

MINUTES

2014 SPECIAL COMMITTEE ON ETHICS, ELECTIONS AND LOCAL GOVERNMENT

October 10, 2014
Room 112-N—Statehouse

Members Present

Senator Mitch Holmes, Chairperson
Representative Steve Huebert, Vice-chairperson
Senator Oletha Faust-Goudeau
Senator Steve Fitzgerald
Representative John Barker
Representative Keith Esau
Representative Stan Frownfelter
Representative Mike Kiegerl

Member Absent

Senator Michael O'Donnell

Staff Present

Martha Dorsey, Kansas Legislative Research Department
Jill Shelley, Kansas Legislative Research Department
Joanna Wochner, Kansas Legislative Research Department
Mike Heim, Office of Revisor of Statutes
Daniel Yoza, Office of Revisor of Statutes
Linda Herrick, Committee Assistant

Conferees

Robert Boyd, Chairman, Riley County Commissioners
Brad Schoen, Director, Riley County Police Department
Rich Jankovich, Manhattan City Commissioner
Whitney Damron, Whitney Damron, P.A., on behalf of City of Topeka
Mayor Larry Wolgast, City of Topeka
Jim Colson, City Manager, City of Topeka
Marc Galbraith, President, Elmhurst Neighborhood Association
Sgt. Colleen Stuart, Topeka Police Department
Chad Sublet, Attorney
Dale Goter, Government Relations Manager, City of Wichita
Erik Sartorius, Executive Director, League of Kansas Municipalities
Luke Bell, Vice President of Governmental Affairs, Kansas Association of Realtors
Representative Stan Frownfelter
James Vollintine, Fire Investigator, Topeka Fire Department

Morning Session

Chairperson Holmes opened the meeting and welcomed the members of the Special Committee on Ethics, Elections and Local Government. The agenda for the meeting is ([Attachment 1](#)) of these minutes.

Mike Heim, Senior Assistant Revisor of Statutes, called the Committee members' attention to the "charge" or purpose of the Committee. The three objectives are to review 2014 SB 436, regarding election of the Riley county law enforcement director; review issues pertaining to abandoned properties; and study the subject of moving spring elections to the fall in order to increase voter turnout for local elections.

Informational Hearing Riley County Consolidated Law Enforcement

Chairperson Holmes noted, in reference to the charge concerning consolidation of law enforcement agencies, under the second bullet, neither Riley County officials nor the Riley County legislative delegation are among those seeking the repeal of the statutes. It is felt the current consolidated system works very well. The revised charge is ([Attachment 2](#)).

Mr. Heim furnished a packet of information, including the current relevant Kansas statutes; a report titled "The Consolidation of Police Service, The Riley County Kansas Experience - A Case Study" by William W. Childers (1977); and a copy of 2014 SB 436 introduced by the Senate Committee on Federal and State Affairs ([Attachment 3](#)). The bill was referred to the Senate Committee on Ethics and Elections, where it died at the end of Session. Mr. Heim reviewed the underlying statutes. The proposed bill would have amended existing law to make the director of the Riley County Law Enforcement Agency an elected four-year term position, rather than an appointment by the Riley County Law Enforcement Board as is currently done.

Robert Boyd, Chairman, Board of Riley County Commissioners, provided information ([Attachment 4](#)) about the law enforcement system in Riley County, the only countywide consolidated law enforcement system in the state. He explained that 40 years ago, statutes were adopted to appoint a police department director who reports to a supervising law enforcement agency or board, consisting of city and county elected commissioners but statutorily not limited to members of those bodies. The appointed director is free to make non-political law enforcement resource decisions that benefit the county at large. The expenses are shared between the city and county. Crime has decreased, and there is no logical reason to modify statutes that have benefited Riley County over the last 40 years.

Brad Schoen, Director, Riley County Police Department, provided comments on the relationship of three different law enforcement agencies (Manhattan and Ogden police and Riley County sheriff) before the consolidation ([Attachment 5](#)). In the 1960s, there were serious crimes in Riley County and, in an effort to improve law enforcement, KSA 19-4424 through 19-4445, inclusive, were adopted providing for a consolidated law enforcement agency if approved by voters. The statutes state a director is appointed by a law board. The law board is composed of seven members and acts similarly to a board of directors. It consists of one county commissioner, one county resident, one Manhattan commissioner, two Manhattan residents, the Riley County Attorney, and one position that alternates between the city and county every two years.

The matter of whether to consolidate the law enforcement system was placed on the Riley County ballot in 1972, and the consolidated agency concept was approved and began operation in January 1974. A group who opposed the consolidation gathered enough signatures to place the new law enforcement system on the ballot again in November 1974. In the latter election, a larger majority of the voters approved the consolidation, which had then been operational for ten months, than in the initial ballot vote in 1972.

Under this system, all communications (rural, city, fire, ambulance, and police) were consolidated. Mr. Schoen stated the system eliminates duplication and centralizes the database, manpower, training, investigation, jail, and dispatch. There is one single budget for law enforcement in Riley County. The Riley County public is surveyed every five years, and 98.4 percent are satisfied with the professionalism of the consolidated law enforcement agency.

In response to questions, Mr. Schoen stated Kansas State University has its own police department, and the spread of financing for the consolidated agency from the cities of Ogden, Leonardville, and Randolph has been revised due to some hardships of these communities, such as flooding. In response to another question, Mr. Heim stated local people decide whether all the law enforcement agency members should also be commissioners. Representative Barker noted the uniqueness of Manhattan was not addressed: it is situated in two counties, meaning both Pottawatomie County and Riley County maintain some jurisdiction.

Rich Jankovich, Manhattan City Commissioner, provided a signed letter from the City Commissioners of Manhattan (Attachment 6) that states, after the statute was enacted to allow cities and counties to consider by ballot the consolidation of law enforcement agencies, support was received by a margin of nearly 70 percent. The letter also states the City believes it has quality, effective law enforcement services.

Representative Frownfelter asked Mr. Heim about requirements to run for sheriff. Mr. Heim stated statutes provide that sheriff candidates have background reviews rather than to be solely elected by popular vote (Attachment 7).

Kevin Barone, representing the group that proposed SB 436, addressed the Committee. He noted the consolidated law enforcement system does work and is very efficient. He agreed with the persons who provided comments earlier in the meeting. The group has no interest in reintroducing the bill and is communicating and discussing issues with the law board.

Presentation - Background and Introductory Information on Abandoned Properties

Whitney Damron, representing the City of Topeka, introduced the topic abandoned properties (Attachment 8). He explained the Committee members and staff were to tour three sites in the Topeka community. Each is an example of the kinds of problems abandoned housing represents. Representatives from the City would provide further discussion later in this meeting.

Visit Multiple Abandoned Properties in Topeka

Committee members visited two abandoned properties. Time did not permit visiting the third property (2425 SE California). The City of Topeka provided a document (Attachment 9) titled "Vacant and Abandoned Properties." Representative Kiegerl and Senator Faust-Goudeau were not able to attend the tour.

Brad Reiff, Interim Director of Housing and Neighborhood Development, provided comments at the onsite visit of the first property, 3500 SW Avalon. It was in a moderate income neighborhood that is considered healthy in terms of poverty, crime, and property values. The property was cited in 2012 for a dilapidated roof on a porch. The owner is deceased. There was a reverse mortgage, and the property was foreclosed and sold in 2013. Taxes have been kept current enough the building is not considered abandoned, but City staff have been unable to reach an owner. Patty Burkholder, Code Enforcement Manager for the City, added that the property did sell to a new mortgage owner in California, and any mail is returned unclaimed.

Kerri Connell, Police Department Officer, stated the property is not being inhabited, lighting is poor, and there is a vegetation overgrowth that makes it difficult for neighbors to watch the property. The property is not posted for no trespassing, so police have no legal grounds to question persons on the property.

James "Rusty" Vollintine, Fire Investigator, stated homeless persons are looking for a place to get out of the weather. If they were to light a fire to keep warm, fire could spread throughout the structure. The Fire Department does not know if the structure is vacant or occupied, so they would fight a fire as if it were occupied. The appraised value was \$149,000 in 2013 and is now \$81,000. The condition of the house depreciates the surrounding properties.

The second abandoned property was located at 1110 NW Jackson. It is in a low income neighborhood that ranks as needing intensive care in terms of neighborhood health. It is vacant and has been boarded up and cited for 21 violations since 2010. The property has been in foreclosure a number of times. The mortgage owner is in California and there has been no response to attempts to contact the owner. Mr. Ditch, a neighbor, said the house has been stripped of anything of value. There are two doors open; the cellar is not secure; and people have been seen entering and leaving.

A representative for the community policing unit for North Topeka indicated there is a high homeless population in the area because of the proximity to the Rescue Mission. The house has been used to consume alcohol and drugs. Children could come here during the summer months. It is unsafe for young children to walk by on their way home from school, in large part because of a danger of sexual assault. The second story floor could not support a lot of weight, and persons risk falling one story. There has been littering and illegal dumping. The Fire Department representative stated the dilapidated floors and boarded windows hinder firefighters. The house is close to neighbors, and fire could spread to other structures.

There was a break for lunch. Representative Huebert and Senator Faust-Goudeau were unable to attend the afternoon portion of the meeting.

Current Situation; Historical Perspective; Ideas for Solutions

The meeting reconvened at 1:30 p.m. Mayor Wolgast thanked the Committee members for touring the properties. He stated legislators are residents of this city for four months, and it is nice to have the opportunity to thank them for being part of Topeka. He added the City always welcomes legislators and wants to make legislators' stays as pleasant and safe as possible. Further comments from the Mayor and the City Manager are found in (Attachment 10).

Jim Colson, City Manager, noted the issues are very difficult. Talking about vacant and abandoned properties involves the issue of private property rights and the protection of the people living in the neighborhoods. Chairperson Holmes asked if this becomes a matter of no

one being in control. Mr. Colson replied there is no one definition that fits all. The City cannot identify the person in control and willing to bring property up to code, and then five or six years go by. In response to a question about who makes the determination on whether a property is abandoned, Mr. Colson stated the City is not the final determiner, and no action can be taken without sufficient judicial review.

Marc Galbraith, President, Elmhurst Neighborhood Association, provided comments (Attachment 11). The Elmhurst area, just west of the Statehouse and north of Washburn University, was established in 1909. It has 400 households, and many of its residents participate in the association. It is estimated there are three or four abandoned properties on each street. He noted this is a serious problem when wind blows leaves and trash, gutters get clogged and leak, doors are pushed open, hinges are broken, windows are broken, and then moisture damages the interior of the house. If a house sits long enough, penalties can be so high, there is no market value for the house. Demolition is expensive. If a house is torn down, then a vacant lot presents its own set of problems. Mr. Galbraith asked the Committee to give the City a new tool with which to work to be able to deal with these problems within a reasonable time frame.

In response to questions, Mr. Galbraith stated one property in his neighborhood is in very bad condition and extremely neglected. The grass is mowed. The house is owned by a bank and the bank is paying taxes. No response is received to communications. In reply to a question, he added no owner or contact can be found through the Register of Deeds.

