

**SB 119 Proponent Testimony – written only**  
**BOTA opinions, valuation restrictions, appraiser list**  
**House Taxation Committee**  
**Dave Trabert – CEO**  
**March 22, 2021**



Chairman Smith and Members of the Committee,

We appreciate this opportunity to testify in support of SB 119, which clarifies the timing to request a full opinion of a BOTA decision, allows for electronic notice of BOTA opinions, extends the time to request a full BOTA opinion, prohibits property valuations being increased during the appeals process, requiring appraisal directives to comply with Uniform Standards of Professional Appraisal Practice (USPAP), and requires counties to notify the Department of Revenue if an appraiser is no longer employed by the county.

For the benefit of new Committee members, it should be noted that each of these proposals passed the Kansas Senate by 40-0 votes last year (SB 262, SB 264, SB 265, SB 272, and SB 297).

#### **Time to request full BOTA opinion**

The statute says a request must be made within 14 days of when an order is received. SB 119 extends the timeframe to 21 days after service of the BOTA opinion.

#### **Allowing for electronic notice of BOTA orders**

Allowing for electronic notice should improve the efficiency of the system for BOTA and for the thousands of taxpayers who have to appeal their valuations annually.

#### **Prohibit valuations being increased during the appeals process**

This provision eliminates a taxpayer complaint about the appeals process, whereby valuations have been increased above the amount being appealed at different levels of the appeal process.

#### **Complying with uniform standards of professional appraisal practice**

USPAP is the generally recognized ethical and performance standards for the appraisal profession in the United States. The Appraisal Foundation, authorized by Congress as the source of appraisal standards and appraisal qualifications, says, "USPAP was adopted by Congress in 1989, and contains standards for all types of appraisal services, including real estate, personal property, business and mass appraisal. Compliance is required for state-licensed and state-certified appraisers involved in federally-related real estate transactions. USPAP is updated every two years so that appraisers have the information they need to deliver unbiased and thoughtful opinions of value."

SB 119 removes the ability of a county appraiser to adopt any standards not consistent with USPAP. This is an important distinction because, as explained in our attached testimony on SB 72, PVD Director David Harper has endorsed standards proposed by the International Association of Assessing Officers (IAAO) that violate established law in Kansas.

The Kansas Constitution requires property to be assessed at fair market value and constitutional compliance thereby necessitates that county appraisers and PVD conform with USPAP.

### **Notifying PVD when an appraiser is no longer employed**

Two news articles are attached to my testimony, underscoring the need for this legislative change.

A March 30, 2017 story from KAKE-TV says Cowley County decided not to renew the appraiser's contract and placed him on administrative leave until his contract expired in June. The story said, "dozens of residents showed up at a commission meeting last week voicing concern over what they felt was over-taxation -- some appraisals increased by 2,500 percent -- and poor handling of hearings and other activities."

The Cowley Courier Traveler interviewed the new county appraiser in January 2018. The story notes, "This is the second time Reedy has followed [him] into a job and the second time she has had to "clean up" after him."

The fired appraiser must have stayed on the eligibility list because Washington County lists him as their appraiser.

There likely are many good appraisers in Kansas, and SB 119 should not be construed as derogatory to their efforts. But Kansans should be shielded from appraisers who have been terminated over job performance.

### **Conclusion**

We encourage the Committee to approve these taxpayer-friendly changes and we appreciate your consideration.

**SB 72 Proponent Testimony – written only**  
**Appraiser courses approved by real estate board**  
**House Taxation Committee**  
**Dave Trabert – CEO**  
**March 22, 2021**



Chairman Smith 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...”<sup>i</sup> (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*.<sup>ii</sup>


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.

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<sup>i</sup> Docket Nos. 2016-2691-EQ *et al.*, page 8.

<sup>ii</sup> *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/](https://sentinelksmo.org/in-latest-dark-store-salvo-assessors-organization-redefines-appraisal-term/)

August 21,  
2019

*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%
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Lowe's	13750 Blackbob	19	\$ 6,170,000	\$ 7,097,000	\$ 12,564,000	77%
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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.

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# Cowley Co. appraiser on way out after property tax complaints

Posted: Mar 30, 2017 3:08 PM CDT  
Updated: May 04, 2017 3:08 PM CDT

written by KAKE News

WINFIELD, Kan. (KAKE) - The Cowley County Commission says it's time for a new county appraiser.

