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To: House Taxation Committee

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Subject: **HB 2134** – Supporting Changes to Streamline the Property Tax Appeals Process and Increase the Consistency and Predictability of Property Taxes for Property Owners

Chairman Carlson and members of the House Taxation Committee, thank you for the opportunity to provide testimony today on behalf of the Kansas Association of REALTORS® in support of **HB 2134**, which is a common-sense and reasonable proposal to streamline the property tax appeals process and increase the consistency and predictability of property taxes for property owners. Through the comments expressed herein, it is our hope to provide additional legal and public policy context to the discussion on this issue.

KAR is the state's largest professional trade association, representing nearly 8,000 members involved in both residential and commercial real estate and advocating on behalf of the state's 700,000 homeowners for over 90 years. REALTORS® serve an important role in the state's economy and are dedicated to working with our elected officials to create better communities by supporting economic development, a high quality of life and providing affordable housing opportunities while protecting the rights of private property owners.

Over the last decade, the property tax burden on Kansas home owners and small businesses has increased exponentially as total property taxes collected have increased from roughly \$1.97 billion in 1997 to over \$3.9 billion in 2011, which is a 99.31% increase in just 14 years. This dramatic increase in the property tax burden is nearly triple the rate of inflation, ten times the rate of mill levy increases and nearly nine times greater than the state's population growth over the same time period.

If the Kansas Legislature does nothing to address this problem and property taxes continue to grow at the recent average annual growth rate of 5.1%, then the total property tax burden on Kansas farmers, home owners and small businesses would increase by another \$4.3 billion to a total of nearly \$8.3 billion by 2026. Can your constituents withstand this 110% increase in their property tax burden and can they afford to come up with another \$4.3 billion annually to pay their property taxes in 2026?

Unfortunately, we believe that this dramatic growth in the property tax burden stifles the economic prosperity of many Kansas small businesses that have seen a consistent, dramatic increase in the amount of their business income that is devoted to paying their property tax assessments. Unlike our state's income taxes on small businesses (which are either average or slightly below average according to the Tax Foundation), the annual property tax bill of a small business does not vary according to whether the business earned a large profit or suffered a large loss over the course of the preceding year.

Instead, regardless of the underlying profitability of the business, nearly every small business owner will be required to pay the same onerous property tax each year, which only increases his or her business input costs and decreases the amount of capital that can be poured back into the business to expand by hiring new employees or investing in new business capacity. If Kansas is truly on the way to becoming a low tax burden state for businesses, then something must be done to address our exponentially increasing property taxes.

According to a detailed analysis by the Tax Foundation, Kansas currently has one of the most burdensome property tax systems for businesses with a ranking of 41st in 2012. Since the Kansas Legislature has started to discuss comprehensive income tax reform to improve the economic growth climate in Kansas for small businesses and individual taxpayers, REALTORS® strongly believe that the Kansas Legislature should also take action to improve the business climate through comprehensive property tax reform.

In addition, in the report entitled *Location Matters: A Comparative Analysis of State Tax Costs on Business* recently released by the Tax Foundation, Kansas ranks 47th overall in terms of the most favorable tax climate on mature business operations and 48th overall for newly-established business operations. Although the report concludes that the corporate income tax burden on these businesses are either average or even slightly below average, the report states that Kansas has one of the highest (if not the highest) property tax burdens on business operations across all 14 categories of businesses.

Furthermore, we believe this increasing property tax burden makes it more difficult for Kansas families to make ends meet and is severely burdensome for many senior citizens and low-income Kansans living on fixed incomes. Over the last few years, we have heard many anecdotal stories of Kansans literally being forced out of their homes due to their inability to keep up with the rapid escalations in their property tax burdens.

Unfortunately, this exponentially increasing property tax burden is compounded by several existing provisions in the property tax appeals process that create unfair treatment for property owners. These provisions make it significantly more difficult for property owners to successfully navigate the property tax appeals process and provide disincentives for county appraisers to deal fairly with property owners during the appeals process.

