

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT.

The meeting was called to order by Chairperson Representative Gerry Ray at 3:30 p.m. on March 21, 2002 in Room 519-S of the Capitol.

All members were present except:

Committee staff present: Theresa Kiernan, Revisor
Mike Heim, Research Dept.
Kay Dick, Secretary

Conferees appearing before the committee: **HB 3023 - act relating to property tax; concerning the determination of fair market value**

Proponents: Bob Taggart, Taggart & Assoc.
Wes Galyon, Wichita Builders Assoc.
Opponents: Rick Stuart, Jefferson County
Appraiser
Larry Baer, KLM

Others attending: See Attached List

The Chair called for action on: HB 564 - concerning counties; relating to register of deeds (certain counties); allowing creation of technology fund.

Rep. Jim Morrison was asked to explain Kansas State Technology and what type of technology that the state uses in connection to SB 564. He referred to SB 5 as the "Hallmark" for all state agencies and how it relates to counties. He stated that all Register of Deed will have to comply if SB 564 passes. Rep. Morrison passed out two attachments; one was from Bruce Roberts, Acting Chief Information Technology Officer for the Executive Branch, regarding the SMI plan and IT Governance for Kansas. (Attachment #1) The second attachment was from Rep. Morrison, showing also the 2002 SIM Plan broken down into graphics. (Attachment #2)

Rep. Morrison answered questions asked by the committee members.

Following a lengthy discussion session, **Rep. Campbell made a substitute motion to make SB 564 mandatory for all Register of Deeds to charge and collect fees. Sec 1 K.S.A. 28-115 sub sec (b) (1), (2), & (3). Rep. Gilbert seconded the motion. The substitute motion passed 7 yeas, 5 nays.**

A motion to pass SB 564 as amended was made by Rep. Campbell, Rep Barnes seconded. SB 564 passed as amended with 9 yeas and 5 nays.

The hearing was opened on HB 3023 - act relating to property tax; concerning the determination of fair market value

Janet Stubbs, Kansas Building Industry Association, read the testimony of Robert Taggart, who was unable to attend the hearing. In the testimony, it was stated that the language contained in HB 3023 is the same that was passed by the Senate in SB 92 on a vote of 39-1 during the 2001 session. It also stated that special assessments may play in fair market value are already factored into the price a "willing buyer" will pay for a given parcel of real property on the open market. County Appraisers are using this method which is found to be inappropriate by the fee appraisers. (Attachment #3)

Wes Galyon, President/CEO of the Wichita Area Builders Assoc. appeared on behalf of their 1100 members, as well as, members of one of their affiliates, the Kansas Building Industry Association,. Mr. Galyon testified in favor of HB 3023, stating the bill would support efforts to provide affordable housing, and housing options, for the people of Kansas who desire to own their own home, especially those who are seeking to get into home ownership on an entry level basis. He asked the committee for it's support of the bill in an effort to prevent the continuation of practice by some appraisers in the state that are resulting

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT at on March 21, 2002 in Room 519-S of the Capitol.

in the over taxation of property owners that would not be the case otherwise. (Attachment #4)

The Chair brought attention to the committee on written testimonies from proponents.

Alida Moore, SRA, stating that such action could destroy the efforts of equalization among site values. (Attachment # 5)

Steven Adams, KS Certified Appraiser G-1184, testimony echoed the other proponents views. (Attachment #6)

Rep. O'Neal, attorney for the Kansas Building Industry Association, gave written testimony emphasizing that **HB 3023** would codify what the Board of Tax Appeals has consistently recognized - - that the value of property should not include special assessments. (Attachment #7)

Rick Stuart, Jefferson County Appraiser, appeared as an opponent to **HB 3023**. He testified that "to deduct the value of the specials would be no different than deduction the remaining mortgage from the market value of a home. This would create great inequities within the valuation process." He went on to say that K.S.A. 79-102 defines "real property" to "include not only the land itself but all buildings, fixtures, improvements, mines, minerals, quarries, mineral springs and wells, rights and privileges." (Attachment #8)

Larry Baer, League of Kansas Municipalities, testified in opposition to **HB 3023**. He stated that both at common law and by statute, Kansas has long defined fair market value to be "the amount in terms of money that a well informed buyer is justified in paying and a well informed seller is justified in accepting for property in an open and competitive market, assuming that the parties are acting without undue compulsion" (Attachment #9)

The committee was instructed to view written testimonies in opposition from:

Kansas Association of Counties, vigorously opposed **HB 3023**. The KAC believes the current statutory definition of market value is very close to the definition of market value used universally by appraisers, both private and public as well as by the judiciary for over 100 years. To change this definition for one particular interest group could have unintended consequences. (Attachment # 10)

In The Matter Of The Protest Of Karl W. Boaz, Saline County, Kansas, is a narrative chronicle of the history of the property that was the first special assessments case that went to the Board of Tax Appeals from Saline County. It is of note because it illustrates that the value of the special assessments does pass to subsequent owners. Thus, showing opposition to **HB 3023**. (Attachment #11)

Ron Broberg, Saline County appraiser prepared written testimony in opposition to HB 3023. He wrote that the language in **HB 3023** would prohibit county appraisers from recognizing all of the consideration given for any property that was subject to liens financed by special assessments. This would inhibit ability to meet statutory requirement to appraiser property in fee simple interest. It would destroy the appraiser's ability to meet constitutional obligation to provide for uniform and equal rate of assessment and taxation. (Attachment #12)

The Chair closed the hearing on HB 3023.

Chair Ray adjourned the meeting. Next meeting is scheduled for March 26, 2002.

HOUSE LOCAL GOVERNMENT COMMITTEE GUEST LIST

DATE: MARCH 21, 2002

NAME	REPRESENTING
Marilyn Nisahl	Register of Deeds Assoc.
Miss Mahon	Missouri Area Bldg. Assoc. / KBIWA
Janet Stabler	Ks. Bldg. Industry Assoc.
Bill Meek	Register of Deeds
Leonard Hayes	visitor
Alida Mraz	Appraiser
Stacy R. Driscoll	Register of Deeds
(Gunnar) Jimox	Register of Deeds
Judy Mohr	KIA
Bill Yuck	Kansas Assn of REALTORS
Dave Holtwick	Home Builders Assoc. of KC.
LARRY R BAER	LKM
Erik Sartorius	City of Overland Park
Rick Stuart	KS County Appraisers
Rod Broberg	Saline County Appraiser
CRAIG Stephenso	Saline County
Lynda Brooks	Johnson County
Becky Gilmore Davis	Johnson County

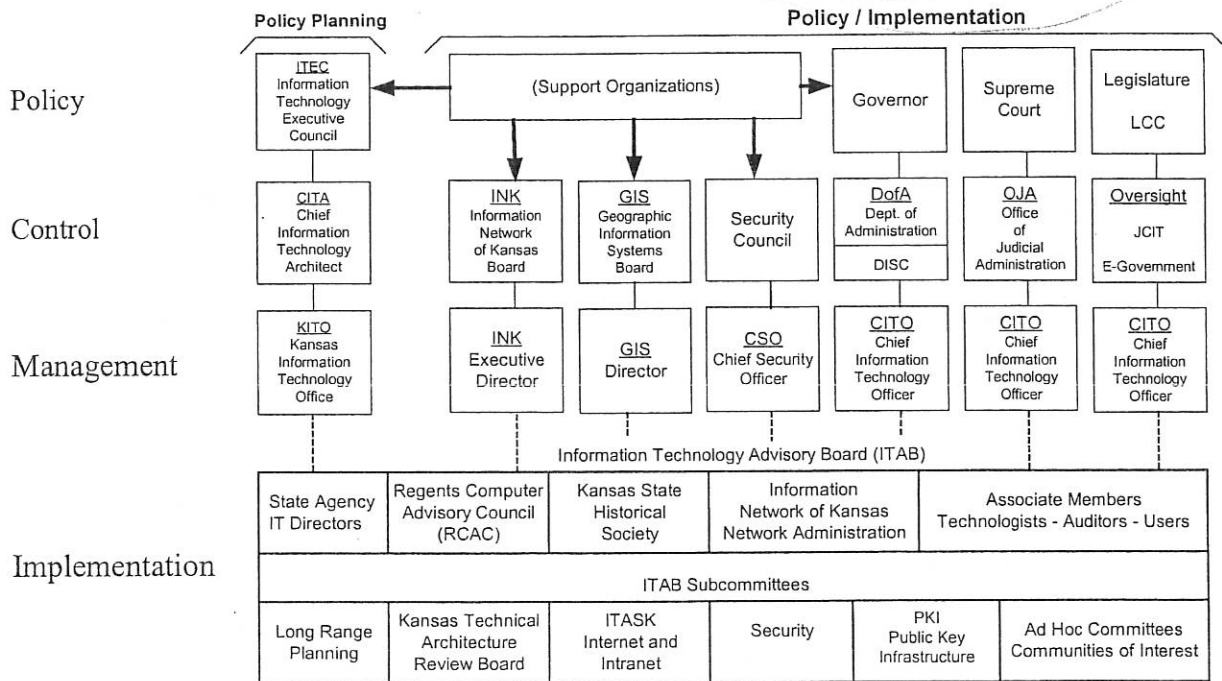
**The SIM Plan and IT Governance for Kansas
 Testimony Before House E-Government Committee
 Bruce Roberts, Acting Chief Information Technology Officer, Executive Branch
 March 21, 2002**

Madam Chair, members of the committee. My name is Bruce Roberts and I currently serve as the Acting Chief Information Technology Officer for the Executive Branch, and as the Director of Information Systems and Communications, Department of Administration. I appreciate the opportunity to provide the committee with information on the Kansas Strategic Information Management (SIM) Plan and the Information Technology (IT) Governance Structure for our state. In addition, I will outline the Kansas Statewide Technical Architecture, an important component of Kansas' comprehensive approach to IT.

I think you will find that this structure effectively addresses organization, planning and coordination of E-government initiatives, by involving all appropriate players collaboratively and with effective oversight.

In 1998, the Legislature passed Senate Bill 5. This legislation established the structure and processes for a statewide approach to implementing information technology in a purposeful and coordinated manner. K.S.A. 75-7201-75-7212 altered the face of IT governance. The new structure produced a roles-based, consolidated model as illustrated below. This model is noteworthy because it establishes governance across all three branches of government. Kansas and Washington are the only two states that have such models.

Kansas IT Governance Model



- **Information Technology Executive Council (ITEC) – Policy/Strategic Focus**

The 17 member council includes Cabinet Secretaries and Senior Executives of various state government entities, senior leaders from local units of government and the private sector, and the Chief Information Technology Officers (CITOs) from each branch of government. The Council meets quarterly and is charged with the adoption of:

- IT Policies, Procedures, Standards, and Guidelines
- The long-range enterprise Strategic Information Management (SIM) Plan
- The Kansas Statewide Technical Architecture
- Project Management Methodologies, Training and Certification

- **Chief Information Technology Architect (Strategic)**

The Chief Information Technology Architect (CITA) reports to the Chair of the ITEC and serves as its Secretary. The CITA is responsible for the development and maintenance of the Strategic Information Management Plan, the Kansas Statewide Technical Architecture, Project Management Standards, and IT Policies proposed to ITEC for adoption.

- **Kansas Information Technology Office (Management)**

The Kansas Information Technology Office (KITO) is the enterprise management and coordination arm of the IT Governance Model and provides staff support for the ITEC, the CITA, and the three Branch CITOs. This staff also supports ITAB, GIS, security issues, and project tracking.

- **Information Technology Advisory Board (Implementation)**

The Information Technology Advisory Board (ITAB) forms the foundation of the Kansas IT Governance Model. Its membership comes from state agency IT Directors, Regents' Universities IT Directors (Regents Computer Advisory Council-RCAC), the leadership of INK, the State Historical Society and associate members including, technologists, functional users, subject matter experts and auditors. Several subcommittees provide planning functions, which move, vertically and horizontally through the consolidated structure

- **Joint Legislative Committee on Information Technology (Oversight)**

The Joint Committee on Information Technology (JCIT) is a standing committee of the Kansas Legislature. Committee membership comes from both the House and the Senate. JCIT serves as an oversight committee on IT issues and projects for state government.

- **House E-Government Committee (Legislative Vision)**

This committee is important for the development and implementation of the vision for electronic government. By addressing the opportunities to make government serve citizens electronically, this committee increases the level of awareness for all of state government.

- **Division of Information Systems and Communications (DISC)**

DISC is the infrastructure provider for state government, including the statewide telecommunications network, information services, and support for IT services. DISC manages these services to meet the needs of state agencies on a fee for service basis. This

infrastructure, along with the agencies support of applications, databases, and services form the basis for the content of e-government services.

- **Information Network of Kansas (Support)**

Established by statute in 1990, this public/private entity has directed the development of efficient, electronic access to public information and services. INK contracts with Kansas Information Consortium, Inc. to provide the portal to state information and services and to assist agencies with the development of E-government applications. Funding for the applications and portal comes from 150 government to business applications.

- **Geographic Information Systems Policy Board (Support)**

The Kansas Geographic Information Systems (GIS) Initiative and Policy Board was established in 1989 by Executive Order. Since then, the initiative has grown into a coordinated model that provides shared, geo-spatial data, standards, and partnerships with state, federal, and local units of government.

- **Security Council (Support)**

The Information Technology Executive Council (ITEC) has established a number of security policies to safeguard the IT assets of the state. To establish effective coordination of security issues for the enterprise, we are establishing this Security Council. The Chief Security Officer, a staff member of the Kansas Information Technology Office, chairs a subcommittee of ITAB that is currently developing a charter for this council.

- **Chief Information Technology Officers (Management)**

The IT Governance structure provides for a Chief Information Technology Officer (CITO) for each of the three branches of Kansas government. The Executive Branch CITO by law has cabinet presence and is appointed by the Governor. The Judicial Branch CITO reports to Office of Judicial Administration and then to the Supreme Court. The Legislative CITO reports to the Legislative Coordinating Council (LCC) and serves as staff to Joint Committee on Information Technology (JCIT). By law, the all three CITOs are members of ITEC.

- **Kansas Statewide Technical Architecture (KSTA)**

K.S.A 75-7203 requires ITEC to adopt an information technology architecture that covers all state agencies. The Chief Information Technology Architect (CITA) is responsible for the architecture. This architecture is critical to the coordinated implementation of IT for state government. ITEC has approved release 9.0 of the architecture covering 18 disciplines of IT. Over 63 individuals from Regents institutions and state agencies developed the architecture over the last two years. The architecture is organic, adapting to the evolution of information technology. It tells all state agencies what we know about IT. It identifies standards across the disciplines according to emerging, current, and twilighted standards. All information technology project plans must address their relationship and concurrence with the architecture before they can be approved.

- **The Strategic Information Management (SIM) Plan**

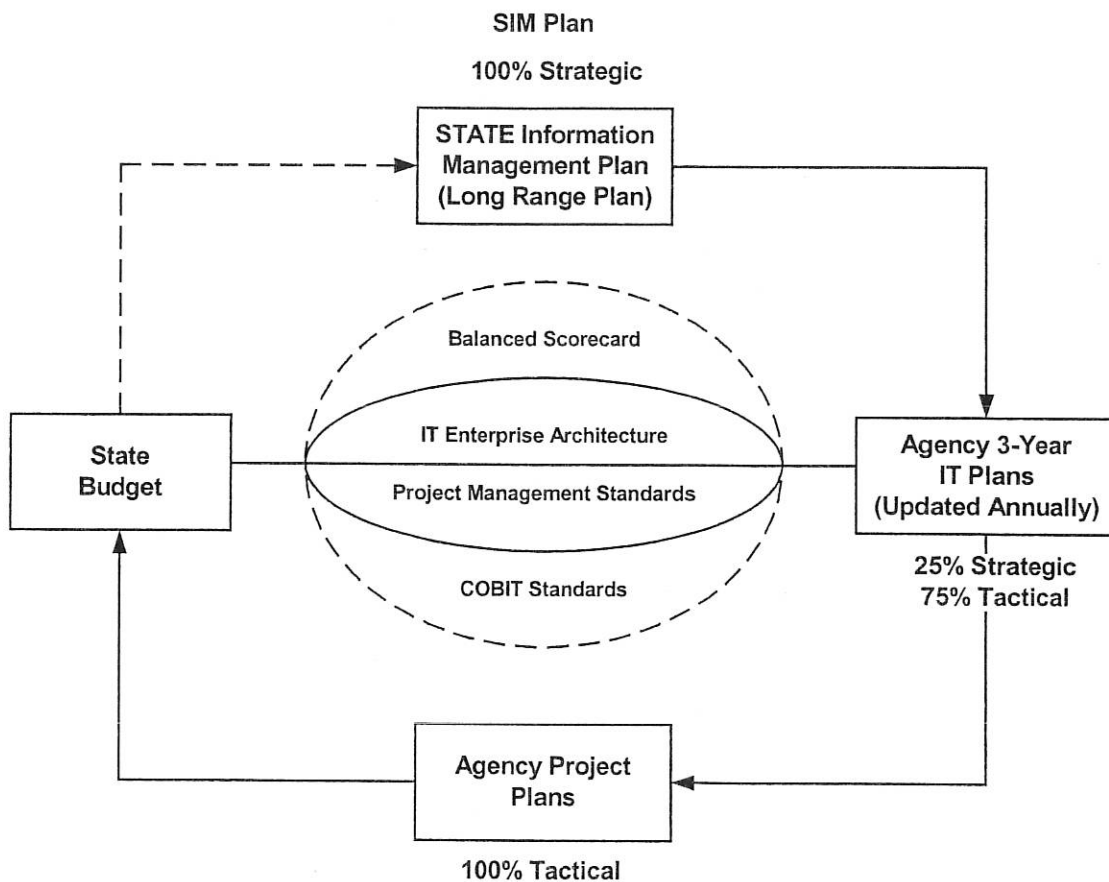
The SIM plan is a living, breathing document that charts direction for state government's information technology (IT) community and its business partners and customers for the next

three years. The first SIM Plan was developed in 1997, and updated in 1999. The newest SIM plan was released in January 2002.

The overarching goal of the SIM Plan is to manage IT from a consolidated approach, to provide citizens access to state services and information, and to operate state government as effectively and efficiently as possible. The consolidated management model brings the IT community together to enhance communication and to coordinate the planning and deployment of information technology.

The goals included in this SIM Plan are based upon the vision that every Kansas citizen should have electronic access to Kansas government and to the services the state provides. In this sense it is the foundation of the state's E-Government plan. This plan is also based upon information sharing between and among the various state agencies and then with the rest of the world. The figure below shows the framework for IT planning and control.

Kansas IT Planning / Controls



Agency Planning

By law agencies must submit to the CITO for their branch annually a three-year plan for information technology. These plans lay out the existing resources and assets related to information technology, including staffing. In addition they describe the applications that agencies maintain, the IT projects that are underway and those proposed. In addition,

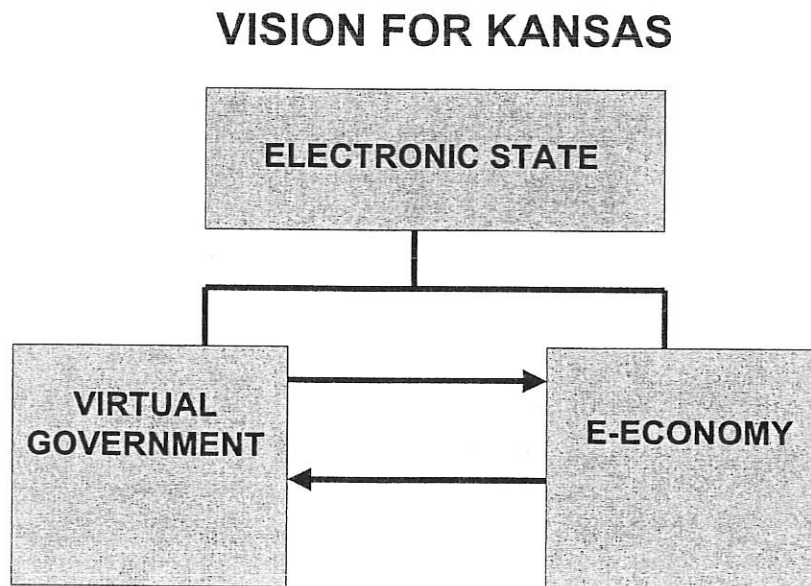
agencies prepare IT project plans for projects of \$250,000 or greater. These projects are approved by the CITO and agency head, based upon cost-benefit analysis.

Vision for Kansas

The SIM plan, when abstracted to its highest level, calls for the creation of an electronic state with two pillars:

- Virtual government and
- E-economy

Virtual government's vision means anything that can be done in the presence of government can be done electronically as well—and done 24 hours a day 7 days a week from any location on the globe. Kansas government IT also reflects a community of interests to include economic development. Additionally, Kansas government must seek to touch the economy by enhancing services while reducing costs. Finally, the vision calls for an integrated, no wrong door, approach to providing e-government services. The figure below depicts the vision for Kansas State government when services for citizens and businesses can be fully accessed and exchanged electronically.

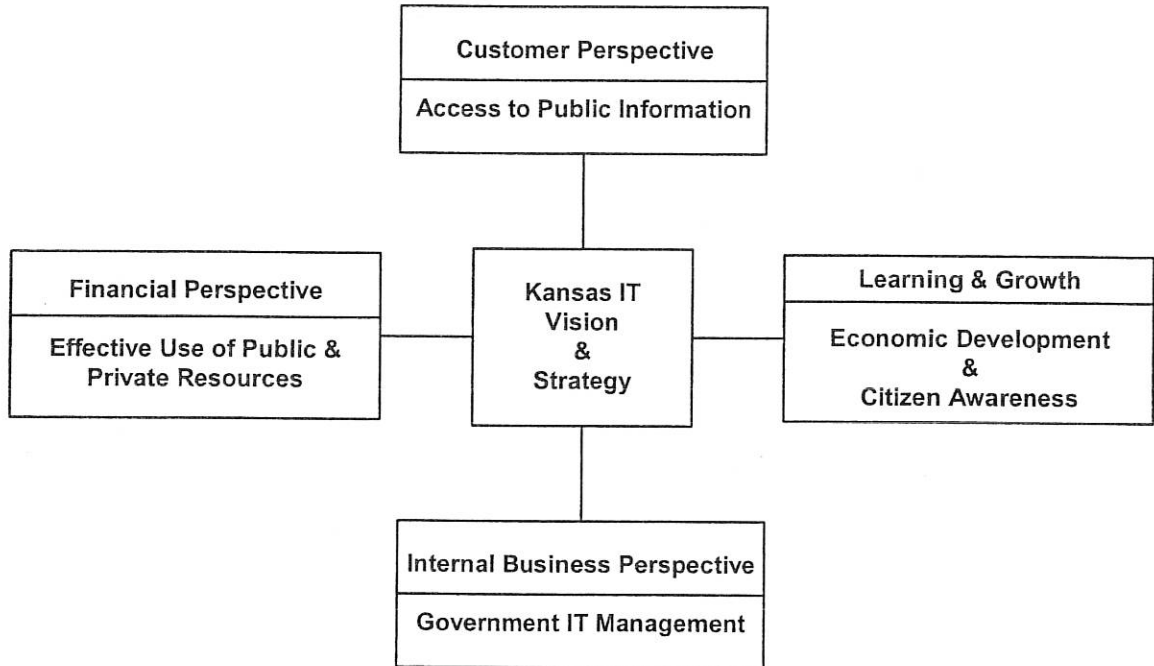


The vision of an electronic state is aided by the public/private partnership of the state with the Information Network of Kansas (INK). Through INK (www.accessKansas.org), citizens, businesses and government employees have access to hundreds of services such as legislative bill tracking, real property value searches in 105 counties, court records, Uniform Commercial Code and corporation filings, even the Kansas Bureau of Investigation's most wanted criminals.

