

Approved Ivan Sand
Date 2/9/88

MINUTES OF THE House COMMITTEE ON Local Government

The meeting was called to order by Representative Ivan Sand at
Chairperson

1:30 a.m./p.m. on February 2, 1988 in room 521-S of the Capitol.

All members were present except:
Representative Rezac, absent

Committee staff present:

Mike Heim, Legislative Research Dept.
Bill Edds, Revisor of Statutes' Office
Lenore Olson, Committee Secretary

Conferees appearing before the committee:

Marla Howard, City of Wichita
Jim Kaup, Kansas League of Municipalities
Janet Stubbs, Home Builders Association of Kansas
Karin McClain, Kansas Association of Realtors
C. Bickley Foster, planning consultant
Dr. Don Wells, Supt. of Schools, Cheney U.S.D. 268, Sedgewick County

Mike Heim gave an overview of HB 2664, stating that passage of this bill will validate the operation of the Cheney Recreation Commission.

Dr. Don Wells testified on HB 2664, presenting the history of the Cheney Recreation Commission and the relationship to the Cheney School. He stated that this bill would eliminate having an expensive election. The city of Cheney supports this bill.

Chairman Sand closed the hearing on HB 2664.

Mike Heim gave an overview of HB 2696. He stated that passage of this bill would change the language to expand purposes for which bonds can be issued.

Dr. Don Wells testified on HB 2696, stating that he is concerned with costs. He stated that he wants to be able to use general funds, capital outlay funds, or a combination of both for reinspections.

Chairman Sand closed the hearing on HB 2696.

Mike Heim gave an overview of HB 2665, stating that it would shift responsibility from the planning committee to the governing body for plat approvals.

Marla Howard testified on HB 2665 as a proponent. She basically approves of the bill but with amendments. (Attachment 1)

Jim Kaup testified on HB 2665, stating that he supports the bill subject to amendments. (Attachment 2)

Janet Stubbs testified on HB 2665, stating that she opposes this bill. She stated that the Wichita people feel that current legislation is effective.

Karin McClain testified on HB 2665, stating that she supports the amendments proposed by Jim Kaup.

C. Bickley Foster testified on HB 2665, proposing that line 59 be changed to include the words "final plat and the." (Attachment 3)

Chairman Sand closed the hearing on HB 2665.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Local Government

room 521-S, Statehouse, at 1:30 ~~a.m.~~/p.m. on February 2, 1988.

Mike Heim gave an overview of HB 2668, stating that this bill would cause the board of zoning appeals to be advisory.

Marla Howard testified on HB 2668, stating that this bill would provide council members with the option to either continue the current procedure or designate the board of zoning appeals as an advisory body, with the governing body making final determination in zoning appeals cases. (Attachment 4)

Jim Kaup testified on HB 2668, stating that he is concerned with restrictions upon board of zoning appeals membership. (Attachment 5)

C. Bickley Foster testified on HB 2668, stating that he feels that there is no need for this bill. (Attachment 6)

Chairman Sand closed the hearing on HB 2668.

The meeting adjourned.

THE CITY OF WICHITA



OFFICE OF THE CITY MANAGER
CITY HALL — THIRTEENTH FLOOR
455 NORTH MAIN STREET
WICHITA, KANSAS 67202
(316) 268-4351

TO: CHAIRMAN IVAN SAND AND MEMBERS OF THE HOUSE
LOCAL GOVERNMENT COMMITTEE

FROM: MARLA J. HOWARD, PUBLIC AFFAIRS OFFICER

DATE: FEBRUARY 2, 1988

RE: TESTIMONY ON HB 2665, PLAT APPROVALS

Dear Chairman Sand and Members of the Committee:

Thank you for providing me with this opportunity to testify on behalf of the City of Wichita in support of House Bill 2665 concerning final plat approvals.

Currently, K.S.A. 12-705b requires that all plats be submitted to the city planning commission or joint committee for subdivision regulation if such has been formed. The City of Wichita and Sedgwick County have created a joint Metropolitan Area Planning Commission that reviews plats.

