

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE.

The meeting was called to order by Chairperson David Corbin at 10:45 a.m. on February 19, 2001, in Room 519-S of the Capitol.

All members were present except:

Committee staff present: Chris Courtwright, Legislative Research Department  
April Holman, Legislative Research Department  
Don Hayward, Revisor of Statutes Office  
Shirley Higgins, Committee Secretary

Conferees appearing before the committee: Wess Galyon, Wichita Area Builders Association  
Rod Broberg, Kansas Association of Counties and  
Kansas County Appraisers Association

Others attending: See attached list.

The minutes of the February 12 and 13, 2001, meetings were approved.

Continued hearing on: **SB 92—Property taxation; concerning the determination of fair market value.**

Wess Galyon, Wichita Area Builders Association, testified in support of **SB 92**. (Attachment 1) He noted that the problem the bill addresses is not new and that it is a problem caused by practices engaged in by county appraisers which he believes should not be allowed. He described in detail a similar attempt on the part of the previous Sedgwick County appraiser, who attempted to value vacant subdivision lots in much the same manner as is being attempted by the current Saline County appraiser. With regard to the specific problem in Saline County, Mr. Galyon asked the Committee to consider five points relating to the issue of valuing infrastructure as part of the value of a lot for tax purposes.

Rod Broberg, representing the Kansas County Appraisers Association and the Kansas Association of Counties, testified in opposition to **SB 92**. (Attachment 2) He began by commenting that the issue involved is primarily the adjustment of sale prices for special assessments which are due and owing on a property. He explained that Saline County began this practice several years ago, not because the county needed more tax money but because problems arose in setting values in a particular subdivision when the developer raised the sale price of the lots each year by the amount of the special assessments he had to pay on the unsold lots. As the buyers were paying more to the developer each year, they were paying less to the City of Salina in outstanding special assessments. More recently, subdivisions in Saline County have not experienced this phenomenon because subdivision lots are developed and sold in smaller increments and developers are pricing the lots high enough in the first place to cover the specials costs over the absorption period. Mr. Broberg went on to describe a current situation regarding two subdivisions in southeast Salina to illustrate the inequities created by the use of special assessment financing. The principal difference in the subdivisions is that one has specials assessments and the other one does not. When trying to value these subdivisions, a problem arises in that the purchase price of a lot in the subdivision with specials is reported as the consideration paid to the developer not including the cost of the improvements to the lot, whereas the price for a lot in the subdivision without specials is reported as the consideration paid to the developer including the improvements to the lot. Ultimately, the subdivisions are valued at significantly differing values for lots that are quite similar.

Mr. Broberg noted that the values resulting from models built with the inclusion of sales that have been adjusted for specials were appealed to the Board of Tax Appeals (BOTA). The Board found for the taxpayer and ordered lower values for those parcels that had been appealed; however, the Board ruled differently in an appeal in Shawnee County. Saline County filed a case in District Court. In consideration of the cost of litigation to the taxpayer, the county offered to drop the case and abide by the BOTA decision for 1999 and

CONTINUATION SHEET

2000. In exchange, the Director of PVD was to appoint a committee to study the situation and make a recommendation to the Director which would result in a directive instructing counties how to handle the influence of special assessments by January 1, 2001. To date, no directive has been issued although the committee has met several times.

In conclusion, Mr. Broberg contended that passage of **SB 92** would only serve to perpetuate an inequity that currently exists. He urged the Committee to keep in mind that the county appraiser does not raise or lower taxes with the raising or lowering of values. He said the valuation process only determines each individual's share of the total tax burden, and the consideration of special assessments in the valuation process only serves to more accurately recognize value in the market place.

Mr. Broberg distributed copies of a letter from Rosemary Walker, Ph.D., Washburn University School of Business, who attended the PVD committee meetings. She concludes, "When special assessments are ignored, two individuals who purchase equally valued property under a different payment plan will end up paying different taxes." (Attachment 3)

Senator Allen asked Mr. Broberg what impact the BOTA decision has had on the work of the Saline County appraiser. In response, Mr. Broberg acknowledged that it is up to the county to abide with the Board's decision with regard to the properties on which the Board issued a decision. However, the county still feels strongly that the adjustments were proper and has not changed its methodology across the board. He said that perhaps the county will refile their court case since the issue has not been resolved with the help of the Director of PVD as anticipated.

