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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.

<u>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</u>. 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).

<u>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</u>:

(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.

<u>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</u>. 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.

<u>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</u>. 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: __________________2002 __________________________________

Mark S. Beck
Director of Property Valuation