House Bill 2665 was introduced by legislators from Sedgwick County at the request of the City of Wichita and would provide our council members with the option to either review all submitted plats for conformance to subdivision regulations, or delegate such authority to the planning commission.

Although the city council adopts local subdivision regulations, those regulations must be somewhat general and flexible as they apply to the entire city. Individual cases are heard by the planning commission, which can grant exceptions so long as they are within the subdivision guidelines. Recently in Wichita, we have had several instances where a developer has requested replatting to allow smaller lots. This would allow the developer to build additional housing to either reduce housing costs or increase profits and reduce the cost of specials assessed to each lot.

*2/2/88
Attachment 1*

Unfortunately, these situations have occurred in areas already partially developed to the originally approved lot size and the city believes that any downsizing of these lots would lower the value of surrounding property; property purchased by homeowners usually with the understanding that neighboring homes will be of consistent value and size.

To date, the planning commission has not approved these replats, but the votes have been extremely close. Understandably, the Wichita City Council is concerned that in such situations it has no authority over the final decision, other than the control each member can exercise on his or her board appointees. Yet council members, as elected representatives, bear the ultimate responsibility to protect citizens in these cases. This is not just a Sedgwick County problem brought to the state for resolution, but rather a request to change a procedure previously established by the state and return the decision of final plat approval authority back to local government, where each community can decide who will determine final approval, depending on individual needs.

We do have two amendments to this bill that we ask be considered today. First, this was intended to be permissive legislation, requiring no action by local governments unless they wanted to change their existing procedure. However, in reviewing our language we find just the opposite and the League of Kansas Municipalities will provide you with a recommended amendment to correct this language.

In addition, we offer an amendment to restore language accidentally omitted by the Revisor's office. On Line 69, the words "The governing body" should be added so that it reads "The governing body, planning commission or joint committee may establish..." for consistency with the remainder of the bill, and Line 70 should read "scale of reasonable fees to be paid in advance to the city clerk or the secretary of the planning commission or joint committee...", for those situations where the local governing body chooses to review plats.

Thank you for this opportunity to testify in support of House Bill 2665.

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League of Kansas Municipalities

PUBLISHERS OF KANSAS GOVERNMENT JOURNAL/112 WEST SEVENTH ST., TOPEKA, KANSAS 66603/AREA 913-354-9565

TO: Chairman Sand and Members,
House Local Government Committee

FROM: Jim Kaup, General Counsel

RE: Amendments to HB 2665; City
Approval of Plats

DATE: February 2, 1988

The purpose of HB 2665 is to give cities the authority to have plats approved by the city governing body instead of the city planning commission as is now required by law. A League policy committee reviewed HB 2665 at a meeting on January 29 and took a position of support for the bill, subject to the adoption of the amendments discussed below.

Platting is a method of dividing land and describing those divisions in terms of blocks and lots on a map which also shows land that is being offered as dedicated for public use. The plat is the basic component of subdivision regulation activity.

Under present law, K.S.A. 12-705(b), plats are required to be filed by a property owner whenever a city has adopted regulations controlling the subdivision of land. K.S.A. 12-705(b) requires plats to be submitted to the city planning commission for its determination as to whether the plat conforms to the adopted subdivision regulations. Planning commission endorsement of the plat is required before the register of deeds can lawfully file the plat, and before a permit to build upon the property can be issued.

Where plats provide for the dedication of land for public use, the city governing body must approve that dedication before the plat can be filed by the register of deeds, and before any building permit can be issued.

HB 2665 would change the present law so as to give the city governing body flexibility to designate either itself or the planning commission as the body which approves plats following a determination of the plat's compliance with adopted subdivision regulations.

The League's proposed amendments to HB 2665 address the fact that, as drafted, any city which desires to maintain the status quo (i.e. wants to keep the current practice of planning commission review and approval of plats) will have to pass an ordinance to do so. We believe cities that empower the governing body with plat approval authority will be the minority, and cities staying with the present procedure the majority. Consequently we feel it better to place the burden of adopting an ordinance upon those cities which desire to place the power to approve plats upon the governing body. The League's proposed amendments at lines 38, 42 and 43 are intended to so shift the duty to act by ordinance. If these amendments are acceptable to this Committee, the League supports HB 2665.

