Luke Bell
General Counsel/VP of Governmental Affairs
785-633-6649 (Cell)
Email: lbell@kansasrealtor.com

To: House Taxation Committee

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Subject: **HB 2714** – Supporting Proposed Changes to Increase the Fairness of the Property Tax Valuation and Appeals Process for Kansas Property Taxpayers

Chairman Kleeb and members of the House Taxation Committee, thank you for the opportunity to provide testimony today on behalf of the Kansas Association of REALTORS® in support of **HB 2714**, which would increase the fairness of the property tax valuation and appeals process for Kansas property owners and remedy abuses of power by county appraisers. Through the comments provided in our testimony, we hope to provide some additional legal and public policy context on this issue.

KAR is the state's largest professional trade association, representing nearly 8,500 members involved in both residential and commercial real estate and advocating on behalf of the state's 700,000 property owners for over 95 years. REALTORS® serve an important role in the state's economy and are dedicated to working with our elected officials to create better communities by supporting economic development, a high quality of life and providing affordable housing opportunities while protecting the rights of private property owners.

Does Kansas have a property tax problem?

Before we discuss how **HB 2714** would increase the fairness of the property tax valuation and appeals process for Kansas property owners, we must first define the problem we are attempting to address with this legislation. As we will discuss below, Kansas families, farmers and small business owners have been hit with an exponentially increasing property tax burden over the last 18 years, which have caused Kansas to have some of the highest property tax rates in the entire nation.

Over the last 18 years, the property tax burden imposed on Kansas families, farmers and small businesses by local governments has increased exponentially. From 1997 to 2015, the total amount of property tax revenues collected by Kansas counties and first class cities more than doubled from $774 million in 1997 to nearly $1.8 billion in 2015, which is a total increase of 128 percent over this time period. On average, Kansas local governments have increased the property tax burden by over seven percent each year.

At the same time, inflation increased by an average of just 2.2 percent and the Kansas statewide population grew by just 0.6 percent each year. Economic theory holds that an economically efficient amount of tax revenue growth would be inflation plus population growth, which would be roughly 2.8 percent in Kansas over the last 18 years. Obviously, local governments need enough property tax revenue growth to cover the increased incremental costs to provide goods and services to residents due to inflation and to provide services to new residents of the community from population growth.

Currently, the property tax burden is growing at a rate that is more than two and a half times the rate of inflation plus population growth. As the growth of the property tax burden continues to increase at a rate that exceeds inflation and population growth, the per capita property tax burden will continue to increase on Kansas property owners. At the current growth rate, the per capita property tax burden will eventually increase to a point where the property tax burden is unaffordable for most Kansas families, farmers and small businesses.

Kansas has some of the highest property taxes in the entire nation

According to several national studies, Kansas has some of the highest property taxes in the entire nation and in our six-state region (Arkansas, Colorado, Kansas, Missouri, Nebraska and Oklahoma). For example, a 2014 study conducted by the Lincoln Institute of Land Policy concluded that Kansas has the worst effective property tax rate in the entire nation on rural commercial properties. Let me stress this again – this study concluded that Kansas has the WORST property tax burden in the entire nation on rural commercial properties!

This study used the cities of Iola (rural) and Wichita (urban) as the Kansas test subjects for the study. These two cities were chosen for the study because they are county seats and are consistent with other cities used in the multi-state study. Although the study just compares the property tax burden for certain properties in two cities in every state, we believe the results can be used to compare the relative property tax burdens among the states.

First, the study found that a taxpayer in the City of Iola (rural community) pays the highest effective property tax rate in the entire nation on rural commercial properties. The effective property tax rate in the City of Iola is 4.26%, which is nearly double the national average effective tax rate of 1.75% for rural communities. This means that a commercial property owner in rural Kansas most likely pays property taxes that are more than twice as high as an average commercial property owner in other states.

For comparison purposes, our neighboring states of Nebraska (12th – 2.13%), Colorado (14th – 2.07%), Missouri (15th – 2.06%), Oklahoma (43rd – 0.92%) and Arkansas (48th – 0.68%) all obviously rank better than Kansas on this study. The effective property tax rate on rural commercial property in Kansas is anywhere from 100% and 527% higher than the effective property tax rates in Nebraska and Arkansas, respectively.

According to the study, the owner of a commercial property valued at $1 million in the City of Iola, would pay total property taxes of $51,141 annually on the property. The same $1 million commercial property would only pay $25,539 in Nebraska (a $25,602 difference), $24,893 in Colorado (a $26,248 difference), $24,713 in Missouri (a $26,428 difference), $11,084 in Oklahoma (a $40,057 difference) and $8,196 in Arkansas (a $42,945 difference).

