BENJAMIN SCHERNER

ATTORNEY AT LAW
3982 POWELL ROAD, SUITE 308
POWELL, OHIO 43065
BEN@BENSCHERNER.COM

TELEPHONE: 614.734.0777

FACSIMILE 614.737.5288

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Chip Vance, President
HORSEPOWER FARMS PROPERTY ASSOCIATION
4301 Home Road
Powell, Ohio 43065

RE: HB 17 and the *Roosevelt* Case

Dear Mr. Vance:

As we discussed, it is my legal opinion that HB 17 is a necessary clarification that is wholly consistent the Ohio Supreme Court decision in *Roosevelt Properties Co. v. Kinney*, 12 Ohio St. 3d 7, 465 N.E. 2d 421 (1984). In *Roosevelt* the Ohio Supreme Court upheld the legislature's taxing of certain types of properties based on the owner's use – agreeing that it is not entirely the classification (residential vs commercial) of the property but the owner's utilization of the property that matters.

The Court reviewed a law that allowed residential property tax reductions, as long as the owner's residential property did not contain a multiunit building of four or more units. Perhaps better stated, the law allowed a commercial for profit owner to get the residential property tax reduction as long as the building contained three or less units even if the owner's entire interest was commercial and for profit.

The law and the Ohio Supreme Court's decision did not turn on the residential zoning of the property, but rather the use of the owner. The Court, in its review, recognized the distinction between "residential property owners," and those persons or concerns who hold land not as their home, but for "commercial" purposes or as "business land-holders." *Id.* at 12.

The Court concluded that "[t]hose sections are not intended to benefit the owners of multiunit apartment complexes, or other properties designed for residential occupancy but which are not utilized as such by their owners." *Id.* Importantly, the Court emphasized that the uses of the owners were "singularly commercial in nature." *Id.*

The Court's clear focus was the use of the owners.

Similar to the focus of *Roosevelt*, our owners occupy their own units and have no commercial uses. Our garage condo owner's uses are singularly residential in nature. Our units

are like a barn on a separate parcel utilized by a farmer, only our uses are wholly consistent with residential use if not identical to the use of a residential garage or outbuilding. Our condominium uses are also similar and consistent with an owner that may own two residential properties and not rent either (thus getting the property tax reduction) - for example a home in suburbia and a condo downtown.

Interestingly and importantly, the Court in *Roosevelt* upheld a property classification that included a landlord's ownership of a multiunit of three or less in its residential classifications - this is important because our owner's uses are infinitely more residential than the *Roosevelt* non-owner, non-occupied landlord's use of a three unit apartment. This distinction is relevant because the *Roosevelt* Court and the Ohio legislature allowed smaller landlords/owners with only commercial interests and no residential use at all to still receive the tax reduction.

Accordingly, if someone cites *Roosevelt* to argue that our uses are not 'residential', they are missing the point. While we concede garage condominium owners may not be residing in their condominium, their uses are entirely residential in nature - and, more importantly, absolutely not commercial or for any type of financial gain.

Owner occupied garage condominium uses are more residential and less commercial than those landlords that own three unit apartments and are allowed to take advantage of residential property tax reductions.

So why is the clarification needed? Because garage condominiums did not exist at the time of the tax legislation addressed by *Roosevelt*. And, because Ohio's county treasurers and garage condominium owner-occupiers need this legislative guidance.

Given Ohio's history of property tax analysis based on 'use' in *Roosevelt*, HB 17, provides consistent and needed clarity for the owner-occupied garage condo owner and the county treasurers.

As a side note, the law in most municipalities and counties does not allow someone to live in their residential garage or outbuilding. That would require meeting certain building codes and obtaining an occupancy permit and, thereafter, it would no longer be a garage. Really the distinction currently made by county treasurers is an arbitrary determination if the garage is on the property of an occupied home - which is an outdated view and inconsistent with *Roosevelt*.

I hope this addresses you question regarding the *Roosevelt* decision. Please feel free to share this opinion letter as you feel necessary.

Very truly yours,

Benjamin Scherner