

Approved January 23, 1990
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Martha Jenkins, Vice Chairman at
Chairperson

3:30 ~~xxx~~/p.m. on January 18, 1990 in room 313-S of the Capitol.

All members were present except: Representatives Buehler, Gomez, and Peterson, who were excused.
Representative O'Neal was also excused.

Committee staff present:

Jerry Donaldson, Legislative Research Department
Mike Heim, Legislative Research Department
Jill Wolters, Revisor of Statutes Office
Mary Jane Holt, Committee Secretary

Conferees appearing before the committee:

David Lord, Attorney, Department of Transportation
Joe Krahn, Bureau of Right of Way, Department of Transportation
Steven L. Potucek, Real Property Manager, City of Wichita, Wichita

REPORT OF 1989 INTERIM STUDIES BY SPECIAL COMMITTEE ON JUDICIARY

Jerry Donaldson, Legislative Research Department, reported on interim studies on Proposal No. 30-Discovery Depositions and Proposal No. 31-Adoption.

Mike Heim, Legislative Research Department, reported on the interim study of Proposal No. 31-Marital Property.

Hearing on H.B. 2601 Acquisition of fee title by Secretary of Transportation within cities

A brief on prepared by the Legislative Research Department was distributed to the Committee, see Attachment I.

David Lord, Attorney, Department of Transportation testified the proposed legislation is extremely important in aiding the Kansas Department of Transportation (KDOT) to best use its resources in developing its comprehensive highway system. HB 2601 was approved during the interim by the Special Committee on Transportation. This bill concerns the nature of the title KDOT acquires when obtaining realty through eminent domain. By enacting this bill the Secretary may acquire full fee simple title for all KDOT purposes within corporate city limits. KDOT will be able to obtain uneconomic remnants of land or tracts of land where it is more economical to purchase the entire tract than to pay the severance or consequential damages. He made several suggestions for changes in the bill, see Attachment II.

Joe Krahn, Bureau of Right of Way, Kansas Department of Transportation, explained the exhibits attached to Attachment II. He stated under present law only the part needed would be condemned. Under the new bill the entire parcel could be condemned, see Attachment II.

Steve Potucek, Real Property Manager, City of Wichita, testified the City of Wichita strongly supports consideration of the Secretary of Transportation's request to expand the authority in K.S.A. 68-413. The expanded authority would allow the State of Kansas to better manage the acquisition, use and disposition of public lands. The provisions of H.S. 2601 do not encroach at all in the rights of property owners who remain entitled to just compensation for the State's acquisition of interests in their real property, see Attachment III.

The hearing was closed on HB 2601.

The Committee meeting was adjourned at 4:40 p.m. The next meeting will be Monday, January 22, 1990, at 3:30 p.m. in room 313-S.

BRIEF:

The bill permits the Secretary of Transportation, within the limits of a city, to condemn property in fee simple title for state highway purposes. When the Secretary determines that property so acquired no longer is needed, such property may be disposed of under the following conditions:

1. The landowner from whom the real estate was acquired, or the landowner's successor in title, must be given the opportunity to purchase the property.
2. The purchase price may not exceed the lesser of the appraised value of the property or the original price.

If the landowner (or successors in title) cannot be located, notice is published once each week for three consecutive weeks in the official city newspaper. The notice must indicate that the purchase option will expire 30 days following the date of the final publication.

If, under authority of the bill, the Secretary of Transportation has acquired an easement, a fee for release thereof can be charged. The fee may not exceed the lesser of the property value to the underlying fee owner or the original price paid for the easement. Reasonable administrative costs also may be assessed. Notice similar to that applicable to the disposition of property held in fee simple title is required with respect to the release of easements.

Proceeds from the disposition of parcels or easements are to be deposited in the State Treasury and credited to the State Highway Fund.

BACKGROUND:

HB 2601 was recommended by the Special Committee on Transportation pursuant to its 1989 interim study of Proposal No. 55--Kansas Department of Transportation (KDOT)--Selected Issues.

