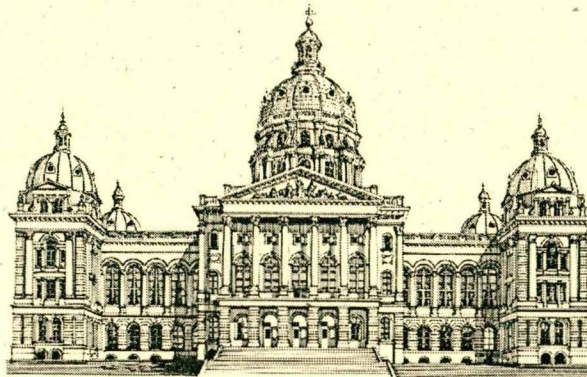


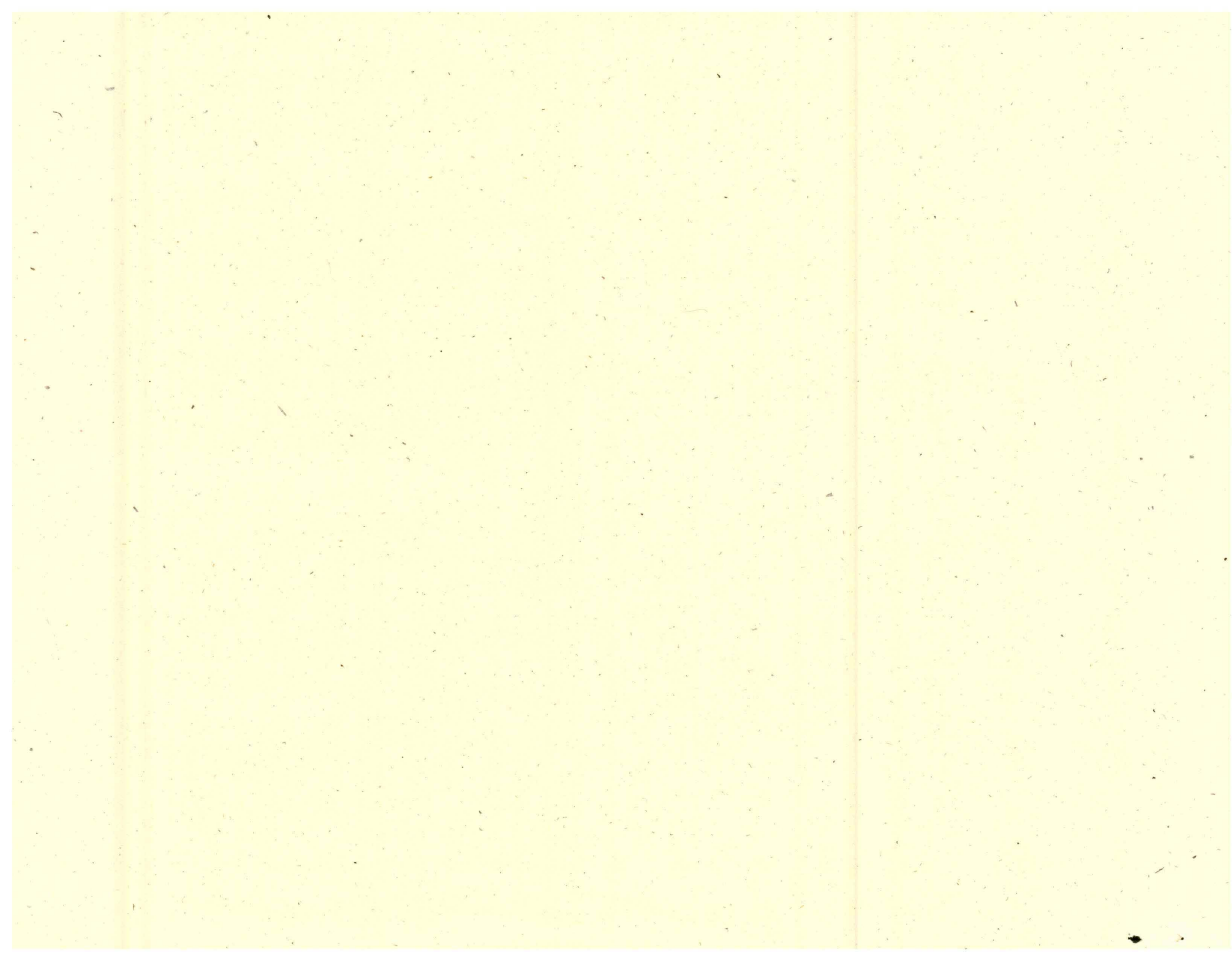
FINAL REPORT

**CONDOMINIUM PROPERTY TAXATION
STUDY COMMITTEE**



Presented to the
LEGISLATIVE COUNCIL
and the
IOWA GENERAL ASSEMBLY
January 2000

Prepared by the
LEGISLATIVE SERVICE BUREAU





FINAL REPORT

Condominium Property Taxation Study Committee

January 2000

MEMBERS

Senator JoAnn Johnson, Co-chairperson
Senator O. Gene Maddox
Senator Mark Shearer

Representative Jack Drake, Co-chairperson
Representative Kay Chapman
Representative Danny Holmes

Contents

- I. Committee Proceedings..... p.2
- II. October 27, 1999 Meeting p.2
- III. November 22, 1999 Meeting p.4
- IV. Recommendations..... p.5
- V. Documents Filed With the
Legislative Service Bureau p.6

Staff Contacts

Mike Goedert, Senior Legal Counsel
(515) 281-3922
mgoeder@legis.state.ia.us

Susan Crowley, Senior Legal Counsel
(515) 281-3430
scrowle@legis.state.ia.us

AUTHORIZATION AND APPOINTMENT

The Condominium Property Taxation Study Committee was established by the Legislative Council and charged to “study the issue of the property taxation of condominiums (described as apartments in horizontal property regimes in Iowa Code chapter 499B). The study shall include classifications which have multiple uses.”



Condominium Property Taxation Study Committee

I. Committee Proceedings.

The Committee was authorized two meeting days during the 1999 Interim.

Meeting Dates. The meetings during the 1999 Interim were held at the State Capitol Building on October 27, 1999, and November 22, 1999.

II. October 27, 1999 Meeting.

Overview. The first meeting of the Committee started with the election of Co-chairpersons Senator JoAnn Johnson and Representative Jack Drake. The Committee heard from the various factions concerning the Department of Revenue and Finance's latest rules on classifying condominium property for property tax purposes and the effect these rules have on conversions of apartment complexes to condominiums.

Also discussed was low-income rental housing, classification of this property as commercial property for property taxation purposes, and the effect the federal tax credit has on such property.

