Approved: February 27, 2009
Date

MINUTES OF THE HOUSE TAXATION COMMITTEE

The meeting was called to order by Chairman Richard Carlson at 9:00 a.m. on February 16, 2009, in Room 535-N of the Capitol.

All members were present except Representative Frownfelter, who was excused. Representative Melanie Meier sat in for Representative Frownfelter.

Committee staff present:
- Gordon Self, Office of the Revisor of Statutes
- Scott Wells, Office of the Revisor of Statutes
- Hank Avila, Kansas Legislative Research Department
- Chris Courtwright, Kansas Legislative Research Department
- Kathy Beavers, Committee Assistant

Conferees appearing before the committee:
- Ron Allen, Manager of the Pawnee Watershed District
- Representative Pat George
- Carol Bonebrake, Cosgrove, Webb & Oman
- Sam Catanese, President, Investment Resources Corporation, Wichita, Kansas
- Edwin Olson, Manhattan Area Housing Partnership
- Fred Bentley, Kansas Housing Resources Corporation
- Bill Caton, Excel Development Group, Auburn, Kansas
- Randall Hrabe, Northwest Kansas Housing, Incorporated
- Ed Keating, Overland Property Group, LLC
- Tom Bishop, Executive Di rector, Homestead Affordable Housing Incorporated
- Gary Post, Lyon County Appraiser

Others attending:
- See attached list.

Chairman Carlson called the meeting to order at 9:10 a.m.

HB 2321 - Political subdivision under the Kansas retailers' sales tax act to include Horsethief Reservoir Benefit District.

The Chairman opened the hearing on **HB 2321**.

Gordon Self, Office of the Revisor of Statutes, briefed the committee on **HB 2321** and stood for questions.

Ron Allen, Manager of the Pawnee Watershed District, testified in support of **HB 2321** (Attachment 1). In his testimony he gave a brief history of the creation of the Horsethief Reservoir Benefit District. An application to the Kansas Department of Revenue, under K.S.A. 79-3602, for a sales tax exemption for goods and services purchased in conjunction with construction was denied. Mr. Allen had assumed that when **HB 2582** (the original) was adopted in 2004, creating the Benefit District, it automatically became an agency of state government. He was told that the District was ineligible under that statute since funding comes from the collection of a .15% sales tax from the four counties comprising the Benefit District. Those counties are Ford, Finney, Gray and Hodgeman. **HB 2321** will remedy this situation by declaring that the Horsethief Reservoir Benefit District is a political subdivision of state government, making them eligible for the exemption. He stood for questions.

Representative Pat George testified in support of **HB 2321** (Attachment 2). He asked that the committee support this bill to fix the technicality in the original bill (**HB 2582**). He stood for questions.

The Chairman closed the hearing on **HB 2321** and opened the hearing on **HB 2319**.

HB 2319 - Determination of fair market value of certain rental property for property tax purposes.

Scott Wells, Office of the Revisor of Statutes, briefed the committee on **HB 2319** and stood for questions.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

Minutes of the House Taxation Committee at 9:00 a.m. on February 16, 2009, in Room 535-N of the Capitol.

Carol Bonebrake, Cosgrove, Webb & Oman, testified in support of **HB 2319** (Attachment 3). Ms. Bonebrake stated in her testimony that the purpose of **HB 2319** is to incorporate existing case law into the statute and clarify that in the appraisal of Section 42 housing projects, an appraiser must consider the restrictions imposed upon the property by the state and federal government. Ms. Bonebrake referenced the Kansas Court of Appeals case In re Equalization Appeal of Ottawa Housing Assn., L.P., which held that "taxing authorities should consider the effects of low-income housing contracts when valuing the property for ad valorem taxes." She stood for questions.

Sam Catanese, President, Investment Resources Corporation, Wichita, Kansas, testified in support of **HB 2319** (Attachment 4). He stated that he is the managing member of entities that own over 40 apartment projects in 16 counties that have binding recorded agreements with HUD and Kansas Housing Resources Corporation that set rents at significantly lower levels that the typical market rate. He cited an example of a property valued by an appraiser at $3.5 million paying $44,000 in taxes during the 2006-2007 year and then the same property was valued by the new county assessor at $8 million and $101,00 in taxes. This was an tax increase of 120%. Mr. Cantonese stated that over $100,000 has been spent and countless hours also spent protesting the valuations of their affordable housing properties at Court of Tax Appeal and in district court. He requested help and support of **HB 2319** to correct the method of valuation to be fair and consistent with the use of affordable housing properties. He stood for questions.

Edwin Olson, Manhattan Area Housing Partnership (MAHP), testified in support of **HB 2319** (Attachment 5). Mr. Olson recounted the housing Manhattan Area Housing Partnership has and examples of the income, staffing, taxes and supplies relating to the property. The annual property tax amount is 300% more than that of the property's previous contribution to the local tax base. He stood for questions.

Fred Bentley, Kansas Housing Resources Corporation, testified in support of **HB 2319** (Attachment 6). Mr. Bentley stated that there are varied and unequal real estate appraisals of Section 42 properties across the state. Affordable housing is crucial to every community and in order to provide a uniform and consistent method of appraisal that recognizes the unique characteristics of a Section 42 tax credit property, Kansas Housing Resources Corporation encourages passage of **HB 2319**. He stood for questions.