The Secretary of Transportation recommended to the Committee that the Secretary be given statutory authority to condemn property for state highway purposes in fee simple title. The Secretary's position was that the principal reason for the recommendation was to save state money. There are many instances in which the state pays nearly 100 percent of the value of a parcel of land and receives only easement rights. In situations involving landlocked land remnants, the state pays damages and receives no property right. If the Secretary could take properties by condemnation, it sometimes should be possible to recoup all or a portion of the state's cost by selling such property when it no longer is needed. Kansas is one of five states that does not use condemnation power to obtain fee simple title for highway right-of-way. The Secretary also contended that holding property in fee simple title would make it possible to more easily transfer clear title to land that is no longer needed. When an easement is involved, the property title is more likely to become confused. The Secretary also noted that when highway projects infringe on wetlands, wildlife refuges, and park lands, such properties must be replaced by an equivalent amount of such land. Authority to take title to such properties by condemnation would be helpful to the Secretary.

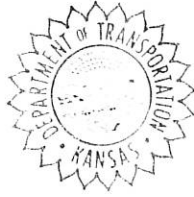
The Committee recommended that the authority requested by the Secretary be granted only within the corporate limits of a city, and further specified the conditions

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Z. J. Corn.
Attachment I

t apply when the Secretary decides to dispose of a property or easement.

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STATE OF KANSAS



KANSAS DEPARTMENT OF TRANSPORTATION

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

Horace B. Edwards
Secretary of Transportation

Mike Hayden
Governor of Kansas

TESTIMONY ON HOUSE BILL NO. 2601

Good afternoon chairperson Jenkins and members of the Judiciary committee. On behalf of Secretary Edwards, let me express our appreciation for this opportunity to address you concerning House Bill No. 2601.

I am David Lord and am a member of the Department's legal staff. With me this afternoon, I have Joe Krahn of our Bureau of Right of Way. We are here to answer questions concerning this bill and KDOT's position regarding it. We believe the contents of this proposed legislation to be extremely important in aiding the Department of Transportation to best use its resources in developing its comprehensive highway system.

House Bill No. 2601 was approved during the interim by the Special Committee on transportation. This is one of several bills initiated by that committee. This particular bill concerns the nature of the title KDOT acquires when obtaining realty through eminent domain. By enactment of

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Attachment II

this bill, the Secretary may acquire full fee simple title for all KDOT purposes within corporate city limits.

Currently, K.S.A. 68-413 controls the manner in which KDOT can acquire land. Through the use of eminent domain, KDOT can acquire only easements for highway rights of way, borrow pits and access ways. But it can acquire fee simple title for building or improvement sites. However, by means of purchase, KDOT can acquire fee simple title for all of these purposes plus it can obtain uneconomic remnants of land or tracts of land where it is more economical to purchase the entire tract than to pay the severance or consequential damages.

What KDOT seeks in regard to this matter of fee simple title can be separated into two general needs. Simply stated these are:

1. The need to be able to condemn for fee simple title for highway rights of way, borrow pits and access ways.
2. The need to be able to condemn for fee simple title when acquiring those tracts or remnants of land which are more economic to purchase in their entirety than to pay the assessed damages to any remainder.

These needs are closely allied and merely require granting the Secretary the right to use eminent domain to secure fee

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simple title in the same situations where it can presently be acquired by purchase. House Bill No. 2601 is designed to accomplish this goal, however, it is limited to acquisitions located inside city limits.

There are several reasons why KDOT believes such legislation is appropriate. The first is a matter of proper stewardship of the funds paid by the taxpayers of Kansas. Obviously this is a vital matter of concern today. Without remedial legislation, the taxpayers are going to continue to leave money on the table for others to take when real estate deals are made as the result of a highway project. There are numerous instances when the taxpayers pay nearly 100% of the value of a parcel of land and receive only easement rights or no rights at all in situations of landlocked remnants. Particularly in urban areas the severance and consequential damages may approach the full value of the remainder land. Now, all KDOT can do is offer to purchase uneconomic remnants and other tracts where its appraisals indicate damages to remainders will approach or equal the value of the land remaining. This proposed legislation would permit obtaining fee simple title by condemnation and allow KDOT (and the taxpayer) the opportunity to recover some of the tax money expended by either selling, trading or leasing the property. Since this bill limits the Secretary's extended authority to condemnations inside city

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limits, it has been estimated this will help remedy about 75% to 80% of the problem. Some may advocate that we should let those who can profit from such situations reap their profits. However, it does not seem appropriate that a few should profit so greatly at the expense of so many taxpayers. Experience shows that it is more frequently land speculators who benefit from the present system and not the lone homeowner.