Department of Revenue and Finance. Dick Stradley, Property Tax Section of the Department of Revenue and Finance (DORF), stated that DORF previously classified condominium property as residential real estate regardless of the fact that such property may be rented and used as a commercial venture. The new rule, which is effective beginning with the 2000 assessment year, provides that condominiums will be classified according to the primary use of the condominium complex. This allows for the classification as residential property for owner-occupied complexes but allows for the classification as commercial property for those complexes which consist primarily of rented units. Mr. Stradley noted that the new rule was developed in response to the request of the Iowa State Association of Assessors to make a change because of developers and landlords converting apartments to condominiums to obtain a reduction in property taxes. Mr. Stradley estimated that the top loss in property tax revenue to local governments if all apartment complexes are converted to condominium complexes and are classified as residential property would be approximately \$53 million annually.

Harry Griger, Assistant Attorney General, provided support for DORF's rule on the classification of condominium complexes. He cited the case of Sevde v. Board of Review of City of Ames, 434 N.W. 2d 878 (Iowa 1989) for the proposition that it is not lawful to divide property into two classifications for purposes of property tax assessments. DORF thus concludes that a condominium classification must be either residential or commercial. Mr. Griger cited Sperfslage v. Ames City Board of Review, 480 N.W. 2d 47 (Iowa 1992) as allowing DORF to classify structures with three or more rental residence units as commercial property where the entire



Condominium Property Taxation Study Committee

structure primarily involves rental units. He also cited City of Newton v. Board of Review for Jasper County, 532 N.W. 2d 771 (Iowa 1995) for upholding the classification of a retirement community cooperative as commercial property because the individual units were rented to the residents.