First, the new language in Section 3(a) on pages four and five of the legislation would prohibit a county appraiser from increasing the valuation of a property for three years after the property has been reduced by a final determination made in the property tax valuation appeals process, unless the county appraiser determines that there are “substantial and compelling reasons” for increasing the valuation of the property. Current law dictates that the county appraiser cannot increase the valuation of the property for the year following the successful appeal, but the existing language in this statute does not provide any definition of what constitutes a “substantial and compelling reason” behind the increased valuation.

In practice, current law basically allows the county appraiser to completely circumvent the intent behind the statute and increase the valuation of the property in the year immediately following a successful property tax appeal. Unfortunately, any property owner who has undergone the full property tax appeals process to the Kansas Court of Tax Appeals will tell you that this is a very difficult, expensive and time-consuming process.

When the property owner finally reaches the end of this arduous process (following thousands of dollars of consultants’ and attorneys’ fees and months or years of waiting) and is granted a decreased valuation of the property, good public policy would dictate that the successful conclusion of this process would provide the property owner with a certain amount of consistency and predictability in their property tax valuation for the next few years. Especially for commercial properties, many property owners rely on this consistent and predictable property valuation to obtain financing and manage their financial investment in the property.

However, in many cases we have received anecdotal reports from property owners that the county appraiser has simply increased the proposed valuation of the subject property back to the originally proposed amount that was the subject of the appeal in the next taxable year following the successful appeal. The practical effect of this practice is to completely negate the property owner’s efforts in prosecuting the successful appeal and to again force them to consider spending considerable financial resources and time on another appeal.

Although we have no evidence as to how widespread this practice has become in recent years, we would content that it is completely unfair and an example of very poor public policy to require a property owner to undergo a subsequent valuation appeal on the subject property when they have just spent a considerable amount of financial resources and time in obtaining the relief on the first successful appeal. In our opinion, there must be a better system in place to provide property owners with consistency following an appeal.

As proposed in Section 3(a) on pages four and five of the legislation, the new language in **HB 2134** would simply guarantee that the property owner would be able to enjoy the relief provided by the first successful appeal for an uninterrupted period of three taxable years following the appeal. Unless the county appraiser was able to detail a “substantial and compelling reason” for increasing the valuation within this time period, the property owner would have consistency and predictability in the valuation of the subject property.

Second, the new language in Section 3(c) on page six of the legislation would define the term “substantial and compelling reasons” to mean a change in the character of the use of the property or a substantial addition or improvement to the property. As discussed above, current law does not define the term “substantial and compelling reasons” and therefore places no limits on the justification that can be used by a county appraiser to increase the valuation of the property following a successful appeal.

Under the current system, there is no objective definition of the term “substantial and compelling reasons” in any Kansas statutes, regulations or case law. Accordingly, the county appraiser has no criteria whatsoever to guide him or her on a claim that the valuation of the subject property should be increased due to a “substantial and compelling reason.” In our opinion, the statute is so vague and indefinite that a reasonable property owner is given no guidance whatsoever on which circumstances might trigger a revaluation of the subject property under the existing statute.

As proposed in Section 3(c) on page six of the legislation, the new language in **HB 2134** will simply provide some objective criteria that the county appraiser will be required to follow when determining whether the valuation of the subject property can be increased following a successful appeal. The proposed definition of “substantial and compelling reasons” in **HB 2134** is completely reasonable and is consistent with the relevant case law concerning the grandfathering of properties with existing, non-conforming uses in zoning law.

Under the proposed language, unless the property owner changes the character of the use (which could have a significant impact on the value of the property) or expands or enlarges the physical footprint of the subject property (which again could and should have a significant impact on the value of the property), the property owner would be provided with consistency and predictability in the valuation of the subject property. Absent these changes to the subject property, we believe that it would be very difficult for the county appraiser to argue that any other reasons are sufficiently “substantial and compelling” to justify an upward departure from the valuation of the property established in a recent successful appeal by the Kansas Court of Tax Appeals.

Third, the new language in Section 1(c) on page two of the legislation would allow a property owner to utilize the small claims and expedited hearings division of the Kansas Court of Tax Appeals when the valuation of the subject property has been increased by the county appraiser in the next three taxable years following the taxable year that the valuation of the property had been reduced due to a final determination made pursuant to the valuation appeals process. As discussed previously in this testimony, the property tax appeals process is an extremely expensive and time-consuming process for property owners to navigate and we believe that the Kansas Legislature should explore all alternatives to improve upon this process for property owners.