Sgt. Colleen Stuart, Topeka Police Department, presented law enforcement's perspective (Attachment 12). The overall mission of the department is to reduce crime and make neighborhoods safe. While enforcement lies with the police, the overall safety is a partnership with neighbors. With Crime Prevention through the Environmental Design program, there can be a reduction in fear and incidences of crime. Under the broken window theory, if not taken care of, small issues become large issues. There is a decline in safety, unmown lawns, trash, vandalism, or even more crime.

For the property on California Avenue that was scheduled to be on the tour for today, in the summer of 2009, at least 15 arrests were made that included gang activity, sex offenses, drug use, and truancy inside the property. Art students from the nearby high school created designs for the outside of boarded windows and doors. Since that time, there have been no real incidents. The neighbors became invested in safety with good results.

Sgt. Stuart stated a Florida study indicates blocks with abandoned properties have 3.2 times as many drug calls, 1.8 times as many theft calls, and twice the number of violence calls than neighborhood blocks without abandoned buildings. Each time there is a call, resources are used that could be used for other parts of the city. In response to questions, she stated neighbors would be in violation of laws if they cut the overgrowth. The city mows the grass but does nothing else in terms of upkeep.

Mr. Vollintine provided the Fire Department's perspective (Attachment 13). The mission statement of the Department states it embraces the duty of saving lives and protecting property. He noted 17 percent of firefighter injuries nationwide involve injuries while responding to or returning from an emergency incident. Transients are a constant concern to the fire service when dealing with abandoned or vacant structures. In winter months, transients seek shelter. Fires are started for the purpose of warming or cooking. In summer months, vandalism and drug use may increase in abandoned structures. In response to questions, Mr. Vollintine stated firefighters must make strategic decisions when they arrive on the scene, not knowing whether a structure is occupied or whether the house could explode due to drugs.

It was asked how many abandoned structures have burned and what happens after burning. The answer was, in the past three years, there have been 41 vacant structure fires in Topeka. The fire investigation is completed, and the matter is handed to the legal department. Chad Sublet, City Attorney, indicated another code violation is sent to the owner under the International Property Maintenance Code, and what happens depends on the extent of damage to the structure.

Mr. Sublet provided information and noted the definition of an abandoned property under Kansas Statutes is that it has not been occupied for 90 days and property taxes have not been paid for two years (Attachment 14). Once any amount of property tax is paid, the delinquency period starts over again. In his 1792 essay on property rights, James Madison said the government is instituted to protect property rights of every sort. Mr. Sublet asked that legislation be considered that will allow a municipality, on a timely basis, to become owner of appropriately defined abandoned structures through strict judicial oversight. Currently, that tool is impeded by the State statutory scheme.

As for the government taking over property, under statute, Kansas can seize property subject to criminal activity. It was asked whether proposed HB 2075 meets the needs. Mr. Sublet reviewed how to protect the property owner and rights of the neighbors. The definition of "abandonment" could be changed. In response to whether all out-of-state owners are required to have a resident agency in the state, Mr. Sublet noted the Secretary of State maintains a registry of the agents of out-of-state corporations, but many mortgage companies operate outside the United States.

Chairperson Holmes asked whether tools are in place or further research is needed. Mr. Sublet stated the Asset Forfeiture Act is used in drug trafficking crimes, misdemeanor gambling, and dog fighting. The City seizes the property and fixes the property for resale. Possibly abandoned and vacant properties could be added to this law.

Dale Goter, City of Wichita, distributed a map showing Wichita properties in a portion of the city within Senator Faust-Goudeau's district with delinquent property tax. The map was color coded by the amount owed at each location and shows the number of years of delinquency (Attachment 15). He stated there are some intense areas of blight. If a property owner pays just a little of the taxes and penalties, there is no action against the owner, and the property can then stand idle for an extended number of years. Mr. Goter showed a video presentation about abandoned properties in Wichita. He noted he supports Representative Frownfelter's bill.

Mr. Goter stated Habitat for Humanity recently purchased eight properties from a sheriff's sale, which had many dollars of delinquent taxes owed. The City of Wichita could waive the special assessments on the property, and Habitat for Humanity could repair the home or build a new home on the lot. He stated blight has been a problem for all of the past eight years he has represented the City before the Legislature, and Wichita has been looking for solutions that do work and improve the quality of its communities.

Senator Fitzgerald said he appreciated the description of the problem, and there are two hurdles to achieve a solution:

- The politics – what the Legislature can pass regarding property rights; and
- The constitutionality with regard to property rights as law is applied when it goes to court either at the state or federal level.

Representative Kiegerl stated the comments make a great deal of sense. He asked if this was more of a municipalities issue than a state problem, though a solution needs to be found.

Erik Sartorius, Executive Director, League of Kansas Municipalities, presented comments (Attachment 16) and added the League would be willing to convene interested parties to discuss and propose a possible solution. He stated a survey was distributed to municipalities prior to this meeting, and there has not been sufficient time to analyze the data. A total of 48 cities responded about the number of abandoned properties. The median size city that responded to the survey had a population of 2,500. Most cities with fewer than 5,000 residents had 30 or fewer abandoned properties. Results from small cities were as follows: Potwin with a population of 181 had 29 abandoned properties; Fredonia with a population of 2,500 had an estimated 15 percent abandoned properties; Parsons with a population of 10,500 had 150-200 abandoned properties; Attica with 640 people had 30 such properties; Junction City with 26,000 people had 900-1,100 such properties; and Topeka has about 400.

Most of the cities indicated properties were abandoned for an average of four years. Some had properties abandoned for at least ten years. Most of those responding to the survey said the properties were largely individually owned with fewer owned by landlords or banks. Almost one-third of those surveyed indicated ownership was by "other," and Mr. Sartorius said he would like to study this category further.

Mr. Sartorius stated that as he visits with cities across the state, one challenge is the availability of adequate housing as candidates for employment decide whether to move to a particular city. He added that either the size of the community or the geography does not attract investors willing to build homes. In some cities, building is outward and utilities need to be extended, which is costly to the municipalities.

Chairperson Holmes suggested Mr. Sartorius come back to the Committee with additional information about the results of the survey and any other available information.

Luke Bell, Kansas Association of Realtors, presented comments (Attachment 17) and indicated the Association agrees with the problems stated today. He stated there should always be two factors that define an abandoned home and indicated support for including two years of delinquent *ad valorem* taxes as one of the factors but questioned the "vacant for 90 days" test. As this problem is addressed, Mr. Bell suggested the Committee carefully consider the options cities already have under existing Kansas law and, if not adequate, proceed with statutory change. He also requested they carefully weigh the need for an additional tool to address this problem against the potential erosion of private property rights.

Representative Frownfelter provided the Kansas Statutes on this topic with his proposed bill inserted (Attachment 18). Words highlighted in yellow defined the changes to be made under HB 2075. He stated KSA 12-1751 through 12-1756, inclusive, give some ability to act now. KSA 12-1756a through 12-1756g, inclusive, deal with not-for-profit organizations, which could be used at this time.

He stated an editorial in *The Kansas City Star* described abandoned properties as follows:

Vacant, nuisance properties have become Kansas City's latter-day plague, a kind of urban gangrene that can create a chronic downdraft in property values. In

neighborhoods where the problem is severe, vacant houses draw rats, squatters, drug dealers, vandals and midnight dumpers.

He noted the same problem is apparent in his hometown as well. If one house is abandoned, it affects the appraisal value of neighboring properties and thereby reduces the revenue that could be collected. He stated it is possible his bill is not the answer, but it is the beginning to a bill that could be a solution.

Adjourn

Chairperson Holmes announced the next meeting is scheduled for 9:00 a.m., Friday, November 21, at which time the topic of fall elections will be discussed. The Committee is scheduled to have its third meeting on Friday, December 12, and Mr. Sartorius was asked to have more information about abandoned properties and any possible solution to share at that time. The meeting adjourned at 3:39 p.m.

Prepared by Linda Herrick
Edited by Martha Dorsey and Jill Shelley

Approved by the Committee on:

December 11-21-2014

(Date)



Vacant & Abandoned Properties

City of Topeka

Home Tour & Legislative Testimony, October 10, 2014

Vacant & Abandoned Properties

City of Topeka

3500 SW Avalon, Westboro Neighborhood

The City of Topeka originally cited this property in September 2012 for a dilapidated and collapsing roof over the porch area. The City did not receive confirmation that the owner received notice, so City officials researched obituaries and court records to discover the owner was deceased. The City attempted to contact the owner's daughter who lived in California in January 2013. She filed a probate case in April 2013. Taxes on the property were kept current; the structure was vacant but not abandoned. Investigation into court records revealed the property was in a reverse mortgage and there was pending litigation as to ownership. It was foreclosed on in June 2013, and ordered to Sheriff Sale. It sold in July 2013. The City started a new case under the International Property Maintenance Code in September 2014. Mail was returned as unclaimed. Shawnee County Appraiser records indicate the property is still listed under the deceased owner's name. The City has done everything in its power, and cannot move forward until the new property owner is identified.

1110 NW Jackson, North Topeka East Neighborhood

This property has been cited for violations 21 times since 2010 for nuisance items, and nine times for weed violations. Taxes are current, so the property is vacant yet not abandoned. A look into court records revealed a Petition for Foreclosure was filed in July 2008; a Sheriff Sale was ordered in November 2008, and was subsequently cancelled the same month. Petition for Foreclosure was filed again in September 2011 and a Sheriff Sale ordered in April 2012; it was subsequently cancelled again that same month. A Sheriff Sale was once again ordered almost a year later, in February 2013, and the property finally sold to a bank in March 2013.