- **Balanced Scorecard**

The framework for the goals and objectives of the SIM Plan employs *The Balanced Scorecard* (BSC) methodology. This methodology helps the enterprise organize and measure progress for goals and initiatives. The figure below shows the four dimensions used for framing the objectives of the SIM plan: Financial, Internal Business Procedures, Learning and Growth, and the Customer.

The Balanced Scorecard Framework for SIM Goals

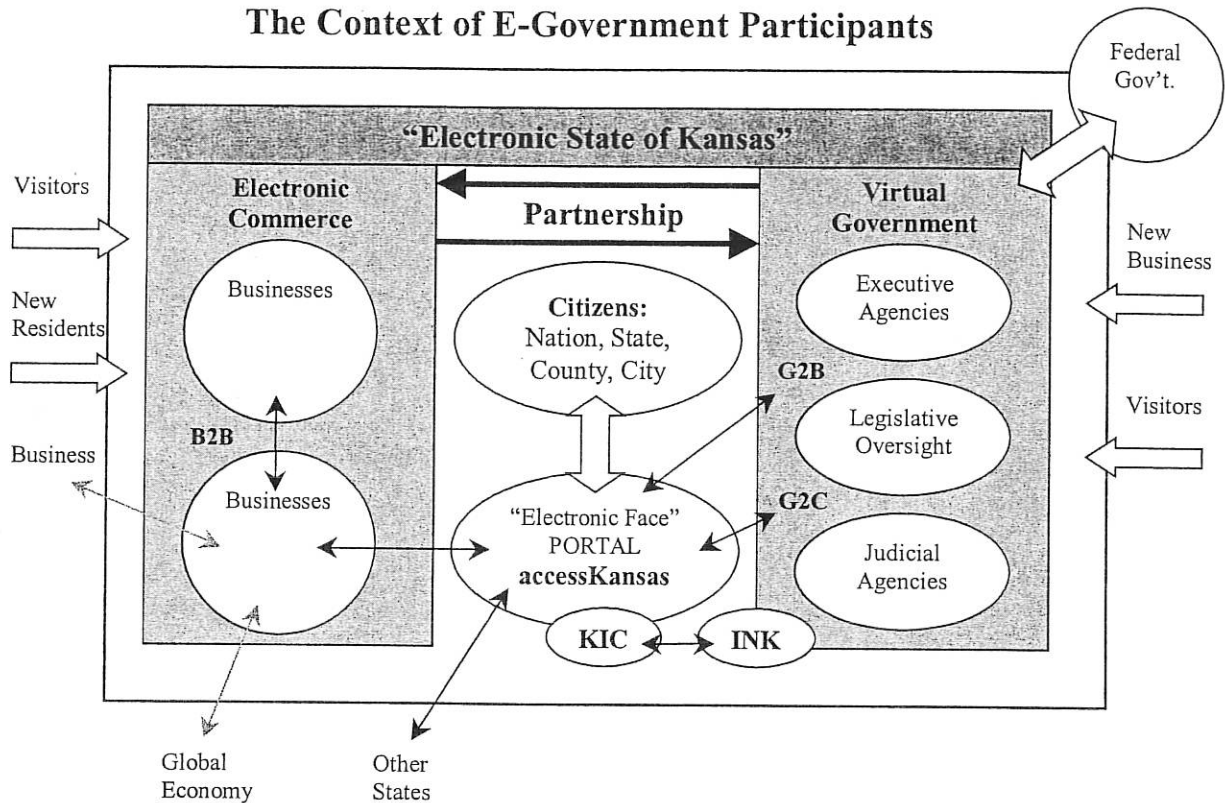


COBIT Standards

The state has adopted Control Objectives for Information Technology (COBIT) standards promulgated by the Information Systems Audit and Control Association (ISACA). These standards outline a comprehensive framework for ensuring that information technology is implemented with assurances for control and success. These standards have recently been implemented as the foundation for position descriptions for state IT workers.

- **Who Does What?**

The following chart depicts an overall context for implementing the vision of the SIM plan. It reflects the many relationships that serve these objectives.



- **Summary**

The IT Governance structure for Kansas has served the enterprise well over the last four years. It greatly facilitated the state's projects to address Y2K, and formed a framework to deal with issues such as ADA compliance for WEB sites, public key infrastructure certificate polices, network security, and effective project management. In addition, ITAB has developed an effective process to share ideas, establish guidelines, and provide effective input into the development of policies, architectures, and best practices. There are over 250 people involved in this process across the enterprise.

In calendar year 2001 Kansas ranked first in the country in IT achievements according to the nationally recognized **Center for Digital Government**. In calendar year 2001 Kansas received several awards from the **Center**. These national awards come from surveys conducted to all of the 50 states in the U.S. with results published in *Government Technology* magazine. Kansas finished first in the country in Social Services and Geographic Information Systems and Transportation. We ranked number nine in Law Enforcement and Courts, number three in the automation of our tax systems and number four in Digital Democracy. Kansas also scored high in education, e-government and IT management.

Other notable recognitions include:

- Two National Association of Information Resource Executives awards, including KDOR's *Project 2000-Putting the Customer First* and Department of Administration's *IT Project Management and Methodology Training*
- Brown University ranked Kansas 6th in the nation in web-site design and usability.
- Syracuse University awarded Kansas an 'A-' in IT achievements. Only three other states earned a similar or higher score.

With a vision that keeps the citizen-customer at the top of the priority list and with methodical strategic planning, Kansas will continue to be a leader in providing IT services to all the citizens of the state.

Madame Chair, I will be happy to stand for questions.



Department of Administration
Kansas Information Technology Office

2002 SIM Plan

Kansas IT Governance Model

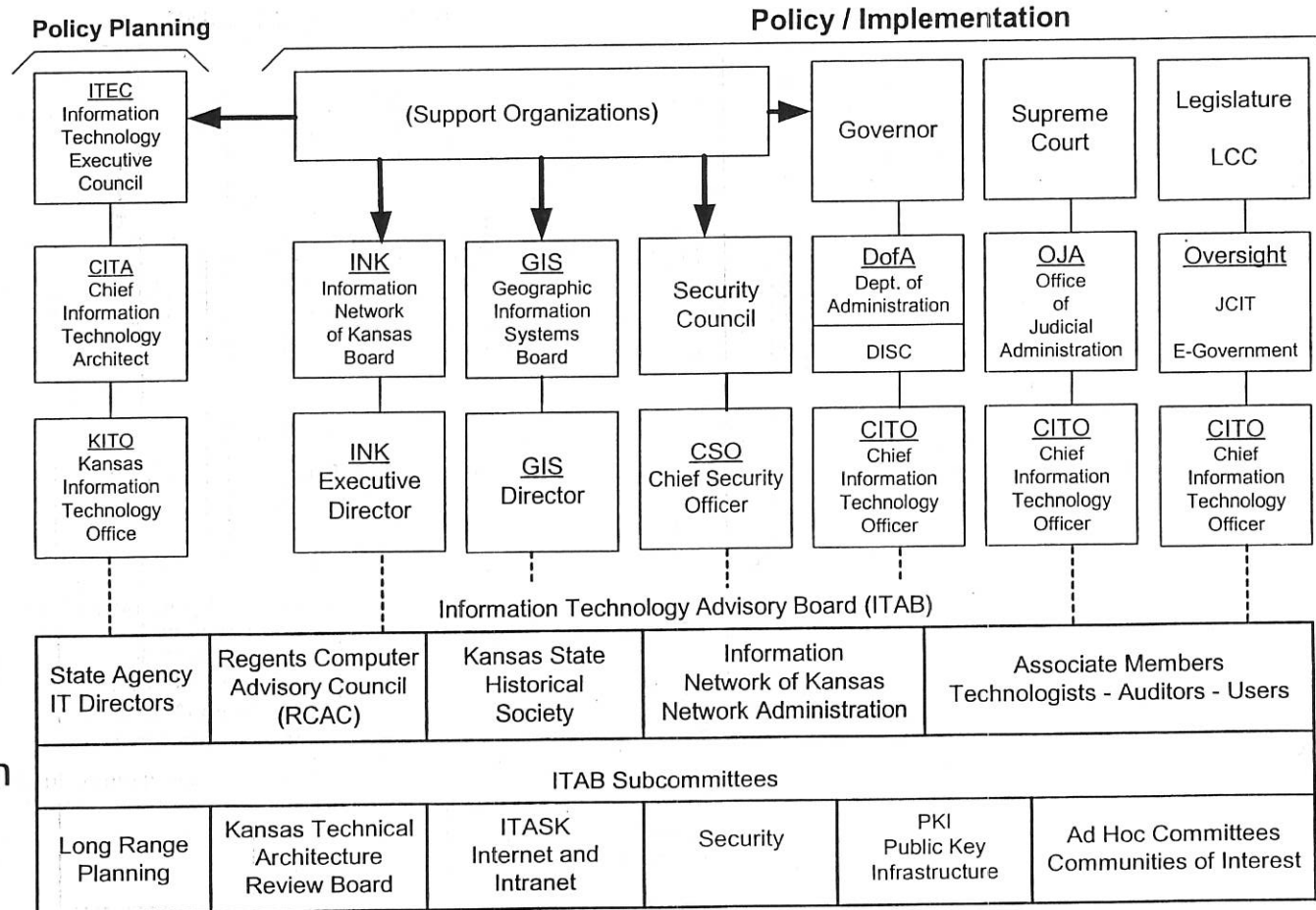
HOUSE LOCAL GOVERNMENT
03/21/02
Attachment 2

Policy

Control

Management

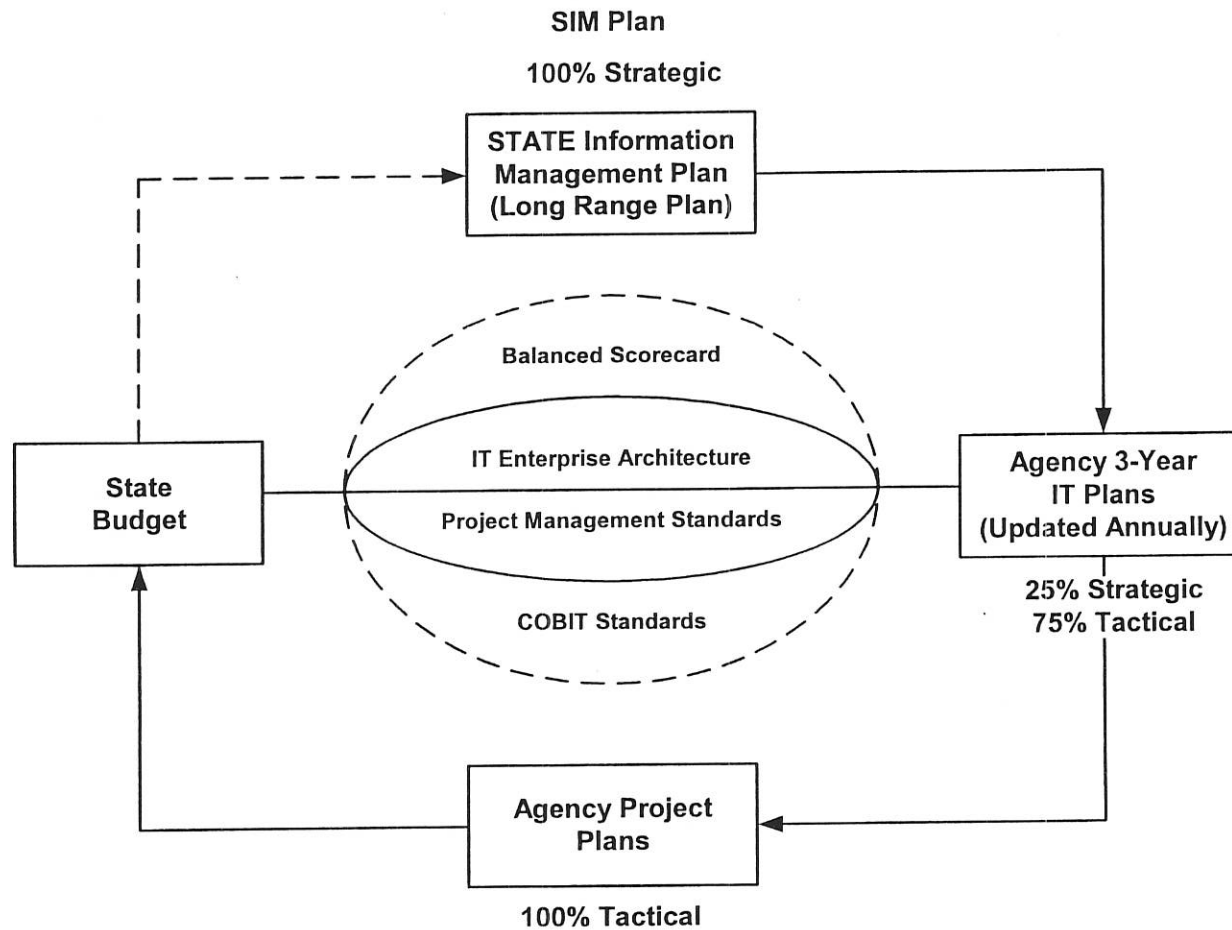
Implementation





2002 SIM Plan

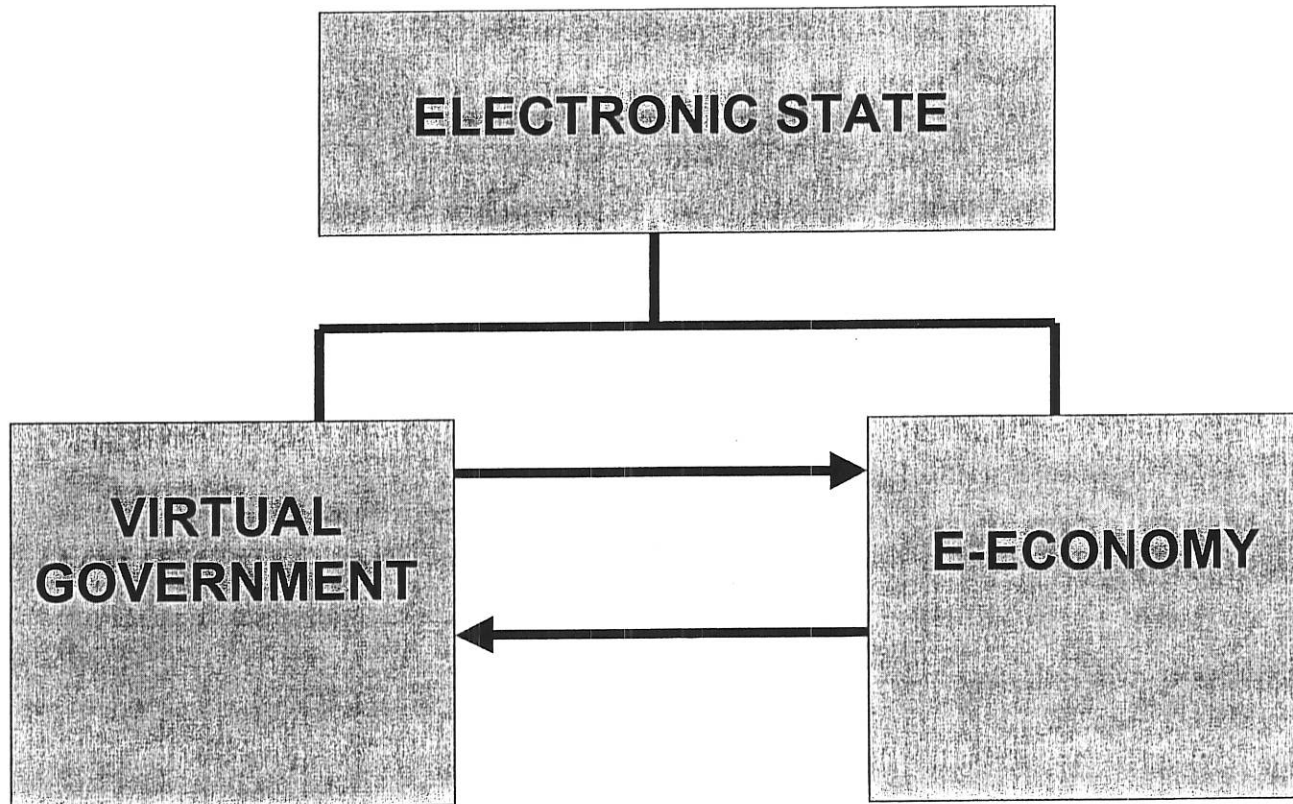
Kansas IT Planning / Controls





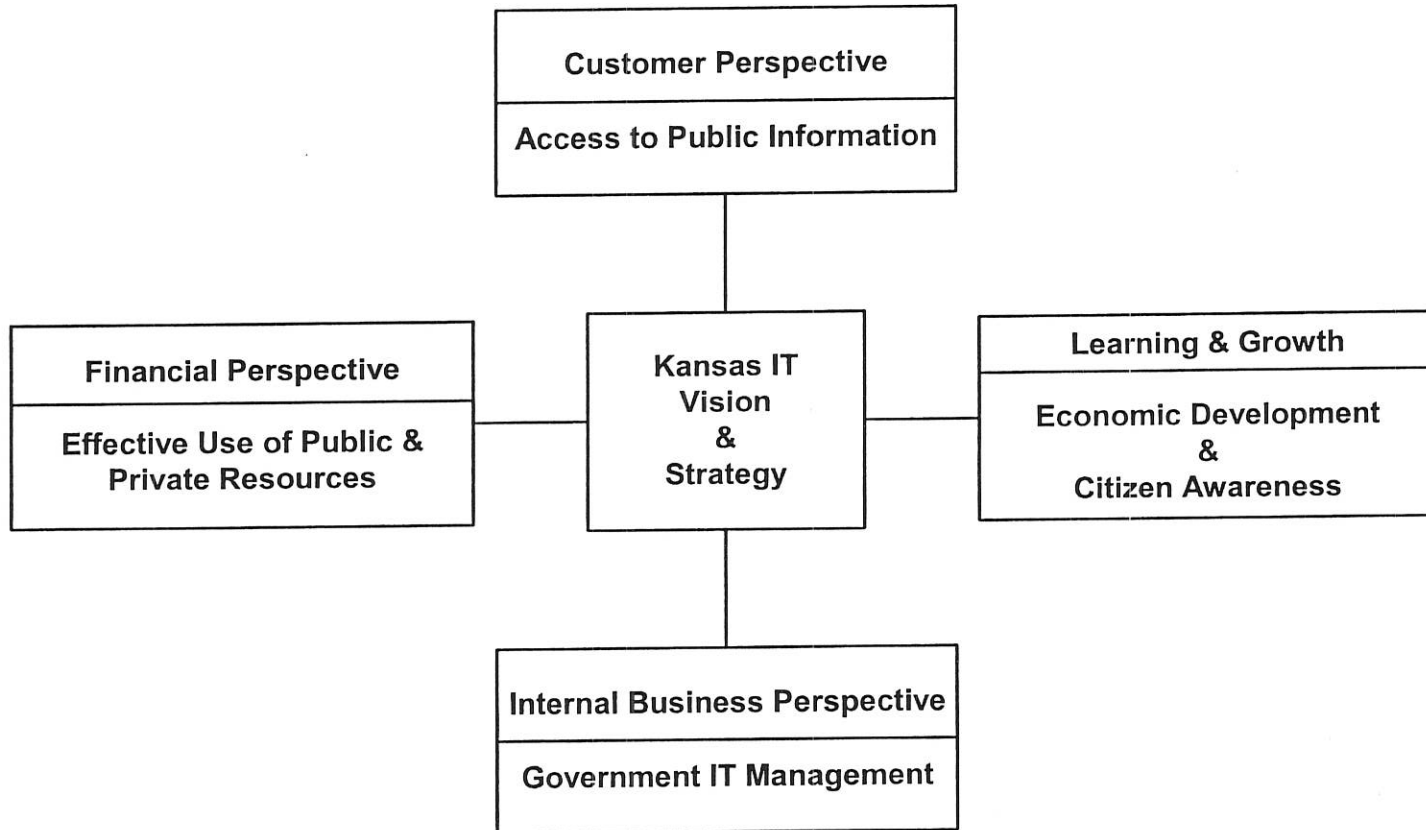
2002 SIM Plan

VISION FOR KANSAS





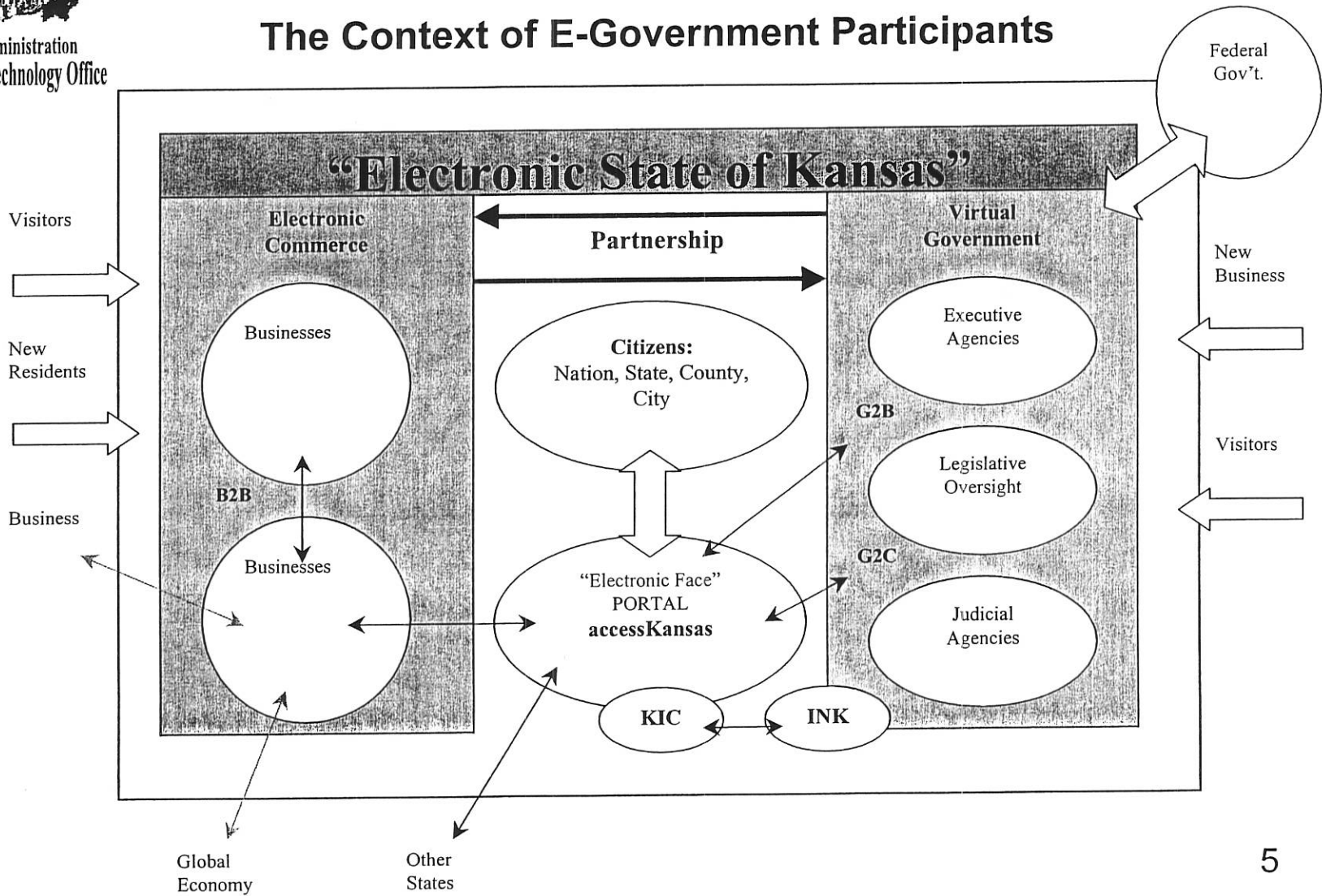
2002 SIM Plan Goals





Department of Administration
Kansas Information Technology Office

The Context of E-Government Participants



(7) (3)

LEGISLATIVE TESTIMONY



2206 SW 29th, Terr., Topeka, KS 66611 ♦ 785-267-2936 Fax 785-267-2959 ♦ E-mail: janetstubs@worldnet.att.net

HOUSE LOCAL GOVERNMENT COMMITTEE HB 3023 March 21, 2002

MADAM CHAIR AND MEMBERS OF THE COMMITTEE:

My name is Bob Taggart representing the Kansas Building Industry Association. We appreciate the opportunity to comment today in support of H.B. 3023 which deals with an extremely important issue to the membership of the KBIA, as well as to the affordability of housing.

