

Jeffrey Mandler, Esq.
Direct Line 305.375.6580
Direct Fax 305.347.6478
E-mail jmandler@rvmlaw.com



RENNERT VOGEL
MANDLER & RODRIGUEZ, P.A.
ATTORNEYS AT LAW

February 3, 2021

VIA E-MAIL
vab@occompt.com

Aaron Thalwitzer, Esq.
Orange County Value Adjustment Board
P.O. Box 38
Orlando, FL 32802

Re: **Remanding Petitions 2020-00622; 00624; 00628; and 00629 for Failure to Consider and Apply Eighth Criterion Cost of Sale Adjustment**

Dear Mr. Thalwitzer:

We are writing you to request that you set aside the recommended decisions of the Special Magistrate rendered on January 11, 2021 with respect to the above-referenced petitions because these decisions do not comply with Florida Statute 194.301, as explained below. Moreover, Rule 12D-9.031(1) of the Florida Administrative Code states the following:

“All recommended decisions shall comply with Sections 194.301 A special magistrate shall not submit to the board, **and the board shall not adopt, any recommended decision that is not in compliance with Sections 194.301**” (emphasis added).

As an initial matter, the magistrate states the following in his findings for all four of the aforementioned cases:

The Petitioner’s argument is that there is no evidence indicating that the Property Appraiser applied a cost of sale adjustment. However, in the Magistrate’s opinion, there is no evidence indicating that the Property Appraiser did not properly CONSIDER the cost of sale in its Mass Appraisal Process. There is also no evidence indicating, that they did not apply a cost of sale adjustment in their Mass Appraisal methodology.

This statement conflates the issue entirely. We did not argue that the property appraiser failed to consider cost of sale in their mass appraisal process. On the contrary, we introduced the Form DR-493, which demonstrates that the property appraiser did in fact utilize a 15% cost of sale adjustment on properties that sold. Thus, we are in agreement with the magistrate on this specific issue.

The real issue is that while the property appraiser may have considered cost of sale in its mass appraisal process, the property appraiser failed to consider cost of sale in its valuation with respect to the four aforementioned cases. On this point, the magistrate stated the following in his findings:

The Property Appraiser indicated that they did CONSIDER the eighth criterion. No sufficiently relevant and credible evidence is provided indicating that the Property Appraiser has not CONSIDERED the eighth criterion.

The magistrate is stating that the burden is on the petitioner, not the property appraiser, to prove whether the eighth criterion was considered in the property appraiser's analysis. This is patently incorrect. In 2009, the Florida legislature substantially amended the Florida Statutes pertaining to presumption of correctness and burden of proof governing assessments. See § 194.301, Fla. Stat. Following the 2009 amendments, the property appraiser is now required to prove "by a preponderance of the evidence that the assessment was arrived at by complying with Fla. Stat. 193.011 . . . and professionally accepted appraisal practices, including mass appraisal standards." *Id* (emphasis added). Moreover, "a taxpayer who challenges an assessment is entitled to a determination by the value adjustment board or court of the appropriateness of the appraisal methodology used in making the assessment." *Id*.

It is clear that following the 2009 legislative amendment, property appraisers are held to a higher standard in formulating their assessments. See *Darden Restaurants, Inc. v. Singh*, 266 So. 3d 228, 233 n.6 (Fla. 5th DCA 2019) (Court stated that in light of the 2009 amendment to Fla. Stat. 194.301, the property appraiser's professional judgment and discretion must be exercised in accordance with professionally accepted appraisal practices.). Moreover, in light of the 2009 legislative amendment, the property appraiser is prohibited from stating in a conclusory fashion that he considered the eighth criterion and ultimately decided not to apply it. See also *Scripps Howard Cable Co. v. Havill*, 655 So. 2d 1071, 1077 (Fla. 5th DCA 1995) (stating that the property appraiser's conclusory statements that the eight criteria were properly considered were insufficient to accord the property appraiser's valuation of property a presumption of correctness.).

Professionally accepted appraisal practices require the property appraiser to recognize and comply with applicable laws and regulations. *See* attached Probable Cause Review by the State of Florida Department of Revenue, affirmed by the First District Court of Appeal State of Florida. Additionally, the Uniform Standards of Professional Appraisal Practice ("USPAP") state that an appraiser "must provide sufficient information to enable the [taxpayer] to have confidence that the processes and procedures used conform to accepted methods and result in credible value conclusions." *Id.* Appraisal standards also require that the appraiser disclose and explain the methodology used in making the assessment to enable the intended users (the taxpayer and special magistrate) to understand what the property appraiser did in developing the presented just valuations and why. *Id.*

Here, the magistrate is permitting the property appraiser to do exactly what appraisal standards and the 2009 amendments specifically prohibit: stating in conclusory terms that the eighth criterion was considered in its valuation analysis without requiring that same be proven by a preponderance of the evidence. On their face, the property appraiser's income approaches to value with respect to the four aforementioned cases show no indication that the eighth criterion was considered, much less applied. By way of example, the attached property record card for petition 2020-00622 sets forth the property's income approach to valuation including market rent, market vacancy, market capitalization rate, and tangible personal property adjustment, resulting in a final income value of \$60,060,963, which equals the 2020 market value for the subject. Nowhere, is a cost of sale adjustment referenced, nor can same be inferred based on the property appraiser's income analysis. Furthermore, at hearing the property appraiser offered no explanation for the absence of the eighth criterion in its income approach on this case, or in any of the other three cases, as well as no explanation for the absence of the eighth criterion on its cost approaches or sales comparison approaches to value. Petitioner also read into the record the assessments of the properties which the Property Appraiser relied upon in its sales approach to show that it applied a cost of sale of at least 15% when assessing the comparable sales, but did not do so in its sales approach for the subject property. Thus, the property appraiser is in clear violation of Fla. Stat. 194.301.