3500 SW Avalon



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1110 NW Jackson

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2425 SE California

Vacant & Abandoned Properties

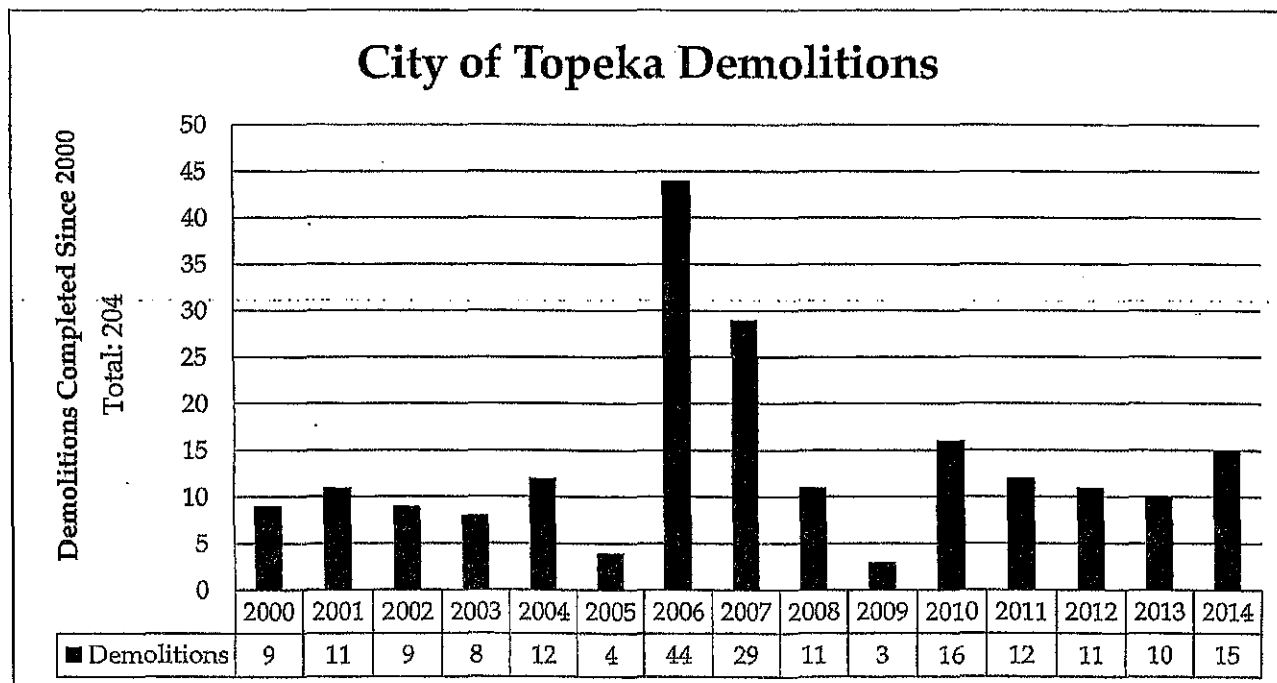
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Ownership now reflects a company in California; all attempts to contact are returned unclaimed in each case. The City continues to abate the property and bill the owner. The bills are unpaid. The City has done all that it can and cannot continue until it receives a response from the owner. The case has not been sent for prosecution because the City has no individual to charge.

2425 SE California, three properties in the Highland Park Central Neighborhood

The three structures are vacant, but not abandoned. Taxes are current. The structures have seen repeated break-ins and urban mining (stripping of copper pipe). The structures have experienced small fires in the interior. Broken windows have been boarded. The structures meet minimum housing standards. The structures were first cited in 2006 and have since continued to be cited for nuisance and weed violations. The owners are in town, and have typically brought the properties into compliance each time. A housing case, filed in 2010, ultimately went to Topeka Municipal Court. The case was dismissed as the windows were boarded, bringing the structures into compliance.

The blighted houses deteriorate property values in the neighborhood, and there is not enough per ordinance to demolish them as unsafe structures. In 2013, the property owner died and the property reverted to a trust fund. The City has done everything in its power to enforce the code, which was simply not strong enough for these particular properties. In July 2014, the property was cited under the City's newly adopted property maintenance code. The case is pending.



Frequently Asked Questions

1. What is the problem?

At any given time, approximately 400 vacant and unused properties are present in the City of Topeka. Of these, 25 to 50 are considered legally abandoned, pursuant to K.S.A. 12-1750, having been delinquent on property taxes for two years, and unoccupied for 90 days.

The distinction between vacant and abandoned is important. Vacancy has no true legal significance. A property can be vacant i.e., no one has occupied the house for five years, but there are periodic property taxes paid. That specific property would not be considered legally abandoned and action could not be taken by the municipality or a non-profit entity. However, the roof is dilapidated; it is overgrown with weeds, and becomes a hub for criminal activity.

One of the most significant impacts of abandoned and vacant property is the infringement upon the personal property rights of the entire neighborhood. One vacant property can damage an entire neighborhood's ability fully enjoy the inalienable rights of property ownership.

"Among those most hurt by the damage vacant property inflicts on housing values are long-time homeowners, many of them senior citizens—the very people who tend to hold together what is left of a declining neighborhood. "We got a call last year from an elderly woman in one of those neighborhoods," says Rob Stephany, director of the Pittsburgh Urban Redevelopment Authority. "She had a \$9,000 bid from a contractor to replace her roof, which had started to leak. Her next-door neighbor's house had sold for less than that, about \$7,000. Here was a responsible, salt-of-the-earth, Greatest Generation senior citizen asking whether she should repair her roof or just ride it out. That is a loss of equity." ¹

As mentioned above, in addition to erosion of personal property rights, crime becomes a significant issue associated with vacant properties. In a time when both urban and rural law enforcement resources are stretched, vacant properties demand an inordinate amount of law enforcement resources. In addition to our local crime data, the Department of Justice studied the impact of vacant properties determining that vacant properties lead to²:

- Narcotics use and sales
- Juvenile delinquency
- Stolen property
- Sex offenses
- Trespassing
- Vandalism
- Illegal dumping
- Burglary

¹ <http://www.pittsburghquarterly.com/index.php/Region/the-cost-of-blight/All-Pages.html>

² http://cpsi.spcollege.edu/assets/partii-theeffectsofvacantandabandonedproperty_apublicnuisance.pdf



Vacant & Abandoned Properties

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- **Prostitution**

Blocks with unsecured vacant buildings have 3.2 times as many drug calls to police, 1.8 times as many theft calls, and twice the number of violent crime calls as blocks without vacant buildings. The Department of Justice calls for collaborative problem solving between government entities to help solve the problem of vacancy. This is our call to the legislature today.

2. What is the profile of a typical abandoned property?

Vacancy can come into play in a number of simple and complex scenarios.

- Property is traditionally abandoned by outright owner: In many cases, an individual will simply walk away from the structure because the cost of repair or taxes is an impediment to maintaining the property. In a large number of these cases, the individual leaves the community. Assessing the true owner can become increasingly difficult. If taxes remain unpaid then a non-profit can attempt to take possession pursuant to K.S.A. 12-1756(a), but that requires a non-profit with the financial ability to rehabilitate the property.
- Property owner is deceased: In many cases the property owner has passed away and the property may be in a trust or owned by another family member.
- Property owner is in foreclosure or bankruptcy: In many cases the property is in the foreclosure process and the mortgage holder is simply holding the property. If a home is in a dilapidated condition, the mortgage holder often will not act on the property due to its unmarketability. In these cases, a property can sit unoccupied for years.
- Traditional Vacancy: In many cases, property taxes are paid but the property is simply boarded up and neglected.

3. How long are properties abandoned?

"Abandoned property" includes: (1) residential property that is two years delinquent in property taxes and has been unoccupied for at least 90 days; and (2) commercial property that is two years delinquent and has a 'blighting influence' on surrounding properties. Many properties are vacant for decades but do not meet the statutory definition of abandonment.

4. What enforcement actions are taken?

Once a property is reported as being in violation of the International Property Maintenance Code, a violation notice is sent to the owner, if one can be located. If no owner is located, the notice is posted on the physical structure of the property. If the owner does not abate the problem within the notice period, he or she is cited and receives a Court date.

If the owner appears in Court, the owner can be assessed fines and a potential jail term. In many cases, owners refuse to show up for Court and a bench warrant is issued for failing to appear. These owners often live out of town, so a bench warrant has little impact. The same is true for mortgage companies.



Vacant & Abandoned Properties

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Eventually, the City abates the property and absorbs the cost of abatement. If the issue is large enough, The City will get an order for demolition. Demolition can cost anywhere from \$9,000 to \$100,000 depending on the nature of the property and existing environmental hazards.

For a distant owner, this process can be repeated several times over, while the property remains in disrepair. City abatement costs taxpayers, as does the divestment of the personal property rights of the neighborhood.

5. What is the timeframe for enforcement?

The City's only enforcement options currently available were outlined in the answer to the previous question. A simple weed violation will be two weeks. A dangerous structure can be anywhere from a year, to several years for demolition. Many violations continue for years as the City does not have a tool to receive clean title to a vacant property and sell it to someone who will keep it in compliance with local and State law.

6. Who typically owns such property?

Typical ownership will vary. Some are out-state-owners, or in the case of bankruptcies and foreclosures, the properties are in limbo until litigation is complete. Banks or mortgage companies have filed cases against a property owner and had them removed from a property, yet their name is often still on the deed and the bank or Mortgage Company does not yet have legal ownership of the property. Occasionally, the property owner is deceased with heirs unwilling or unable to take over the property. Then the property falls into further disrepair and/or proceeds to the complicated process of going to sheriff/tax sale. In some cases, property owners in town are simply unwilling to use their property for any purpose, leaving a property vacant but not abandoned.

Statutory challenges facing municipalities in dealing with abandoned housing

K.S.A. 12-1753 allows the governing body, after notice to the owner and a hearing, to determine whether a property is abandoned. If the body makes that determination, the governing body issues a resolution fixing a time for the owner to rehabilitate the property. "Rehabilitate" means bringing the property into compliance with fire, housing, and building codes.

If the owner fails to rehabilitate the property, the city shall 'cause the structure . . . to be rehabilitated.' K.S.A. 12-1753. The problem is that there is no procedural process in place to proceed. K.S.A. 12-1753 provides that the governing body 'may authorize the rehabilitation of abandoned property 'as provided in K.S.A. 12-1756a.' K.S.A. 12-1756a provides a process whereby a nonprofit housing organization can initiate court action to secure temporary possession of abandoned property in order to make improvements. If the owner fails to regain possession, the court may issue a judicial quit-claim deed to the nonprofit. That deed extinguishes all ownership interests, except for tax liens and mechanics liens. K.S.A. 12-1756e.

The City does not have the same rights as a non-profit to rehabilitate and receive title. The real problem is with the definition of abandonment as it relates to property taxes. If one payment is made during a two year period the clock starts all over again, allowing a property to remain in disrepair and infringe on the



Vacant & Abandoned Properties

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property rights of the people in the neighborhood. In the case of a lengthy foreclosure or bankruptcy, the taxes are paid by the mortgage company so they can maintain control of the property.

Eminent domain

A city can 'take' private property provided the taking is for 'public use' and the owner is compensated for the property's fair market value. "Public use" is broadly defined by the courts. The governing body would have to authorize the legal department to commence a condemnation action in district court. Three appraisers are appointed by the court to determine fair market value. Upon payment by the city, the latter would acquire title.

Eminent domain can't be used to sell, lease, or transfer the property to a private entity unless: (1) the owner has acquiesced, in writing; (2) the property is 'unsafe for human occupation...under the building codes; or (3) ownership interests are unknown and/or there are defects in the title.

Land Bank

Property that is acquired by the city can be placed in a land bank and sold or disposed. The advantage of a land bank is that the properties are scrubbed of all property taxes, thus, presumably making them more marketable. The special assessments remain but a city may abate all or some of the assessments.

The issue with a land bank is that the City has to secure good title to the real estate before the property can be placed in the land bank. Many of these properties are in title purgatory and getting clear title to the property becomes virtually impossible.