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attachment #2

HOUSE BILL No. 2665

By Representatives Fuller, Baker, Borum, Bowden, Cribbs, Dean, Foster, Francisco, Gjerstad, Grotewiel, Helgerson, Kennard, Pottorff, Sawyer, Schauf, Spaniol, Webb and Williams

1-19

0020 AN ACT concerning planning and zoning; relating to platting;
0021 amending K.S.A. 12-705b and repealing the existing section.

0022 *Be it enacted by the Legislature of the State of Kansas:*

0023 Section 1. K.S.A. 12-705b is hereby amended to read as fol-
0024 lows: 12-705b. The owner or owners of any land located within
0025 an area governed by regulations subdividing the same into lots
0026 and blocks or tracts or parcels, for the purpose of laying out any
0027 subdivisions, suburban lots, building lots, tracts or parcels or any
0028 owner of any land establishing any street, alley, park or other
0029 property intended for public use or for the use of purchasers or
0030 owners of lots, tracts or parcels of land fronting thereon or
0031 adjacent thereto, shall have a plat drawn which accurately de-
0032 scribes the subdivision, lots, tracts or parcels of land, giving the
0033 location and dimensions thereof or the location and dimensions
0034 of all streets, alleys, parks or other properties intended to be
0035 dedicated to public use or for the use of purchasers or owners of
0036 lots, tracts or parcels of land fronting thereon or adjacent thereto.
0037 All plats shall be verified by the owner or owners thereof.

0038 ~~Except as provided by this section,~~ all such plats shall be
0039 submitted to the governing body of the city which shall deter-
0040 mine if the plat conforms to the provisions of the subdivision
0041 regulations. ~~The governing body may delegate such determina-~~
0042 ~~tion to the~~ city planning commission or to the joint committee for
0043 subdivision regulation if such has been formed, which shall
0044 determine if the plat conforms to the provisions of the subdivi-
0045 sion regulations. If such determination is not made within 60

The governing body of any city, by ordinance, may provide that

Otherwise, plats shall be submitted to the , which shall determine if the plat conforms to the provisions of the subdivision regulations.

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④

0046 days after the first meeting of ~~such~~ *the governing body or the*
 0047 *planning commission or joint committee* following the date of
 0048 the submission of the plat to ~~the secretary thereof~~, such plat shall
 0049 be deemed to have been approved and a certificate shall be
 0050 issued by the *city clerk or the secretary* of the planning com-
 0051 mission or joint committee upon demand. ~~If the planning com-~~
 0052 ~~mission or joint committee finds it is determined~~ that the plat
 0053 does not conform to the requirements of the subdivision regula-
 0054 tions, ~~it shall notify~~ the owner or owners *shall be notified* of such
 0055 fact. If the plat conforms to the requirements of such regulations,
 0056 there shall be endorsed thereon the fact that it has been submit-
 0057 ted to and approved by the *governing body or the* city planning
 0058 commission or joint committee.

0059 The governing body shall approve or disapprove the dedica-
 0060 tion of land for public purposes within 30 days after the first
 0061 meeting of the governing body following the date of the sub-
 0062 mission of the plat to the clerk thereof. The governing body may
 0063 defer action for an additional 30 days for the purpose of allowing
 0064 for modifications to comply with the requirements established
 0065 by the governing body. No additional filing fees shall be as-
 0066 sessed during that period. If the governing body defers or dis-
 0067 approves such dedication, it shall advise the commission or
 0068 committee of the reasons therefor.

0069 The planning commission or joint committee may establish a
 0070 scale of reasonable fees to be paid in advance to the secretary of
 0071 the planning commission or joint committee by the applicant for
 0072 approval for each plat filed with the planning commission or
 0073 joint committee.