Housing Industry. Jennifer Kingland, representing the Iowa Association of Realtors, stated that the realtors' concern is with how the rules classify condominium complexes rather than with the conversion of apartment complexes into condominium complexes. She opined that cities should adopt stricter building codes for the conversion of apartments to condominiums. If this had been done in Iowa City, she averred, this problem would not have arisen, and the interim committee would not be meeting.

Condominium Group. Jim West, Condominium Group representative, disagreed with Mr. Griger by stating that the Sevde case does not apply to condominium complexes. He explained that this is so because condominiums, when sold, are separately platted property and should be assessed as such. Mr. West felt that the city has the authority to regulate apartment conversions and this could be done through building codes or ordinances that would provide or require certain procedures or restrictions relating to conversion.

Home Builders. Charles Wasker, representative of the Home Builders Association of Iowa, expressed his dismay at DORF's seeming inability or concern about how to value common elements of a condominium complex. He stated that banks that provide mortgages and insurance companies which insure the units do not seem to have any problem fixing a value on the interests which an owner may possess. He also felt that it is wrong to classify a condominium complex as commercial simply because more of the individual units are rented than sold.

Affordable Housing. Dan Roseliep, President of Heartland Management Company, discussed the valuation and taxation of Section 42 affordable housing projects. Section 42 projects are projects in which transferable income tax credits under Section 42 of the Internal Revenue Code (IRC) are granted. Mr. Roseliep stated that since 1989, the affordable housing program has successfully provided targeted housing support, particularly for the rural Iowa workforce. He emphasized that the mandated rent restrictions limit project income but that state law limits the assessor's ability to consider this factor in valuation for property tax purposes. This results in a tax burden which is disproportionate to the project's capacity to pay. Mr. Roseliep urged that consideration be given to solutions which may remedy this problem including an approach implemented by the state of Minnesota which allows for a reduced rate of taxation.

League of Municipalities. Ernie Lehman, Mayor of Iowa City, briefly discussed the conversions of apartments to condominiums in his city. He noted that Iowa City,



Condominium Property Taxation Study Committee

like most cities, regulate property by its use. Thus, the simplest way to eliminate the complexity regarding the classification of condominium complexes is to classify all property according to use, and not according to ownership. He also queried whether there needs to be a different classification established for residential units that are rented.

Local Assessors. Jerry Musser, Johnson County Assessor, stated that the problems have not been with new construction but with the conversion of old apartments into condominiums. He explained that in the early to mid 1990s, conversions were being made because the owner sought to sell, and by selling each unit, the owner got a better price. At that time, the increase in the total valuation of the complex as a result of the individual units being worth more than the complex as a whole based upon rental value was offset by the rollback. Thus, the property taxes did not increase. But recently with the rollback for residential property dropping below 60 percent, it becomes advantageous to convert apartments to condominiums even if the owner does not intend to sell the units. His example of apartments converted into condominiums in the city of Coralville show an estimated property tax savings of \$129,000 if the condominiums are classified as residential. He did not think that the condominium chapter of the Iowa Code was intended to change the classification of the property for taxation purposes.

Jim Maloney, Polk County Assessor, stated that the law should not distinguish between separate units as being rental or owner-occupied. He also had doubts about DORF's concern on how to value common elements in multiuse buildings and listing them as separate items. He said that he does not keep common elements separate but rather considers the value of an interest in the common elements to be included in the market value of the condominium unit itself. He admitted that conversions in Polk County have occurred in the past but have not occurred recently. His opinion was that this was probably due to the fact that building codes have been made stricter and that the building standards for new apartments and condominiums are the same in Polk County.

Gary Bilyeu, Story County Assessor, said that the thrust of the new administrative rule by DORF is to prevent owners from converting apartments to condominiums without an intent to sell the units. He said the answer to the problem is to fix the residential rollback provision.

III. November 22, 1999 Meeting.

Overview. The second meeting of the Committee continued with additional comments concerning condominiums and low-income housing. The Committee concluded its work with five recommendations.



