Approved: March 19, 2003
Date

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE

The meeting was called to order by Chairperson David Corbin at 10:50 a.m. on March 18, 2003, in Room 519-S of the Capitol.

All members were present except: Senator Donovan

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

Conferees appearing before the committee: Don Seifert, City of Olathe
Chris Wilson, Kansas Building Industry Association
Mark Beck, Director, Property Valuation Division
Rod Broberg, Saline County Appraiser
Paul Welcome, Johnson County Appraiser

Others attending: See attached list.

Senator Corbin called the Committee's attention to the minutes of the March 13 meeting. Senator Taddiken moved to approve the minutes of the March 13, 2003, meeting, seconded by Senator Buhler. The motion carried.

HB 2205–Real estate transactions; disclosures relating to special assessments and fees

Senator Corbin commented that the subject matter of **HB 2205** has been considered by the Committee during the past four or five years in several bills, and a bill finally passed both houses during the 2002 Legislative session. Due to a last minute veto by the Governor in 2002, the subject is being addressed once again.

Don Seifert, City of Olathe, testified in support of **HB 2205**, noting that the bill began as a relatively simple bill that required sellers of real property to provide buyers with a written disclosure of existing or proposed special assessments affecting a piece of real estate. The original language is now contained in new Sections 2 and 3 as passed by the House. He explained that the City of Olathe regularly uses the general improvement and assessment statute as a tool to facilitate development. Once the improvement is constructed, special assessments are levied against real estate parcels benefitting from the improvement. He noted that the system generally works well unless the landowner who petitioned for the original improvement has sold or subdivided property in the benefit district or if there is a substantial time lag between creation of the district and final assessment. Although the City of Olathe regularly provides special assessment information to anyone who asks, not all buyers know to ask in advance. **HB 2205** would ensure that pending special assessments are included with other disclosure statements before a contract is signed. In conclusion, Mr. Seifert emphasized that the bill is an important piece of a broad public education program about special assessments initiated by the City of Olathe. (Attachment 1)

Senator Pugh pointed out that new Sections 2 and 3 are identical with the exception that Section 2 references K.S.A. 12-6a01 and Section 3 references K.S.A. 12-601. He suggested that the bill could be amended to include only one new section referencing "either K.S.A. 12-6a01 or K.S.A. 12-601."

Senator Corbin called attention to written testimony in support of **HB 2205** submitted by Bill Yanek, Kansas Association of Realtors. The Association of Realtors supports Section 1 as is but recommends that new Section 2 be amended to provide that a seller's failure to disclose special assessments or fees shall not make a contract for the sale of real property void. (Attachment 2)

Chris Wilson, Kansas Building Industry Association (KBIA), testified in support of Section 1 of **HB 2205**. She noted the similar legislation which passed last year, **HB 3023**, was vetoed by the Governor. Although

the Governor and his staff philosophically agreed on the valuation of special assessments, they did not believe that the language in **HB 3023** accomplished the intended objective. Ms. Wilson recalled that the issue arose over a series of valuations of vacant lots wherein the value was determined by adding the cost of a special assessment debt to the selling price of the lot. Even though the Board of Tax Appeals repeatedly ruled in favor of the appealing taxpayer, the practice continued. Therefore, KBIA requested legislation to address the situation statutorily so that taxpayers would not have to take the time and expense to bring the issue before the Board. She went on to say that the Property Valuation Division issued a directive to address the issue in July 2002, and KBIA was hopeful that the directive would take care of the problem. However, in January, the Sedgwick County Appraiser valued vacant lots by adding the special assessment amount to the selling price, reasoning that it was necessary because the Governor vetoed **HB 3023**. Two bills were introduced in 2003 to address the Sedgwick County action (**SB 227** and **HB 2206**), both of which contained the vetoed language. However, KBIA and the Property Valuation Division developed the language in Section 1 of **HB 2205** (page 1, lines 40 through 43) to address the concerns expressed by Governor Graves and his staff in 2002. In conclusion, Ms. Wilson stated that KBIA is not opposed to New Sections 2 and 3. (Attachment 3)

