From:	Mrs. Sheila Anderson
To:	DORPTO
Cc:	Mark Hamilton; Steve Keller; CFO Robert Tornillo
Subject:	Florida Real Property Guidelines - DRAFT
Date:	Monday, November 18, 2024 4:27:09 PM
Attachments:	cps dor draft real property guidelines 2024 comments for 11.20.2024 workshop.doc dor Administrative procedure act and taxation.pdf cps phipps guidelines as rules.pdf

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To whom it may concern:

Please see the attached "comments", "AGO 76-123", and "Phipps and Howell Memorandum, 21 July 2010.

Sheila Anderson

TO: **Florida Department of Revenue**
Property Tax Oversight Program

FROM; **Sheila Anderson, Principal/Broker**
Commercial Property Services, Inc.
Licensed Real Estate Broker

DATE: **October 26, 2024**

REF.: **Florida Real Property Appraisal Guidelines**
Property Tax Oversight 2024

See attached: AGO 76-123
Memorandum – Phipps & Howell, Attorney at Law, 21 July 2010

The scheduling of the public workshop fails to acknowledge or adhere to Section 112.311(6), Fla.Stat. which describes the *fiduciary obligations* inherent in the "public interest". See also AGO 76-123, and attached Memorandum, dated 21 July 2010.

Page 12
Missing in 1.1 Paragraph 1:
*Chapter, section, and text of the State Constitution granting Department Authority
*Names and positions of persons in State offices currently with such Authority
*Names and positions of persons who drafted or contributed to this draft to ensure verification is possible to be assured of compliance with state code of ethics.
***See: Sections 112.311(3) and 112.311(6), Fla.Stat.**
***And: Section 112.312(3), Fla.Stat.**

Also missing:** The chapter, section, and text requirements of the United States Constitution and the State Constitution and a statement as to: ***purpose of ad valorem taxation to ascertain the "***effective tax rate"*** (source: Kathy Henley, DOR/PTO retired) and **the constitutional requirement of *uniformity".***
***Insert: Section 195.0012, Fla.Stat.**
***Insert: Section 195.027(1), Fla.Stat.**
***Insert: Section 195.032, Fla.Stat.**
***Insert: Section 192.001(12), Fla.Stat. – the definition of real property**
Cite: Allegheny Pittsburgh Coal Company vs. Webster County, Nordlinger v. Hahan (90-1912) 505 U.S. 1 (1992) any later SCOTUS opinions, and subsequent Florida case law opinion(s) on "*uniformity".
Include references to 194.301, Fla.Sta. (**and make clear that ***the intent of "professional appraisal practices' **in 194.301, Fla.Stat. referred to Uniform Standards of Professional Appraisal Practice ("USPAP"} and only USPAP.** (Source: Benjamin Phipps, Esq./author of the specific statement in 194.301, Fla.Stat. and his stated intent)
***Include USPAP'S "Jurisdictional Exceptions" language**

Paragraph 2:
***Begin with "**n the course of discharging its statutory duties**, <u>on behalf of the Governor and Cabinet,</u>** the Department provides general supervision ~~the~~ **<u>of</u>** the property appraiser of each of the 67 counties in the state of Florida.

<u>Pursuant to State law, the property appraiser is "the county officer"</u> ~~charged~~ **<u>with the statutory responsibility to list and assess all real property in their respective county each year for the purpose of ad valorem taxation, as stated in ss. 192.011 and 193.085(1), F.S. Their responsibilities are to determine the value of all real property within the county, with maintaining certain records connected therewith which are used for the purpose of</u>**

determining the taxes on taxable property after ~~taxes~~ millage rates have been set and ad valorem taxes have been levied.

The whole description of elections is out of place, not relevant, and reads as if it is a public relations effort to elevate the property appraisers to positions greater than the governor and cabinet. Totally inappropriate, inconsistent with !2D-51.001, F.A.C., and does not belong in "real property guidelines".

Paragraph 4:
*Delete "… underscore's the Legislature's intent to limit …" See AGO 76-123 and attached Memorandum dated 21 July 2010.

Page 13, Paragraph 5:
*"The required scope of the components …" NOT clear in any statutory language and appears to be gratuitous. Should be deleted. There is nothing in the Guidelines that cannot be followed in every Florida County.