Second, the study found that a taxpayer in the City of Wichita (urban community) pays the 15th highest effective property tax rate in the entire nation on urban commercial properties. The effective property tax rate in the City of Wichita is 2.74%, which is nearly 27% higher than the national average effective tax rate of 2.16% for urban communities. This means that a commercial property owner in urban Kansas most likely pays property taxes that are 27% higher than an average commercial property owner in other states.

For comparison purposes, only the state of Missouri (14th – 2.76%) has a higher effective property tax rate on commercial properties in urban communities than Kansas. Our neighboring states of Colorado (21st – 2.4%), Nebraska (27th – 2.06%), Arkansas (38th – 1.44%) and Oklahoma (43rd – 1.31%) all rank better than Kansas on this study. The effective property tax rate on urban commercial properties in Kansas is anywhere from 14% and 109% higher than the effective property tax rates in Colorado and Oklahoma, respectively.

Property taxes on residential properties generally fare a little bit better since residential properties have a much lower assessment rate (11.5%) compared to commercial properties (25%) under the Kansas Constitution. According to a 2015 study by the Tax Foundation, Kansas home owners pay an effective property tax rate of 1.39% on a median value owner-occupied home, which is the 15th highest effective tax rate in the entire nation.

For comparison purposes, only the state of Nebraska (7th – 1.84%) has a higher effective property tax rate on residential properties than Kansas. Our neighboring states of Missouri (26th – 1.02%), Oklahoma (29th – 0.86%), Arkansas (42nd – 0.62%) and Colorado (43rd – 0.61%) all rank better than Kansas on this study. The effective property tax rate on residential properties in Kansas is anywhere from 36% and 128% higher than the effective property tax rates in Missouri and Colorado, respectively.

Realizing that the effective tax rate on property is much higher in Kansas than most other states, the discussion turns to the causes for this disparity. Not surprisingly, there has been considerable disagreement on both sides of this issue. In this testimony, we will discuss this issue using actual property tax data from the Kansas Department of Revenue on property tax revenues collected by Kansas counties and first class cities from 1997 to 2015.

What has caused local governments to increase the property tax burden on Kansas property owners?

In summary, three basic theories have been floated by local governments and the media in an attempt to explain why local governments have increased the property tax burden on Kansas property owners. These theories, none of which are backed up by the actual data on property tax revenues, are the following:

(1) Elimination of funding since 2003 for the Local Ad Valorem Tax Reduction Fund (LAVTRF) and City-County Revenue Sharing Fund (CCRSF) has caused local governments to increase the property tax burden;
(2) Exemption for commercial machinery and equipment (M&E) from property taxes since 2006 has caused local governments to increase the property tax burden; and
(3) Reductions in state general fund spending by the Kansas Legislature from 2010 through 2014 have caused local governments to increase the property tax burden.

First, local governments have asserted that local governments have resorted to increasing the property tax burden in response to the loss of state revenue transfers to local governments under the LAVTRF and CCRSF programs since 2003. Under this line of reasoning, the elimination of state funding transfers to local governments has forced local governments that have otherwise been responsible with property tax collections to increase property taxes to make up for this lost funding.

Basically, both of these funds worked by taking state income and sales tax revenues and transferring a portion of these funds to local governments to subsidize spending on local government programs and services. Local governments were supposed to utilize the funds provided through these funding streams to reduce property taxes. The data provided in this briefing will demonstrate that this did not happen and instead the growth of the property tax burden actually grew at much HIGHER levels while the LAVTRF and CCRSF programs were funded.

From 1997 to 2003, the Kansas Legislature appropriated just over $573 million in funding for these two programs, which was an average of $82 million each year. At the same time, Kansas counties and first class cities continued to increase the property tax burden on Kansas property owners by nearly $373 million, or an average of nearly $64 million each year. As a result, while the Kansas Legislature spent nearly $82 million each year on "property tax relief" through these two programs, Kansas counties and first class cities continued to increase the property tax burden on Kansas families, farmers and small business owners by nearly $64 million each year at the same time.

If you were to accept the theory advanced by local governments that the loss of the revenue transfers from the state government to local governments caused increases in the property tax burden, then you would anticipate that the total amount of property taxes collected by Kansas counties and first class cities would have increased at a more rapid pace AFTER the elimination of the LAVTRF and CCRSF funding. If their theory was correct, then the annual growth of property tax increases should have been lower when these programs were fully funded and higher following their elimination by the Kansas Legislature in 2004.