Bill Caton, Excel Development Group, Auburn, Kansas, testified in support of **HB 2319** (Attachment 7). In his testimony, Mr. Caton stated that **HB 2319** provides the necessary legislative directive to have fair and uniform assessment of section 42 properties and other affordable housing programs administered by HUD and USDA Rural Development in Kansas." He stood for questions.

Randall Hrabe, Executive Director of the Northwest Kansas Planning & Development Commission and board member of the Northwest Kansas Housing, Incorporated (NWKHI), testified in support of **HB 2319** (Attachment 8). He stated that Northwest Kansas Housing, Incorporated has built 92 single family units in 10 different rural communities throughout northwest Kansas. Except for two of the homes, all of the properties were built with IRS Section 42 Low Income Housing Tax Credit funds along with other funding sources. Mr. Hrabe stated that some county appraisers are valuing the properties based on market value approach and not the restricted income as originally mandated in law. He stood for questions.

Ed Keating, Overland Property Group, LLC, testified in support of **HB 2319** (Attachment 9). He stated, "Unfortunately, there are apartment communities associated with the Section 42 Program that are in grave financial danger due to valuation issues for real estate tax purposes." Increases in taxes could result in rent increases to tenants of these properties. He stood for questions.

Tom Bishop, Executive Director, Homestead Affordable Housing, Incorporated testified in support of **HB 2319** (Attachment 10). Section 42 projects have "Land Use Restriction Agreements". These agreements restrict rents, income and details the required replacement reserves accounts to be maintained. The basis of the value for taxes should be income based. These developments cannot be financially feasible if taxed on the cost of development. He stood for questions.

Chairman Carlson called attention to written testimony from Chris Wilson, Executive Director of Kansas Building Industry Association (Attachment 11) in support of **HB 2319**.

The Chairman called attention to the written testimony from Gary Post, Lyon County Appraiser, in opposition to **HB 2319** (Attachment 12).

The Chairman closed the hearing on **HB 2319**.

Chairman Carlson told the committee members that, if time permits, the following bills will be worked, Tuesday, February 17, 2009:

- **HB 2175** - Repealing statute which provides penalty for misclassification of employees.
- **HB 2321** - Political subdivision under the Kansas retailers' sales tax act to include horsethief reservoir benefit district.

Gary Post, Lyon County Appraiser, submitted written testimony only in opposition to **HB 2319** (Attachment 12).

The next meeting is scheduled for February 17, 2009.

The meeting was adjourned at 10:50 a.m.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

HOUSE TAXATION COMMITTEE

SIGN IN SHEET

DATE: February 16, 2009

Randall / Hrabe, NWKP+DC	
Joyce Schamberger NWKHI	
Ron Allen, Pawnee W/S Dist	
Robin Jennison, rep 1	
Tom Bishop, Homestead Affordable Housing	
Kent Eckles	KS Chamber of Commerce
Dave Holtwick	Overland Park Chamber
Dennis Ryser	KS Association of Counties
Michelle Butler	Capitol Strategies
Chris Wilson	KBIA
Carol Bond	Cosgrove Webb & Oman
Bill Caton	Excel Dev. Group
Ed Olson	Manhattan Area Housing Partnership

Testimony-HB 2321
House Taxation Committee—February 16, 2009

Thank you, Mr. Chairman, and members of the committee, for the opportunity to speak briefly with you this morning. I am Ron Allen, manager of the Pawnee Watershed District and interim manager of the HorseThief Reservoir Benefit District.

I am sure that most of you have at least a passing familiarity with HorseThief Reservoir, currently under construction in Hodgeman County.

The HorseThief project is being constructed under the direction of the two local bodies mentioned, the Pawnee Watershed District being responsible for construction, operation, and maintenance of the dam portion of the project.

The HorseThief Reservoir Benefit District, created by action of the 2004 session of the Legislature, was given the authority to issue bonds to assist in financing the project, as well as the responsibility for construction and operation of the recreational facilities associated with the Reservoir.

To date, most activity on the site—primarily dam construction—has been managed by the Pawnee Watershed District. But as completion of the dam this coming fall nears, the efforts of the Benefit District are ramping up.

In anticipation of their activities—installation of roads and utilities, construction of boat ramps, and the like—I made application to the Kansas Department of Revenue for a sales tax exemption for goods and services purchased in conjunction with construction.

That application for exemption under K.S.A. 79-3602 was denied. I was told that since we do not fund operations and bond repayment through the collection of ad valorem taxes, as required by that statute, we were ineligible.

Needless to say, I was surprised, since I had always assumed that when HB 2582—the bill creating the Benefit District-- was adopted, we automatically became an agency of state government, since we had been created by state government.

As you might recall, in our case funding comes from the collection of a .15% sales tax in the four counties comprising the Benefit District—Ford, Finney, Gray, and Hodgeman.

House Bill 2321 has been introduced on our behalf to remedy this situation, by declaring that we **are** a political subdivision of state government, making us eligible for the exemption. Obviously, this action would make a larger portion of the funds collected by the sales tax available for construction of facilities used by the public.

With that, I would be happy to entertain any questions you might have.