Chairman Corbin observed that Saline County lost some cases with BOTA yet it persists in pursuing the same avenue followed before the BOTA decision and, in addition, has not been able to work out its differences with the group appointed to resolve the issue. Consequently, the Legislature must work out the differences.

There being no others wishing to testify, the hearing on **SB 92** was closed.

The meeting was adjourned at 11:30 a.m.

The next meeting is scheduled for February 20, 2001.

# SENATE ASSESSMENT AND TAXATION COMMITTEE GUEST LIST

DATE: February 19, 2001

NAME	REPRESENTING
Richard Aam	KDOR
Mark Beck	KDOR
Janice Johnson	KDOR
Joanna Wilson	
Chris Wilson	KBIA
WESS GALYON	WICHITA AREA BLDGS.
JANET STUBBS	KBIA
Joe Lieber	KS Co-op Council
Stacy Kramer	Western Resources, Inc.
Ann Dukes	DOR
Rudy Shaw	Kearney Law Office
Red Broberg	Saline County
Judy Moler	KAC
Tom Bruno	OBRA
BILL Bracy	KS Gov't Consulting
Chris Caldwell	Topeka Chamber of Commerce
Jan Nbleu	LKM
Kelly Kuitola	City of Overland Park
Jack Slawer	Wichita-King



Testimony before Senate Tax Committee  
Monday, February 19, 2001  
Presented by: Wess Galyon, President, Wichita Area Builders  
Association

Mr. Chairman and members of the Committee. I'm Wess Galyon, President of the Wichita Area Builders Association which is a trade association with a current membership of 1007 individuals who live and work within our seven county jurisdictional area, the majority of them living and working in Sedgwick, Butler, and Harvey Counties.

I appreciate the opportunity to appear before you today in support of Senate Bill 92 which I was unable to do earlier since I was out of State when previous testimony was taken.

The issue that is before you today and the problem that Senate Bill 92 addresses is not a new problem. It is a problem, however, that is caused by practices that we believe should not be allowed to be engaged in by county appraisers in our state.

When I tell you this is not a new problem, I tell you that because we dealt with a similar attempt on the part of our previous Sedgwick County Appraiser who attempted to value vacant subdivision lots much in the same manner as is being attempted by the current Saline County Appraiser.

In the early 1990's, after classification and reappraisal became a reality, our then Sedgwick County Appraiser, Pat Ismert, began the practice of adding outstanding special assessment debt (both principle and interest) to the price lots were selling for and alleged that the price which a lot sold for, inclusive of outstanding special assessment debt, equated to market value. Such was not true prior to that time, was not true then, and is not true today. There is no disagreement that there are costs associated with the construction of infrastructure (streets, sewer, water, storm drainage, etc.). However, any perceived value on the part of a buyer is based more on the utility that having the infrastructure in place provides in terms of usability of the property, rather than the dollar costs incurred to build it. Further, whatever the perceived value is, if any, is accurately reflected in the price a willing buyer is willing to pay a willing seller for a specific property.

When our Sedgwick County Appraiser, Pat Ismert, would not listen to reasons that we advanced, together with a cadre of professional appraisers in our area, as to why her office should recognize market values based on actual market sales and related data, we organized a group of developers/builders to appeal the values assigned to their properties by her office to the State Board of Tax Appeals. At issue, was whether it was appropriate and proper to utilize market sales and related data in conjunction with recognized appraisal practices and methodologies to establish the market values of lots in new subdivisions which included the use of the discounted cash flow method in determining the market value of subdivision lots that were being held in inventory for sale by the developers/builders in our area. Mrs. Ismert had refused to employ the use of certain

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2-19-01  
Attachment 1*

recognized appraisal techniques and methodologies of long standing on the basis that it was her belief that true market value could only be determined by adding outstanding special assessment debt to the price for which lots were being sold. She refused to acknowledge the fact that lots in our area were not, and could not, be sold for the value her office had assigned. And, during hearings before the Board of Tax Appeals, Mrs. Ismert, nor any of her staff, could justify the position her office had taken in this regard, nor could they defend the appraisal methodologies they had employed. As a result, the Board ordered the utilization of the discounted cash flow method in determining the value of subdivision lots held in inventory for sale by developers/builders in our area and in so doing recognized that market value cannot be determined by adding outstanding special assessment debt to the price a lot sells for and claim that it is the established market value. The practice of adding on special assessments and the utilization of the discounted cash flow methodology has been employed since the Board's decision. Janet Stubbs, our Kansas Building Industry Association lobbyist, has provided you with information about this methodology for your information.