County Administrator Lucas Goff said that during a special closed session March 30, commissioners approved the motion not to renew the contract of County Appraiser Lance Leis. Additionally, Leis was put on administrative leave immediately until the end of his current contract, which ends in June.

## **Cowley County residents feel unfairly taxed**

This, after dozens of residents showed up at a commission meeting last week voicing concern over what they felt was over-taxation -- some appraisals increased by 2,500 percent -- and poor handling of hearings and other activities.

Goff said the county is working toward placing someone into the County Appraiser position on an interim basis, and that information toward that decision would "hopefully" be available by April 7.

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EDITOR'S PICK

TOP STORY

## New county appraiser conducting 'clean up'

By JUDITH ZACCARIA CourierTraveler

Jan 27, 2018

Lori Reedy has been the Cowley County appraiser for almost six months, and she has been spending much of her time reestablishing good relations between the appraiser's department and county residents.

"I came in and assessed the situation and made my plans based on compliance requirements," Reedy said. "It's what I'm supposed to be doing."

Reedy followed Lance Leis as county appraiser. The county commission did not renew Leis' four-year contract after a year and more of public protests, including at least one standing-room-only meeting at which county residents spoke against Leis and his appraisal practices.

This is the second time Reedy has followed Leis into a job and the second time she has had to "clean up" after him, she said.

### Changes and goals

Reedy said she is making changes and introducing new efficiencies in the appraiser's office "one day at a time."

When she first took the job, 400 commercial properties in the county needed to be inspected. Every property needs to be inspected and reevaluated every six years according to state statute, Reedy said.

In 2018, one of her goals is to inspect the rest of the commercial properties — all 700 of them.

She has made some change in the way things are done: some duplicated steps have been eliminated from sales, simplifying the process of recording them.

She also has been clearing out real property files and old property record sheets. There are document retention laws, she said, but the county appraiser's office just kept "all kinds of stuff."

Another 2018 goal is to get a document imaging system so the office can have electronic rather than paper files. The office also "absolutely" needs a color printer.

Gathering the data is critical to doing the work well, she said. She said it would be a good idea to hire another field person to help collect that data.

Re-evaluating the grain elevators in the county is another goal for the year. They have not been reviewed for some time, Reedy said.

The Property Valuation Division, which is the appraiser's oversight agency, needs to say whether the office is in compliance with current regulations.

### Past problems

Asked about the problems in the appraiser's office, Reedy said the office does not set any land values. Those values are set by the state and are based on use value, not on market value.

The problems in the county arose over the past few years when the appraisers changed property from agricultural to market value. Sometimes whether land is valued as agricultural or other is open to interpretation.

Customer service is very important, Reedy said. She wants to put a coffee bar into the appraiser's office.

"It sets the tone," she said. "Makes them feel welcome."

She said she hasn't had many confrontations since she took the job, though she wouldn't have been surprised if people had come by to hear her out.

People received mailers from the appraiser's office reminding them to protest their evaluations for 2017 if they felt they had been unfairly assessed.

The appraisers held payment-under-protest hearings beginning Dec. 20. The total number of protests was 253, less than 1 percent of the 34,000 properties in the county.

Reedy said that if it is at all possible to settle an issue in the county, it is better than taking it to Topeka.

Brian Petty, one of the county residents who questioned Leis' judgment, said he went to Topeka for a hearing and received justice.

He was a member of the board that interviewed Reedy for the position, and he was favorably impressed by her, though he hasn't spoken with her since she took the job.

Reedy said she encourages anyone with questions to come down to the office.

“They are always welcome to come talk about their property. I want them to do that,” she said.

## Background

Reedy has been an appraiser since 1987. When she joined the field, she had no idea she would be in it for so long — it was just a job. But she found the work interesting, and the more she worked in the field and the more she learned, the more she wanted to remain in it.

Her specialty is commercial properties. Reedy said she is guided by two principles.

“I’m a public servant and I’ve never lost sight of it,” she said. “I’m here to do a job for the taxpayers.”

Second is valuing staff and treating them like they make a difference.

The appraiser’s office has “a great staff,” Reedy said. That includes deputy appraiser Allen Black, who served as interim appraiser after Leis left. Reedy and Black worked together in Sedgwick County for 20 years.

He knows residential appraisal as she knows commercial, so he could fill her in about what she needed to know about the Cowley County office’s operations.

“Our goal is to make sure they’re prepared to lead after I leave, to function and be successful,” Reedy said. “It is my four-year plan.”

She did not say that she will retire in four years, but she will have enough KPERS points by then.