The purpose of this legislation is not to expand opportunities for KDOT land acquisitions but merely to enable acquiring fee simple title so it can deal intelligently in modern real estate situations.

Another reason KDOT requests this legislation is to be able to transfer clear, undisputed title to the land once it is no longer needed. Many landowners do not understand the distinction between permanent easements and fee simple title. They assume the state obtains full fee through condemnation. For practical purposes, for their life, the consequences may be the same, but legally, as you well know, the difference is significant. The right of reversion continues until the easement terminates. If KDOT held fee simple title, our conveying deeds would pass the same title.

Further use of the ability to condemn in fee simple could be the implementation of advance acquisition as provided in K.S.A. 68-423a. In order to expedite a highway

project and eliminate costly delays, this statute permits the acquisition of a strip of land in advance of construction. If fee simple title is owned by KDOT, it could subsequently resell that land no longer needed following completion of the highway project.

Finally, it is significant that 45 states have already determined the wisdom of acquiring their highway rights of way in fee simple interest. They have this authority through eminent domain. Two of these states, Indiana and Wisconsin, were added to this list within the last few years. Our survey shows that only Missouri, South Carolina, South Dakota, West Virginia and Kansas have failed to join the other states.

This body, the Kansas Legislature, has also recognized this same wisdom when it extended this same authority to the cities of Kansas in 1988. We believe it is time to complete the job and grant that authority to KDOT. This may be done within city limits by passage of House Bill No. 2601.

The Secretary urges passage of this legislation. However, we also recommend reconsideration of some of its provisions.

We recommend that paragraph (1) of subsection (b) located on page one of the bill at line 39 be deleted. It deals with the required procedure upon the sale of land no longer needed for KDOT purposes. It requires notice and

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option to purchase be given to the original landowner at the existing appraised value or the original condemnation price whichever is less. This right extends to the landowner's successors in title. We believe this provision to be unwise for several reasons.

First, it is an unwise business practice. The true value of the land parcel may have increased manyfold. This could be due to the passage of time and inflation or by change in the land use due to the new highway location. The original landowner was paid a just price for the land when originally acquired by KDOT. He should not later reap a windfall gained by repurchasing at the old value and then immediately resell at the new current value. This would shortchange the taxpayer when attempting to recoup highway expenses.

Secondly, this paragraph makes the resale of land held in fee simple title subject to two procedures, depending upon whether it was acquired by purchase or by eminent domain. If the sale is made many years later, disposition may become confusing when KDOT acquired some land by purchase and adjoining land by condemnation.

Third, this paragraph is inconsistent with the authority K.S.A. 12-16,103 gives to the cities when they dispose of land owned in fee simple. The Special Committee expressed a desire to make eminent domain authority of KDOT

