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Sent: Friday, January 17, 2025 1:29 PM
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Subject: FW: Florida Real Property Appraisal Guidelines

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Attached please find comments to the proposed Florida Real Property Appraisal Guidelines. Our firm has been representing taxpayers throughout the state of Florida in connection with ad valorem property taxes for over 30 years.

We appreciate the PTO's updating and streamlining of the Guidelines. In reviewing them, however, there are a few important concepts that we believe were omitted, and should be included. We have made comments with proposed additions and changes directly on the attached pdf version of the revised guidelines.

Thank you in advance for your consideration of these comments and we look forward to further public meetings to discuss the incorporation of these concepts into the new guidelines. An open, public and fair process is critical to fair taxation.

Sincerely,

Julie Schwartz, Esq. | [vCard](#)



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Florida Real Property Appraisal Guidelines



Property Tax Oversight
XXXX 2024

1.0 INTRODUCTION

1.1 Overview and Specific Authority. Section 195.002(1), Florida Statutes (F.S.), identifies the Florida Department of Revenue (Department) as a state administrative agency with the statutory responsibility of general supervision of the assessment and valuation of property, and the administration and collection of property taxes. The Department's supervision is necessary to ensure all property is placed on the tax rolls and valued in accordance with the requirements of the state constitution.

Every four years, the voters in each Florida county elect a property appraiser as directed by Article VIII, section 1(d), of the Florida Constitution. Section 192.001(3), F.S., states the property appraiser is "the county officer charged with determining the value of all property within the county, with maintaining certain records connected therewith, and with determining the tax on taxable property after taxes have been levied." In the course of discharging its statutory duties, the Department provides general supervision to the property appraiser of each of the 67 counties in the state of Florida.

Property Appraisers have the statutory responsibility to list and appraise all real property in their respective county each year for purposes of ad valorem taxation, as stated in ss. 192.011 and 193.085(1), F.S.

Section 192.011, F.S., states, in pertinent part "[t]he property appraiser shall assess all property located within the county, except inventory, whether such property is taxable, wholly or partially exempt, or subject to classification reflecting a value less than its just value at its present highest and best use." Section 193.085(1), F.S., states, in pertinent part "[t]he property appraiser shall ensure that all real property within his or her county is listed and valued on the real property assessment roll."

Sections 195.062(1) and 195.032, F.S. specifically direct the Department to establish standard measures of value, which include these *Real Property Appraisal Guidelines* to aid and assist property appraisers in performing their assessment and valuation responsibilities. Statute provides the specific authority and legislative directive for the Department's development of these guidelines, as well as underscore's the Legislature's intent to limit the scope of their use.

Section 195.062(1), F.S., states, in pertinent part:

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:

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

Section 195.032, F.S., states:

In furtherance of the requirement set out in section 195.002, the Department of Revenue shall establish and promulgate standard measures of value not inconsistent with those standards provided by law, to be used by property appraisers in all counties, including taxing districts, to aid and assist them in arriving at assessments of all property. 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 sections 193.011 and 193.461. The standard measures of value shall assist the property appraiser in the valuation of property and be deemed prima facie correct, but shall not be deemed to establish the just value of any property. However, the presumption of correctness accorded an assessment made by a property appraiser shall not be impugned merely because the standard measures of value do not establish the just value of any property.

2.0 FOUNDATIONAL PRINCIPLES

Definitions for these key foundational mass appraisal terms are available in Addendum A:

Ad valorem tax
Assessed value

Just value
Mass appraisal

Quality control
Real property

2.1 Legal and Regulatory Foundations. Section 192.042(1), F.S., requires that all real property must be assessed according to just value each year on January 1. Section 193.011, F.S., provides direction to property appraisers for the just valuation of real property for ad valorem tax purposes. It states:

Factors to consider in deriving just valuation.--In arriving at just valuation as required under s. 4, Art. VII of the State Constitution, the property appraiser shall take into consideration the following factors:

- (1) The present cash value of the property, which is the amount a willing purchaser would pay a willing seller, exclusive of reasonable fees and costs of purchase, in cash or the immediate equivalent thereof in a transaction at arm's length;
- (2) The highest and best use to which the property can be expected to be put in the immediate future and the present use of the property, taking into consideration the legally permissible use of the property, including any applicable judicial limitation, local or state land use regulation, or historic preservation ordinance, and any zoning changes, concurrency requirements, and permits necessary to achieve the highest and best use, and considering any moratorium imposed by executive order, law, ordinance, regulation, resolution, or proclamation adopted by any governmental body or agency or the Governor when the moratorium or judicial limitation prohibits or restricts the development or improvement of property as otherwise authorized by applicable law. The applicable governmental body or agency or the Governor shall notify the property appraiser in writing of any executive order, ordinance, regulation, resolution, or proclamation it adopts imposing any such limitation, regulation, or moratorium;
- (3) The location of said property;
- (4) The quantity or size of said property;
- (5) The cost of said property and the present replacement value of any improvements thereon;
- (6) The condition of said property;
- (7) The income from said property; and
- (8) The net proceeds of the sale of the property, as received by the seller, after deducting usual and reasonable fees and costs of the sale, including the costs and expenses of the sale, and an allowance for unconventional or atypical terms of financing arrangements. When the net proceeds of the sale of any property are utilized, directly or indirectly, in the determination of just valuation of realty of the sold parcel or any other parcel under the provisions of this section, the property appraiser, for the purposes of such determination, shall exclude any portion of such net proceeds attributable to payments for household furnishings or other items of personal property.

property

and to record the methodology and results of such consideration in its records.

Section 193.011, F.S., requires the property appraiser to consider each of these eight criteria. These guidelines present other relevant statutes applicable to each of the eight factors listed above where appropriate.

Section 193.011, F.S. is specific to real property; the factors for valuation of land classified for agricultural use are listed in s. 193.461(6), F.S. The *Agricultural Classified Use Real Property Appraisal Guidelines* provide guidance for use valuation of such land.

In 1967 the Florida legislature added the 8th just valuation factor providing for property appraisers to deduct cost of sale in arriving at just valuations. Applying the 8th criteria is different from applying the other seven factors in sec. 193.011. This is because property appraisers generally apply the other seven factors through their annual appraisal process when they analyze and apply property specific appraisal data related to the other factors. However the general lack of market data impedes the verification of specific costs of sale. Therefore given this general lack of market data, property appraisers should apply a uniform percentage deduction and the across the board practice of uniform deduction of cost of sale is required to achieve just value. In fact, the Florida legislature requires property appraisers to annually report to the DOR the cost of sale deductions a property appraiser "made to recorded selling prices or fair market value" in arriving at assessed value, as prescribed by department rule. DOR implemented this reporting requirement by adopting rule 12D-8.0004.



The property appraiser is responsible for understanding and adhering to professionally accepted appraisal practices and appropriate appraisal methodologies to ensure that current standards of practice, as prescribed by Florida ad valorem tax law and the professional organizations cited above, are followed in arriving at just values.

2.3 Foundations of Mass Appraisal in Florida. Mass appraisal provides a structure for property appraisers to value large quantities of properties with a variety of uses as of the date of assessment. The process systematically considers the just values of other property within groups for equity. Because just valuations of real property for ad valorem tax purposes in Florida are generally performed using mass appraisal, these guidelines focus on the real property mass appraisal process.

“Mass appraisal refers to methods that have been developed to solve large-scale valuation problems, such as when many properties must be appraised for the same purpose, often as of the same date and at low per-property cost. Mass appraisal is characterized by standardized procedures, common data, and statistical testing. It is a challenging activity rooted in economics that draws on statistical and spatial analysis of data from property markets. Like all spheres of appraisal, it requires experience and judgment.”¹

“Market value for assessment purposes is generally determined through the application of mass appraisal techniques. Mass appraisal is the process of valuing a group of properties as of a given date and using common data, standardized methods, and statistical testing. To determine a parcel’s value, assessing officers must rely upon valuation equations, tables, and schedules developed through mathematical analysis of market data. Values for individual parcels should not be based solely on the sale price of a property; rather, valuation schedules and models should be consistently applied to property data that are correct, complete, and up-to-date. Properly administered, the development, construction, and use of a CAMA system results in a valuation system characterized by accuracy, uniformity, equity, reliability, and low per-parcel costs. Except for unique properties, individual analyses and appraisals of properties are not practical for ad valorem tax purposes.”²

To fulfill the statutory duty to value real property, property appraisers may leverage the use of mass appraisal techniques. Mass appraisal is recognized by Florida ad valorem tax law as a professionally accepted appraisal practice (see ss. 193.023(2)(3) and 194.301(1), F.S.).