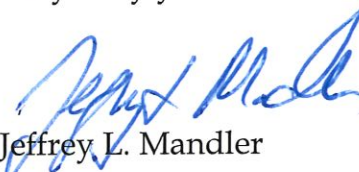
Failing to consider and apply a cost of sale deduction to these four cases, while the property appraiser admittedly applies a cost of sale deduction to all properties assessed through its mass appraisal system, constitutes selective, discriminatory conduct disallowed under Florida law. *See* § 194.301(2)(a)(3) (stating that an assessment may not be "arbitrarily based on appraisal practices that are different from the appraisal practices generally applied by the property appraiser to comparable property within the same county"). As such, the property appraiser and the special magistrate in its decision were

Aaron Thalwitzer, Esq.
February 3, 2021
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required to uniformly apply a 15% cost of sale adjustment to the four cases at issue. *See Louisville & Nashville Railroad Co. v. Department of Revenue, State of Florida*, 736 F.2d 1495, 1498-99 (11th Cir. 1984) (Court held that when comparing valuation practices under review to valuation practices applied to other comparable property, the overriding consideration is to apply a single standard for both groups to achieve uniform treatment under Fla. Stat. 194.301(2)(a).); *see also Ozier v. Seminole Cty. Prop. Appraiser*, 585 So. 2d 357, 359 (Fla. 5th DCA 1991) (referencing *Allegheny Pittsburgh Coal Co. v. County Commissioner*, 488 U.S. 336 (1989) ("Intentional systematic undervaluation by state officials of other taxable property in the same class contravenes the constitutional right of one taxed upon the full value of his property."); *Ozier*, 585 So. 2d at 359 ("Nothing causes taxpayer resentment and resistance as much as the perception of unfair treatment.").

Rule 12D-9.031(4)(b) of the Florida Administrative Code states that "[t]he board may direct a special magistrate to produce a recommended decision that complies with subsection (1)" We are requesting that in light of the foregoing, and in accordance with the above Rule, you direct the special magistrate of the four aforementioned cases with instructions to apply a cost of sale adjustment in the amount of 15% to the value conclusions to comply with Florida Statute 194.301, and the appraisal practice of applying a cost of sale of 15% to properties which sold in Orange County.

Very truly yours,



Jeffrey L. Mandler

Attachments

cc: Mr. Randy Harmer (Orange County Property Appraiser's Office)
Mr. Robert Grimaldi (Orange County Property Appraiser's Office)

Property Record - 25-21-29-5220-01-000

Orange County Property Appraiser • <http://www.ocpafl.org>

Property Summary

Property Name
 400 North
Names
 Maitland Multi Family LLC
Municipality
 MTL - Maitland
Property Use
 0314 - Multi-Family Mid-Ris

Mailing Address
 1500 Cordova Rd Ste 300
 Fort Lauderdale, FL 33316-2191
Physical Address
 400 N Orlando Ave
 Maitland, FL 32751



QR Code For Mobile Phone



Value and Taxes

Historical Value and Tax Benefits

Tax Year Values	Land	Building(s)	Feature(s)	Market Value	Assessed Value
2020 W INC				\$60,060,963 (701%)	\$60,060,963
2019 ✓ MKT	\$7,500,000	+	\$0	+	\$0 = \$7,500,000
					\$3,090,219
Tax Year Benefits	Tax Savings				
2020 W	\$0				
2019 ✓ \$	\$41,004				

2020 Taxable Value and Estimate of Proposed Taxes

Taxing Authority	Assd Value	Exemption	Tax Value	Millage Rate	Taxes	%
Public Schools: By State Law (Rle)	\$60,060,963	\$0	\$60,060,963	3.6090 (-6.53%)	\$216,760.02	22 %
Public Schools: By Local Board	\$60,060,963	\$0	\$60,060,963	3.2480 (0.00%)	\$195,078.01	20 %
Orange County (General)	\$60,060,963	\$0	\$60,060,963	4.4347 (0.00%)	\$266,352.35	27 %
City Of Maitland	\$60,060,963	\$0	\$60,060,963	4.5353 (4.37%)	\$272,394.49	28 %
City Of Maitland Debt Service 2004	\$60,060,963	\$0	\$60,060,963	0.2530 (-8.66%)	\$15,195.42	2 %
St Johns Water Management District	\$60,060,963	\$0	\$60,060,963	0.2287 (-5.26%)	\$13,735.94	1 %
				16.3087	\$979,516.23	

2020 Non-Ad Valorem Assessments

Levying Authority	Assessment Description	Units	Rate	Assessment
There are no Non-Ad Valorem Assessments				

Income Pro forma (as of Jan 1st 2020) for 400 North, which includes parcel(s):

PID	DOR Code	DOR Description	Allocation Percentage
25-21-29-5220-01-000	0314	Multi-Family Mid-Rise	100%

Note: Pro forma does not contain actual income and expenses specific to this property if provided by the property owner.

Rent Roll Rentable Area	Type	Description	Restrict Rent	Efficiency Ratio	Net Rentable Area	Rent Amount	Rental Period	Annual Rent
10	UT	Unit (Generic)	N	100.00%	10	\$1,995.00	12	\$239,400
5	UT	Unit (Generic)	N	100.00%	5	\$2,335.00	12	\$140,100
52	UT	Unit (Generic)	N	100.00%	52	\$1,520.00	12	\$948,480
23	UT	Unit (Generic)	N	100.00%	23	\$1,445.00	12	\$398,820
18	UT	Unit (Generic)	N	100.00%	18	\$1,495.00	12	\$322,920
15	UT	Unit (Generic)	N	100.00%	15	\$1,495.00	12	\$269,100
5	UT	Unit (Generic)	N	100.00%	5	\$1,550.00	12	\$93,000
4	UT	Unit (Generic)	N	100.00%	4	\$1,560.00	12	\$74,880
52	UT	Unit (Generic)	N	100.00%	52	\$1,460.00	12	\$911,040
48	UT	Unit (Generic)	N	100.00%	48	\$1,310.00	12	\$754,560
23	UT	Unit (Generic)	N	100.00%	23	\$1,440.00	12	\$397,440
15	UT	Unit (Generic)	N	100.00%	15	\$1,420.00	12	\$255,600
15	UT	Unit (Generic)	N	100.00%	15	\$1,350.00	12	\$243,000
8	UT	Unit (Generic)	N	100.00%	8	\$1,440.00	12	\$138,240
7	UT	Unit (Generic)	N	100.00%	7	\$1,380.00	12	\$115,920