7. What laws prevent municipalities from enforcing codes, assessing fines, foreclosing, etc.?

The laws may not prevent enforcement, but they certainly impede the progress. Length of time and notification requirements restricts progress in some cases and impedes progress in cases of habitual violators. Municipalities can mow a property or cover graffiti, but the bigger expenses of fixing roofs, replacing windows or siding, painting, etc., are cost prohibitive to the City's budget. The length of time involved in processes of properties going through tax foreclosures and sales involve at least two years of back taxes not being paid, followed by another year of attempts to contact property owners, followed by the sale and then one year redemption periods. Properties then fall into further disrepair and become more unusable. Costs, fees and penalties assessed for abatements or demolitions performed are generally not ever recouped.

8. What problems do abandoned houses create for law enforcement and/or public safety agencies?

Numerous problems occur for public safety agencies on both abandoned and vacant structures which are not maintained by a property owner. Police respond to prowlers, squatters and transients, theft reports and other criminal activity; Fire responds to accidental and arson fires; Property Maintenance Code responds due to structures not being secured, tall weeds and overgrown vegetation, nuisance and sanitation violations, broken windows, dilapidated roofs, gutters and siding, and sometimes complete demolitions.



Vacant & Abandoned Properties

...

The structures have been known to attract child predators and children are endangered and in some cases, assaulted within the vacant structure. Injuries can occur by intruders or the merely curious due to rotten floors, broken glass, rusty nails and bio-hazardous waste.

In the Department of Justice study referenced in question one, Austin Texas was a City that was examined for the impact of vacant or abandoned structures on crime.³ The findings were nothing short of startling:

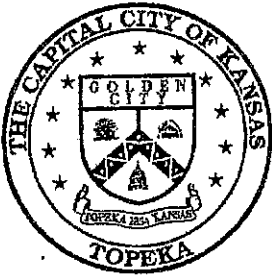
- Crime rates on blocks with open abandoned buildings were twice as high as rates on control blocks without open buildings;
- 83% of the open abandoned buildings showed evidence of prostitution, narcotics activity and property crimes
- 43% of abandoned buildings could be entered without any force

Most alarming is the use of abandoned properties as magnets for sex crimes. Abandoned homes provide privacy, anonymity and time to groom potential victims.⁴

³ http://cpsi.spcollege.edu/assets/partii-theeffectsofvacantandabandonedproperty_apublicnuisance.pdf

⁴ http://cpsi.spcollege.edu/assets/partii-theeffectsofvacantandabandonedproperty_apublicnuisance.pdf





CITY OF TOPEKA

215 SE 7th Street, Room 356
Topeka, Kansas 66603
Tel.: (785) 368-3895

Fax: (785) 368-3909
www.topeka.org

Joint Statement Mayor Larry Wolgast and City Manager Jim Colson

Topeka is a vibrant and diverse City similar to other communities throughout the State of Kansas. The problem of abandoned, vacant and dilapidated residential and commercial structures in our City is a major concern impacting the inalienable rights of those in our community to preserve the right to own and maintain real property. Furthermore, when someone allows a property to become dilapidated and vacant to the point it impacts other individuals' rights to own property and becomes a blighting influence, the City needs a mechanism to address the abandoned property as that owner has demonstrated an inability to meet the legal expectations placed on owners of personal property. Additionally, the issue of abandoned structures has a significant impact on both crime and economic development. As municipalities attempt to do more with less, legislation is needed to assist our urban and rural communities with the blight and economic drain created by abandoned and vacant structures.

When a property is vacated or abandoned with no plan in place for maintenance and the owner cannot be located or refuses to respond to multiple attempts to abate the blight, it becomes dilapidated to the point that it impacts the rights of those in the community to preserve and maintain real property. As Property values diminish, families are forced to make the tough decision to remain in an increasingly blighted neighborhood or leave the neighborhood causing increased decay of the integrity of the neighborhood they value. In Topeka, we have seen entire neighborhoods move from being primarily owner occupied to rental properties. In many cases, the owners become long distant owners which in some cases leads to more homes becoming dilapidated as renters cannot be found to fill the now vacant properties. Without a legislative fix to allow municipalities to take control of the vacant properties with unknown or unresponsive owners for needed improvements and resale or reclamation entire neighborhoods will continue to deteriorate and individual rights to own and preserve real property will continue to erode.

In addition to erosion of personal property rights, abandoned and vacant structures become an attractive nuisance for crimes and criminal behavior. In a time when local law enforcement resources are stretched to critical mass, abandoned and vacant structures significantly drain those precious law enforcement resources. Vacant properties are magnets for graffiti, drug use, juvenile delinquency and violent crime. In addition to traditional criminal activities, vacant structures become havens for vagrancy and arson associated with attempts to stay warm in the cold winter months endangering neighbors in the community. A neighborhood with a vacant structure has 3 times as many calls for service then a neighborhood without a vacant structure. This is simply a law enforcement model that cannot be maintained.

Communities throughout Kansas spend millions of taxpayer dollars on economic development. If a City had the ability to take possession and rehabilitate a commercial structure or home and remarket the property it will increase property values as well as attract new businesses to attractive commercial structures and revitalized communities. Clearly, small businesses are more likely to begin a new venture in a revitalized and flourishing neighborhood than one in decline because of structural blight. This is economic development without utilizing or increasing taxes. Additionally, it increases revenues for local government as owners are now occupying properties and paying property taxes on structures where the previous owner was significantly delinquent or not paying property taxes at all.

Legislation that makes it easier for municipalities to take control of vacant structures with appropriate judicial oversight will have a significant impact on both rural and urban communities across Kansas suffering from diminishing neighborhood property values. Specifically, it will reduce the drain on local law enforcement and lead to increased economic development. We thank you for the opportunity to provide you with our written testimony and look forward to working collaboratively with you moving forward.

October 9, 2014

SPECIAL COMMITTEE ON ETHICS, ELECTIONS AND LOCAL GOVERNMENT

Senator Mitch Holmes, Chairperson
Senator Oletha-Faust-Goudeau
Sen. Steve Fitzgerald
Sen. Michael O'Donnell

Rep. Steve-Huebert, Vice person
Rep. John Barker
Rep. Keith Esau
Rep. Mike Leigerl
Rep. Stan Frownfelter

Mr. Chairman, and committee members, thank you for the opportunity to speak with you today about this important and pressing problem.

My name is Marc Galbraith. I live in Topeka and I am the president of the Elmhurst Neighborhood Association. Elmhurst was established in 1909. We are a neighborhood of about 400 households. We are located west of the statehouse and just north of the Washburn University campus.

We are an active neighborhood. Many of us work to encourage, educate about and fund improvements in our neighborhood homes. We also work with the city and others to help us accomplish this goal.

We have made much progress. Recently, I believe it's fair to say, we thought we had perhaps turned the corner on our neighborhood's history. Then in 2010 or 2011 we began to notice vacant properties in the neighborhood. We do not know the exact number of abandoned properties in Elmhurst. We attempted our own count, but ran into difficulties and never completed the process. Still some neighbors reporter 4-6 vacant homes on their street and 3-4 on other streets. What we do know is that we have a higher number than we have had in the past.

Of course the problem goes way beyond the Elmhurst neighborhood. I am certain that many Topeka neighborhoods are experiencing the problems associated with vacant and abandoned properties. Just as another example, the Chesney Park neighborhood, located just east of the Washburn University campus, has one hundred more households than Elmhurst, but I believe they have considerably more vacant properties proportionately. In 2012, 15% of Chesney Park properties were delinquent for property taxes. As far as I know, there is no direct correlation between delinquent and abandoned properties, but, at least in some cases, one does seem to point to the other. I believe it is also true that in recent years the delinquent property rate in Topeka NIA neighborhoods was between 18%-25%.

This is a serious problem. Why? Well it's more or less the same sad story every time. A home is abandoned. The grass and weeds grow wild and take over the yard. Gutters get full, they leak and they get heavy and pull away from the roof. Doors are forced open allowing entry by all and exposing the property to interior damage. Windows are broken, letting in the

elements and wildlife. The list of code violations grow. Copper and wire are removed. Health and safety issues including crime and fire are also concerns.

Meanwhile the value of nearby properties turns south and the good work for revitalization erodes.

I recently heard one very involved neighborhood representative say that abandoned properties are terrorizing our neighborhoods.

What do neighbors do? In many ways abandoned properties and associated problems are beyond the capacity of neighborhood folks. And the fact is that you can't sell a neighborhood when a bunch of properties within it look like they could explode at any second.

Of course, a neighborhood organization can call code compliance, the police, the health department, but the owners are not to be found and in many ways these problems have become something that is beyond the capacity of the cities to deal with, as well.

So neighborhoods wait. If the property is vacant for three years it may also be delinquent for property taxes. By statute the county can offer the property at a tax sale after three years, and it generally takes one more year for the administrative work. Actually, in reality, it can take much longer before properties are put up for tax sale. If enough time passes, the back taxes, penalties and cost of repairs make the property unmarketable.

In such cases, demolition may be the last resort. But Topeka, and I suspect many other cities, earmark few dollars for demolition and the wait for such action can be long. If a property is finally demolished, the neighborhood ends up with a big empty lot where a well-built house once stood. And the empty lot becomes yet another sort of problem.

My real purpose here today is to ask you to give cities new and better tools so they can address this problem in a way that offers real solutions within reasonable time frames.

Thank you again for this opportunity.

Marc Galbraith
1230 College
Topeka, KS



TOPEKA POLICE DEPARTMENT

Sgt Colleen Stuart
785-368-9490

Chief James Brown
320 S. Kansas STE 100
Topeka, Ks 66603



Testimony presented by Sgt. Colleen Stuart, Topeka Police Department

Reducing crime and making neighborhoods safer is the overall mission of the Topeka Police Department. While the enforcement aspect lies with the police department, overall neighborhood safety lies with the partnership between community and the police. The current situation of abandoned properties within communities hampers that effort to maintain overall neighborhood safety.

Using the Crime Prevention through Environmental Design concept, the program suggests proper design and effective use of the built environment can lead to a reduction in fear and incidences of crime as well as an improvement in the quality of life for those neighborhoods. The current state of the properties toured show neglect of the built environment. This neglect can lead to an invitation for the criminal element thus increasing the fear within the surrounding neighborhood.

The decline of properties and the increase of crime in those neighborhoods are illustrated using the "Broken Windows" theory. This theory suggests if small quality of life issues, or civil disorders or not addressed it shows there is no care or concern for the area. When no care, concern or action is taken on these small issues they gradually become larger issues. This continued level of disorder leads to increased fear, reduced interaction among residents and can allow for more serious crime to move in.

For abandoned properties, a broken window not taken care of will soon begin a neighborhood safety decline. One broken window turns into another broken window, and then an unkempt lawn. As no perceived action is taken to repair the property, crimes such as vandalism and theft may occur. The longer the neglect and inaction the more crime may occur creating a rise in neighborhood fear. In a neighborhood where community control breaks down the doors are open to invite crime in.