With specific regard to the problem that has been created in Saline County which is what Senate Bill 92 is designed to correct, there are some important points I would ask you to consider with regard to the problem that exists, specifically as it relates to the issue of valuing infrastructure as part of the value of a lot for tax purposes:

The first point is that the infrastructure we are talking about is rarely, if ever, owned by the property owner. It is publicly owned infrastructure that provides a certain amount of utility for the property which we believe people have come to expect it to have. While the property owner may have paid for it when the property was initially purchased, or is willing to pay for it by assuming debt in the form of special assessments on the property, he does not own it. Publicly owned property is not valued for tax purposes nor is it taxed which would become the case if what is being done in Saline County is allowed to continue.

The second point is that the utility infrastructure provided does not equate to value in terms of the cost to construct it. Whatever value might be perceived on the part of a purchaser is reflected in what he, or she, is willing to pay a willing seller for it. True market value is best determined on the basis of comparable sales which provide the most accurate and telling information as to what property is worth in the free market place.

The third point is that inflating the price of lots for tax assessment purposes adversely affects the affordability of housing at all price levels, especially those who are buying entry level homes. Increased costs of ownership, especially taxes, are always a concern to property owners.

The fourth point is that if county appraisers are allowed to artificially increase the value of lots for tax assessment purposes, the net effect will be an artificial increase in values for existing homes as a portion of all properties in an area are reappraised, or more appropriately revalued, as is done annually in all jurisdictions throughout the state.

The fifth and final point is that we believe this issue is more about generating increased tax revenues, than creating equity or fairness in values in terms of how the values are ultimately determined.

On behalf of the members of the Wichita Area Builders Association and the Kansas Building Industry Association, we ask for your consideration and support of Senate Bill 92.

Thank you.

TESTIMONY IN OPPOSITION TO SENATE BILL 92  
Presented by ROD BROBERG for,  
KANSAS COUNTY APPARISERS ASSOCIATION, &  
KANSAS ASSOCIATION OF COUNTIES

Senate Bill 92 would modify K.S.A. 79-503a, which is the statute that defines "fair market value". The modification would disallow the adjustment of sale prices to account for the current value of improvements to vacant land.

In Saline County, we have been making adjustments for special assessments for several years. The need to make these adjustments appeared several years before that, when problems arose in setting values on a particular subdivision. It appeared that each year we would build a model to value lots in the subdivision and each subsequent year the sale prices of the lots would be significantly higher than the value we predicted. We determined that in this particular subdivision, the developer would raise the sale price of the lots each year by the amount of the special assessments that he had to pay on the unsold lots. Even though it appeared that the values were increasing rapidly, as evidenced by the increasing sale prices, in reality, the value was there all the time. It was only that as the buyers were paying more to the developer each year, they were paying less to the City of Salina in outstanding special assessments. The total cost to the buyer was relatively constant over the time it took to sell all of the lots.

More recently subdivisions in Saline County have not experienced this phenomenon. I believe that there are two reasons for this. First, subdivision lots are developed and sold in smaller increments, with all lots in a phase being sold in three years or less. Secondly, developers are pricing the lots high enough in the first place to cover these specials costs over the absorption period.

Another situation exists currently that illustrates the inequities created by the use of special assessment financing. For this purpose I will tell you "A Tale of Two Subdivisions." Situated close to the southeast corner of the City of Salina are two subdivisions that pose an interesting comparison. Subdivision A, also called Mariposa Subdivision, is a fairly upscale new subdivision that opened about ten years ago, but continues to expand with the opening of additional phases. Subdivision B, known as Highland Meadows Hamlet, is recently opened, fairly upscale subdivision located approximately one mile from Subdivision A. From an appraisal standpoint these subdivisions appear to provide similar utility to prospective homeowners, and would be comparable for the purposes of performing an appraisal. The principal difference in these subdivisions is that Subdivision A has specials assessments and Subdivision B does not. Subdivision A financed the streets, water and sewers through the City of Salina and the payments on that indebtedness are born by whomever owns the lots. Subdivision B, on the other hand, has no special assessments as the developer either paid cash or secured private financing for the street, water and sewers.