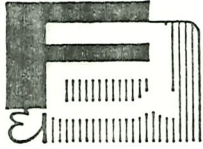
0074 No building permit shall be issued for the construction of any
 0075 structure upon any lot, tract or parcel of land located within the
 0076 area governed by the subdivision regulations that has been
 0077 subdivided, resubdivided or replatted after the date of the
 0078 adoption of such regulations by the governing body or governing
 0079 body and board of county commissioners but which has not been
 0080 approved in the manner provided by this act. Any regulations
 0081 adopted by a governing body with reference to subdividing lots
 0082 shall provide for the issuance of building permits on lots divided

0083 into not more than two tracts without **having** to replat the lot,
 0084 provided that the resulting tracts shall **not** again be divided
 0085 without replatting. Such regulations shall **provide** that lots zoned
 0086 for industrial purposes may be divided **into** two or more tracts
 0087 without replatting such lot. Such regulations shall contain pro-
 0088 cedure for issuance of building permits **on** divided lots which
 0089 shall take into account the need for adequate street rights-of-way,
 0090 easements, improvement of public facilities, and zoning regula-
 0091 tions if in existence. The regulations shall provide for a
 0092 cedure which specifies a time limit **within** which action shall be
 0093 taken, and shall further provide, where **applicable**, for the final
 0094 decision on the issuance of such building permit to be made by
 0095 the governing body, except as may be **provided** by law.

0096 The register of deeds shall not file any plat until such plat shall
 0097 bear the endorsement hereinbefore provided and the land dedi-
 0098 cated to public purposes has been approved by the governing
 0099 body.

0100 Sec. 2. K.S.A. 12-705b is hereby repealed.

0101 Sec. 3. This act shall take effect and be in force from and
 0102 after its publication in the statute book.



FOSTER & ASSOCIATES - PLANNING CONSULTANTS
2818 N. EDWARDS AVE. WICHITA, KANSAS 67204 PHONE 316/838-7563

February 4, 1988

To: HOUSE LOCAL GOVERNMENT COMMITTEE
From: C. Bickley Foster, Planning Consultant
Subject: Comments on HB2665 regarding platting approval.

Thank you for the opportunity on February 2 to testify on HB 2665. For your convenience, here is a summary of my comments based on my contacts with clients and having prepared 40 to 50 Subdivision Regulations in the state.

Background Comments:

1. If the bill were adopted as proposed it would not change any jurisdictional arrangements between cities or counties nor between zoning and platting procedures because the statutes are separate and self-contained. It would simply give governing bodies the authority to process and decide plats unless delegated to their planning commissions.

2. The reference on line 0042 to a "joint committee" has absolutely nothing to do with the Wichita-Sedgwick County Metropolitan Area Planning Commission. Such a hybrid joint committee is formed only under K.S.A. 12-705a between the memberships of city and county planning commissions and are only used when a city and county cannot otherwise agree on how to cooperate on subdivision jurisdiction. The only one in the state that I have encountered is for Hutchinson and Reno County. Cities and counties such as Wichita and Sedgwick County cooperating in a single planning commission under K.S.A. 12-716 follow state statutes for either cities or counties when processing plats depending upon the particular jurisdiction of the land being platted. If the bill were passed, Wichita and many other cities in Sedgwick County and the state would still be able to retain their extraterritorial subdivision jurisdiction.

3. The bill in line 0039 seems to focus on to whom plats are "submitted" rather than the real issue, i.e., who actually approves a final plat. I have never known of a city or county that did not want plats to be initially submitted through their planning commission. Planning commissions initially "adopt" subdivision regulations under K.S.A. 12-705 which are later made effective by governing body approval.

The real issue begins on line 0059 and was amended as the result of Moore v. City of Lawrence, 232 Kan. 353 (1982). In addition to approval of dedications, should the governing body have approval over the total final plat? Planning commissions presently make the latter decision. All of my clients are surprised to find that this is the statutory procedure. To meet their needs, I have included in their regulations the authority of the governing body to also approve the final plat along with the acceptance of dedications. This creates a form of joint approval. I felt that Mike Hein very properly raised the question whether that would be legal under the present statute, possibly raising a Moore-type of case again.