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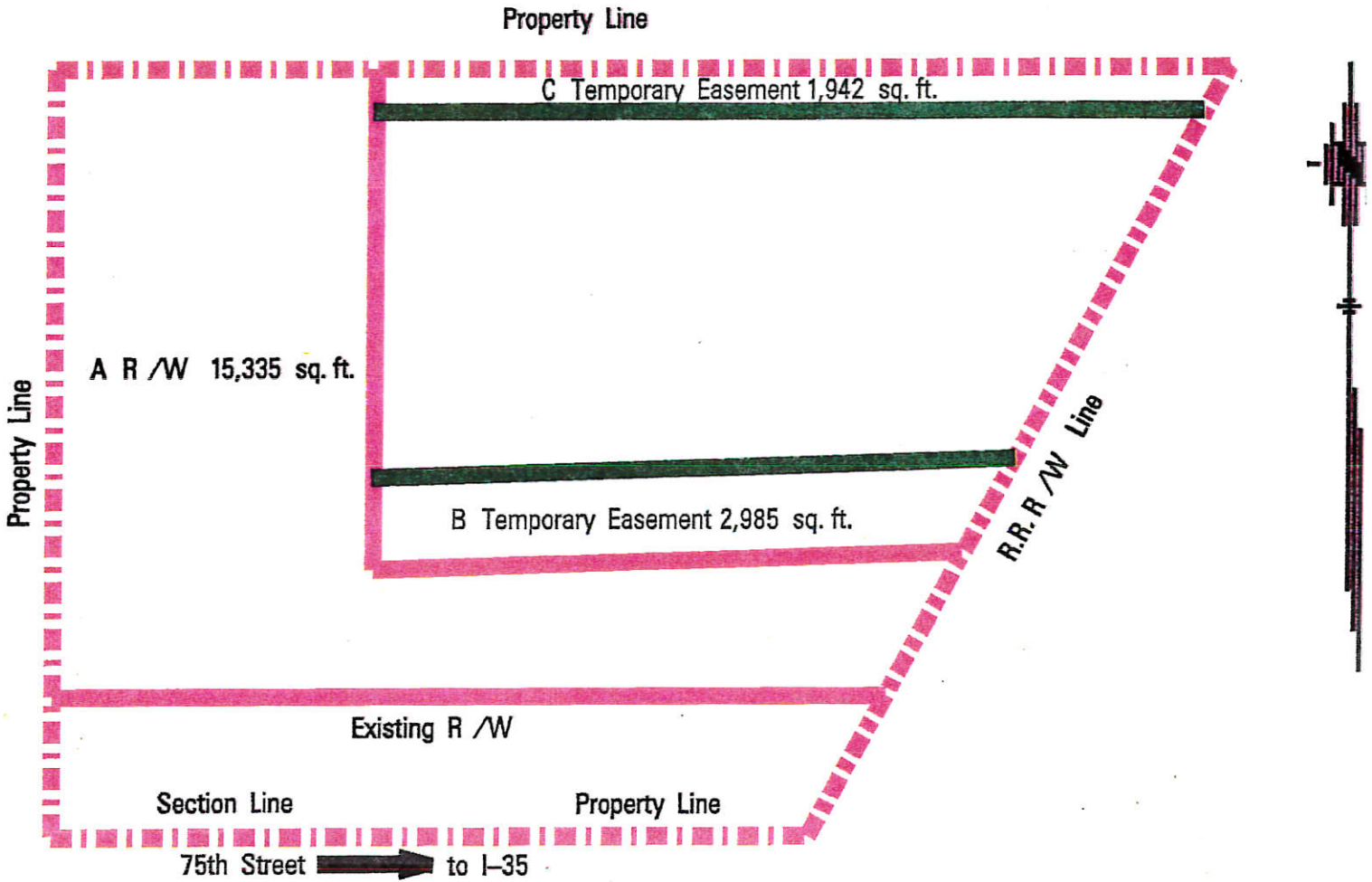
and the governing bodies of the cities the same within city boundaries. If this is to be done, then we suggest that the general language of paragraph (b) of K.S.A. 12-16,103 be substituted for paragraph (1) of subsection (b) of this bill.

As a final alternative, we suggest the committee consider the resale provisions of K.S.A. 68-423a (b). This is the statute I previously mentioned that provides for advance acquisition and subsequent resale of purchased land. It provides for resale at the current appraised value.

The other portion of this bill which we believe deserves reconsideration is paragraph (2) located on page two from line 13 through line 32. This paragraph deals with the release of easements. Since the purpose of new section 1 of this bill is to extend situations when the Secretary can condemn land in fee simple title, it would seem inappropriate to discuss release of easements. The procedure for the release of easements is already adequately established elsewhere in K.S.A. 68-413 as stated on page four of this bill at line 21.

At this time, Joe Krahn has examples to present which illustrate the need for this legislation.

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75th Street & I-35 Merriam, Kansas Johnson County

Before area: 34,395 sq.ft. with service station

Before value: \$250,000

Project requirements:

15,335 sq. ft. for R /W @ \$4.50/sq. ft.	\$69,000
4,927 sq. ft. Temporary Easement for construction	\$5,325
Signs	\$15,765
Damages to remainder – change	<u>\$119,675</u>
In highest & best use	\$209,765

