FOR THE RECORD

Rebuttal to Sponsor Testimony Related to Ohio S.B. 36
Senate Ways & Means Committee

FROM SPONSOR TESTIMONY
February 27, 2019

ASSERTION: The *Notestine Manor* case completely changed the valuation methodology and represents 'new law'

The facts are as follows: To the contrary, the *Notestine Manor* decision further clarified and aligned all of the previous case law and is fully consistent with ORC 5713.03. The *Notestine* ruling aligned with the full body of work of the Ohio Supreme Court dating back to the 1980, and did not represent any 'new law' nor did it represent any change in the valuation methodology.

The facts of the *Notestine* case revolved around a very specific type of affordable housing (a HUD PRAC 202) that was still under construction when it received its $811,120 valuation from the Logan County Auditor, despite the fact it was not yet even operational. The Auditor ignored the Use Restrictions that were associated with this affordable housing project, and incorrectly applied the 'cost approach' when determining its value, citing the value of the grant from the U.S. Department of Housing and Urban Development (HUD) to construct the property as the basis for the valuation (and ignoring the Restrictive Covenant). Once the property was built, the original HUD-established rents were only $407 per unit per month (and that rent payment included all utility charges). The *Notestine* decision addresses the scenario where the government-imposed rents are set BELOW market rate rents.

For a more complete summary of the case law related to the valuation of affordable housing in Ohio since 1980 please refer to the corresponding paper titled *"Notestine Manor and the History of Property Tax Valuations of Affordable Housing in Ohio"*. One will note that with its most recent decisions, the Ohio Supreme Court remains fully aligned with its previous decisions while further clarifying preferred valuation methodologies (consistent with the Ohio Constitution and previous court precedent) as it relates to some of the different flavors of affordable housing.

To be clear, the *Notestine* decision was fully consistent with nearly 40 years of case law established by the Ohio Supreme Court, and did NOT represent any significant deviation from existing law.

ASSERTION: The Court asked the Legislature for new law

The facts are as follows: In its *Notestine Manor* ruling, Justice Dewine (in providing a dissenting opinion in the 5-2 ruling) noted that housing with a charitable purpose (as is the case with *Notestine*) could or should be *exempt* from taxation altogether. As such, if the court was seeking legislative action, it was to ELIMINATE the tax burden for certain types of affordable housing, NOT increase the valuations for all affordable housing as proposed with S.B. 36.

It is a misrepresentation to suggest that the dissenting Justice was asking for the language put forth in S.B. 36. To the contrary, we believe the Court was suggesting that affordable housing with a charitable purpose should be *exempt* – not imposed with a higher valuation.

ASSERTION: Low valuations (as supported in the *Notestine Manor* case) produce a new cash windfall for the property owners

The facts are as follows: Affordable housing projects are structured with the assumption that the valuation is based on its 'true value', consistent with the requirements of the Ohio Constitution. Since the 2009 Ohio Supreme Court ruling *Woda Ivy Glen v. Fayette County Board of Revision*, Ohio's affordable housing projects have been successful (often after engaging in the legal appeal process) in securing appropriate valuations that account for the government-imposed Restrictive Covenants that result in rents that are less than market rents.

S.B. 36 would result in values that far exceed the 'true value' of these assets, as it would require valuation based on rents that are not legally permissible. Adoption of S.B. 36 would result in the dramatic increase of real estate taxes across Ohio's portfolio of affordable housing properties.

It is noteworthy that affordable housing properties have high administrative costs (driven by the significant amount of paperwork required to ensure applicants meet eligibility requirements) and receive a suppressed level of revenue (as the Restrictive Covenants limit the rent that can be charged as a condition of the requirements of the federal program(s)). As such, these projects operate with very narrow margins. An inappropriate valuation results in a corresponding tax burden that cannot be paid with the limited cash proceeds from operations, placing the banks who hold the mortgages at great risk of financial loss. With the adoption of S.B. 36, banks and lenders will realize significant financial losses for the existing affordable housing stock, and put at risk any future affordable housing developments as they would be economically unfeasible.