The language contained in HB 3023 is the same language passed by the Senate in S.B. 92 on a vote of 39-1 during the 2001 Session. This issue was brought to the Legislature late in the Session of 2000 when it was felt there was not sufficient time to deal with the subject. Therefore, the KBIA requested introduction of bills in the 2001 Session to clarify into law what we believe to be the current practice by fee appraisers throughout the State.

The background on the issue is as follows: In 1998, the Board of Tax Appeals issued an order on 8 parcels of land in McPherson County and ruled in favor of the taxpayer, Westview Development Corporation. BOTA's opinion is attached and states on page 2, item 4, "The County appraised each parcel by adding a substantially large portion of said parcel's special assessments to said parcel's listing price to arrive at the 1997 appraisal value. Said procedure is inconsistent with the definition of fair market value set out in K.S.A. 79-503a." Under item 9 on page 3 of the same opinion, the Board states, "Adding said taxes to the purchase price, as the County has done herein with the special assessments, is not an appropriate methodology for determining said parcel's fair market value." Under item 10 on the same page, the opinion further states, "Based thereon, the Board finds that the County's valuation methodology is flawed and does not lead to the determination of the fair market value of the subject parcels." "The Board finds that the subject property's respective listing prices, which are also the sales prices of comparable properties, are the most accurate indicator of value."

HOUSE LOCAL GOVERNMENT

03/21/02

Attachment 3

In a 1999 ruling by BOTA on Valley View Estates in Saline County, different members comprised the Board but arrived at the same opinion. On page 2, item 10, of the opinion States, "As for the valuation, the Board finds that the selling prices of the properties that did sell are the best indication of value for the subject properties. Special assessments are essentially the buying of streets, sewers, sidewalks, and so forth over a period of time. The special assessments are costs to the property that must be paid. The benefit of the special assessments is the addition to the property's value by having a paved street, or other improvement financed by the special assessment. 11. Typically, a buyer would pay less for a property with outstanding special assessments than he would for a property that was unencumbered. While it is true that the property does already benefit from the special assessments already present, the special assessments must still be paid off and remain a liability against the property. Therefore, the Board finds that the value of the subject property should not include the value of the outstanding special assessments. As noted above, the selling price of \$22,000 is the best indication of value for the subject properties."

In 1999, BOTA also ruled on this issue in favor of Karl W. Boaz from Saline County. Page 2, item 11, 12 and 13 in the BOTA order reads, "The Board finds that the value of the subject property should not include the cost of the special assessments. The purchase price for the subject property in May 1997 did not include the unpaid special assessments. It is unlikely that any subsequent purchase price would include any unpaid special assessments. (12) Although the special assessment may add value to the subject property, it is not intrinsic to the market value of the subject property. A "well informed buyer" would not include the special assessments in the purchase offer. The special assessments would be deferred as long as possible. If a purchaser were to pay off the special assessments now, any subsequent selling price would have to include the special assessments. It would be difficult to sell a property for \$29,400 (the county's value) when the neighboring lots are selling for approximately \$10,000. Therefore, the special assessments do not inherently affect the market value of the subject property. (13) An argument could be made that the unpaid mortgage on a personal residence should be added to the value for tax purposes if the Board were to adopt the County's analysis. For example, a person borrowing money to purchase a \$100,000 home will pay approximately \$275,000 for that home over a period of thirty years. The mortgage adds value to the residence in that it affords the purchaser enjoyment and use of the property now instead of waiting thirty years for that enjoyment and use. Without the mortgage, the purchaser could not acquire the residence. But the mortgage does not add to the market value of the residence if the purchaser attempted to sell the property at a later date. Furthermore, although the purchaser will pay approximately \$275,000 for the \$100,000 residence, the County more than likely has the property appraised for approximately \$100,000.....The Board is not persuaded by the County's argument that the fair market value includes the special assessments."

The most recent BOTA case was decided by a Board Order issued in July of 2001, in favor of the taxpayer/developer. The Board refused to reconsider and the County appealed to District Court. In each step of the appeals process, the taxpayer represented himself. Unfortunately, he did not understand the process and did not engage an attorney to represent him in District Court on January 2, 2002. Therefore, the District Court decision reads, "The Taxpayer did not file a written response to the County's brief and in oral arguments before the Court, presented no legal authority to contradict the legal analysis presented by the County. Therefore, the Court adopts the legal analysis presented by the County and concludes that the decision of BOTA is erroneous as a matter of law. It is apparent this case was not decided on facts but rather on a flawed legal process.

Further legal research has revealed that the Indiana Department of Revenue v. Security Bank & Trust 393 N.E.2d 197 (Ind. App. 1979) Court of Appeals excluded specials from its calculation of fair market value for estate tax purposes. In Gorz v. Gorz 428 N.W. 2d 839 (Minn. App. 1988), the Minnesota Court of Appeals excluded special assessments from a valuation of real property disposed of in divorce proceedings. In addition, California amended its property valuation statute to include language very similar to what is being proposed in HB 3023 by adding the following: "There is a rebuttable presumption that the value of improvements financed by the proceeds of an assessment resulting in a lien imposed on the property by a public entity is reflected in the total consideration, exclusive of that lien amount, involved in the transaction. This presumption may be overcome if the assessor establishes by a preponderance of the evidence that all or a portion of the value of those improvements is not reflected in that consideration."

As a result of this amendment, California presumes the parties to a real estate transaction have taken the present value of any special assessments into account when they reach a purchase price for the property. The burden then shifts to the assessor to disprove this presumption if he or she disagrees with using purchase price to determine the fair market value. In Huson v. County of Ventura, 96 Cal. Repr. 116 (2000), the California Court of Appeals affirmed this approach.

K.S.A. 79-503a defines fair market value as "the amount in terms of money that a well informed buyer is justified in paying and a well informed seller is justified in accepting for property in an open and competitive market, assuming that the parties are acting with undue compulsion." This fair market value is not singular to Kansas. To the contrary, the definition of fair market value shows virtually no substantive variation throughout the United States in a variety of contexts, both tax and otherwise. If one assumes, as California does, that arms length transactions on the open market take into account the

full value of real property, including the present value of any special assessments, then HB 3023 would merely clarify what is already the law in Kansas.

Additional arguments in opposition to inclusion of special assessments in the determination of fair market value: First, fair market value is determined by application of the "willing buyer/willing seller" concept with respect to a given piece of property. The fair market value determination does not permit adjustments for factors which clearly are not a component of the selling price. Second, including special assessments as "additions" to the purchase price would improperly treat improvements such as streets and sewers as a physical part of the subject property itself, when in fact the improvements are owned by governmental entities. This would be analogous to adding in additional value to the already determined open market selling price for below market utility rates or sewer costs in the subject area. Third, it would be capricious to conclude, without corroborating underlying data, that an arbitrary determination of the present value of future payments on special assessments should somehow be a component of the fair market value of a given parcel of real property. Finally, as alluded to by BOTA in the Valley View decision, whatever role special assessments may play in fair market value are already factored into the price a "willing buyer" will pay for a given parcel of real property on the open market.

I find it incredulous that County Appraisers are using this method which is found to be inappropriate by the fee appraisers of my acquaintance. Thank you for the opportunity to present the attached information from an appraisal firm in Wichita which was presented to the Senate during 2001. This includes documentation from appraisal manuals substantiating the reason for our support of HB 3023.

We urge your favorable approval of HB 3023.

HOUSE BILL No. 3023

By Committee on Appropriations

3-15

AN ACT relating to property taxation; concerning the determination of fair market value; amending K.S.A. 79-503a and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 79-503a is hereby amended to read as follows: 79-503a. "Fair market value" means the amount in terms of money that a well informed buyer is justified in paying and a well informed seller is justified in accepting for property in an open and competitive market, assuming that the parties are acting without undue compulsion. *In the determination of fair market value of any real property, the value of any special assessment shall not be considered.* For the purposes of this definition it will be assumed that consummation of a sale occurs as of January 1.

Sales in and of themselves shall not be the sole criteria of fair market value but shall be used in connection with cost, income and other factors including but not by way of exclusion:

- (a) The proper classification of lands and improvements;
- (b) the size thereof;
- (c) the effect of location on value;
- (d) depreciation, including physical deterioration or functional, economic or social obsolescence;
- (e) cost of reproduction of improvements;
- (f) productivity;
- (g) earning capacity as indicated by lease price, by capitalization of net income or by absorption or sell-out period;
- (h) rental or reasonable rental values;
- (i) sale value on open market with due allowance to abnormal inflationary factors influencing such values;
- (j) restrictions imposed upon the use of real estate by local governing bodies, including zoning and planning boards or commissions; and
- (k) comparison with values of other property of known or recognized value. The assessment-sales ratio study shall not be used as an appraisal for appraisal purposes.

The appraisal process utilized in the valuation of all real and tangible personal property for ad valorem tax purposes shall conform to generally

1 accepted appraisal procedures which are adaptable to mass appraisal and
2 consistent with the definition of fair market value unless otherwise spec-
3 ified by law.

4 Sec. 2. K.S.A. 79-503a is hereby repealed.

5 Sec. 3. This act shall take effect and be in force from and after its
6 publication in the statute book.

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BEFORE THE BOARD OF TAX APPEALS OF THE STATE OF KANSAS

IN THE MATTER OF THE EQUALIZATION
APPEALS OF WESTVIEW DEVELOPMENT
CORPORATION FOR THE YEAR 1997 FROM
MCPHERSON COUNTY, KANSAS

Docket Nos. 1997-4010-EQ
thru 1997-4017-EQ

ORDER

Now, on this 14th day of September, 1998, the above-captioned matters come on for consideration and decision by the Board of Tax Appeals of the State of Kansas.

This Board conducted a hearing in these matters on June 10, 1998. After considering all of the evidence presented thereat, and being fully advised in the premises, the Board finds and concludes as follows:

1. The Board has jurisdiction of the subject matter and the parties hereto, proper appeals having been filed pursuant to K.S.A. 79-1609.
2. The subject matter of these tax equalization appeals is described as follows:

Tracts of real estate known as
Parcel ID# 059-033-08-0-30-09-001.00-0,
Parcel ID# 059-033-08-0-30-11-007.00-0,
Parcel ID# 059-033-08-0-30-11-009.00-0,
Parcel ID# 059-033-08-0-30-11-010.00-0,
Parcel ID# 059-033-08-0-30-12-019.00-0,
Parcel ID# 059-033-08-0-30-13-002.00-0,
Parcel ID# 059-033-08-0-30-13-005.00-0 and
Parcel ID# 059-033-08-0-30-13-006.00-0.

3. The Taxpayer waived personal appearance at the scheduled hearing and submitted its contentions in writing. Richard E. Batchellor, County Appraiser, represented McPherson County.
4. The subject property consists of eight (8) separate vacant parcels located in Lindsborg, Kansas. For each parcel, the Taxpayer submitted as follows: comparable properties in the immediate area that have sold at prices which were substantially less than each parcel's respective 1997 appraisal value. Each parcel is for sale at a listing price that is substantially less than said parcel's respective 1997 appraisal value. Each parcel has been listed for sale

at its respective listing price over the past three years. Each parcel has remaining unpaid special assessments due over the next eight years. The County appraised each parcel by adding a substantially large portion of said parcel's special assessments to said parcel's listing price to arrive at the 1997 appraisal value. Said procedure is inconsistent with the definition of fair market value set out in K.S.A. 79-503a. The Taxpayer requested that the subject parcels' respective 1997 appraisal values be reduced to their listing price. The table below is a compilation of pertinent information for each parcel.

Docket No.	1997 appraisal value	Requested value	Listed value	Specials Due
97-4010	\$16,010	\$8,500	\$8,500	\$10,000
97-4011	\$26,100	\$16,500	\$17,500	\$9,000
97-4012	\$8,790	\$3,500	\$17,500 ¹	\$3,600
97-4013	\$22,760	\$13,000	\$17,500 ¹	\$7,300
97-4014	\$85,380	\$53,000	\$53,000	\$36,750
97-4015	\$16,380	\$8,500	\$8,500	\$10,000
97-4016	\$16,660	\$8,500	\$8,500	\$10,000
97-4017	\$16,010	\$8,500	\$8,500	\$10,000

¹ The parcels of Docket Nos. 97-4012-EQ and 97-4013-EQ are listed for sale together at one total sales price of \$17,500.

5. The County did not recommend that the subject property's respective 1997 appraisal values be reduced. The County submitted as follows: The fair market value of a property having special assessments is said property's potential sales price plus a portion of special assessments due. A prudent purchaser will adjust its offering price to account for the special assessments that it will assume. Consequently, the respective special assessment should be treated in the same manner as a second mortgage assumed by the purchaser. The County indicated that its valuation methodology was pursuant to Kansas Division of Property Valuation (PVD) guidelines.
6. K.S.A. 79-501 provides, in material part, that, "Each parcel of real property shall be appraised at its fair market value in money . . ."
7. K.S.A. 79-503 indicates, in material part, as follows:

"Fair market value" means the amount in terms of money that a well informed buyer is justified in paying and a well

informed seller is justified in accepting for a property in an open and competitive market, assuming that the parties are acting without undue compulsion.

8. When one of the subject parcels, or a comparable property having similar special assessments, sells at a reduced price, \$X, due to the special assessments owed, the seller and buyer exchange \$X as the transaction price. The \$Y in special assessments due may have been an important factor in determining \$X, yet \$Y was not part of the consideration given to facilitate the purchase of the property.
9. If, for example, a parcel is subject to a slightly higher than normal tax burden, the amount paid by the buyer to the seller to acquire said parcel would, in and of itself, address said tax burden. Adding said taxes to the purchase price, as the County has done herein with the special assessments, is not an appropriate methodology for determining said parcel's fair market value.
10. Based thereon, the Board finds that the County's valuation methodology is flawed and does not lead to the determination of the fair market value of the subject parcels. At instant, the Taxpayer has presented evidence of sales of comparable properties subject to equivalent special assessments as the subject parcels. The Board finds that the subject property's respective listing prices, which are also the sales prices of comparable properties, are the most accurate indicator of value. Based thereon, the Board finds that the subject property's 1997 appraisal values shall be, and the same are hereby, reduced, as follows:

Docket No.	Original 1997 appraisal value	Final 1997 appraisal value
97-4010	\$16,010	\$8,500
97-4011	\$26,100	\$17,500
97-4012	\$8,790	\$4,000
97-4013	\$22,760	\$13,500
97-4014	\$85,380	\$53,000
97-4015	\$16,380	\$8,500
97-4016	\$16,660	\$8,500
97-4017	\$16,010	\$8,500

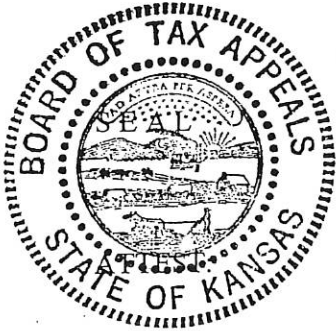
IT IS THEREFORE ORDERED BY THE BOARD OF TAX APPEALS OF THE STATE OF KANSAS that the above findings and conclusions shall be, and the same are hereby, made orders of the Board.

IT IS FURTHER ORDERED that the McPherson County officials are authorized and directed to correct their records accordingly and provide a refund to the Taxpayer, if appropriate.

Any party to this appeal who is aggrieved by this decision may file a written petition for reconsideration with this Board as provided in K.S.A. 77-529, as amended by 1998 Kan. Sess. Laws, ch. 146, § 4. The written petition for reconsideration shall set forth specifically and in adequate detail the particular and specific respects in which it is alleged that the Board's order is unlawful, unreasonable, capricious, improper or unfair. Any petition for reconsideration shall be mailed to: Secretary, Board of Tax Appeals, DSOB Suite 451, 915 SW Harrison St., Topeka, KS 66612-1505. A copy of the petition, together with all accompanying documents submitted, shall be mailed to all parties at the same time the petition is mailed to the Board. Failure to notify the opposing party shall render any subsequent order voidable. The written petition must be received by the Board within fifteen (15) days of the certification date of this order (allowing an additional three days for mailing pursuant to statute if the Board serves the order by mail). If at 5:00 pm on the last day of the specified period the Board has not received a written petition for reconsideration, this order will become a final order from which no further appeal is available.

IT IS SO ORDERED

THE BOARD OF TAX APPEALS



Rita Maichel
RITA MAICHEL, SECRETARY

Stephen Adnan Jones
STEPHEN ADNAN JONES, ATTORNEY

DISSENTING

AUGUST BOGINA, JR. P.E., CHAIRMAN

J. Lyn Entrikin Goering
J. LYN ENTRIKIN GOERING, MEMBER

Robert G. Frey
ROBERT G. FREY, MEMBER

David L. Patton
DAVID L. PATTON, MEMBER

DISSENTING

WAYNE C. VENNARD, JR., MEMBER

CERTIFICATION

I, Rita Maichel, Secretary of the Board of Tax Appeals of the State of Kansas, do hereby certify that a true and correct copy of the order in Docket Nos. 1997-4010-EQ through 1997-4017-EQ, and any attachments thereto, was placed in the United States Mail, on this 8th day of October, 1998, addressed to:

William E Gusenius, President
Westview Development Corporation
PO Box 328
Lindsborg, KS 67456

Richard E Batchellor
McPherson County Appraiser
P.O. Box 530
McPherson, KS 67460-0530

IN TESTIMONY WHEREOF, I have hereunto subscribed my name at Topeka, Kansas.

Rita Maichel
Rita Maichel, Secretary

BEFORE THE BOARD OF TAX APPEALS OF THE STATE OF KANSAS

IN THE MATTER OF THE EQUALIZATION
APPEALS OF VALLEY VIEW ESTATES
FOR THE YEAR 1998 FROM SALINE
COUNTY, KANSAS

Docket Nos. 1998-4515-EQ
Thru 1998-4523-EQ

ORDER

Now, the above-captioned matters come on for consideration and decision by the Board of Tax Appeals of the State of Kansas.

This Board conducted a hearing in these matters on January 7, 1999. After considering all of the evidence presented thereat, and being fully advised in the premises, the Board finds and concludes as follows:

1. The Board has jurisdiction of the subject matters and the parties hereto; proper appeals having been filed pursuant to K.S.A. 79-1609.
2. The subject matter of these tax equalization appeals are described as follows:

Tracts of real estate known as
Parcel ID#s
085-099-29-0-10-01-003.00-0,
085-099-29-0-10-01-030.00-0,
085-099-29-0-10-01-004.00-0,
085-099-29-0-10-01-029.00-0,
085-099-29-0-10-01-009.00-0,
085-099-29-0-10-01-025.00-0,
085-099-29-0-10-01-007.00-0,
085-099-29-0-10-01-026.00-0 &
085-099-29-0-10-01-031.00-0.

3. The Taxpayer appeared by Duane Thibault, Member of the LLC. Saline County (the County) appeared by Chuck Latham, Assistant Saline County Appraiser; and Michael Montoya, Saline County Counselor. Dennis Debold appeared as a witness under subpoena by the County. County Exhibits #1 and #2 and Taxpayer Exhibit #1 were admitted into evidence. County Exhibits #3 through #5 were marked; but withdrawn from being entered into

Docket Nos. 1998-4515-EQ thru 1998-4523-EQ
Saline County, Kansas
Page 2

evidence.