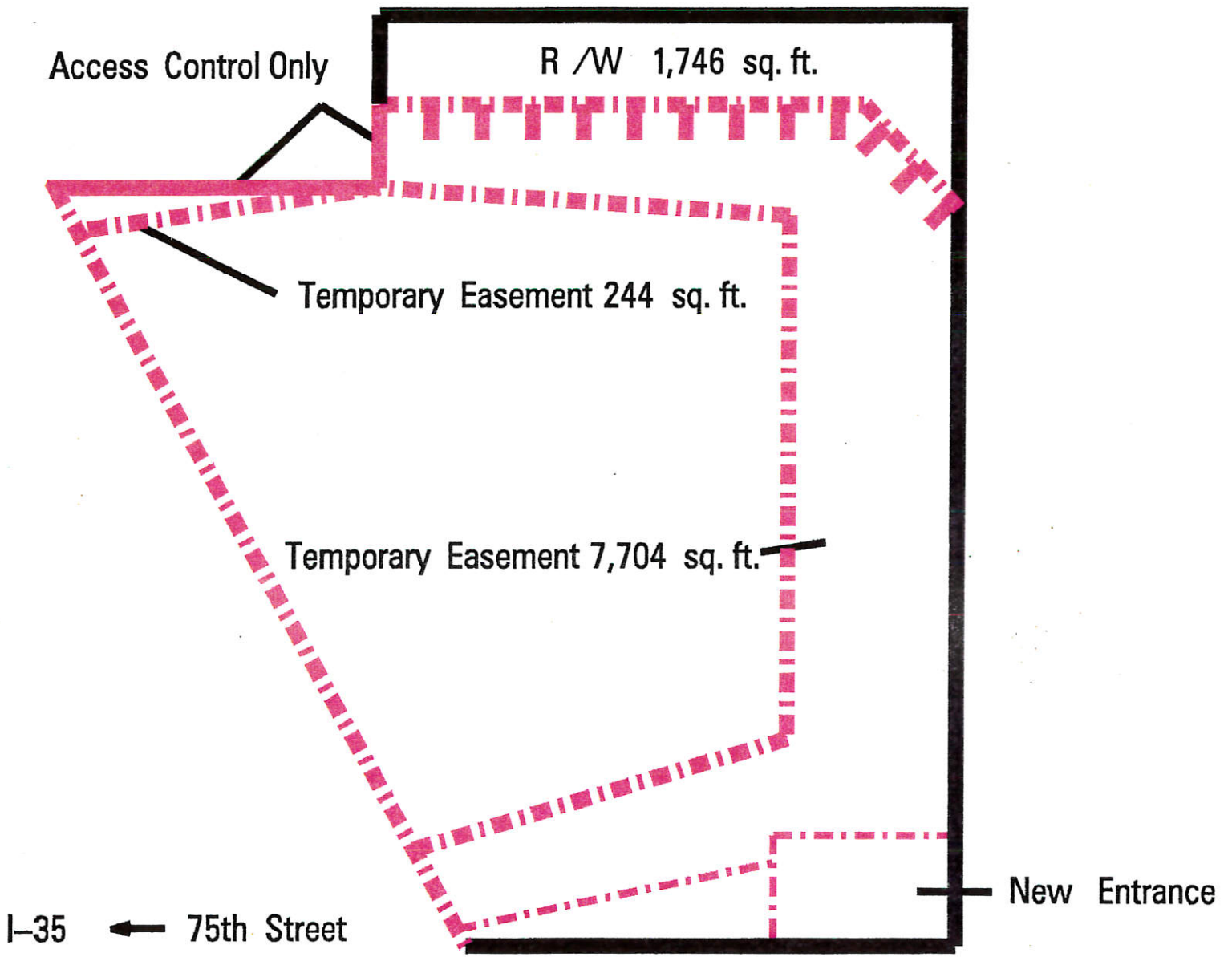
Offer to purchase entire property for \$250,000 was accepted.

Land & building have been used as a KDOT

Construction & Materials Office and will be for the

foreseeable future due to excellent location in proximity to I-35

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75th Street & I-35

Overland Park, Kansas Johnson County

Former service station rented to a pickup specialties parts store.

Before area: 22,518 sq. ft. with a 1,736 sq. ft. building and canopy

Before value: \$157,625

Project requirements:

1,746 sq. ft. of R /W @ \$4.00 sq. ft.	\$6,985
7,948 sq. ft. Temporary Construction Easement	\$3,180
Damages to remainder	\$104,835
	<u>\$115,000</u>

Offered to purchase entire property for \$157,625 – owners did not accept.

Difference was \$42,625

Remaining property sold to adjacent owner for \$95,000 the day after state's check for \$115,000 was delivered.

Adjacent owner recently sold 56,893 sq. ft. that included the remainder for \$512,000 or \$9.00 /sq. ft.