Mark Beck, Director of Property Valuation, stood in support of **HB 2205**, confirming that Section 1 codifies pertinent provisions of Appraisal Directive #02-040 issued to all county appraisers in July 2002. He called attention to a copy of the directive, which states that it is improper for county appraisers to simply add the current special assessment balance to the cash sales price because this technique may not be indicative of fair market value. The directive also discusses appropriate appraisal methodology. Mr. Beck noted, should the bill become law, it will be helpful to have the directive as part of the record if questions concerning proper application arise. (Attachment 4)

Rod Broberg, Saline County Appraiser, testified in opposition to Section 1 of **HB 2205**. At the outset, he stated that he can work with the directive issued by the Property Valuation Division. For the Committee's information, he distributed copies of a Journal Entry on a case in Johnson County regarding reconsideration of a decision by the Board of Tax Appeals. The District Court found that the market value of the property in question did, in fact, include the cost of special benefit district assessments. (Attachment 5) Mr. Broberg explained that he is concerned that, if he operates under the directive from the Property Valuation Division and his valuation turns out to be the same as it would be if he followed the language in Section 1, it is possible that the Board of Tax Appeals will tell him later, "We don't care how you got that value, you just can't use it." To address his concern, he requested that Section 1 be amended on page 1, line 42, by inserting "solely" before "determined." In his opinion, his suggested amendment will provide a means to defend his valuation.

Senator Lee commented that Mr. Broberg's suggested amendment changes the meaning of the sentence to almost the opposite of its intent. There being no further Committee questions or conferees, the hearing on **HB 2205** was closed.

SB 255–Amendment of tax rolls by county appraiser after final determination of reduction in real property valuation through appeals process in certain circumstances

Paul Welcome, Johnson County Appraiser, testified in support of **SB 255**. He explained that the amendment to K.S.A. 79-1460 (page 2, lines 29 through 37) is taxpayer friendly because it would allow appraisers to change the current tax roll after a second half payment under protest is made. Another amendment on page 2, lines 36 and 37, would allow the most expeditious remedy for proper changes to the tax roll if evidence would warrant a change in value. (Attachment 6)

There being no others wishing to testify, the hearing on **SB 255** was closed.

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

The next meeting is scheduled for March 19, 2003.

SENATE ASSESSMENT AND TAXATION COMMITTEE
GUEST LIST

DATE: March 18, 2003

NAME	REPRESENTING
	KDOR
Rod Broberg	Saline County
Paul Welcome	Johnson County Appraiser
Kevin Bazone	Hein Law Firm
Trista Curzydlo	KS Bar Assn
	KLA
	KMHA
Bill Brady	KS. Gov. Consulting
Chris Wilson	KBIA
	Ks. Credit Union Assn
Deann Williams	KMCA
Larry R Baker	LKM
Don Seifert	City of Olathe
Don Montgomery	Nemaha Co.

City of Olathe

MEMORANDUM

TO: Members of the Senate Assessment and Taxation Committee

FROM: Donald R. Seifert, Policy Development Leader DRS

SUBJECT: **HB 2205**; Disclosure of Pending Special Assessments

DATE: March 18, 2003

Thank you for the opportunity to appear today in support of this bill. HB 2205 began as a relatively simple bill that would require sellers of real property to provide buyers with a written disclosure of existing or proposed special assessments affecting a piece of real estate. The disclosure could be provided prior to execution or as part of a sales contract. The language of the original bill is now contained in new Sections 2 and 3 as passed by the House. These sections would address a fairly common problem in local government: upset property owners at a city council hearing on levying of special assessments for a public improvement stating that "no one told me about this assessment when I bought the property."

The city of Olathe, like many Kansas communities, regularly uses the general improvement and assessment statute at K.S.A. 12-6a01 *et seq*. as a tool to facilitate development in the city. Benefit districts may be used to finance roads, water lines, sewers, and other public infrastructure that makes up the fabric of a growing community. Once the improvement is constructed, special assessments are then levied against real estate parcels receiving a benefit from the improvement, generally on a pro-rated square foot basis. Once levied, the property owner may pay the assessment in a lump sum, or pay it in installments over the term of the bonds issued to finance the improvement.