However, the actual data on property tax collections does not support this theory. In fact, Kansas has had a major problem with property tax increases by local governments since 1999 and the trend of property tax increases by local governments has actually slowed down significantly since 2003 (when there has been no LAVTRF and CCRSF funding). Again, property tax increases are LOWER compared to when the Kansas Legislature funded the LAVTRF.

Not surprisingly, the data actually shows that the average annual growth rate of the property tax burden imposed by local governments was significantly HIGHER when the LAVTRF and CCRSF programs were funded by the Kansas Legislature. From 1997 to 2003, when the LAVTRF and CCRSF programs received record amounts of funding, the average annual growth rate of the property tax burden was 8.2%.

From 2004 to 2015, following the elimination of all funding for the LAVTRF and CCRSF programs, the average annual growth rate of the property tax burden was actually reduced to 3.8%. As result, the average annual growth of the property tax burden imposed by local governments is actually 55% lower following the elimination of funding for the LAVTRF and CCRSF programs compared to when the programs were funded at near record amounts by the Kansas Legislature.

In addition, the largest increase in the property tax burden on record by Kansas local governments took place in 2001 when property taxes increased by $93 million (a 10% increase). Not surprisingly, 2001 was also a year when the LAVTRF and CCRSF programs were funded with roughly $89 million in SGF funding. How could any reasonable person argue that the LAVTRF and CCRSF programs had any positive effect on lowering the property tax burden on Kansas families, farmers and small businesses?

Second, an additional argument advanced by local governments is that the passage of the property tax exemption for machinery and equipment (M&E) also caused the drastic increase in the property tax burden imposed by local governments. However, the same data also shows that the average annual growth rate of the property tax burden imposed by local governments is again significantly LOWER following the passage of the M&E property tax exemption at an average annual rate of 2.6%, which is 69% lower than the average annual growth rate of property taxes in the years prior to the passage of the M&E property tax exemption.

Again, the data proves that the elimination of funding for the LAVTRF and CCSRF programs and the passage of the M&E property tax exemption by the Kansas Legislature have not been the primary causes of the drastic increase in the property tax burden imposed by local governments. In fact, the data shows that the average annual growth in the property tax burden was actually significantly HIGHER during the years in which those programs were funded at record levels and no changes had been made to the taxation of machinery and equipment.

Third, another argument advanced by local governments is that the reduction of state general fund (SGF) spending from 2011 through 2014 has shifted the cost of funding government programs to local governments, which has caused a drastic increase in the property tax burden. Again not surprisingly, the actual data on local government property tax revenues shows that reductions in SGF spending has absolutely no correlation with increases in local government property tax revenues.

If this theory were true, then the data would show that property tax revenues collected by local governments would grow at a higher than average rate in the years following larger than average reductions in state general fund spending and would grow at a lower than average rate in the years following larger than average increases in state general fund spending. By studying the actual data comparing local property tax increases to changes in state general fund spending, there is actually an inverse relationship (-0.30) between these two measurements.

This means that not only is there no correlation between these two measurements, but that there is actually a small inverse relationship that shows that local property tax revenues actually INCREASE by a larger percentage when state general fund spending also INCREASES by a larger than average percentage. By the same token, local property tax revenues increase by a much smaller percentage when state general fund spending also DECREASES or increases by a smaller percentage than average. Simply, changes in SGF spending seem to have no effect on property taxes and if anything local property taxes increase when state spending also increases.

<u>What is the real cause of the drastic growth in the property tax burden if these theories are not correct?</u>

In contrast, the actual data demonstrates that local governments have continually increased the property tax burden on Kansas property owners since the Kansas Legislature's repeal of the public vote requirement in 1999. Prior to the repeal, local governments were essentially prohibited from increasing property taxes over the preceding year (without jumping through some difficult hoops). Obviously, not many local governments had been able to circumvent these requirements and property taxes essentially did not go up significantly prior to 1999.

During the 1999 Legislative Session, local governments came to the Kansas Legislature and promised to be "responsible" with property tax increases if the Kansas Legislature repealed the "burdensome" and "unfair" property tax lid. During that session, the Kansas Legislature repealed the property tax lid in one very small provision tucked into a large income and sales tax reform package (**SB 45**) at the very end of the session. According to an article published by the *Topeka Capitol-Journal*, the reaction from one very prominent local government lobbyist was (this is an exact quote) the following: "Whoopee! We're out from under the tax lid!"

