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Division of Property Valuation

DIRECTIVE #98-035

TO: County Appraisers

SUBJECT: Building Permits and Fair Market Value

A question has arisen as to whether the value stated on a building permit should be considered the fair market value of real property for property tax purposes. The county appraiser shall not use the value stated on a building permit as the sole criteria for determining the fair market value of real property for property tax purposes.

By law, property other than land devoted to agricultural use, commercial machinery and equipment and certain motor vehicles must be valued at fair market value. (K.S.A. 79-501; K.S.A. 79-1439; K.S.A. 79-5101 et seq.; Kan. Const., art. 11, § 1; Kan. Const., art. 11, § 12). For property tax purposes, "fair market value" means:

[T]he amount in terms of money that a well informed buyer is justified in paying and a well informed seller is justified in accepting for property in an open and competitive market, assuming that the parties are acting without undue compulsion. (K.S.A. 79-503a).

K.S.A. 79-503a also requires a county appraiser to consider several factors when determining the fair market value of property for property tax purposes. Among the factors required to be considered and applied are the three generally accepted approaches to value: (1) sales; (2) cost; and (3) income.

When determining the validity of an appraisal for property tax purposes, the courts have consistently stated:

[T]he essential question is whether the standards prescribed by K.S.A. 79-503a have been considered and applied by the taxing officials. The assessment of real property which takes into consideration only some of the pertinent statutory factors of K.S.A. 79-503a cannot be upheld where evidence indicates there has not been a uniform and equal rate of

assessment and taxation in the county. Board of Johnson County Comm'rs v. Greenhaw, 241 Kan. 119, 126-27, 734 P.2d 1125 (1987).

See also Sunflower Racing, Inc. v. Board of Wyandotte County Comm'rs, 256 Kan. 426, 442, 885 P.2d 1233 (1994) (“[T]he essential question is whether the standards prescribed by 79-503a have been considered and applied by taxing officials, or intentionally and grossly disregarded.”), citing Northern Natural Gas Co. v. Williams, 208 Kan. 407, 417, 493 P.2d 568, cert. denied 406 U.S. 967 (1972).

Thus, the highest court in Kansas has held that compliance with K.S.A. 79-503a is a vital factor in determining whether a tax assessment is uniform and equal as required by art. 11, § 1 of the Kansas Constitution. In re Tax Appeal of Andrews, 18 Kan. App. 2d 311, 317, 851 P.2d 1027, rev. denied 253 Kan. 859 (1993).

The value stated on a building permit is not one of the factors listed in K.S.A. 79-503a. Because building permit fees are usually based upon a percentage of the construction costs, the value stated on the building permit is frequently understated; therefore, it is not a reliable cost indicator. Construction costs plus land costs of a new property may be the most valid indicator of value; however, cost in and of itself cannot be considered “fair market value.” The market value contributions of additions or alterations to existing properties may or may not be supported by their construction costs. Therefore, using the value stated on the building permit as the fair market value of the property would often grossly overstate or understate the value of the property.

None of the foregoing is intended to suggest that the county appraiser should not have access to and analyze building permits. For example, Directive #98-031 provides in part: “The county appraiser shall not classify real property as a vacant lot if the county appraiser determines there is added value attributable to the construction in progress on January 1.” Building permits are a valuable tool for monitoring vacant lots and other property for new construction and construction in process. However, using the value stated on a building permit as the sole criteria of fair market value violates the requirement that the county appraiser consider and apply all of the factors set forth in K.S.A. 79-503a.

Approved: _____ .

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