

Approved: 2-7-96  
Date

MINUTES OF THE HOUSE COMMITTEE ON TAXATION..

The meeting was called to order by Chairperson Phill Kline at 9:06 a.m. on February 1, 1996 in Room 519-S of the Capitol.

All members were present except: Rep. Lawrence

Committee staff present: Chris Courtwright, Legislative Research Department  
Tom Severn, Legislative Research Department  
Don Hayward, Revisor of Statutes  
Ann McMorris, Committee Secretary

Conferees appearing before the committee:

Rep. Tom Sloan  
Rep. Ralph Tanner  
Rep. Troy Findley  
Rep. Barbara Ballard  
Don Cashatt, property owner, Lawrence  
Jim Jessie, Attorney, Lawrence  
Tim Kennedy, Kansas Taxpayers Network  
Rod Broberg, President, Kansas County Appraisers Assn.

Others attending: See attached list

Chair opened hearing on:

**HB 2625 - Concerning: Valuation of residential property for property tax purposes**

Proponents:

Rep. Tom Sloan (Attachment 1)  
Rep. Ralph Tanner (Attachment 2)  
Rep. Troy Findley (Attachment 3)  
Rep. Barbara Ballard  
Don Cashatt, property owner, Lawrence (Attachment 4)  
Jim Jessie, Attorney, Lawrence (Attachment 5)  
Tim Kennedy, Kansas Taxpayers Network (Attachment 6)

Opponents:

Rod Broberg, President, Kansas County Appraisers Assn. (Attachment 7)

After considerable questions and discussion of both proponents and opponents, Chair asked Kansas County Appraisers Assn. for their recommendations on how the committee could address this matter.

Chair closed hearing on **HB 2625**.

Chair opened for introduction of committee bills.

Moved by Rep. Welshimer, seconded by Rep. Larkin, the committee introduce a bill to change the number of population from 20,000 to 25,000 in determining whether there is need for a parttime or full time appraiser. Motion carried.

Moved by Rep. Shore, seconded by Rep. McKinney, the committee introduce a bill to clarify responsibility of paying sales tax on purchaser rather than merchant. Motion carried.

The next meeting is scheduled for February 6, 1996.

Adjournment 10:32 a.m.

Attachments - 7

# TAXATION COMMITTEE GUEST LIST

DATE:           FEBRUARY 1, 1996          

NAME	REPRESENTING
Pat Theroff	Ks. Farm Bureau
Lloyd Benton	Ks. Farm Bureau
Virginia Benton	Ks Farms Bureau
BILL RABTICE	VISITING w/ TOM SWAN
Gary German	Ks. Farm Bureau
George Hodgson	"
Doug Keesling	"
Jane Kelsey	"
DENNIS KRANSE	"
JEFF VARNOR	"
Richard Nielsen	Rice Co Farm Bureau
Jim Jesse	MYSELF
Michael W. Steinfert	Ks Farm Bureau
Elywn Stucky	" " "
Rae Mena Herman	" " "
Ed + Alma Reed	" " "
Roger Franke	KGC
Roni Beling-Harris	Ks. Farm Bureau
Gay + Chris Helison	K. Farm Bureau
Anne Spies	Ks. Assoc. of Counties

# TAXATION COMMITTEE GUEST LIST

DATE:           **FEBRUARY 1, 1996**          

NAME	REPRESENTING
William Lothholz	DCTPA
Walter Thome	DCTPA
Floyd Ott	DCTPA
KEN CALLICOTT	DCTPA
Robert Neis	DCTPA
RICHARD RODEWARD	TAXPAYERS
MARIAN CASHATT	DCPOA
Delpha Bodger	DCTPA
Bill Muggs	DCTPA
Sam V. Sunar	DCPOA
Gregory Shipe	DCPOA
Don Cashatt	MYSELF & DCPOA
Rod Broberg	Kansas County Appraisers Assoc.
DONALD STODGRASS	KANSAS FOOD DEALERS ASSN.
James Wulf	Kansas Farm Bureau
Ellen Schirmer	KANSAS FARM BUREAU
DAN DOYLE	KANSAS FARM BUREAU
TIM KENNEDY	KANSAS TAXPAYERS NETWORK
CRIST THEROFF	FBI

**TOM SLOAN**

REPRESENTATIVE, 45TH DISTRICT  
DOUGLAS COUNTY

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TOPEKA

HOUSE OF  
REPRESENTATIVES

COMMITTEE ASSIGNMENTS

MEMBER: AGRICULTURE  
LOCAL GOVERNMENT  
ENERGY & NATURAL RESOURCES

**TESTIMONY ON HB2625**

Mr. Chairman, Members of the Committee - HB2625 is the first step toward restoring common sense and fairness to the property tax appraisal process.