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Lenexa, Kansas Johnson County

Before Area: 821,106 sq ft (18.85 acres) with a rental house

Before value: \$967,082

Project requirements:

80,586 sq. ft. for R/W @ \$1.16 per sq. ft. : \$93,480

158,558 sq. ft. (3.64 acres) for Permanent Pipeline Easement \$165,535

205,168 sq. ft. (4.71 acres) Temporary Easement (pipeline relocation) \$61,205

OFFER \$320,220

Owner felt the remainder was damaged and provided information that a pending sale fell through due to the temporary easement. (2 years)

If condemned, there was a high probability that substantial damages would be paid.

Decision was made to offer to purchase entire property.

Negotiated price was \$995,976 (\$1.21 per sq. ft.)

Additional property was used as a borrow area with estimated savings to the state of \$250,000

The house was rented until area was needed for borrow.

KDOT will sell 17 acres (3.64 acres subject to pipeline easement on the outer perimeter adjacent to I-435).

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U.S. 54 (Kellogg) near West Street

Wichita, Kansas Sedgwick County

acquired by City – 87.5% state funds, 12.5% city funds.

Before area: 188,839 sq. ft. (4.3 acres)

with motel/restaurant and direct access to Kellogg

Project requirements:

2,749 sq. ft. of R /W @ \$3.50 per sq. ft.	\$9,265
254 sq. ft. Temporary Easement	\$225
Damage to remainder	<u>\$600,375</u>
Offer to property owners	\$610,225

Offer rejected and the city filed condemnation for area needed for project.

Court appointed appraisers award:

\$663,380 (included sign originally slated for relocation at city expense)

Landowners appealed court award

City appraisers (3) before value ranged from \$1,555,000 to \$1,900,000:

taking and damages ranged from \$600,000 to \$704,500

Landowners appraiser set the before value at \$2,500,000

with the taking and damages at \$1,880,000

City settled appeal for an additional \$536,620

i.e., total compensation of \$1,200,000.

After the acquisition 186,090 sq. ft. (4.27 acres) remained.

156,816 sq. ft. (3.6 acres) sold for \$1,475,000 (\$9.40 per sq. ft.) in June, 1988

Landowners retained the frontage property with the restaurant (0.67 acres)

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date set for such sale. In no case shall such real estate be sold at public auction for less than $\frac{2}{3}$ of its appraised value, except that, if no sale has been effected after an effort to sell at public auction under this section, the secretary of transportation may set aside the appraisal and order a new appraisal and readvertise the real estate for sale at public auction. If such new appraisal does not exceed \$1,000, the secretary may readvertise and sell the real estate to the highest bidder. Conveyances of such real estate shall be by deed executed by the secretary.

(c) The secretary of transportation shall keep a record of all such conveyances. All moneys derived from such sales shall be remitted to the state treasurer who shall deposit the entire amount thereof in the state treasury to the credit of the state highway fund.

History: L. 1963, ch. 333, § 1; L. 1975, ch. 427, § 108; L. 1983, ch. 274, § 5; July 1.

Research and Practice Aids:

States—85.

C.J.S. States §§ 104, 106.

68-423a. Advance acquisition of real property or rights for future construction on state highway system; disposal of property acquired; appraisal; sale; public auction, when; advertisements; new appraisal and readvertisement; conveyance; record; disposition of moneys. (a) It is hereby declared to be public policy of this state to provide for the acquisition of real property necessary for the construction, improvement, reconstruction, maintenance or drainage of the state highway system, in advance of actual construction, for the purpose of eliminating costly details in construction, reducing hardship to owners of such property, and eliminating economic waste occasioned by the improvement of such property immediately prior to its acquisition for highway uses. The legislature therefore finds and declares that purchase and condemnation of real property necessary for the construction, reconstruction, improvement, maintenance or drainage of the state highway system, reasonably in advance of programmed construction, is for a public use and purpose and for a public highway purpose.

(b) Whenever the secretary of transportation determines that any real estate so purchased should be disposed of by sale, the secretary shall have the real estate appraised by three disinterested persons. The secretary shall give the landowner from whom the real estate was acquired, or the landowner's successors in title, an opportunity to purchase the real estate at the appraised value. If the landowner does not elect within a reasonable time to purchase the real estate at the appraised value, the secretary, in the name of the state of Kansas, is authorized to sell the interest of the state in the real estate to the highest bidder at public auction. Such sale at auction shall be preceded by an advertisement of the sale in the Kansas register once each week for at least three consecutive weeks prior to the

12-16,103. Acquisition of fee title to realty; sale of realty; record. (a) The governing body of any city may acquire by condemnation, dedication, gift or purchase the fee interest in any real estate in which it could acquire a permanent easement.

