

Approved September 19, 1988
Date

MINUTES OF THE House COMMITTEE ON Transportation

The meeting was called to order by Rex Crowell at
Chairperson

2:10 ~~xxx~~/p.m. on March 16, 1988 in room 519-S of the Capitol.

All members were present except: Representatives Laird and Gross

Committee staff present:

Bruce Kinzie, Revisor of Statutes
Hank Avila, Legislative Research
Donna Mulligan, Committee Secretary

Conferees appearing before the committee:

Representative Sam Roper
Mr. Mike Beam, Kansas Livestock Association
Mr. Joe Krahn, Kansas Department of Transportation
Mr. Jim Jones, Kansas Department of Transportation
Mr. Michael O'Keefe, Director of the Budget, State of Kansas

The meeting was called to order by Chairman Crowell, and the first order of business was a hearing on HB-3086 concerning loaders for cylindrically shaped bales of hay.

Representative Sam Roper, sponsor of the bill, briefed the Committee on its contents.

Representative Roper suggested HB-3086 be amended in line 24, preceding "fork" by inserting "empty"; in line 25, after the word "loader" by inserting "in a down position" (See Attachment 1)

Mr. Mike Beam, Kansas Livestock Association, testified in opposition to HB-3086. (See Attachment 2)

He said KLA is opposed to HB-3086 because of its impact on numerous farmers and ranchers who process, transport, and feed large round bales.

The hearing on HB-3086 ended.

The next order of business was a hearing on SB-575 concerning payments of relocation assistance authorized by the Secretary of Transportation.

Mr. Joe Krahn, Kansas Department of Transportation, testified in favor of SB-575. (See Attachment 3)

He said SB-575 was requested by the Department of Transportation to resolve conflicts which currently exist between the Kansas debt set-off statutes as codified at K.S.A. 75-6201 et. seq. and Federal regulations as codified at 49 CFR 25.207.

The hearing on HB-575 ended.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Transportation,
room 519-S, Statehouse, at 2:10 ~~am~~ p.m. on March 16, 1988

The next order of business was a hearing on SB-576 concerning the power of the Secretary of Transportation to condemn fee title.

Mr. Joe Krahn, Kansas Department of Transportation, testified in support of SB-576. (See Attachment 4)

He said enactment of SB-576 would enable the Secretary to condemn fee title when acquiring right-of-way and to condemn uneconomic remnants and entire lots, blocks or tracts of land when the Secretary finds that by so doing, the interest of the public would be best served.

Written testimony was received from Mr. Charles S. Allen, Kansas Wildlife Federation, supporting SB-576. (See Attachment 5)

The hearing on SB-576 ended.

The next order of business was a hearing on SB-579 authorizing the Secretary of Transportation to use money from the State Highway Fund for routes from a state highway to any property managed or controlled by the Department of Wildlife and Parks.

Hank Avila briefed the Committee on SB-579.

Mr. Jim Jones, Kansas Department of Transportation, testified in favor of SB-579. (See Attachment 6)

He said the Governor has recommended \$1.2 million of the state highway funds to be used for park roads for FY-1989 and that the Secretary of Transportation and the Secretary of Wildlife and Parks confer and agree upon the process and procedure to enhance long-term maintenance management of wildlife and parks road facilities.

Mr. Michael O'Keefe, Director of the Budget, testified as a proponent on SB-579.

The hearing on SB-579 was concluded.

The meeting was adjourned at 3:05 p.m.


Rex Crowell, Chairman

REPORTS OF STANDING COMMITTEES

MR. SPEAKER:

Your Committee on Transportation and Utilities

Recommends that House Bill No. 3086

"AN ACT concerning motor vehicles; relating to cylindrically shaped bales of hay loaders; amending K.S.A. 1987 Supp. 8-2118 and repealing the existing section."

Be amended:

On page 1, in line 24, preceding "fork" by inserting "empty"; in line 25, after the word "loader" by inserting "in a down position";

And the bill be passed as amended.

Chairperson



2044 Fillmore • Topeka, Kansas 66604 • Telephone: 913/232-9358
Owns and Publishes The Kansas STOCKMAN magazine and KLA News & Market Report newsletter.

STATEMENT
OF THE
KANSAS LIVESTOCK ASSOCIATION
IN REFERENCE TO
HOUSE BILL 3086
BEFORE THE HOUSE TRANSPORTATION COMMITTEE
REPRESENTATIVE REX CROWELL, CHAIRMAN
PRESENTED BY
MIKE BEAM
EXECUTIVE SECRETARY, COW-CALF/STOCKER DIVISION
MARCH 16, 1988

The Kansas Livestock Association (KLA) is a trade organization made up of nearly 10,000 members located in all of the 105 counties. KLA, founded in 1894, has members who are actively involved in numerous aspects of limited production that include cow-calf/stocker producers, feeders, sheep producers, swine operators, and general farming and ranching enterprises.