	Percent	Amount	Per Unit
Potential Gross Income		\$5,302,500	\$17,675
less Vacancy/Collection Loss	8.00%	\$424,200	
= Effective Gross Income		\$4,878,300	\$16,261
plus Ancillary Income	6.00%	\$292,698	\$976
= Adjusted Gross Income		\$5,170,998	\$17,237
less Expenses	25.00%	\$1,292,750	\$4,309

=	Net Gross Income		\$3,878,248	\$12,927
plus	Miscellaneous Income			
=	Net Operating Income		\$3,878,248	\$12,927
	Overall Rate	5.00000%		
plus	Millage Rate/Tax Rate	1.64074%		
=	Capitalization Rate	6.64074%		
	Capitalized Value		\$58,400,841	\$194,669
less	TPP Amount		\$199,878	\$666
plus	Additional Value			
(+/-)	Total Misc Adjustment		\$1,860,000	\$6,200
=	Income Value		\$60,060,963	\$200,203

Property Features

Property Description

LOTS 3 AND 4 OF UPTOWN MAITLAND REPLAT 99/30 LOT 1

Total Land Area

243,622 sqft (+/-) | 5.59 acres (+/-) GIS Calculated

Land

Land Use Code	Zoning	Land Units	Unit Price	Land Value	Class	Unit Price	Class Value
0314 - Multi-Family Mid-Ris	DMZD	300 UNIT(S)	\$25,750.00	\$7,725,000	\$0.00		\$7,725,000

Buildings

Model Code	03 - Multi Fam Residence	Subarea Description	Sqft	Value
Type Code	0314 - Multi-Family Mid-Ris	AOF - Avg Office	4653	\$562,687
Building Value	\$51,527,668	BAS - Base Area	22541	\$2,725,883
Estimated New Cost	\$51,527,668	FOP - F/Opn Prch	35369	\$1,710,918
Actual Year Built	2019	FST - Fin Storge	5512	\$333,283
Beds	3	FUS - F/Up Story	179521	\$21,709,475
Baths	2.0	PTO - Patio	7593	\$45,953
Floors	6	SDA - Salea Disa	27580	\$3,502,012
Gross Area	451502 sqft	STA - Story 5-15	162012	\$20,571,765
Living Area	396307 sqft	UST - Unf Storag	6721	\$365,692
Exterior Wall	Wood.Fr.St			
Interior Wall	Drywall			
Model Code	06 - Warehouse	Subarea Description	Sqft	Value
Type Code	2802 - Parking Garage	BAS - Base Area	23218	\$816,809

Building Value	\$7,215,347	FOP - F/Opn Prch	202	\$3,553
Estimated New Cost	\$7,215,347	FUS - F/Up Story	94661	\$3,330,174
Actual Year Built	2019	STA - Story 5-15	79828	\$2,948,752
Beds		UST - Unf Storag	6598	\$116,059
Baths				
Floors	6			
Gross Area	204507 sqft			
Living Area	197707 sqft			
Exterior Wall	Prec.Panel			
Interior Wall	None			

Extra Features

Description	Date Built	Units	Unit Price	XFOB Value
6182 - Fountain 3	05/31/2019	1 Unit(s)	\$20,000.00	\$20,000
6416 - Elevator Commercial 7	05/31/2019	2 Unit(s)	\$150,000.00	\$300,000
5834 - Pool Commercial 5	05/23/2019	1 Unit(s)	\$200,000.00	\$200,000
6220 - Parking Space	05/23/2019	88 Unit(s)	\$1,000.00	\$88,000

Sales

Sales History

Sale Date	Sale Amount	Instrument #	Book/Page	Deed Code	Seller(s)	Buyer(s)	Vac/Imp
There are no sales for the selected parcel							

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D19-2596

ED CRAPO, as Alachua County
Property Appraiser,

Appellant,

v.

FLORIDA DEPARTMENT OF
REVENUE,

Appellee.

On appeal from Florida Department of Revenue.
Jim Zingale, Executive Director.

July 14, 2020

PER CURIAM.

AFFIRMED.

B.L. THOMAS, OSTERHAUS, and BILBREY, JJ., concur.

*Not final until disposition of any timely and
authorized motion under Fla. R. App. P. 9.330 or
9.331.*

John C. Dent, Jr. and Jennifer A. McClain of Dent & McClain,
Chartered, Sarasota, for Appellant.

Ashley Moody, Attorney General, Timothy E. Dennis, Chief
Assistant Attorney General, and Franklin Sandrea-Rivero,
Assistant Attorney General, Tallahassee, for Appellee.

Filing # 93602313 E-Filed 08/02/2019 03:51:39 PM

IN THE FLORIDA DEPARTMENT OF REVENUE

ED CRAPO, as Alachua County Property
Appraiser,
Appellant

v.

Case No. 1D19-2596

FLORIDA DEPARTMENT OF REVENUE
Appellee.

RECEIVED

AUG 05 2019

DEPARTMENT OF REVENUE
OFFICE OF GENERAL COUNSEL

SECOND AMENDED NOTICE OF ADMINISTRATIVE APPEAL (with attachment)

NOTICE IS GIVEN that Ed Crapo, as Alachua County Property Appraiser, Appellant, appeals to the 1st District Court of Appeals, the order of the Department of Revenue rendered June 19, 2019, attached hereto. The nature of the order is an administrative order denying probable cause to the Appellant, Ed Crapo, as Alachua County Property Appraiser, the authority to sue the Alachua County Value Adjustment Board.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to Rinky Parwani, Parwani Law, P.A., 9905 Alambra Avenue, Tampa, FL 33619-5060 at rinky@parwanilaw.com, Timothy Dennis, Office of the Attorney General, The Capitol Pl 01 Tallahassee, FL 32399-1050, at timothy.dennis@myfloridalegal.com and and Megan Renee Maxwell, P.O. Box 6668, Tallahassee, FL 32314 on this 2nd day of July, 2019.