The following sections discuss fundamental topics relevant to the annual assessment of real property in Florida. These include:

- Real property rights
- Purpose and intended use
- Intended users
- Date of assessment
- Comparison of single-property appraisal and mass appraisal
- Education and training of assessment personnel

The fee simple estate in real property is the unencumbered ownership limited only by the four powers of government; taxation, police power, eminent domain and escheat.

2.3.1 Real Property Rights. For ad valorem tax purposes in Florida, the real property rights to be valued are the unencumbered fee simple estate, unless specified otherwise.³

¹ International Association of Assessing Officers, *Fundamentals of Mass Appraisal* (Kansas City, MO: International Association of Assessing Officers, 2011), page 1.

² International Association of Assessing Officers, *Standard on Mass Appraisal of Real Property* (Kansas City, MO: International Association of Assessing Officers, 2017), page 1.

³ See *Schultz v. TM Florida-Ohio Realty Ltd Partnership*, 577 So.2d 573 (Fla. 1991).

3.0 THE MASS APPRAISAL PROCESS IN FLORIDA

Definitions for these key mass appraisal terms are available in Addendum A:

Ad valorem tax
Assessment roll

Fee simple
Just value

Personal property
Ratio study

3.1 Overview. These guidelines address the steps for an effective mass appraisal process for just valuations of real property in Florida. The steps are not necessarily done in the sequence given since many of these steps are ongoing and may be performed not only sequentially, but also concurrently and interactively.

3.2 Annual Just Valuation Cycle. Property appraisers have many deadlines and significant calendar requirements they must meet, several of which apply to operations other than the just valuation of real property. These guidelines describe the activities and timeframes involved in just valuation. This is a limited description provided as a brief overview, and users should not rely solely on it for regulatory compliance.

The assessment date, or date of value, is January 1. Real property assessment for ad valorem tax purposes in Florida is an annual process. The scope of the mass appraisal in any given year includes:

- Updating the just values of the previous year
- Producing just values for newly platted land, new construction, parcels with changes in land use regulations, new parcels resulting from splits and combinations, etc.
- Preparing and submitting assessment rolls to the Department
- Responding to study results, evaluations, procedures reviews, or report findings from the Department
- Preparing and mailing truth in millage (TRIM) notices to taxpayers
- Participating in value adjustment board (VAB) proceedings
- Communicating with interested parties, including taxpayers, taxing authorities, elected and appointed officials

The process of updating just values for existing parcels and producing just values for new parcels is an independent function of the property appraiser and staff. It includes collecting and managing data, qualifying or disqualifying real property transfers, discovering and classifying property, defining market areas, specifying and calibrating valuation models, applying adjustments to reflect market changes over time, and conducting ratio studies and other applicable analyses.

Property appraisers are required to prepare and submit assessment rolls to the Department several times a year and respond to study results, evaluations, procedures reviews, or report findings from the Department. The Department communicates these requirements and the standards for the evaluation of the tax rolls in the annual [Tax Roll Production, Submission and Evaluation Standards](#). The standards are sent annually to property appraisers at the time of publication and are available online at this location:

https://floridarevenue.com/property/Pages/Cofficial_CompleteSubRollEval.aspx

3.3 Identification of Real Property. The first step in the valuation process is to identify the real property, as defined by s. 192.001(12), F.S., to be assessed. Just valuations should exclude personal property, as defined in s.192.001(11), F.S.

The Department prescribes the parcel data required for the assessment rolls in the [Tax Roll Production, Submission and Evaluation Standards](#). The real property assessment roll is comprised of the Name-Address-Legal (NAL) data file and the sale data file (SDF). The NAL has 92 data fields while the SDF has 14. Please refer to the [Tax Roll Production, Submission and Evaluation Standards](#) for the details of each field. Property and intangible personal property.