Several Democratic members of the Kansas Senate, including Senate Minority Leader Anthony Hensley (D – Topeka), were shocked by the action and stated the following in an extremely eloquent and relevant explanation of vote on **SB 45** that can and should be applied to the situation we find ourselves in today:

> *It is very important that the public has the right to know whenever local government wants to reap a windfall due to higher valuations. However, with the sunset of the property tax lid, there is no longer a limit or control on local spending. Several proposals have been made which would give the public the right to vote on increases, and I am very concerned that this legislation gives no such provision for a public vote.* Kansas Senate Journal. May 2, 1999.

In response to the repeal of the public vote requirement and in carrying out their promise to be "responsible" with property tax increases, Kansas counties and first class cities increased the property tax burden on Kansas property owners by new annual records of 7% in 1999, 8% in 2000 and 10% in 2001. If 10%, 8% and 7% increases were considered to be "responsible" property tax increases, then we are frightened to find out what would be considered an "irresponsible" property tax increase.

The record annual increases in the property tax burden in 1999, 2000 and 2001 by local governments came at a time when the LAVTRF and CCRSF programs were funded at nearly record levels, the Kansas economy was growing at healthy rates, property values were steadily increasing and the state government was flush with funding and experiencing no major budget problems. As a result, it is clear that the lack of funding for the LAVTRF and CCSRF since 2003 has not been the primary reason for the exponentially increasing property tax burden.

By reviewing the historical data on local government property taxes from 1997 to 2015, it becomes very clear that the overwhelming driver behind the exponential increase in local property taxes is increasing assessed valuations on existing properties. When you compare the growth of assessed valuations to the growth in local government property tax revenues since 1997, these two measurements have a very close correlation at 0.80.

This means that, in nearly ever year from 1997 to 2015, local government property taxes go up at a rate each year that is very similar to the rate of growth in assessed valuations. As a result, the only accurate indicator on whether local government property tax revenues will increase or decrease is whether assessed valuations have increased or decreased. Therefore, if you want to tackle the problem of extremely high Kansas property taxes, then you are going to need to do something about the growth of assessed valuations.

<u>Driving intent behind **HB 2714** – Combatting the inherent conflict of interest that is found in the current property tax valuation process since those responsible for establishing assessed valuations (county and district appraisers) work for those who benefit from higher assessed valuations (counties and county commissioners)</u>

First and foremost, we strongly believe that there is an inherent conflict of interest that is found in the current property tax valuation process in Kansas. The reason is that those individuals that are responsible for establishing the assessed valuations of properties (county and district appraisers) work directly for those who ultimately benefit when assessed valuations are increased on properties (counties and county commissioners).

Even the Kansas Supreme Court has implicitly acknowledged the inherent conflict of interest of our property tax valuation system by stating the following about the relationships of county and district appraisers to counties and county commissioners: "county commissioners serve as 'the client' and the taxing districts are the 'intended users' of the appraisal." *Board of County Commissioners of Johnson County v. Jordan*, No. 114,827 (Kan. 2016). Simply stated, county appraisers serve county commissioners and local governments who ultimately benefit from higher assessed valuations on taxable properties.

If county appraisers serve county commissioners, then should there not be someone that is the advocate for property taxpayers to ensure that their interests are protected in the property tax valuation and appeals process? The Kansas Legislature and the Property Valuation Division (PVD) of the Kansas Department of Revenue both serve an extremely important role in providing clear direction and oversight of county appraisers to ensure that property taxpayers are provided with basic fairness in the property tax valuation and appeals process.

In our opinion, the inherent conflict of interest of county appraisers "serving" county commissioners in the property tax valuation process creates an implicit bias against property taxpayers. All of the proposed reforms contained in **HB 2714** are intended and necessary to blunt this implicit bias and increase the fairness of the property tax valuation and appeals process for property taxpayers.

Section 1 – Change from an annual to a biennial property tax valuation process would provide property owners with more consistency and predictability on their property tax burden

Under Section 1, **HB 2714** would change the current property tax valuation process in Kansas from an annually-required appraisal of each property at its fair market value to a two-year or biennial appraisal process. Under current law, every parcel of real property in this state must be appraised by counties on January 1st of each year.

This proposal would change our property tax valuation process from an annual to a biennial process in which properties would be appraised once every two years beginning on January 1, 2017. This would provide more consistency and predictability to taxpayers on property tax valuations and would reduce the need for frequent appeals of property valuations established by county appraisers.

During the 2014 Legislative Session, the Kansas Legislature enacted several changes to K.S.A. 2014 Supp. 79-1460. Among other things, this statute stated that when a property owner successfully appeals a property valuation, the county appraiser was prohibited from increasing the property's valuation for the next two years unless certain substantial and compelling reasons existed for the increase.