The bill establishes in law what most reasonable people assume was always true - that the highest and best use of an owner-occupied, single-family home, and up to 5 acres of land on which it sits, is as a residence. Furthermore, it meets legislative intent when the property classification system was originally established by comparing residences to residences, including the ground on which the homes sit, not as speculative commercial or industrial property, not as a potential windfall to its owner, but as the home of the family that lives there.

Our forefathers cried, "No taxation without representation." This bill says, "no taxation without reasonable appraisals." The value of a person's home should not increase from \$40,000 to \$400,000 because a new school is built in the neighborhood. Homeowners should not have an 10-fold increase in valuation because a large, national retailer locates within the block.

This is a simple bill and only applies to non-income producing, single-family residential properties, owned and occupied by their owners. It is not a Lawrence bill, but one for all Kansans who cannot control what is built in their neighborhood,.

Will local governments and the state lose revenue? Yes, but only a little. In Douglas County only a few dozen, out of thousands of properties on the tax role, will be affected by this bill. More importantly, this is in keeping with the intent of the appraisal process - compare residential properties with residential properties, not commercial.

Can passage of this bill protect some home owners from unreasonably high property appraisals? Yes! Is this bill popular with County Appraisers? No! Is this bill the right way to protect homeowner rights and restore common sense to the appraisal process? Yes!

I ask the committee to strike a note for responsible tax law and recommend HB2625 favorably for passage.

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THE CAPITOL

HOUSE OF  
REPRESENTATIVES

RALPH M. TANNER  
DISTRICT 10

COMMITTEE ASSIGNMENTS

MEMBER	EDUCATION GOVERNMENTAL ORGANIZATION & ELECTIONS
VICE CHAIR	SELECT COMMITTEE ON HIGHER EDUCATION
	TOPEKA HOTLINE DURING SESSION - 1-800-432-3924

## TESTIMONY

Committee on Taxation

February 1, 1996

Mr. Chairman, Members of the Committee:

I am honored to have the opportunity to address you in support of HB2625 because of my belief that the urgency of passage on this measure is critical to the welfare of the property owners in my district, and beyond.

County appraisers, in their zeal to raise valuations on real property, have, on many occasions, raised the assessment of residential property to that of a commercial designation for no other reason than that the home in question had been encroached upon by commercial developers. I have sometimes called this sort of action "confiscatory," or "predatory." And it is! But the appraisers reasoned that the property should be categorized as "commercial" despite the fact that the home-owner had done nothing to affect the use or value of his or her property.

Two properties come to mind as cases in point in Douglas County. In one instance, the owner and his family have lived in

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their home on Iowa Street in Lawrence for more than twenty years, and in another, the home of long-standing on west Sixth Street in Lawrence of a widow past ninety years of age. In both cases, commercial development had crept up on the home owners' property but no zoning change had occurred on either of these. The County Appraiser assumed that the highest and best use for these parcels was "commercial." He proceeded to such a designation, and notified the property owners of his decision. He believed, I think, that he was directed to his finding by the laws of the State of Kansas.

Ladies and Gentlemen of the Committee, I am moved to respond to the Appraiser's interpretation of the law by quoting the Dickensian character, Mr. Bumble, "If the law supposes that, the law is a [sic] ass, a [sic] idiot."

It would be virtually impossible to persuade me that the legislative intent when the current tax law was written was to come to the conclusions mentioned above. To let stand the interpretation put upon current law by the Douglas County Appraiser and a district court would constitute a grievous wrong that cries out for a remedy. This outrageous situation -- and it is that -- can be quieted by your action. I urge you remember and to speak for the people whom we represent and grant passage of this bill. I beg you to engage in due diligence and see to its final passage as HB2625 moves along its course through the legislative process.

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 TOPEKA, KS 66612-1504



TOPEKA

HOUSE OF  
 REPRESENTATIVES

COMMITTEE ASSIGNMENTS  
 MEMBER: FEDERAL & STATE AFFAIRS  
 FINANCIAL INSTITUTIONS & INSURANCE  
 GOVERNMENTAL ORGANIZATION & ELECTIONS  
 JOINT COMMITTEE ON ECONOMIC  
 DEVELOPMENT

## TESTIMONY IN SUPPORT OF HOUSE BILL 2625

Mr. Chairman, members of the committee I greatly appreciate this opportunity to appear before you today to testify in support of House Bill 2625. HB 2625 was introduced by the Douglas County Legislative Delegation in an effort to address concerns raised by many of our constituents in Douglas County over the past year relating to the appraisal process.