This system generally works well unless the landowner(s) that petitioned for the original improvement has sold or subdivided property in the benefit district to new owners, or there is a substantial time lag between creation of the district and final assessment. It is very common for a petition for public improvements to be acted on long before the first homes are constructed in a subdivision. Much later, an entire subdivision of new homeowners may receive notice to attend an assessment hearing they claim they knew nothing about. Although benefit districts of record are included in the owner's title insurance policy, often these policies are overlooked or not understood. Such policies are also unavailable until after a real estate contract has been signed. The city regularly provides special assessment information to anyone that asks, but not all buyers know to ask in advance.

Real estate professionals compile volumes of information about a property before marketing it to prospective buyers. HB 2205 would simply insure that pending special assessments are included with other disclosure statements before a contract is signed. We city believes this is good public policy, and should not be a burden on the real estate or development community. This is one important piece of a broad public education program we have initiated about special assessments. The city of Olathe urges the committee to recommend this bill favorably for passage.

Senate Assessment & Taxation
3-18-03
Attachment 1

KANSAS
Association of REALTORS®
SOLD on Service

TO: SENATE ASSESSMENT AND TAXATION COMMITTEE

FROM: BILL YANEK, KAR DIRECTOR OF GOVERNMENTAL RELATIONS

DATE: March 18, 2003

SUBJECT: House Bill 2205

The Kansas Association of REALTORS® supports enactment of Section 1 of HB 2205. Section 1 prohibits adding the present value of special assessments to the sales price in determining the fair market value of real property. This prohibition will allow properties burdened by special assessments to be appraised by the same methodology as those not burdened by special assessments.

The Kansas Association of REALTORS® supports the special assessment disclosure provisions contained in Section 2 of HB 2205. However, we recommend one change to the special assessment disclosure process.

We recommend amending HB 2205 with language stating that: "A seller's failure to disclose special assessments or fees or that the property is located in an improvement district created pursuant to K.S.A. 12-6a01et seq. **shall not** make a contract for the sale of real property void."

Thank you for the opportunity to present testimony in support of House Bill 2205.

Senate Assessment & Taxation
3-18-03

785.267.3610 VOICE
800.366.0069 TOLL FREE
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3644 SW Burlingame Rd
Topeka, Kansas 66611
www.kansasrealtor.com

Attachment 2

STATEMENT OF THE KANSAS BUILDING INDUSTRY ASSOCIATION

TO THE SENATE ASSESSMENT AND TAXATION COMMITTEE

SENATOR DAVID CORBIN, CHAIR

REGARDING H.B. 2205

MARCH 18, 2003

Mr. Chairman and Members of the Committee, I am Chris Wilson, Director of Government Affairs of the Kansas Building Industry Association (KBIA). KBIA is the statewide trade and professional association of the residential home building industry in Kansas. We are in support of H.B. 2205 and appreciate the opportunity to speak to it today.

H.B. 2205 was amended in House Judiciary Committee to address the issue of appraisal of vacant lots that your Committee acted on during the 2002 Session. As you will recall, this issue arose over a series of valuations of vacant lots where the value was determined by adding the cost of special assessments to the selling price of the lot. The Board of Tax Appeals repeatedly ruled in favor of the appealing property owner in these cases, but the practice continued. KBIA requested legislation to address this issue. We greatly appreciate your support for that legislation, which the Senate passed not once but three times, with 39 votes in favor.

The bill that finally passed both houses last year was H.B. 3023, which was vetoed by Governor Graves due to the wording in the bill. The Governor's staff agreed with us philosophically on the valuation of the special assessments – that they should not automatically be included in the appraised value, but are a consideration in determining fair market value. However, they did not believe that the language passed in H.B. 3023 accomplished that objective.