Ron Allen

PAT GEORGE
REPRESENTATIVE 119TH DISTRICT
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STATE OF KANSAS

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS

VICE CHAIR: VISION 2020
MEMBER: ECONOMIC DEVELOPMENT AND TOURISM
TAXATION
VETERAN, MILITARY AND HOMELAND SECURITY

February 16, 2009

To: Chairman Richard Carlson
Members of the Taxation Committee

From: Pat George, 119th District State Representative

Re: HB2321

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you today in support of HB 2321.

In 2004 I was approached to help with HB 2585; which created a benefit district for the purpose of imposing a sales tax(.015%), with voter approval, on 4 counties(Ford, Finney, Hodgeman, and Gray). The sales tax collected was to be used in the building of Horsethief Reservoir. HB2582 passed both Chambers and signed into law without controversy and the voters in 4 counties passed the sales tax issue overwhelmingly.

Recently a small technicality was discovered thus prompting the introduction of HB2321. Because of the multi-jurisdictional (4 counties) entity that was created, a hybrid of sorts, technically the Horsethief Reservoir Benefit District has been determined not to be a political subdivision. HB2321 would give the Horsethief Reservoir Benefit District political subdivision status. A copy of HB2582 is attached, section "B" on the first page reads: *The powers conferred by this act are for public uses, economic development purposes or purposes for which public money may be expended.* **In my view, the words:** *public money may be expended* **indicates that the makers of the bill, in 2004, intended or**

assumed that Horsethief Reservoir Benefit District would be a public entity.

I ask for your support in passing out HB2321 favorably so that the "Oasis on the Plains" can proceed!

Thank you,
Pat George
KS House of Representatives
119th District
3007 Westview
Dodge City, KS 67801

Kansas House Assessment and Taxation Committee
House Bill No. 2319

My name is Carol B. Bonebrake. I am a lawyer with Cosgrove, Webb and Oman in Topeka. I am appearing in support of House Bill No. 2319 which amends K.S.A. 79-503a, the statutory provision which lists all of the various factors which an appraiser must consider in arriving at fair market value for ad valorem tax purposes. The purpose of House Bill No. 2319 is to incorporate existing case law into the statute and clarify that in the appraisal of Section 42 housing projects, an appraiser <u>must</u> consider the restrictions imposed upon the property by the state and federal government.

Section 42 housing is housing built or acquired pursuant to a contract with the state to provide low-income housing. Section 42 of the Internal Revenue Code provides tax credits for the construction/acquisition of affordable housing projects. Tax credits are allocated to the developer by the state; these are then sold to investors and the proceeds are used to pay a portion of the project's construction costs. In return for the tax credits, the Section 42 project is required to lease the apartments at rents set by the government to persons who earn less than 60% of the median income for the geographic area. The rent restrictions must be maintained for at least 15 years and typically 30 years. In the event the restricted rents are not maintained, tenants may sue for damages under the Fair Housing Act and the IRS will require recapture of the tax credits.

In 2000, the Kansas Court of Appeals decided <u>In re Equalization Appeal of Ottawa Housing Assn., L.P.</u>, 27 Kan. App. 2d 1008. In that case, the Court of Appeals held that "taxing authorities should consider the effects of low-income housing contracts when valuing the property for ad valorem taxes." Syl. 7. Since 2000, the various counties, PVD and the Court of Tax Appeals have interpreted the <u>Ottawa Housing</u> decision in different ways. An example is a recent decision of COTA which upheld a County's appraisal of a Section 42 project prepared without consideration of the effects the low-income housing contract had upon the property. In re Equalization of Paola Sundance.

Since the Paola Sundance decision, certain counties, in their appraisals of Section 42 properties, have ignored the Section 42 restrictions which affect what a willing buyer will be willing to pay for the property; these counties are treating Section 42 properties as if the owners may increase the rents if they choose to do so. Other counties are recognizing that the restrictions imposed by government will affect what the property would sell for in an open and competitive market and are adjusting the valuations accordingly. Statewide there is inconsistent treatment of Section 42 properties.

The purpose of House Bill No. 2319 is to clarify that Ottawa Housing is the law in the state of Kansas. K.S.A. 79-503a sets forth the various factors which an appraiser must consider in achieving fair market value. House Bill No. 2319 amends subparagraphs (f), (h) and (j) so that it is crystal clear that an appraiser must consider the restrictions imposed by the low-income housing contracts in arriving at the fair market value for ad valorem purposes. I request that the Committee act favorably on House Bill No. 2319 to eliminate the confusion which presently exists.

Kansas House Assessment and Taxation Committee
House Bill No. 2319

My name is Sam Catanese and I am the president of Investment Resources Corporation in Wichita, Kansas. I am the managing member of entities that own over 40 apartment projects in 16 counties containing over 3000 apartment units, all of which provide clean, quality, affordable housing for low income elderly and moderate income families throughout Kansas. We have entered into binding recorded agreements with HUD and Kansas Housing Resources Corporation that set rents at significantly lower levels than the typical market rate. The household income of our tenants cannot exceed 60% of the area median income in the county where located. On average our rents are $200 dollars less per month than market rent.
Although there is clear and defined case law in place for valuation of affordable properties based on net operating income, several appraisers in the state have taken it upon themselves to use other methods of valuation. Numerous times we have met with individual assessors, county commissioners, and the department of revenue property valuation division, who are sympathetic, confirm the revenue department guidelines, but refuse to base the tax value on actual experienced financial results; as the law and revenue department guidelines require. In case after case we are forced to bear the cost to go to COTA.