(b) The governing body of any city may sell real estate acquired or held in fee simple when it is no longer needed for public purposes, including, but not limited to, real estate acquired for the construction of municipal water supply structures or reservoirs and land adjacent thereto, street, sanitary and storm sewer systems. A record of all sales authorized herein shall be maintained in the office of the city clerk.

History: L. 1984, ch. 60, § 1; L. 1986, ch. 77, § 1; L. 1988, ch. 77, § 1; July 1.

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THE CITY OF WICHITA



DEPARTMENT OF PUBLIC WORKS

ENGINEERING DIVISION
CITY HALL — SEVENTH FLOOR
455 NORTH MAIN STREET
WICHITA, KANSAS 67202
(316) 268-4501

January 18, 1990

The Honorable Michael O'Neal, Chairman
House Judiciary Committee
Room 313, Statehouse
Topeka, Kansas 66612

Re: House Bill No. 2601
By Special Committee on Transportation -
Proposal No. 55
Acquisition of fee title by
Secretary of Transportation within Cities

Dear Chairman O'Neal and Members of the House Judiciary Committee:

Your Committee has pending before it a request from the Secretary to expand his authority contained in K.S.A. 68-413. The expanded authority would enable the Secretary to condemn fee title when acquiring right-of-way and 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.

The City of Wichita, by prudent implementation of similar legislation (K.S.A. 1987 Supp. 12-16103) realizes the full benefits of property acquired for public projects, the full value of public monies expended for public projects and the associated economic benefits of redevelopment subsequent to the construction of public projects. Prior to the legislation, property was acquired through condemnation for public projects but only a limited title (specific use) was conveyed. Full fair market value for fee simple title was appraised and paid for property, but title of a lessor value was received.

The following example is presented for your consideration in explanation of the benefits derived by the public in implementation of KSA 12-16103:

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Attachment III

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The Days Inn Hotel located on the southwest corner of Kellogg (US-54) and Broadway in downtown Wichita will be required for the US-54 overpass project. The tract contains a land area of approximately 1.6 acres and is improved with a 176 room hotel (see map exhibit attached).

Right-of-way requirements for the highway construction project will necessitate the acquisition of .3 acre on US-54 and Broadway frontages of the assemblage. The estimated value of the total assemblage as it exists today is \$4,300,000. The land value of the right-of-way which will be required for the project is \$260,000. By virtue of the taking of the frontage parking and access control on US-54/Broadway, it is estimated that an additional 75% severance damage or \$3,030,000 is attributed to the remainder property in the acquisition of required right-of-way. Total damages to the tract are therefore estimated at \$3,290,000 which would be paid for the acquisition of the required .3 acre.

With an expenditure of \$3,290,000 for required right-of-way from an assemblage valued at \$4,300,000, it is obvious that the acquisition of the total assemblage should be considered. If the total assemblage were acquired, right-of-way needs would be met and the remainder property could be utilized as a public facility, i.e.: Halfway house, elderly residential complex, etc. or sold to recoup part of the public investment in the property. At a minimum, the remainder property after right-of-way needs are met will have a land value in excess of \$1,100,000.

Example Summary:

Estimated Value of the whole \$4,300,000

Acquisition Damages (partial taking)

Estimated Value of Right-of-Way	\$ 260,000
Estimated Value of Severance Damages	<u>\$3,030,000</u>

Total Damages	\$3,290,000
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<u>Acquisition Damages (total taking)</u>	\$4,300,000
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<u>Estimated Value of Remainder For Alternate Public Use</u>	\$4,040,000
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<u>Estimated Value of Remainder (land value only)</u>	\$1,100,000
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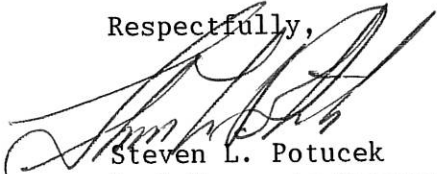
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In the example above, the landowner receives full market value for the property acquired. The condemning authority receives property which is required for public right-of-way plus an asset which can be utilized for an alternate public use or a marketable asset which can be sold to recoup some of the public investment in the originally required right-of-way.