Thank you Mr. Chairman and committee members for the opportunity to present our views on House Bill 3086. As drafted, the measure would make it a \$20 fine "for the driver of a motor vehicle equipped with cylindrically shaped bales (large round bales) of hay loader, to drive such motor vehicle on any highway with a fork or forks of such loader extending to the rear of such motor vehicle." We are opposed to the bill because of its impact on numerous farmers and ranchers who process, transport, and feed large round bales. We appreciate the concern and intent to promote safety on Kansas roads and highways. However, we think it is unwise to inhibit the use of

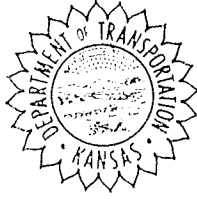
most round bale hay loaders by adopting a fine and making the use of such equipment a traffic infraction.

First, let's look at the practice of using large round bales. The cylindrically shaped hay balers were first introduced about 15 years ago. Since their inception, this style of bale has become very popular and is a common method of harvesting forage and crop residues. There are several advantages to using the large round hay baler. In many cases, this baler is more economical than the conventional small square baler that has been in existence for many years. The large round baler can usually bale hay much faster than the conventional baler and save farmers and ranchers valuable time during hay season. This baler has become most popular because it has essentially eliminated the physical labor requirements for putting up hay.

There is one disadvantage that the round baler has versus the conventional square baler. The bale shape is not always handy for transportation purposes. There have been a great many small and local businesses who have designed and are manufacturing equipment for pickup trucks and tractors to transport these large round bales. Most of this equipment has one or more "forks."

Practically all of this equipment extends beyond the rear of the vehicle. Should we pass a law and make it a fine for farmers and ranchers who use this equipment? Some bill handling manufacturers make equipment that would have no problem complying with this legislation. I must add that this equipment is much more expensive than many of the other hay handling alternatives. Perhaps someday the hay handling technology will change and we will not see the use of the fork handling equipment or perhaps will not even be using the large round bale. For now, we ask that you not pass this legislation and allow Kansas livestock producers the ability to move hay like they have done in the past and like their counterparts in other neighboring states. Thank you.

STATE OF KANSAS



KANSAS DEPARTMENT OF TRANSPORTATION

*Docking State Office Building
Topeka 66612-1568
(913) 296-3566*

Horace B. Edwards
Secretary of Transportation

March 16, 1988

Mike Hayden
Governor of Kansas

MEMORANDUM TO: The House Transportation Committee

FROM: The Kansas Department of Transportation

REGARDING: Senate Bill 575

Senate Bill 575 by the Committee on Transportation and Utilities was requested by the Department of Transportation to resolve conflicts which currently exist between the Kansas debt set-off statutes as codified at K.S.A. 75-6201 et. seq. and Federal regulations as codified at 49 CFR 25.207.

Highway rights-of-way acquisitions involving use of Federal aid are governed by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 USC 4601 et. seq.). Federal regulations promulgated by the United States Department of Transportation (Federal Register, Volume 51, No. 39, Part Four) allow deductions from relocation assistance payments to an individual for any advance relocation payments made to such individual. The withholding of any part of a relocation assistance payment to satisfy an obligation to any other creditor, including the state, is prohibited by the regulations. The Department has been previously notified by the Federal Highway Administration that a conflict exists between the Kansas Debt Set-Off Law and the Federal law. The proposed legislation would eliminate such conflict.

Copies of the Federal regulations prohibiting the withholding of amounts from relocation assistance payments, and the Federal Highway Administration's letter to the agency identifying the conflicts between the State and Federal law are attached.

The Department requests favorable consideration of Senate Bill 575 by the Committee. Thank you.

Attachments

Attach. 3

Actions from relocation payments. An Agency shall deduct the amount of any advance relocation payment from the relocation payment(s) to which a displaced person is otherwise entitled. Similarly, a Federal agency shall, and a State agency may, deduct from relocation payments any rent that the displaced person owes the Agency; provided that no deduction shall be made if it would prevent the displaced person from obtaining a comparable replacement dwelling as required by § 204 of these regulations. **The Agency shall not withhold any part of a relocation payment to a displaced person to satisfy an obligation to any other creditor.**

(g) **Notice of denial of claim.** If the Agency disapproves all or part of a payment claimed or refuses to consider the claim on its merits because of untimely filing or other grounds, it shall promptly notify the claimant in writing of its determination, the basis for its determination, and the procedures for appealing that determination.

§ 208 Relocation payments not considered as income.

No relocation payment received by a displaced person under these regulations shall be considered as income for the purpose of the Internal Revenue Code of 1954, or for the purpose of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other Federal law.

Subpart D—Payment for Moving and Related Expenses

§ 301 Payment for actual reasonable moving and related expenses—residential moves.

Any displaced owner-occupant or tenant of a dwelling who qualifies as a displaced person (defined at § 2(f)) is entitled to payment of his or her actual moving and related expenses, as the Agency determines to be reasonable and necessary, including expenses for:

(a) Transportation of the displaced person and personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the Agency determines that relocation beyond 50 miles is justified.