Paragraph 6:
Add at the end of the last sentence "… should result in uniform assessments **within each classification in each county."**

Page 14, Paragraph 4:
3) **To meet the Department's statutory obligation to aid and assist property appraisers to comply with governing Constitutional requirements and state law.**

Page 15, Paragraph 2:
Insert: **These Guidelines are part of the body of administrative law which may be subject to change in the event there are material changes to the Constitution or state statutes.** (source: AGO 76-123 and Memorandum dated 21 July 2010.)

Paragraph 6:
1.5 Content of These Guidelines
Insert: **These guidelines have been updated to reflect current Florida ad valorem tax law and reorganized as described below. This version of the Real Property ASSESSMENT Guidelines, upon adoption, replaces the 2002 version which was organized into 16 sections. In this updatr, related topics have been consolidated, repetitions have been minimized, and some information has been moved to addendums.**

Throughout the document, references are made to the term "appraisal" which implies certain professional standards not necessarily relevant to the "assessment" of property. To provide clarity, , the term "assessment" should replace the use of "appraisal" to convey that there are differences and distinctions related to *ad valorem* taxation and the constitutional mandate of *uniformity*. For example, in appraisals, it is common to combine real, tangible, and intangible assets within a valuation and each appraisal may be based upon a different purpose which leads to differing assumptions and results. In *ad valorem* assessments, the same assumption - "unencumbered fee simple" estate - is applicable to each real property, AND "market data" is intended for application in cost and income approaches – see 193.01 (5) and (7), F.S. The use of "market value", for example, in TRIM Notices, represents consistency with the "uniform" constitutional purpose of assessments used for taxing purposes.

Page 19, Paragraph 2
The Department publishes informational bulletins on statutory changes that may affect assessment practice in Florida, however ~~property appraisers~~ recipients cannot rely on the bulletins as the only source of information. The bulletins are electronically ~~communicated~~ transmitted to ~~property appraisers~~ interested parties at the time of publication and are subsequently archived in the Department's tax law library located here. …

Page 20, Paragraph 2.2
Insert: Jurisdictional exceptions in references to USPAP.

Paragraph 5:
Insert: … **are relevant in arriving at uniform just values.**

Page 33, Paragraph 7
Insert: Examples of economic data **applicable to unencumbered fee simple** include **market** costs, **qualified** sales prices, **market** rents, and **market** operating expenses.

Page 34, Paragraph 6
Insert: … It is important to consider that these sources may sometimes contain incomplete or inaccurate information for ~~appraisal~~ **assessment** purposes, but still provide useful leads for additional research.

4,4 Specific Data. … Categories of specific real property **assessment** data include:

Page 37, 4.4.6
Paragraph 2: … Cost data should be current and include all direct and indirect costs of construction, including reasonable contractor's profit ~~and developer's profit.~~ Marshall does not include developer's profit which is an intangible, taxable only by the State, and not a certain part of construction. There may be no developer's profit, or such profit may not occur until some future date. Developer's profit is not a professionally recognized component of "costs".

Page 42, 4.4.8
Reinsrt: This data ~~may~~ **should** include ~~market~~ **market** income ~~.~~ **… To be consistent with "unencumbered fee simple", the property appraiser should rely upon sources of market information. Otherwise "leased fee" data is being potentially confused with "fee simple" data which contradicts the principles of "arm's length transactions" AND the legal hypothetical that asks "what would a property command if offered to the market on the data of assessment?"! In addition, there is no way to really know what negotiated terms may have influenced rates and pass throughs. Many if not most commercial property leases may be "net" when "unencumbered fee simple" suggests "full service" terms and conditions are applicable. In effect, mixing sources of information means mixing professional standards, leading to inaccurate conclusions as to "market rates" and is quite unprofessional.**

~~Property appraisers should actively solicit this information through direct contact and surverys.~~ This sentence contradicts 195.027(3) "where necessary" and "Access to a taxpayer's records shall be provided ONLY in those instances …"

Page 57, Paragraph 2
"… ~~For e~~**xample**~~, if a property is subject to a below market lease, the present use should be disregarded since it is not the highest and best use of the unencumbered fee simple estate.~~ **This sentence does not make sense. It seems to confuse "use" with "user" and to assume a "leased fee" exists when "unencumbered fee simple" suggests a vacant property on the date of assessment – which is a legal hypothetical, per USPAP. The "use" should be "retail", "office", "industrial" and market data would be applicable based upon age, condition, location, access, and nearby catalysts of economic development, if any.**