The intent of this change was to attempt to provide some measure of consistency and predictability to property taxpayers on their property tax burden. For many years, we received numerous reports of county appraisers increasing property valuations in the years immediately following when a property owner was able to reduce an unreasonable property valuation established by the county appraiser in front of the Board of Tax Appeals (BOTA).

Bear in mind, it often takes several years and thousands of dollars for a property owner to successfully appeal an unreasonable property valuation established by the county appraiser to BOTA. The intent of this legislative change was again to attempt to provide some small measure of consistency and predictability to property taxpayers on their property tax burden.

Unfortunately, county appraisers (led by the Johnson County Appraiser) simply could not be bothered with giving property owners even a one year break from increasing property valuations. Late last year, Johnson County filed a lawsuit against the Kansas Department of Revenue over this provision, which ultimately invalidated the provision and wiped out any relief that the Legislature had provided to property owners faced with never-ending increases in assessed valuations and the resulting increases in the property tax burden.

Even before the Kansas Supreme Court had issued a decision on the matter, the Johnson County Appraiser's office dispatched a letter to property owners notifying them that the county appraiser would not be following the law and that they would not be providing property owners with the legislatively-mandated two-year safe harbor from increasing property valuations. AGAIN – even before the courts ruled on the issue, the county appraiser unilaterally decided to ignore a law passed by the Kansas Legislature. This is extremely troubling!

Not surprisingly, many county appraisers are adamantly opposed to a biennial appraisal process since it would take away their ability to increase property valuations each year and thus produce property tax revenue increases for the counties they "serve." In addition, county appraisers will attempt to argue that a biennial appraisal process somehow violates the Kansas Constitution's provision that requires the Kansas Legislature to "provide for a uniform and equal basis of valuation and rate of taxation of all property subject to taxation."

Under current law, K.S.A. 79-309 provides that each taxable property must be listed and valued as of January 1st each year. Real property, other than agricultural use property, is appraised at its fair market value every January 1st. See K.S.A. 79-501. Fair market value is a defined term applicable to all taxable real property other than that used for agricultural purposes. See K.S.A. 2014 Supp. 79-503a.

As long as the proposal provides for a "uniform and equal basis of valuation" under Article 11, Section 1(a) of the Kansas Constitution, a biennial appraisal process will not violate the Kansas Constitution. Although we believe that Section 1 of **HB 2714** may require a little tweaking as suggested by the Property Valuation Division (PVD), a biennial appraisal process does not violate the Kansas Constitution since all properties would similarly be assessed under the language found in Section 1. If the Kansas Legislature makes the policy choice to move to a biennial appraisal process, all properties will be "uniformly and equally" appraised under the biennial appraisal process.

Sections 2 and 6 – "De novo" review of property tax valuation decisions issued by the Board of Tax Appeals (BOTA) would provide more options to taxpayers attempting to contest unreasonable property tax valuations

Under Sections 2 and 6, **HB 2714** would clarify that a "de novo" trial means that the district court is required to review the entire matter on appeal from BOTA rather than just reviewing the findings of BOTA. During the 2014 Legislative Session, the Kansas Legislature passed legislation to allow aggrieved taxpayers to seek a de novo review of a property tax valuation decision from the Board of Tax Appeals (BOTA) in district court.

Under previous law, property tax appeals could only be taken to the Kansas Court of Appeals (skipping the district court level) and the Kansas Court of Appeals could only review BOTA's decision to determine if BOTA arbitrarily, capriciously or incorrectly applied the law to the facts of the case. However, the Court of Appeals did not have the authority to review the actual facts of the case and make judgments on the facts. This severely limited the ability of aggrieved taxpayers to challenge an erroneous ruling of BOTA in the court system.

Unfortunately, certain counties have attempted to narrow the application of the de novo trial option for property owners in court by asserting that the district courts only have the authority to review the record of the case from BOTA and not conduct a brand new trial on the matter. Traditionally, the term "de novo" means that the court has the ability to conduct a brand new trial and is not limited to a simple review of the record.

Accordingly, **HB 2714** is needed to amend the statute to clarify that the term "de novo" trial means that the courts shall review the entire matter of the property tax appeal by conducting a new trial on the matter and will not be limited to a simple review of the record from BOTA. This would ensure that taxpayers are allowed to present new evidence and arguments at the trial to increase their chances of overturning an unreasonable property valuation established by the county and an unfavorable opinion on the property's valuation from BOTA.