(b) Packing, crating, unpacking, and uncrating of the personal property.

(c) Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances, and other personal property.

(d) Storage of the personal property for a period not to exceed 12 months, unless the Agency determines that a longer period is necessary.

(e) Insurance for the replacement value of the property in connection with the move and necessary storage.

(f) The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.

(g) Other moving-related expenses that are not listed as ineligible under § 305, as the Agency determines to be reasonable and necessary.

§ 302 Fixed payment for moving expenses—residential moves.

Any person displaced from a dwelling, or a seasonal residence, is entitled to receive a fixed payment in lieu of a payment for actual moving and related expenses under § 301, that consists of:

(a) A moving expense allowance not to exceed \$300 which shall be determined in accordance with the applicable moving allowance schedule approved by the Federal Highway Administration; and

(b) A dislocation allowance of \$200.

§ 303 Payment for actual reasonable moving and related expenses—nonresidential moves.

(a) **Eligible costs.** Any business or farm operation which qualifies as a displaced person (defined at § 2(f)) is entitled to payment for such actual moving and related expenses, as the Agency determines to be reasonable and necessary, including expenses for:

(1) Transportation of personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the Agency determines that relocation beyond 50 miles is justified.

(2) Packing, crating, unpacking, and uncrating of the personal property.

(3) Disconnecting, dismantling, removing, reassembling, and reinstalling relocated machinery, equipment, and other personal property, including substitute personal property described at § 303(a)(12). This includes connection to utilities available nearby. It also includes modifications to the personal property necessary to adapt it to the replacement structure, the replacement site, or the utilities at the replacement site, and modifications necessary to adapt the utilities at the replacement site to the personal property. (Expenses for providing utilities from the right-of-way to the building or improvement are excluded.)

(4) Storage of the personal property for a period not to exceed 12 months,

unless the Agency determines that a longer period is necessary.

(5) Insurance for the replacement value of the personal property in connection with the move and necessary storage.

(6) Any license, permit, or certification required of the displaced person at the replacement location. However, the payment may be based on the remaining useful life of the existing license, permit, or certification.

(7) The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.

(8) Professional services necessary for—

(i) Planning the move of the personal property;

(ii) Moving the personal property; and

(iii) Installing the relocated personal property at the replacement location.

(9) Relettering signs and replacing stationery on hand at the time of displacement that are made obsolete as a result of the move.

(10) Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business or farm operation. The payment shall consist of the lesser of:

(i) The fair market value of the item for continued use at the displacement site, less the proceeds from its sale. (To be eligible for payment, the claimant must make a good faith effort to sell the personal property, unless the Agency determines that such effort is not necessary. When payment for property loss is claimed for goods held for sale, the fair market value shall be based on the cost of goods to the business, not the potential selling price.); or

(ii) The estimated cost of moving the item, but with no allowance for storage. (If the business or farm operation is discontinued, the estimated cost shall be based on a moving distance of 50 miles.)

(11) The reasonable cost incurred in attempting to sell an item that is not to be relocated.

(12) Purchase of substitute personal property. If an item of personal property which is used as part of a business or farm operation is not moved but is promptly replaced with a substitute item that performs a comparable function at the replacement site, the displaced person is entitled to payment of the lesser of:

(i) The cost of the substitute item, including installation costs at the replacement site, minus any proceeds

March 30, 1987

Relocation Payment

Mr. W. H. Wright
State Transportation Engineer
Kansas Department of Transportation
Topeka, Kansas 66612

Attention: Joe Krahn, Chief, Bureau of Right-of-Way

Dear Mr. Wright:

The section for Withholding of Relocation Payments in KDOT's Draft Relocation Manual has been reviewed. The section provides that KDOT may deduct any advance payment, rent owed the agency, and off set for debts owed the State in accordance with provisions of K.S.A. 75-6201 et seq.

CFR 49 25.207 has provisions for deduction for advance payments and rent owed the agency with the provision that no deduction shall be made if it would prevent the displaced person from obtaining comparable replacement dwelling and is specific that the State shall not withhold any part of the relocation payment to satisfy other creditors.

The off set payment is not permitted by CFR 49 25.207 and for KDOT to withhold in compliance with the off set will jeopardize Federal participation in the project.

The provision in CFR that no deduction shall be made if it would prevent the displaced person from comparable replacement dwelling should also be added to KDOT's manual.

We are available to discuss this issue.

Sincerely yours,

/s/ Earl H. White

For Robert J. Deatrick
Division Administrator

EHWhite:dsl

Kansas Department of Transportation

March 16, 1988

MEMORANDUM TO: THE HOUSE TRANSPORTATION COMMITTEE

FROM: THE KANSAS DEPARTMENT OF TRANSPORTATION

RE: SENATE BILL NO. 576

State law (K.S.A. 68-413) now authorizes the Secretary of Transportation to purchase fee simple title when acquiring right of way. The law also provides that the Secretary may purchase uneconomic remnants and entire lots, blocks or tracts of land for highway purposes, even though the entire properties are not immediately needed for state highway purposes if the Secretary finds that by so doing, the interests of the public will be best served. The law does not authorize the Secretary to condemn fee title, except for shop sites, and does not authorize condemnation of uneconomic remnants or entire lots, blocks or tracts of land even where severance or consequential damages to the remaining property makes the acquisition of the entire property more economical to the state.