An example is the abandoned buildings at 2425 SE California. In the summer of 2009 into the school year of 2010 there were a marked number of events that necessitated law enforcement intervention in the way of arrests. These incidents included gang activity, drug usage, truancy, sex offenses, graffiti inside the buildings, and theft. At least fifteen arrests were made within that school year at the same abandoned properties. It was not until the neighborhood, the school and the police partnered together that the properties were dealt with. Negotiating with the property owner, permission was eventually granted for the art students to board the windows and doors and create a

more aesthetically pleasing exterior. Since that time there have been no incidents of reported needing law enforcement intervention. The neighborhood became invested in their own safety and it has paid off.

In 2013, St Petersburg College conducted a study of vacant buildings nationwide. This study was provided through a grant from the Bureau of Justice. The study found that neighborhood blocks with abandoned buildings had 3.2 times as many drug calls, 1.8 times as many theft calls and twice the number of violent call than neighborhood blocks that did not have abandoned buildings.

Overall, Law Enforcement is concerned about crimes that occur on or near abandoned buildings. This is a quality of life issue for the surrounding neighborhood residents.

Issues such as:

Manufacturing, sale and use of narcotics

Gang Activity

Juvenile delinquency, such as:

Truancy

Runaways

Vandalism

Sex Offenses, such as:

Prostitution

Child Molestation

Trespassing:

Transient/Squatters

Prowlers

Burglary

Theft

Of building materials- copper, wire, valuables

Manpower

Use of resources to check and re-check security of building for safety concerns.

The abandonment of one property creates a breakdown of the surrounding neighborhood. When there is a perception of unconcern for those properties there is an increased level of fear. This only continues to be evident as crimes and the criminal element begin to make their visible and psychological mark on the entire neighborhood.



CITY OF TOPEKA



Fire Department
324 SE Jefferson Street
Topeka, KS 66607-1185
Tel: (785) 368-4000
Fax: (785) 368-4030

Greg T Bailey Sr, Fire Chief
www.topeka.org

James R. Vollintine Jr., Fire Investigator, BATFE Canine Handler, IAAI CFI

**City of Topeka, Kansas Fire Department
Fire Prevention Division
324 SE Jefferson St.
Topeka, Kansas 66607
Office: (785) 368-4153, Facsimile: (785) 232-8184
Email: Jrvollin@topeka.org**

The mission statement of the Topeka Fire Department, not unlike all fire departments, embraces the duty of saving lives and protecting property. This is first and foremost our objective every time we are called to service.

When responding to any alarm, the potential for injury begins from the moment the alarm is dispatched. Injury to firefighters while responding to or returning from an emergency incident comprises nearly 17% of all fire fighter injuries nationwide. This becomes especially troublesome when we talk about responding to vacant or abandoned structures.

As stated previously our mission places lives ahead of property. Because a property is boarded up or shows perceived signs of abandonment, it cannot be assumed that the property is vacant. This requires that we must deploy resources to assure that there are no potential fire victims inside. In short, we are in the not so unique position of placing firefighters in harms way for property that even the owner has failed to display little concern.

Regardless of the time of year, transient and homeless activity is a constant source of concern to the fire service when dealing with abandoned or vacant structures. In the winter months we often find that unsecured, vacant or abandoned property serve as shelters for this transient and homeless population. During these winter months, fires started for the purpose of warming and cooking are commonplace. In the summer months we continue to experience this issue to some degree, yet we are also faced with a youth population that is no longer in school. This results in an increase in vandalism and drug use in these structures; again, greatly increasing the potential for fires to occur.

Providing a snapshot, in the last three years nearly 20% of all fires Investigated by the Topeka Fire Department Investigation Unit were in vacant structures. All but one of these fires was determined to be associated with the crime of arson or classified as undetermined*.

Property losses associated with these types of fires are not the only cost involved. Responding to these incidents also expends considerable resources. In the case of the Topeka Fire

Department 409 individual apparatus responded to mitigate these incidents, resulting in three firefighter injuries and approximately 104 clock hours. More importantly to the community as a whole, the average time responding companies were out of service was 2 hours 35 minutes per incident, greatly reducing the service we can provide to the remainder of our community, during this time period.

- Longest incident 9 hours 42 minutes

Once responding units arrive on the scene of Abandoned/vacant/blighted structures the safety of the suppression crews presents a whole new set of complex problems. These structures are inherently more dangerous during firefighting activities.....

- Structural degradation due to weather and vandalism
- Removal of recyclable building materials "Urban Mining"
- Penetrations in walls floors and ceilings by transient, homeless or urban miners allows for abnormal fire spread

Structural safety is not the only part of the problem, as the contents of these structures can be unpredictable and can aid in fire spread and hinder extinguishment. Heavy volumes of combustible materials, both present at the time of abandonment and brought into the structure by transients and or its inhabitants produces difficult and unusual suppression issues.

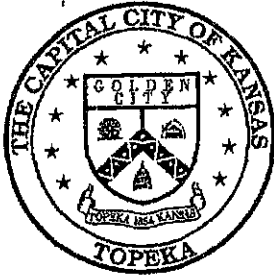
- Blocked or damaged stairs
- Blocked entries/exits
- Covered and/or boarded windows reduces emergency egress for firefighters as well as limiting or delaying entry

The time a fire burns within a building directly correlates to the safety of the firefighters and the potential for structural failure. When dealing with abandoned or vacant structure, the time between the inception of fire, discovery and arrival of suppression units is typically delayed. This allows for heavy fire conditions upon arrival, and results in rapidly changing and more advanced fire conditions. This can cause the fire to spread beyond the structure of fire origin or result in the complete loss of the structure. Because of this potential for fire spread, neighboring structures are exposed to a higher level of risk than structures surrounded by maintained and occupied buildings.

- 2012 The national average for firefighter injuries per 100 fires per NFPA was 2.9. The Topeka Fire Department has experienced a 7.3 % firefighter injury rate per 100 vacant structures.

In conclusion, a significant number of abandoned and vacant properties within a municipality pose a significant challenge to fire department operations and community safety. This is manifested by extended on scene times, overall firefighter safety and an increased risk for damage resulting from uncontrolled fire spread from abandoned or vacant properties, to adjacent occupied structures....

**Classifying a fire as undetermined does not preclude the fire from being arson. Only that the cause cannot be proven to an acceptable level of certainty.*



CITY OF TOPEKA

Legal Department
215 SE 7th Street, Room 353
Topeka, KS 66603-3914
Tel: (785) 368-3883
Fax: (785) 368-3901

Chad J. Sublet
City Attorney
csublet@topeka.org

Testimony submitted by City Attorney Chad Sublet

I want to start by thanking you for the opportunity to address you today. My Name is Chad Sublet and I am the City Attorney for the City of Topeka. The issue of abandoned and dilapidated structures is one that communities across Kansas struggle with on a daily basis. The blight created by these structures impacts the ability of neighbors to maintain their right to own and maintain personal property. Further, abandoned structures lead to increased criminal activity in neighborhoods putting both law enforcement and fire fighters in increased danger. We ask you today to consider legislation that will allow a municipality to become owners of appropriately defined abandoned structures through strict judicial oversight. That tool is currently impeded by the current State statutory scheme.

K.S.A. 12-1753 allows the governing body, after notice to the owner and a hearing, to determine whether a property is abandoned. If the body makes that determination, the governing body issues a resolution fixing a time for the owner to rehabilitate the property. "Rehabilitate" means bringing the property into compliance with fire, housing, and building codes. K.S.A. 12-1750(f). "Abandoned property" includes: (1) residential property that's 2 years delinquent in property taxes and has been unoccupied for at least 90 days; and (2) commercial property that's 2 years delinquent and has a 'blighting influence' on surrounding properties.

If the owner fails to rehabilitate the property, the city shall 'cause the structure . . . to be rehabilitated.' K.S.A. 12-1753. The problem is that there is no procedural process in place to proceed. K.S.A. 12-1753 provides that the governing body 'may authorize the rehabilitation of abandoned property 'as provided in K.S.A. 12-1756a.' K.S.A. 12-1756a provides a process whereby a nonprofit housing organization can initiate court action to secure temporary possession of abandoned property in order to make improvements. If the owner fails to regain possession, the court may issue a judicial quit-claim deed to the nonprofit. That deed extinguishes all ownership interests, except for tax liens and mechanics liens. K.S.A. 12-1756e.

The City does not have the same rights as a non-profit to rehabilitate and receive title. The real problem is with the definition of abandonment as it relates to property taxes. If one payment is made during a two year period the clock starts all over again allowing a property to remain in disrepair and infringe on the property rights of the people in the neighborhood. In the case of a lengthy foreclosure or bankruptcy the taxes are paid by the mortgage company so they can maintain control over the property.

Eminent domain

A city can 'take' private property provided the taking is for 'public use' and the owner is compensated for the property's fair market value. "Public use" is broadly defined by the courts. The governing body would have to authorize the legal department to commence a condemnation action in district court. Three appraisers are appointed by the court to determine fair market value. Upon payment by the city, the latter would acquire title.

Eminent domain can't be used to sell, lease, or transfer the property to a private entity unless: (1) the owner has acquiesced, in writing; (2) the property is 'unsafe for human occupation...under the building codes; or (3) ownership interests are unknown and/or there are defects in the title.

Land Bank K.S.A. 12-5901 *et seq.*

Property that's acquired by the city can be placed in a land bank and sold or disposed of. The advantage of a land bank is that the properties are scrubbed of all property taxes, thus, presumably making them more marketable. The special assessments remain but a city may abate all or some of the assessments. K.S.A. 12-5909.

The issue with a land bank is that the City has to secure good title to the real estate before the property can be placed in the land bank. Many of these properties are in title purgatory and getting clear title to the property becomes virtually impossible.

The current statutory scheme laws may not prevent enforcement for code violations, but they certainly impede the progress. Length of time and notification requirements restricts progress in some cases and impedes progress in cases of habitual violators. The costs and notification are one thing, for while municipalities can mow a property or cover graffiti, the bigger expenses of fixing roofs, replacing windows or siding, painting, etc., are cost prohibitive to the City's budget. The length of time involved in processes of properties going through tax foreclosures and sales involve at least two years of back taxes not being paid, followed by another year of attempts to contact property owners, followed by the sale and then one year redemption periods. Properties then fall into further disrepair and become more unusable. Costs, fees and penalties assessed for abatements or demolitions performed are generally not ever recouped.