You should be aware that this approval issue is a divided opinion within the planning profession and many officials and planners like the present statute,

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particularly the larger cities. It is felt that having the approval authority makes the planning commission more responsible and the subdividers more attentive to their decision. It enables one group to focus their attention and abilities on the issue without diluting authority with the governing body. It is interesting to note that a similar statute regarding counties, K.S.A. 19-2918C, does not require the county commissioner's approval at all. Presumably, they also accept dedications only. Many, if not most states, permit the planning commission to have final approval which does prevent a subdivider from being caught in limbo between the two groups.

I respectfully recommend that the Committee focus on the final plat approval issue on lines 0059 and 0060 to decide whether the statute should:

- a. Remain the same,
- b. Provide joint approval,
- c. Have the planning commission recommend and the governing body approve, or
- d. Permit two or all of the above.

cc: Mike Hein, Principal Analyst
Legislative Research Department

Other interested parties

THE CITY OF WICHITA



OFFICE OF THE CITY MANAGER
CITY HALL — THIRTEENTH FLOOR
455 NORTH MAIN STREET
WICHITA, KANSAS 67202
(316) 268-4351

TO: CHAIRMAN IVAN SAND AND MEMBERS OF THE HOUSE
LOCAL GOVERNMENT COMMITTEE

FROM: MARLA J. HOWARD, PUBLIC AFFAIRS OFFICER

DATE: FEBRUARY 2, 1988

RE: TESTIMONY ON HB 2668, BOARD OF ZONING APPEALS

Dear Chairman Sand and Members of the Committee:

Thank you for providing me with this opportunity to testify on behalf of the City of Wichita in support of House Bill 2668 concerning local boards of zoning appeals.

Currently, K.S.A. 12-714 requires any city which has enacted a zoning ordinance to create a board of zoning appeals and allows the local governing body to appoint members to the board for terms of either three or four years. The City of Wichita has such a board.

House Bill 2668 was introduced by legislators from Sedgwick County at the request of the City of Wichita and would provide our council members with the option to either continue the current procedure or designate the board of zoning appeals as an advisory body, with the governing body making final determination in zoning appeals cases. The bill also allows the governing body to locally determine the terms of board members.

Although the city council adopts zoning regulations, they must of necessity be somewhat general and flexible as they apply to the entire city. The board of zoning appeals can grant zoning exceptions and variances so long as they are within the zoning regulations. Unfortunately, some exceptions and variances can be made that do not conform with the local governing body's original intent, yet the only recourse to either the governing body or any citizen is to bring an action in district court.

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Attachment 5

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The Wichita City Council has been concerned that it has very little final authority in these situations, yet bears the ultimate responsibility to protect its citizens. Again, we have asked for the Kansas Legislature to change an existing State mandate and allow local governing bodies the authority to determine what will best meet the needs in their specific communities.

Thank you for this opportunity to testify in support of House Bill 2668.

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League of Kansas Municipalities

PUBLISHERS OF KANSAS GOVERNMENT JOURNAL/112 WEST SEVENTH ST., TOPEKA, KANSAS 66603/AREA 913-354-9565

TO: Chairman Sand and Members,
House Local Government Committee

FROM: Jim Kaup, General Counsel

RE: Amendments to HB 2668; Powers of
Boards of Zoning Appeals

DATE: February 2, 1988

HB 2668 would amend Kansas law governing city boards of zoning appeals as follows:

- (1) Amend K.S.A. 12-714 to remove the statutory three- or four-year terms of office for members of boards of zoning appeals (BZA). The bill provides that a city may set the terms of office by ordinance.
- (2) Amend K.S.A. 12-715 to authorize any city to make any or all BZA actions advisory only. Therefore, by ordinance, the city governing body could assume final determination on all matters now required to be taken before the BZA.

This bill was reviewed by the League's Finance and Taxation Committee at its January 29 meeting. The League supports HB 2668 subject to the adoption of the amendment discussed below.