Enactment of Senate Bill No. 576 would enable the Secretary to condemn fee title when acquiring right of way and to condemn uneconomic remnants and entire lots, blocks or tracts of land when the Secretary finds that by so doing, the interest of the public would be best served. It should be noted that K.S.A. 68-413 (b) (3) has not been changed, thereby continuing the restriction in current law precluding the Secretary from condemning oil and gas mineral interests, except for shop sites.

The request that the Legislature consider expanding the Secretary's power to condemn fee title was based on several factors. Getting the taxpayers what they pay for was a primary consideration. When the Secretary condemns a permanent easement for right of way and removal of borrow, he invariably pays at least 100% of the value of the land taken plus damages to the remainder when appropriate.

In situations where a tract of land is separated from the parent tract or landlocked, KDOT pays damages, sometimes as high as the actual value of the land without obtaining title to the damaged property. KDOT now offers to purchase uneconomic remnants and other tracts where our appraisals indicate damages to remainders that approach or equal the value of the remainders. This proposal would allow the Secretary to obtain fee title by condemnation and have the opportunity to recover some of the tax money expended by selling, trading, or leasing the property to an adjacent owner or to use the area for wildlife habitat. KDOT and the Department of Wildlife and Parks are working together to better utilize highway right of way for wildlife habitat. Senate Bill 576 would assist in this endeavor. Under the present statute, the Secretary can purchase but cannot condemn in these situations. Consequently, substantial damages to the remainders are paid in condemnation with absolutely no chance to recoup these payments or use the property for other public purposes.

There are instances in the recent past where KDOT was able to purchase entire properties instead of a partial acquisition with substantial damages to the remainder. The property which was not needed for highway purposes was traded to other landowners in the area affected by the project in lieu of or coupled with reduced monetary compensation. We were fortunate in being able to purchase the property that was traded. Enactment of Senate Bill

Attach. 4

No. 576 would reduce the need for good fortune by enabling the Secretary to condemn if purchase negotiations reach an impasse.

The requested authority to condemn in fee is also needed when acquiring replacement property for wetlands or parkland. Borrow areas could be condemned in fee and developed as wetlands. This authority could also facilitate damage mitigation efforts when it would be in the public interest to acquire property from one party and convey to another.

Many landowners do not understand the distinction between permanent easements and fee title and assume the state obtains fee title through condemnation. In a typical condemnation for highway right of way, retention by the condemnee of the underlying fee and the oil and gas mineral interests is of little interest to the owner of the property being condemned unless there is significant oil and gas activity in the area. Creation of an underlying fee owner by condemning a permanent easement means that if the property ever becomes surplus, it can only be released to the current holder of the underlying fee, i.e. the party whose land was condemned or that person's heirs or assigns.

Since many condemnees do not realize they retained the underlying fee, little or no attention is paid to this matter when their remaining property is conveyed. Consequently, in many instances, the current owner of property adjacent to surplus highway right of way is not the heir or assign of the underlying fee owner. This situation presents problems for KDOT as well as current adjacent owners seeking to obtain surplus right of way since the property should only be released to the current owner of the underlying fee. When an underlying fee owner dies intestate, that interest is often divided into fractional shares, with the owners sometimes not even aware of their interest. Years later, it is often difficult and costly to determine and locate the current underlying fee owners. Conveyance of a deed by the Secretary to someone outside the chain of title would not be appropriate. These problems do not arise when dealing with property acquired in fee.

Recent research indicates that Kansas is one of only seven states that do not condemn fee title for highway right of way. A number of states that condemn fee title, including Nebraska, Iowa, Oklahoma, Colorado, and Texas, do not condemn the oil and gas mineral rights when acquiring highway right of way. Under this bill, the oil and gas mineral rights continue to remain with the landowner.