The cause of these concerns appear to be related to the definition of fair market value as set out in K.S.A. 1994 Supp. 79-503a. Two recent cases in Douglas County best illustrate this problem. These cases involved Mr. Don Cashatt, who is here to testify in support of this bill today, and Mrs. Mary Davenport. In both of these cases, Mr. Cashatt and Mrs. Davenport, owned homes that were once on the edge of the city of Lawrence. Eventually the area around them developed with new businesses and homes. The county appraiser, charged by state law and mandated by the Property Valuation Division to value property at its fair market value, ended up appraising these properties at values far in excess of comparable homes. It should be noted that these types of problems are rare in nature, particularly when one considers the number of parcels statewide. The problem occurs under unique circumstances and is occurring in Lawrence because of rapid growth.

For the taxpayer who is faced with this dilemma, the much higher taxes that result from the often dramatic increase in property valuation may have the effect of forcing them to sell their home of many years because they are unable to pay the taxes. This essentially may be best characterized as condemnation by taxation.

HB 2625 seeks to address this unique and rare problem by adding a new requirement to the appraisal process. This requirement specifies that owner-occupied, single-family residential real property and the land which it occupies, up to five acres, be appraised as residential property and that this is the highest and best use for that property. It is our hope that the enactment of this measure will protect long established property owners and members of our community from in effect being taxed out of their homes.

I appreciate this opportunity to appear before the committee today in support of HB 2625, and respectfully request that the committee take favorable action on this bill. I would be happy to try to answer any questions the committee might have at this time.

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 Attachment 3

Testimony on HB 2625  
Taxation Committee

by  
Don Cashatt  
February 1, 1996

My name is Don Cashatt, I live at 2714 Iowa St., Lawrence, KS. I wish to thank you, Mr. Chairman and members of the Tax Committee for hearing my statements.

I am co-chairman of the Douglas County Property Owners Association, which was formed in April 1995. We have nine members of the Board of Directors and a dues-paying membership of about 230. We meet on a monthly basis and have had as our featured speakers such persons as Rep. Phill Kline, Rep. Tim Shallenburger, Rep. Tom Sloan, Rep. Troy Findley and Rep. Tanner. Our mission is to monitor the taxing and spending of the three units of local government

I am a long-time resident of Lawrence, Kansas, having bought my present home in August 1966. At that time I was assured by both County and City officials that it would always be a residential area.

My experience with the Douglas County appraisers office began in April 1991 when I received a valuation notice increasing my home value from \$101,700 to \$147,000, which was a 45% increase. Upon contacting the appraisers' office, I spoke with an appraiser who stated that the increase in value was due to a classification change from residential to commercial. I informed him that my property had not been changed and upon verifying that fact, he immediately corrected my value to \$102,000. A new appraisal system utilized by Douglas County resulted in the reduction of valuation to ~~approximately \$75,000.~~ *\$72,500.*

My next experience with the appraisers office took place in February 1994, when I received my valuation notice increasing my value from ~~\$75,200~~ to \$201,130, which was an increase of \$125,930 amounting to a 167% increase. *\$72,500*

Upon contacting the appraisers office, a clerk offered to mail me a list of comparables. I immediately went to her office, picked up the list and began checking it out. The comparables in no way matched the values placed upon my home.

The following day, I returned to the appraisers office and spoke to the same clerk who said they would reconsider and make some changes to my value. She encouraged me to gather evidence and to request a formal hearing. She then entered the office of one of the appraiser managers with the comparables list. The manager soon came out of his office and informed me that the list of comparables would do me no good because my property was not being valued as a residence. He explained that because my neighborhood had become primarily commercial, he was having to value me as commercial. He informed me that for me to continue to use my property as a residence was no longer the highest and best use and in fact it was a mis-use of the land and that I should sell it and move elsewhere. My reply was that I had bought it for my home, I had lived in it since 1966, it had always been zoned residential, it was still being used as my home and that I had no plans to sell and move elsewhere - and that decision should be mine.



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I proceeded to have two hearings in Douglas County to no avail.

The second hearing officer said he could not understand how the appraiser could do to me what he was doing and encouraged me to appeal to BOTA and let them decide the case. It was my understanding at that point that the decision of BOTA would be the final authority.

I appealed to Board of Tax Appeals who ruled in my favor. The County proceeded to appeal BOTA's decision. BOTA responded to the county again instructing them to adjust my value back to \$102,000 and to refund any overpayment of taxes.