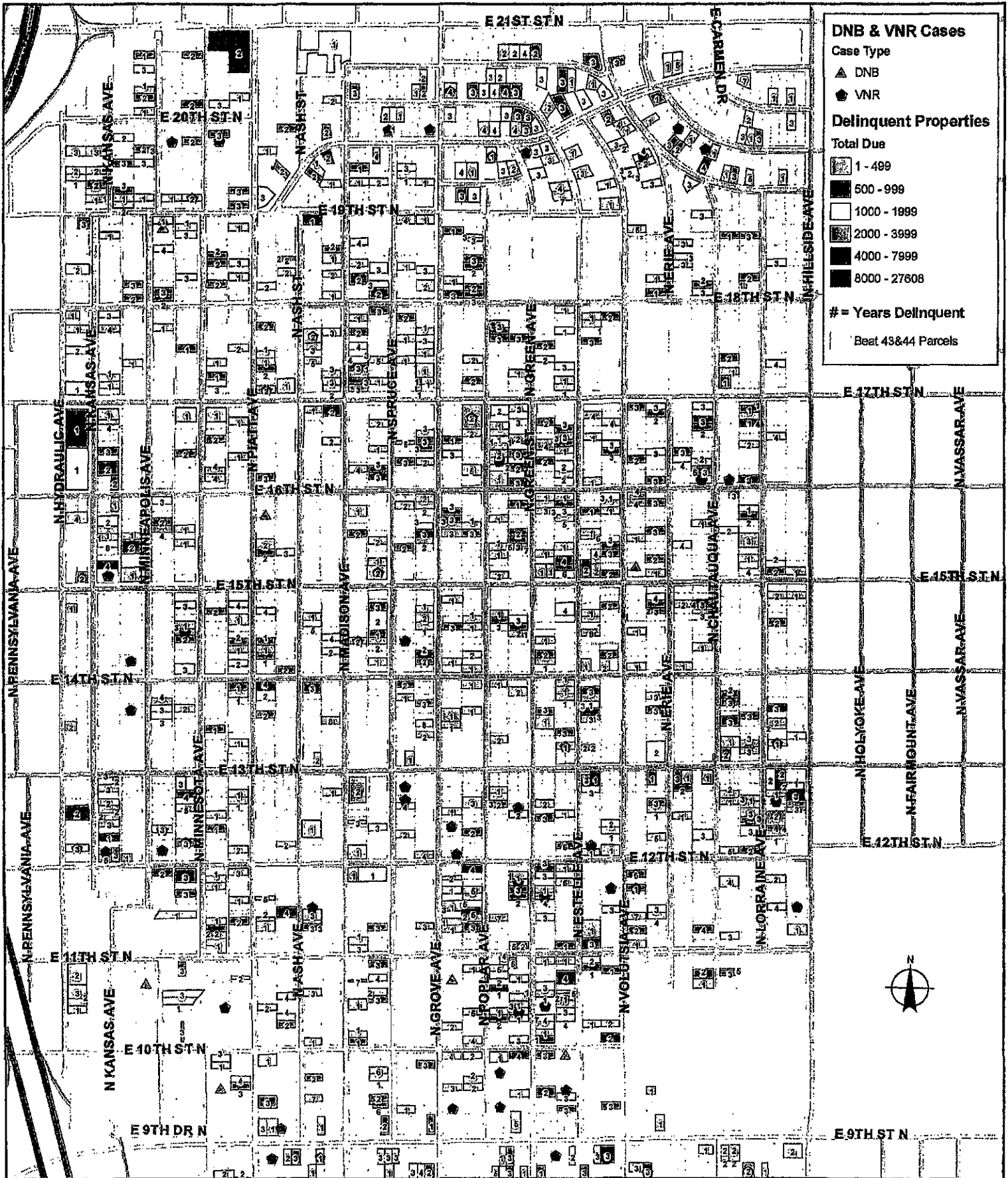
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overgrown vegetation, nuisance and sanitation violations, broken windows, dilapidated roofs, gutters and siding, and sometimes complete demolitions.

The structures have been known to attract child predators and children are endangered and in some cases, assaulted within the vacant structure. Injuries can occur by intruders or the merely curious due to rotten floors, broken glass, rusty nails and bio-hazardous waste.

Chad J. Sublet
City Attorney

BEAT 44 & 43 Delinquent Property Tax w/ DNB and VNR Cases



DNB & VNR Cases

Case Type

- ▲ DNB
- VNR

Delinquent Properties

Total Due

- 1 - 499
- 500 - 999
- 1000 - 1999
- 2000 - 3999
- 4000 - 7999
- 8000 - 27608

= Years Delinquent

Beat 43&44 Parcels

0 187.5375 750 1,125 1,500 Feet



Software: ArcGIS Ver. 9.3
 Map Data Source:
 Tax Delinquency Data provided by Sedgwick County, July 2nd 2009.
 DNB and VNR Data Provided by Tidemark, June 29th 2009.
 Monday, July 6th 2009
 X:\gis\work\proj\WOC\DNB_VNR_Delinquent\TaxBeat44_43.mxd

It is understood that while the City of Wichita Data Center Geographical Information Systems Department have no indication and reason to believe that there are inaccuracies in information incorporated in the base map, the Data Center-GIS personnel make no warranty or representation, either expressed or implied, with respect to the information, or data displayed.
 Note: Public property representations on this map is not intended to be inclusive.

Video presented to Senate Special Ethics, Elections and Local Government Committee
October 10, 2014

By:

Dale Goter
Government Relations Manager
City of Wichita

Video: City of Wichita Stop Blight Program January 2007

<http://www.youtube.com/watch?v=59v9cPl3qw&feature=youtu.be>



Date: October 10, 2014

To: Special Committee on Ethics, Elections & Local government

From: Erik Sartorius

Re: Abandoned Properties

Thank you for allowing me to appear before you today and present testimony and information regarding abandoned and vacant properties in Kansas cities on behalf of the League of Kansas Municipalities and its member cities.

The League supports legislation which streamlines and expedites the process for local governments, neighborhood organizations and private businesses to deal with the blight of abandoned, nuisance and foreclosed housing.

Abandoned property is not a new issue for cities. The Great Recession of the 2000s did exacerbate the problem in some communities, and the uneven economic recovery has left some cities in precarious positions with respect to their housing stock. Too often, the houses fall into disrepair and can become sanctuaries for vagrants or the homeless. Failure to pay property taxes is also a result. As these properties fall further into disrepair, they have a blighting effect upon the surrounding properties and the potential to become dangerous structures as they continue to deteriorate.

The League surveyed its members to gather information regarding abandoned and vacant properties. A total of 48 cities responded, ranging in size from 139 to 185,000. We asked cities several questions about abandoned property in their jurisdiction. These included the number of properties, how long most have been abandoned and what enforcement actions the city has taken to abate these properties. We also asked about any statutory barriers to addressing such properties, as well as what issues abandoned houses create for law enforcement or public safety agencies. Answers to these questions varied among respondents.

The median size of a responding city was 2,500, providing some useful data regarding smaller communities in Kansas. For cities that responded, here are some of the key findings:

How many properties are abandoned? For cities with fewer than 5,000 residents, most cited 30 or fewer properties as abandoned. These may seem like small numbers, but is a particularly magnified issue in Potwin (pop. 181, 29 properties), Florence (pop. 471, 30 properties) and Attica (pop. 640, 30 properties). Other cities that described significant abandoned housing issues include Fredonia (pop. 2,482, est. 15% of properties abandoned), Parsons (pop. 10,500, 150-200 properties), Junction City (pop. 25,817, 915-1,115 properties) and Topeka (pop. 127,473, 400 properties).

How long have they been abandoned? Four years is the median length of time a property has been abandoned in cities that responded to the survey. Thirteen of the 48 cities responding said that some of their abandoned properties have been that way for 10 or more years.

Who owns the properties? The abandoned houses they deal with generally are owned by individuals who have moved away. Those owned by landlords or a bank make up a much smaller percentage of the properties in question.

As we visit with city officials across the state, one of the significant challenges they face in keeping their communities vibrant is the availability of adequate housing stock. Many communities currently face housing shortages, and their size or geography does not attract investors willing to build speculative houses. As such, every residence in the community is important.

In responding to the survey, the City of Lindsborg made a few other important points about how abandoned houses affect development in a city. In addition to the negative effect an abandoned house has on adjacent properties, the loss of functional housing puts upward pressure on rental and real estate markets by reducing supply. Dilapidated structures can also discourage infill development, pushing any new development into the green space of a city's edge and resulting in increased costs for installing new infrastructure.

The presence of abandoned buildings in a city has several effects on the health, safety and welfare of taxpayers and property owners, as well. Problems frequently cited by cities responding to our survey included:

- Increased police calls for thefts, prowlers, drug trafficking and squatting;
- Increased fire calls responding to accidental fires and arson, as well as bio-hazard dangers from drug production;
- Property maintenance issues, including overgrown vegetation, dilapidated structures, wildlife and other animals, illegal dumping and sanitation problems;
- Creation of an "attractive," yet dangerous, nuisance for children in a neighborhood.

Committee members may wonder why some communities have abandoned properties that have been that way for 10 or even 20 years. From our survey, the frank answer is that it is an expensive proposition for taxpayers to have abandoned properties addressed in their communities. Costs include the remediation of code violations, unpaid municipal utilities, and the cost of demolition of an abandoned house when it reaches the point of being a dangerous structure. While cities may establish a tax lien on the property, their experience has been that only a small percentage of the taxpayers' costs will be recovered in a tax sale.

The League and its members appreciate this committee taking a careful look at the problem of abandoned properties in Kansas. For the growth and success of Kansas communities, both rural and urban, they need workable tools to maintain one of their most necessary resources – adequate housing stock. Continued deterioration of this resource due to the abandonment compounds the challenge of attracting qualified workers to communities. We look forward to working with this committee for a solution.

Thank you for allowing me to appear before you and present information on this matter. I will be happy to stand for questions at the appropriate time.



Luke Bell
Vice President of Governmental Affairs
3644 SW Burlingame Rd.
Topeka, KS 66611
785-633-6649 (Cell)
Email: lbell@kansasrealtor.com

To: Special Committee on Ethics, Elections and Local Government

Date: October 10, 2014

Subject: Comments on Potential State Policy Proposals to Address Abandoned Housing Issues and Concerns with the Erosion of Private Property Rights

Chairman Holmes, Vice Chairman Huebert and members of the Special Committee on Ethics, Elections and Local Government, thank you for the opportunity to provide testimony today on behalf of the Kansas Association of REALTORS® to comment on potential state policy proposals to address abandoned housing issues and our concerns with the potential for the erosion of private property rights. Through our comments, we hope to provide some additional context to the discussion on this very important issue.

KAR is the state's largest professional trade association, representing over 8,000 members involved in both residential and commercial real estate and advocating on behalf of the state's 700,000 property owners 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.

What is the Process for Seizing a Property as "Abandoned Property" under Kansas State Law?

Generally, the provisions of K.S.A. 12-1750 through 12-1756g provide cities with very broad authority to repair or demolish "unsafe or dangerous" structures or to seize an "abandoned property" and turn it over to a qualified organization that intends to rehabilitate the property. Having said that, there are some restrictions contained in the statute over what types of property can be classified as "abandoned property."

Regarding residential real estate, there are basically two triggers that must occur under the current language found in K.S.A. 12-1750(c) before a property can be considered "abandoned property" under the statute. First, the ad valorem taxes on the property must be delinquent for at least the two preceding years. Second, the property must be unoccupied by persons legally in possession for the preceding 90 days. K.S.A. 12-1750(c).