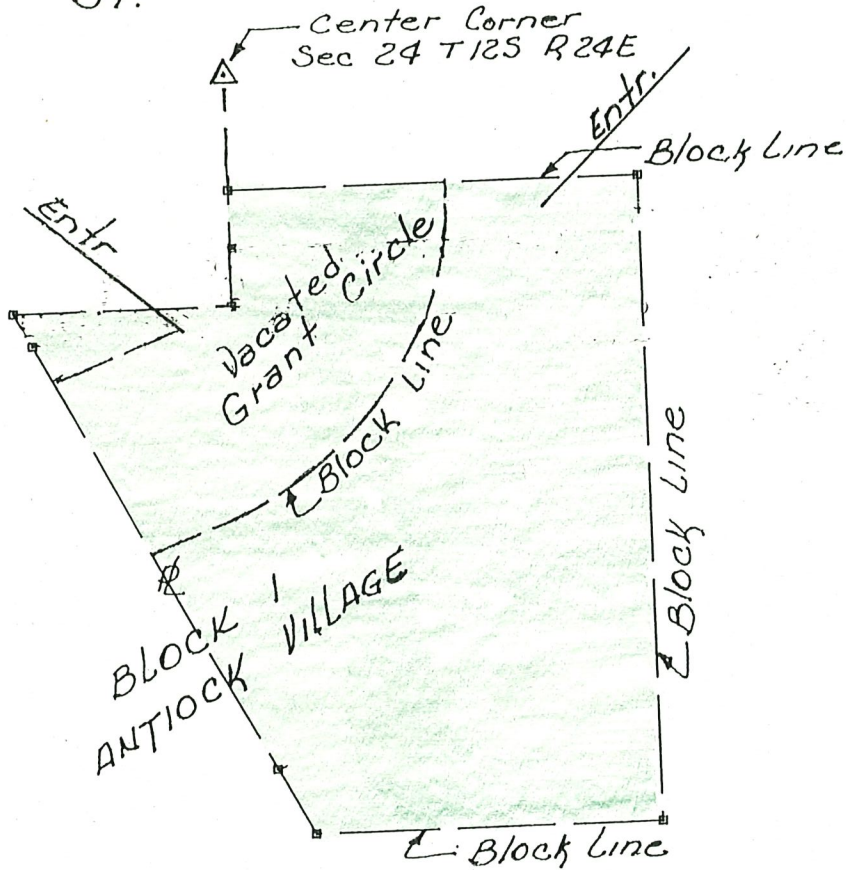
Enactment of this proposal would get the taxpayers what they are paying for in right of way condemnations, provide more flexibility to trade property during and after project acquisition, facilitate improved management and disposition of property, and, in the long run, save money for the taxpayers and landowners adjacent to highways seeking to acquire excess right of way. It also provides clearer authority to replace parkland and wetlands as required by law on federal projects and more opportunities to develop wildlife habitat areas.

Should the need arise to utilize the advance acquisition statute (K.S.A. 68-423a), this legislation would enable the agency to recoup its investments to a greater degree when the land not needed for highway purposes is identified and ready for sale.