In July of last year, the Property Valuation Division issued a directive to address this issue. We were hopeful the directive would take care of the problem and did not plan to seek further legislation during this Session. However, in January, Sedgwick County issued appraised values of vacant lots by adding the special assessments on, stating that they were supposed to do so because the Governor had vetoed the bill. So, here we are again, asking you to pass a bill on this issue once more. Two bills were introduced in response to the Sedgwick County action, one in each house. Both of those bills contained the vetoed language of H.B. 3023. However, KBIA and PVD have worked together to develop preferable language that addresses the concerns of Governor Graves and his staff. That language is before you today in H.B. 2205.

We are hopeful that this bill will resolved the vacant lot issue and would appreciate your indulgence in once again recommending for passage a bill to address this issue.

There is also a section of this bill that addresses notification of homebuyers when there are special assessments on the property. KBIA does not oppose this section of the bill.

Thank you, Mr. Chairman, for the opportunity to stand in support of H.B. 2205. I would be glad to respond to questions at the appropriate time.

Senate Assessment + Taxation
3-18-03
Attachment 3

K A N S A S

JOAN WAGNON, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

DEPARTMENT OF REVENUE
DIVISION OF PROPERTY VALUATION

MEMORANDUM

TO: Senator David R. Corbin
Chairman, Senate Assessment & Taxation Committee

FROM: Mark S. Beck
Director of Property Valuation

DATE: March 18, 2003

SUBJECT: Senate Bill 2205

Senator Corbin, Members of the Committee, I am Mark Beck, Director of Property Valuation. I am appearing in support of Senate Bill 2205.

Section 1 of Senate Bill 2205 codifies pertinent provisions of Appraisal Directive #02-040 issued to all county appraisers in July 2002. The directive states that it is improper for county appraisers to simply add the current special assessment balance to the cash sales price because this technique may not be indicative of fair market value and discusses appropriate appraisal methodology.

Appraisal Directive #02-040 is attached to my testimony. Should this bill become law, it would be helpful to have it as part of the record if questions arise as to proper application.

DOCKING STATE OFFICE BUILDING, 915 SW HARRISON ST., ROOM 400, TOPEKA, KS 66612-1585
Voice 785-296-2365 Fax 785-296-2320 http://www.ksrevenue.org/

Senate Assessment + Taxation
3-18-03
Attachment 4

ST: F KANSAS
Bill Graves, Governor

DEPARTMENT OF REVE
Stephen S. Richards, Secr

Mark S. Beck, Director
Department of Revenue
Division of Property Valuation
915 SW Harrison St., Room 400
Topeka, KS 66612-1585

(785) 296-2365
FAX (785) 296-2320
Hearing Impaired TTY (785) 296-3909
Internet Address: www.ksrevenue.org

Division of Property Valuation

DIRECTIVE #02-040

TO: County Appraisers

RE: Special Assessments

This directive is adopted pursuant to the provisions of K.S.A.79-505, and amendments thereto, and shall be in force and effect from and after the Director's approval date.

A question has arisen as to how to determine the fair market value of a property that is sold when the buyer assumes a substantial balance of special assessments to pay for public improvements that provide a direct benefit to the property. Such public improvements may include a sewer system, water service, streets, etc. The cash given for the property under these circumstances may be significantly less than the cash given for similar properties that were sold unencumbered by special assessments. In the latter instances, the developer would have paid for the public improvements benefiting the properties and passed these costs on to the buyers. This directive will address all types of property subject to special assessments.

The county appraiser shall presume that the cash given for a property subject to special assessments represents its sales price, and thus should be given substantial weight for purposes of determining the property's fair market value. An arms-length sale may be given substantial weight, but it is not the sole criteria of fair market value for ad valorem tax purposes. Other factors in K.S.A. 79-503a are important as well. *Wolf Creek Golf Links, Inc. v. Johnson Board of Co. Comm'rs*, 18 K.A. 2d 263, 266, 853 P.2d 62 (1993); *Board of County Commr's v. Brookover*, 198 Kan. 71, 77, 422 P.2d 906 (1967).