A few days later, I received a letter from the County Attorney's office informing me that the County Commissioners were filing suit against me in the County District Court to overturn BOTA's decision.

In due time, Judge King of the Douglas County District court heard my case and ruled from the bench in favor of the Douglas County Commissioners. He charged BOTA with not following the Kansas Law and that the cases cited by BOTA in making their decision in no way applied to my property.

My case is currently in the Kansas appellate court waiting a hearing date.

Something is very wrong when a person can live for 30 years in the same house, on the same lot and one day the appraiser's office can decide that it should instead be commercial property and taxed accordingly.

In view of my experiences and the conflicting actions of various officials, which has now been going on for two years and at considerable time and expense to me, I believe this bill sponsored by Rep. Tom Sloan and co-sponsored by Rep. Troy Findley and signed on to by all 5 of the Douglas County Representatives is needed and necessary to protect other Kansas citizens from similar harassments.

I have had to keep my statements brief due to time constraints but will be happy to answer any questions you may have.

Thank you.

# JAMES M. JESSE

Attorney and Counselor at Law

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## Testimony of James M. Jesse Regarding H.B. 2625

My name is Jim Jesse and I am a property tax attorney in Lawrence. I currently represent Don Cashatt in his matter before the court of appeals. Before opening my practice in Lawrence, I was an attorney at the Board of Tax Appeals for over two and a half years. Thus, I have experience in the area of property taxation and the appraisal process.

This bill attempts to codify what I believe has been commonly understood in appraising property uniformly and equally at its fair market value--that all property within the same class shall be valued uniformly, and compared with, other property within that class. In this case, and in others in Douglas County (and perhaps other counties), the appraiser has impermissably valued the actual home with like residences, but valued the land with other commercial properties. This not only leads to unequal assessments, but does not follow accepted appraisal practice because you are not using the same basis of comparison. Moreover, it is accepted appraisal practice that if the improvements on a lot have any value in excess of the vacant lot, an appraiser must conclude that the highest and best use of the property is its current use.

This bill is simply saying that a residential property's highest and best use is its current use. The Legislature defines

fair market value and is free to define appraisal concepts when it sees fit. Indeed, 79-503a is a codification of the legislature's attempt to define and refine the term "fair market value."

This bill prevents an appraiser from taxing homeowners out of their homes. Unless you believe that selected taxpayers should be taxed out of their homes and that county appraisers should be the ones who determine when a home should be turned into a commercial enterprise, you should support this legislation. This bill simply prevents a county appraiser from accomplishing what a zoning department has not. If it is in a city's best interest to change the use of a property from residential to commercial, then the city has powers of eminent domain, condemnation, or zoning that could accomplish such a purpose. It is beyond the power of a county appraiser to accomplish such a purpose.

I would like to note that in 1990 Senator Alicia Salisbury of Topeka introduced Senate Bill 555 (later passed as part of Senate Bill 729), which became subsection (j) of K.S.A. 79-503a. This bill was in direct response to the development along the Wanamaker Corridor in Topeka. The intent of subsection (j), as illustrated in the minutes quoted below, was to remedy a problem virtually similar to the one in Douglas County. The homes in the Wanamaker Corridor that prompted S.B. 555 were described by Senator Salisbury as "modest and are occupied by the elderly on fixed and limited income, and some have been occupied for up to

40 years and most of the residents have no desire to re-locate."

R.I, p. 60. The minutes continued as follows:

It may be a number of years before these properties are commercial, and she would like to propose an amendment to amend the law to read residential properties should be appraised as residential property as along as that is the intended use, and the constitution only allows for agricultural property to be appraised at land use. She said, the guidelines issued by the Property Valuation Director would be more appropriate, and SB555 does not do this, and she does not believe the intent of reappraisal was to drive long-term elderly individuals from their homes, and just because they do not have a buyer and are unable to pay taxes of \$2,000 to \$6,000 a year on a one or two bedroom home they have occupied for many years. These individual homes should be appraised at regular residential use until there is evidence the property is ready to be developed for commercial use.

Thus, it is clear that the sponsor of subsection (j) meant to avoid the very situation that is present in this case--long-time taxpayers being forced from their homes due to outrageous taxes because the county appraiser labeled the area commercial. The problem is that the wording of subsection (j) was neither strong nor direct enough to alleviate this problem. This bill makes clear that until a home's zoning is changed, houses are to be valued as houses and compared with other residences.

I would also like to address an argument that I anticipate the opponents to this bill will use--that this bill essentially orders county appraisers to value some homes based upon their use value. This is untrue. Only agricultural land in Kansas is valued at its use based "upon the basis of the agricultural

income or productivity attributable to the inherent capabilities of such land in its current usage under a degree of management reflecting median production levels in the manner herein after provided." K.S.A. 1995 Supp. 79-1476.

