



BLUESTONE
LAW GROUP, LLC

Charles L. Bluestone, Esq.
Alexander J. Pierce, Esq.
Anissa E. Bélanger, Paralegal

141 East Town Street, Suite 100
Columbus, Ohio 43215

Telephone: 614.220.5900
Facsimile: 614.462.1930
www.bluestonelawgroup.com

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**Top 20 Tips for Appraisers
in Real Property Tax Valuation Cases**

Property owners who file a Complaint Against Valuation (“CAV”) with a County Board of Revision (“BOR”) bear the burden of proving that the property’s value should be lowered by submitting probative and competent evidence. A recent arm’s-length sale of the property is often the strongest evidence of its market value. Voluntary sales made on the open market between two parties, who are knowledgeable about the market and acting in their own self-interest, almost always qualify as “arm’s-length,” and if those sales occur within a reasonable time of the relevant January 1st tax lien date, then they also qualify as “recent.” Evidence of a newly-built project’s construction costs may also be probative of market value.

Where a recent arm’s-length transaction has not occurred and the improvements are not new, the owner should proffer into evidence a professionally prepared appraisal report. An appraiser will give an opinion of the market value of the property utilizing one or more of the three traditional valuation methodologies: (i) income capitalization, (ii) market comparison, or (ii) cost approaches. Each approach has its own pros and cons and may be better suited to some types of properties than others. As a general rule, tax boards are likely to find in favor of owners who have presented appraisals that:

- ▶ Provide a detailed description of the property;
- ▶ Accurately reflect market trends;
- ▶ Utilize reliable data; and
- ▶ Provide transparent explanations of their valuation conclusions.

To assist property owners and the appraisal community, **Bluestone Law Group** has surveyed Ohio case law in order to identify common errors in appraisals that have resulted in tax appeals being dismissed or the owner not achieving the maximum property valuation reduction.

In order to present a winning appraisal, an appraiser should follow these 20 tips:

- ▷ **Value the property as of the applicable January 1st tax-lien date** - The appraisal must value the property retrospectively, as of the tax-lien date of the year in question (which is always January 1st of the applicable year).¹
- ▷ **Use market-derived financials, not actual financials** - Actual financials do not necessarily reflect market rates because they may be a product of

¹ *Olmsted Falls Village Association v. Cuyahoga Cty. Bd. of Revision*, 75 Ohio St. 3d 552 (1996).

management decisions specific to that property, so the appraiser needs to extract market-based statistics.²

- ▷ **Confirm sales comparables were indeed arm's-length transactions** - An appraiser needs to confirm that the comparables were of an arm's-length nature; a market-comparison approach cannot rely on transactions that were not arm's-length.³
- ▷ **Include a cost approach analysis when the property is less than 5 to 10 years old** - The cost approach should be employed when the property is new (no more than 10 years old). Estimating depreciation becomes more difficult as properties age, making use of the cost approach less relevant for older properties.⁴
- ▷ **Account for the percentage of a property that was under construction as of the tax-lien date** - A building, fixture, or other improvement under construction on that year's tax-lien date should be valued by its percentage of completion as of that date, less an appropriate discount due to the partial completion of the improvements.⁵ In Franklin County, a 25% discount is generally applied.
- ▷ **Value the property for its highest and best use, not necessarily its current use** - The appraisal should value the property as if being utilized for its highest and best use.⁶ Where the appraiser concludes that a different use, i.e., other than how the property was being used as of the valuation date, would produce a greater return, then the appraisal report needs to discuss, in detail, why the alternative use would be superior and to well document that conclusion with supporting data.
- ▷ **Avoid using a listing price as the sole factor for determining value** - A property's listing price is, essentially, an aspirational selling price, so while it can be included in an appraisal, it should only be one of many factors determining the property's value.⁷
- ▷ **Account for a property's transition from lease-up to stabilized when calculating income, expenses, and capitalization rate** - An appraisal should not simply make dollar-for-dollar adjustments to account for this transition period. Instead, these deductions should be part of the formulation of the property's income, expenses, and cap rate.⁸

² *NFI Metro Center II Associates v. Franklin Cty. Bd. of Revision*, 78 Ohio St. 3d 105 (1997).

³ *Allen v. Hamilton Cty. Bd. of Revision*, 2012 Ohio Tax LEXIS 2381.

⁴ *Dritz v. Franklin Cty. Bd. of Revision*, 1999 Ohio App LEXIS 4171.

⁵ *Bd. of Education of the Dublin City Schools v. Franklin Cty. Bd. of Revision*, 2013 Ohio LEXIS 2316.

⁶ *Brooklyn Acres Mutual Homes, Inc. v. Cuyahoga Cty. Bd. of Revision*, 111 Ohio App. 3d 377 (1996).

⁷ *Kaiser v. Franklin Cty. Auditor*, 2012 Ohio App. LEXIS 717 (2012).

⁸ *Wellington Housing Partners, L.P. v. Franklin Cty. Bd. of Revision*, 2007 Ohio Tax LEXIS 1304.

