

Notestine Manor and the History of Property Tax Valuations of Affordable Housing in Ohio

Response from Mark A. Snider, Esq., Porter Wright Morris & Arthur, LLP, Columbus, Ohio, to the proposition that the Ohio Supreme Court's decision in *Notestine Manor v. Logan County Board of Revision* was a significant deviation from existing law.

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Notestine Manor

The primary way to value rental property in Ohio for property tax purposes is to capitalize the net income stream produced by the subject property or comparable properties. In *Notestine Manor*, the Ohio Supreme Court ruled that the use of actual rents to value a federal "Section 202" subsidized affordable housing property was appropriate when the total rent collected was well below what market rate properties could achieve.

Parties that oppose the *Notestine Manor* decision and support changing Ohio property tax law through adopting S.B. 36 have recently alleged that the *Notestine Manor* decision was a significant deviation from existing law. It was not.

The decision was a logical application of existing Ohio property tax law to a particular set of facts. Moreover, the assertion that *Notestine Manor* was a surprise decision or radical departure from existing law is internally inconsistent with other arguments made by supporters of S.B. 36. In other venues, those persons have argued that the Court was constrained to rule the way it did in *Notestine Manor* by existing law and that the General Assembly needs to change the law to untie the Court's hands.

Ohio Supreme Court's Long History of Affordable Housing Property Tax Decisions

The Ohio Supreme Court has recognized the unique nature of low-income housing, government subsidized housing, and other types of affordable housing for about 40 years in more than 100 cases. Here is a summary of some of the most important cases over the years:

- **1980.** The "uniform rule" requirement of Ohio property tax law allows classifications of real property to be implemented if such classifications have a rational basis. *State ex rel. Swetland v. Kinney*.
- **1983.** The net income capitalization approach should be used to value residential rental property including affordable housing. *Canton Towers, Ltd. v. Stark Cty. Bd. of Revision*.
- **1988.** Fair market is to be determined without regard to leasehold interests or rent subsidies, as these intangible assets have no effect on the fair market value of the real estate. Subsidies above fair market value should be ignored. *Alliance Towers, Ltd. v. Stark Cty. Bd. of Revision*.

- **1995.** Although privately imposed restrictions should be disregarded when valuing real property for tax purposes, tax valuation should take into account the effect of “limitations caused by involuntary, governmental actions,” such as housing program restrictive covenants. *Muirfield Assn., Inc. v. Franklin Cty. Bd. of Revision*.
- **2009.** Deed restrictions in place under the low-income housing tax credit program change the value of the real property and should be a factor in determining the property’s true value. *Woda Ivy Glen v. Fayette Cty. Bd. of Revision*.
- **2013.** The General Assembly changed Revised Code Section 5713.03 which concerns the valuation of affordable housing. As revised, the statute requires that county auditors determine the true value of each parcel of real estate “as if unencumbered **but subject to any effects from the exercise of police powers or from other governmental actions**” (emphasis added).
- **2018.** For low-income housing properties that also receive significant rent subsidies, a valuation approach can be used that compares the property to comparable low-income housing properties without rent subsidies. *Network Restorations I v. Franklin Cty. Bd. of Revision*.
- **2018.** The use of actual rents, including both amounts paid by tenants and the government, to value a subsidized affordable housing property is appropriate when the total collected is below market. The Court explicitly cited *Alliance Towers* and *Wody Ivy Glen* and ruled that for properties that receive significant government rent subsidies, actual rents can be used to develop the income pro forma if they are less than market rents. *Notestine Manor v. Logan Cty. Bd. of Revision*.

Conclusion

We believe the Court has done a good job overall by consistently trying to determine fair market value in a variety of factual situations. The precise rule applied in some cases is logically somewhat different from that used in other cases for significantly different types of property. Overall, however, the Court’s decisions, including *Notestine Manor*, all reflect the stable principles that (i) rental property should be valued by capitalizing its income stream, and (ii) governmental programs that restrict rent increases and limit the tenant pool decrease fair market value.