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*2-19-01*

*Attachment 2*



When a buyer purchases a lot in subdivision A, he pays the developer for the value of the land only (developers cost plus profit), and assumes an indebtedness for the value of the improvements required to make it a buildable lot. The price paid to the developer, and the present value of the debt incurred by the buyer should both be considered a part of the purchase price just as it is when a buyer purchases a lot in subdivision B, where he pays the developer directly for both the value of the land and the cost of the improvements to that land.

When trying to value these subdivisions a problem arises in that the purchase price of a lot in subdivision A is reported as the consideration paid to the developer not including the cost of the improvements to the lot, whereas the price for a lot in subdivision B is reported as the consideration paid to the developer including the improvements to the lot. Ultimately one ends up with the subdivisions valued at significantly differing values for lot that are quite similar.

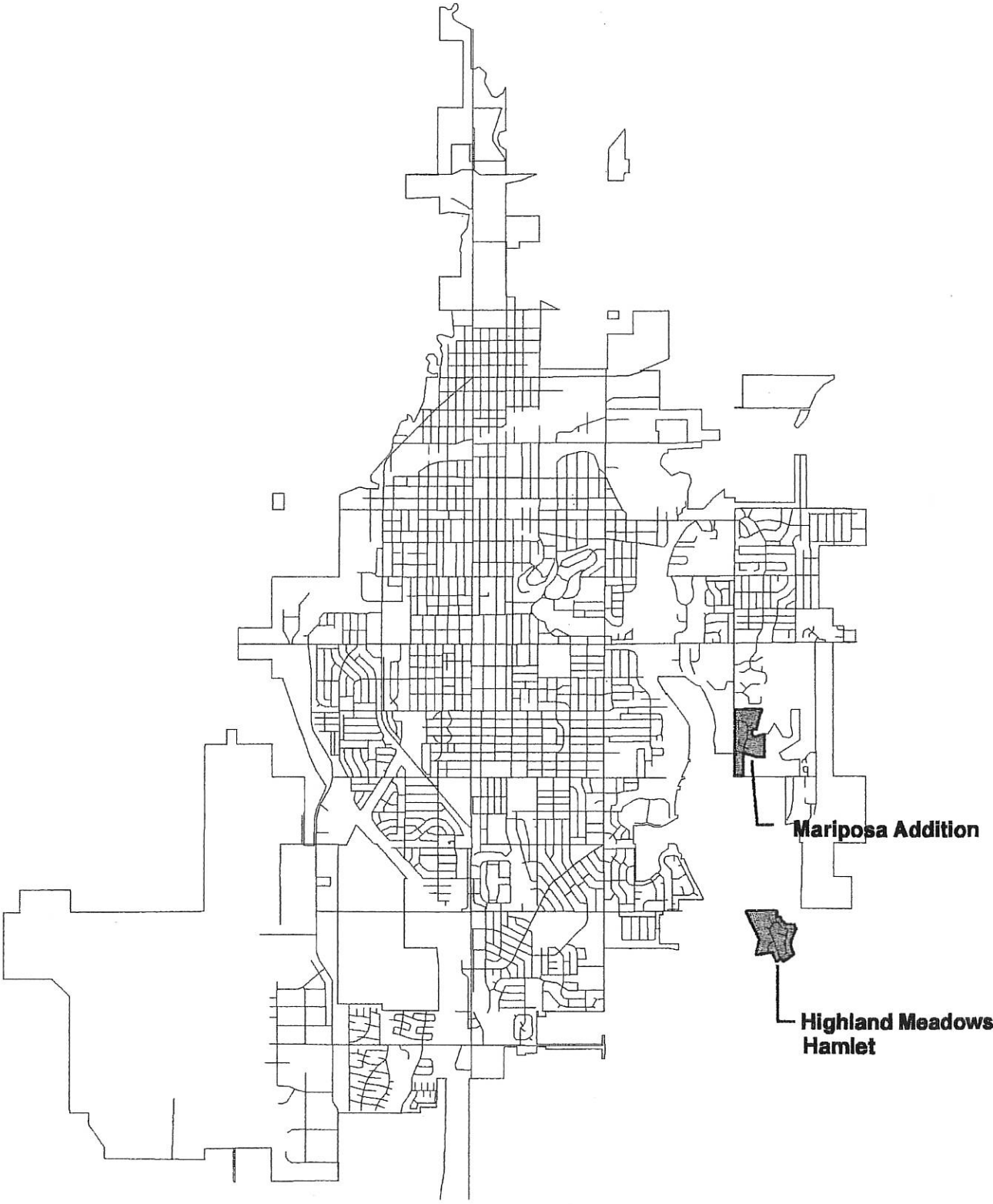
As you may know, values resulting from models built with the inclusion of sales that have been adjusted for specials have been appealed to the Board of Tax Appeals. The Board found for the taxpayer and ordered lower values for those parcels that had been appealed. Subsequently, a taxpayer in Shawnee County appealed the values of lots in a subdivision and, based on the order in the Saline County case, asked that his values be lowered to exclude the value of subdivision improvements even though he had paid for them himself. In other words the Board has ruled differently in two consecutive cases.