One example of this occurs in Riley County where in 2006 and 2007 the appraisers used the Property Valuation Division Model set in place by the Kansas Court of Appeals (Ottawa housing case) and valued our 108 unit Section 42 affordable apartment property reasonably at $3.5 million paying $44,000 in tax. Without any increase in property income, the 2008 value was arbitrarily increased by the new county assessor, using his highest and best use value approach to set the property value at $8 million and $101,000 in taxes, a tax increase of 120%. We are unable to raise rents to offset the taxes due to our State and Federal land use restrictions and the economic viability of the property is now in jeopardized.

Over the past several years our company has spent over $100,000 dollars and countless hours protesting the valuations of our affordable housing properties at COTA and in district court. We have cases pending in Riley, Geary, Sedgwick, Reno, Butler, and Leavenworth Counties. Several of our cases are backed up over 3 years waiting for a court date. These communities recruited us to help solve their affordable housing needs. Knowing taxes would be crucial to the viability of the project we meet with City officials and county assessors to establish a value to be used in our underwriting. The model to determine the value is no longer being honored. We can no longer continue to construct affordable housing in Kansas when we cannot clearly provide to our equity investors an income proforma with predictable tax expenses. Due to the unwarranted increase in valuations the public policy to provide affordable housing in Kansas is being undermined.

We ask for your help and support of House Bill 2319 which corrects the method of valuation to be fair and consistent with the use of affordable housing property.

Testimony in Support of HB 2319
February 16, 2009
Jill Jacoby, Manhattan Area Housing Partnership, Inc.

This testimony supports HB 2319, which provides guidelines to county appraisers so that they may levy fair and equitable assessments on affordable housing properties in Kansas. Interpretations of a long-standing court ruling on appraisal of non-profit housing vary from county to county in Kansas. Passage of HB 2319 is absolutely vital to clarify appraisal methodology, to encourage development of affordable, low-income housing in Kansas, and to allow existing Section 42 housing to sustain itself financially.

Manhattan Area Housing Partnership (MAHP) is a non-profit 501 (c) 3 Community Housing Development Organization (CHDO) that is dedicated to providing safe, affordable housing development in Manhattan, Riley County, Kansas. Our program guidelines, which derive from Section 42, Low Income Housing Tax Credit, require that our rents be substantially below market rates, and that property be rented to income qualified applicants (60% Area Median Income or below). (Compliance is monitored by the Internal Revenue Service.) However, our single family homes are assessed at values similar to non-Section 42 homes. Non-section 42 homes rent for approximately twice as much within the same neighborhood.

MAHP's current Section 42 housing includes: 12 single family homes (2 and 3 bedrooms/ 2 baths), and four duplexes (3 bedrooms / 2baths) which are nearing completion. Average rents for existing 3 bedroom houses are $637 and for the duplexes will be $677. In addition, MAHP recently completed a 48 unit apartment complex with average rents of $470 for 2 bedrooms, and $520 for 3 bedrooms. Many of these homes are handicapped accessible. These are quality units. None of these properties is more than four years old and some are not yet complete. Photos are found on the back of this page.

In addition to new construction, we have partnered with the public housing authority in Manhattan to rehabilitate a 60 unit public housing property with Section 42 funding. Rents for those units are $325 for a one bedroom, $500 for a 2 bedroom, $575 for a 3 bedroom and $625 for a 4 bedroom.

Property taxes assessed on the 12 single family homes total $18,694; in addition to property taxes, we pay special assessments for roads and sewers of $14,737—a total of $33,431. We do not yet know the assessment on the duplexes which are nearing completion. The 48 unit Section 42 apartment complex is assessed annual taxes of $38,395. The public housing property which formerly provided a federal payment in lieu of taxes (PILOT) is now responsible to pay an annual property tax amount of $52,320. This represents more than 300% of the property's previous contribution to the local tax base.

[Personal comments of Edwin Olson] HB 2319 is necessary not only to encourage development of affordable housing, but also to sustain the organizations that plan and administer the properties. Our local unit receives only $12,000 per year for management fees from our properties (perhaps it will increase by $4,000 with the new duplexes). For required accounting and insurance we pay $6,000. Rent, utilities and supplies are $7,000. These two figures exceed our annual income from management fees. But we also have an executive director that we pay to rent the units, write reports, and deal with maintenance and tenant concerns. She works part time, as does a student helper. Others of us volunteer. How do we make ends meet? We have been sustained by grants for new developments, but we cannot depend on those continuing. Basing property tax payments on below-market rental income of affordable housing (rather than the higher rents for privately-owned properties) will assist tremendously in providing the additional revenue that we need to continue the program in Manhattan.

Please support the passage of this bill. Members of the communities throughout the state depend on it for continued availability of affordable housing and economic development. On behalf of the Manhattan Area Housing Partnership, we thank you for the opportunity to provide testimony in support of HB 2319.

Jill Jacoby, Executive Director
Manhattan Area Housing Partnership, Inc.
P.O. Box 831, 103 S. 4th St. Suite 25, Manhattan, Kansas 66505,

Rehabilitated Units. One to three bedrooms, $325 to $520 per month

New Duplexes, three bedrooms, $677 per month.

New apartments, two and three bedrooms, $470 and $520 per month.