To assist the Committee in its consideration of this bill, the League offers the following outline of Kansas law on BZAs:

BOARDS OF ZONING APPEALS: Organization, Duties and Responsibilities Under K.S.A. 12-714 and 12-715

Creation	Mandatory if a zoning ordinance is approved. Created by ordinance passed by the city governing body.
Jurisdiction	Corporate limits of the city and land within three miles of the city if extraterritorial zoning exists.
Membership	Not less than 3 nor more than 7.
Appointment	Mayor, with consent of the governing body.

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Terms

Original members, one, two and three year terms; thereafter, three or four-year terms.

Powers and Duties

- 1) Administer details of appeal from or other matters referred to it regarding the application of the zoning ordinance.
- 2) Hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of the zoning ordinance.
- 3) Grant variances from specific terms of zoning ordinance where literal enforcement will result in unnecessary hardship.
- 4) Grant exceptions to provisions of zoning ordinances.
- 5) Modify or vary building or setback lines in response to unwarranted hardship.

League Amendment. The League offers an amendment to HB 2668 to address a separate concern of cities over the restriction upon BZA membership now a part of K.S.A. 12-714. That law (see lines 30:32) prohibits any city officers (other than one member of the city planning commission) from also serving on the BZA. A number of Kansas cities--in particular smaller ones--have experienced difficulty in getting citizens to serve on the BZA. Some of those cities would have their problem resolved if they could appoint city governing body members to BZA positions. Accordingly, the League requests an amendment to line 31 of HB 2668 which would limit the present restriction on BZA membership to exclude only appointive city officers.

Committee members may recall considering late last year SB 386, which is still in this Committee. That bill attempts to make the creation of a BZA optional, notwithstanding the provisions of K.S.A. 12-715. We believe the above-offered amendment to add the word "appointive" would meet the needs of the proponents of SB 386.

Section 2(b) of HB 2668: Authority to make the BZA an advisory-only body. Our general support of new Section 2(b) of the bill, which would allow the city elected governing body to make any or all BZA actions advisory only, is based on Home Rule concepts. We frankly doubt many city governing bodies will want to take over the function of a BZA. But if they do, we support the option to do so which this bill provides.

HOUSE BILL No. 2668

By Representatives Fuller, Baker, Borum, Bowden, Cribbs,
Dean, Foster, Francisco, Gjerstad, Grotewiel, Helgerson,
Kennard, Pottorff, Sawyer, Schauf, Spaniol, Webb and Wil-
liams

1-19

0020 AN ACT concerning cities; relating to planning and zoning;
0021 amending K.S.A. 12-714 and 12-715 and repealing the existing
0022 sections.

0023 *Be it enacted by the Legislature of the State of Kansas:*

0024 Section 1. K.S.A. 12-714 is hereby amended to read as fol-
0025 lows: 12-714. The governing body of any city which has enacted
0026 a zoning ordinance shall *create* by ordinance ~~create~~ a board of
0027 zoning appeals. Such board shall consist of not less than three ~~(3)~~
0028 nor more than seven ~~(7)~~ members, all of whom shall be residents
0029 of the city, to be appointed by the mayor by and with the consent
0030 of the council or board of commissioners. None of the members
0031 shall hold any other ^{public office of the city except that one} ~~public office of the city except that one~~
0032 member may be a member of the planning commission. The
0033 members first appointed shall serve respectively for terms of
0034 one, two and three years, divided equally or as nearly equally as
0035 possible between the members. Thereafter the governing body
0036 of any city may *establish* by ordinance ~~change the terms of said~~
0037 *the terms of the members to either three (3) or four (4) years,*
0038 ~~whichever is deemed to be in the best interest of the city of such~~
0039 *board.* Vacancies shall be filled by appointment for the unex-
0040 pired term. The members of such board shall serve without
0041 compensation. The board shall annually elect one ~~(1)~~
0042 members as ~~chairman~~ *chairperson*, and shall appoint a secretary
0043 who may be an officer or an employee of the city. The board shall
0044 adopt rules in accordance with the provisions of the ordinance
0045 creating the board. Meetings of the board shall be held at the call