We felt strongly enough about our position in this matter that we had filed our case to District Court. In an effort to be considerate of the costs of litigation to the taxpayer, Saline County offered to drop our case, abide by the BOTA decision for 1999 and 2000 tax years. In exchange the Director of PVD would convene a committee to study the situation and make a recommendation to the Director which would ultimately result in a directive from PVD instructing counties on how to handle the influence of special assessments. This action was taken in the summer of 2000, with the resulting directive to be out by January 1, 2001. To date the committee has met several times. It is my opinion that all data has been gathered, and all viewpoints have been aired. No further meetings of the committee have been scheduled and no directive has been forthcoming.

It is our position that passage of the language in this bill would only serve to perpetuate an inequity that currently exists. Please keep in mind that the County Appraiser does not, as some would have you believe, raise or lower taxes with the raising or lowering of values. The valuation process only determines each individuals share of the total tax burden. The consideration of special assessments in the valuation process only serves to more accurately recognize value in the market place.

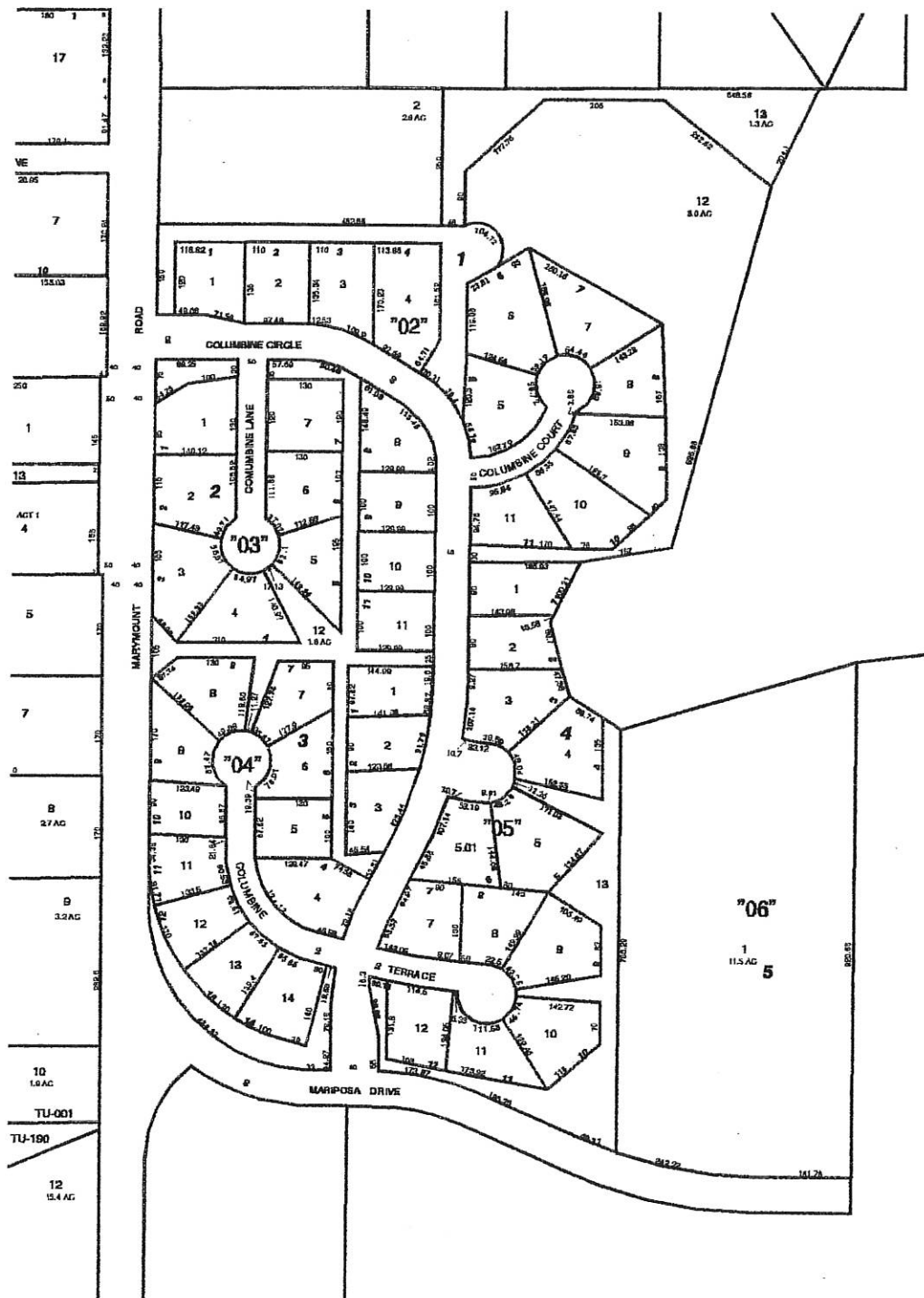
Thank you for your consideration..