Three bedroom home, $637 per month

Testimony on HB 2319

My name is Fred Bentley. I am the Director of Rental Housing for the Kansas Housing Resources Corporation. In this capacity I am the Manager of the IRS Section 42 housing tax credit program for Kansas. It is the goal and purpose of the program to provide affordable rental housing opportunities for Kansas residents. Over 25,000 rental housing units in 81 counties throughout the state have been financed through the Section 42 program.

In the administration of this program over the past 17 years it is apparent to me that there are varied and unequal real estate appraisals of Section 42 properties across the state. Even through the Kansas Department of Revenue has provided guidance on how to appraise this type of real estate, many county appraisers opt to value tax credit properties as if they were unrestricted market rate units. However, unlike in market rate housing, property owners are restricted in the rental rates they can charge and owners of tax credit housing enter into agreements to comply with these restrictions for 30 years. These restrictions significantly impact the market value of these properties.

As a result many Section 42 properties are being appraised without regard to the restricted income and use of the properties required by federal law. The resulting higher appraisals undermine the public policy mandate to

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provide affordable housing. Higher real estate taxes increase operating costs and make it difficult to sustain the operation of these properties. If property owners pay more in taxes, they have less money for upkeep, a fact that can affect the safety and living condition of a housing development. In addition, higher operating costs also impact KHRC's ability to attract new investors into the affordable housing market. If profits are down or simply non-existent, investors are not likely to contribute.

Affordable housing is crucial to every community in the state. It is a key element in the economic development and health of any community. However, the appraisals of these income restricted properties in many counties are making it more difficult for communities to secure the rental housing they need.

In order to provide a uniform and consistent method of appraisal that recognizes the unique characteristics of a Section 42 tax credit property KHRC supports HB 2319 and urges its adoption by this committee.

Testimony in Support of HB 2319
By: Bill Caton, Excel Development Group
February 16, 2009

I appreciate the opportunity to provide written testimony in support of HB 2319. This bill will provided needed guidance for local county appraisers/assessors in the fair and equitable assessment of affordable housing properties in Kansas. While a long-standing court ruling has provided sound guidance in the past, there is a need for legislative guidance to remove local interpretation and deviation that currently and unfairly has created gross inequities in several counties and has threatened financial failure of affordable housing properties across Kansas.

As past president of Kansas Development Finance Authority, executive director of Kansas Equity Fund, and my current position as development director of Excel Development Group, I have participated in over 80 section 42 housing properties in Kansas over the past 15 years. And I can tell you that a common thread runs among all of them: the uncertainty of obtaining an initial fair tax assessment and the fear of having revaluation of the property cause financial failure.

While section 42 housing has been the most successful program for affordable housing for the past 2 decades, it is also heavily regulated by both the federal administrator, the IRS, and the local administrator, the Kansas Housing Resources Corp. Rent levels are strictly restricted for at least 30 years. Compliance with the program requires expensive independent financial audits by a CPA, investor-imposed 3rd party monitoring of program compliance and mountains of record keeping and verifications. With restricted rents and higher operating expenses, reaction to unforeseen expense increases, such as dramatic increases in property taxes, is severely limited and impossible to cope with. Most section 42 properties are structured to cope with 2% restrictions on annual rent increases and 3% annual expense increases. Many times, rents for these properties are 50 – 60% of what an identical market-rate projects are, has imbedded higher expenses created mainly by compliance issues, and cannot afford to pay property taxes at the same rate as a market-rate property. They cannot react to unforeseen expense increases by raising rents to offset the additional costs.

The need for passage of HB 2319 goes beyond the current issue of a change in local interpretation of some county assessors. I have seen many times a section 42 property, which was correctly assessed under current guidelines by the court ruling and the Kansas Department of Revenue, be re-assessed by a new local county assessor who did not research why the property was properly valued and, in many cases, more than doubled the property tax liability. While there are mechanisms in place to appeal assessed valuations, it can take up to 3 years and longer to reverse this action and limited resources of these properties cannot sustain the property during the appeal process.

County assessors are only doing their job to fairly assess property in their county to provide an appropriate tax base to fund local government activities. But the unfair use of the "best possible use" formula for assessing section 42 housing instead of the "income approach" (which is the equitable way to assess these properties) will bring certain financial failure to the existing properties and development of new properties will cease, creating additional housing needs in communities across Kansas.

HB 2319 provides the necessary legislative directive to have fair and uniform assessment of section 42 properties and other affordable housing programs administered by HUD and USDA Rural Development in Kansas. The beneficiaries of passage of this bill are the tenants who live in these properties who are at or below 80% (60% for section 42 properties) of the area median income and the cities and counties that depend on affordable housing to maintain and create economic development in their communities. I strongly urge you to support and pass HB 2319.

Thank you again for the opportunity to provide written testimony on behalf of HB 2319.

Bill Caton
Excel Development Group
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Auburn, KS 66402
785-221-4971
bill@exceldg.com

Northwest Kansas Housing, Inc.
Serving 18 Northwest Counties
P.O. Box 248
319 N. Pomeroy
Hill City, Kansas 67642
Telephone (785)421-2151 Fax (785)421-3496
Email: nwkpdc@ruraltel.net

Good Morning! I am Randall Hrabe, the Executive Director of the Northwest Kansas Planning & Development Commission and board member of the Northwest Kansas Housing, Inc., a 501c3 non-profit organization. Also accompanying me, is Loyce Schamberger, the Director of Northwest Kansas Housing.

