sup>34</sup> See Advisory Opinions 28, *Scope of Work Decision, Performance, and Disclosure*, and Advisory Opinion 29, *An Acceptable Scope of Work*. References to Advisory Opinions are for guidance only and do not incorporate Advisory Opinions into USPAP.

913 Appraisal Report. The file must be available for inspection by the client (or the  
 914 client's representatives, such as those engaged to complete an appraisal review),  
 915 state enforcement agencies, such third parties as may be authorized by due  
 916 process of law, and a duly authorized professional peer review committee except  
 917 when such disclosure to a committee would violate applicable law or regulation.

918 When reporting an opinion of market value, information analyzed in compliance  
 919 with Standards Rule 1-5 is significant information that must be disclosed in a  
 920 Restricted Use Appraisal Report. If such information is unobtainable, a  
 921 statement on the efforts undertaken by the appraiser to obtain the information is  
 922 required. If such information is irrelevant, a statement acknowledging the  
 923 existence of the information and citing its lack of relevance is required.

924 (ix) state the use of the real estate existing as of the date of value and the use of the real  
 925 estate reflected in the appraisal; and, when an opinion of highest and best use was  
 926 developed by the appraiser, state that opinion;

927 (x) clearly and conspicuously:

- 928 • state all extraordinary assumptions and hypothetical conditions; and
- 929 • state that their use might have affected the assignment results; and

930 (xi) include a signed certification in accordance with Standards Rule 2-3.

931 **Standards Rule 2-3**

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

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

- 935 — the statements of fact contained in this report are true and correct.
- 936 — the reported analyses, opinions, and conclusions are limited only by the reported  
 937 assumptions and limiting conditions and are my personal, impartial, and unbiased  
 938 professional analyses, opinions, and conclusions.
- 939 — I have no (or the specified) present or prospective interest in the property that is  
 940 the subject of this report and no (or the specified) personal interest with respect to  
 941 the parties involved.
- 942 — I have no bias with respect to the property that is the subject of this report or to  
 943 the parties involved with this assignment.
- 944 — my engagement in this assignment was not contingent upon developing or  
 945 reporting predetermined results.
- 946 — my compensation for completing this assignment is not contingent upon the  
 947 development or reporting of a predetermined value or direction in value that  
 948 favors the cause of the client, the amount of the value opinion, the attainment of a  
 949 stipulated result, or the occurrence of a subsequent event directly related to the  
 950 intended use of this appraisal.
- 951 — my analyses, opinions, and conclusions were developed, and this report has been  
 952 prepared, in conformity with the *Uniform Standards of Professional Appraisal*  
 953 *Practice*.
- 954 — I have (or have not) made a personal inspection of the property that is the subject  
 955 of this report. (If more than one person signs this certification, the certification