Sections 3, 10, 11 and 13 – Requiring county appraisers and BOTA to establish property valuations based on the fair market value of the individual properties would reduce overreliance on mass appraisals by county appraisers

Under Sections 3, 10, 11 and 13, **HB 2714** would clarify that BOTA must establish a valuation for a property based on the fair market value of the fee simple of the property and cannot rely solely on a mass appraisal of the property generated by a county appraiser during the initial valuation process. Under current law, county appraisers have argued in front of BOTA that it is unnecessary for a county appraiser to conduct a written individual appraisal of each property and instead they seek to assert that they are only required to appraise the property using a computer-assisted mass appraisal system (CAMA). This provision would clarify that county appraisers are required to prepare a written individual appraisal for each property during the appeals process.

For practical purposes, mass appraisals are an imperfect tool that must be used to value properties during the initial valuation process. We acknowledge that it would be prohibitively difficult, if not impossible, for county appraisers to conduct individual written appraisals on all properties during the initial valuation process. However, once a property owner appeals the valuation, a mass appraisal becomes completely inadequate in valuing a property since it fails to consider the individual characteristics that comprise the fair market value of the property.

The language proposed in Sections 3, 10, 11 and 13 is not intended to eliminate the ability of a county appraiser to use a computer-assisted mass appraisal system on the initial valuations of properties. However, once the property taxpayer has appealed the property valuation to BOTA or the courts, the county appraiser would be required to produce a written individual appraisal for the property during the property tax appeals process. This will ensure that the property taxpayer is allowed to present property-specific evidence during the property tax appeals process and overturn the more generic mass appraisal generated by the county appraiser.

Sections 4 and 14 – Requiring county appraisers to follow valuation methodologies developed by the Property Valuation Division (PVD) would ensure that properties are uniformly and equally assessed across the state

Under Sections 4 and 14, **HB 2714** would require all county appraisers to follow valuation methodologies developed and adopted by the Property Valuation Division (PVD) on certain types of specialized properties (affordable housing, multi-family residential, office buildings, shopping centers, etc.). Over the past few years, PVD has been engaged in the process of working with property experts and stakeholders to develop methodologies as to how certain types of specialized properties should be appraised.

Unfortunately, many county appraisers do not have sufficient expertise to establish valuations on these specialized properties. As a result, we strongly support PVD's proactive efforts to develop guidelines and methodologies that will be used to establish valuations on these specialized properties. Under **HB 2714**, if BOTA finds that the county appraiser failed to follow the valuation methodologies adopted by PVD, BOTA would be required to award judgment in the matter to the property taxpayer.

Under current law, there are no statutory remedies for county appraisers that ignore the valuation methodologies developed and adopted by PVD. As a result, this proposal is necessary to ensure that country appraisers follow the valuation methodologies in establishing property tax valuations on properties covered by the methodologies. Otherwise, we are concerned that county appraisers will fail to follow the valuation methodologies.

Section 5 – Requiring counties to pay a filing fee on all property tax appeals to BOTA would provide counties with a greater incentive to settle disputes with property owners during the initial informal meeting

Under Section 5, **HB 2714** would require the county to pay a filing fee that is equal to the fee paid by the aggrieved taxpayer when a taxpayer files an appeal of a property valuation with BOTA. This would provide the county appraiser with a greater incentive to settle the property valuation dispute with the taxpayer during the informal meeting and ensure that both parties are paying the costs of the appeal to BOTA.

Under current law, when a property taxpayer is forced to appeal an unreasonable property valuation to BOTA, they are required to pay a filing fee and hire an attorney or property tax consultant to represent them in front of BOTA on the property valuation dispute. This represents a significant cost for many property taxpayers and only increases the burden of attempting to contest an unreasonable property valuation.

On the other side, the county appraiser that refused to to provide relief to the taxpayer during the informal meeting is not burdened with a similar requirement. Sadly, the counties get to use funds paid by other property taxpayers to fight a taxpayer's attempt to lower their unreasonable property valuation. In our opinion, this provision would provide counties with a greater incentive to settle disputes with property taxpayers during the initial informal meeting and prior the filing of an appeal to BOTA.

Section 7 – Clarifying that county appraisers are prohibited from taking matters into consideration that occur after January 1st would protect property taxpayers from abuse during the property tax appeals process

Under Section 7, **HB 2714** would clarify that county appraisers are prohibited from taking matters into consideration that occur after January 1st in establishing the property tax valuation of a property as of January 1st as required by the statute. Under current law, county appraisers are required to establish the valuation of properties for property tax purposes at their fair market value as of January 1st each year.