The NWKHI was formed approximately 10 years ago and has built 92 single family units in 10 different rural communities throughout northwest Kansas. Except for two of the homes, all of the properties were built with IRS Section 42 Low Income Housing Tax Credit funds along with other funding resources. The mission of NWKHI and the only reason it was formed, was to provide affordable decent housing to northwest Kansas residents. Although, at times, we feel we should be doing more, building 92 new homes in less than 10 years is fairly aggressive for a non-profit organization.

What has happened recently is that some county appraisers are valuing the properties based on market value approach and not the restricted income as originally mandated in law.

I will use our Ellis property as an example. Ellis is a small community of approximately 1,500 residents. At the request of the community and the local banker, we built 10 housing units. In this particular case, they are duplexes and are restricted to elderly residents 55 years of age or older, in addition to the program income restrictions. Nearly all of our other properties are designated for low to moderate income families. Originally, when we built the Ellis property, we projected the property tax to be approximately $4,000 per year based on the income valuation approach. In 2007, the taxes were $5,191 and the latest property tax statement was $12,196. The county assessor's decision was based on a BOTA decision, "*In the Matter of the Equalization Appeal of Paola-Sundance Apartments for the year 2004 from Miami County, Kansas, et al.*" From the NWKHI 2008 Profit and Loss Statement on this property, the net income was only $1,214. And, that was before we took any property management fee out. It does not take a mathematician to see that raising the property taxes by $7,000 per year will bankrupt the property. Please remember, the rents we are able to charge are limited by the Section 42 Program and realistically the residents would not be able to pay higher rents because of their income. In these units, a person making a maximum of 60% of the area median income ($22,500 maximum income) would be paying $490 per month for rent and utility allowance.

The housing units in Goodland are affected the same way. The original taxes were $5,500 and the latest tax statement was $11,384. If all 10 of our housing properties increased their tax by $6.000 or $7,000 per year, like these two examples, the additional cost to our non-profit organization would be over $60,000. We would not survive that scenari[illegible] we would not be building any more housing units, even though we have a list of a dozen other communities wanting us to build in their community.

If northwest Kansas is to survive, providing affordable housing is a critical component of the economic needs to be addressed.

I want to thank you for allowing me to present this testimony today and request your full support of the passage of HB 2319.

I would stand for any questions or you may email Loyce or myself at nwkpdc@ruraltel.net

Thank you for your time.

Testimony in Support of HB 2319
By: Ed Keating, Overland Property Group, LLC
February 16, 2009

Thank you for the opportunity to provide written testimony in support of HB 2319. As you may know, Section 42 Low Income Housing Tax Credit (LIHTC) Housing was created and enacted by Congress in 1986 to provide housing to low-income families and individuals. Prior to Section 42 Housing, HUD (Housing and Urban Development) administered affordable housing in the United States, which created problems due to the inefficiency and sometimes corruption associated with this agency. Congress enacted Section 42 Housing to provide the private sector with incentives to build affordable housing, which has led to better, more cost and energy efficient housing across the US.

The Section 42 Program has been very successful here in Kansas and our company alone owns approximately 500 units. A typical Section 42 apartment community consists of a wide variety of tenants such as military people, retail and construction workers, seniors on fixed incomes, teachers and police. The properties statewide are well maintained and seldom could be identified as affordable housing by the interior or exterior characteristics of the housing. Our typical apartment unit rents for approximately $500 but would rent for $700 or $800 if we were not associated with the LIHTC Section 42 Program.

HB 2319 is necessary in order to ensure the continued success and viability of the Section 42 Program in Kansas. Other states such as Iowa have enacted similar legislation to stay competitive in order for businesses to attract workers and for residents to have a safe and affordable place to call their home.

One of the largest issues associated with owning and operating Section 42 Properties is the wide variation in how County Appraisers value this type of housing for real estate tax purposes. For instance, our apartment complex of 96 units in Manhattan, KS would have paid taxes of approximately $43,000 had the County Appraiser valued the property like neighboring counties but instead will pay taxes of approximately $115,000 because of that particular Appraiser's methodology for valuation. In order to satisfy lender requirements, a situation like this could result in the tenants facing rent increases of $100 per month, which simply is not affordable to many who live in our communities. Another obstacle is that in order to build and own a Section 42 Property, you must agree to limit the amount of rent charged to qualified, low income tenants (persons making 60% or less of the area median household income). The rent limits and the compliance period are deed restricted for a minimum of 15 years. There are cases where the rent increases necessary to cover the increased real estate taxes exceed the rent limits associated with the program or are unaffordable to the tenants in the apartment community so they are forced to move.

Section 42 LIHTC Housing is important to all areas in Kansas to ensure quality of life and community stability and growth. Our apartments are located in areas such as Liberal, Salina, Coffeyville and Olathe. It is almost a given that when we ask for community support for this type of housing the community leaders mention that their city is restricted in growth due to availability of affordable housing. In every community we have worked in, the City Governments have been supportive and proactive in attracting us to their communities.

Unfortunately, there are apartment communities associated with the Section 42 Program that are in grave financial danger due to valuation issues for real estate tax purposes. These projects are not designed to generate much, if any, positive cash flow. An appeal to either the local county or to the Kansas Court of Tax Appeals is costly and can take many years to resolve. In some instances, there is not enough money generated from the project to pay either the tax assessed or the attorneys to protest the valuation.