4. The subject properties are vacant land formerly used for agricultural purposes. The agricultural land was subdivided and developed into residential lots. About half of these lots have sold. The lots sold for around \$22,000. The Taxpayer requests that the remaining lots be classified as agricultural and valued at their agricultural use value.
5. Under cross-examination, the Taxpayer admitted that in 1997, no hay was taken from the subject properties; however, the grass was mowed. In 1998, the land was swathed and baled. See Taxpayer Exhibit #1. The Taxpayer testified that if the crop is not good, a crop may not be taken from the subject properties. The primary purpose of mowing the subject properties is for maintenance.
6. The County inspected the subject properties in the fall of 1997. At that time, they discovered that they were overgrown with Russian olive trees and that there was no apparent agricultural use made of the subject properties.
7. The County recommends that the subject properties remain classified as "Vacant" according to their use as of January 1, 1998, and that no changes in value be made.
8. The County has the lots valued as if they were owned in fee simple unencumbered by the special assessments.
9. The Board finds that the subject properties do not qualify to be classified and valued as agricultural use value. Only land devoted to agricultural use would qualify. K.S.A. 79-1476. In this case, the evidence shows that the subject property was not devoted to agricultural use; instead, it had no use other than as investment property.
10. As for the valuation, the Board finds that the selling prices of the properties that did sell are the best indication of value for the subject properties. Special assessments are essentially the buying of streets, sewers, sidewalks, and so forth over a period of time. The special assessments are costs to the property that must be paid. The benefit of the special assessments is the addition to the property's value by having a paved street, or other improvement financed by the special assessment.
11. Typically, a buyer would pay less for a property with outstanding special assessments than he would for a property that was unencumbered. While it is true that the property does already benefit from the special assessments already present, the special assessments must still be paid off and remain a

Docket Nos. 1998-4515-EQ thru 1998-4523-EQ
Saline County, Kansas
Page 3

liability against the property. Therefore, the Board finds that the value of the subject property should not include the value of the outstanding special assessments. As noted above, the selling price of \$22,000 is the best indication of value for the subject properties. Therefore, the Board finds that the appraised values for the subject properties shall be \$22,000 per lot.

IT IS THEREFORE ORDERED BY THE BOARD OF TAX APPEALS OF THE STATE OF KANSAS that the appraised values for the subject properties shall not include the amount of the special assessments and shall be set at \$22,000 per lot. The subject properties shall remain classified as "Vacant," and assessed at 12% of their fair market value of \$22,000.

Any party to this appeal who is aggrieved by this decision may file a written petition for reconsideration with this Board as provided in K.S.A. 77-529, and amendments thereto. The written petition for reconsideration shall set forth specifically and in adequate detail the particular and specific respects in which it is alleged that the Board's order is unlawful, unreasonable, capricious, improper or unfair. Any petition for reconsideration shall be mailed to: Secretary, Board of Tax Appeals, DSOB Suite 451, 915 SW Harrison St., Topeka, KS 66612-1505. A copy of the petition, together with all accompanying documents submitted, shall be mailed to all parties at the same time the petition is mailed to the Board. Failure to notify the opposing party shall render any subsequent order voidable. The written petition must be received by the Board within fifteen (15) days of the certification date of this order (allowing an additional three days for mailing pursuant to statute if the Board serves the order by mail). If at 5:00 pm on the last day of the specified period the Board has not received a written petition for reconsideration, this order will become a final order from which no further appeal is available.

Docket Nos. 1998-4515-EQ thru 1998-4523-EQ
Saline County, Kansas
Page 4

IT IS SO ORDERED



THE BOARD OF TAX APPEALS

David L. Patton

DAVID L. PATTON, CHAIRMAN

Robert G. Frey

ROBERT G. FREY, MEMBER

Wayne C. Vennard, Jr.

WAYNE C. VENNARD, JR., MEMBER

Tony R. Folsom

TONY R. FOLSOM, ACTING SECRETARY

Carl Edwards

CARL EDWARDS, ATTORNEY

Jill A. Jenkins

JILL A. JENKINS, MEMBER

Susan M. Seltsam

SUSAN M. SELTSAM, MEMBER

Docket Nos. 1998-4515-EQ thru 1998-4523-EQ
Saline County, Kansas
Page 5

CERTIFICATION

I, Tony R. Folsom, Acting Secretary of the Board of Tax Appeals of the State of Kansas, do hereby certify that a true and correct copy of the order in Docket Nos. 1998-4515-EQ thru 1998-4523-EQ, and any attachments thereto, was placed in the United States Mail, on this 10th day of February, 2000, addressed to:

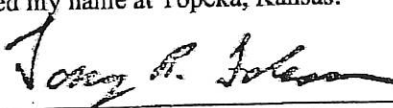
Duane Thibault, Member LLC
Valley View Estates
PO Box 856
Salina, KS 67402-0856

Michael Montoya, Co Counselor
Saline County Counselor
PO Box 1220
Salina, KS 67402

Rodney Broberg
Saline County Appraiser
300 W Ash St
P O Box 5040
Salina, KS 67402-5040

Keith Lilly
Saline County Treasurer
300 West Ash
Salina, KS 67401-2396

IN TESTIMONY WHEREOF, I have hereunto subscribed my name at Topeka, Kansas.


Tony R. Folsom, Acting Secretary

BEFORE THE BOARD OF TAX APPEALS OF THE STATE OF KANSAS

IN THE MATTER OF THE PROTEST OF
BOAZ, KARL W.
FOR TAXES PAID FOR 1998 IN
SALINE COUNTY, KANSAS

Docket No. 1999-2680-PR

ORDER

Now on this 16th day of August, 1999, the above-captioned matter comes on for consideration and decision by the Board of Tax Appeals of the State of Kansas.

This Board conducted a hearing in this matter on July 22, 1999. After considering all of the evidence presented, the Board finds and concludes as follows:

1. The Board has jurisdiction of the subject matter and the parties as a tax protest has been filed pursuant to K.S.A. 79-2005, and amendments thereto.
2. The subject matter of this tax protest is described as follows:

Real estate and improvements legally known as
Lot 6, Block 1, Holiday Resort Addition, Saline County,
Kansas, also known as Parcel ID#
085-094-17-0-10-01-006.00-0.
3. The Taxpayer, Karl W. Boaz, appears on his own behalf. The County appears by Michael Montoya, County Counselor; and Chuck Latham, Assistant County Appraiser.
4. The subject property has a 1998 appraisal of \$29,400. The County valued the subject property by preparing a land analysis after reviewing a series of sales. Mr. Latham testified that the County valued the subject property as if it were completely unencumbered. Mr. Latham testified that the County included the cost of the special assessments in the value of the subject property.
5. The County noted that the special assessments covered the price for installing the sewer, water lines, and the streets. The County asserted that these improvements added value to the subject property. Therefore, the cost of these assessments should be added to the value of the subject property.
6. The Taxpayer testified that he purchased the first lot in the Holiday Resorts subdivision for \$14,500 in May 1997. The Taxpayer noted that construction has occurred on only four of the lots in the subdivision. The Taxpayer

asserted that the remaining lots in the subdivision have sold for approximately \$10,000 each.

7. The Taxpayer asserted that the surrounding subdivisions are experiencing an increase in the amount of new construction while the amount of new construction in the Holiday Resorts subdivision is stagnant. The Taxpayer further asserted that the desirability for the subject property might diminish because there is a nursing home located behind the subject property.
8. The Taxpayer asserted that the cost of the special assessments should not be added to the value of the subject property. The Taxpayer notes that over the next eight years he will pay approximately \$12,100 in special assessments. The Taxpayer asserted that if he attempted to sell the subject property, he would not include the cost of the special assessments in the price. The Taxpayer asserts that the value of the subject property is \$16,000. The Taxpayer notes that if the Board finds that the value of the subject property includes the cost of special assessments, then the value of the subject property is \$26,100.
9. Each parcel of non-agricultural real property in Kansas is appraised at its fair market value. See K.S.A. 79-501, and amendments thereto. The term "fair market value" is defined as that "amount in terms of money that a well informed buyer is justified in paying and a well informed seller is justified in accepting for property in an open and competitive market, assuming that the parties are acting without undue compulsion." See K.S.A. 79-503a, and amendments thereto.
10. Pursuant to K.S.A. 79-2005, and amendments thereto, the County Appraiser must support the validity and correctness of the value by a preponderance of evidence for residential property. Pursuant to Kan. Const. art. XI, § 1, the subject property is classified as vacant land. Therefore, the burden of demonstrating the validity and correctness of the value is on the Taxpayer.
11. The Board finds that the value of the subject property should not include the cost of the special assessments. The purchase price for the subject property in May 1997 did not include the unpaid special assessments. It is unlikely that any subsequent purchase price would include any unpaid special assessments.
12. Although the special assessment may add value to the subject property, it is not intrinsic to the market value of the subject property. A "well informed buyer" would not include the special assessments in the purchase offer. The

special assessments would be deferred as long as possible. If a purchaser were to pay off the special assessments now, any subsequent selling price would have to include the special assessments. It would be difficult to sell a property for \$29,400 (the County's value) when the neighboring lots are selling for approximately \$10,000. Therefore, the special assessments do not inherently affect the market value of the subject property.

13. An argument could be made that the unpaid mortgage on a personal residence should be added to the value for tax purposes if the Board were to adopt the County's analysis. For example, a person borrowing money to purchase a \$100,000 home will pay approximately \$275,000 for that home over a period of thirty years. The mortgage adds value to the residence in that it affords the purchaser enjoyment and use of the property now instead of waiting thirty years for that enjoyment and use. Without the mortgage, the purchaser could not acquire the residence. But the mortgage does not add to the market value of the residence if the purchaser attempted to sell the property at a later date. Furthermore, although the purchaser will pay approximately \$275,000 for the \$100,000 residence, the County more than likely has the property appraised for approximately \$100,000.
14. The Board finds that the Taxpayer has presented sufficient evidence to establish the value for 1998 at \$16,000. The Taxpayer purchased the subject property in May 1997 for \$14,500. Furthermore, numerous lots in the Holiday Resort subdivision have sold for less than \$14,500. The Board is not persuaded by the County's argument that the fair market value includes the special assessments.

IT IS THEREFORE ORDERED BY THE BOARD OF TAX APPEALS OF THE STATE OF KANSAS that, for the reasons stated above, the appraised value of the subject property for tax year 1998 is \$16,000.

Any party to this appeal who is aggrieved by this decision may file a written petition for reconsideration with this Board as provided in K.S.A. 77-529, and amendments thereto. The written petition for reconsideration shall set forth specifically and in adequate detail the particular and specific respects in which it is alleged that the Board's order is unlawful, unreasonable, capricious, improper or unfair. Any petition for reconsideration shall be mailed to: Secretary, Board of Tax Appeals, DSOB Suite 451, 915 SW Harrison St., Topeka, KS 66612-1505. A copy of the petition, together with all accompanying documents submitted, shall be mailed to all parties at the same time the petition is mailed to the Board. Failure to notify the opposing party shall render any subsequent order voidable. The written petition must be received by the Board within fifteen (15) days of the certification date of this order (allowing an additional three days

for mailing pursuant to statute if the Board serves the order by mail). If at 5:00 pm on the last day of the specified period the Board has not received a written petition for reconsideration, this order will become a final order from which no further appeal is available.

IT IS SO ORDERED

THE BOARD OF TAX APPEALS



David L. Patton
DAVID L. PATTON, CHAIRMAN

Robert G. Frey
ROBERT G. FREY, MEMBER

Wayne C. Vennard, Jr.
WAYNE C. VENNARD, JR., MEMBER

Tony R. Folsom
TONY R. FOLSOM, ACTING SECRETARY

Jill A. Jenkins
JILL A. JENKINS, MEMBER

Jason C. Neal
JASON C. NEAL, ATTORNEY

Susan M. Seltsam
SUSAN M. SELTSAM, MEMBER

BEFORE THE BOARD OF TAX APPEALS OF THE STATE OF KANSAS

IN THE MATTER OF THE PROTEST OF
BOAZ, KARL W. FOR TAXES PAID FOR
1998 IN SALINE COUNTY, KANSAS.

Docket No. 1999-2680-PR

ORDER GRANTING RECONSIDERATION

Now the above captioned matter comes on for consideration and decision by the Board of Tax Appeals of the State of Kansas.

The Board finds, upon review of the Motion for Reconsideration, that reconsideration should be granted. The parties will be allowed to present oral arguments on the issues addressed in the Motion for Reconsideration. The parties will be notified of the time and place of the oral arguments.

IT IS, THEREFORE, BY THE BOARD OF TAX APPEALS OF THE STATE OF KANSAS, CONSIDERED AND ORDERED that, the above captioned Motion for Reconsideration should be, and the same is hereby, granted. IT IS FURTHER ORDERED that the parties will be notified of the time and place of the oral arguments.

IT IS SO ORDERED

THE BOARD OF TAX APPEALS



David L. Patton

DAVID L. PATTON, CHAIRMAN

Robert G. Frey

ROBERT G. FREY, MEMBER

Wayne C. Vennard, Jr.

WAYNE C. VENNARD, JR., MEMBER

Jill A. Jenkins

JILL A. JENKINS, MEMBER

Tony R. Folsom

TONY R. FOLSOM, ACTING SECRETARY

Jason C. Neal

JASON C. NEAL, ATTORNEY

Susan M. Seltsam

SUSAN M. SELTSAM, MEMBER

Docket No. 1999-2680-PR
Saline County, Kansas
Page 2

CERTIFICATION

I, Tony R. Folsom, Acting Secretary of the Board of Tax Appeals of the State of Kansas, do hereby certify that a true and correct copy of the order in Docket No. 1999-2680-PR, and any attachments thereto, was placed in the United States Mail, on this 4th day of October, 1999, addressed to:

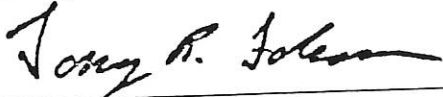
Karl W Boaz
2079 S 4th
Salina, KS 67401

Michael Montoya, Co Counselor
Saline County Attorney/Counselor
PO Box 1220
Salina, KS 67402

Rodney Broberg
Saline County Appraiser
300 W Ash St
P O Box 5040
Salina, KS 67402-5040

Keith Lilly
Saline County Treasurer
300 West Ash
Salina, KS 67401-2396

IN TESTIMONY WHEREOF, I have hereunto subscribed my name at Topeka, Kansas.



Tony R. Folsom, Acting Secretary

BEFORE THE BOARD OF TAX APPEALS OF THE STATE OF KANSAS

IN THE MATTER OF THE EQUALIZATION
APPEAL OF ST. ANDREWS CT., L.L.C.
FOR THE YEAR 2000 FROM JOHNSON
COUNTY, KANSAS

Docket No. 2000-8477-EQ

ORDER

Now the above-captioned matter comes on for consideration and decision by the Board of Tax Appeals of the State of Kansas.

This Board conducted a hearing in this matter on June 25, 2001. After considering all of the evidence presented, the Board finds and concludes as follows:

1. The Board has jurisdiction of the subject matter and the parties as an equalization appeal has been filed pursuant to K.S.A. 79-1609, and amendments thereto.
2. The subject matter of this tax equalization appeal is described as follows:

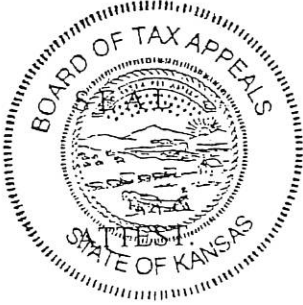
Vacant real estate in Johnson County, Kansas,
known as Parcel ID# 046-NF241326-2003.
3. The Taxpayer, St. Andrews Ct., L.L.C., appeared by Paul Goehausen. The County appeared by Bill Neal, Residential Valuation Specialist. Taxpayer Exhibit #1 and County Exhibit #1 are admitted.
4. The Taxpayer asserted that the County has overvalued the subject property for tax year 2000. The Taxpayer asserted that the subject property was purchased in 1999 for \$362,500. See Taxpayer Exhibit #1. Mr. Goehausen asserted that originally the price of the subject property was \$562,500. However, Mr. Goehausen asserted that a title search of the parcel revealed that there was a benefit district on the parcel for the expansion of Nieman Road. Due to the benefit district on the parcel, the Taxpayer paid \$362,500 for the subject parcel. The Taxpayer asserted that the appropriate value of the subject property is \$362,500.
5. The County valued the subject property using the cost approach or the replacement cost new, less any depreciation. The County asserted that the sales validation contract indicates the parcel was sold for \$562,500 in 1999.
6. The County does not recommend any further adjustment to the value of the subject property.

7. Each parcel of non-agricultural real property in Kansas is appraised at its fair market value. See K.S.A. 79-501, and amendments thereto. The term "fair market value" is defined as that "amount in terms of money that a well informed buyer is justified in paying and a well informed seller is justified in accepting for property in an open and competitive market, assuming that the parties are acting without undue compulsion." See K.S.A. 79-503a, and amendments thereto.
8. Pursuant to K.S.A. 79-1609, and amendments thereto, the County Appraiser must support the validity and correctness of the value by a preponderance of evidence for residential property or real property used for commercial and industrial purposes for taxation purposes. Pursuant to Kan. Const. art. XI, § 1, the subject property is classified as residential property. Therefore, the burden of demonstrating the validity and correctness of the value is on the County. The Board finds that the County has not presented sufficient evidence to support the County's value. The Board concludes that the Taxpayer's recommended value, as supported by the real estate sales contract, better reflects the fair market value of the subject property than the value recommended by the County.

IT IS THEREFORE ORDERED BY THE BOARD OF TAX APPEALS OF THE STATE OF KANSAS that, for the reasons stated above, the appraised value of the subject property for tax year 2000 is \$362,500. IT IS FURTHER ORDERED that the appropriate officials are directed to correct the County's records accordingly, re-compute the taxes owed by the Taxpayer and issue a refund for any overpayment.

Any party to this appeal who is aggrieved by this decision may file a written petition for reconsideration with this Board as provided in K.S.A. 77-529, and amendments thereto. The written petition for reconsideration shall set forth specifically and in adequate detail the particular and specific respects in which it is alleged that the Board's order is unlawful, unreasonable, capricious, improper or unfair. Any petition for reconsideration shall be mailed to: Secretary, Board of Tax Appeals, DSOB Suite 451, 915 SW Harrison St., Topeka, KS 66612-1505. A copy of the petition, together with all accompanying documents submitted, shall be mailed to all parties at the same time the petition is mailed to the Board. Failure to notify the opposing party shall render any subsequent order voidable. The written petition must be received by the Board within fifteen (15) days of the certification date of this order (allowing an additional three days for mailing pursuant to statute if the Board serves the order by mail). If at 5:00 pm on the last day of the specified period the Board has not received a written petition for reconsideration, this order will become a final order from which no further appeal is available.

IT IS SO ORDERED



THE BOARD OF TAX APPEALS

David L. Patton
DAVID L. PATTON, CHAIRMAN

Jill A. Jenkins
JILL A. JENKINS, MEMBER

Susan M. Seltsam
SUSAN M. SELTSAM, MEMBER

Dwight D. Keen
DWIGHT D. KEEN, MEMBER

Calvin T. Roberts
CALVIN T. ROBERTS, MEMBER

Tony R. Folsom
TONY R. FOLSOM, ACTING SECRETARY

Melissa Graf
MELISSA GRAF, ATTORNEY

3-25th

CERTIFICATION

I, Tony R. Folsom, Acting Secretary of the Board of Tax Appeals of the State of Kansas, do hereby certify that a true and correct copy of the order in Docket No. 2000-8477-EQ, and any attachments thereto, was placed in the United States Mail, on this 20th day of July, 2001, addressed to:

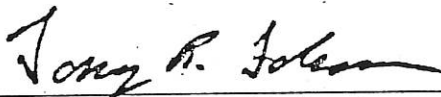
St. Andrews Ct., L.L.C.
Paul Goehausen
8435 Cherokee
Leawood, KS 66206

Kathryn D Myers, Asst County Counselor
Johnson County Counselor
Johnson County Admin Bldg
111 S Cherry Ste 3200
Olathe, KS 66061-3441

Paul A Welcome
Johnson County Appraiser
Johnson County Admin Bldg
111 S Cherry
Olathe, KS 66061-3486

William O'Brien
Johnson County Treasurer
Johnson County Admin Bldg
111 S Cherry
Olathe, KS 66061-3486

IN TESTIMONY WHEREOF, I have hereunto subscribed my name at Topeka, Kansas.



Tony R. Folsom, Acting Secretary

GARDNER'S

P.O. BOX 799, 932 N. WATER, WICHITA, KANSAS 67201-0799 (316) 264-9181 FAX (316) 264-2735

REAL ESTATE SERVICES

FAX COVER SHEET

TO: JANET STUBBS, KANSAS ASSOC. OF
HOMEBUILDERS, TOPEKA, KS
PHONE/FAX: 877-266-4540 / 785-267-2959

FROM: JIM GARDNER, II
(KANSAS CERTIFIED GENERAL REAL PROPERTY APPRAISER, G-505)
DATE: 8 FEB. 2001
PAGES: (including cover) 26

JANET: THIS TRANSMISSION INCLUDES THE FOLLOWING:

- A. KSA 79-503a, with update para. "k"
- B. Several pages definitions: Market Value, Present Value, Present Worth, Price. (note that nowhere do they instruct the addition of "outstanding liabilities" to the purchase price to determine "market value") sources noted on pages.
- C. An "Advisory Opinion" (AO-8) from USPAP (Uniform Standards of Professional Appraisal Practice, developed by "The Appraisal Foundation" authorized by the US Congress) addressing the difference between "Market Value" and "Fair Value". Note the FASB (Financial Accounting Standards Board) Standard No. 15, addresses the "fair value of assets", not liabilities. Outstanding debt for a public improvement is not an asset.
- D. A summary of the "Basic Principles of Real Estate Value". Note that "Anticipation" and "Contribution" may be positive or negative factors of influence and "Change". (this is more FYI, but good basics)
- E. USPAP Standards Rule 1-2,(e)(iv): (An appraiser must identify..) Note that "special assessments" are grouped under "characteristics of the property(e)(iv)" with "easements, restrictions, encumbrances, leases, reservations, covenants, contracts, special assessments, ordinances, or other items of similar nature... , ALL of which limit, restrict, bind, or diminish to some degree the "bundle of rights of use and enjoyment" of a property. This is a listing of negatively impactive factors, which diminish the fee. While the property may derive benefit from some of these items, they nevertheless are generally liabilities, subtracting from the whole.

Janet/2 ...