OIL PROPERTIES
JOHNSON COUNTY
35-46 K 1442-01
BLOCK 1 ANTILOCK VILLAGE
4-08-83 CITY OF OVERLAND PARK

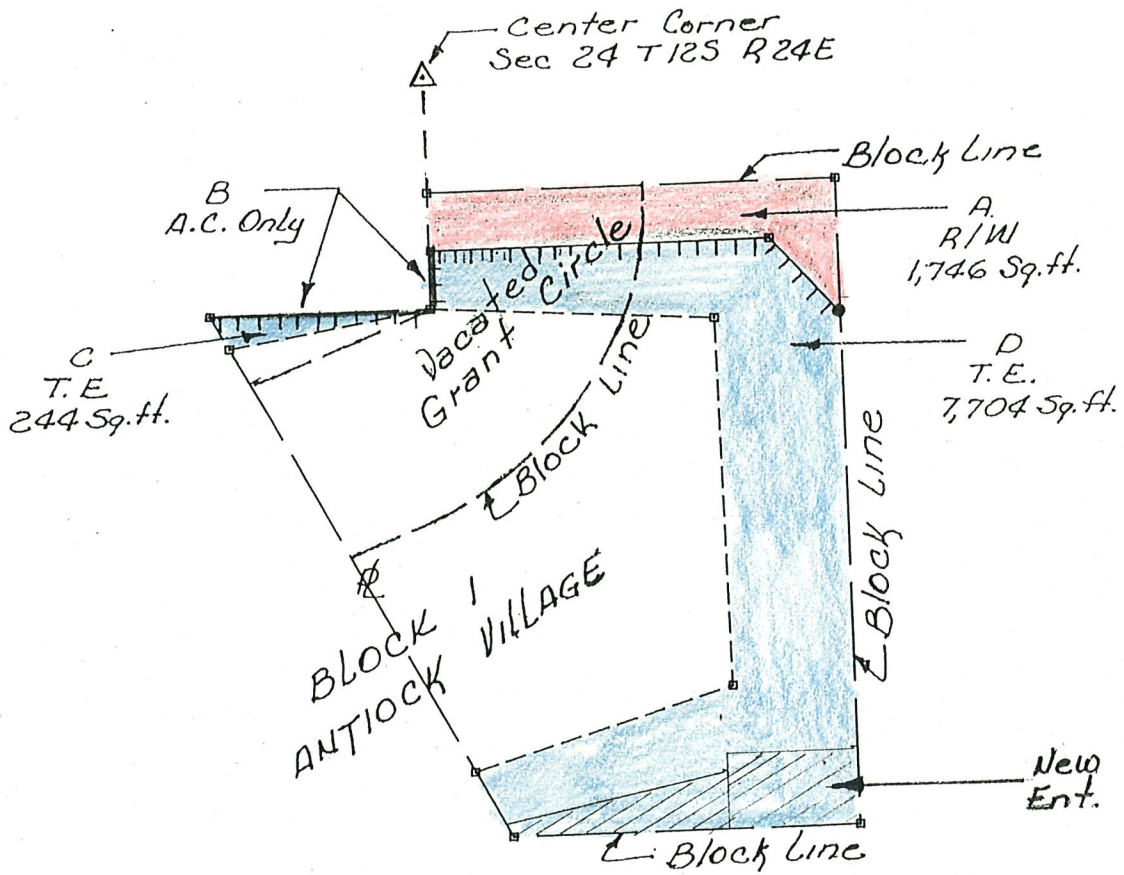
5 CITY
860-1678

75th St.

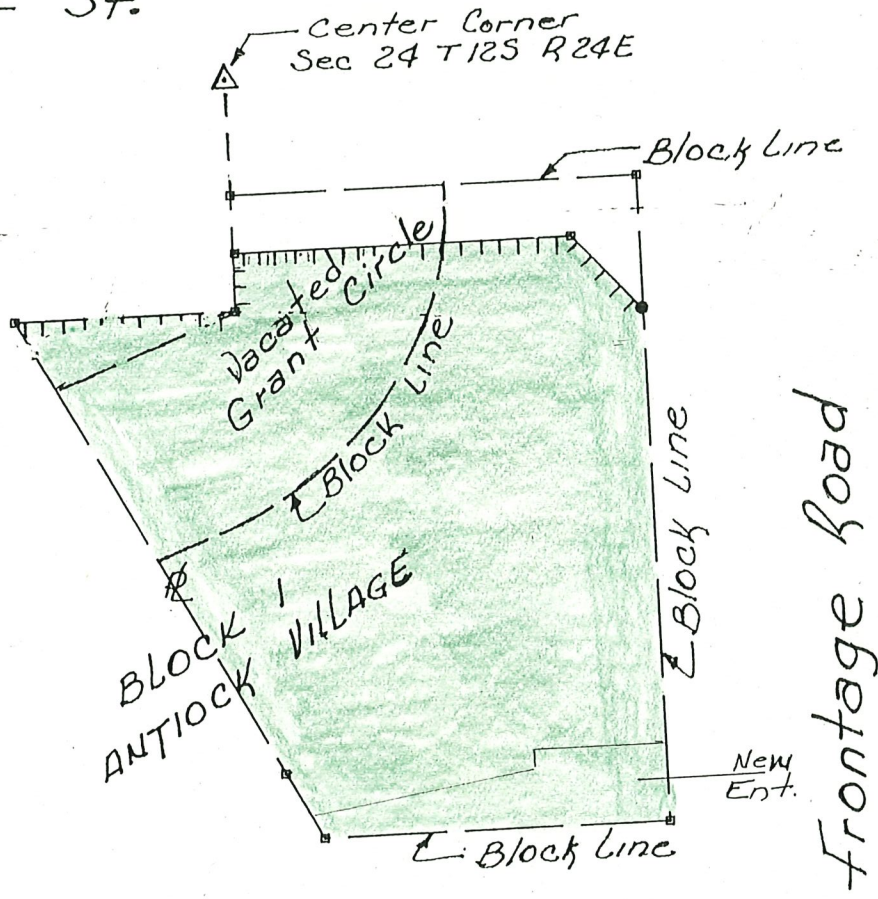


AREA 22 518 Sq. Ft.