6.0 MASS APPRAISAL VALUATION

Definitions for these key mass appraisal valuation terms are available in Addendum A:

Actual age	Fee simple	Market participants
Contract rent	Functional obsolescence	Model specification
Deferred maintenance	Gross income multiplier (GIM)	Multiple regression analysis (MRA)
Direct capitalization	Highest and best use	Physical deterioration
Effective age	Just value	Replacement cost new (RCN)
External obsolescence	Market rent	Yield capitalization

6.1 Highest and Best Use. Florida ad valorem tax law guides the scope of highest and best use analysis in the just valuation of real property for ad valorem tax purposes. For just valuation purposes in Florida, present use means the real property's existing use as of the date of assessment. As specified in s. 193.011(2), F.S., the highest and best use and the present use of real property comprise the second of the eight factors property appraisers must consider in determining just value of real property. Specifically, this statute states: *"The highest and best use to which the property can be expected to be put in the immediate future and the present use of the property, taking into consideration the legally permissible use of the property, including any applicable judicial limitation, local or state land use regulation, or historic preservation ordinance, and any zoning changes, concurrency requirements, and permits necessary to achieve the highest and best use, and considering any moratorium imposed ..."*.

The data collection and management activities described in these guidelines are the primary mechanisms by which the property appraiser considers the real property's present use. Assigning the use code to real property is the first step in valuation. The Department's annual [Tax Roll Production, Submission and Evaluation Standards](#) includes the list of land use codes and descriptions. Property use codes applied to each real property parcel on the assessment roll should reflect the real property's present, or current use. Unless a change in highest and best use is reasonably probable in the immediate future, the present use may represent the highest and best use of real property. In that case, the highest and best use is determined by research or analysis. In other cases, the present use of real property is subject to a below-market lease, the highest and best use of the unencumbered fee simple estate.

Property appraisers are prohibited from speculating when and if any of the limitations referenced in (2) will be removed, or if zoning changes, concurrency requirements, or permit will be allowed. Property appraisers are prohibited from considering potential uses to which a property is reasonably susceptible and to which it might possibly be put in a future tax year. *Lanier v. Overstreet*, 175 So. 2nd 521 (Fla. 1965)

There are four sequential tests for highest and best use considerations.²⁵ These tests involve consideration of the legally permissible uses, physically possible uses, financially feasible uses, and maximally productive uses within real property groups. Consideration of these four tests is reflected in the property appraiser's annual real property mass appraisal activities. These activities include data collection and management, geographic stratification, exploratory data analysis, application of professionally accepted appraisal practices and appropriate appraisal methodologies, highest and best use considerations, and compliance with current Florida ad valorem tax law. When applied to appraisals for some private sector purposes, the third and fourth tests may involve in-depth market and/or feasibility studies. These studies are beyond the scope of highest and best use considerations required for mass appraisal in accordance with Florida ad valorem tax law.

Highest and best use may shift as a result of changes in zoning and future land use classifications, new subdivisions, improvements to infrastructure, new construction, substantial renovation, demolition, sales, and rentals. These changes may be observed directly through field inspection of real property, or indirectly by reviewing permits, ordinances, and market transactions and tendencies. Mapping these types of changes may

²⁵ International Association of Assessing Officers, *Property Assessment Valuation, Third Edition* (Kansas City, MO: International Association of Assessing Officers, 2010), pages 29-30.

6.5.2 Adaptive Estimation Procedure. Adaptive estimation procedure, also referred to as “feedback,” is another useful mass appraisal tool in the sales comparison approach.³⁵ Like MRA, this is a highly complex statistical procedure that analyzes the relationships between the property characteristics and sale prices of sold property to develop a mathematical equation to determine the just valuations of groups of real property. Separate feedback models may be developed for residential market areas and other real property groups. The adaptive estimation procedure has requirements, possible limitations, and assumptions like those of MRA.

6.6 The Income Approach. The effectiveness of the income capitalization approach in mass appraisal may depend in part on reliable data collection and management, effective exploratory data analysis, good market knowledge, professionally accepted appraisal practices and appropriate appraisal methodologies, and application of mass appraisal quality assurance tools. In its basic applications, the income approach is a set of procedures in which stabilized income from income-producing real property is capitalized into a just value indication by dividing stabilized net operating income by an overall capitalization rate, or by multiplying stabilized gross income by a gross income multiplier (GIM). A buyer of income-producing property exchanges current dollars for the expectation of receiving future dollars. The collection and management of income data and exploratory data analysis are described in section 4.4.8 and 4.7 of these guidelines.

The income approach relies on proper stratification of real property. Stratification criteria may include property use code, location, quality grade, effective age, or size. The appropriate level of stratification may vary based on the number and type of real property parcels involved and the amount of market data available.