Page 58, Paragraph 5
Insert: … Unless specified otherwise, **the unencumbered** fee simple estate is the interest in real property to be valued …

Page 65, Paragraph 5:
Delete: ~~… However all determinations of RCN of eal property should include both.~~ **The reference to "developer's anticipated profit" contradicts the requirements of NOT including "intangibles" in the valuation of "real**

property". There is no certainty that such revenue will be obtained, or when, or how much and represents a condition after a property is sold. The property might never be sold, or sold at a loss. Accordingly, this is an inappropriate insertion that effectively increases the value. And again, it is an intangible which is NOT, by definition in 192.001, F.S. a component of "real property".

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Administrative procedure act and taxation

Number: AGO 76-123

Date: November 12, 1998

Subject:
Administrative procedure act and taxation

TAXATION--APPLICABILITY OF ADMINISTRATIVE PROCEDURE ACT TO STANDARD ASSESSMENT PROCEDURES, FORMS, AND MEASURES OF VALUE

To: J. Ed Straughn, Executive Director, Department of Revenue, Tallahassee

Prepared by: Joseph C. Mellichamp III, Assistant Attorney General

QUESTIONS:

1. Is a standard assessment procedure a rule?

2. Is a standard measure of value a rule?

3. Is a form and its instructions, promulgated pursuant to s. 195.022, F. S., a rule; would such a form be a rule if its sole use was by a county official in reporting to the Department of Revenue; would the written permission of the executive director allowing a county officer to use his own form constitute an order or a rule?

4. If the answer to any of the foregoing questions is yes, must such rules be published and indexed in the Florida Administrative Code?

SUMMARY:

A standard assessment procedure prescribed pursuant to s. 195.027, F. S., a standard measure of value promulgated pursuant to ss. 195.002 and 195.032, F. S., and a form and its instructions prescribed by s. 195.022, F. S., are rules under the provisions of Ch. 120, F. S. Such forms and instructions, whether or not a particular form was solely for use by a county official reporting to the Department of Revenue, are rules under the provisions of Ch. 120. Written permission by the executive director pursuant to s. 195.022 to a county official to use a form other than the forms described by the department is an order under Ch. 120, F. S., which requires that the standard assessment procedures, the standard measure of value, and the forms and instructions adopted by the department be filed, published, and indexed in the Florida Administrative Code.

Section 195.062, F. S., provides:

"The department shall prepare and maintain a current manual of instructions for property appraisers and other officials connected with the administration of property taxes. This manual shall contain all rules and regulations, all instructions relating to the use of forms and maps,

standard assessment procedures, and the standard measures of value prescribed by the department or by general law. . . ."

Your questions are answered in the affirmative. Preliminarily, it should be noted that Ch. 74-234, Laws of Florida, passed during the same legislative session as Ch. 74-310, Laws of Florida, contained no provisions which would alter the application of the Administrative Procedure Act to the Department of Revenue. There are no provisions in Ch. 120, F. S., exempting the department from the provisions of the act, and it is within s. 120.52, defining agency. Attorney General Opinion 075-312. Therefore, if it is determined that the manual of instructions are rules under the statutory definition, it can be concluded that all pertinent provisions of the Administrative Procedure Act must be complied with by the department.

This legal situation arises out of s. 4, Art. VII, State Const., providing:

"By general law regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation . . . ."

Section 195.027(1), F. S., provides that the Department of Revenue shall prescribe reasonable rules and regulations for the assessing and collecting of taxes.

Section 195.002, F. S., provides that the Department of Revenue shall have general supervision of the assessment and valuation of property so that all property will be placed on the tax rolls and valued according to its just valuation.

Section 195.032, F. S., provides that, in furtherance of the requirements set out in s. 195.002, the Department of Revenue shall establish and promulgate standard measures of value not inconsistent with those standards provided by law.

Section 195.022, F. S., provides that the Department of Revenue shall prescribe and furnish all forms to be used in administering and collecting ad valorem taxes.

Section 195.062, F. S., provides that the Department of Revenue shall prepare and maintain a current manual of instructions which shall contain all rules and regulations, all instructions relating to the use of forms and maps, standard assessment procedures, and the standard measures of value prescribed by the department or by general law for property appraisers and other officials connected with the administration of property taxes.