According to information we have received, there have been many situations where counties have deviated from the statute and took matters into consideration that occurred after January 1st to establish a valuation for a property. This leads to situations where a major event (renovation, sale or announcement of new tenant for the property) that occurs after January 1st is used to retroactively justify a significant increase in the assessed valuation of the property. If these allegations are true, this is a violation of the statute and clarifying language is needed to ensure that counties do not take factors into account that occur after January 1st.

Section 8 – Requiring county appraisers to apportion the valuation of a tract of land that has been divided into separate tracts resolves an ambiguity in the existing statute

Under Section 8, **HB 2714** would require a county appraiser to apportion the valuation of any tract of land that has been divided into tracts owned by different persons. K.S.A. 79-425a authorizes a county appraiser to apportion the valuation of a property whenever a tract of land has been assessed and is later divided into separate tracts owned by different persons, but the language used is voluntary and the decision to apportion the valuation is left up to the discretion of the county appraiser.

Some county appraisers refuse to process an apportionment after certain arbitrary dates that are not found in the statute. Accordingly, this provision would amend the statute to state that "the county appraiser shall apportion such valuation among the owners of such tracts according to the value of their respective interests as shown by the evidence available at a time designated by the county appraiser." This would make it clear that there is no arbitrary date deadline for filing these applications and makes it mandatory for the county appraiser to apportion the value of the property.

Section 9 – Prohibiting county appraisers from using an "economic unit" analysis in the valuation of individual properties will force county appraisers to appraise each property individually at its fair market value

Under Section 9, **HB 2714** would prohibit county appraisers from establishing the valuation of individual property parcels using an "economic unit" analysis. In lieu of performing an individual valuation for each distinct and separate property parcel, some valuations are based on an economic unit summary. An economic unit is a combination of two or more bordering individual parcels into a single parcel for the purposes of a valuation.

Although each parcel has its own unique characteristics and tax identification number, county appraisers prepare property tax valuations based on the entire economic unit (the combined properties) rather than individually. Unfortunately, the "economic unit" method of property tax valuation gives greater value to individual parcels included in economic units rather than if the parcels were valued independently.

A good example would be a reserve parcel in a commercial strip development that is used to contain a storm water detention pond for the development. Technically, the reserve parcel cannot be developed since it must be used as a detention pond for the benefit of the neighboring parcels. As a result, it is independently worthless and has no value apart from the benefit it provides to the remaining parcels in the development.

However, if the reserve parcel containing the detention pond is combined with the bordering parcel containing the actual buildings of the commercial strip development into an economic unit, the county can assign a much higher value to the reserve parcel containing the detention pond due its relationship to the separate parcel containing the much more valuable buildings. The net effect is that the value of the reserve parcel containing the detention pond is artificially inflated by the utilization of the economic unit valuation method.

Again, the overriding intent of **HB 2714** is to ensure that each property is appraised at its individual fair market value during the property tax valuation and appeals process. This provision would ensure that each property parcel is valued individually at its fair market value and that the valuation of a parcel is not artificially inflated by the county appraiser using the valuation of a neighboring parcel.

Section 12 – Prohibiting county appraisers from utilizing unreasonable interrogatories and subpoenas in property tax valuation appeals will protect property taxpayers from abuse during the property tax appeals process

Under Section 12, **HB 2714** would prohibit county appraisers from forcing property owners or financial institutions to turn over appraisals conducted on a property to obtain mortgage financing during the property tax appeals process. Under current law, it is common practice for counties to subpoena and obtain an appraisal conducted on a property during the process of obtaining mortgage financing to use against the property owner in a dispute over the property's valuation for property tax purposes.

Unfortunately, appraisals conducted on a property to obtain mortgage financing are drastically different than appraisals conducted on a property for the purpose of ad valorem tax valuations. The mortgage financing appraisal establishes a valuation of the property at its fully developed and highest operating capability while the ad valorem appraisal establishes a valuation of the property at its current status.

In addition, once the mortgage financing appraisal is in the possession of the county appraiser, this information may be subject to the Kansas Open Records Act and cannot be protected from falling into the hands of competitors and members of the public. As a result, this proposal would prohibit counties from forcing property owners or financial institutions to turn over appraisals conducted for mortgage financing during the property tax valuation and appeals process.

In addition, the legislation would prohibit county appraisers from using any fee appraisal that took place more than 12 months prior to the date of the protest as evidence in a valuation dispute. Under current law, it is common practice for counties to subpoena and obtain appraisals conducted on properties by private appraisers to use against the property owner in property valuation disputes. In many cases, the appraisals obtained through the subpoena process are older appraisals that were obtained in previous valuation disputes.

Unfortunately, appraisals that were conducted on a property more than 12 months prior to a given date typically contain stale information that may not accurately reflect current real estate market conditions or property characteristics. As a result, older appraisals should not be allowed to be used as evidence in a property tax valuation dispute.

