**Senate Bill 36**

**Written and Oral Testimony of Mark A. Snider, Esq.**

**April 2, 2019**

Chairman Terhar, Vice-Chair Roegner, Ranking Member Williams, and Members of the Senate Ways & Means Committee, my name is Mark A. Snider, Esq., of Porter Wright Morris & Arthur, LLP, in Columbus. I am a real property tax attorney with approximately 15 years of experience representing taxpayers, particularly affordable housing property owners, in hundreds of property tax valuation cases around the state. I have appeared at dozens of county Boards of Revision, the Ohio Board of Tax Appeals, Ohio Courts of Appeal, and the Ohio Supreme Court. I represented friend-of-the-court parties in some of the most important property tax cases regarding affordable housing in the last decade, including *Woda Ivy Glen*, *Network Restorations I and III*, and *Notestine Manor v. Logan County Board of Revision* (where my clients opposed a motion for reconsideration).

Today I speak to you to urge the Senate to oppose Senate Bill 36. Current Ohio law reflects Ohio constitutional principles and accurately determines the true value of affordable housing properties.  S.B. 36, on the contrary, would require false assumptions be used to value such properties, invariably resulting in excessive valuations and unfair taxes.

The Ohio constitution requires all real property in the state be valued at its “true value,” which means its fair market value.  Fair market value is the price that an educated willing buyer would pay an educated willing seller for the property at issue, when neither party is compelled to enter into the transaction.

Because low-income housing tax credit and other affordable housing properties (1) can only be rented to a small subset of the overall population, and (2) can only generate government-limited rental income amounts, the fair market value of such properties is inherently less than market rate properties.

The Ohio Supreme Court has repeatedly recognized that reality. S.B. 36’s attempt to punish a type of housing disfavored by certain legislators may violate equal protection requirements of the Ohio and U.S. constitutions. It is generally illegal to target discriminatory laws against a disfavored segment of the population such as low-income residents.

I come before you today and provide a very brief history of Ohio law related to valuing affordable housing. The *Notestine Manor* case, which we understand was the impetus for the introduction of Senate Bill 36, was a logical application of existing Ohio property tax law to a particular set of facts. Passing a special law to try to overturn *Notestine Manor* is not wise and will result in unnecessary litigation.

**Ohio Supreme Court’s 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.

* In **1980**, the Ohio Supreme Court ruled in *State ex rel. Swetland v. Kinney*, that the “uniform rule” requirement of Ohio property tax law allows different classes of real property to be handled differently if such classifications have a rational basis. Therefore, valuing affordable housing as *affordable housin*g, and not artificially as if it were market rate housing, is constitutional.
* Also in **1980**, the Supreme Court ruled in *Canton Towers, Ltd. v. Stark Cty. Bd. of Revision*, that the primary way to value rental property in Ohio for property tax purposes is, logically, to consider the income stream produced by the subject property or comparable properties.
* In **1988**, the Supreme Court ruled in *Alliance Towers, Ltd. v. Stark Cty. Bd. of Revision*,that a property’s fair market value is to be determined without regard to leasehold interests or rent subsidies, as these intangible assets are not real estate. Thus, the Court ruled that rent subsidies above fair market value should be ignored*.*
* In **1995**, the Supreme Court ruled in*Muirfield Assn., Inc. v. Franklin Cty. Bd. of Revision* that, although privately imposed restrictions should be disregarded when valuing real property, tax valuations should take into account the effect of “limitations caused by involuntary, governmental actions,” such as affordable housing program restrictive covenants.
* In **2009**, the Supreme Court ruled in*Woda Ivy Glen v. Fayette Cty. Bd. of Revision*, that deed restrictions in place under the low-income housing tax credit program may change the value of the real property and should be a factor in determining the property’s true value.
* In **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).
* In **2018**, the Supreme Court ruled in*Network Restorations I v. Franklin Cty. Bd. of Revision*, that, 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.
* In **2018**, the Supreme Court ruled in *Notestine Manor v. Logan Cty. Bd. of Revision*, that 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. Separate testimony will tell you more about *Notestine Manor.*

In conclusion, S.B. 36 would deviate from reality and artificially value some properties at amounts well in excess of actual fair market values. A statute violating the true value requirement would be legally suspect, and conflict with all of the Supreme Court cases I just discussed. Therefore, I urge you to oppose S.B. 36.

I am willing to answer any questions you may have.

Respectfully submitted,

Mark A. Snider

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