The term "rule" as it is used in Ch. 120, F. S., must be defined to determine whether a standard assessment procedure, a standard measure of value, and a form and its instruction promulgated pursuant to s. 195.022, *supra*, are rules within the purview of that definition. Agency action must be an exercise of its quasi-legislative powers to be within the purview of s. 120.54, F. S. *See* Boone v. Div. of Family Services, 297 So.2d 594 (1 D.C.A. Fla., 1974); AGO 075-12. This quasi-legislative act can be generally defined as being primarily concerned with policy considerations for future, rather than the evaluation of past, conduct; based not on evidentiary facts but on policymaking conclusions to be drawn from facts; action affecting an entire class rather than individuals of the class; and action when particular members of a class are not singled out for special consideration based on their own facts. These descriptive phrases were capsulized in

Polar Ice Cream & Creamery Co. v. Andrews, 146 So.2d 609 (1 D.C.A. Fla., 1962) at 612:

"Stripped of its irrelevant verbiage, this section [s. 120.021(2)] of the statute defines the term 'rule' as a rule or order of general application adopted by an agency which affects the rights of the public or other interested parties."

Section 120.52(14), F. S., defines the term "rule" as meaning:

". . . each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedure, or practice requirements of an agency and includes the amendment or repeal of a rule. The term does not include:
(a) Internal management memoranda which do not affect either the private interests of any person or any plan or procedure important to the public,
(b) Legal memoranda or opinions issued to an agency by the attorney general or agency legal opinions prior to their use in connection with the agency action, or
(c) The preparation or modification of:
1. Agency budgets,
2. Contractual provisions reached as a result of collective bargaining, or
3. Agricultural marketing orders under chapter 573 or chapter 601."

It is a well-settled rule of statutory construction that where the language of a statute is plain and unambiguous and conveys a clear and definitive meaning, there is no occasion for resort to the rules of statutory interpretation. The Legislature should be held to have intended what it has plainly expressed. 30 Fla. Jur. *Statutes* s. 79, pp. 230-231 (1974). The legislative intent and meaning of the term "rule," as it is used in Ch. 120, F. S., is unequivocally expressed in s. 120.52(14). *See* AGO 075-12. Thus, in view of the above, the inescapable conclusion is that a standard assessment procedure prescribed pursuant to s. 195.027, F. S., and a standard measure of value promulgated pursuant to ss. 195.002 and 195.032, F. S., must be considered rules under the provisions of Ch. 120. The conclusion is mandated by the fact that they are unambiguous statements by the Department of Revenue that implement and interpret the Constitution and legislative policy of just valuation for ad valorem tax purposes of all property and provide for a uniform assessment as between property within each county and property in each other county or taxing district and are not mere internal memoranda which do not affect either the private interests of any person or any plan or procedure important to the public. Section 195.0012, F. S.; Burns v. Butscher, 187 So.2d 594 (Fla. 1966); Powell v. Kelly, 223 So.2d 305 (Fla. 1969); Container Corporation of America v. Rutherford, 293 So.2d 379 (1 D.C.A. Fla., 1974).

It seems equally clear that a form and its instructions prescribed pursuant to s. 195.022, F. S., are likewise a rule. The form and instructions are department statements of general applicability to all property appraisers, tax collectors, clerks of the circuit courts, and boards of tax adjustment in administering and collecting ad valorem taxes which describe the procedure and practice requirements of the department in order that all property will be assessed, taxes will be collected, and that the administration will be uniform, just, and otherwise in compliance with the requirements of the general law and the Constitution. Such forms and instructions could not reasonably be considered an exception to the definition of a rule as set forth in s. 120.52(14), F. S.

There remains the question of whether or not written permission of the executive director allowing a county officer to use his own form in lieu of those forms prescribed by the department constitutes an order or a rule. Section 195.022, *supra*, provides that the department is to prescribe and furnish all forms to be used by county officials in administering and collecting ad valorem taxes. A county officer may, however, at his own expense and with the showing of good cause receive written permission from the executive director to use a form other than the form prescribed by the department pursuant to s. 195.022.