# SOUTHEAST SALINA



Saline County, KS

# MARIPOSA ADDITION



SW/4 20-14-2, Saline County, KS



COMPARISON OF SALES OF SIMILAR LOTS IN TWO  
SUBDIVISIONS

**SUBDIVISION A (Mariposa)**

Sale Price to Developer	\$24,000
Total Specials payable over 10 years	\$14,408
Present Value of Specials (cost of lot improvements)	\$10,770
Total sale price reported on Sales Questionnaire	\$24,000
Sale Price used for land valuation models	\$34,770
Sale Price used for land valuation models (per BOTA order)	\$24,000

**SUBDIVISION B (Highland Meadows Hamlet)**

Sale Price to Developer	\$37,758
Total Specials payable over 10 years	\$0.00
Cost of lot improvements (incurred by developer)	\$14,348
Total sale price reported on Sales Questionnaire	\$37,758
Sale Price used for land valuation models	\$37,758
Sale Price used for land valuation models (per BOTA order)	\$37,758



**WASHBURN UNIVERSITY**

School of Business

Kansas Association of Counties

c/o Judy Moler

Tuesday, 06 February, 2001

To Whom It May Concern:

I am an economist at Washburn University and I recently have been working on the special assessment issue with Pete Davis on the Special Assessment Committee. This letter regards HB 2064 and SB 92.

The "fair market value" of a property is considered the value a buyer is willing to pay for the property and a seller is willing to sell the property. The fair market value includes the actual purchase price and all debts that are obtained because of the purchase. This includes all special assessments that the buyer has to pay in order to purchase the property. If the property is worth \$30,000 and the buyer incurs \$20,000 worth of special assessments because of the sale, than the sale price of the property will be \$10,000 since an informed buyer will deduct the debt they are picking up from the value of the property. It would not make sense for someone to purchase a property that is worth \$30,000 for \$30,000 in cash plus \$20,000 in assessments. Therefore, not including the present value of a special assessment in the fair market value of the property incorrectly values the property by the value of the special assessment.

When special assessments are ignored, two individuals who purchase equally valued property under a different payment plan will end up paying different taxes. Suppose, for example, the tax rate is 10% and two individuals, A and B, that purchase property worth \$30,000, however, individual A buys property that is not burdened by any special assessment and pays \$30,000 cash while individual B buys property with special assessments and pays in \$10,000 cash and \$20,000 in specials. If specials are not included in the market value calculation, then individual A will pay \$3,000 while individual B will pay only \$1,000 in property taxes. This results in two property owners who are receiving unequal treatment from the tax system.

Sincerely,

Rosemary Walker, Ph.D.