

SB 72 Proponent Testimony – in person
Appraiser courses approved by real estate board
Senate Assessment and Taxation Committee
Dave Trabert – CEO
February 4, 2021



Chairwoman Tyson and Members of the Committee,

We appreciate this opportunity to testify in support of SB 72, which requires appraisal courses for county appraisers and BOTA members to be approved by the Kansas real estate appraisal board.

This change is needed because, unfortunately, at least one organization offering training courses is openly promoting appraisal methods contrary to established Kansas law.

As noted in the news article attached to my testimony, the International Association of Assessing Officers (IAAO) is attempting to redefine the meaning of “fee simple” so counties can hike valuations on large retailers by charging property tax on the value of the business rather than just the land and building as required under Kansas law.

David Harper, Kansas’s Property Valuation Director, and Greg McHenry, Riley County appraiser, sit on the board of the IAAO, which unanimously approved the white paper. Neither has responded to requests to be interviewed and explain why they are promoting a method contrary to Kansas law.

IAAO’s proposed methodology change is at the core of what’s being called the ‘dark store’ theory. As stated in the article, “‘Dark Store Theory’ is a phrase coined by county appraisers, referring to setting commercial property values based on the building and land. Ironically, that’s the way big-box retailers have been valued all along. Now the county also wants to tax intangible value attributable to a lease in place and business value. In other words, Johnson County officials applied an ominous-sounding label to generally accepted appraisal practices to provide cover for what they were doing. They want residents to believe retailers are asking for special treatment with ‘tax reductions;’ in reality, those retailers are trying to hold county appraisers to existing law and appealing what they believe to be large, improper tax increases.”

Lest there be any doubt that the IAAO and some Kansas counties are violating state law, the Kansas Board of Tax Appeals (BOTA) recently admonished Johnson County for illegally hiking appraised values on Walmart and Sam’s Club stores. The panel said, “...the County admittedly is making its record for an appeal seeking the reversal of Kansas precedent...”ⁱ (emphasis added)


BOTA said Johnson County was calling for *In re Prieb Properties, L.L.C.* to be overturned. The Kansas Supreme Court also favorably cited *Prieb* in *Creegan v. State of Kansas*.ⁱⁱ

It is incumbent upon the Legislature to protect taxpayers and prevent appraisers and BOTA members from being trained by organizations such as IAAO that openly advocate violating established Kansas law. We accordingly ask the Committee to approve SB 72, and thank you for your consideration.

ⁱ Docket Nos. 2016-2691-EQ *et al.*, page 8.

ⁱⁱ *James M. Creegan, et al. v. State of Kansas*, No. 111,082. Pages 12-13.

In latest 'dark store' salvo, assessors organization redefines appraisal term

 sentinelksmo.org/in-latest-dark-store-salvo-assessors-organization-redefines-appraisal-term/

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updated August 22

The International Association of Assessing Officers' (IAAO) board of directors is seeking to redefine the meaning of "fee simple" according to a top commercial real estate attorney, Linda Terrill. In early August, the organization for property appraisers unanimously approved and released a white paper, "Setting the Record Straight on Fee Simple."

In layman's terms, "fee simple" values real estate properties based on sales where only the land and building sold and excludes investment-type sales where the buyer is also buying an income stream by buying the land, building, and a lease.

"Our state requires fee simple assessments, and our court has defined what that means," Terrill says.

White paper authors, however, assert that there are issues arising from whether the term requires properties to be valued as if they're vacant or whether the term should include market rent.

"Therefore, it is essential to clarify fee simple in order to maintain accuracy, consistency, and uniformity in assessment practices and to retain credibility in the assessment profession. This paper explains these issues and sets the record straight about what fee simple is and what fee simple is not," it reads.

According to Terrill, the paper is attempting to go around the legislative and legal process to redefine the way commercial properties are assessed for taxation purposes.

"It's the proverbial burr under my saddle. If they don't like the law, they should go to where the law is made — the legislature— and take their chances," Terrill says.

David Harper, Kansas's Property Valuation Director, and Greg McHenry, Riley County appraiser, sit on the board of the IAAO, which unanimously approved the white paper. Neither has responded to requests to be interviewed for this story.

In his role as property valuations director, Harper is responsible for issuing guidance to county property assessors throughout the state. According to Terrill, he should immediately issue a directive informing county appraisers that the IAAO white paper's definition is contrary to state law.

The white paper is the latest salvo in an ongoing battle between big box retail stores and county property appraisers. Known colloquially as the “dark store controversy,” Johnson County is ground-zero for the debate, and Terrill is the lead attorney for a number of big-box retailers who are fighting the county over their property tax valuations.

The county changed its assessment methodology for commercial retailers in 2016, causing a dramatic spike in retail valuations, and therefore property tax bills, for big-box retailers. Rather than assessing the value of the land and the big box retail building atop it, assessors included intangible values based on lease agreements and the business in the building in their valuations.

Assessed valuations for the 57 Johnson County big box stores larger than 40,000-square-foot increased by 85 percent, jumping from \$400 million in assessed valuations in 2015 to \$742 million in 2016. The 10 Walmarts in the county, for example, saw their valuations increase from \$10 million to \$22 million in a single year. Every Johnson County big-box retailer filed a property tax appeal that year.