Moreover, **HB 2714** would also prohibit county appraisers from requiring property owners to turn over individual lease documents and architectural drawings in a property tax valuation dispute. During the property tax appeals process, counties routinely send interrogatories ask for copies of confidential information on the property, such as individual lease agreements between the property owner and tenants and architectural drawings.

Revealing the confidential information contained in individual lease agreements and architectural drawings can be an undue burden on property owners and exposes this confidential information to public disclosure under an open records request. In the alternative, the property owner should be allowed to respond to an interrogatory request for individual lease agreements and architectural drawings with a certified rent roll, which would include tenant names, tenant spaces, square footages of the tenancies, lease rates and lease term dates. The certified rent roll should be sufficient to provide the necessary information to the county without breaking the confidences between the property owner and tenants that would result from the disclosure of the individual lease agreements and architectural drawings.

<u>Sections 13 and 15 – Clarifying several statutes relating to the valuation of properties “devoted to agricultural use” would protect property taxpayers from abuse during the property tax appeals process</u>

Under Sections 13 and 15, **HB 2714** would clarify the application of several statutes relating to the valuation of properties “devoted to agricultural use.” In our opinion, the current statutes provide county appraisers with a strong incentive to unreasonably deny an agricultural use classification to taxpayers in order to maximize the property tax revenues that are produced from the subject property.

In studying this issue, we have identified two reforms that would protect property owners who are engaged in disputes with county appraisers over an agricultural use classification. First, Section 13 would require county appraisers to allow property owners to demonstrate that land is “devoted to agricultural use” by providing an executed lease agreement demonstrating a commitment on the part of the property owner to use the property for an agricultural use.

Under current law, the property owner designates the intended use of the property for agricultural purposes at the time of the purchase. However, the county appraiser has the authority to overturn this classification and reclassify the property for a higher use that would result in more property tax revenue for the county.

The language found in Section 13 would require the county appraiser and BOTA to uphold the property owner's classification of the property for agricultural use as long as the property owner provides the county appraiser with an executed lease document demonstrating that a written commitment is in place for a tenant to utilize the property for agricultural purposes. The county appraiser would be prohibited from reclassifying the property to a more intensive use for property tax purposes once the executed lease document was provided by the property owner to the county appraiser.

Second, Section 15 would clarify that county appraisers and BOTA are required to establish separate and different valuations for the portions of properties that are used for agricultural and residential purposes. If a property has land that is devoted to agricultural use and also land that is used as a residential home site, the county appraiser would be required to determine the amount of the land that is used for agricultural purposes and value it accordingly as land devoted to agricultural use. The county appraiser would then be required to determine the amount of the remaining land that is used for other purposes and value it accordingly.

If both proposals are adopted by the Kansas Legislature, **HB 2714** would clarify the application of several statutes relating to the valuation of properties devoted to agricultural use. In our opinion, the current statutes provide county appraisers with a strong incentive to unreasonably deny an agricultural use classification to taxpayers in order to maximize the property tax revenues that are produced from the subject property and this language is intended to increase the fairness of that process for taxpayers.

Section 16 – Prohibiting county treasurers from distributing any property taxes paid under protest until the property tax appeals process has been completed will provide counties with a greater incentive to settle disputes with property owners during the initial informal meeting

Under Section 16, **HB 2714** would prohibit county treasurers from distributing any property taxes paid by a property taxpayer under protest until an appeal of the property valuation has been completed. The county treasurer would be required to hold those funds aside pending the outcome of the property valuation appeal.

This would provide the county with a very strong incentive to work with the property owner to find a mutually agreeable solution earlier in the property tax appeals process rather than dragging out the matter in an extended valuation appeals process. Under the current system, it is fundamentally unfair to allow a county to require a property taxpayer to pay under protest while the same county drags out the property tax appeals process, which causes a severe hardship on a taxpayer that is forced to contest an unreasonable property tax valuation.

Conclusion

In closing, we would respectfully request that the members of the House Taxation Committee support **HB 2714**, which would increase the fairness of the property tax valuation and appeals process for Kansas property owners and remedy abuses of power by county appraisers. We have been engaged in some preliminary discussion with the Property Valuation Division (PVD) and would like to thank Director Harper and his staff for their willingness to work with us on these issues.

Before **HB 2714** is worked by the House Taxation Committee, we are confident that the proponents of the bill can sit down with PVD to work out most of the technical issues they have identified in the legislation. Thank you for the opportunity to provide comments to the committee members on this very important issue.