appointive

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0046 of the ~~chairman~~ *chairperson* and at such other times as the board
 0047 may determine. The board shall keep minutes of its proceedings,
 0048 showing evidence presented, findings of fact by the board,
 0049 decision of the board and the vote upon each question. Records
 0050 of all official actions of the board shall be filed in its office and
 0051 shall be a public record. The governing body of the city may
 0052 *establish* in the ordinance creating such board ~~establish~~ a scale
 0053 of reasonable fees to be paid in advance by the party appealing.
 0054 Sec. 2. K.S.A. 12-715 is hereby amended to read as follows:
 0055 12-715. (a) *Except as provided in subsection (b)*, the board of
 0056 zoning appeals shall administer the details of appeals from or
 0057 other matters referred to it regarding the application of the
 0058 zoning ordinance as hereinafter provided. The board shall fix a
 0059 reasonable time for the hearing of an appeal or any other matter
 0060 referred to it. Notice of the time, place and subject of such
 0061 hearing shall be published once in the official city newspaper at
 0062 least ~~twenty (20)~~ 20 days prior to the date fixed for hearing. A
 0063 copy of ~~said the~~ notice shall be mailed to each party to the appeal
 0064 and to the city planning commission.

0065 Appeals to the board may be taken by any person aggrieved, or
 0066 by any officer of the city or any governmental agency or body
 0067 affected by any decision of the officer administering the provi-
 0068 sions of the zoning ordinance. Such appeal shall be taken within
 0069 a reasonable time as provided by the rules of the board, by filing
 0070 a notice of appeal specifying the grounds thereof and the pay-
 0071 ment of the fee required therefor. The officer from whom the
 0072 appeal is taken, when notified by the board or its agent, shall
 0073 ~~forthwith~~ transmit to the board all the papers constituting the
 0074 record upon which the action appealed from was taken. The
 0075 board shall have power to hear and decide appeals where it is
 0076 alleged there is error in any order, requirement, decision or
 0077 determination made by an administrative official in the enforce-
 0078 ment of the zoning ordinance. The board ~~may also~~, when it shall
 0079 deem the same necessary, *also may* grant variances and excep-
 0080 tions to the zoning ordinance on the basis and in the manner
 0081 hereinafter provided: ~~(a)~~ (1) *Variances*. To authorize in specific
 0082 cases a variance from the specific terms of the ordinance which

0083 will not be contrary to the public interest and where, owing to
 0084 special conditions, a literal enforcement of the provisions of the
 0085 ordinance ~~will~~, in an individual case, ~~result~~ *results* in unneces-
 0086 sary hardship, and provided that the spirit of the ordinance shall
 0087 be observed, public safety and welfare secured, and substantial
 0088 justice done. Such variance shall not permit any use not permit-
 0089 ted by the zoning ordinance in such district. A request for a
 0090 variance may be granted in such case, upon a finding by the
 0091 board that all of the following conditions have been met: ~~(1)~~ (A)
 0092 That the variance requested arises from such condition which is
 0093 unique to the property in question and which is not ordinarily
 0094 found in the same zone or district; and is not created by an action
 0095 or actions of the property owner or the applicant; ~~(2)~~ (B) that the
 0096 granting of the permit for the variance will not adversely affect
 0097 the rights of adjacent property owners or residents; ~~(3)~~ (C) that
 0098 the strict application of the provisions of the zoning ordinance of
 0099 which variance is requested will constitute unnecessary hard-
 0100 ship upon the property owner represented in the application; ~~(4)~~
 0101 (D) that the variance desired will not adversely affect the public
 0102 health, safety, morals, order, convenience, prosperity, or general
 0103 welfare; and ~~(5)~~ (E) that granting the variance desired will not be
 0104 opposed to the general spirit and intent of the zoning ordinance.
 0105 ~~(b)~~ (2) *Exceptions*. To grant exceptions to the provisions of the
 0106 zoning ordinance in those instances where the board is specifi-
 0107 cally authorized to grant such exceptions and only under the
 0108 terms of the zoning ordinance. ~~In no event shall~~ Exceptions to
 0109 the provisions of the zoning ordinance *shall not* be granted
 0110 where the use or exception contemplated is not specifically
 0111 listed as an exception in the zoning ordinance. ~~Further, under no~~
 0112 ~~conditions shall~~ The board of zoning appeals *shall not* have the
 0113 power to grant an exception when conditions of this exception, as
 0114 established in the zoning ordinance by the governing body, are
 0115 not found to be present. In exercising the foregoing powers, the
 0116 board, in conformity with the provisions of this act, may reverse
 0117 or affirm, wholly or partly, or may modify the order, requirement,
 0118 decision, or determination, and to that end shall have all the
 0119 powers of the officer from whom the appeal is taken, may attach

