

MINUTES OF THE Senate COMMITTEE ON Local Government

The meeting was called to order by Senator Don Montgomery at
Chairperson

9:08 a.m./~~p.m.~~ on February 10, 1988 in room 531-N of the Capitol.

All members were present except:

Committee staff present: Mike Heim, Emalene Correll, Theresa Kiernan and
Lila McClaflin

Conferees appearing before the committee:

Ernie Mosher, The League of Kansas Municipalities
Jim Kaup, The League of Kansas Municipalities
Winston Barton, Secretary, Social and Rehabilitation Services

Discussion was opened on H.B. 2063 - relating to group home zoning. The chairman called attention to a handout from Winston Barton, Secretary of SRS (Attachment I). He asked the members to turn their attention to the amendments distributed by the League (Attachment II).

Senator Gaines said the state needs more group homes. We have a five year plan to reduce the capacity of our mental retardation hospitals in the state, and we need places for these patients. This bill is absolutely necessary.

Ernie Mosher and Jim Kaup, responded to questions relating to the special or conditional use permit. Jim Kaup stated the hearing in a special permit process is quasi-judicial.

A motion was made by Senator Gaines to accept the amendments offered by the League. Senator Mulich seconded the motion.

Senator Bogina stated this bill would take away the control from the local citizens, or the ability to have any input into the zoning, it's a bad bill, it says that the legislature knows much better in every city, what is best for them. This bill is not the way to do it.

Senator Langworthy stated the state needs to show commitment to financing group homes, so far, Kansas has not done that. The state needs to make hard decisions about the placement of mentally retarded persons. The state needs a financial commitment to buy spaces in group homes. State assurance that it will finance slots in group homes is a key to financing construction or renovation of homes for the retarded. She challenged the Ways and Means Committee members to make the funds available. She further stated Oklahoma has been successful in getting group homes built, she has visited with a gentleman from their state on this issue. Oklahoma did pass a bill effective as of July 1, 1987, but it is narrower than what we are looking at now. This bill is not necessary, the dollars are what we need.

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Local Government,
 room 531-N, Statehouse, at 9:00 a.m./~~p.m.~~ on February 10, 1988

Secretary Barton responded to several questions concerning the amount recommended in the governor's budget.

Senator Winter was not in favor of the amendments, but after four years of going through this process he was willing to compromise.

Written testimony from Ray Petty, was presented by the chairman. The chairman said Mr. Petty disagreed with the special or conditional use permit regulations, but at this time, it seemed the best thing to move forward (Attachment III).

After discussion, the chairman called for the vote on the motion. The motion carried.

Senator Gaines moved the bill be passed as amended. Senator Mulich seconded the motion. Discussion followed.

Senator Allen stated it is a local issue, except in isolated areas, the laws we have now are working. This takes the control away from the local elected officials.

Senator Winter stated the bill as amended gives local governments control of the issue. But the bill does help accommodate the process of negotiations and discussion as communities go through the process.

Senator Salisbury stated this legislation is not in the best interest of the clients. This type of statewide policy is not the solution. There needs to be a strong commitment from the administration for funding and administration. It has been shown in Oklahoma that it can be done.

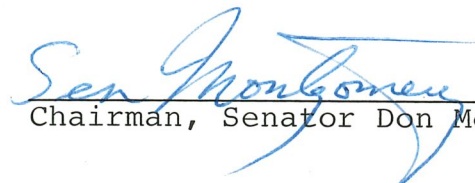
The chairman called for a vote, resulting in a 5-5 vote.

A motion was made by Senator Winter that the bill be reported without recommendations, so it could be debated on the floor. Senator Gaines seconded the motion.

After brief discussion on this motion, the vote was taken resulting in a 5-5 vote.


Senator Gaines moved to adopt the minutes of February 3 and 4 meetings. Senator Salisbury seconded the motion. The motion carried.

The next meeting of the committee will be at 9:00 a.m., on February 11, 1988. The meeting adjourned at 10:53 a.m.


 Chairman, Senator Don Montgomery

STATE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
Statement Regarding House Bill 2063
(As Amended by House Committee of the Whole)


1. Title - This Bill would allow the establishment of group homes for physically handicapped, mentally retarded, and other developmentally disabled persons in single family residential areas, notwithstanding local zoning ordinances to the contrary.
2. Purpose - Many disabled persons are physically segregated from community living arrangements because of local legal barriers which prevent their movement into normal residential areas. Regardless of a growing awareness among health professionals that disabled persons should be provided normal living surroundings to the greatest possible extent, local government officials and residents are not always convinced. There continues to be a shortage of community residential beds for these disabled individuals who need assistance with community living but not hospitalization. The needed residential settings must be available in reasonably close proximity to treatment/training sites.
3. Background - This Bill will ensure the right of disabled persons to live in residential communities throughout Kansas because zoning would be uniformly applied by all cities. With this legislation, county and municipal zoning ordinances, and administrative interpretation thereof, would not deny disabled persons their right to benefit from normal residential life in group homes. Limitations on the number of group homes in a given area are made to avoid any claims of excessive concentration.
4. Effect of Passage - Passage of this Bill would ensure that mentally retarded and other disabled individuals have the same right to live in single family areas as others.
5. SRS Recommendations - The Department of Social and Rehabilitation Services supports this Bill and feels that its provisions should be made available to persons developmentally disabled, physically handicapped, or mentally retarded.