When the county appraiser decides to increase the valuation of the subject property in a year immediately following the successful appeal of the property’s valuation, this will force the property owner (who has just completed the very expensive and time-consuming process) to go through the exact same process again to contest the proposed valuation of the property and obtain relief from the Kansas Court of Tax Appeals. In these situations, we believe that it is entirely appropriate and good public policy to allow the property owner to go through a streamlined process to obtain more immediate relief on the property tax appeal.

This will ensure that property owners are not unnecessarily bogged down in continuous and nearly unending years of litigation in front of the Kansas Court of Tax Appeals over the proposed valuation on the exact same subject property. Under the proposed language in Section 1(c), property owners who have just completed a successful appeal of their property valuation could utilize the exact same process that is successfully utilized under current law by the owners of properties that are residential or have a valuation of less than \$2,000,000.

Fourth, the new language in Section 2(a) on pages three and four of the legislation would allow the property owner to submit an independent appraisal of the subject property prepared by a licensed appraiser at the informal meeting for property tax appeals. If the county appraiser declines to adopt the valuation established in the independent appraisal, and the taxpayer decides to continue the valuation appeals process, then the county appraiser would be required to show why the independent appraisal is not valid.

However, if the taxpayer's property is subsequently reduced by a final determination of the valuation appeals process, then the county would be required to pay all reasonable attorney fees and costs of the prevailing taxpayer. The bill would also require the county appraiser, at the informal meeting for property tax appeals, to provide evidence to substantiate the valuation of the property, including allowing the taxpayer the opportunity to review the data sheet of comparable sales used in the determination of the valuation at least 48 hours before any hearing on the valuation.

Under current law, there is absolutely no requirement that a county appraiser or any individual employed by a county appraiser maintain a valid certificate or license as a real estate appraiser from the state of Kansas. Although the county appraiser is required to follow the standards articulated in the Uniform Standards of Professional Appraisal Practice (USPAP) in valuing properties like certified and licensed real estate appraisers, they are not required to actually undergo the same stringent certification and licensing requirements as private citizens employed as certified or licensed real estate appraisers.

In our opinion, there is absolutely no reason why an independent appraisal of the subject property prepared by a certified or licensed appraiser should not be required to be considered by the county appraiser in the property tax appeals process. As proposed in Section 2(a) on pages three and four of the legislation, the county appraiser would simply be required to consider the independent appraisal submitted by the property owner in the valuation appeals process and would bear the burden of proof in refuting the independent appraisal if he or she chose not to accept the independent appraisal as the valuation of the property.

We strongly believe that individuals certified or licensed as real estate appraisers are similarly (or even more) qualified to establish the valuation of properties as county appraisers. If the property owner obtains an independent and unbiased valuation of the property from a certified or licensed real estate appraiser, then there is simply no good reason why the county appraiser should not be required to give full consideration to this independent appraisal in the property tax appeals process.

Finally, the new language in Section 4(a) on page seven of the legislation would require the county appraiser, at the informal meeting for property tax appeals, to provide evidence to substantiate the valuation of the property, including allowing the taxpayer the opportunity to review the data sheet of comparable sales used in the determination of the valuation at least 48 hours before any hearing on the valuation.

Unfortunately, the county appraiser is the party that has most of the necessary information in the property tax appeals process. If the property owner is going to receive a fair opportunity to have an equal and informed discussion with the county appraiser in the informal meeting required by the statute, the county appraiser should be required to provide the evidence used to substantiate the proposed valuation prior to the meeting. This will ensure that the property owner has a reasonable amount of time to review this information and prepare their arguments and questions for the informal meeting with the county appraiser.

For all the foregoing reasons, we would urge the members of the House Taxation Committee to strongly support the provisions of **HB 2134**, which is a common-sense and reasonable proposal to streamline the property tax appeals process and increase the consistency and predictability of property taxes for property owners. Thank you again for the opportunity to testify and I would be willing to stand for questions at the appropriate time.