DENT & MCCLAIN, CHARTERED
3415 Magic Oak Lane
Sarasota, Florida 34232
Phone: (941) 952-1070
Fax: (941) 952-1094
Attorneys for Defendant
Ed Crapo

/s/ John C. Dent, Jr.
JOHN C. DENT, JR.
Florida Bar No. 0099242
jdent@dentmcclain.com
JENNIFER A. MCCLAIN

Florida Bar No. 0446830
jmccclain@dentmccclain.com

Filing # 93573650 E-Filed 08/02/2019 11:27:14 AM

IN THE FLORIDA DEPARTMENT OF REVENUE

ED CRAPO, as Alachua County Property
Appraiser,
Appellant

v.

Case No. 1D19-2596

FLORIDA DEPARTMENT OF REVENUE
Appellee.

RECEIVED

AUG 05 2019

DEPARTMENT OF REVENUE
OFFICE OF GENERAL COUNSEL

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DENT & MCCLAIN, CHARTERED
3415 Magic Oak Lane
Sarasota, Florida 34232
Phone: (941) 952-1070
Fax: (941) 952-1094
Attorneys for Defendant
Ed Crapo

/s/ John C. Dent, Jr.
JOHN C. DENT, JR.
Florida Bar No. 0099242
jdent@dentmcclain.com
JENNIFER A. MCCLAIN

Florida Bar No. 0446830
jmcclain@dentmcclain.com

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FILED
DEPARTMENT OF REVENUE
Agency Clerk
By: Mugan Maxwell
Date: June 19, 2019

STATE OF FLORIDA
DEPARTMENT OF REVENUE

IN RE: THE MATTER OF CERTAIN
DECISIONS OF THE 2018 ALACHUA
COUNTY VALUE ADJUSTMENT BOARD

Alachua County, Florida

PROBABLE CAUSE REVIEW BY THE DEPARTMENT OF REVENUE

This document contains the results of the Department of Revenue's (Department) probable cause review (Review) of an assertion (Assertion) filed with the Department by the Alachua County Property Appraiser (Appraiser) against certain written final decisions of the 2018 Alachua County Value Adjustment Board (Board).

ASSERTION BY THE ALACHUA COUNTY PROPERTY APPRAISER

Under authority in subsection 194.036(1)(c), Florida Statutes (F.S.), the Appraiser filed the Assertion seeking probable cause from the Department for the Appraiser to proceed to circuit court to appeal certain 2018 Board decisions. Filing an assertion and receiving an affirmative probable cause finding is only one of three possible statutory avenues for the Appraiser to appeal Board decisions in circuit court. The other two avenues are provided in subsections 194.036(1)(a) and (b), F.S.

On May 2, 2019, prior to filing the Assertion with the Department on May 3, 2019, the Appraiser filed direct challenges in circuit court of certain Board decisions, under subsection 194.036(1)(a), F.S. The Board decisions the Appraiser challenged directly in circuit court, the day before filing the Assertion, are the same Board decisions challenged in the Assertion. Thus, the Assertion is a duplication of effort and the Appraiser's motivation for this is unclear.

Pursuant to subsection 194.036(1)(c), F.S. (2018), the Appraiser, Ed Crapo, filed an Assertion with the Department alleging the existence of a consistent and continuous violation of the intent of the law and administrative rules of the Department by the 2018 Board in three (3) 2018 just value decisions and eleven (11) 2018 exemption decisions. As required by subsection 194.035(1), F.S., the 2018 Board appointed Special Magistrates (Magistrates) to hear taxpayer petitions filed with the Board and to produce written recommended decisions for consideration by the Board. After considering the Magistrates' recommendations, the Board produced the written final decisions that are the subject of the Assertion.

THE LEGAL EFFECT OF THE DEPARTMENT'S PROBABLE CAUSE REVIEW

In the context of civil law, probable cause is defined as: "*A reasonable belief in the existence of facts on which a claim is based and in the legal validity of the claim itself.*" Black's Law Dictionary, Eighth Edition, page 1239. In a probable cause review, the Department reviews the Assertion, applicable law, and records regarding the Board decisions that are the subject of the Assertion and produces a finding on whether there is probable cause to support the Appraiser's assertion of a consistent and continuous violation of the intent of the law and rules by the Board in those decisions. A finding by the Department that such probable cause exists is only a probable cause finding and is not an adjudication of the Appraiser's claims nor of any facts or legal issues. The decision whether to bring an action in circuit court remains within the discretion of the Appraiser. Any circuit court proceeding would be de novo, with the Department's finding of probable cause having no effect on the outcome of the litigation. See subsections 194.036(1)(c) and (3), Florida Statutes, and PAAB, Sarasota County v. Florida Department of Revenue, 349 So.2d 804 (Fla. 2d DCA 1977), cert. denied, 357 So.2d 187 (Fla. 1978). A finding by the Department that probable cause exists does not adversely affect the rights of the taxpayers nor can it in any way change, modify, overturn, or otherwise adversely affect the Board's decisions. The Board's decisions are in no way adversely affected by a Department sanction of judicial challenge thereof by the Appraiser. See Mikos v. PAAB of Sarasota County, 365 So.2d 757 (Fla. 2d DCA 1978).

STATEMENT OF THE CASE

By email on May 3, 2019, the Department received the Appraiser's Assertion, which consisted of three pages. The Assertion alleged a consistent and continuous violation of the intent of the law and administrative rules by the 2018 Board in three (3) 2018 just value decisions and eleven (11) 2018 exemption decisions. The Assertion identified these 14 decisions by Board petition numbers noted below.

By letter dated May 13, 2019 and sent by email on same date, the Department advised the Board Clerk of the Assertion and requested Board records pertaining to the Board decisions that are the subject of the Assertion. See subsections 194.034(1) and 194.036(1)(c), F.S.

On May 20, 2019, the Department received Board records from the Board Clerk by U.S. mail postmarked May 16, 2019. By email on May 24, 2019, the Department received additional records from the Board Clerk regarding petition number 2017-094. Some of the Board records the Department received appear to be disorganized or incomplete, or to contain errors, all of which made the Department's review difficult.

FINDINGS OF THE DEPARTMENT OF REVENUE

Based on the Appraiser's Assertion, records furnished by the Board Clerk pertaining to the Board decisions challenged in the Assertion, and the Department's research and review relating to the foregoing, the Department makes the following findings.