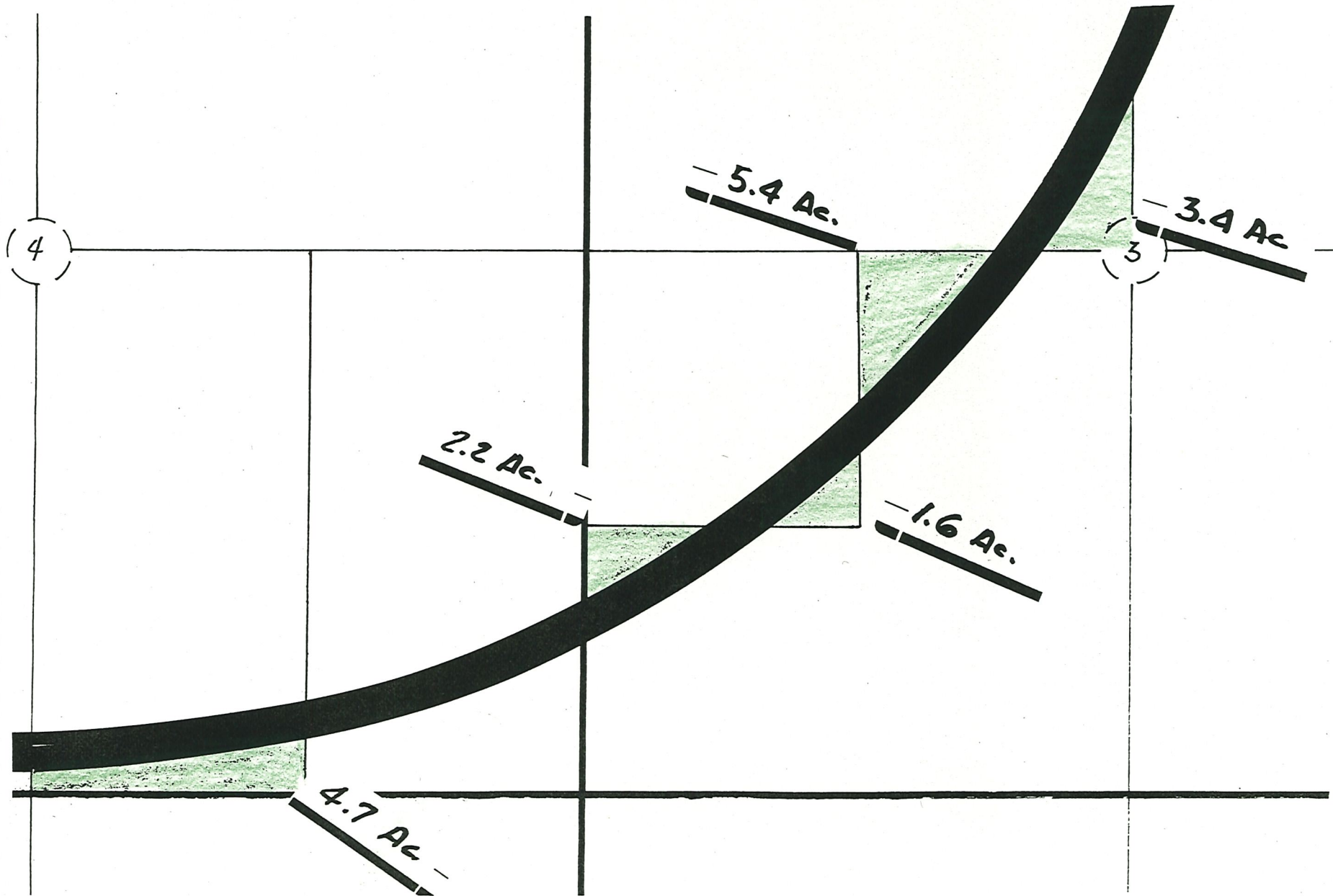
OIL PROPERTIES 5 CITY
JOHNSON COUNTY 860-1678
35-46 K 1442-01
BLOCK 1 ANTILOCK VILLAGE
4-08-83 CITY OF OVERLAND PARK