Condominium Property Taxation Study Committee

Richard Horn, Ames City Assessor. Richard Horn discussed his two proposals with the Committee. These involve the restoration of the previous rules of the Department of Revenue and Finance relating to the classification of residential property and commercial property for real property tax purposes and the elimination of the provision enacted during the 1999 Session that allowed certain condominium properties to be classified pursuant to these previous rules until January 1, 2005, since this language would no longer be needed if the previous rules are restored. As part of his discussion of his proposals, Mr. Horn expressed his reasons for why the new rules of the department are inconsistent and easily subverted. Mr. Horn gave an example of the effects on taxable valuation of the actual conversion of an apartment complex within his jurisdiction. He noted that the loss of taxable value is approximately 30 percent. However, he said, there will not be a loss of tax revenue overall, but only a shift in taxes to other classes of property. Mr. Horn suggested an approach to handle the rollback problem by listing all rental dwellings, including single-family homes, as a separate classification with a rollback for that classification between residential and commercial. His approach to the issue of converting apartments to condominium units is to address the conversion process, not the method of classification for taxation.

Low-Income Housing. Dan Roseliep, President of Heartland Management Company reiterated his belief that federal Section 42 affordable housing projects for low-income persons should be classified as other than commercial. He believes these projects should be valued using the income approach rather than the market value approach since such property is seldom sold and, thus, it is hard to establish a fair market value. Lawrence Mazzotta, President, Farnam Group, Inc., commented that his company initially was involved in developing rural housing, but no longer develops these in Iowa because of the risk. He said the risk is due in part to the high taxes which represent approximately 37 percent of the total operating costs in Iowa. He noted that Kansas has recognized that Section 42 low-income property with its limitations on rents is incapable of passing on taxes via rents, so the Kansas Legislature enacted legislation to provide special valuation for such low-income rental property by using the income approach to valuation.

Committee Discussion and Recommendations. The Committee instructed staff to draft five proposals for the members' consideration. After discussion of the proposals, the Committee made its recommendations.

IV. Committee Recommendations.

The Committee made the following recommendations to the General Assembly at its November 22, 1999, meeting:

- Nullify existing rules 71.1(4) and 71.1(5) of the Department of Revenue and Finance, describing property classified as residential and commercial.



Condominium Property Taxation Study Committee

- Add to the existing law relating to the real property taxation of condominiums, a provision that the fair market value determined for a condominium unit includes the value of its appurtenant share of the land and common elements. This recommendation is intended to eliminate the need to separately assess and determine the value of the land and common elements.
- Add to the existing condominium law a provision that states that each condominium unit constitutes for all purposes a separate parcel of real property.
- Add new statutory language prohibiting any existing structure after January 1, 2000, from being converted to a condominium complex unless the converted structure meets the applicable local city or county building code in effect on the date of the conversion, or meets the state building code if the city or county does not have a building code.
- Add statutory language that requires at least 45 days' notice be given the city or county, as applicable, before the filing of the declaration to convert a structure to a condominium complex. The intent of the recommendation is to provide local governments with proof that the conversions have met the appropriate building code.

V. Documents Filed With the Legislative Service Bureau.

A. October 27, 1999 Meeting.

- Summary of Remarks – Department of Revenue and Finance.
- Issue Brief of Proposed Administrative Rule on Condominiums – Department of Revenue and Finance.
- Uniform Common Interest Ownership Act provided by Jim West.
- City of Clive Ordinance on Residential Condominiums and Cooperatives provided by Jim West.
- Summary of Remarks – Dan Roseliep.
- Documents regarding Federal Section 42 Housing and Minnesota application process provided by Dan Roseliep.
- Summary of Remarks – Mayor Ernie Lehman.
- "Tax Impact of Commercial Classification of Apartments in Polk County" – Jim Maloney.
- "Apartments in Coralville Taxed as Condominiums to Take Advantage of the Residential Rollback" – Jerry Musser.

B. November 22, 1999 Meeting.

- Summary of Remarks and Proposals provided by Richard Horn.
- Summary of Remarks provided by Dan Roseliep and Lawrence Mazzotta.

3327ic