Those who argue this bill creates a use value confuse equality with use. Use value means appraising a property based upon its use instead of valuing it at its fair market value. Given the definition of use value, this bill does not create a use value based upon arbitrary criteria. This bill states that residences are to be valued at their fair market values as residences, not as commercial properties--this is not a use value.

This bill says nothing more than that houses should be appraised as houses, and until the actual use of a residential property changes, it shall be taxed on the uniform and equal basis with other residential properties. While this problem is not rampant throughout the state, it is becoming acute in counties experiencing growth. I thank this committee for allowing me the time to testify and for taking this bill up. If you have any comments or questions, I would be happy to entertain them at this time.

**KANSAS TAXPAYERS NETWORK**

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**HB 2625**

**Tim Kennedy**

Testimony before the House Taxation Committee

February 1, 1995

I appreciate the opportunity to speak to the committee in favor of HB 2625.

The determination of the highest and best use of a property is perhaps the most important judgment an appraiser must make. In most instances the determination is relatively straight forward, and possibly obvious. Often, however, things that appear obvious, actually are not. The Dictionary of Real Estate Appraisal defines highest and best use as "The reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value." Clearly, the most accurate highest and best use determinations are the result of careful consideration and analysis and testing. This is particularly true in areas that are undergoing transition.

Generally accepted appraisal practice requires that such analysis and testing be done prior to changing the highest and best use of a property. Indeed it is generally recognized that a property will enter an interim or non conforming use prior to a change in it's highest and best use. That interim or non conforming use is generally the property's current use. New developments are not completed overnight. When new commercial developments begin one can be relatively certain that there will be a change in the highest and best

use of the residential property in the area, provided the development does not fail. You can be certain that the use changes when the residential property owner sells to a commercial developer. However, that could be several years after the development begins. That is why residential properties enter a period of interim use. That is also the reason the appraiser must carefully study the market forces of supply and demand and test the results.

Given the demanding tax calendar that county appraisers function under, there is seldom time for the exhaustive market analysis and testing that is required to accurately determine the of highest and best use of properties in areas undergoing transition. Perhaps that is why appraisers so often assume the obvious and overlook the important generally accepted appraisal concepts of interim and legally non conforming uses.

We believe this amendment would require that these important appraisal concepts be recognized in the highest and best use determination for residential property in areas of transition. We therefore the committee to report HB 2625 favorably.

Thank you again for your consideration.

KANSAS COUNTY APPRAISERS ASSOCIATION  
P.O. Box 1714  
Topeka, Kansas 66601

TO: House Committee on Assessment and Taxation  
FROM: Rod Broberg  
RE: House Bill 2625  
DATE: 2-01-96

My name is Rod Broberg and I appear today on behalf of the Kansas County Appraisers Association.

K.S.A. 79-503a, as you know, is the statute that defines "Fair Market Value" for the purpose of Ad Valorem taxation in this state. It has always been, and remains today, very close to the classic or "textbook" definition of fair market value that is used by all appraisers no matter what the purpose of their appraisals.

The first step in estimating the fair market value for any given property is to determine its highest and best use. Highest and best use is defined as the "most profitable use at a specific time, given legal, physical, and financial limitations". (Property Appraisal and Assessment Administration, International Association of Assessing Officers, page 31)

Typically the highest and best use of a property is its current use. This principle comes into play most often when property in a given area is in transition from one use to another. For example, property may be changing from residential to commercial use. The basic question the appraiser must ask is what legal and financially and physically feasible use will bring the highest price in the market for the current owner. The assumption being made is that a property owner will seek the highest price in the market even if the anticipated use by the new owner is different than the current use. The new language in this bill will force the County Appraiser in some cases, to ignore the actual highest and best use and thereby conclude a value that is something other than fair market value. The danger in this scenario is that appraisal performance in counties is judged by the sales ratio study. When any parcel is valued at a value other than market value, and then that property sells, presumably at fair market value, then the county is penalized.

It is my observation that the proposed new language in this bill exists for the purpose of protecting a very small set of taxpayers from what might be considered abnormally high taxes. Some persons present today feel that high taxes based on sound appraisal theory and practice should not force people from their homes. Others may feel that if the potential for selling ones home for a very high price exists, then that person should pay taxes on that potential value. These are taxation questions, not appraisal questions. While it is certainly the prerogative of the Legislature to determine public policy in matters of assessment and taxation, I would ask you to find other solutions, and leave the concept of "Fair Market Value" intact.