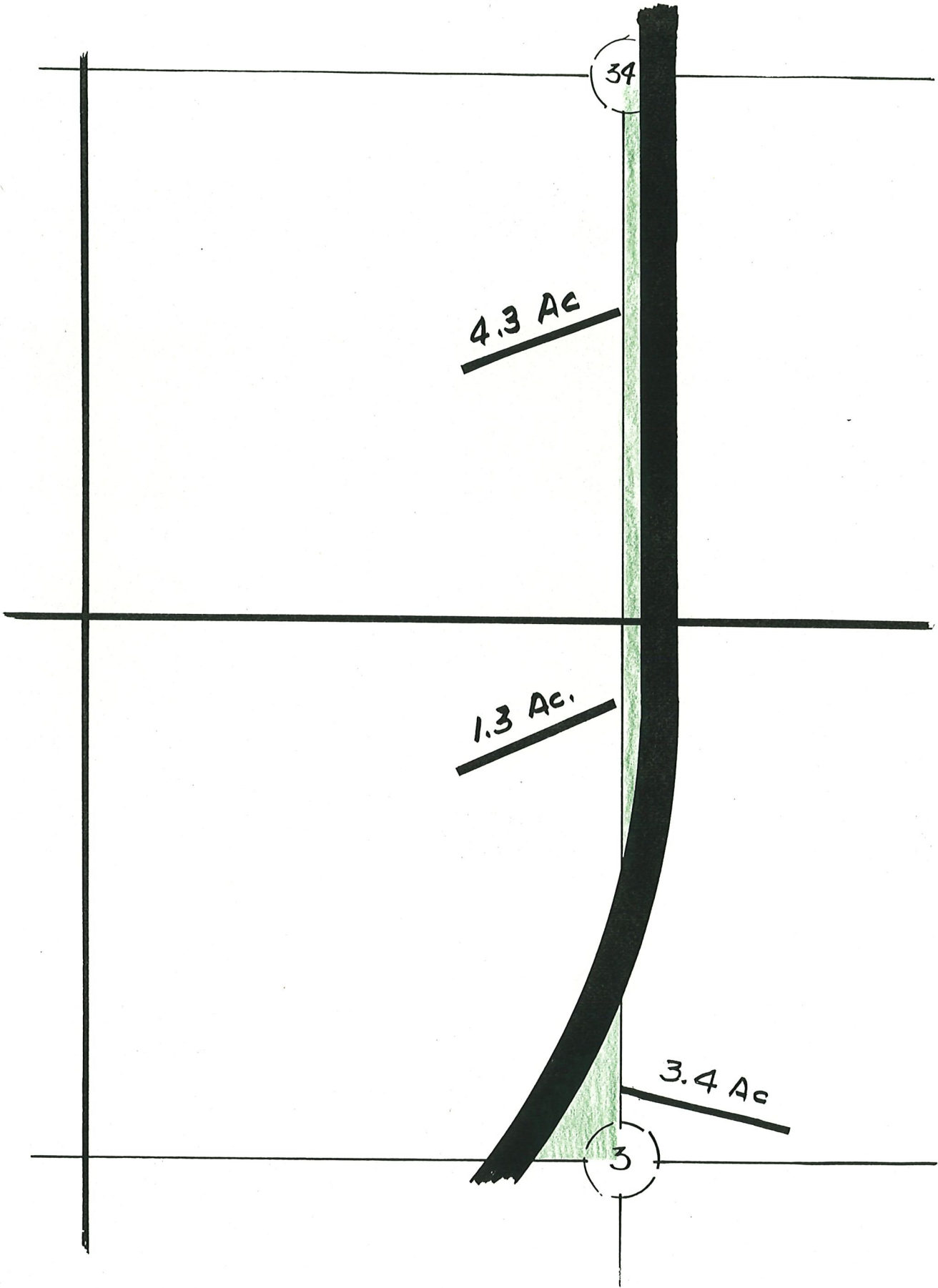


75th St.



AREA 20,772 Sq. Ft.





4.3 Ac

1.3 Ac.

3.4 Ac

34

3

<u>4.0 Ac.</u>	<u>4.2 Ac.</u>	<u>4.1 Ac.</u>
(35)		(36)

TO: The House Transportation Committee

RE: Senate Bill No. 576

By way of introduction, my name is Charles S. Allen and I am a Vice President of the Kansas Wildlife Federation representing over 7000 paid members in Kansas.

The Kansas Wildlife Federation strongly supports Senate Bill No. 576 and urges its favorable consideration. The passage of this legislation will both clarify and strengthen condemnation procedures. Moreover; the taxpayers will be getting what they are paying for and the Secretary of Transportation will gain much needed latitude in both the use and/or disposition of such tracts of land.

The Kansas Wildlife Federation has been working closely with the Department of Transportation and Wildlife and Parks to better develop roadsides and adjacent areas to enhance wildlife habitat. This legislation would enable the Secretary of Transportation to exercise more flexible management of our land resources. As I understand it, Kansas is only one of seven states that does not condemn fee title for highway right of way. In effect, this legislation will provide clearer authority to replace parkland and wetlands as required by law on federal projects and add opportunities to develop wildlife habitat areas.

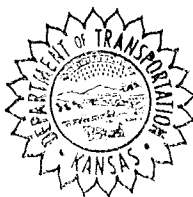
There has been some concern voiced over the possibility of increased wildlife road kills. Very well documented controlled studies by several other midwestern states have determined that enhanced roadside wildlife areas result in no appreciable

Attach. 5

increase in roadway kills. The long term effect of this legislation will be to provide more effective management of our wildlife resources.

The Kansas Wildlife Federation strongly supports the favorable passage of Senate Bill No. 576.

STATE OF KANSAS



KANSAS DEPARTMENT OF TRANSPORTATION

*Docking State Office Building
Topeka 66612-1568
(913) 296-3566*

Horace B. Edwards
Secretary of Transportation

March 16, 1988

Mike Hayden
Governor of Kansas

MEMORANDUM TO: House Transportation Committee

FROM: The Kansas Department of Transportation

REGARDING: Senate Bill 579

Thank you Mr. Chairman and members of the Committee. Senate Bill 579 amends K.S.A. 68-406 to expand the authority of the Secretary of Transportation to use monies from the State Highway Fund for the purchase of rights-of-way, construction, improvement, reconstruction, and maintenance of any property managed or controlled by the Department of Wildlife and Parks. K.S.A. 68-406 currently restricts the expenditure of such funds to state parks.

Senate Bill 579 is consistent with the Governor's recommendation to the 1988 Legislature to expand the Department of Transportation's authority to include capital and maintenance activities at Department of Wildlife and Parks facilities. The bill does not have a fiscal impact.

The Governor has recommended \$1.2 million of the state highway funds to be used for park roads for FY 1989 and that the Secretary of Transportation and the Secretary of Wildlife and Parks confer and agree upon the process and procedure to enhance long-term maintenance management of wildlife and parks road facilities. The Governor has advised the Secretary of the Department of Wildlife and Parks to utilize the considerable maintenance management expertise of the Kansas Department of Transportation.

That concludes my prepared remarks. Thank you.

Attach. 6