Findings on the Assertion Regarding Three 2018 Board Decisions on Just Value

1. The Assertion alleges that in three just value decisions of the 2018 Board, there exists a consistent and continuous violation of the intent of the law or administrative rules. Each of these three Board written decisions pertains to the just value assessment of commercial real property where the Appraiser presented a just value developed by the income capitalization approach. In the Assertion, the 2018 Board just value decisions are identified by petition numbers 2018-212, 2018-247, and 2018-258.
2. In the Assertion, the Appraiser alleges that the three 2018 Board just value decisions are a continuation of alleged 2017 Board "violations" in four petitions the Assertion identifies by petition numbers 2017-094, 2017-096, 2017-428, and 2017-429. However, for at least two reasons, there is no basis for such allegations regarding the four 2017 petitions. First, the petitioner withdrew one of the 2017 petitions (number 2017-096) and the Board did not issue any final decision in that petition. Second, in each of the other three 2017 petitions, the Board just value decision upheld the Appraiser's 2017 just value. It is unclear why the Appraiser made such allegations. Accordingly, the Department finds no probable cause for the Appraiser to appeal these three 2017 Board decisions in circuit court.
3. In each of the three 2018 Board just value decisions, the Board found that the Appraiser did not properly address the net proceeds of sale factor in subsection 193.011(8), F.S. Subsection 194.301(1), F.S., states in pertinent part:

"...a taxpayer who challenges an assessment is entitled to a determination by the value adjustment board or court of the appropriateness of the appraisal methodology used in making the assessment. The value of property must be determined by an appraisal methodology that complies with the criteria of s. 193.011 and professionally accepted appraisal practices. The provisions of this subsection preempt any prior case law that is inconsistent with this subsection."

[underlined emphasis added]
4. In a long-standing, widely-accepted, and across-the-board practice under Florida law, cost-of-sale deductions are generally made in arriving at just valuations of real property, which equate to the estimated net proceeds of sale for each parcel. Cost-of-sale deductions in just valuations are a widely known, professionally accepted appraisal practice under Florida ad valorem tax law.

5. Magistrates are hired for their knowledge of professionally accepted appraisal practices and, under sections 194.301 and 194.3015, F.S., are required to apply those practices based on their knowledge of the proper application of such practices. In the 2018 Board just value decisions Included In the Assertion, the Board found the Appraiser did not present evidence of having made the cost-of-sale deduction in arriving at the presented just values and, accordingly, overturned those values and revised them in accordance with law and professionally accepted appraisal practices.
6. Under subsection 194.301(1), F.S., the Appraiser has the duty of going forward and presenting evidence explaining how the Appraiser satisfied each of the just valuation criteria. This statute states in pertinent part:

"In any administrative or judicial action in which a taxpayer challenges an ad valorem tax assessment of value, the property appraiser's assessment is presumed correct if the appraiser proves by a preponderance of the evidence that the assessment was arrived at by complying with s. 193.011, any other applicable statutory requirements relating to classified use values or assessment caps, and professionally accepted appraisal practices, including mass appraisal standards, if appropriate."

In the 2018 just value decisions, the Board determined the Appraiser did not present evidence showing compliance with subsection 193.011(8), F.S., as provided in subsection 194.301(1), F.S.

7. Professionally accepted appraisal practices require the Appraiser to recognize and comply with laws and regulations that apply to the appraiser or to the appraisal assignment.¹ See text highlighted in yellow on pertinent pages (from the Uniform Standards of Professional Appraisal Practices) appended hereto as **Attachment 1**.
8. The Appraiser reportedly uses mass appraisal to develop just valuations of real property. Professionally accepted appraisal practices include communicating, or reporting, the mass appraisal results. A mass appraisal report is any communication, written or oral, about the mass appraisal. Regarding mass appraisal reporting, a professionally accepted mass appraisal standard states:²

"The appraiser must provide sufficient information to enable the client and intended users to have confidence that the processes and procedures used conform to accepted methods and result in credible value conclusions."

¹ See *Uniform Standards of Professional Appraisal Practice, 2018-2019 Edition* (Washington, DC: Appraisal Foundation), pages 11-13.

² See Standard 6, Mass Appraisal Reporting, *Uniform Standards of Professional Appraisal Practice, 2018-2019 Edition* (Washington, DC: The Appraisal Foundation), page 41.

9. Another mass appraisal standard requires the Appraiser to disclose and "explain" the methodology used in making the assessment and to tailor the explanation to the needs of the intended users which, in this case, are the taxpayer, the Board, and a Magistrate."³ Such explanation would enable the intended users to understand what the Appraiser did in developing the presented just valuations and why.
10. The Assertion alleges the Board erred in finding the Appraiser did not comply with subsection 193.011(8), F.S. However, the Board's written decision shows that the Board's decision to overturn the Appraiser's just value was based on a lack of evidence showing the Appraiser properly addressed subsection 193.011(8), F.S.
11. Subsection 194.034(2), F.S., compels the Board to make a finding when there is a lack of evidence showing that a statutory criterion was satisfied. Subsection (2) requires the following from Boards and Magistrates: "*Findings of fact must be based on admitted evidence or a lack thereof.*" Likewise, Rules 12D-9.030(1) and 12D-9.032(1)(a), F.A.C., provide as follows: "*For each of the statutory criteria for the issue under administrative review, findings of fact must identify the corresponding admitted evidence, or lack thereof.*" [underlined emphasis added]
12. Boards and Magistrates cannot rely upon conclusory statements in evaluating compliance with a statutory criterion. The term "conclusory" is defined as: "*consisting of or relating to a conclusion or assertion for which no supporting evidence is offered.*" See Merriam-Webster Dictionary online (accessed June 8, 2019).
13. Florida courts have not given any weight to conclusory statements made by witnesses testifying about property value. See Fla. Dept. of Transportation v. Samter, 393 So.2d 1142 (Fla. 3d DCA 1981) ("*no weight may be accorded an expert opinion which is totally conclusory in nature and is unsupported by any discernible, factually-based chain of underlying reasoning.*") and Scripps Howard Cable Co. v. Havill, 665 So.2d 1071, 1077 (Fla. 5th DCA 1995), *approved*, 742 So.2d 210 (Fla. 1998) (stating that conclusory statements made by the appraiser are not credible and holding that the assessment was not entitled to a presumption of correctness because the valuation approaches were not properly used).
14. The Assertion mentions the Appraiser having made a cost-of-sale deduction for one of the 2017 petitioned parcels (petition number 2017-094) that was sold in the year preceding the assessment date. Also, in one of the 2017 just value petitions (number 2017-096), the Appraiser presented a scatter chart (titled "*2017 Level of Assessment for Commercial Sales*") reportedly showing that a cost-of-sale deduction was made for