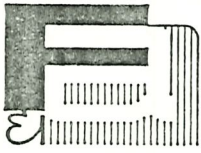
0120 appropriate conditions, and may issue or direct the issuance of a
0121 permit. Any person, official or governmental agency dissatisfied
0122 with any order or determination of ~~said~~ the board may bring an
0123 action in the district court of the county in which such city is
0124 located to determine the reasonableness of any such order or
0125 determination.

0126 *(b) The governing body of any city, by ordinance, may des-*
0127 *ignate any or all of the actions of the board of zoning appeals to*
0128 *be advisory and designate the governing body of the city to*
0129 *make such final determinations regarding the application of the*
0130 *zoning ordinance as set out in subsection (a). Such ordinance*
0131 *shall specify those actions in which the board advises the*
0132 *governing body and shall establish the procedures for consider-*
0133 *ation and final action by the governing body. Any person,*
0134 *official or governmental agency dissatisfied with an order or*
0135 *determination of a governing body acting under this subsection*
0136 *may bring an action in district court of the county in which the*
0137 *city is located to determine the reasonableness of any such order*
0138 *or determination.*

0139 Sec. 3. K.S.A. 12-714 and 12-715 are hereby repealed.

0140 Sec. 4. This act shall take effect and be in force from and
0141 after its publication in the statute book.

5/3



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February 4, 1988

To: HOUSE LOCAL GOVERNMENT COMMITTEE
From: C. Bickley Foster, Planning Consultant
Subject: Comments on HB2668 regarding Boards of Zoning Appeals (BZA).

Thank you for the opportunity on February 2 to testify on HB 2668. For your convenience, here is a summary of my comments based on my contacts with clients and having prepared 40 to 50 Zoning Regulations in the state.

The bill is representative of the adage, "If it ain't broke, why fix it." This statute has been in effect for almost 50 years. Since 1939, it has barely been changed statutorially and less than a handful of appeal cases have done nothing to change its effectiveness.

Boards of Zoning Appeal not only have final approval over variances (e.g., setbacks) and use exceptions (e.g., a day care center in a residential district), but decide appeals from decisions of the zoning administrator. According to an Attorney General's Opinion, the latter appeal from the zoning administrator is a quasi-judicial function.

If the governing body were permitted to serve as the BZA, they would make the law, revise the law and handle all appeals therefrom. A careful review of administrative law would be needed to determine whether this arrangement is possible and, if so, under what circumstances would the governing body perform its new duties. It would seem like a lot more court cases could be generated by this procedure.

Although I have not specifically researched the procedure in all states, I am familiar with most of them and in my 34 years of planning experience I have not heard or read of the governing bodies performing this function. I am told, however, that in Nevada the BZA can be advisory to the governing body. The latter procedure would lengthen the process and increase the cost to applicants and government.

When local problems do arise with the BZA, it is usually because revisions are needed in the Zoning Regulations themselves, particularly where too much power is bestowed on the BZA and where there is a lack of confidence in the members appointed by the mayor and governing body. The BZA's of Topeka and Wichita meet monthly, a city of 10,000 might meet four to five times and small cities one to two times a year.

The Kansas Section of the American Planning Association has a group of fourteen planners, lawyers and interested parties studying possible statutory revisions and this is the only section within which no substantive changes have surfaced other than to make the city and county procedures compatible.

Based on experience and client contacts, I frankly do not see any need for changes proposed in HB 2668.

cc: Mike Hein, Principal Analyst, Legislative Research Department
Other interested parties

*attachment 6
2/2/88*