In summary, the City of Wichita strongly supports your positive consideration of the Secretary's request to expand authority now granted in K.S.A. 68-413 as the expanded authority represents an opportunity for the State to better manage the acquisition, use and disposition of public lands. The provisions of the request do not encroach at all in the rights of property owners who remain entitled to just compensation for the State's acquisition of interests in their real property.

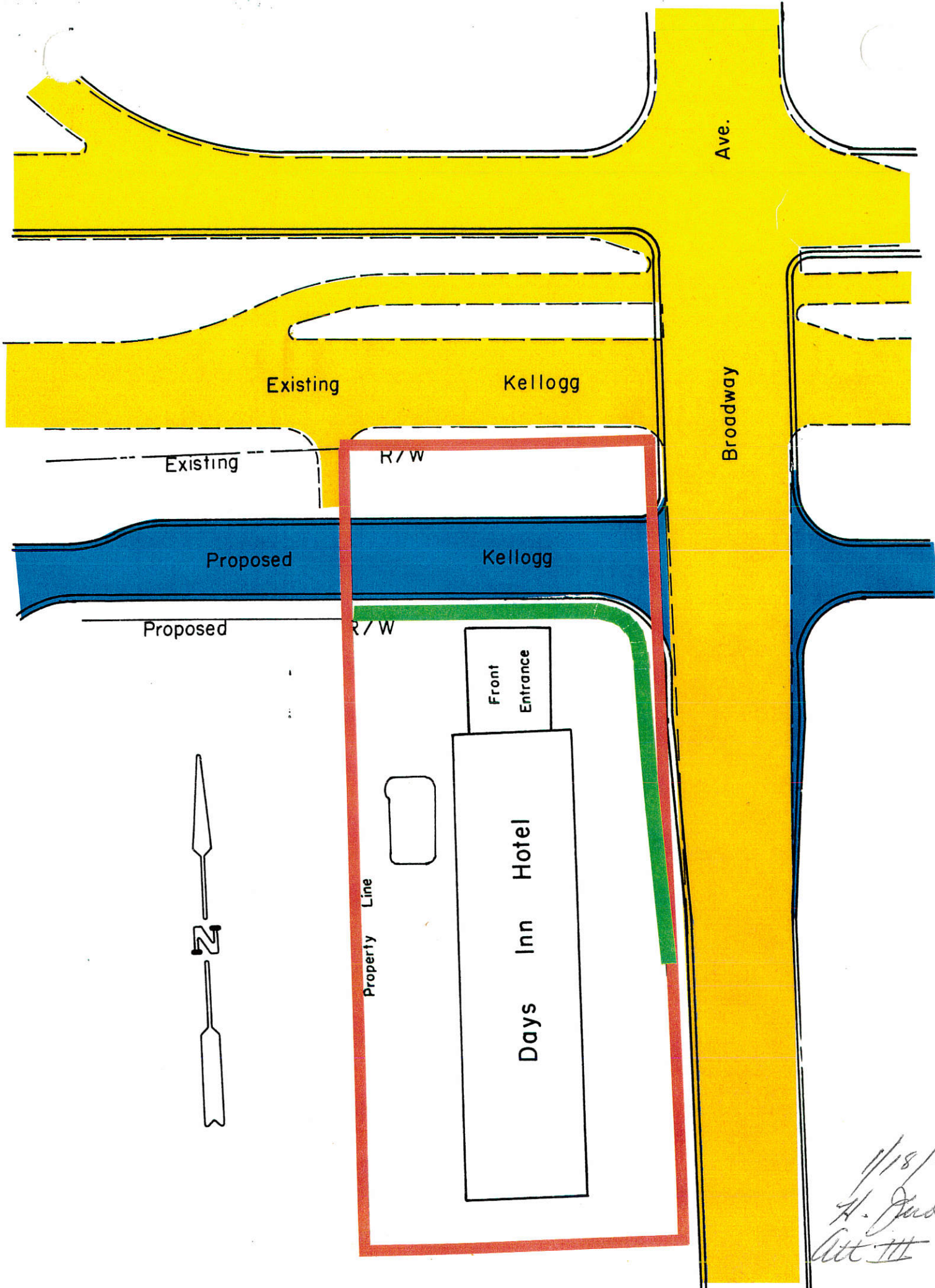
Respectfully,



Steven L. Potucek
Real Property Manager

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