

Proper Role and Function of the Board of Equalization

The proper role of members of the Board of Equalization in administration of the property tax in Alabama is specified in the Code of Alabama, 1975 - Title 40 Revenue and Taxation, Section 40-3-3, exemplified by the members' oath of office (excerpts) ... "adjust, equalize, and fix the taxable value of all property listed for taxation and submitted for review to the board" ... "***on a basis of its fair and reasonable market value to the best of my knowledge and ability***" ... (emphasis added.)

The Board is to ***act as an arbiter and NOT as an advocate***, either on behalf of the government or for the property owner; and is to consider evidence presented by property owners (or authorized agents) in support of objections to the assessment valuation and examine under oath any complaining property owner and any other witnesses as to the fair and reasonable market value of the property.

In matters before the BOE, the burden of providing evidence contrary to the assessment valuation is, by law, on the owner or their authorized agent. The proper role of the Board is to impartially compare and evaluate such evidence against the local assessment valuation, subsequently making a fair, independent, impartial, and objective decision guided by the legal standard in Alabama ... that of fair and reasonable market value.

It is incumbent upon Board members to understand explicitly that their responsibility is to function as the name prescribes – that of ***Equalization*** – *even to the point of increasing property values if the evidence discovered during the process indicates it should be so*. And that, if they act without due cause and unjustifiably lower a particular property's value, they have wrongly shifted the tax burden to other property owners of the jurisdiction.

If the Board finds that, from the evidence presented, the assessment valuation is not "the amount specified by law based on the fair and reasonable market value" ... "***whether more or less***" (emphasis added) ... "said valuation or assessment shall be corrected so that it will show the amount specified by law" ...; that is, fair and reasonable market value. (Reference: Code of Alabama 1975 Title/Section 40-3-19)

The Market Value Standard

Value. The fair and reasonable market value of property, estimated at the price which the property would bring at a fair voluntary sale. [Code of Alabama 1975, Title/Section 40-1-1 (16).]

Market Value. ***The most probable price***, as of a specified date, in cash, or in terms of equivalent to cash, or in other precisely revealed terms, for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress. (Appraisal Institute.)

Market value. A current economic definition agreed upon by agencies that regulate federal financial institutions in the United States is: ***The most probable price*** (in terms of money) which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. In such a sale, the buyer and seller are typically motivated, both parties are well informed, and acting in what they consider their best interests. A reasonable time is allowed for exposure in the open market. Payment is made in terms of cash or in terms of financial arrangements comparable thereto. (International Association of Assessing Officers.)

Market Value is a statistical concept, as indicated by the various definitions. It is ***the most probable price***, meaning that price with the greatest probability of occurrence as indicated by historical comparable sales prices or other market-based data (such as operating income) in a sale under ordinary circumstances.

Fee Appraisals in the Context of BOE Appeals

In response to the savings and loan crisis of the late 1980's, in 1989 congress passed a set of regulatory changes to the U. S. savings and loan banking system and the real estate appraisal industry. Known as the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA), this federal law included provision for creation of a state agency in every state whose purpose is to regulate the appraisal industry within each of the respective states. Our state agency is known as the Alabama Real Estate Appraisers Board.

The subsequent state law that specifies the particulars for the AREAB and regulation of the appraisal profession in Alabama is codified in **Title 34, Professions and Businesses, Chapter 27A, Real Estate Appraisers**. Accordingly, there are legal requirements for fee appraisers performing and reporting appraisals for fee on properties located in Alabama. It is critical for BOE members to be aware of these legal requirements of fee appraisers in considering such evidence when submitted in support of an appeal before the Board.

According to the law, appraisers must:

- (1) possess the proper, legally specified professional licensing or certification appropriate to the type and value range of the subject property, issued by the Alabama Real Estate Appraisers Board (AREAB) or by its counterpart in another state that has a reciprocal agreement of acceptance with the AREAB;
- (2) if a non-resident of Alabama, the appraiser must also have obtained from the AREAB a current temporary license to appraise property located within Alabama;
- (3) lastly, but importantly, the statute requires that any appraisal performed in Alabama for fee must comply with the Uniform Standards of Professional Appraisal Practice (USPAP), which is developed maintained and published by the Appraisal Institute. (Reference: Code of Alabama, Title/Section 34-27A-23.).

As with all professions, the appraisal profession has a code of ethics as well as prescribed methods for properly performing the services of the profession. Appraisers are obliged to abide by these rules in the public interest and for the purpose of promoting the public trust. These rules are contained in USPAP.

A corollary to this important aspect of the Board's responsibilities is an understanding of *what constitutes an appraisal; more particularly, an appraisal for fee*. (Property owners may appraise their own property and present same to the Board, not being bound by the referenced law that pertains specifically to fee appraisers).

In the public interest, BOE members need to understand what constitutes an appraisal so that, when an appraisal is submitted, they can properly consider whether the above legal requirements have been met. (NOTE: According to USPAP, there are important distinctions between appraisers acting as consultants and appraisers actually appraising property. For example, an agent acting as a consultant

and not actually estimating value is allowed to accept a fee for his/her work on a contingency basis; such is not allowed by USPAP if the agent is actually appraising the property.)

Not infrequently, tax agents submit analyses of sales data, cost data or financial operating data that results in an estimate of value, while omitting the pronouncement that such is actually an appraisal. Sometimes, they even label or identify the value estimate with terms such as “Owner’s Requested Value”; when, in fact, *it was the appraiser who developed the value estimate*. This is often done either because the tax agent is not properly qualified to appraise such property and/or the work he/she performed is not USPAP compliant. USPAP requires that the fee appraiser disclose his/her responsibility for any such value estimate and to certify that it is USPAP compliant.

What is an appraisal?

According to the Code of Alabama, Title/Section 34-27A-2 – Definitions:

An appraisal is “The act or process of developing an opinion of value of real property; an opinion of the value of real property; of or pertaining to appraising real property and related functions such as appraisal practice or appraisal services.”

If the tax agent offers an opinion of value, either orally or in writing, he/she has appraised the property and is bound by Alabama’s licensing/certification requirements as well as compliance with USPAP.

Too often, bad actors successfully prevail upon unwitting local BOE’s with illegal appraisals, thereby attempting to, and often succeeding in, misrepresenting themselves as qualified to offer an opinion of value. Such defrauds local and state government and our schools of needed tax revenues while, perhaps even more importantly, negatively impacts the equity of our tax system.

Prescribed Remedy – the filing of written complaints with the Alabama Real Estate Appraisers Board by users of such reports (as suggested by USPAP in policing the industry for the benefit of the public trust), to include state and county appraisers, tax officials and Boards of Equalization. Violation of the licensing/certification requirements specified in the law (i.e. appraising property for fee without the proper licensing or certification) is a Class A Misdemeanor in Alabama.

Please refer to attachment – relevant AG Opinion to BOE of Montgomery Co.; accompanying AREAB Declaratory Ruling of 1999.

- M. E. Bailey; 5th August 2021

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