- ▷ **Disregard the property’s encumbrances** - For real property tax purposes, the property is to be valued as if unencumbered, meaning the appraiser should ignore encumbrances that affect the property’s value (with a few exceptions).⁹ For example, Low-Income Housing Tax Credit projects are supposed to use the government restrictions and market rate expenses.
- ▷ **Refrain from using the county auditor’s taxable value in one year as evidence of a lower value in another** - A county auditor’s taxable value is not dispositive of the market value. In other words, each tax year stands alone, having little to no bearing on another year’s valuation.¹⁰
- ▷ **Address a recent arm’s-length transaction, if one exists, and provide reasons why a departure from it is warranted** - An appraisal is unlikely to overcome evidence of a recent arm’s-length transaction that is contrary to the report’s valuation, but it should acknowledge the transaction and keep its value reasonably close to that of the transaction, lest it lose all credibility.¹¹
- ▷ **Avoid using mortgage financing appraisals** – Mortgage financing appraisals typically value properties on a leased-fee basis. While they may provide some probative data, tax boards prefer appraisals to value properties on an unencumbered, fee-simple basis for ad valorem tax purposes.
- ▷ **Know the comparable properties mentioned in the appraisal inside and out** - The appraiser should become as familiar as possible with the comparable properties used in the market approach, viewing their exteriors at a minimum and, if possible, their interiors.¹²
- ▷ **Avoid relying on a discounted cash flow analysis** - Tax boards routinely rule against appraisals that rely (exclusively) on DCF models on account of their highly speculative and subjective underlying analyses. While DCF methodology may have value to an investor purchasing multiple parcels, it has been criticized as not being indicative of the market value of a single parcel. The Ohio Revised Code and the related administrative rules limit acceptable approaches to cost, market comparison, and income capitalization.¹³
- ▷ **Avoid using a “restricted use” appraisal** - Ohio taxing authorities almost always rule against parties who rely on “restricted use” reports. Instead, the appraiser should prepare what is often referred to as a “summary” or “self-contained” report.
- ▷ **Include a certification of an opinion of value** - An appraiser should provide a certification of the report (as part of the introduction or presented on a separate,

⁹ *Muirfield Association, Inc., v. Franklin Cty. Bd. of Revision*, 73 Ohio St. 3d 710 (1995).

¹⁰ *Olmsted Falls Bd. of Education v. Cuyahoga Cty. Bd. of Revision*, 122 Ohio St. 3d 134 (2009).

¹¹ *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St. 3d 188 (2013).

¹² *RDSOR v. Knox Cty. Bd. of Revision*, 2006 Ohio Tax LEXIS 1479 (2006).

¹³ *Bd. of Education of the Dublin City Schools v. Franklin Cty. Bd. of Revision*, BTA Case No. 2011-1858.

signed page) in order to take responsibility for the opinions and conclusions in it.¹⁴

- ▷ **Testify at the tax board hearing** - A state-licensed appraiser should always testify at the BOR hearing in order to explain the valuation analysis presented in the report. Not doing so allows the school district's counsel to object to the report as a hearsay document, meaning the tax board may be prevented from considering it.¹⁵
- ▷ **Be qualified as an expert witness** – Together with prior experience appraising similar types of properties, certification from the Division of Real Estate and Professional Licensing of the Ohio Department of Commerce and/or a designation from the Appraisal Institute allows an appraiser to be qualified as an expert witness. A résumé or statement of qualifications, plus a copy of the appraiser's license, should be included in the report.¹⁶
- ▷ **Understand new BTA filing deadlines** - Appellants are now required to disclose their expert appraisers and exchange any appraisal reports within 150 days from the date of filing of the Notice of Appeal; appellees must do so within 180 days.¹⁷ An appraiser needs to work in tandem with the property owner's legal counsel in complying with these new, shorter deadlines. Extensions of these deadlines can be arranged by agreement between the parties and/or by applying to the BTA for a different case management schedule.
- ▷ **Be reasonable** - Appraisers and property owners must be reasonable and have support for their assumptions, analyses and value conclusions. An "aggressive" appraisal with a predetermined low value that is not well supported is a complete waste of money and a disservice to the property owner. The appraisal report will, almost certainly, be deemed not probative, and the property owner will lose his/her tax appeal. Most significantly, that appraiser's credibility will be diminished for future cases.

Bluestone Law Group regularly monitors how Ohio courts and tax boards evaluate different appraisal methods and post updates on our website, www.bluestonelawgroup.com. Please contact us if you or your clients have questions concerning real property tax laws.

¹⁴ *AP Hotels of Illinois, Inc. v. Franklin Cty. Bd. of Revision*, 118 Ohio St. 3d 343 (2008).

¹⁵ *Evenson v. Erie Cty. Bd. of Revision*, 2002 Ohio Tax LEXIS 615.

¹⁶ *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St. 3d 227 (2013).

¹⁷ Ohio Admin. Code §§ 5717-1-06, 5717-1-07. We note an ambiguity in the rules. Since a Notice of Appeal has to be filed both with the BOR and the BTA (which can occur on as much as 30 days from one another), it is unclear whether one begins counting the number of days from the date of the 1st or 2nd filing. Our recommendation and the best practice is to begin the countdown from the date of the 1st filing.

DISCLAIMER – These materials have been prepared for general educational purposes only and are not intended as legal advice for any specific case. The reader is strongly encouraged to seek professional legal representation with respect to the filing of any proceedings by the Board of Revision or the Ohio Board of Tax Appeals. v 12.3.13.