³ See International Association of Assessing Officers, *Standard on Mass Appraisal of Real Property* (Kansas City, MO: International Association of Assessment Officers, July 2017), pages 11 and 12.

each of several recently sold parcels. These items indicate a mistaken belief that cost-of-sale deductions apply only to sold parcels. In fact, such practice is discriminatory and inconsistent with subsection 194.301(2)(a)3., F.S. Such practice is a type of selective reappraisal, an unprofessional practice that impedes appraisal uniformity.⁴

15. The Board found that the Appraiser did not adhere to section 194.301(2)(a)3., F.S., which precludes the Appraiser, in appraising the petitioned property, from using appraisal practices that are arbitrarily different from the appraisal practices the Appraiser applied to comparable property within the county. The Department finds no reason to believe the Board erred in this regard.
16. The United States Supreme Court has held that selective reappraisal results in denial of equal protection under the Fourteenth Amendment to the United States Constitution. See Allegheny Pittsburgh Coal Co. v. County Commissioner, 488 U.S. 336 (1989); also, see Sioux City Bridge Co. v. Dakota County, 260 U.S. 441 (1923), stating: "*The purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents.*"
17. The records do not indicate that any of the parcels involved in the three 2018 just value decisions were sold recently. Apparently, this why these parcels did not receive a cost-of-sale deduction, resulting in disparate treatment between sold and unsold parcels. The Board found that the Appraiser's three 2018 just valuations at issue resulted in denial of equal protection. The Department finds no reason to believe the Board erred in this regard.
18. A United States Court of Appeals held that the net proceeds of sale criterion in subsection 193.011(8), F.S., should be applied to all property without regard to whether property was recently sold. The Court's holding was based on a stipulation of facts by the parties that set forth, county-by-county, the mathematical results of applying the cost-of-sale factor. The Court held that selectively applying the cost-of-sale factor, based on whether the property was recently sold, is a discriminatory practice. See Louisville and Nashville Railroad Co. v. Department of Revenue, State of Fla., 736 F.2d 1495 (11th Cir.(Fla.) July 24, 1984).
19. Accordingly, the Department does not find reason to believe the Board erred in overturning the Appraiser's just value assessments in the Board's three 2018 just value decisions that are the subject of the Assertion.

⁴ International Association of Assessing Officers, *Mass Appraisal of Real Property* (Chicago: International Association of Assessing Officers, 1999), page 315.

Findings on the Assertion Regarding
Eleven 2018 Board Decisions on Exemptions

20. Appraiser asserts that the Board improperly found property to be exempt and granted two exemption petitions over the Appraiser's denials. The first property (petition 2018-006) is an acupuncture school that has been held to be exempt by the Florida First District Court of Appeal. See Grappo v. Acad. for Five Element Acupuncture, Inc., 2018 Fla.App.LEXIS 12280, 43 Fla.L.Weekly D2013, 2018 WL 4139276 (August 30, 2018). The first DCA held this property exempt and that a VAB decision had precedential effect making it binding on the future VAB in the absence of changed circumstances shown by Appraiser. The case is currently pending on rehearing en banc. This decision is dissimilar to the other exemption decisions and it does not indicate a consistent and continuous violation of law or rules. The second exemption petition (2018-023) involved a teaching hospital with a complex lease arrangement involving the University of Florida. The Department does not find that the Board's granting of exemptions in these two dissimilar cases indicates a consistent and continuous violation of law or rules.
21. In nine petitions (2018-318, 319, 320, 321, 322, 323, 324, 325, and 326), the Board found the Appraiser's denials of exemptions to be invalid under section 196.193(5), F.S., which provides standards and time limits for denials of exemption and provides the denials are invalid if these statutory standards are not met. These decisions by the Board are based on Appraiser's failure to issue denials of the exemptions by July 1 as referenced in the statute, together with the Appraiser's sending confirmation of the continuations of the exemptions previously by February 1 in eight of the nine petitions. The Department does not find reason to believe that the Board's decisions granting these exemptions, by finding Appraiser's denials invalid, constitute violations of the intent of the law or rules.

THE DEPARTMENT'S FINDING ON PROBABLE CAUSE

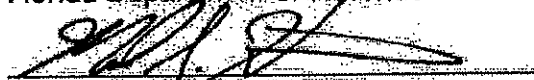
After considering the relevant facts and applicable law, the Department does not find probable cause that there is a consistent and continuous violation of the intent of the law by the Board in its 14 decisions challenged in the Assertion. The Department's finding of no probable cause is not an adjudication of the Appraiser's claims nor of any facts or legal issues.

WHEREFORE, the Department does not find, from its review of the decisions and related records noted in this Probable Cause Review, the evidence sufficient to establish cause for the Property Appraiser to proceed pursuant to paragraph 194.036(1)(c), Florida Statutes. The Property Appraiser is not authorized to file a suit under that statutory paragraph.

DECIDED this 19 day of June, 2019, Tallahassee, Florida.

James Zingale
Executive Director
Florida Department of Revenue

By:



Mark Hamilton, General Counsel
Florida Department of Revenue

Prepared by:

Steve Keller
Chief Assistant General Counsel
Office of General Counsel
Florida Department of Revenue

Filed with the Agency Clerk and copies mailed to the indicated parties this 19 day of June, 2019.