If both conditions have been met, the city may initiate a legal process to seize the property by first sending a notice to the property owner and holding a hearing in front of the city's governing body to provide the property owner with the opportunity to demonstrate why the property is not "abandoned." If the city's governing body finds that the property is "abandoned" for the purposes of the statute, any qualified organization may file a petition with the district court for temporary possession of the property. K.S.A. 12-1752 and 12-1753.

Once the petition is filed, the property can request a 90-day compliance period to make repairs to the property to bring it into compliance with applicable building codes and pay all delinquent ad valorem property taxes. If the property owner satisfies these conditions within the compliance period, the district court is required to dismiss the petition and terminate the organization's action for possession of the property. K.S.A. 12-1756a.

If the property owner fails to submit a plan to repair the property or the district court fails to approve the plan submitted by the property owner, then the district court has the authority to receive a rehabilitation plan for the property from the organization and grant temporary occupancy of the property to the organization. Following the order, the organization will take temporary occupancy of the property and is required to file annual reports with the court updating the rehabilitation and use of the property. K.S.A. 12-1756a and 12-1756b.

At any time after the original order of temporary possession is granted to the organization, the property owner can file a petition with the court to regain the possession of the property and agree to compensate the organization for the funds that have been spent to rehabilitate and maintain the property. If the property owner fails to file an action to regain possession prior to the organization's completion of the rehabilitation of the property, then the organization may file a petition with the district court for a judicial deed to the property. K.S.A. 12-1756c and 12-1756e.

If the court grants this petition, then full legal title to the property will be transferred to the organization. Any person who purchases the property from the organization that has rehabilitated it must occupy the home for at least two years following the date of taking title to the property. K.S.A. 12-1756g.

What is the Current Statutory Definition of "Abandoned Housing?"

Under K.S.A. 12-1750(c), "abandoned property" means "any residential real estate for which taxes are delinquent for the preceding two years and which has been unoccupied continuously by persons legally in possession for the preceding 90 days" or "commercial real estate for which the taxes are delinquent for the preceding two years and which has a blighting influence on surrounding properties."

Under this statute, "commercial real estate" means "any real estate for which the present use is other than one to four residential units or for agricultural purposes." Although the statute does not provide for an explicit definition of the term "residential real estate" for the purposes of the abandoned housing provisions, the implication through a reading of the "commercial real estate" definition would be that "residential real estate" is any real estate consisting of one to four residential units.

Regarding residential real estate, there are basically two triggers that must occur under the current language found in K.S.A. 12-1750(c) before a property can be considered "abandoned property" under the statute. First, the ad valorem taxes on the property must be delinquent for at least the two preceding years. Second, the property must be unoccupied by persons legally in possession for the preceding 90 days. K.S.A. 12-1750(c).

Most importantly, both of these factors must be satisfied before the district court will approve a petition by an organization to take temporary possession of the property. In our opinion, the intent behind the two-factor test is to ensure that legitimate and responsible property owners are not unduly or unreasonably deprived of ownership and possession of their property.

Concerns with Past Suggested Amendments that Significantly Infringed on Private Property Rights

Unfortunately, previous proposals in the Kansas Legislature on this issue (2012 HB 2544) would have amended the statute to eliminate the two-factor test and allow cities to seize a property as "abandoned" if the property had two years of delinquent ad valorem taxes or if the property was continuously unoccupied for 90 days. Under the worst case scenario, a property owner that had regularly maintained the property and was in full compliance with local building codes could have their property seized by the city as "abandoned" simply because they went on a long-term vacation or work assignment for more than 90 days.

Similarly, a property owner that had regularly maintained the property, was in full compliance with local building codes and resided in the property could have the property seized by the city as "abandoned" if they had two years of delinquent ad valorem taxes. However, the Kansas Legislature has stated that the city cannot subject to the property to a tax sale unless the property owner is more than three years delinquent on ad valorem taxes.

The reason the current statute requires that the city meet the two-factor test is to protect property owners from an unreasonable determination that they have permanently "abandoned" their property. Under the common law rules relating to the abandonment of property, a finding of "abandonment" basically means that the property owner has expressed an intent to permanently renounce ownership or possession of the property, either expressly or implicitly through his or her actions.

Under the current language found in the statute, the city bears the burden to prove that the property owner has demonstrated an intent to renounce possession of the property by showing that the property owner has failed to pay property taxes on the property for at least two years and has failed to maintain a residence in the home for at least 90 continuous days. Absent one factor from the two-factor test, we do not believe that the actions of the property owner in doing one of these things demonstrates that he or she has "abandoned" the property.

Comments on More Recent Proposals to Change the Definition of "Abandoned Housing"

Furthermore, legislation (2013 HB 2075) was filed during the 2013-14 Legislative Session to amend the definition of "abandoned property" under the statute to allow an organization to file an action for temporary possession of a residential property when the property has been unoccupied continuously for the preceding 180 days and when the property has a "blighting influence" on surrounding properties. This new alternative definition of "abandoned property" would not modify or replace the existing definition found in the statute.

During the hearings on the legislation in the House Local Government Committee, we expressed some concerns with the very broad definition of "blighting influence" in the statute that would be applied to determinations under the statute. Thankfully, the House Local Government Committee made many amendments to the definition that significantly tightened the number of conditions that are considered to have a "blighting influence."

In our opinion, the "blighting influence" definition should only be intended to protect the safety, health and welfare of the occupants of surrounding properties. This protection should not be unreasonably extended to include conditions that might affect the "economic" interests of the occupants of surrounding properties, which are more subjective and detract from the constitutionally-protected police power of the city in protecting the health, safety and welfare of the occupants of surrounding properties.

Having said that, we have no major objections to the definition of "blighting influence" found in the amended 2013 HB 2075 and believe that the definition has now been narrowly-tailored to address property conditions that affect the health, safety and welfare of the occupants of surrounding properties. In our opinion, none of the factors contained in this test would go beyond what cities can already do under their nuisance abatement authority for unsafe or dangerous structures (also found in K.S.A. 12-1750 through 12-1756g).

What Other Tools are Available to Local Governments to Address this Problem?

However, the abandoned housing provisions are not the only tools that are available to Kansas cities to address the perceived problem of dilapidated, tax delinquent and unsafe residential structures. In addition, cities may also choose to address these situations with the following tools: (1) eminent domain proceedings to acquire properties that are unsafe for occupation by humans under the building codes of the jurisdiction (K.S.A. 26-501b); (2) nuisance abatement procedures to repair or demolish "unsafe or dangerous" structures (K.S.A. 12-1750); (3) the enforcement of building and property maintenance codes under the city's home rule authority; (4) the sale of properties with three years of delinquent ad valorem taxes; and (5) existing proceedings under the Abandoned Housing Act when the property owner has two years of delinquent taxes and the property has been unoccupied continuously for the preceding 90 days.

In our opinion, this committee should thoroughly examine the other options that cities already have under existing Kansas law to address properties that contain some of the conditions identified in other testimony provided to this committee. If the committee determines that the existing statutory provisions and authority provides to cities are inadequate to address this problem, then discussion should proceed on statutory changes.

Conclusion

Thank you for the opportunity to provide testimony today on behalf of the Kansas Association of REALTORS® to comment on potential state policy proposals to address abandoned housing issues and our concerns with the potential for the erosion of private property rights. As you consider potential proposals to address the perceived problem of "abandoned property" in Kansas, we would urge the committee to carefully weigh the need for an additional tool to address this problem against the potential erosion of private property rights.

KSA 12-1750 – 12-1756g
(From Article 17. - BUILDINGS, STRUCTURES AND GROUNDS)

12-1750. Unsafe or dangerous structures; abandoned property; commercial real estate; definitions. As used in this act:

- (a) "Structure" means any building, wall or other structure.
- (b) "Enforcing officer" means the building inspector or other officer designated by ordinance and charged with the administration of the provisions of this act.
- (c) "Abandoned property" means:
 - (1) Any residential real estate for which taxes are delinquent for the preceding two years and which has been unoccupied continuously by persons legally in possession for the preceding 90 days; or
 - (2) commercial real estate for which the taxes are delinquent for the preceding two years and which has a blighting influence on surrounding properties. "Commercial real estate" means any real estate for which the present use is other than one to four residential units or for agricultural purposes.
- (d) "Blighting influence" means conditions in such structure which are dangerous or injurious to the health, safety or morals of the occupants of such buildings or other residents of the municipality or which have an adverse impact on properties in the area. Such conditions may include, but are not limited to, the following: Defects increasing the hazards of fire, accident, or other calamities; air pollution; light or sanitary facilities; dilapidation; disrepair; structural defects; uncleanness; dead and dying trees, limbs or other unsightly natural growth or unsightly appearances that constitute a blight to adjoining property, the neighborhood or the city; walls, sidings or exteriors of a quality and appearance not commensurate with the character of the properties in the neighborhood; unsightly stored or parked material, equipment, supplies, machinery, trucks or automobiles or parts thereof; vermin infestation; inadequate drainage; or any violation of health, fire, building or zoning regulations.
- (e) "Organization" means any nonprofit corporation organized under the laws of this state and which has among its purposes the improvement of housing.
- (f) "Rehabilitation" means the process of improving the property into compliance with applicable fire, housing and building codes.
- (g) "Parties in interest" means any owner or owners of record, judgment creditor, tax purchaser or other party having any legal or equitable title or interest in the property.
- (h) "Last known address" includes the address where the property is located, or the address as listed in the tax records.

History: L. 1961, ch. 74, § 1; L. 1994, ch. 242, § 1; L. 2003, ch. 90, § 1; L. 2010, ch. 116, § 26; L. 2012, ch. 126, §

4; July 1.

12-1751. Same; powers of governing body. (a) The governing body of any city shall have the power to cause the repair or removal of, or to remove any structure located within the city, which may have become unsafe or dangerous.

(b) The governing body of any city shall have the power to cause the rehabilitation of or to rehabilitate any abandoned property located within the city.

History: L. 1961, ch. 74, § 2; L. 1994, ch. 242, § 2; July 1.

12-1752. Same; notice and hearing. Whenever the enforcing officer files with the governing body of the city a statement in writing that any structure, describing the same and where located, is unsafe or dangerous or is abandoned property, the governing body, by resolution, shall fix a time and place at which the owner, the owner's agent, any lienholders of record and any occupant of such structure may appear and show cause why such structure should not be condemned and ordered repaired or demolished in the case of unsafe or dangerous structures or rehabilitated in the case of abandoned property. Such resolution shall be published once each week for two consecutive weeks on the same day of each week. At least 30 days shall elapse between the last publication and the date set for the hearing. A copy of the resolution shall be mailed by certified mail within three days after its first publication to each such owner, agent, lienholder and occupant, at the last known address and shall be marked "deliver to addressee only."

History: L. 1961, ch. 74, § 3; L. 1968, ch. 185, § 1; L. 1981, ch. 173, § 24; L. 1994, ch. 242, § 3; July 1.