Special Assessments are the "costs" of public improvements, installed and financed by a governmental entity, levied against a benefit district, and the separate properties therein. The improvements are publicly owned, and while some benefit (not always a 'dollar value', ie, public safety or sanitation) may accrue to the property in 'desireability', the benefit is reflected in the sales price actually paid. The unpaid special assessments assumed by the buyer of a property in the Kansas marketplace are normally acknowledged by both the buyer and the mortgage lender, to be a monetary obligation or an encumbrance, a liability, not an asset. Under the definition of "market value" the sales price on the contract reflects the seller's and the buyer's consideration of the sum total of the respective property's assets and liabilities. NOBODY but a "county assessor" would add "future tax liabilities" to a sales price and claim it was the 'true' "market value". Only if the taxes/liability were "prepaid" could they be considered to be a positive contributory factor of value, and even then the contributory value (present worth), would be discounted.

Past studies comparing developments with "prepaid" public infrastructure to those with levied "outstanding"(yet to be paid) public infrastructure costs, have not demonstrated a clear market recognition of all of the "additional value" by virtue of pre-payment. That is to say, the buying public hesitates to pay the higher lot cost for the 'full additional prepaid infrastructure' compared to typical lower priced lots with outstanding specials. Significant discounting of the "perceived benefit" of "prepaid specials" by the buyer, has not only been apparent, but is readily demonstrated by the consistent developer preference for special assessment 'financing' at the lower municipal bond rate. If the supposed 'additional value' of prepaid infrastructure were recognized by the buying public, it would be more profitable for the developer, but that is not the case.

Other clear examples abound. Commercial property fronting a recently widened street with new (outstanding) special assessments for paving, curb, gutter, and storm drainage, invariably sells for less, than similar property locations without the unpaid special assessment liability. Attend the public hearings where the governing bodies consider the adoption and initiation of these capital improvement and infrastructure projects, or the appraiser's special assessment report hearings where the project costs are spread (levied) against the benefit district properties. My experience has been that nearly none of the 'beneficiary' property owners favor the levy against their property. They may want the improvement, but they don't want to pay for it, and they nearly all believe the assessed levy will adversely impact their respective property values. If these special assessments "add value" why do the owners protest? Why do their properties sell for less afterward? Maybe they can't rewrite their leases to

3-28

Janet/3...

cover the specials / increased taxes? Try taking your newly levied special assessments to the bank and explaining how with this windfall of additional value, a refinanced mortgage, increased to cover the unpaid specials levied, ought to be just the ticket for paying things off.

Please feel free to give me a call about any of this, and don't forget to ask the Saline Co. assessor for a copy of his study demonstrating the 'added value theory'. I'm sure there will be a lot of interested appraisal 'peer review' boards. You might also ask him for his curriculum vitae, or inquire where he might have taught or testified before. I suspect he's not overly well schooled in the appraisal field.

Sincerely,


JIM GARDNER, II

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS PRIVILEGED AND CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE TO DELIVER IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISCLOSURE, COPYING, DISTRIBUTION OR THE TAKING OF ANY ACTION IN RELIANCE ON THE CONTENTS OF THIS TELECOPIED INFORMATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY THE SENDER BY TELEPHONE TO ARRANGE FOR THE RETURN OF THE DOCUMENTS.

3-29

(A)

RULES FOR VALUING PROPERTY

79-503a

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29. Statute cited; provisions of 79-342 declared unconstitucional as violative of art. 11, sec. 1 of Kansas Constitution. State ex rel. Stephan v. Martin. 227 K. 456, 458, 508 P.2d 580.

30. Assessment and taxation of common areas in planned unit development not double taxation to individual lot owner; such areas not without fair market value. Quivira Falls Community Ass'n v. Johnson County, 230 K. 350, 354, 357, 634 P.2d 1115 (1981).

31. Considered in denying petition of attorney general for writ of quo warranto to prevent utilization of 79-331 and challenging constitutionality thereof. State ex rel. Stephan v. Martin. 230 K. 747, 754, 641 P.2d 1011 (1982).

32. Considered in holding 79-343, relating to assessment of farm machinery and equipment, unconstitutional and void; quo warranto granted. State ex rel. Stephan v. Martin, 230 K. 759, 757, 777, 641 P.2d 1020 (1982).

33. Cited in holding that valuation of land was arbitrary and discriminatory. Board of Johnson County Comm'r's v. Groenhaw, 241 K. 119, 124, 734 P.2d 1125 (1987).

34. Cited; allegations regarding illegal or void valuations or assessments of real property prohibited before exhausting administrative remedies examined. Board of Osage County Comm'r's v. Schmidt, 12 K.A.2d 312, 313, 758 P.2d 354 (1988).

79-502.

History: L. 1951, ch. 213, § 1; Repealed. L. 1959, ch. 368, § 1; March 27.

79-503.

History: L. 1963, ch. 460, § 4; L. 1965, ch. 515, § 1; L. 1969, ch. 433, § 10; Repealed. L. 1982, ch. 391, § 39; July 1.

CASE ANNOTATIONS

1. Purpose of act; fair and equitable value of property for taxation; justifiable value considered. Board of County Commissioners v. Brookover, 188 K. 70, 77, 422 P.2d 906.

2. Assessment and valuation of property are administrative in character; absent evidence that assessment was arrived at fraudulently, arbitrarily or capriciously, a difference of opinion as to value doesn't warrant judicial interference. Cities Service Oil Co. v. Murphy, 202 K. 282, 253, 290, 291, 292, 447 P.2d 791.

3. Assessment schedules failing to consider prescribed factors invalid. Garvey Grain, Inc. v. MacDonald, 203 K. 1, 2, 3, 8, 9, 11, 15, 16, 19, 23, 24, 25, 26, 28, 30, 453 P.2d 59.

4. In arriving at value under statute, board's 5% capitalization rate held not unreasonable or capricious. Panhandle Eastern Pipe Line Co. v. Dwyer, 207 K. 417, 420, 421, 422, 423, 424, 426, 427, 435 P.2d 149. Affirmed: 208 K. 304, 307, 491 P.2d 961.

5. Section applied to valuation and assessment of interstate gas pipeline and distribution property; factors applied. Northern Natural Gas Co. v. Dwyer, 208 K. 337, 338, 341, 355, 356, 358, 361, 365, 372, 373, 383, 384, 492 P.2d 147.

6. Assessment of ad valorem tax is administrative matter and board of tax appeals' order thereon is final, absent showing order is arbitrary, unreasonable or fraudulent. Northern Natural Gas Co. v. Dwyer, 208 K. 337, 341, 355, 356, 358, 361, 365, 492 P.2d 147.

7. Purpose, standards and factors prescribed in section considered and applied; radio study does not reflect value for ad valorem tax purposes. Northern Natural Gas Co.

v. Williams, 209 K. 407, 408, 414, 415, 417, 418, 423, 432, 493 P.2d 563.

8. Valuation of property considered in action involving directives issued for equalization of assessed value under K.S.A. 79-1446 (dissenting opinion). State ex rel. v. Dwyer, 208 K. 437, 432, 454, 456, 457, 493 P.2d 1095.

9. Referred to and applied in upholding valuation and assessment of utility by board of tax appeals under 79-5a04. Mobil Pipeline Co. v. Rohmiller, 214 K. 903, 906, 907, 908, 914, 921, 925, 926, 927, 522 P.2d 923.

10. Applied in upholding valuation and assessment of shopping center property. Kellogg Mall Associates v. Board of Sedgwick County Comm'r's, 227 K. 231, 233, 234, 235, 237, 238, 607 P.2d 1030.

11. Statute cited; provisions of 79-342 declared unconstitutional as violative of art. 11, sec. 1 of Kansas Constitution. State ex rel. Stephan v. Martin, 227 K. 456, 459, 462, 463, 465, 466, 467, 608 P.2d 380.

12. Assessment and taxation of common areas in planned unit development not double taxation to individual lot owner; such areas not without fair market value. Quivira Falls Community Ass'n v. Johnson County, 230 K. 350, 354, 356, 357, 634 P.2d 1115 (1981).

13. Considered in denying petition of attorney general for writ of quo warranto to prevent utilization of 79-331 and challenging constitutionality thereof. State ex rel. Stephan v. Martin, 230 K. 747, 754, 755, 756, 641 P.2d 1011 (1982).

14. Considered in holding 79-343, relating to assessment of farm machinery and equipment, unconstitutional and void; quo warranto granted. State ex rel. Stephan v. Martin, 230 K. 759, 757, 758, 759, 771, 773, 774, 778, 641 P.2d 1020 (1982).

79-503a.

Fair market value defined; allowable variance; factors to be considered in determining fair market value; generally accepted appraisal procedures to be utilized. "Fair market value" means the amount in terms of money that a well informed buyer is justified in paying and a well informed seller is justified in accepting for property in an open and competitive market, assuming that the parties are acting without undue compulsion. For the purposes of this definition it will be assumed that consummation of a sale occurs as of January 1.

A variance of 10% in any individual appraisal at fair market value shall not be considered willful neglect of the county appraiser's duty to achieve fair market value. The foregoing provision shall not be construed to mean that a series of such variances does not constitute willful neglect.

Sales in and of themselves shall not be the sole criteria of fair market value but shall be used in connection with cost, income and other factors including but not by way of exclusion:

- (a) The proper classification of lands and improvements;
- (b) the size thereof;
- (c) the effect of location on value;

B-30

(A)

79-5a01

TAXATION

(d) depreciation, including physical deterioration or functional, economic or social obsolescence;

(e) cost of reproduction of improvements;

(f) productivity;

(g) earning capacity as indicated by lease price or by capitalization of net income;

(h) rental or reasonable rental values;

(i) sale value on open market with due allowance to abnormal inflationary factors influencing such values; and

(j) comparison with values of other property of known or recognized value. The assessment-sales ratio study shall not be used as an appraisal for appraisal purposes.

The appraisal process utilized in the valuation of all real and tangible personal property for ad valorem tax purposes shall conform to generally accepted appraisal procedures which are adaptable to mass appraisal and consistent with the definition of fair market value unless otherwise specified by law.

History: L. 1982, ch. 391, § 2; July 1.

Law Review and Bar Journal References:

"The Kansas Property Tax: Understanding and Surviving Reappraisal." P. John Brady, Brian T. Howes, and Greg L. Musil, 57 J.K.B.A. No. 3, 23, 27 (1988).

"Reappraisal—How Long Will It Last?" Bruce Landeck, 58 J.K.B.A. No. 1, 15, 18 (1989).

Attorney General's Opinions:

Factors for determining fair market value of property. 80-82.

Public utilities valuation of real and personal property. 80-83.

Powers and duties of county appraisers; removal from office. 82-270.

CASE ANNOTATIONS

1. Section considered in determining validity of assessment of real property for uniformity and equality. Board of County Comm'rs v. Greenhaw, 241 K. 119, 126, 734 P.2d 1125 (1987).

2. Cited; allegations regarding illegal or void valuations or assessments of real property prohibited before exhausting administrative remedies examined. Board of Osage County Comm'rs v. Schmidt, 12 K.A.2d 812, 813, 758 P.2d 254 (1988).

Article 5a.—PUBLIC UTILITIES

Revisor's Note:

Former laws. K.S.A. 79-601 et seq., 79-701 et seq.

Cross References to Related Sections:

Publication of annual report of state assessed property. see 74-2441a, 74-2441b.

Valuation of property by corporation commission, see 66-128 et seq.

79-5a01. Public utility or public utilities; defined. (a) As used in this act, the terms "public utility" or "public utilities" shall mean every individual, company, corporation, association

of persons, lessees or receivers that now or hereafter are in control, manage or operate a business of:

(1) A railroad or railroad corporation if such railroad or railroad corporation owns or holds, by deed or other instrument, an interest in right-of-way, track, franchise, roadbed or track-age in this state;

(2) transmitting to, from, through or in this state telegraphic messages;

(3) transmitting to, from, through or in this state telephonic messages;

(4) transporting or distributing to, from, through or in this state natural gas, oil or other commodities in pipes or pipelines, or engaging primarily in the business of storing natural gas in an underground formation;

(5) generating, conducting or distributing to, from, through or in this state electric power;

(6) transmitting to, from, through or in this state water if for profit or subject to regulation of the state corporation commission;

(7) transporting to, from, through or in this state cargo or passengers by means of any vessel or boat used in navigating any of the navigable watercourses within or bordering upon this state.

(b) The terms "public utility" or "public utilities" shall not include: (1) Rural water districts established under the laws of the state of Kansas; or (2) any individual, company, corporation, association of persons, lessee or receiver owning or operating an oil or natural gas production gathering line which is situated within one county in this state and does not cross any state boundary line; or (3) any individual, company, corporation, association of persons, lessee or receiver owning any vessel or boat operated upon the surface of any man-made waterway located entirely within one county in the state.

History: L. 1969, ch. 434, § 1; L. 1971, ch. 294, § 1; L. 1981, ch. 375, § 1; L. 1982, ch. 395, § 1; L. 1983, ch. 314, § 1; L. 1986, ch. 371, § 1; April 24.

Revisor's Note:

Section was amended twice in 1981 session. see 79-5a01a.

Cross References to Related Sections:

Application of section, see 79-5a12 and 79-5a13.

Law Review and Bar Journal References:

"Railroad Right of Way: The Real Property Interest in Kansas." Tim Pittman, 25 W.L.J. 327, 345 (1986).

Attorney General's Opinions:

Exempt property. Machinery and equipment of electric utility company. 88-158.

(A)

Kansas statutes identify the effective of real property appraisals to be January 1. KSA 79-501.

(d) define the value being considered; if the value to be estimated is market value, the appraiser must clearly indicate whether the estimate is the most probable price:

- (i) in terms of cash; or
- (ii) in terms of financial arrangements equivalent to cash; or
- (iii) in such other terms as may be precisely defined; if an estimate of value is based on below-market financing or financing with unusual conditions or incentives, the terms of such financing must be clearly set forth, their contributions to or negative influence on value must be described and estimated, and the market data supporting the valuation estimate must be described and explained;

Kansas statutes define the value to be estimated by this office reference KSA 79-503a as follows:

"Fair market value" means the amount in terms of money that a well informed buyer is justified in paying and a well informed seller is justified in accepting for property in an open and competitive market, assuming that the parties are acting without undue compulsion. For the purposes of this definition it will be assumed that consummation of a sale occurs as of January 1.

A variance of 10% in any individual appraisal at fair market value shall not be considered willful neglect of the county appraiser's duty to achieve fair market value. The foregoing provisions shall not be construed to mean that a series of such variances does not constitute willful neglect. Sales in and of themselves shall not be the sole criteria of fair market value but shall be used in connection with cost, income and other factors including but not by way of exclusion:

- (a) The proper classification of lands and improvements;*
 - (b) the size thereof;*
 - (c) the effect of location on value;*
 - (d) depreciation, including physical deterioration or functional, economic or social obsolescence;*
 - (e) cost of reproduction of improvements;*
 - (f) productivity;*
 - (g) earning capacity as indicated by lease price or by capitalization of net income or by absorption or sell-out period;*
 - (h) rental or reasonable rental values;*
 - (i) sale value on open market with due allowance to abnormal inflationary factors influencing such values;*
 - (j) restrictions imposed upon the use of real estate by local governing bodies, including zoning and planning boards or commissions; and*
 - (k) comparison with values of other property of known or recognized value.*
- The assessment-sales ratio study shall not be used as an appraisal for appraisal purposes.*

3-32

Possessory Interest--cont.

distinguish the interest of a lessee in government owned property from the interest of a lessee in privately owned land.

POSSIBLE CAPACITY--The maximum number of vehicles that can pass a given point on a lane or roadway during one hour under prevailing roadway and traffic conditions.

POSTS AND TIMBERS--Lumber of square or approximately square cross section, 5 x 5 inches and larger, graded primarily for use as posts or columns carrying longitudinal load but adapted for miscellaneous uses in which strength in bending is not especially important.

POSTSTRESSED CONCRETE--A method of giving concrete tensile strength after the concrete has hardened by putting reinforcing cables in metal sheaths which are placed in the wet concrete; the cables are stressed after the concrete sets and the sheathing filled with grout. After the grout sets, the cables are released and the stress is transmitted to the concrete.

POTENTIAL VALUE--The value which is expected to develop if and when stated probabilities become actualities.

POWER PLANT--A plant, including engines, dynamos, etc., with the building or buildings, for the generation of power derived either from coal, gas, or water. The power so created may be for an industry's own operations or for commercial distribution to other users. See also, Hydroelectric Plant, Water Power Plant.

PRACTICAL CAPACITY--The maximum number of vehicles that can pass a given point on a roadway or lane during one hour without the traffic density being so great as to cause unreasonable delays, hazards, or driving restrictions under prevailing roadway and traffic conditions.

PRAIRIE SOILS --See, Types of Soil, page 263.

PREFABRICATION--The manufacturing and assembling of construction materials and parts into component structural units, such as wall, floor, and roof panels, which are later erected at the construction site.

PRESCRIPTION--Title obtained in law by long possession. Occupancy for the period prescribed by the Code of Civil Procedure as sufficient to bar an action for the recovery of the property gives title by prescription.

Principal

PRESENT VALUE--The current monetary value. Sometimes it is used synonymously, and inadvisedly, with the term present worth. It is the today's cash lump sum which represents the current value of the right to collect future payments. It is the discounted value of aggregate future payments.

PRESENT WORTH OF FUTURE COLLECTIONS--The present value of money to be collected at a specified future time when discounted from that time to the present date and this is done at a specified rate of interest.

PRESTRESSED CONCRETE--A method of giving concrete tensile strength by stressing the reinforcements in the concrete before it sets and releasing the reinforcements after the concrete has hardened.

PRICE--The quantity of one thing which is exchanged for another; the amount of money paid, asked, or offered where sale is contemplated; the money consideration which is expected or given in exchange for commodities or services. Price is sometimes value expressed in terms of money. In real estate valuation a distinction is made between price and value because price may be justified or not, while value is properly a justified price.

PRICE LEVEL--The average of prices, usually at wholesale, of a selected list of representative commodities at a stated time, usually expressed as an index number. Comparison of the average of one year with that of any other year shows the change in the price level.

PRICE SUPPORTS--Various governmental programs designed to maintain market prices from falling below a certain minimum level, such as those for agriculture which are supported either by outright subsidies or purchases at higher than market prices, etc.

PRIMARY SOIL.--See, Types of Soil, page 263.

PRIME COST--The cost of direct labor and materials in any project. Synonym: net field costs.

PRIME FEE--A leased fee, the rent payable for which is exceptionally well secured by enhancement in the value of the land since the lease was made and/or by the value of improvements erected by the lessee.

PRINCIPAL--A sum loaned or employed as a fund or investment, as distinguished from its income or profits. The original amount (as

FROM "APPRAISAL TERMINOLOGY A HANDBOOK"
5TH EDITION AMERICAN INSTITUTE OF REAL ESTATE APPRAISERS

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(B)



Definition of Market Value [OTS/USPAP]*

The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: (1) Buyer and seller are typically motivated; (2) Both parties are well informed or well advised, and acting in what they consider their own best interests; (3) A reasonable time is allowed for exposure in the open market; (4) Payment is made in terms of cash in U.S. Dollars or in terms of financial arrangements comparable thereto; and (5) The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

*[Office of Thrift Supervision, under Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), 12 U.S.C. 1828(m), 564.2 Definitions, and the Uniform Standards of Professional Appraisal Practice ("USPAP"), Definitions, page I-7, Copyright 1992, The Appraisal Standards Board of The Appraisal Foundation, Washington, DC]



Definition of Market Value [PIK 11.05]

[PIK 11.05 / Pattern Instructions for Kansas 2d]

Market Value is that amount which would be paid under normal circumstances on the free and open market, in the usual course of dealings, by a willing buyer not forced to buy and which amount would be acceptable to a willing seller not forced to sell.

"Market Value" is synonymous with the legal term "Fair Market Value", and with Pattern Instructions for Kansas, PIK 11.05, "Market Value".

Definition of Most Advantageous Use [PIK 11.11]

[PIK 11.11 / Pattern Instructions for Kansas 2d]

In arriving at the market value of the subject land and interest taken, you should consider all the possible uses to which the land could have been put, including the best and most advantageous use to which the property was reasonably adaptable, but your considerations must not be speculative, conjectural, or remote. The uses which may be considered must have been so reasonably probable as to have had an effect on the market value of the land at the time of the taking.

Definition of Highest and Best Use

The highest and best use is defined as, "The most profitable likely use to which a property can be put. The opinion as such use may be based on the highest and most profitable continuous use to which it is adapted or needed, or likely to be in demand in the reasonably near future." It is also defined as, "That legal use which will yield to land the highest present value, sometimes called optimum use."

[Appraisal Terminology and Handbook, American Institute of Real Estate Appraisers, Fifth Edition, Craftsman Press, page 99-100]

3-34



131.05

PATTERN INSTRUCTIONS KANSAS 3d

131.05 MARKET VALUE—DEFINITION

To arrive at an award in this proceeding, you need to know the meaning of "market value."

Market value is the amount that would be paid under normal circumstances on the free and open market, in the usual course of dealings, by a willing buyer not forced to buy and that would be acceptable to a willing seller not forced to sell.

In determining market value, you should consider all of the possible uses to which the property could have been put, including the best and most advantageous use to which the property was reasonably adaptable, but your considerations must not be speculative, conjectural, or remote. The uses which may be considered must have been so reasonably probable as to have had an effect on the market value of the property at the time of the taking.

Notes on Use

K.S.A. 26-513 calls for "just compensation" and provides that the measure of compensation is the "value" of the property.

Comment

PIK 2d 11.05, 11.03 and 11.11 were approved in *Skelly Oil Co. v. Urban Renewal Agency*, 211 Kan. 804, 508 P.2d 954 (1973).

3

LEASE

A legal agreement that grants to another the right to use, occupy, or control all or part of a property for a stated period of time at a stated rental.

LEASED FEE ESTATE

Landlord's (lessor's) interest in fee estate, bound by a stated term and other conditions of a lease or leases conveying rights, usually use and occupancy, to one or more tenants (lessees).

LEASEHOLD ESTATE

Tenant's (lessee's) property rights, usually use and occupancy, conveyed by a lease establishing a stated term and other conditions.

LINEAR MODEL

A linear model is one in which marginal contribution to the value of an independent variable is constant over the entire range of the variable. For example, for the variable square feet of living area, the linear model requires each square foot of living area to add equally to value.