Winston Barton, Secretary
Social and Rehabilitation
Services
(913) 296-3274



League of Kansas Municipalities

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

RE: HB 2063--Group Homes, Zoning and Restrictive Covenants
TO: Senate Committee on Local Government
FROM: E.A. Mosher, Executive Director 
DATE February 8, 1988

Enclosed for your consideration are some amendments to HB 2063.

The League's convention-adopted Statement of Municipal Policy on this issue provides as follows:

1-8c. Group Homes. We recognize the social and psychological value of the location of group homes for the handicapped and developmentally disabled persons in residential neighborhoods. We encourage cities to review their regulations and eliminate provisions which unreasonably and unnecessarily restrict the location of group homes. However, the basic local planning and zoning process, including public hearings, should be applicable to all proposed land use changes. Cities should not be prohibited from requiring conditional use permits for the use of dwellings for group homes and other non-single family uses in areas zoned exclusively for single family uses.

The League took the position of "no position" on the original HB 2063. With the House deletion of the provision (line 66) relating to "special or conditional use permit regulations," the Governing Body of the League took action to oppose the bill, unless this language is restored.

While we are supportive of this bill's special objective, as indicated by our convention action, we have concerns as to whether this fundamental change from local decision making to state decision making in local planning and zoning matters may be extended to other areas in the future. However, the restoration of the "special or conditional use permit regulations" language would at least permit the continuation of some process of local decision making. It would permit the local governing body to respond to community and neighborhood concerns that can be legitimately addressed--but still permitting the use of a dwelling as an eligible group home. For example, the city might require that no alterations be made to the building which renders it incompatible with surrounding dwellings, or that any fire escape not be attached to the front of the building. Under the existing bill, such conditional use regulations would still have to be "nondiscriminatory" (see line 67).

Other amendments are proposed, with a brief explanation.

(ATTACHMENT II) Local Go 2/10/88

cc: John Connard, David Mills, Governor's Office

President: Carl Dean Holmes, Mayor, Plains - Vice President: Douglas S. Wright, Mayor, Topeka - Past President: John L. Carder, Mayor, Iola -
Directors: Nancy R. Denning, Commissioner, Manhattan - Ed Eilert, Mayor, Overland Park - Irene B. French, Mayor, Merriam - Frances J. Garcia,
Commissioner, Hutchinson - Robert G. Knight, Mayor, Wichita - Paula McCreight, Mayor, Ness City - Jay P. Newton, Jr., City Manager, Newton -
Richard U. Nienstedt, City Manager, Stockton - David E. Retter, City Attorney, Concordia - Judy M. Sargent, City Manager, Russell - Joseph E.
Steineger, Mayor, Kansas City - Arthur E. Treece, Mayor, Coffeyville - Executive Director: E.A. Mosher

927

HOUSE BILL No. 2063

By Representative Douville

1-15

AMENDMENT

EXPLANATION

0021 AN ACT concerning zoning; relating to group homes. [and restrictive covenants

The bill concerns restrictive covenants as well as zoning--see line 60.

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

0023 Section 1. (a) It is hereby declared to be the policy of the
0024 state of Kansas that physically handicapped, mentally retarded or
0025 other developmentally disabled persons shall not be excluded
0026 from the benefits of single family residential surroundings by
0027 any municipal zoning ordinance, resolution, regulation or re-
0028 strictive covenant. It is also declared to be the policy of the state
0029 of Kansas to encourage the dispersion of group homes within a
0030 municipality.

[areas zoned exclusively for single family residences

The bill relates to the dispersion of group homes within single family residential areas, not "within a municipality." See lines 74:75.

0031 (b) For the purpose of this act:

0032 (1) "Group home" means any dwelling occupied by ~~six~~
0033 [eight] or fewer physically handicapped, mentally retarded or
0034 other developmentally disabled persons who need not be related
0035 by blood or marriage and ~~also may include~~ two staff residents
0036 who need not be related by blood or marriage to each other or to
0037 the physically handicapped, mentally retarded or other devel-
0038 opmentally disabled residents of the home[, which dwelling is
0039 licensed by a regulatory agency of this state];

[not more than 10 persons, including

As written, the bill would apparently permit an unlimited number of persons within a group home, provided there are not more than eight handicapped, etc., or two staff persons.