12-1753. Same; findings; resolution; contents; notice. On the date fixed for hearing or any adjournment thereof, the governing body shall hear all evidence submitted by the owner, the owner's agent, lienholders of record and occupants having an interest in such structure as well as evidence submitted by the enforcing officer filing the statement and shall make findings by resolution. If the governing body of the city finds that such structure is unsafe or dangerous, such resolution shall direct the structure to be repaired or removed and the premises made safe and secure. If the governing body of the city finds that such structure is abandoned property, the governing body may authorize the rehabilitation of such property as provided by K.S.A. 12-1756a. Such resolution shall be published once in the official city paper and a copy mailed to the owners, agents, lienholders of record and occupants in the same manner provided for the notice of hearing. The resolution shall fix a reasonable time within which the repair or removal of such structure shall be commenced and a statement that if the owner of such structure fails to commence the repair or removal of such structure within the time stated or fails to diligently prosecute the same until the work is completed, the governing body will cause the structure to be repaired or razed and removed in the case of unsafe or dangerous structures or rehabilitated in the case of abandoned property.

History: L. 1961, ch. 74, § 4; L. 1994, ch. 242, § 4; July 1.

12-1754. Same; duties of owner after removal of structure. The owner of any structure, upon removing the same, shall fill any basement or other excavation located upon the premises and take any other action necessary to leave such premises in a safe condition.

History: L. 1961, ch. 74, § 5; June 30.

12-1755. Same; salvage, sale; assessment and collection of costs; procedure. (a) If the owner of any structure has failed to commence the repair or removal of such structure within the time stated in the resolution or has failed to diligently prosecute the same thereafter, the city may proceed to raze and remove such structure, make the premises safe and secure, or let the same to contract. The city shall keep an account of the cost of such work and may sell the salvage from such structure and apply the proceeds or any necessary portion thereof to pay the cost of removing such structure and making the premises safe and secure. All moneys in excess of that necessary to pay such costs and the cost of publications of notice and any postage for mailing of notice, after the payment of all costs, shall be paid to the owner of the premises upon which the structure was located.

(b) The city shall give notice to the owner of such structure by restricted mail of the total cost incurred by the city in removing such structure and making the premises safe and secure and the cost of providing notice. Such notice also shall state that payment of such cost is due and payable within 30 days following receipt of such notice. If the cost is not paid within the thirty-day period and if there is no salvageable material or if moneys received from the sale of salvage or from the proceeds of any insurance policy in which the city has created a lien pursuant to K.S.A. 40-3901 et seq., and amendments thereto, are insufficient to pay the cost of such work, the balance shall be collected in the manner provided by K.S.A. 12-1,115, and amendments thereto, or shall be assessed as a special assessment against the lot or parcel of land on which the structure was located and the city clerk at the time of certifying other city taxes, shall certify the unpaid portion of the costs and the county clerk shall extend the same on the tax rolls of the county against such lot or parcel of land. The city may pursue collection both by levying a special assessment and in the manner provided by K.S.A. 12-1,115, and amendments thereto, but only until the full cost and any applicable interest has been paid in full.

Whenever any structure is removed from any premises under the provisions of this act, the city clerk shall certify to the county appraiser that such structure, describing the same, has been removed.

(c) If there is no salvageable material, or if the moneys received from the sale of salvage or from the proceeds of any insurance policy in which the city has created a lien pursuant to K.S.A. 40-3901 et seq., and amendments thereto, are insufficient to pay the costs of the work and the cost of providing notice, such costs or any portion thereof in excess of that received from the sale of salvage or any insurance proceeds may be financed, until the costs are paid, out of the general fund or by the issuance of no-fund warrants. Whenever no-fund warrants are issued under the authority of this act the governing body of such city shall make a tax levy at the first tax levying period for the purpose of paying such warrants and the interest thereon. All such tax levies shall be in addition to all other levies authorized or limited by law and shall not

be subject to the aggregate tax levy prescribed in article 19 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto. Such warrants shall be issued, registered, redeemed and bear interest in the manner and in the form prescribed by K.S.A. 79-2940, and amendments thereto, except they shall not bear the notation required by that section and may be issued without the approval of the state board of tax appeals. All moneys received from special assessments levied under the provisions of this section or from an action under K.S.A. 12-1,115, and amendments thereto, when and if paid, shall be placed in the general fund of the city.

History: L. 1961, ch. 74, § 6; L. 1968, ch. 185, § 2; L. 1985, ch. 73, § 3; L. 1986, ch. 74, § 3; L. 2008, ch. 109, § 33; L. 2014, ch. 141, § 27; July 1.

12-1756. Same; immediate hazard; action to protect public; notice not required; cost. When in the opinion of the enforcing officer, any structure is in such condition as to constitute an immediate hazard requiring immediate action to protect the public, such officer may erect barricades or cause the property to be vacated, taken down, repaired, shored or otherwise made safe without delay and such action may, under such circumstances, be taken without prior notice to or hearing of the owners, agents, lienholders and occupants. The cost of any such action shall be assessed against the property and paid in the manner provided by K.S.A. 12-1755.

History: L. 1961, ch. 74, § 7; June 30.

12-1756a. Rehabilitation of abandoned property; petition for possession; service of process; affirmative defense; rehabilitation plan; lease of property. (a) An organization may file a petition with the district court for an order for temporary possession of property if:

- (1) The property meets the definition of abandoned as set forth in K.S.A. 12-1750, and amendments thereto;
 - (2) the organization intends to rehabilitate the property and use the property as housing; and
 - (3) the organization has sent notice to the enforcing officer and the parties in interest of the property, by certified or registered mail, mailed to their last known address and posted on the property at least 20 days but not more than 60 days before the date the petition is filed, of the organization's intent to file a petition for possession under K.S.A. 12-1750 through 12-1756e, and amendments thereto.
- (b) The proceeding shall be commenced by filing a verified petition in the district court in the county in which the property is located. The petition shall state that the conditions specified in subsection (a) exist. All parties in interest of the property shall be named as defendants in the petition. Summons shall be issued and service shall be made pursuant to K.S.A. 60-303, and amendments thereto. Service may be made by publication if the organization with due diligence is unable to make service of summons upon a defendant pursuant to subsection (a)(3) of K.S.A. 60-307, and amendments thereto.
- (c) Any defendant may file as part of such defendant's answer, as an affirmative defense, a plan for the rehabilitation of the property and evidence of capacity and resources necessary to complete rehabilitation of the

property. The court shall grant the defendant 90 days to bring the property into compliance with applicable fire, housing and building codes and to pay all delinquent ad valorem property tax. For good cause shown, the court may extend the ninety-day compliance period for an additional 90 days. If the property is brought into such compliance within the ninety-day period or extension of time thereof, the petition shall be dismissed. If the defendant fails to bring the property into such compliance within the ninety-day period or extension of time thereof, or if the defendant's plan is otherwise insufficient, the defendant's affirmative defense shall be stricken.

(d) At the hearing on the organization's petition, the organization shall submit to the court a plan for the rehabilitation of the property and present evidence that the organization has adequate resources to rehabilitate and thereafter manage the property. For the purpose of developing such a plan, representatives of the organization may be permitted entry onto the property by the court at such times and on such terms as the court may deem appropriate.

(e) The court shall make its own determination as to whether the property is in fact abandoned consistent with the terms of K.S.A. 12-1750 through 12-1756e, and amendments thereto.

(f) If the court approves the petition, the court shall enter an order approving the rehabilitation plan and granting temporary possession of the property to the organization. The organization, subject to court approval, may enter into leases or other agreements in relation to the property. Whether the court approves or denies the petition, the organization shall provide the governing body a copy of the order within 30 days of the organization's receipt or knowledge of such order.

History: L. 1994, ch. 242, § 5; L. 1996, ch. 231, § 1; L. 2003, ch. 90, § 2; L. 2010, ch. 116, § 27; July 1.

12-1756b. Same; annual report, contents. An organization which has possession of property pursuant to K.S.A. 12-1756a, and amendments thereto, shall file an annual report with the court concerning the rehabilitation and use of the property. The court shall require reports and status dates to be filed as it deems appropriate under the circumstances but no less frequently than once a year. The report shall include statements of all expenditures made by the organization including, but not limited to, payments for the rehabilitation, operation and maintenance of and repairs to the property, and for real estate taxes, and payments to mortgagees and lienholders during the preceding year and shall include statements of all income and receipts from the property for the preceding year.

History: L. 1994, ch. 242, § 6; L. 1996, ch. 231, § 2; L. 2003, ch. 90, § 3; July 1.

12-1756c. Same; procedure to obtain possession by owner; hearing. The owner of property of which temporary possession has been transferred to an organization pursuant to K.S.A. 12-1756a, and amendments thereto, shall be entitled to regain possession of the property by petitioning to the district court of the county in which such property is located for restoration of possession and, upon notice to the organization for a hearing on such petition. At the hearing, the court shall determine proper compensation to the organization for its expenditures, including management fees, based on the organization's reports to the court. The court, in determining the proper compensation to the organization, may consider income or receipts received from the property by the organization. After the owner pays the compensation to the organization as determined by the court, the owner shall resume possession of the property, subject to all existing rental agreements whether written or verbal, entered into by the organization.

History: L. 1994, ch. 242, § 7; L. 1996, ch. 231, § 3; July 1.

12-1756d. Same; organization's right to redeem. If property of which temporary possession has been transferred to an organization pursuant to K.S.A. 12-1756a, and amendments thereto, is sold for unpaid taxes, an organization with temporary possession may redeem the property in the same manner as the owner and amounts paid to redeem the property shall be included as expenditures in the organization's report to the court.

History: L. 1994, ch. 242, § 8; L. 1996, ch. 231, § 4; July 1.

12-1756e. Same; petition for judicial deed; conditions. If an owner of property of which temporary possession has been transferred to an organization pursuant to K.S.A. 12-1756a, and amendments thereto, takes no action to regain possession of the property prior to the organization completing rehabilitation of the property, the organization may file a petition for judicial deed to the property. Upon due notice to the named defendants, an order may be entered granting a quit-claim judicial deed to the organization. A conveyance by judicial deed shall operate to extinguish all existing ownership interests in, liens on, and other interest in the property, except tax liens or mechanics' liens.

History: L. 1994, ch. 242, § 9; L. 1996, ch. 231, § 5; L. 2003, ch. 90, § 4; July 1.

12-1756f. Organizations interested in rehabilitating abandoned property. The enforcing officer shall maintain a list of all organizations who are interested in rehabilitating abandoned property and who have requested to be included on such list. The organizations on such list shall be given written notice of abandoned property which may be available for rehabilitation by any such organization. The enforcing officer may require that requests to be included on such list be submitted annually to the enforcing officer.

History: L. 1996, ch. 231, § 6; July 1.

12-1756g. Occupation of rehabilitated house by purchaser. Any person who purchases a house from an organization which has rehabilitated such house pursuant to K.S.A. 12-1750 et seq., and amendments thereto, shall agree to occupy such house for at least two years following the date of taking title to such property.

History: L. 2003, ch. 90, § 5; L. 2010, ch. 116, § 28; July 1.