Agency Clerk

By: Megan Maxwell

Agency Clerk
TITLE

Copies furnished to:

Honorable Ed Crapo, Alachua County Property Appraiser

(via email: edcrapo@acpafl.org)

John Dent, Attorney for the Alachua County Property Appraiser

(via email: jdent@dentmcclain.com)

Rinky Parwani, Attorney for the Alachua County Value Adjustment Board

(via email: rinky@parwanilaw.com)

Chairman Mike Byerly, Alachua County Value Adjustment Board

(via email: mbyerly@alachuacounty.us)

Deanne Williams, Alachua County Value Adjustment Board Clerk

(via email: dmw@alachuaclerk.org)

Attachment 1

UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE

2018-2019
EDITION

APPRAISAL STANDARDS BOARD



THE APPRAISAL FOUNDATION

*Authorized by Congress as the Source of Appraisal
Standards and Appraiser Qualifications*

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January 1, 2018 through December 31, 2019

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STATEMENTS ON APPRAISAL STANDARDS

Statements on Appraisal Standards (SMT) are authorized by the by-laws of The Appraisal Foundation and are specifically for the purposes of clarification, interpretation, explanation, or elaboration of the *Uniform Standards of Professional Appraisal Practice* (USPAP). Statements have the full weight of a Standards Rule and can be adopted by the Appraisal Standards Board only after exposure and comment. There are currently no active Statements.

PREAMBLE

The purpose of the <i>Uniform Standards of Professional Appraisal Practice</i> (USPAP) is to promote and maintain a high level of public trust in appraisal practice by establishing requirements for appraisers. It is essential that appraisers develop and communicate their analyses, opinions, and conclusions to intended users of their services in a manner that is meaningful and not misleading.	1 2 3 4
The Appraisal Standards Board promulgates USPAP for both appraisers and users of appraisal services. The appraiser's responsibility is to protect the overall public trust and it is the importance of the role of the appraiser that places ethical obligations on those who serve in this capacity. USPAP reflects the current standards of the appraisal profession.	5 6 7 8
USPAP addresses the ethical and performance obligations of appraisers through DEFINITIONS, Rules, Standards, Standards Rules, and Statements (there are currently no active Statements).	9 10
<ul style="list-style-type: none"> The DEFINITIONS establish the application of certain terminology in USPAP. The ETHICS RULE sets forth the requirements for integrity, impartiality, objectivity, independent judgment, and ethical conduct. The RECORD KEEPING RULE establishes the workfile requirements for appraisal and appraisal review assignments. The COMPETENCY RULE presents pre-assignment and assignment conditions for knowledge and experience. The SCOPE OF WORK RULE presents obligations related to problem identification, research, and analyses. The JURISDICTIONAL EXCEPTION RULE preserves the balance of USPAP if a portion is contrary to law or public policy of a jurisdiction. The Standards establish the requirements for appraisal and appraisal review and the manner in which each is communicated. <ul style="list-style-type: none"> STANDARDS 1 and 2 establish requirements for the development and communication of a real property appraisal. STANDARDS 3 and 4 establish requirements for the development and communication of an appraisal review. STANDARDS 5 and 6 establish requirements for the development and communication of a mass appraisal. STANDARDS 7 and 8 establish requirements for the development and communication of a personal property appraisal. STANDARDS 9 and 10 establish requirements for the development and communication of a business or intangible asset appraisal. There are currently no active Statements on Appraisal Standards. Comments are an integral part of USPAP and have the same weight as the component they address. These extensions of the DEFINITIONS, Rules, and Standards Rules provide interpretation and establish the context and conditions for application. 	11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33
<u>When Do USPAP Rules and Standards Apply?</u>	34
USPAP does not establish who or which assignments must comply. Neither The Appraisal Foundation nor its Appraisal Standards Board is a government entity with the power to make, judge, or enforce law. An appraiser must comply with USPAP when either the service or the appraiser is required by law, regulation, or agreement with the client or intended user. Individuals may also choose to comply with USPAP any time that individual is performing the service as an appraiser. In order to comply with USPAP, an appraiser must meet the following obligations:	35 36 37 38 39
<ul style="list-style-type: none"> An appraiser must act competently and in a manner that is independent, impartial, and objective. An appraiser must comply with the ETHICS RULE in all aspects of appraisal practice. An appraiser must maintain the data, information and analysis necessary to support his or her opinions for appraisal and appraisal review assignments in accordance with the RECORD KEEPING RULE. An appraiser must comply with the COMPETENCY RULE and the JURISDICTIONAL EXCEPTION RULE for all assignments. When an appraiser provides an opinion of value in an assignment, the appraiser must also comply with the 	40 41 42 43 44 45 46

PREAMBLE

- 47 SCOPE OF WORK RULE, the RECORD KEEPING RULE, the applicable development and reporting Standards
48 and applicable Statements (there are currently no active Statements).
- 49 • When an appraiser provides an opinion about the quality of another appraiser's work that was performed as
50 part of an appraisal or appraisal review assignment, the appraiser must also comply with the SCOPE OF WORK
51 RULE, the RECORD KEEPING RULE, applicable portions of STANDARDS 3 and 4, and applicable Statements
52 (there are currently no active Statements).
- 53 • When preparing an appraisal or appraisal review that is a component of a larger assignment with additional
54 opinions, conclusions, or recommendations, the appraisal or appraisal review component must comply with
55 the applicable development and reporting Standards and applicable Statements (there are currently no
56 active Statements), and the remaining component of the assignment must comply with the ETHICS RULE, the
57 COMPETENCY RULE, and the JURISDICTIONAL EXCEPTION RULE.