As applied in the income approach, units of comparison are the economic units into which the income, operating expenses, or value indications of real property may be divided for analysis. Examples of units of comparison are rent per square foot or expenses per square foot. Selecting the appropriate unit of comparison for income and expenses involves two primary criteria. One is the unit of comparison market participants use most frequently in their decision-making for the property type under analysis, and the other is the unit of comparison resulting in the lowest measures of dispersion in income and operating expense data sets. Before valuation analysis, all income and operating expense data should be reduced to the appropriate unit of comparison.

6.6.1 Market Rent and Expense Analysis. Market rent, which is distinct from contract rent, corresponds to the fee simple estate. Contract rent corresponds to the leased fee estate. Therefore, contract rent is irrelevant to real property valuation for ad valorem tax purposes in Florida, unless independent support is available indicating that contract rent is equal to market rent. Market rent may be less than, equal to, or greater than contract rent.

Reliable market rent and expense analysis involves both quantitative and qualitative analyses. After market rent and expense data have been appropriately stratified and compared, useful market rent is the rent a property should bring in a competitive and open market under all conditions requisite to a fair lease transaction. *The Appraisal of Real Estate*, 15th Edition, Appraisal Institute, 2020, p. 421.

6.6.2 Direct Capitalization. Direct capitalization is used to convert a single year’s income expectancy into a value indication. This conversion is accomplished in one step, either by dividing the net operating income by an appropriate income rate or by multiplying the gross income estimate by an appropriate factor or multiplier.³⁶

The market factors to consider may include:

- 1) The recent income and expense histories of properly stratified real property groups

³⁵ International Association of Assessing Officers, *Fundamentals of Mass Appraisal* (Kansas City, MO: International Association of Assessing Officers, 2011), pages 269-271.

³⁶ Appraisal Institute, *The Appraisal of Real Estate, Fifteenth Edition* (Chicago: Appraisal Institute, 2020), page 459.

is the preferred methodology under the income approach for ad valorem valuations.

- 2) The current trends for income and expenses of properly stratified real property groups
- 3) The market participants' expectations for income and expenses of properly stratified real property groups
- 4) The recent history, current trends, and market participants' expectations for income and expenses of individual properties in properly stratified real property groups
- 5) Commercially available and published reports on the recent history, current trends, and market participants' expectations for income and expenses of property that may be compared to the properly stratified real property groups

An overall capitalization rate, or overall rate, is a number in decimal form that may be divided into net operating income to produce an indication of just value by the income approach.

Direct capitalization is a common, but somewhat complex income approach method. To produce credible just valuation using direct capitalization for income producing properties, the property appraiser and valuation staff should have a good working knowledge of the method and understand how to apply it effectively.

6.6.3 Gross Income Multiplier (GIM). In this variant of direct capitalization, a value indication may be formed in two ways. One way is to multiply potential gross income by a market-extracted multiplier or to divide the sale price by potential gross income if they were extracted. Various indicators of GIMs may be used. The GIM method does not explicitly consider operating expenses. When valuing real property with related non-realty items, it is important to remove tangible and intangible property from the analysis. *Singh v. Walt Disney Parks and Resorts US, Inc.*, 325 So 3rd 124, (5th DCA 2020). *Havill v. Scripps Howard Cable Co.*, 742 So. 2nd 210 (Fla. 1998).

6.6.4 Yield Capitalization. Discounted cash flow analysis is a common variant of yield capitalization, when appropriate. Discounted cash flow analysis is a set of procedures in which a value indication is produced by projecting the future annual net operating income over a typical investment holding period, along with the net proceeds of resale at the end of the holding period, and then discounting these future economic benefits back to the present using an appropriate discount rate. In evaluating the potential use of any yield capitalization method in particular situations, property appraisers must apply professionally accepted appraisal practices and appropriate appraisal methodologies.

This approach is most often used for small residential income producing properties. *The Appraisal of Real Estate*, 15th Edition, Appraisal Institute, 2020, p. 473.

In some cases, Florida courts have rejected property valuations for ad valorem taxation that involve projecting and discounting future economic benefits. A Property Appraiser may not speculate about future economic benefits.



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Subject: Re: Florida Department of Revenue Proposed Rules - Development of Proposed
Amendments to the Florida Real Property Appraisal Guidelines

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Mr. Cotton, *et al.*,

Please find attached our revised comments regarding the latest proposed revisions to the Florida Real Property Appraisal Guidelines. We believe our identification of the newly-added language and the legal infirmity it creates should be considered. Thank you.