Without the uniformity of valuation offered by HB2319, Section 42 Housing will cease to expand and developments across the state will suffer unnecessary financial burdens and sometimes failure. Many community leaders across the State of Kansas have commented that the positive financial impact of this type of housing is very important to attract and maintain businesses in their area. Many community leaders are very fearful of the negative impact burdened or failing Section 42 Housing would have in their area as well as the prospects of getting more affordable housing in their area in the future. I strongly urge you to pass HB2319.

Ed Keating
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HOMESTEAD AFFORDABLE HOUSING, INC.

P.O. Box 1007
115 West 4th Street, Suite 200
Holton, KS 66436

To: House Taxation Committee
From: Tom Bishop, Executive Director
RE: Testimony in Support of HB 2319
Date: February 16, 2009

Thank you for the opportunity to share with you briefly this morning to offer testimony in support of HB 2319. Homestead Affordable Housing, Inc is a 501 (C) 3 non-profit Community Housing Development Organization, one of the twenty-three CDHO's approved by the state through Kansas Housing Resources Corporation. We have been a developer of single and multi-family affordable housing since 1998.

The affordable senior housing communities we have developed utilize the federal housing tax credit program (LIHTC, or Section 42 of the IRS code) and other public and private sources of financing that make the rents affordable for our senior tenants. These sources include federal HOME funds, FHLBank Affordable Housing Program, USDA Rural Development 515 and 538 programs, and historic tax credits.

The combination of the equity from the LIHTC program and these other sources of funds usually results for us in a mortgage amount that is only 20-25% of the cost of the development. With the low debt service costs, rents can be much more affordable than if the project was developed as a market rate development. HB 2319 is correct in providing for the tax valuation of such a development being income based. These projects have "Land Use Restriction Agreements" (LURA) required by Kansas Housing Resources Corporation, recorded of record that restricts rents, income, and details the required replacement reserves accounts to be maintained.

As rent restricted and tenant income restricted these developments have received public resources (LIHTC) to enable these projects to serve seniors at 30%, 50% and 60% of area median income. The basis of the value for taxes should be income based, as these developments cannot be financially feasible if taxed on the cost of development.

For the last dozen years the Kansas Department of Revenue has provided county appraisers a methodology for valuation of subsidized housing. This "Subsidized Housing Valuation Worksheet" was developed in partnership with officials of USDA Rural Development, HUD and others to enable a consistent, property income based, approach. Unfortunately, it appears this tool is not consistently or universally used by all counties. It is my hope that the language of HB 2319 will help promote a fair treatment of valuation, based on the actual rent restricted incomes of these developments. Again income rather than cost based valuation.

The attached charts show the development funding and debt structure of two of our senior communities. The funding partnerships create opportunities for very low income seniors to have a decent place to live. If taxed at the cost of development these projects are not feasible.

I'll be glad to respond to questions. Thank you.

PHONE: 785-364-0110 **FAX: 785-364-0114** **E-**

Brookside Senior Residences

Age - Average 75, youngest - 55, oldest – 93

Income - Average Household Income $12,493.02

32 households are below 50% AMI
9 households are between 50% and 60% AMI

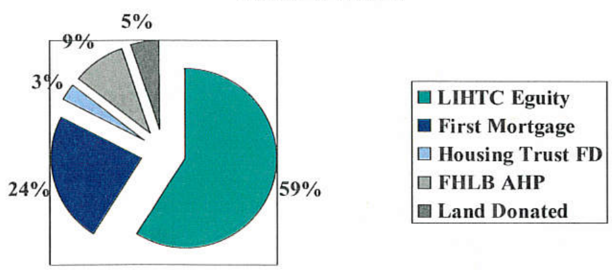
Head of Household - 93% Female, 7% Male

38 Single Households, 3 Couple Households

Brookside Senior Residences, Augusta, KS

A Homestead Affordable Housing Development

Sources of Finance



- LIHTC Equity $1,915,000 Kansas Housing Resources Corporation
- First Mortgage 765,000 Prairie State Bank
- KS Trust FD 100,000 KDOCH
- FHLB AHP 300,000 FHLBank of Topeka
- Land 165,000 Donated Land and Deferred Fees
- **TOTAL $3,245,000**

10-2

Main Street Place

Age - Average - 73, Youngest - 55, Oldest – 88

Income - Average Household Income $17,374.64

43 households are below 50% AMI 16 households are between 50% and 60% AMI

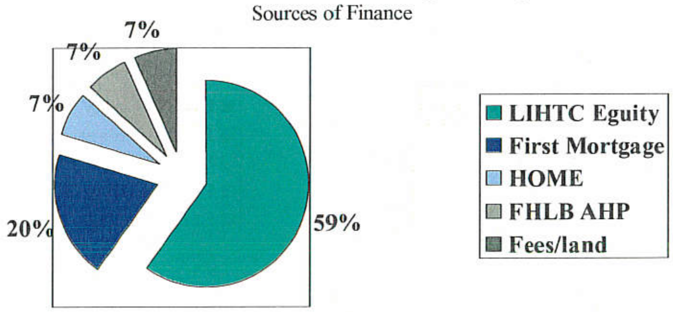
Head of Household - 73% Female, 27% Male