ASSERTION: Developers of affordable housing get 'FREE MONEY' that is wasteful

The facts are as follows: It is true that developers of affordable housing receive either grants, low-interest loans or tax credits to allow for the affordable housing to be constructed. The reality is that WITHOUT some form of financial support, these projects would not be financially feasible and could never be constructed. How possibly could a developer build a financially viable housing project with a tax valuation that assumes market rents in the instance where they are unable to receive a full market rent? How would the developer be able to cover the expense of their mortgage? In short, they would be unable to do so.

The grants or tax credits developers receive allow for decent, safe and sanitary housing to be constructed with only a modest mortgage on the property (commensurate with the low rents that are collected). If not for the grants or tax credits, the mortgage would be too large, and the corresponding rents (to support the mortgage) would not be affordable. As such, the grants or tax credits that allow these properties to be constructed are a critical component of the affordable housing program. Without the grants or tax credits, affordable housing would not be financially viable and could not exist.

FROM PROPONENT TESTIMONY
March 5, 2019

ASSERTION: The valuation of Notestine Manor should have been established based on the construction costs.

The facts are as follows: Despite long-standing case law that required the county Auditor to consider the Use Restrictions associated with this affordable housing project, the Auditor inappropriately elected to establish valuation based on the cost-approach, which the courts ultimately corrected. The Auditor ignored his duty to apply the appropriate valuation method in performing his work, which the courts correctly reversed.

Admittedly, the ultimate valuation was exceedingly low at this property, but this was as result of the fact that the property was not even operational in 2013, as it was actively under construction. With the appropriate use of the 'income approach' methodology one would expect a higher valuation in the future (commensurate with the income being produced by the property).

ASSERTION: "Widows trying to make it on Social Security…pay more" in taxes is the result of the lower valuation of affordable housing projects.

The facts are as follows: It is true that the local school board receives exactly the same amount of revenue as approved by the taxpayers as result of the 'equalization process.' Meaning, a valuation that considers the Use Restrictions (resulting in a lower valuation) does not reduce the monies received by the local school board, rather, taxpayers in the same class pay slightly more through the equalization process. To be clear, however, affordable housing is categorized as Class 2 Commercial and as such, any adjustments to other taxpayers are not 'widows', but rather commercial establishments.

In the case of Notestine, there was in fact a $55,735.85 refund due back to the owner that did impair the school board, as the window to 'equalize' taxes had long past. If the Auditor, however, had applied the appropriate valuation methodology at the onset (i.e., used the income approach) versus inappropriately using the cost approach method, the school board would not have been harmed and would have not realized a loss. This underscores the importance of the Auditor to appropriately set valuations up-front for this asset class.

ASSERTION: Everything was fine until 2009 (i.e., the *Woda* decision) and we should return to pre-2009 valuation methods

The facts are as follows: Prior to 2009, Ohio's affordable housing portfolio was in a state of crisis as a significant percentage of affordable housing projects where under severe financial stress as result of unstainable valuations. Abandoning the 'income approach' methodology for affordable housing (as proposed by S.B. 36) would have a tremendously negative impact on Ohio's affordable housing portfolio, resulting in the loss of much-needed affordable units and financial loss to the lenders.

ASSERTION: "This legislation will not create an excessive valuation for subsidized housing."

The facts are as follows: This proposed legislation would have a devastating impact on all flavors of affordable housing in Ohio. Proponents are purposefully attempting to confuse the question by honing-in on a small segment of affordable housing that also includes a direct tenant subsidy component. Hence, their reference to 'subsidized housing' in the proponent testimony. The majority of affordable housing projects developed in Ohio over the past 15 years do not have any project-based subsidy where the tenant rents are being subsidized. For example, in a typical affordable housing project developed utilizing the Low Income Housing Tax Credit (LIHTC), the tenant does not receive any form of direct subsidy, but the rents they are charged are affordable (meaning, below a typical rent that would be charged at a market rate project). The proponents of S.B. 36 completely ignore these projects in their testimony.