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April 24, 2025

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

We previously sent a letter, dated April 9, 2024, indicating that, while we believe the changes proposed in the draft guidance document will have a positive effect on the impacted professions, there were several corrections to the draft necessary to comport with Florida law. Unfortunately, it appears that not only were most of these suggestions ignored, but further changes were made that bring this draft further from compliance with state law and USPAP requirements. This is an issue of great public importance as it impacts every taxpayer – and every potential taxpayer – in Florida.

Specifically, there is an addition to § 6.4.1 which states (emphasis added):

“Replacement cost figures should include all direct and indirect costs, including materials, labor, equipment cost, supervision, architect and legal fees, administrative expenses, overhead, and reasonable profit. Properly accounting for indirect costs and entrepreneurial profit requires research.” The two components of profit in replacement cost new RCN are contractor’s profit and entrepreneurial incentive developer’s anticipated profit. Developer’s anticipated profit is sometimes referred to as entrepreneurial incentive. The cost data from published cost manuals may include contractor’s profit, but entrepreneurial incentive developer’s anticipated profit typically is not. However, all determinations of replacement cost new RCN of real property should include both. The two methods of deriving replacement cost new RCN that are commonly applied in mass appraisal are the comparative unit method and the unit-in-place method.”

This addition is plainly contrary to Florida law. Taxable real property, for purposes of assessment, is limited to “land, buildings, fixtures, and all other improvements to land.” (§192.001(12), Fla. Stat.) Profit, on the other hand, is considered to be intangible personal property (§192.001(11)(b), Fla. Stat.), and is not subject to property taxes pursuant to the Florida Constitution (“Counties, school districts, and municipalities shall, and special districts may, be authorized by law to levy ad valorem taxes ... except ad valorem taxes on intangible personal property and taxes prohibited by this constitution” Art. VII, § 9(a), Fla. Const. (emphasis added)). The application in the instant matter is best set forth in *Singh v. Walt Disney Parks and Resorts US, Inc.*, 325 So.3d 124 (Fla. 5th DCA, 2020). In *Singh*, the court specifically disallowed the “Rushmore method” used by the county assessor as it improperly included intangible value, including profit. (*id. at* 132). An assessor including profit (either contractor and entrepreneurial) in the assessed value would plainly be in violation of the Florida Constitution and other applicable law. Sufficing to say, these guidelines cannot whole cloth change what is taxable in Florida – only a constitutional amendment can.

This difference is further illustrated by instances in which such profit is anything outside the norm. For example, a vertically integrated home builder who makes money on selling land or a homeowner doing their own work do not make profit on the construction. Many builders profit only by virtue of the sale – i.e., the value of the land – and adding



profit on the construction side via replacement cost method essentially double dips to increase an assessment beyond the just value. An assessor including profit in such valuation would be taxing something that simply does not exist. These guidelines, by including profit, would be giving credence to government officials to violate the constitutional rights of all property owners in Florida.

It is also worth noting that building permits and other public filings related to construction may include profit in their calculated values. Such public documents are easy and attractive for assessors to use as evidence for a just value, but they are based on a separate legal standard. Permits are inexorably tied to the contracts, not the real property, by virtue of their relationship to construction lien law, Chapter 713, Fla. Stat.. Simply put, contractors can recover based on contract value, which includes intangible profit. But just as contracts and property are entirely different legal topics, so too are their conceptualization of definitions and “value.” As noted above, including profit in assessed value is contrary to Florida law. Including profit in a contract is expected, and that “benefit of the bargain” cannot change how the state defines the physical property.

We will also point out that “profit” is not escaping state taxation by being exempt from ad valorem taxes. Builders and contractors are subject to sales and use taxes (and often corporate income and employment-related taxes) in addition to various government fees related to their work. Even local governments can add discretionary surtaxes to address local needs.

Finally, provided below are our prior, limited comments. Please note that a few of the comments were accepted in the latest draft and have now been removed from this letter.

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 limited 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 accurate and legally appropriate terminology for this paragraph.

Section 6.1: This section explains what highest and best use is. While generally a great addition, the last sentence of the second paragraph - which has been deleted in the latest version - 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 an 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 13.8: This section 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 for assessment purposes – 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 your next revision. Leaving the draft “as is” would be both unconstitutional and result in increased litigation for the Florida Department of Revenue and Florida taxpayers. Thank you.

Sincerely,

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