MARKET RENT

The rental income that a property would most probably command in an open market; formerly called economic rent.¹³

→ MARKET VALUE

Market value is the major focus of most real property appraisal assignments. Both economic and legal definitions of market value have been developed and refined. A current economic definition agreed upon by agencies that regulate federal financial institutions in the United States of America is:

→ The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. buyer and seller are typically motivated;
2. both parties are well informed or well advised, and acting in what they consider their best interests;
3. a reasonable time is allowed for exposure in the open market;
4. payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto; and
5. the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

Substitution of another currency for United States dollars in the fourth condition is appropriate in other countries or in reports addressed to clients from other countries.

Persons performing appraisal services that may be subject to litigation are cautioned to seek the exact legal definition of market value in the jurisdiction in which the services are being performed.

MINORITY INTEREST

An ownership of less than 50 percent interest in an enterprise or property.

¹³ Ibid., page 221.

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1 ADVISORY OPINION 8 (AO-8)

2
3 *This communication by the Appraisal Standards Board (ASB) does not establish new standards or interpret existing*
4 *standards. Advisory Opinions are issued to illustrate the applicability of appraisal standards in specific situations and*
5 *to offer advice from the ASB for the resolution of appraisal issues and problems. They do not constitute a legal opinion*
6 *of the ASB.*

7
8 SUBJECT: Market Value vs. Fair Value in Real Property Appraisals

9
10 NOTE: The guidance in this Advisory Opinion also applies in personal property appraisals, when applicable.

11
12 THE ISSUE:

13
14 Most real property appraisal assignments require a market value opinion. Some regulatory agency rules require
15 opinions of fair value for troubled real estate loans and real estate owned by a financial institution. Does fair value
16 differ from market value?

17
18 ADVICE FROM THE ASB ON THE ISSUE:

19
20 Fair value is an accounting term and market value is an appraisal term. The accounting literature is clear on this
21 distinction. The term "fair value" appears in four statements by the Financial Accounting Standards Board (FASB):
22 No. 13, No. 15, No. 67, and No. 121. These references are summarized below and on the next page.

23
24 FASB Statement of Financial Accounting Standards No. 13 [Accounting for Leases, Effective
25 January 1, 1977]. The fair value of the leased property is the price for which the property could be
26 sold in an arm's length transaction between unrelated parties.

27
28 → FASB Statement of Financial Accounting Standards No. 15 [Accounting by Debtors and Creditors
29 for Troubled Debt Restructuring, Effective December 31, 1977]. The fair value of the assets
30 transferred is the amount that the debtor could reasonably expect to receive for them in a current
31 sale between a willing buyer and a willing seller, that is, other than in a forced or liquidation sale.
32 Fair value of assets shall be measured by their market value if an active market for them exists. If
33 no active market exists for the assets transferred but exists for similar assets, the selling prices in
34 that market may be helpful in estimating the fair value of the assets transferred. If no market price
35 is available, a forecast of expected cash flows may aid in estimating the fair value of assets
36 transferred, provided the expected cash flows are discounted at a rate commensurate with the risk
37 involved.

38
39 FASB Statement of Financial Accounting Standards No. 67 [Accounting for Costs and Initial Rental
40 Operations of Real Estate Projects, Effective December 31, 1982]. The amount in cash or cash
41 equivalent value of other consideration that a real estate parcel would yield in a current sale between
42 a willing buyer and a willing seller (i.e., selling price), that is, other than in a forced or liquidation
43 sale. The fair value of a parcel is affected by its physical characteristics, its probable ultimate use,
44 and the time required for the buyer to make such use of the property considering access,
45 development plans, zoning restrictions, and market absorption factors.

46
47 The American Institute of Certified Public Accountants states in its *Guide for the Use of Real Estate Appraisal*
48 *Information* (1987 and 1990):

49
50 Fair value is defined in several authoritative accounting pronouncements: FASB Statement
51 No. 13...; ...No. 15...; No. 67...; and ...No. 121. Although the definitions are phrased to fit the
52 circumstances to which the pronouncements refer, fair value is generally defined as the amount that
53 can be reasonably expected to be received in a current sale between a willing buyer and a willing
54 seller, other than in a forced or liquidation sale.

55
56 Rarely will market value and fair value be exactly the same because market value assumes the
57 property has been previously exposed for sale and the closing takes place on the valuation date.

(c)

while fair value assumes that the property has not yet been exposed to sale and the sale will occur in the future.

The auditor can generally relate the definition of fair value in the accounting literature to the appraiser's definition of market value.

It is clear from the accounting literature that the accountant looks to the appraisal concept of market value in establishing fair value. An example of a market value definition from the Glossary of USPAP is as follows:

The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. buyer and seller are typically motivated;
2. both parties are well informed or well advised and acting in what they consider their best interests;
3. a reasonable time is allowed for exposure in the open market;
4. payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto; and
5. the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

Informed appraisers and accountants should understand the relationship between the accounting term "fair value" and the appraisal term "market value" and be in a position to clarify the use of these terms for their common clients.

This Advisory Opinion is based on presumed conditions without investigation or verification of actual circumstances. There is no assurance that this Advisory Opinion represents the only possible solution to the problems discussed or that it applies equally to seemingly similar situations.

Approved September 16, 1993
Revised September 16, 1998
Revised September 15, 1999

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SUMMARY OF VALUE INFLUENCES - BASIC PRINCIPLES OF R.E. VALUE.

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of Rural valuation

Anticipation

Anticipation means that value created by the expectation of benefits to be derived in the future. In the market, the current value of a property is not based on historical prices or the cost of creation; it is based on what market participants perceive to be the future benefits of acquisition.

For income-producing real estate, value is based on anticipated future income flows produced by the property. Hence, real estate appraisers must be knowledgeable about real estate trends at local, regional, and national levels that affect buyer or seller perceptions of the future. Historical data concerning the property or the market are relevant only insofar as they help the appraiser to interpret current market anticipations.

Examination of a property's income experience may reveal factors, favorable or unfavorable, that have enabled this property to produce a certain net income. The assembled data are then analyzed, and appropriate factors are weighed in order to form an opinion concerning whether, under typical management and business conditions, the net income stream may be expected to continue unchanged, to decline, or to increase.

For farm and ranch properties, anticipation is tied to productivity, which determines the income stream that is derived from the operation. This differs from the application of anticipation in the case of an investor who holds land in expectation of increased value from a change in use.

Change

Change is the law of cause and effect at work. It is inevitable and constantly occurring, although the process may be almost indiscernible due to its often gradual evolution. The real estate market reflects change because external forces continuously cause fluctuation. Social, economic, government, and environmental forces, which affect real estate, are in constant transition. Appraisers, therefore, attempt to identify trends and to anticipate future market circumstances that can affect current property values. Because change is continuous, value estimates are valid only for the point in time specified in the appraisal assignment.

A rural appraiser looks for changes in land use and changes in farming practices and technology that can make land more productive—for example, new cropping patterns and better farm machinery. The rural appraiser must recognize and weigh such evidences of change to ascertain their effect on the value of a property. The more trends that can be identified and interpreted, the more effectively the impact of change on the market value of a property can be estimated.

Appraisal Principles

Appraisal principles, which are founded in general economics but applied within an individual context relating to the unique physical and legal characteristics of a particular parcel of real property, are (1) supply and demand, (2) substitution, (3) balance, and (4) externalities. The result of the proper accord of these principles is highest and best use, a concept of great significance to real property appraisal.

CAN ALSO BE NEGATIVE - A LIABILITY

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tes whether the is of estimating properly defined parcel or parcels assignments are of preservation e nature, qual- aspects of, real of evaluation as- idies, economic ibility or invest-

nicates to the ertinent market tivity and evi- lue conclusion. sion is derived of professional

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FACTORS MAY BE EITHER POSITIVE (ASSET) OR NEGATIVE (LIABILITY)

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Rural Valuation

soil, but in the absence of marketing facilities, the value of a nonconforming farm would not be so high as the value of a tobacco farm.

A property's internal conformity occurs when the four agents in production—labor, capital, coordination, and land—are appropriately combined in the property. For most real properties, the critical combination is land and capital—that is, money expended for man-made improvements. In urban properties, capital generally refers to the building improvement; in agricultural properties, capital generally refers to the addition of production-related site improvements and equipment necessary to realize the maximum return from the land. The point of economic balance is achieved at the optimal combination of land and capital—that is, at the point at which no marginal benefit (utility) is achieved by adding another unit of capital.

Larger amounts of the agents in production produce greater net income up to a certain point (the law of increasing returns). At this point the maximum value is developed (the point of decreasing returns). Any additional expenditures do not produce a return commensurate with the additional investment (the law of decreasing returns). The fertilization of farmland provides a simple example of internal conformity. Applying fertilizer increases the crop yield of the land only up to a point. The optimum amount of fertilization is achieved when the value of the land's crops does not increase with any additional expenditures for fertilizer. This is the point of balance. In fact, at some point, adding more fertilizer may decrease the land's crop yield.

Contribution. When appraisers apply the principle of balance to component property parts, they study the concept of contribution. Contribution states that the value of a particular component is measured in terms of its contribution to the value of the whole property, or by how much that part's absence detracts from the value of the whole. Accordingly, cost does not necessarily equal value. The construction of an expensive residence on a farm or ranch does not necessarily cause the property value to increase in direct proportion to the improvement's cost. The installation of an irrigation system or the development of a specialty crop or orchard might never find a value in the market equal to the cost of development.

Instead, the contribution to value is measured in terms of the market perception of the increase in the property's benefits or utility—a figure that might be lower or higher than the cost of the individual component. In some cases, nothing may be added to the market value of the property as a whole. The value of any part of an enterprise must be economically justified by its influence on productivity and utility. For example, the capital outlay for an irrigation system would be justified only if increased productivity would result in increased property value that exceeds the expenditure.

Surplus productivity. *Surplus productivity is the net income that remains after the proper costs of labor, capital, and coordination have been paid.* The surplus is attributable to land rent and tends to fix land value.

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Market Value

In rural property appraisal, the greatest emphasis is placed on *market value*, or value in exchange. The rural appraiser thus is most concerned with the forces that create value in the market.

Value in exchange is the amount of goods and services that an informed purchaser would offer in exchange for an economic good under given market conditions. Value in exchange is relative, since there must be a comparison with other economic goods from which the potential purchaser can make a choice. This kind of value reflects the actions of buyers, sellers, and investors in the market and is synonymous with market value. There are no differences in the application of value in exchange to urban properties or rural properties.

Many specific definitions of market value have been promulgated by economists, lawmakers, the courts, and leading appraisal scholars. The most often-quoted definitions stem from court decisions involving eminent domain and property tax cases². Such government acquisitions are cash transactions. In other situations, market value usually includes mortgage financing. Since appraisals often become evidence in litigation, the definitions of market value used must be consistent and acceptable to the court. Although the exact wording may differ, all legal-based definitions of market value are predicated on a "willing buyer, willing seller" concept.

A current definition of market value is

The most probable price in cash, terms equivalent to cash, or in other precisely revealed terms, for which the appraised property will sell in a competitive market under all conditions requisite to fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress.

Fundamental assumptions and conditions presumed in this definition are:

1. Buyer and seller are motivated by self-interest.
2. Buyer and seller are well informed and are acting prudently.
3. The property is exposed for a reasonable time on the open market.
4. Payment is made in cash, its equivalent, or in specified financing terms.
5. Specified financing, if any, may be the financing actually in place or on terms generally available for the property type in its locale on the effective appraisal date.

²Most definitions of market value are based on a decision by the California Supreme Court in an eminent domain case (*Sacramento Railroad Company v. Heilbron*, 156 Calif. 408, 1909). That definition reads: "The highest price in terms of money which a property will bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently, knowledgeably, and assuming the price is not affected by undue stimulus" [emphasis added].

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- 6. The effect, if any, on the amount of market value of atypical financing, services, or fees shall be clearly and precisely revealed in the appraisal report.

The assumptions contained in this definition are based on somewhat idealized conditions which do not always exist in reality. The definition relies on the requisite factors of utility, scarcity, desire, and effective purchasing power, and further expresses value as a result that should prevail if the parties to the transaction are relatively free and if there are no undue influences, motivations, or terms atypical of the market. The definition is sufficiently broad to encompass most properties under most appraisal situations.

Because of varied decisions in different legal jurisdictions, there is no "universal" definition of market value. Each definition carries its own parameters and presumptions. Obviously, different definitions of market value can result in different value estimates. Appraisers should be familiar with the specific definition established in the jurisdiction in which appraisal services are being performed and be careful to state the definition they use in an appraisal.

Market value, or value in exchange, is the purpose of most valuations. A market value estimate reflects the appraiser's interpretation of the actions of buyers and sellers in the market. Market value reflects prevailing market opinions, not individual perspectives.

→ **Distinctions among Market Value, Price, and Cost**

Appraisers make important distinctions among the terms market value, price, and cost. By traditional definition, market value and price are equal only under conditions of a perfect market. *Market value, as applied to real estate, represents an expected price that should result under specific market conditions.* Price, commonly referred to as a sale or transaction price, is an accomplished fact. *A price represents what a particular purchaser agreed to pay and a particular seller agreed to accept under the particular circumstances surrounding their transaction.*

Presumptions requisite for market value—rational behavior by buyer and seller and no undue duress or pressure—are not implicit in any actual sale price. Neither is there a presumption that the transaction was "typical" in the market. Without making an appraisal, an appraiser does not know whether a price actually paid or received equaled the property's market value. While actual prices can provide strong evidence of market value, the appraiser must analyze specific transaction prices carefully before reaching a market value conclusion.

Cost, as used in appraisal procedures, applies to production, not exchange, and is not synonymous with either value or price. *Cost is the total dollar expenditure for labor, materials, legal services, architectural design, financing, taxes during construction, interest, contractor's overhead and profit, and entrepreneurial overhead and profit.* Cost is either a retrospective fact or a current estimate. It may or may not have a direct relation-

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ship to the utility (present or future) of the property created. Consider, for example, the value of an irrigated property in an area where the water source has been depleted.

Use Value

The concepts of use value and market value are not synonymous. Use value is the value a specific property has to a specific owner for a specific use. It is a value concept based on the productivity of an economic good to its owner-user. The concept of use value centers on the contributory value of the property's use to the person or enterprise using it, or to someone who might use it without regard to highest and best use or to the value contribution the property might produce for another user or what might be financially realized upon its sale. It may vary even for a single user, depending on that user's management of the property and such external conditions as changes in the user's business.

In urban real estate, the use value is tied to the structure and the user's management of the property. As applied to rural properties, use value has a different connotation. Because rural land used for agricultural production is almost entirely dependent on the land's innate capability to produce agricultural commodities, use value is tied to what can be grown on the property. The use value of an agricultural property, perhaps better described as farm-use value, is an amount that can be justified solely by the income the property generates. Unlike a market value estimate, a farm-use value estimate includes no allowance for amenities or land value appreciation. There is a limit to the income an agricultural property can generate even under the best possible management. The land, rather than the buildings or the current farm operator, thus receives the primary consideration in use-value appraisals of agricultural properties.

Farm-use value is sought primarily for two reasons: (1) ad valorem taxation, and (2) estate planning. In each instance, if the use value of the property is lower than its market value, taxes will be lower. In the latter case, the heirs to the property will not be forced to sell it to pay the estate taxes that would accrue to it if the land were valued at a going market rate.

Farm-use value is prevalent in districts where legislation for preserving land for agricultural use is in effect. Laws for the preservation of agricultural land and the practices of acquiring separate development rights have mandated farm-use-value appraisals for land currently used for agricultural production.

Some states, such as Colorado, where land is being bought by investors for recreational development, have passed laws specifying that agricultural properties must be assessed on the basis of use value. Likewise, New Mexico has enacted legislation stating that grazing land must be valued according to carrying capacity. This implies use value.

Types of legislation aimed at preserving land in agricultural use are discussed in Chapter 22. For the purposes of this chapter, it is sufficient for the reader to understand that there are significant differences between the

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Valuation

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results of use-value appraisals of rural properties and those of urban prop-
erties and that use-value appraisals are performed only in specified cases.

Summary

Land is basic. It supports physical structures and is the major source of
mineral, animal, and vegetable substances that sustain life. The productivity
of agricultural land is measured primarily in terms of its capacity to produce
food, fiber, livestock, timber, minerals, and other commodities. The physical
land and appurtenances, including affixed structures, are termed *real estate*.
Real property is a more inclusive term, covering the interests, benefits, and
rights inherent in ownership of the physical real estate. In contrast to real
estate, *personal property* is generally movable—items not permanently af-
fixed to, and part of, the real estate.

The basic theory of real property ownership is the bundle of rights
concept, comparing ownership to a bundle of sticks, with each stick repre-
senting a distinct and separate right and privilege of ownership. These rights
include the right to use, sell, lease, or give away property, and the right not
to exercise any of these rights. The owner's rights are limited by powers of
government: taxation, eminent domain, police power, and escheat.

An appraisal is an unbiased estimate of the nature, quality, value, or
utility of an interest in, or aspect of, identified real estate. The appraisal
problem indicates whether the appraisal is valuation or evaluation. Valua-
tion is the process of estimating market value, investment value, insurable
value, or other properly defined value, of an identified interest or interests
in a specific parcel or parcels of real estate as of a given date. Evaluation is
a study of the nature, quality, or utility of a parcel of real estate or interests
in, or aspect of, real property without reference to a value estimate.

Appraisers study all influences at work in markets for real property.
In a specific assignment, an appraiser successively narrows the study of a
property by ascertaining the ways in which influences external to the prop-
erty operate to affect its value. The appraiser studies the realities of antici-
pation and change that characterize human actions and value judgments in
terms of the appraisal principles—supply and demand, substitution, balance,
and externalities—that help explain shifts in value. The result of the proper
accord of these principles is highest and best use. Highest and best use is
determined for (1) the land, or site, as though vacant and available to be
put to its highest and best use; and (2) the property as improved.

Value influences are studied specifically through analysis of the four
forces—social, economic, government, and environmental. The value of
specific properties is analyzed in terms of the four factors—utility, scarcity,
desire, and effective purchasing power—that are essential for the creation
of value. Such systematic analysis forms the basis of all appraisal inquiries.

Market value, or value in exchange, is the purpose of most rural ap-

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praisal assignments. A market value estimate reflects the appraiser's interpretation of the actions of buyers and sellers in the market and the conditions that prevail as of the date of the appraisal.

In estimating market value, appraisers understand important distinctions among the terms *market value*, *price*, and *cost*. Market value represents an expected price that should result under specific market conditions. Price represents what a particular purchaser agreed to pay and a particular seller agreed to accept under the circumstances surrounding their transaction. Cost applies to production, not exchange, and is the total dollar expenditure for building a structure.

Certain assignments require an estimate of use value. Use value is the value a specific property has to a specific owner for a specific use. It is a value concept based on the productivity of an economic good to its owner-user. Farm-use value is tied to what can be grown on the property or the amount that can be justified by the income it generates. Use value is important for ad valorem taxation and estate planning.

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USPAP

Standards Rule 1-2 (This Standards Rule contains binding requirements from which departure is not permitted.)

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In developing a real property appraisal, an appraiser must:

- (a) identify the client and other intended users;⁶
- (b) identify the intended use of the appraiser's opinions and conclusions:

Comment: Identification of the intended use is necessary for the appraiser and the client to decide:

- the appropriate scope of work to be completed, and
- the level of information to be provided in communicating the appraisal.

An appraiser must not allow a client's objectives or intended use to cause an analysis to be biased.

- (c) identify the purpose of the assignment, including the type and definition of the value to be developed, and, if the value opinion to be developed is a market value,⁷ ascertain whether the value is to be the most probable price:

- (i) in terms of cash; or
- (ii) in terms of financial arrangements equivalent to cash; or
- (iii) in other precisely defined terms; and
- (iv) if the opinion of value is to be based on non-market financing or financing with unusual conditions or incentives, the terms of such financing must be clearly identified and the appraiser's opinion of their contributions to or negative influence on value must be developed by analysis of relevant market data;

Comment: When the purpose of an assignment is to develop an opinion of market value, the appraiser must also develop an opinion of reasonable exposure time linked to the value opinion.⁸

- (d) identify the effective date of the appraiser's opinions and conclusions;⁹

- (e) identify the characteristics of the property that are relevant to the purpose and intended use of the appraisal,¹⁰ including:

- (i) its location and physical, legal, and economic attributes;
- (ii) the real property interest to be valued;
- (iii) any personal property, trade fixtures, or intangible items that are not real property but are included in the appraisal;
- (iv) any known easements, restrictions, encumbrances, leases, reservations, covenants, contracts, declarations, special assessments, ordinances, or other items of a similar nature; and
- (v) whether the subject property is a fractional interest, physical segment, or partial holding;

⁶ See Statement on Appraisal Standards No. 9 (SMT-9) on page 96.
⁷ See Advisory Opinion AO-8 on page 130.
⁸ See Statement on Appraisal Standards No. 6 (SMT-6) on page 83. See also Advisory Opinions AO-7 on page 128 and AO-8 on page 130.
⁹ See Statement on Appraisal Standards No. 3 (SMT-3) on page 77.
¹⁰ See Advisory Opinion AO-2 on page 117 and AO-23 on page 192.

Reference to Advisory Opinions are for guidance only and do not incorporate Advisory Opinions into the Standards Rules.

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NOTE THE GROUPING WITH OTHER ELEMENTS WHICH RESTRICT, LIMIT, OR IMPINGE ON THE USE OF THE PROPERTY - SPECIAL ASSESSMENTS ARE TREATED AS A LIABILITY - A DEDUCTION TO VALUE, NOT A DEDUCTION.

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LEGISLATIVE TESTIMONY



2206 SW 29th, Terr., Topeka, KS 66611 ♦ 785-267-2936 Fax 785-267-2959 ♦ E-mail: janetstubbs@worldnet.att.net

March 21, 2002

MADAM CHAIR AND MEMBERS OF THE COMMITTEE:

My name is Wess Galyon. I am the President/CEO of the Wichita Area Builders Association and I am here today on behalf of our 1100 members, as well as on behalf of the members of the Kansas Building Industry Association with which we are affiliated.

We are asking for your support of House Bill 3023, which, contrary to testimony you will likely hear from opponents of this bill today, will go a long way toward supporting efforts to provide affordable housing, and housing options, for the people of Kansas who desire to own their own home, especially those who are seeking to get into home ownership on an entry level basis.

The practice of adding outstanding special assessment debt to the price at which vacant lots sell for in the market place should be prohibited. Not because a willing buyer does not perceive there to be value in terms of having infrastructure in place that provides some degree of utility in terms of what the property can be used for, but because assumed debt does not equate to value, on a dollar for dollar basis. Whatever value might be perceived by the buyer and seller is reflected in the price a well informed buyer is justified in paying, and a well informed seller is justified in accepting for the property. If, in fact, debt equated to value, I believe we would all agree that the current value of Enron stock would be much higher than it is presently. And, if debt equated to value, lots that were developed in years past in a handful of subdivisions in our area that ended up with very high special assessments would not have been sold, time after time, at tax sales because of the high specials and no perception of value on the part of the buying public.