Chapter 120, F. S., does not contain any reference to such terms as adjudication, rights, duties, privileges, or immunities. *Cf*. Bay National Bank and Trust Company v. Dickinson, 229 So.2d 302, 306 (1 D.C.A. Fla., 1969); Dickinson v. Judges of District Court of Appeal, First District, 282 So.2d 168 (Fla. 1973); Lewis v. Judges of District Court of Appeal, First District, 322 So.2d 16 (Fla. 1975). It would appear that, by deleting these terms from the statute, the limitations placed on the definition of the term "order" under Ch. 120, F. S. 1973, are not applicable as parameters. The new Ch. 120, F. S. 1975, covers all final agency actions. *See Levinson, The Florida Administrative Procedure Act: 1974 Revision and 1975 Amendments*, 29 U. Miami L. Rev. 617 (1975).

Section 120.52(2) and (9), F. S., define the terms "agency action" and "order" as follows:

"(2) 'Agency action' means the whole or part of a rule or order, or the equivalent, or the denial of a petition to adopt a rule or issue an order. The term also includes any request made under [s. 120.54(4)].
(9) 'Order' means a final agency decision which does not have the effect of a rule and which is not excepted from the definition of a rule, whether affirmative, negative, injunctive, or declaratory in form. An agency decision shall be final when reduced to writing."

Thus, based upon these definitional changes by the Legislature, it is my opinion that the term "order," within the meaning and context of Ch. 120 includes the agency's quasi-judicial powers, part of the agency's quasi-executive powers, and so much of the exercise of its "quasi-legislative" function not considered part of the rulemaking process. Broward County v. The Administration Commission, 321 So.2d 605 (1 D.C.A. Fla., 1975); Lewis v. Judges of District Court of Appeal, First District, *supra*.

In view of the above definition, it is my opinion that such written permission by the executive director to a county official, based on good cause shown, to use a form other than the forms prescribed by the department is an order as the term is contemplated under Ch. 120, F. S. Such written permission would affect the private interests of persons whose property is being taxed under such form and is therefore a procedure important to the public. The written permission does not have the effect of a rule since it is not an agency statement of general applicability.

In view of the affirmative answers to your questions concerning whether or not a standard assessment procedure prescribed pursuant to s. 195.027, F. S., a standard measure of value promulgated pursuant to ss. 195.002 and 195.032, F. S., and the forms and instructions prescribed pursuant to s. 195.022, F. S., are rules for the purposes of Ch. 120, *supra*, the rules must be published and indexed in the Florida Administrative Code. Section 120.54(10)(b) provides that:

"Twenty-one days after the notice required by subsection (1), or after the final public hearing, if the hearing extends beyond the 21 days, the adopting agency shall file with the Department of State three certified copies of the rule it proposes to adopt, a summary of the rule, a summary of any hearings held on the rule, and a detailed written statement of the facts and circumstances justifying the rule."

Section 120.55, F. S., provides that:

"(1) The Department of State shall:

* * * * *

(b) Publish in a permanent compilation entitled 'Florida Administrative Code' all rules adopted by each agency . . . and complete indexes to all rules contained in the code. . . ."

It is my opinion that Ch. 120, F. S., will require that the standard assessment procedures, the standard measures of value, and the forms and instructions adopted by the department be filed, published, and indexed in the Florida Administrative Code.

P&H
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Benjamin K. Phipps
DIRECT NO. 222 2717

MEMORANDUM

(via email and U.S. Mail)

21 July 2010

TO: Commercial Property Services ("CPS")

FROM: Benjamin K. Phipps

SUBJECT: The Florida Department of Revenue Appraisal Guidelines

A question has arisen of whether The Florida Real Property Appraisal Guidelines, adopted by the Governor and Cabinet, sitting as the Department of Revenue, constitute a "rule" under Chapter 120, Florida Statutes, the Florida Administrative Code. Before getting into exactly where the guidelines fit in the spectrum of laws, it is appropriate to first examine their statutory provenance.

Section 195.062, Florida Statutes, requires the Florida Department of Revenue to "prepare and maintain a current manual of instructions for property appraisers and other officials connected with the administration of property taxes." That statute further requires that the manual contain:

(a) Rules and regulations
(b) Standard measures of value
(c) Forms and instructions relating to the use of forms and maps

Section 195.032 requires that the Department establish and promulgate the "standard measures of value," and further mandates that such "shall provide guidelines for the valuation of property and methods for property appraisers to employ in arriving at the just value of particular types of property." Shortly after the adoption of the amendment to Section 195.032 relating to the promulgation of the guidelines, the Attorney General was asked to opine if standard measures of values constitute a rule under Chapter 120. The Attorney General's unambiguous opinion was that standard measures of value are rules as that term is defined in the Florida Administrative Code, Chapter 120 of the Florida Statutes. (AGO 76-123.)