COMPETENCY RULE

An appraiser must: (1) be competent to perform the assignment; (2) acquire the necessary competency to perform the assignment; or (3) decline or withdraw from the assignment. In all cases, the appraiser must perform competently when completing the assignment.	299
BEING COMPETENT	302
An appraiser must determine, prior to agreeing to perform an assignment, that he or she can perform the assignment competently. Competency requires:	303
1. the ability to properly identify the problem to be addressed;	305
2. the knowledge and experience to complete the assignment competently; and	306
3. recognition of, and compliance with, laws and regulations that apply to the appraiser or to the assignment.	307
Comment: Competency may apply to factors such as, but not limited to, an appraiser's familiarity with a specific type of property or asset, a market, a geographic area, an intended use, specific laws and regulations, or an analytical method. If such a factor is necessary for an appraiser to develop credible assignment results, the appraiser is responsible for having the competency to address that factor or for following the steps outlined below to satisfy this COMPETENCY RULE.	309
	310
	311
	312
	313
For assignments with retrospective opinions and conclusions, the appraiser must meet the requirements of this COMPETENCY RULE at the time the assignment is performed, rather than the effective date.	314
	315
ACQUIRING COMPETENCY	316
If an appraiser determines he or she is not competent prior to accepting an assignment, the appraiser must:	317
1. disclose the lack of knowledge and/or experience to the client before accepting the assignment;	318
2. take all steps necessary or appropriate to complete the assignment competently; and	319
3. describe, in the report, the lack of knowledge and/or experience and the steps taken to complete the assignment competently.	320
	321
Comment: Competency can be acquired in various ways, including, but not limited to, personal study by the appraiser, association with an appraiser reasonably believed to have the necessary knowledge and/or experience, or retention of others who possess the necessary knowledge and/or experience.	322
	323
	324
In an assignment where geographic competency is necessary, an appraiser who is not familiar with the relevant market characteristics must acquire an understanding necessary to produce credible assignment results for the specific property type and market involved.	325
	326
	327
When facts or conditions are discovered during the course of an assignment that cause an appraiser to determine, at that time, that he or she lacks the required knowledge and experience to complete the assignment competently, the appraiser must:	328
	329
	330
1. notify the client;	331
2. take all steps necessary or appropriate to complete the assignment competently; and	332
3. describe, in the report, the lack of knowledge and/or experience and the steps taken to complete the assignment competently.	333
	334
LACK OF COMPETENCY	335
If the assignment cannot be completed competently, the appraiser must decline or withdraw from the assignment.	336
	337

SCOPE OF WORK RULE¹⁴

338 For each appraisal and appraisal review assignment, an appraiser must:

- 339 1. identify the problem to be solved;
- 340 2. determine and perform the scope of work necessary to develop credible assignment
- 341 results; and
- 342 3. disclose the scope of work in the report.

See also
FAQ 151-
214

343 An appraiser must properly identify the problem to be solved in order to determine the appropriate scope of
344 work. The appraiser must be prepared to demonstrate that the scope of work is sufficient to produce credible
345 assignment results.

346 Comment: Scope of work includes, but is not limited to:

- 347 • the extent to which the property is identified;
- 348 • the extent to which tangible property is inspected;
- 349 • the type and extent of data researched; and
- 350 • the type and extent of analyses applied to arrive at opinions or conclusions.

351 Appraisers have broad flexibility and significant responsibility in determining the appropriate scope of work
352 for an appraisal or appraisal review assignment.

353 Credible assignment results require support by relevant evidence and logic. The credibility of assignment
354 results is always measured in the context of the intended use.

355 PROBLEM IDENTIFICATION

356 An appraiser must gather and analyze information about those assignment elements that are necessary to
357 properly identify the appraisal or appraisal review problem to be solved.

358 Comment: The assignment elements necessary for problem identification are addressed in the applicable
359 Standards Rules (i.e., SR 1-2, SR 3-2, SR 5-2, SR 7-2, and SR 9-2). In an appraisal assignment, for example,
360 identification of the problem to be solved requires the appraiser to identify the following assignment
361 elements:

- 362 • client and any other intended users;
- 363 • intended use of the appraiser's opinions and conclusions;
- 364 • type and definition of value;
- 365 • effective date of the appraiser's opinions and conclusions;
- 366 • subject of the assignment and its relevant characteristics; and
- 367 • assignment conditions

368 This information provides the appraiser with the basis for determining the type and extent of research
369 and analyses to include in the development of an appraisal. Similar information is necessary for problem
370 identification in appraisal review assignments.

371 Communication with the client is required to establish most of the information necessary for problem
372 identification. However, the identification of relevant characteristics is a judgment made by the appraiser that
373 requires competency in that type of assignment.

¹⁴ See Advisory Opinion 28, *Scope of Work Decision, Performance, and Disclosure* and Advisory Opinion 29, *An Acceptable Scope of Work*.

Assignment conditions include assumptions, extraordinary assumptions, hypothetical conditions, laws and regulations, jurisdictional exceptions, and other conditions that affect the scope of work. Laws include constitutions, legislative and court-made law, administrative rules, and ordinances. Regulations include rules or orders having legal force issued by an administrative agency.	374 375 376 377
SCOPE OF WORK ACCEPTABILITY¹⁵	378
The scope of work must include the research and analyses that are necessary to develop credible assignment results.	379 380
Comment: The scope of work is acceptable when it meets or exceeds:	381
<ul style="list-style-type: none"> the expectations of parties who are regularly intended users for similar assignments; and what an appraiser's peers' actions would be in performing the same or a similar assignment. 	382 383
Determining the scope of work is an ongoing process in an assignment. Information or conditions discovered during the course of an assignment might cause the appraiser to reconsider the scope of work.	384 385
An appraiser must be prepared to support the decision to exclude any investigation, information, method, or technique that would appear relevant to the client, another intended user, or the appraiser's peers.	386 387
An appraiser must not allow assignment conditions to limit the scope of work to such a degree that the assignment results are not credible in the context of the intended use.	388 389
Comment: If relevant information is not available because of assignment conditions that limit research opportunities (such as conditions that place limitations on inspection or information gathering), an appraiser must withdraw from the assignment unless the appraiser can:	390 391 392
<ul style="list-style-type: none"> modify the assignment conditions to expand the scope of work to include gathering the information; or use an extraordinary assumption about such information, if credible assignment results can still be developed. 	393 394 395
An appraiser must not allow the intended use of an assignment or a client's objectives to cause the assignment results to be biased.	396 397
DISCLOSURE OBLIGATIONS	398
The report must contain sufficient information to allow intended users to understand the scope of work performed.	399 400
Comment: Proper disclosure is required because clients and other intended users rely on the assignment results. Sufficient information includes disclosure of research and analyses performed and might also include disclosure of research and analyses not performed.	401 402 403

¹⁵ See Advisory Opinion 29, *An Acceptable Scope of Work*.