While I understand the argument advanced by some county appraisers that: Purchase Price + Assumed Debt = Value, the flaw in this argument is that it is contrary to the definition of fair market value, which is what someone is willing to pay for a property.

Regardless of the fact that special assessments are used to finance infrastructure in various locales throughout the state, it has been my experience that people perceive special assessments

HOUSE LOCAL GOVERNMENT

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Attachment 4

to be another form of taxation. And, even though they must qualify to repay the debt incurred to build the infrastructure and assume repayment of it as part of their monthly payment when they purchase a property, it does not equate it to value. Further, adding debt to the price at which a property sells for and "arbitrarily taxing it at an artificially inflated rate", results in "taxing a tax", and is a practice I believe property owners would find both distasteful and extremely unfair.

Additionally, infrastructure that is built and financed via special assessments is not privately owned property. It is publicly owned property that has been financed via a mechanism used by a government entity for which they receive repayment inclusive of interest and a profit, and on which they continue to get a return on the asset they own on an ongoing basis through the property taxes generated from property owners.

While I understand the temptation, and possible motivation, to generate more tax revenues for a particular jurisdiction than would be possible to generate otherwise, we believe that it is the perception of the participants in the marketplace that determine value - not the mathematics of an appraiser. For these reasons, it remains our opinion that the marketplace does not realize the value of any improvements financed through special assessments until the special assessments are paid off, if at all. And, if there is a realization it is based on a perception of value on the part of buyers of property and whatever perceived value there might be is reflected in what a well informed buyer is justified in paying and a well informed seller is justified in accepting for a property.

We are asking for your support of this bill in an effort to prevent the continuation of practices by some appraisers in the state that are resulting in the over taxation of property owners that would not be the case otherwise.

Thank you.

SPEAKER INFORMATION

Name and Address:

**Wesley E. Galyon, President/CEO Wichita Area Builders Association
730 N. Main
Wichita, Kansas 67202**

Work History:

**Executive Vice President, Wichita Area Association of Realtors – 1972-1979
Director of Operations, Coldwell Banker/Dinning Beard Realtors – 1979-1988
President/CEO Wichita Area Builders Association – 1988 – Present**

Affiliations:

**Member of National Association of Home Builders Association Executive Officers Council and four time
Board of Director Member
Vice Chairman of Professional Partnership Committee of the National Association of Home Builders
Licensed General Contractor – Sedgwick County, Kansas
Licensed Real Estate Broker – State of Kansas
Member of Board of Directors of Wichita Festivals
Member of Board of Trustees of Kansas Building Industry Workers Compensation Fund
Member of Citizens Committee on Access Management for City of Wichita
National Association of Home Builders Congressional Contact
Executive Officers Council Liaison to National Association of Home Builders Design Committee
Director of Real Estate Development Institute – A Licensed Proprietary School by the State of Kansas,
Which Provides Post License Education Credit for Licensed Real Estate Brokers and Sales Agents
Member of Wichita Area Chamber of Commerce
Member Sedgwick County Solid Waste Committee**

Education:

**BBA from Wichita State University, Wichita, Kansas – Major Degree Emphasis in Behavioral Science and
Minor Emphasis in Marketing
Completed Courses I, II, III, & IV of the National Association of Homes Builders Sales and Marketing
Council and Working Toward MIRM Designation (Member Institute Residential Marketing)
Numerous Course Pertaining to Real Estate Brokerage Techniques and Practices – Both Required
Optional
Numerous Seminars on Trade Association Management**

3

Topeka, KS
March 21, 2002

ATTENTION: *A testimonial to the House Local Government Committee, HB 3023*

SUBJECT: *Special assessments added/or not added to subdivision site values:*

As an experienced appraiser and instructor of the Uniform Standards of Professional Appraisal Practice, USPAP, I oppose adding special assessment costs to a site value for the following reasons:

If so completed, each site value would not be based upon market value. Directly adding an assessment denies the interpretation of actions between buyers and sellers in the market approach thus a manipulation of market value.

The net effect would be double taxation: paid once each year for the assessment, secondly each year for the assessment added into the site value.

Such action could destroy the efforts of equalization among site values.

It is impossible to understand how taxes (special assessments) make value. Special assessments pay for an improvement: Do we want to tax a paid improvement?

Alida M. Moore, SRA

HOUSE LOCAL GOVERNMENT

03/21/02

Attachment 5

03/21/02 06:43

TX/RX NO.6318

P.001

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Written Only



March 20, 2002

Mr. Wess Galyon
Wichita Area Association of Builders
730 N. Main
Wichita, KS 67203

VIA E-MAIL

Re: House Bill No. 3023

Dear Mr. Galyon:

I support your efforts to restrict the practice of adding special assessments to a lot price in order to estimate fair market value for ad valorem tax purposes. I believe we all can agree that the improvements to land which are financed by special assessments enhance the value of a site, but there is a great deal of debate within the appraisal community on how much value is realized in the marketplace - and when that value is realized.

The definition of fair market value means the amount of money (emphasis added) that a well informed buyer is justified in paying and a well informed seller is justified in accepting for property in an open and competitive market. I emphasized money, because most definitions further clarify that this means cash to the seller. The assumption of debt may or may not impact that cash price.

It is the responsibility of the appraiser to support his or her opinion of value. It is inappropriate to unilaterally add the debt to the sale price to estimate value without finding evidence from the marketplace that *cash plus debt equals fair market value*. This is especially true in the case of special assessments, where many of the market participants view special assessments as a form of taxation - not the financing of improvements.

Take the case of a typical homebuyer: While the purchase price of the home is significant, the critical factors are (a) how much money do I have to put down, and (b) what are my monthly payments. Special assessments add to the monthly payment. If there are five or fifteen years of specials remaining, but the monthly payments are the same - it is unlikely the value of the home with only five years of specials remaining is fully enhanced by the difference in the balance of the special assessments.



March 20, 2002
Mr. Wess Galyon
Page 2

Regardless of the fact that special assessments are mechanism to finance infrastructure, as I've noted earlier it has been my experience that most people perceive special assessments to be another form of taxation. A typical net lease of commercial property best exhibits this perception. Virtually all clauses I've read call for the tenant to pay special assessments in addition to taxes. While this practice is common, virtually all tenants would balk at the notion of paying off the landlord's debt in addition to paying rent.

As I'm sure you are aware, it is the perception of the participants in the marketplace that determine value - not the mathematics of an appraiser. For these reasons, it remains my opinion that the marketplace does not realize the value of any improvements financed through special assessments until the special assessments are paid off.

I hope this sufficiently illustrates my position on this topic. If you have any questions, please do not hesitate to call.

Respectfully,

Steven R. Adams
KS Certified Appraiser G-1184



Qualifications of the Appraiser

STEVEN R. ADAMS

Education:

Bachelor of Business Administration Degree
Major - Real Estate and Land Use Economics
The Wichita State University (May, 1991)

Academic Real Estate and Related Courses:

Principles of Real Estate
Real Estate Law
Real Estate Appraisal
Real Estate Finance
Urban Land Development
Real Estate Investment Analysis

Successfully completed the following courses offered by the Appraisal Institute:

Basic Income Capitalization Theory and Techniques, Course 310
Advanced Income Capitalization Theory and Techniques, Course 510
Standards of Professional Practice Part A (Course 410)
Standards of Professional Practice Part B (Course 420)

Professional License / Certification:

Certified General Real Property Appraiser - Kansas (No. G-1184)

Honorary and Professional Associations:

Rho Epsilon, National Real Estate Fraternity, Member
Kansas Real Estate Appraisal Board - Board Member 03/10/00 - 06/30/02

Experience:

4/97 to present	The Martens Companies, Commercial Real Estate Appraiser
6/93 to 4/97	NationsBank (formerly BANK IV), Review Appraiser
1991 to 6/93	The Martens Companies, Real Estate Appraiser

5
STATE OF KANSAS
HOUSE OF REPRESENTATIVES

W: Her July

MICHAEL R. (MIKE) O'NEAL

104TH DISTRICT
HUTCHINSON/NORTHEAST RENO COUNTY

LEGISLATIVE HOTLINE
1-800-432-3924
e-mail: oneal@house.state.ks.us



CHAIRMAN:
JUDICIARY COMMITTEE
REDISTRICTING COMMITTEE

MEMBER:
KANSAS FUTURES
FISCAL OVERSIGHT
UNIFORM LAW COMMISSION
KANSAS JUDICIAL COUNCIL

TESTIMONY IN SUPPORT OF H.B. 3023
House Local Government Committee
Rep. Gerry Ray, Chairperson
March 21, 2002

Chairperson Ray and members of the Committee, I appreciate your consideration of H.B. 3023, dealing with the equitable valuation and assessment of real estate burdened by special assessments. My schedule doesn't allow me to be present personally to testify. H.B. 3023 would codify what the Board of Tax Appeals has consistently recognized --- that the value of property should not include special assessments. See, e.g., *In the matter of the Protest of Boaz*, Docket #1999-2680-PR, attached. BOTA has consistently held that:

"Although the special assessment may add value to the subject property, it is not intrinsic to the market value of the subject property. A "well informed buyer" would not include the special assessments in the purchase offer. The special assessments would be deferred as long as possible. If a purchaser were to pay off the special assessments now, any subsequent selling price would have to include the special assessments. It would be difficult to sell a property for \$29,400 when the neighboring lots are selling for approximately \$10,000. Therefore, the special assessments do not inherently affect the market value of the subject property."

I am aware of a recent decision to the contrary out of Johnson County District Court. See *Board of County Commissioners v. St. Andrews CT, LLC*, Case #01CV5281, decided January 2, 2002. However, the case has no value as precedent as the ruling was based on the fact that the unrepresented taxpayer failed to file a written response to the Board's brief and presented no legal authority to support his position. I have reviewed the argument of the County and find it to be clearly contrary to established appraisal law.

TOPEKA ADDRESS

STATE CAPITOL BLDG., SUITE 170-W
TOPEKA, KS, 66612-1504
785-296-7679
FAX: 785-296-5805

HUTCHINSON ADDRESS

HOUSE LOCAL GOVERNMENT
HUTCHINSON, KS 67504
316-662-0537
FAX: 316-669-9421
03/21/02
Attachment 7

The Committee's attention should be directed to the applicable statute being amended. K.S.A. 79-503a provides our legislative definition of "fair market value":

"Fair market value" means the amount in terms of money that a well informed buyer is justified in paying and a well informed seller is justified in accepting for property in an open and competitive market, assuming that the parties are acting without undue compulsion... "

The Johnson county court based its decision on an analysis of the value of a fee simple interest in property, contrary to the statutory requirement of a "fair market value" analysis. Indeed, the County had appraised land that the taxpayer had purchased only the previous year for \$362,500, based on its location within a benefit district, for \$562,500, the price at which the property had originally been offered for sale! The County used a cost approach or the replacement cost new, less depreciation, and not fair market value. See *In the Matter of the Equalization Appeal of St. Andrews Ct. L.L.C.*, Docket #2000-8477-EQ, attached.

The Committee's attention should also be directed to the USPAP (Uniform Standards of Professional Appraisal Practice, developed by the "Appraisal Foundation" authorized by Congress). It should be noted that "special assessments" are grouped under "characteristics of the property (e)(iv)" with such things as "easements, restrictions, encumbrances...", i.e., characteristics which limit, restrict, bind, or diminish the "bundle of rights of use and enjoyment" of a property. These are considered to diminish the fee, not enhance it, as argued by the Johnson County judge. Special assessments are costs of "public" improvements, which are publicly owned, and while some benefit may derive therefrom, any benefit is reflected in the sales price.

The need for the legislation is to prevent taxpayer constituents of ours from being forced by local appraisers to have to litigate every appraisal that includes the burden of special assessments. BOTA's rulings have been consistent but some appraisers have ignored BOTA on the theory that some taxpayers will not choose to go to the expense of litigation and will end up paying the higher taxes. Passage of H.B. 3023 will bring clarity to our legislative mandate of appraisals based on "fair market value". Failure to pass this legislation will result in continued inequitable appraisal practices, affecting all types of taxpayers, many of whom can't afford to fight the system. Thank you for your consideration.

BEFORE THE BOARD OF TAX APPEALS OF THE STATE OF KANSAS

IN THE MATTER OF THE PROTEST OF
BOAZ, KARL W.
FOR TAXES PAID FOR 1998 IN
SALINE COUNTY, KANSAS

Docket No. 1999-2680-PR

ORDER

Now on this 16th day of August, 1999, the above-captioned matter comes on for consideration and decision by the Board of Tax Appeals of the State of Kansas.

This Board conducted a hearing in this matter on July 22, 1999. After considering all of the evidence presented, the Board finds and concludes as follows:

1. The Board has jurisdiction of the subject matter and the parties as a tax protest has been filed pursuant to K.S.A. 79-2005, and amendments thereto.
2. The subject matter of this tax protest is described as follows:

Real estate and improvements legally known as
Lot 6, Block 1, Holiday Resort Addition, Saline County,
Kansas, also known as Parcel ID#
085-094-17-0-10-01-006.00-0.
3. The Taxpayer, Karl W. Boaz, appears on his own behalf. The County appears by Michael Montoya, County Counselor; and Chuck Latham, Assistant County Appraiser.
4. The subject property has a 1998 appraisal of \$29,400. The County valued the subject property by preparing a land analysis after reviewing a series of sales. Mr. Latham testified that the County valued the subject property as if it were completely unencumbered. Mr. Latham testified that the County included the cost of the special assessments in the value of the subject property.
5. The County noted that the special assessments covered the price for installing the sewer, water lines, and the streets. The County asserted that these improvements added value to the subject property. Therefore, the cost of these assessments should be added to the value of the subject property.
6. The Taxpayer testified that he purchased the first lot in the Holiday Resorts subdivision for \$14,500 in May 1997. The Taxpayer noted that construction has occurred on only four of the lots in the subdivision. The Taxpayer

asserted that the remaining lots in the subdivision have sold for approximately \$10,000 each.

7. The Taxpayer asserted that the surrounding subdivisions are experiencing an increase in the amount of new construction while the amount of new construction in the Holiday Resorts subdivision is stagnant. The Taxpayer further asserted that the desirability for the subject property might diminish because there is a nursing home located behind the subject property.
8. The Taxpayer asserted that the cost of the special assessments should not be added to the value of the subject property. The Taxpayer notes that over the next eight years he will pay approximately \$12,100 in special assessments. The Taxpayer asserted that if he attempted to sell the subject property, he would not include the cost of the special assessments in the price. The Taxpayer asserts that the value of the subject property is \$16,000. The Taxpayer notes that if the Board finds that the value of the subject property includes the cost of special assessments, then the value of the subject property is \$26,100.
9. Each parcel of non-agricultural real property in Kansas is appraised at its fair market value. See K.S.A. 79-501, and amendments thereto. The term "fair market value" is defined as that "amount in terms of money that a well informed buyer is justified in paying and a well informed seller is justified in accepting for property in an open and competitive market, assuming that the parties are acting without undue compulsion." See K.S.A. 79-503a, and amendments thereto.
10. Pursuant to K.S.A. 79-2005, and amendments thereto, the County Appraiser must support the validity and correctness of the value by a preponderance of evidence for residential property. Pursuant to Kan. Const. art. XI, § 1, the subject property is classified as vacant land. Therefore, the burden of demonstrating the validity and correctness of the value is on the Taxpayer.
11. The Board finds that the value of the subject property should not include the cost of the special assessments. The purchase price for the subject property in May 1997 did not include the unpaid special assessments. It is unlikely that any subsequent purchase price would include any unpaid special assessments.
12. Although the special assessment may add value to the subject property, it is not intrinsic to the market value of the subject property. A "well informed buyer" would not include the special assessments in the purchase offer. The

special assessments would be deferred as long as possible. If a purchaser were to pay off the special assessments now, any subsequent selling price would have to include the special assessments. It would be difficult to sell a property for \$29,400 (the County's value) when the neighboring lots are selling for approximately \$10,000. Therefore, the special assessments do not inherently affect the market value of the subject property.

13. An argument could be made that the unpaid mortgage on a personal residence should be added to the value for tax purposes if the Board were to adopt the County's analysis. For example, a person borrowing money to purchase a \$100,000 home will pay approximately \$275,000 for that home over a period of thirty years. The mortgage adds value to the residence in that it affords the purchaser enjoyment and use of the property now instead of waiting thirty years for that enjoyment and use. Without the mortgage, the purchaser could not acquire the residence. But the mortgage does not add to the market value of the residence if the purchaser attempted to sell the property at a later date. Furthermore, although the purchaser will pay approximately \$275,000 for the \$100,000 residence, the County more than likely has the property appraised for approximately \$100,000.
14. The Board finds that the Taxpayer has presented sufficient evidence to establish the value for 1998 at \$16,000. The Taxpayer purchased the subject property in May 1997 for \$14,500. Furthermore, numerous lots in the Holiday Resort subdivision have sold for less than \$14,500. The Board is not persuaded by the County's argument that the fair market value includes the special assessments.

IT IS THEREFORE ORDERED BY THE BOARD OF TAX APPEALS OF THE STATE OF KANSAS that, for the reasons stated above, the appraised value of the subject property for tax year 1998 is \$16,000.

Any party to this appeal who is aggrieved by this decision may file a written petition for reconsideration with this Board as provided in K.S.A. 77-529, and amendments thereto. The written petition for reconsideration shall set forth specifically and in adequate detail the particular and specific respects in which it is alleged that the Board's order is unlawful, unreasonable, capricious, improper or unfair. Any petition for reconsideration shall be mailed to: Secretary, Board of Tax Appeals, DSOB Suite 451, 915 SW Harrison St., Topeka, KS 66612-1505. A copy of the petition, together with all accompanying documents submitted, shall be mailed to all parties at the same time the petition is mailed to the Board. Failure to notify the opposing party shall render any subsequent order voidable. The written petition must be received by the Board within fifteen (15) days of the certification date of this order (allowing an additional three days

for mailing pursuant to statute if the Board serves the order by mail). If at 5:00 pm on the last day of the specified period the Board has not received a written petition for reconsideration, this order will become a final order from which no further appeal is available.

IT IS SO ORDERED

THE BOARD OF TAX APPEALS



Tony R. Folsom
TONY R. FOLSOM, ACTING SECRETARY

Jason C. Neal
JASON C. NEAL, ATTORNEY

David L. Patton
DAVID L. PATTON, CHAIRMAN

Robert G. Frey
ROBERT G. FREY, MEMBER

Wayne C. Vennard, Jr.
WAYNE C. VENNARD, JR., MEMBER

Jill A. Jenkins
JILL A. JENKINS, MEMBER

Susan M. Seltsam
SUSAN M. SELTSAM, MEMBER

BEFORE THE BOARD OF TAX APPEALS OF THE STATE OF KANSAS

IN THE MATTER OF THE EQUALIZATION
APPEAL OF ST. ANDREWS CT., L.L.C.
FOR THE YEAR 2000 FROM JOHNSON
COUNTY, KANSAS

Docket No. 2000-8477-EQ

ORDER

Now the above-captioned matter comes on for consideration and decision by the Board of Tax Appeals of the State of Kansas.

This Board conducted a hearing in this matter on June 25, 2001. After considering all of the evidence presented, the Board finds and concludes as follows:

1. The Board has jurisdiction of the subject matter and the parties as an equalization appeal has been filed pursuant to K.S.A. 79-1609, and amendments thereto.
2. The subject matter of this tax equalization appeal is described as follows:

Vacant real estate in Johnson County, Kansas,
known as Parcel ID# 046-NF241326-2003.
3. The Taxpayer, St. Andrews Ct., L.L.C., appeared by Paul Goehausen. The County appeared by Bill Neal, Residential Valuation Specialist. Taxpayer Exhibit #1 and County Exhibit #1 are admitted.
4. The Taxpayer asserted that the County has overvalued the subject property for tax year 2000. The Taxpayer asserted that the subject property was purchased in 1999 for \$362,500. See Taxpayer Exhibit #1. Mr. Goehausen asserted that originally the price of the subject property was \$562,500. However, Mr. Goehausen asserted that a title search of the parcel revealed that there was a benefit district on the parcel for the expansion of Nieman Road. Due to the benefit district on the parcel, the Taxpayer paid \$362,500 for the subject parcel. The Taxpayer asserted that the appropriate value of the subject property is \$362,500.
5. The County valued the subject property using the cost approach or the replacement cost new, less any depreciation. The County asserted that the sales validation contract indicates the parcel was sold for \$562,500 in 1999.
6. The County does not recommend any further adjustment to the value of the subject property.

7-23
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7. Each parcel of non-agricultural real property in Kansas is appraised at its fair market value. See K.S.A. 79-501, and amendments thereto. The term "fair market value" is defined as that "amount in terms of money that a well informed buyer is justified in paying and a well informed seller is justified in accepting for property in an open and competitive market, assuming that the parties are acting without undue compulsion." See K.S.A. 79-503a, and amendments thereto.
8. Pursuant to K.S.A. 79-1609, and amendments thereto, the County Appraiser must support the validity and correctness of the value by a preponderance of evidence for residential property or real property used for commercial and industrial purposes for taxation purposes. Pursuant to Kan. Const. art. XI, § 1, the subject property is classified as residential property. Therefore, the burden of demonstrating the validity and correctness of the value is on the County. The Board finds that the County has not presented sufficient evidence to support the County's value. The Board concludes that the Taxpayer's recommended value, as supported by the real estate sales contract, better reflects the fair market value of the subject property than the value recommended by the County.

IT IS THEREFORE ORDERED BY THE BOARD OF TAX APPEALS OF THE STATE OF KANSAS that, for the reasons stated above, the appraised value of the subject property for tax year 2000 is \$362,500. IT IS FURTHER ORDERED that the appropriate officials are directed to correct the County's records accordingly, re-compute the taxes owed by the Taxpayer and issue a refund for any overpayment.