The Department has promulgated standard measures of value governing the assessment of real property; standard measures of value governing the assessment of classified use of property ("agricultural guidelines"); standard measures of value for the assessment of tangible personal property ("tangible personal property appraisal guidelines"); and cadastral mapping guidelines. The real property appraisal guidelines, adopted by the Governor and Cabinet on 26 November 2002, are essentially an updating and replacement of the original standard measures of value for the assessment of real property adopted in 1976.

To recapitulate, there are four sets of guidelines: real property assessment, agricultural classified use assessments, cadastral mapping instructions, and tangible personal property appraisal guidelines. The classified use (agriculture) guidelines are specifically identified as standard measures of value, as are the tangible personal property appraisal guidelines. Under AGO 76-123, there can be no question that these two constitute a rule. Putting aside the question relating to the cadastral mapping guidelines, the issue remains whether the real property assessment guidelines (adopted in 2002) are less than a standard measure of value, and are therefore not a rule. In fact the Attorney General held that each and everything in the statutorily mandated manual constitutes a rule, including the forms. Viewing all of these documents together, that is as the composite of the manual of instructions mandated in Section 195.062, logic dictates that each set of guidelines are in the nature of "standard measures of value," whether specifically identified as such or not. Thus, they are all clearly rules, in the Chapter 120 sense of that term. AGO 76-123 adds the authority of law to this logic.

Nevertheless, the statement is frequently made that, "the guidelines, while adopted like rules, are somehow not rules." A careful examination of the law, as was achieved and articulated in AGO 76-123, gives scant support to this concept. The concept that the guidelines are "adopted like rules but are something less than rules" is more in the nature of an urban myth than a legal thesis.

Even assuming that somehow the guidelines are "less than a rule," they are nonetheless a statutorily mandated promulgation of the Department of Revenue. Section 195.032 states:

> The standard measures of value shall provide guidelines for the valuation of property and methods for property appraisers to employ in arriving at the just valuation of particular types of property consistent with ss.193.011 and 193.461.

The statute then goes on to state that they shall be deemed "prima facie correct." Arguably, a property appraiser might depart from the guidelines, in particular instances, where there is some compelling appraisal methodology requiring such a departure. Otherwise, property appraisers must follow and apply the guidelines.

The question then remains whether the standard measure of value and guidelines must be followed by Value Adjustment Boards and their special magistrates, as well as by property appraisers. To the extent there may have been any lingering doubt, this question was answered in the affirmative by the Legislature in its 2008 major reform of the VAB process (Ch.2008-197, Laws of Florida (House Bill 909)). In section 5 of that Act, the Legislature mandated that the training to be conducted by the Department of Revenue of special magistrates, "shall emphasize the department's standard measures of value, including the guidelines for real and tangible personal property." (Codified as Section 194.035(3), Florida Statutes.) Not only are these Department promulgations binding on special magistrates, they must be trained in their application.

In conclusion, contrary to the urban myth, the four sets of guidelines adopted by the Governor and Cabinet, whether technically rules under Chapter 120, or merely "in the nature of rules," are statutorily mandated promulgations of the Department which property appraisers and special magistrates are required to use and comply with. Under the new Section 194.301, property appraiser must justify any departure from professionally accepted appraisal practices. The guidelines are a recitation of professionally accepted appraisal practices, and special magistrates must enforce rigorous compliance with the guidelines in their evaluation of challenged assessments.

From: Bradley Tennant <bradley.tennant@realadvice.com>
Sent: Thursday, January 9, 2025 1:08 PM
To: DORPTO <DORPTO@floridarevenue.com>
Cc: Todd Jones <todd.jones@realadvice.com>; Jim Zingale <Jim.Zingale@floridarevenue.com>; Rene Lewis <Rene.Lewis@floridarevenue.com>; Mark Hamilton <Mark.Hamilton@floridarevenue.com>
Subject: Florida Department of Revenue Proposed Rules - Development of Proposed Amendments to the Florida Real Property Appraisal Guidelines

Mr. Cotton, *et al.*,

Please find attached our comments regarding the proposed revisions to the Florida Real Property Appraisal Guidelines. We applaud the work done to date and hope our limited suggestions are considered. Thank you.