The presumption that the cash given for the property subject to special assessments is reflective of its fair market value may be rebutted if the county appraiser has evidence to the contrary, including evidence that:

(1) A well informed buyer knowingly assumed the obligation to pay a substantial balance of special assessments;

(2) The cash given for the property subject to special assessments is considerably less than the cash given for similar properties unencumbered by special assessments in open market transactions without any undue influences; or

(3) The market has demonstrated that the public improvements underlying the special assessment add value to private property in the market place.

The county appraiser must be able to demonstrate that the cash given for the property does not fully reflect its fair market value, because part of the consideration given for the property was in the form of assuming the obligation to pay special assessments. That being the case, the cash given alone would not reflect the *total* amount in terms of money given in exchange for the property. Still further, the cash given would not be viewed as the *total* arms-length sales price that is entitled to substantial weight for purposes of determining fair market value.

A county appraiser shall not as a matter of standard practice value a property subject to special assessments by adding the special assessment balance to the cash sales price. Even when this technique is employed recognizing the present worth of future payments, it may result in valuing the property inappropriately. See, e.g., Directive 92-029, 92-035 (Added costs do not necessarily equate to added value.)

The technique of adding the balance of special assessments to the cash given for a property in order to determine its total sales price may not reliably reflect the actual value added to the private property by public improvements. The courts do not require a local governing body to assess the total cost of public improvements based upon the exact benefit to each affected property. Furthermore, the cost of an improvement does not necessarily equate to value in the market place. Finally, the market must demonstrate what portion of the public improvement actually enhances the value of private property and is therefore taxable.

Property subject to special assessments may be valued based upon arms-length sales of similar properties benefited by similar public improvements that have sold unencumbered by special assessments. Under this method, the market defines how much actual value is added to the private property by the public improvement. The parties to such sales recognize that only the private property is being acquired, not the public property. Thus, only the enhanced value of the private property is captured for tax purposes.

Approved: July 23 2002

Mark S. Beck
Director of Property Valuation

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 EXEMPTION FROM AD VALOREM
TAXATION IN JOHNSON COUNTY, KANSAS

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.

Rod Broberg

Senate Assessment + Taxation
3-18-03
Attachment 5

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

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 is 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 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

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.

Lawrence E. Sheppard 11/7/02

Honorable Lawrence E. Sheppard

Prepared by:

Kathryn D. Myers

Kathryn D. Myers 14830
Assistant Count Counselor

MEMORANDUM

Office of the County Appraiser Johnson County, KS

Named "Distinguished Assessment Jurisdiction" for 2000

TO: Senate Assessment and Tax

FROM: Paul Welcome, CAE, County Appraiser

RE: **SB 255 Proposed Statute Changes to 79-1460 & 79-2005**

DATE: March 18, 2003

The change in KSA 79-1460 would allow the county appraiser to change the tax roll after the certification date of June 15 but before November 1st. The second half payment protest hearing for the prior year occurs after June 15th certification deadline for the current year. The county appraiser is not allowed to change the following year's tax roll and the property owner has to file a payment under protest for the current year to receive the adjustment when they pay their taxes by December 20th. The intent of 79-1460 was to allow for the value change to be carried forward to the following year. This cannot occur with the 2nd half payment under protest due to timing for the following year's tax roll. We believe allowing the county appraiser to change the roll would be advantageous for the property owner and the county. The county could correct the roll prior to final millage rates being finalized and the county would not have to pay for additional interest because of the delay to implement 79-1460.

The second bill 79-2005 would allow the property owner to make a payment under protest until January 31st if the mortgage company makes a partial or full payment. When this bill was changed to allow for the property owner to file until January 31st the mortgage companies were making a full payment by December 20th. With federal law changes, the mortgage companies will make two payments if there is not incentive or discount for full payment at the first payment time. We feel this change would allow for the most expeditious remedy for proper changes to the tax roll if their evidence would warrant a change in value. The county would be able to make the change early and not have to wait until the second half payment is due.

Thank you for your consideration.

P:\PAW\2003\legislation\SB255 changes to 79-1460 and 79-2005.doc

Senate Assessment & Taxation
3-18-03
Attachment 6