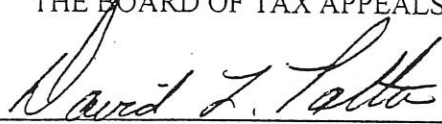
Any party to this appeal who is aggrieved by this decision may file a written petition for reconsideration with this Board as provided in K.S.A. 77-529, and amendments thereto. The written petition for reconsideration shall set forth specifically and in adequate detail the particular and specific respects in which it is alleged that the Board's order is unlawful, unreasonable, capricious, improper or unfair. Any petition for reconsideration shall be mailed to: Secretary, Board of Tax Appeals, DSOB Suite 451, 915 SW Harrison St., Topeka, KS 66612-1505. A copy of the petition, together with all accompanying documents submitted, shall be mailed to all parties at the same time the petition is mailed to the Board. Failure to notify the opposing party shall render any subsequent order voidable. The written petition must be received by the Board within fifteen (15) days of the certification date of this order (allowing an additional three days for mailing pursuant to statute if the Board serves the order by mail). If at 5:00 pm on the last day of the specified period the Board has not received a written petition for reconsideration, this order will become a final order from which no further appeal is available.

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IT IS SO ORDERED



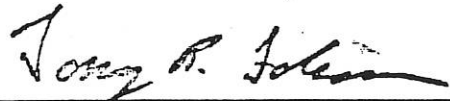
THE BOARD OF TAX APPEALS



DAVID L. PATTON, CHAIRMAN



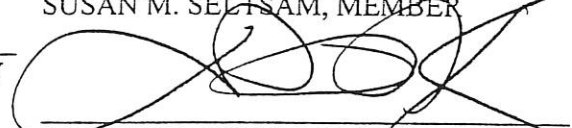
JILL A. JENKINS, MEMBER



TONY R. FOLSOM, ACTING SECRETARY



SUSAN M. SELTSAM, MEMBER



DWIGHT D. KEEN, MEMBER



MELISSA GRAF, ATTORNEY



CALVIN T. ROBERTS, MEMBER

8

7

House Bill 3023

Special Assessments

Presented to:

Local Government

Presented by:

Rick Stuart, CAE
Jefferson County Appraiser
for the
Kansas County Appraiser's Association (KCAA)

March 21, 2002

HB3023

Special assessments have been a difficult valuation issue for years. I believe the task has become clearer following a recent Johnson County District Court decision.

Site improvements are items such as curbs, guttering, water and sewer. Simply stated, special assessments are a method of financing the site improvements. **To deduct the value of the specials would be no different then deducting the remaining mortgage from the market value of a home.** Therefore, those who have a larger lien or choose to mortgage versus pay up-front would pay less. This **would create great inequities within the valuation process.** The same would hold true for developers who pay for the site improvements up-front versus a developer who borrows to pay for those site improvements.

In this case, the State Board of Tax Appeals, reduced the value of a vacant tract of land by subtracting the total cost of the special assessments from the purchase price. The County then appealed to the District Court.

Some direct quotes from the County's appeal are provided below.

“K.S.A. 79-102 defines “real property” to “include not only the land itself, but all buildings, fixtures, improvements, mines, minerals, quarries, mineral springs and wells, rights and privileges appertaining thereto. Because real property is defined to include all rights and privileges, it is the fee simple interest that is valued for ad valorem purposes. The fee simple interest is defined as “the absolute ownership **unencumbered** by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power; and escheat. *The Appraisal of Real Estate*, 11th ed. p. 137.”

“The special assessment is a lien against the property, an encumbrance. The Taxpayer is not restricted in the use of the subject property because of the lien, therefore, it is not a limitation. Therefore, in a fee simple valuation, it is inappropriate to subtract from the valuation for an encumbrance.”

A portion of the District Court’s ruling is as follows:

“The Taxpayer did not file a written response to the County’s brief and in oral arguments before the Court, presented no legal authority to contradict the legal analysis presented by the County. Therefore, the Court adopts the legal analysis of the County and concludes that the decision of BOTA is erroneous as a matter of law.”

Based upon this court decision, we request that HB 3023 **not be approved.**



League of Kansas Municipalities

Date: March 21, 2002
To: House Local Government Committee
From: Larry R. Baer
Assistant Legal Counsel
Re: HB 3023 - Testimony in Opposition

Thank you for allowing me to appear before the Committee this afternoon on behalf of the League of Kansas Municipalities and its member cities and present testimony in opposition to HB 3023.

Both at common law and by statute Kansas has long defined fair market value to be "the amount in terms of money that a well informed buyer is justified in paying and a well informed seller is justified in accepting for property in an open and competitive market, assuming that the parties are acting without undue compulsion". Or, as it is often shortened to, "what a willing seller will take and a willing buyer will give when neither one of them is forced to buy or sell." As we understand HB 3023, it proposes to amend K.S.A. 79-503a to change this long understood meaning of "fair market value" by deducting the value of special assessments against the real property.

We first question whether it is good policy to have a different definition of a common term for tax purposes than for other purposes, eminent domain for example. This is particularly true when the methods of appraisal, whether for tax, eminent domain or simply establishing the value between buyer and seller are the same.

But more critically, we believe that the proposed amendment violates the "uniform and equal" provision in Article 11, § 1 of the Kansas Constitution. Article 11, § 1 of the Kansas Constitution provides, in part: ". . . , the legislature shall provide for a **uniform and equal** basis of valuation and rate of taxation of all property subject to taxation. . . ."

Both the Kansas court of appeals and the supreme court have often stated: "Uniformity in taxation implies equality in the burden of taxation, and this equality cannot exist without uniformity in the basis of valuation. Uniformity in taxation does not permit a systematic, arbitrary, or intentional higher valuation than that placed on other similar property within the same taxing district."

What does this mean? It means that not just the tax rate must be uniform and equal for a given class of property but, also, that the method of determining the valuation of the

property must be uniform and equal. Special assessments do not apply to all properties. Special assessments may not even apply equally to all properties in the same subdivision because of the method of assessment. "Uniform and equal" cannot exist when special assessments would be deducted from some properties and not from all properties of the same class.

For example, two houses, side-by-side, identical lots, with very similar values. The owner of property "A" chooses to pay all specials prior to them being assessed against the property, therefore, there are no specials to be deducted. The owner of property "B" did not make this election, therefore, the value of the property would be reduced by the specials due against the property. This results in nonuniformity in the basis of the valuation. Nonuniformity in the basis of valuation results in nonuniformity in the burden of taxation.

The changes proposed by HB 3023 likely will not withstand a constitutional challenge. For this reason the League urges the Committee to reject HB 3023.

Thank you for the opportunity to appear and present testimony on HB 3023.

10

9

Written Only



**KANSAS
ASSOCIATION OF
COUNTIES**

TESTIMONY
House Local Government Committee
On
HB 3023
March 21, 2002

Thank you Chairman Ray and Members of the Committee for allowing the Kansas Association of Counties to provide written testimony on HB 3023.

The Kansas Association of Counties vigorously opposes HB 3023. The KAC believes that the current statutory definition of market value is very close to the definition of market value used universally by appraisers, both private and public as well as by the judiciary for over 100 years. To change this definition for one particular interest group could have unintended consequences.

Issues surrounding the definition of market value have been settled in court often. The KAC believes that is the proper venue for this dispute. The proposed change would require counties to appraise properties in conflict with the constitutional requirement for a "uniform and equal rate of assessment and taxation." In addition, such a change would create inequities between counties that offer special assessment financing and those who do not.

The Kansas Association of Counties asks that you leave the current definition as it is and fail to pass HB 3023.

The Kansas Association of Counties, an instrumentality of member counties under K.S.A. 19-2690, provides legislative representation, educational and technical services and a wide range of informational services to its member counties. Inquiries concerning this testimony should be directed to Randy Allen or Judy Moler by calling (785) 272-2585.

6206 SW 9th Terrace
Topeka, KS 66615
785•272•2585
Fax 785•272•3585
email kac@ink.org

HOUSE LOCAL GOVERNMENT
03/21/02
Attachment 10



Written Only

IN THE MATTER OF THE PROTEST OF KARL W. BOAZ SALINE COUNTY, KANSAS

The following narrative chronicles the history of the property that was the first special assessments case that went to the Board of Tax Appeals from Saline County. It is of note because it illustrates that the value of the special assessments does pass to subsequent owners.

In May of 1997 Mr. Karl Boaz purchased lot 6, block 1 of Holiday Resort Addition for \$14,500. Saline County investigated the sale, determined that it was a valid sale and adjusted the sale price for special assessments. In addition to the purchase price of \$14,500, Mr. Boaz assumed a debt to the City of Salina for the remainder of the specials. On the date of purchase the present value of this debt was \$9,195. This means that in order to own the property in fee simple estate, that is to own the lot completely unencumbered, Mr. Boaz would have had to expend \$23,695

For 1998 Saline County used Mr. Boaz sale and others to build a land valuation model for this neighborhood. Mr. Boaz was notified of a value of \$29,400. Mr. Boaz appealed this value and ultimately the Board of Tax Appeals set Mr. Boaz value at \$16,000.

In July of 2001, Mr. Boaz sold the lot to another individual for \$20,000. This buyer also assumed a debt to the City of Salina for special assessments with a present value of \$6,362. This second buyer, were he to pay off the specials in order to own the lot in fee simple estate, would have needed to expended \$26,362.

An analysis of these sales would seem to indicate that Mr. Boaz realized a profit on the lot of \$5,500 ($\$20,000 - \$14,500 = \$5,500$). The county's analysis of the market over the period of time between the sales indicated that the increase in sale price due to inflation should have been \$2,260. This would result in an expected sale price of \$16,760.

These calculations indicate that Mr. Boaz received \$3,240 more that we would have expected due to inflation ($\$5,500 - \$2,260 = \$3,240$). Where did this increase come from? We can also note from the figures above that during his ownership, Mr. Boaz reduced the debt against the property by \$2,833 ($\$9,195 - \$6,362 = \$2,833$). We can conclude from this calculation that Mr. Boaz fully recovered the money he paid to reduce the debt against the property.

The buyer in this case fully recognized the value of the raw land by paying Mr. Boaz enough money to cover his original investment of \$14,500. Additionally, he recognized the value added by inflation. Finally, he recognized that there is value in the street, water, and sewer improvements to the lot. He did this by fully reimbursing Mr. Boaz for the amount of money expended to reduce the debt.

We can see by this example that the value of the lot improvements was always there, and that subsequent buyers recognize this. The only thing that changed over time is the amount of value recognized in cash sale price and the amount of value that existed in assumed debt. This is an excellent example that sale price does not always equal value and that proper adjustments to sale prices to reflect the full value of fee simple estate is justified.

TESTIMONY ON HOUSE BILL 3023
HOUSE LOCAL GOVERNMENT COMMITTEE

By Rod Broberg
Saline County Appraiser

In Saline County we first became aware of special assessments and their possible effect on market value six or seven years ago. As we tried to build land valuation models for a particular subdivision we could not keep up with the sale prices that occurred from year to year. We would build a model using the latest sales, thinking that we should be able to predict value for the following year. Each year in turn found us still short of predicting the sale prices.

After some research and thought we discovered that each year as the developer paid the special assessments, he increased his cash price to recoup that years expense. Buyers in the first year were purchasing the lots and assuming the full amount of the special assessments. Buyers in each successive year were paying more in cash to the developer and assuming less debt against the special assessments. This led us to the conclusion that for the most part all of the buyers were paying about the same for the lots, but the financing was changing from year to year.

What then are "special assessments?" Special assessments are the payments made to amortize the debt incurred to finance improvements to bare land. Some will contend that these payments constitute a tax payment. This is not true because these improvements are purchased by the developer and in many cases are financed by the developer and not by any governing body.

The next event that happened in Saline County that added to the quandary, was the platting of a subdivision that did not use special assessment financing to pay for the lot improvements. In this subdivision the developer paid for the lot improvements out of his own pocket, and recouped all of his expenses at the time of sale. Competing subdivisions recovered the cost of raw land and entrepreneurial profit in the cash sale price, but the cost of the improvements for streets, water and sewers are recovered in the special assessment payments. If we were to use only the cash sale price paid to the developer as an indication of value, then these lots which may be identical in every other way, will end up having very different values and therefore very different tax burdens.

It is important to remember that county appraisers are required to appraise property in fee simple interest. Fee simple interest is defined as "the absolute ownership unencumbered by any other interest or estate." In the case of the two subdivisions discussed in the previous paragraph, the buyer of a lot in the no specials subdivision pays his money and in return receives his lot in fee simple interest. The buyer of a lot in the subdivision with special assessments receives his lot with an encumbrance. At the point that he expends additional monies to pay the outstanding debt, he then owns his lot in fee simple interest. When we count the original purchase price to the developer, plus the cost to pay the outstanding debt for the lot improvements, we usually find that both parties have paid similar amounts for similar lots.

Where does this leave us with HB 3023. The language in HB 3023 would prohibit county appraisers from recognizing all of the consideration given for any property that was subject to liens financed by special assessments. In turn this would inhibit our ability to meet our statutory requirement to appraise property in fee simple interest. Even more importantly, it destroys our ability to meet our constitutional obligation to provide for a uniform and equal rate of assessment and taxation. The proponents of this bill contend that to recognize special assessments places some developers at a competitive disadvantage. I believe that just the opposite is true. To not recognize special assessments places the disadvantage on those developers who chose self financing.

With these thoughts in mind, I would urge you not to consider HB 3023 favorably.

*Special Assessments
should not be
deducted from sale price*

IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS

BOARD OF COUNTY COMMISSIONERS
OF JOHNSON COUNTY, KANSAS,

Petitioner,

v.

ST. ANDREWS CT., L.L.C.,
Respondent.

Case No. *01CV5281*

Court No. *15*

Pursuant to Ch. 77

JOURNAL ENTRY

NOW on this 2nd day of January, 2002, the above captioned matter comes before the Court on oral arguments. The petitioner appears by counsel, Kathryn D. Myers, assistant county counselor of Johnson County, Kansas. The respondent appears by Paul Goehausen, general partner, pro se.

The Court, after reading the brief of the petitioner and hearing the arguments of the parties finds as follows:

1. The issue before the Court is a question of law; whether it was legally correct for the Board of Tax Appeals (BOTA), in its order certified July 20, 2001, to reduce the January 1, 2000 ad valorem valuation of respondent's real property by the present value of special benefit district liens against the real property.

2. The facts are not in dispute. The real property is a large vacant tract of land. The County valued the real property at \$565,820. The respondent purchased the real property in 1999. By contract, but before closing, the respondent agreed to purchase the real property for \$562,500. However, the title search discovered that the real property was subject to various special benefit district assessments payable over a number of years that resulted in a net present value payoff amount of approximately \$200,000. The contract was amended to reduce the purchase price from \$562,500 to \$362,500. BOTA accepted the purchase price of \$362,500 as

DISTRICT COURT
JOHNSON COUNTY, KS

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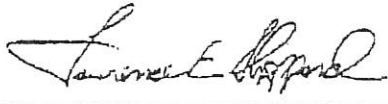
the fair market value of the land. The County appealed the decision of BOTA to this Court asserting that it was improper for BOTA to deduct the net present value of the special benefit district assessments to arrive at the value of the real property for ad valorem tax purposes.

3. The County, in its brief to the Court, asserts that the decision by BOTA violates Article 11, § 1 of the Kansas Constitution that requires that real property be valued uniformly and equally. The County asserts that the valuation of real property for ad valorem tax purposes requires that the valuation be in fee simple. See K.S.A. 79-102 that defines "real property." The County also states that K.S.A. 79-503a requires that accepted appraisal practice adaptable to mass appraisal must be used to arrive at ad valorem valuations. To value the fee simple interest, encumbrances against the real property are ignored because the improvement to the real property for which the encumbrance has been created adds to the value of the real property. To do otherwise, results in similar properties being valued differently based on how improvements to the real property are financed.

4. The Taxpayer did not file a written response to the County's brief and in oral arguments before the Court, presented no legal authority to contradict the legal analysis presented by the County. Therefore, the Court adopts the legal analysis of the County and concludes that the decision of BOTA is erroneous as a matter of law.

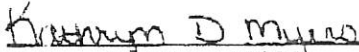
5. Counsel for the County is directed to prepare the journal entry which will not be subject to R. 170. Counsel shall mail a copy of the prepared journal entry to Mr. Goehausen. The respondent has five days in which to notify the Court of any objection as to the form of the journal entry.

IT IS THEREFORE ORDERED that the petition of the County is granted; the order of BOTA reducing the value of the real property owned by respondent is set aside and the ad valorem valuation of the County as of January 1, 2000 for the real property is reinstated.



Honorable Lawrence E. Sheppard 1/7/02

Prepared by:



Kathryn D. Myers 14830
Assistant Count Counselor

RECEIVED

BEFORE THE BOARD OF TAX APPEALS OF THE STATE OF KANSAS AUG 3 2001

IN THE MATTER OF THE EQUALIZATION APPEAL
OF ST. ANDREWS CT., L.L.C.
FOR EXEMPTION FROM AD VALOREM
TAXATION IN JOHNSON COUNTY, KANSAS

BOARD OF TAX APPEALS

AUG - 6 2001

JO CO LEGAL DEPT

Docket No. 2000-8477-EQ

MOTION FOR RECONSIDERATION

The Board of County Commissioners of Johnson County, Kansas, through counsel, Kathryn D. Myers, assistant county counselor, moves the Board for an order granting reconsideration in the above referenced matters. The County alleges that the Board's decision in its order certified July 20, 2001 was not based on substantial evidence in view of the record as a whole, has erroneously applied the law and has acted arbitrarily and capriciously.

1. This motion is timely filed pursuant to K.S.A. 77-529.
2. The subject matter is real property known as PIN 046-NF241326-2003.
3. The subject property is a 15.4 acre vacant tract zoned for residential use located at 133 Street and Nieman Road in Overland Park, Kansas.
4. The subject property is located within a special benefit district assessed pursuant to K.S.A. 12-608 for the extension of Nieman Road.
5. The Board reduced the County's value to account for the lien of the special assessment against the subject property.
6. The deduction by the Board violates the constitutional and statutory requirement that real property be valued by the fee simple interest to achieve uniform and equal valuations of like properties.

I. Controlling Authority

A. Uniform and Equal

The Kansas Constitution, Art.11, § 1 is the supreme authority for the valuation and assessment of real property for ad valorem tax purposes which states that "[t]he legislature shall provide for a uniform and equal rate of assessment and taxation (emphasis added)."

Any valuation placed on real property must comply with the uniform and equal mandate in Art.11, § 1.

B. Interest Appraised

The legislature, as directed by Art.11, § 1, enacted a number of statutes to ensure that real property ad valorem valuations would comply with the uniform and equal mandate. Any valuation placed on real property must comply with these statutes as well.

K.S.A. 79-102 defines "real property" to "include not only the land itself, but all buildings, fixtures, improvements; mines, minerals, quarries, mineral springs and wells, rights and privileges appertaining thereto. Because real property is defined to include all rights and privileges, it is the fee simple interest that is valued for ad valorem purposes. The fee simple interest is defined as "the absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power; and escheat. *The Appraisal of Real Estate*, 11th ed. p. 137.

The special assessment is a lien against the property, an encumbrance. The Taxpayer is not restricted in the use of the subject property because of the lien, therefore, it is not a limitation. Therefore, in a fee simple valuation, it is inappropriate to subtract from the valuation

for an encumbrance. Doing so is a violation of the uniform and equal mandate as explained below.

C. Board Orders Regarding the Treatment of Special Assessments

The County is aware of several Board orders that have reduced the valuations of real property by the amount of the special assessments. See *In the Matter of the Equalization Appeals of Valle View Estates*, Docket No. 1998-4515-EQ and *In the Matter of the Equalization Appeals of Westview Development Corp.*, Docket No. 1997-4010-EQ. A review of those orders finds that no one raised the issue of uniform and equal and what is the appropriate appraisal practice for the consideration of the fee simple valuation of real property subject to a special assessment.

First and foremost, this Board must value real property in a uniform and equal manner. To do this, and as stated in K.S.A.79-102, real property is to be valued in fee simple. Fee simple requires that real property be valued without regard to encumbrances. For example, Lot A and Lot B are contiguous. Lot A faces Elm Street and Lot B faces Oak Street. Elm Street was improved in 2000 through a special benefit district. Oak Street was also improved in 2000 but the developer paid for the improvements. On January 1, 2001, Lot A and Lot B both sell. Lot A sells for \$10,000 and Lot B sells for \$20,000. Lot A sold for less because the special assessment for the street improvement is being paid for overtime to the city and is not included in the sale price. Lot B sells for more because the developer recovers his costs for street improvements upfront. Lot A and Lot B are exactly alike in all respects except for how the street improvements were financed. This is exactly why real property is valued as unencumbered. Lot B paid for the improvement, but did it at its present value upfront in the purchase price. By

reducing Lot A's value by the special improvements, the true fee simple value of Lot A is not being valued and Lot B is not being treated uniformly and equally. Lot A's fair market value is the sale price plus the present value of the improvements or \$20,000.

The Appraisal of Real Estate, 11th e., at page 196 supports the County's position. A deduction in the value of real property is only made if the real property is to be valued subject to an encumbrance. The definition of fee simple clearly states that real property is valued without regard to an encumbrance. Therefore, the present value of the encumbrance is included in the fee simple value.

D. Present Value of the Special Assessments

The County, in preparing for the hearing in the above captioned matter, relied on the certificate of value filed by the seller of the property. See Attachment A. The Taxpayer, at the hearing, presented the closing statement showing a \$200,000 credit against the sale price for benefit districts. See Attachment B. It was assumed by the Board that the \$200,000 represented the lien amount for special benefit district assessments against the subject property. This was a false assumption.

The subject property, on January 1, 2000, was included in three benefit districts. The first, OPC ID96-173 was placed on the subject property in 1996 and pays off in 2007. The current payoff of this lien is \$23,830.82. The second, OPC ID92-158, pays off this year. The final payment amount assessed to the subject property is \$124.59. The third, OPC ID90-145, was paid off in 2000. The final payment amount assessed to the subject property was \$694.35. Therefore, the total amount of liens against the subject property on January 1, 2000 was approximately \$25,000 not \$200,000. See Attachment C.

If the Board is not going to value the subject property as unencumbered, at the very least, the Board must adjust the amount that it deducted to a value of \$537,500.

WHEREFORE, the County prays that the Board will reconsider its decision and reverse its initial order by sustaining the County's 2000 valuation of the subject property.

Respectfully submitted,

Kathryn D. Myers
Kathryn D. Myers, 14830
111 S. Cherry, Ste 3200
Olathe, KS 66061-3441
913-715-1858
913-715-1873 FAX
Kathryn.Myers@jocoks.com
Attorney for Board of County Commissioners of
Johnson County, Kansas

CERTIFICATE OF SERVICE

I hereby certify that a correct and true copy of the above and foregoing was deposited into the United States mail, postage prepaid, this 2 day of August, 2001, addressed to

PAUL GOEHAUSEN
ST ANDREWS CT LLC
8435 CHEROKEE
LEAWOOD KS 66206

Kathryn D. Myers
Kathryn D. Myers