51 Single Households 8 Couple Households

Main Street Place Senior Residences, Haysville, KS

A Homestead Affordable Housing Development

Sources of Finance



• LIHTC Equity	$2,600,000	Equity Partners
• First Mortgage	875,000	Farmers Bank & Trust, NA
• HOME	300,000	Kansas Housing Resources Corporation
• FHLB AHP	300,000	FHLBank of Topeka
• Donated Land	185,000	City of Haysville
• **TOTAL**	**$4,360,000**	

STATEMENT OF THE
KANSAS BUILDING INDUSTRY ASSOCIATION

TO THE HOUSE TAXATION COMMITTEE

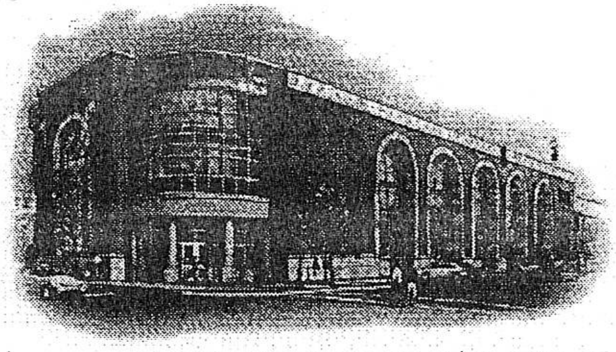
REPRESENTATIVE RICHARD CARLSON, CHAIR

REGARDING H.B. 2319

MONDAY, FEBRUARY 16, 2009

Chairman Carlson and Members of the Committee, thank you for the opportunity to comment regarding House Bill 2319, which concerns the determination of fair market value for federal Section 42 housing. I am Chris Wilson, Executive Director of Kansas Building Industry Association (KBIA), the state association of the residential construction industry, with over 2300 members. KBIA is the Kansas affiliate of the National Association of Home Builders.

KBIA supports H.B. 2319, which would clarify that the limitations on rental income under Section 42 are to be taken into account when determining fair market value of the property. We believe that should be the case based on the current law, but since there have been problems with this, it needs to be clarified. We encourage the Committee to report the bill favorably for passage.



Lyon County Appraiser
Lyon County Courthouse

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Emporia, KS 66801

(620) 341-3302
Fax: (620) 341-3360

HOUSE TAXATION COMMITTEE **HB 2319** **February 16, 2009**

The data below illustrates in a very vivid manner the difference between actual rents and market rents and the value produced. In order for an individual to become Section 42 Housing they must apply. It is voluntary. The trade off for lower actual rents is the tax credits. The Court of Tax Appeals has ruled in a Miami County Case that market rents can and should be use to value Section 42 housing at Market Value.

ISSUE

This property (Apartments) was built in 2005. The owner's agent wanted only the subsidized income reviewed to establish a value as of 1/1/2007. The agent's opinion is that this apartment complex should be valued at $1,280,663 or $29.35 per Sqft or $30,492 per unit for the 14 one bedroom and 28 two bedroom units.

COUNTY POSITION

This 42 unit complex consists of a 43,632 Sqft frame 3-story garden apartment building and separate parking structure constructed in 2005/2006. The reported building permit cost was $2,721,341 on 3.3 acres of land which was purchased for $292,500 in August 2004. The 2007 county value is from the cost model at $2,212,510

History

Year	**Land**	**Building**	**Total**	**Sqft**	**Unit**	**Appeals**
2004	$ 31,740		$ 31,740	Split value		No Appeal
2005	$ 115,310	$971,500	$1,086,810	40% complete		Informal NC
2006	$ 115,310	$2,015,650	$2,130,960	$48.84	$50,737	No Appeal
2007	$ 191,770	$2,020,740	$2,212,510	$50.71	$52,679	Informal NC

Market Rent Income
$744 per month 1 Bedroom
$876 per month 2 Bedroom
Total potential per month $34,944 or $9.61 annually per Sqft
Total potential per year $419,328

Current gross rent multiplier: Monthly 63 Annually 5.28
Total Actual Exp w/o debt/taxes/depr 2006 $116,678 percent of market 28%
Capitalization Rate 10%
Effective tax rate 1.7%
Actual Subsidized 2006
$454 per month 1 Bedroom
$545 per month 2 Bedroom
Total actual per month $21,056 or $5.70 annually per
Actual Subsidized 2006 income $196,320

Sales

Lyon County has reports of 10 apartment sales during 2004-2006. The county rarely gets income and expense data from these sales but gross rent multipliers can be readily developed. Most of the complexes that have changed hands have been older units that sold for around $30 per Sqft and had an annual income of about $5 per Sqft with gross monthly multipliers in the mid 60's. The subject was built in 2005 and has an elevator.

Tax Credits

In an August 2007 Legislative Post Audit Committee report on Section 42 housing, the Total Development Cost reported was $4,064,020 with $3,883,610 tax credits applied for and $3,791,140 tax credits awarded for these Senior Place Residences. The Register of Deeds in Lyon County shows a Mortgage for $1,150,000 to a Kansas Bank & Trust. Miscellaneous Document recorded in Book xxx Page xxx shows "...the owner has applied to the Department for an allocation of Credit to the Project in an amount not to exceed $3,791,140".

The County's current 2007 value of $2,212,510 or $50,71 per sqft may be almost 50% low based on reported total cost development of $4,064,020 or $93.14 per sqft.

Gary Post

Gary Post
Lyon County Appraiser