Bradley Tennant, Esq. & MSRE | Managing Director | **Real*Advice*** | 727-346-8443

January 9, 2024

Mike Cotton
Property Tax Oversight Program
Florida Department of Revenue
DORPTO@floridarevenue.com
Cc: Jim Zingale, jim.zingale@floridarevenue.com;
Rene Lewis, rene.lewis@floridarevenue.com;
Mark Hamilton, mark.hamilton@floridarevenue.com

RE: Comments on the proposed Florida Real Property Appraisal Guidelines revisions

Overall, we believe the changes proposed in the draft guidance document will have a positive effect on the impacted professions. Many of the changes modernize the guide, and should be applauded.

That being said, we believe there are a select few sections that should be revised prior to finalization. Below are our limited comments.

Section 1.1: This section alters the citations relative to the property appraiser's duties. While this improves readability, it no longer includes the caveat in the prior version relative to exceptions. While a thorough debriefing of all exceptions or limitations is unnecessary, we believe it is important to reference that they at least exist. Some, such as the limitation on levying ad valorem taxes contained in Fla. Const. Art. VII Sec. 9(a) ("except ad valorem taxes on intangible personal property and taxes prohibited by this constitution."), have been getting increasing focus in recent years. We believe adding back in the phrase "with certain exceptions" would help signal to the assessors that their responsibilities in valuing property are not only granted, but also limted by statutory and constitutional law. Neglecting to address this will guarantee unnecessary conflicts in the proper administration of property taxation.

Section 4.4.8: This section alters the guidance relative to obtaining information relative to the income approach assessors utilize. One change, replacing "market rent" with "rent income", will unnecessarily confuse assessors regarding the proper execution of their duties. Specifically, the law in Florida is that the assessment should represent "the fair market value of the unencumbered fee…" *Schultz v. TM Florida-Ohio Realty Ltd. Partnership*, 577 So.2d 573 (Fla. 1991).The issue with the language, as altered, is that it implies a leased-fee analysis by connecting the "rent income" (i.e., contract rent vs. market rent) – which seems to be property specific – with the determination of value. We urge you to use the term "market rent" as it is the more acurate terminology for this paragraph.

Section 6.1: This sections explains what highest and best use is. While generally a great addition, the last sentence of the second paragraph gives an example of a "below-market lease" impacting a property. Conceptually it is the correct answer, but the example given presents a representation of a leased-fee versus fee-simple distinction instead of a example of highest and best use. A better example that more accurately tracks the paragraph might be: "For example, if a standalone grocery store is located in a zoning district that permits high density residential use, and market factors support adequate demand for new development, and the factors in FS193.011(2) are properly considered, the present use should be disregarded since it is not the highest and best use of the unencumbered fee simple estate."

Section 6.4: This section addresses the cost approach. The only objection to this paragraph is the use of the abbreviation "RCN", which stands for replacement cost new. The use of this phrase is confusing for two reasons: (1) as it is unclear if the reference to new is "when it was new" or "newly rebuilt", and (2) it could be confused with the term "reproduction cost new" which is generally inconsistent with Florida law. We believe simply using the term "replacement cost new" instead of the abbreviation would be more clear and accurate.

Section 13.8: This setion deals with adjustments in the cost approach (and is incorporated into a previous section). The second sentence references that "contractors profit is typically included in published cost manuals, but developer's anticipated profit typically is not. However, all determination of RCN of real property should include both." The proper phrase we recommend is "developer's incentive". To put a finer point on it, a developer's anticipated profit could vary wildly based on many factors that are not relevant to the appraisal – i.e., they got a good deal on concrete. The broader term of "incentive" recognizes that a development would not occur if not for a benefit to the developer, but is an objective term that is more appropriate for valuing something that would be unknown and inappropriate to directly consider for an appraisal. At issue is the phrase "anticipated profit" which is a specific reference to an intangible asset that should not be included in an appraisal for ad valorem purposes under Florida law, as that element is exempt.

We hope you consider these suggestions in you next revision. Thank you.

Sincerely,

Todd Jones, MAI, CRE, FRICS

Bradley S. Tennant, Esq.
Board Certified in Real Estate Law