[not to exceed

0040 (2) "municipality" means any city/or county located in Kan-
0041 sas;

[, township

Some townships in Kansas have authority to enact zoning regulations, and have done so.

0042 (3) "developmental disability" means a severe chronic dis-
0043 ability of a person, other than mental illness, which:

0044 (A) Is attributable to a mental or physical impairment or
0045 combination of mental and physical impairments;

0046 (B) is manifested before the person attains age 22;

0047 (C) is likely to continue indefinitely;

0048 (D) results in substantial function limitations in three or
 0049 more of the following areas of major life activity: (i) Self-care, (ii)
 0050 receptive and expressive language, (iii) learning, (iv) mobility,
 0051 (v) self-direction, (vi) capacity for independent living and (vii)
 0052 economic self-sufficiency; and

0053 (4) (E) reflects the person's need for a combination and se-
 0054 quence of special, interdisciplinary, or generic care, treatment or
 0055 other services which are of lifelong or extended duration and are
 0056 individually planned and coordinated.

0057 (c) Except as hereinafter provided, no municipality shall
 0058 prohibit the location of a group home in any zone or area where
 0059 single family dwellings are permitted. Any zoning ordinance,
 0060 resolution, regulation or restrictive covenant which prohibits the
 0061 location of a group home in such zone or area in violation of this
 0062 act is invalid. Notwithstanding the provisions of this act, group
 0063 homes shall be subject to all other regulations applicable to other
 0064 property located in the zone or area that are imposed by any
 0065 municipality through its building regulatory codes, subdivision
 0066 regulations, ~~special or conditional use permit regulations~~ or
 0067 other nondiscriminatory regulations. For the purpose of ~~protect-~~
 0068 ~~ing the development~~ of the area, the governing body of the
 0069 municipality ~~shall~~ require the physical structure of the group
 0070 home to be generally compatible with other physical structures
 0071 in the surrounding neighborhood. In order to avoid excessive
 0072 concentration of group homes, from and after the effective date of
 0073 this act, no such group home may be located within 1,000 feet of
 0074 another such group home in areas zoned exclusively for single
 0075 family dwellings, unless the governing body of the municipality
 0076 approves a closer location by a majority vote thereof.

0077 Sec. 2. This act shall take effect and be in force from and
 0078 after its publication in the statute book.

, special or conditional use permit regulations

preserving the single family residential character

may

Restoration of this stricken language would permit the local governing body to respond to community and neighborhood concerns that can be legitimately addressed and still preserve the intent of state preemption of local control. Note that such regulations would have to be "nondiscriminatory"--see line 67.

In most instances, the group home will probably be located in an area that is already developed. The term "single family residential character" makes this provision more consistent with the language used in line 26.

We suggest "may" is a better word. If the legislature is going to invalidate local zoning regulations, it seems inconsistent to mandate remedial local action. Without the authority of imposing special or conditional use permit regulations (line 66), how does a municipality accomplish lines 67:71?



TOPEKA RESOURCE CENTER FOR THE HANDICAPPED

West Tenth Professional Building
1119 West Tenth, Suite 2
Topeka, Kansas 66604-1105

Telephone
913-233-6323

February 9, 1988

Senator Don Montgomery
Chairman, Local Government
Room 503N, Statehouse

Dear Senator Montgomery:

I am sorry not to be able to attend your deliberations and vote on House Bill 2063 with regard to the location of group homes for people with disabilities in residential neighborhoods. Unfortunately, a previous engagement in Kansas City precluded my attendance.

I had an opportunity today to discuss with Lila Paslay of the Topeka Association for Retarded Citizens certain amendments which I understand may be offered on the bill. If I understood them correctly, all but the proposed change on line 66 are technical in nature, and we have no problem with those. The amendment on line 66, which would reinsert "special or conditional use permit regulations", is substantive in that it would allow local governments to require permits for group homes - and those permits would require or at least allow zoning hearings.

At this time, notwithstanding my inclination to object to the possibility that citizens with disabilities in Kansas may be called upon to endure prejudicial remarks and other hostile behaviors from potential neighbors, it seems the best thing to do is move forward. This issue has been debated long enough. The committee's judgment is that this amended bill goes far enough - I truly hope that is the case. If it is not, and certain communities balk and stall and play games with the new rules, it will then be up to you to mandate the prevailing state interest in the development of community-based housing alternatives throughout the state. Otherwise two state policies will continue to be at odds with one another.

(Attachment ~~III~~ Local 60 2/10/88

I wish the committee well in its deliberations. Thank you for the attention you have paid this issue over the past two years.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ray Petty", with a long horizontal flourish extending to the right.

Ray Petty, Executive Director

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