Johnson County Assessed Valuation Impacts						
Retailer	Address	Age	2014 Value	2015 Value	2016 Value	2016 Change
Target	20255 W. 154th St.	16	\$ 5,611,000	\$ 6,502,000	\$ 14,845,000	128%
Target	8101 W. 151st St.	15	\$ 5,483,000	\$ 6,669,000	\$ 14,884,000	123%
Target	11501 W. 97th St.	13	\$ 6,097,000	\$ 7,066,000	\$ 15,868,000	125%
Target	6100 Broadmoor St.	16	\$ 6,640,000	\$ 7,392,000	\$ 16,687,000	126%
Target	15700 Shaw. Miss. Pkwy	21	\$ 8,362,000	\$ 9,291,000	\$ 21,118,000	127%
Target	15345 W. 119th St.	21	\$ 8,623,000	\$ 9,543,000	\$ 21,259,000	123%
Target	12200 Blue Valley Pkwy	21	\$ 8,748,000	\$ 9,720,000	\$ 21,656,000	123%
Home Depot	20025 W. 154th	16	\$ 4,771,000	\$ 5,301,000	\$ 11,462,000	116%
Home Depot	11850 S. Strang Line Rd	21	\$ 5,742,000	\$ 6,242,000	\$ 13,306,000	113%
Home Depot	5700 Antioch	21	\$ 5,678,000	\$ 6,450,000	\$ 13,506,000	109%
Home Depot	9600 Metcalf Ave.	19	\$ 5,571,000	\$ 6,428,000	\$ 10,401,000	62%
Home Depot	15501 W. 67th St.	18	\$ 5,703,000	\$ 6,478,000	\$ 13,750,000	112%
Home Depot	8000 W. 135th St.	17	\$ 5,703,000	\$ 6,478,000	\$ 13,972,000	116%
Lowe's	16300 W. 65th St.	18	\$ 6,343,000	\$ 7,545,000	\$ 16,087,000	113%
Lowe's	4960 Roe Blvd.	13	\$ 5,437,000	\$ 6,627,000	\$ 15,765,000	138%
Lowe's	13750 Blackbob	19	\$ 6,170,000	\$ 7,097,000	\$ 12,564,000	77%
Walmart	5150 Roe Blvd	27	\$ 4,809,000	\$ 5,175,000	\$ 9,413,000	82%
Walmart	7701 Frontage Rd.	26	\$ 5,665,000	\$ 6,087,000	\$ 11,100,000	82%
Walmart	11701 Metcalf Ave.	28	\$ 6,204,000	\$ 6,628,000	\$ 14,765,000	123%
Walmart	5701 Silverheel St.	5	\$ 12,651,000	\$ 13,658,000	\$ 22,056,000	61%
Walmart	15700 Metcalf Ave.	15	\$ 8,803,000	\$ 9,785,000	\$ 22,137,000	126%
Walmart	1725 E. Santa Fe	12	\$ 7,534,000	\$ 8,495,000	\$ 16,024,000	89%
Walmart	16100 W. 65th St.	18	\$ 9,712,000	\$ 10,791,000	\$ 22,201,000	106%
Walmart	395 N. K7 HWY	11	\$ 9,381,000	\$ 10,423,000	\$ 22,927,000	120%
Walmart	13600 S. Alden St.	22	\$ 8,902,000	\$ 9,659,000	\$ 16,608,000	72%
totals for these retailers			\$ 174,343,000	\$ 195,530,000	\$ 404,361,000	107%

Source: Testimony submitted to Senate Tax Committee by Linda Terrill on February 18, 2018

So far, the retailers are winning the argument that county appraisers are not following the law, having won every appeal filed in Kansas. Terrill explains the change this way: The value of your current home doesn't change if you win the lottery or lose your job.

'Dark Store Theory' is a phrase coined by county appraisers, referring to setting commercial property values based on the building and land. Ironically, that's the way big-box retailers have been valued all along. Now the county also wants to tax intangible value attributable to a lease in place and business value. In other words, Johnson County officials applied an ominous-sounding label to generally accepted appraisal practices to provide cover for what they were doing. They want residents to believe retailers are asking for special treatment with 'tax reductions;' in reality, those retailers are trying to hold county appraisers to existing law and appealing what they believe to be large, improper tax increases.

Terrill recently told the Kansas City Star what appraisers are trying to do, saying, "If you win the lottery on Monday, your house isn't suddenly worth more on Tuesday," Terrill said. "And if you file bankruptcy on Wednesday, your house is still worth exactly the same thing."

The proper way to redefine the assessment methodology would be to go to various state capitols and seek legislative change, Terrill says. In Kansas, the change might require a constitutional amendment and it would mean that different types of properties were assessed using different methods.

"Legislators would shut them down in a heartbeat. Instead, they have cleverly said, we need to close the dark store loophole. Nobody likes loopholes and nobody likes dark stores," Terrill says. "I give them an A-plus for the PR campaign they've developed. It is brilliant."

However, she says, the timing is really bad for retailers, who are in the process of attempting to right-size their storefronts in the face of booming internet sales.

"I give (assessors) an 'F' in timing. Retailers are getting hit from all sides," Terrill says.

As Johnson County battles retailer tax appeals, the county is facing declining sales tax revenues. Between January and July of 2018, the county collected a little more than \$102 million in sales tax revenues. During the same period this year, the county collected a little more than \$100 million, a 2 percent decline. Some city and county officials may be hoping that changing the valuation methodology for commercial retailers may help make up the difference.

However, Alan Cobb, president of the Kansas Chamber, says the appropriate way to go about that is through the legislature.

"Don't make it up," he told Republicans at a luncheon in Johnson County Tuesday. If local government wants to do this they need to be honest and advocate a change in the law."