Approved April 25, 1990
Date

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT.

The meeting was called to order by REPRESENTATIVE ROBERT D. MILLER at
Chairperson

1:40 a.m./p.m. on MARCH 20, 1990 in room 521-S of the Capitol.

All members were present except:

Representative Samuelson, excused

Committee staff present:

Mike Heim, Legislative Research Dept.
Theresa Kiernan, Revisor of Statutes
Connie Smith, Committee Secretary

Conferees appearing before the committee:

Price Banks, American Planning Association
Michael P. Howe, City Attorney, Lenexa, Kansas
M. S. Mitchell, Homebuilders Assn.
Jim Kaup, League of Kansas Municipalities
Terry Humphrey, Kansas Manufactured Housing Association
Barry Hokanson, Planning Director of Johnson Co.
David Pope, Chief Engineer-Director, Division of Water Resources, Kansas State Board of Agriculture
Doug Martin, Attorney for Shawnee Co. & the Board of Co. Commissioners
Marvin S. Krout, Director of Planning, Wichita

Chairman Miller called for hearings on HB 3058, Act concerning planning and zoning.

Chairman Miller announced that the testimony would be heard and the Committee could ask questions if time allows. Chairman Miller stated that if the bill isn't worked today; it will be worked tomorrow. The Chairman stated that when the testimony is being presented it will pertain to the balloon version of HB 3058. (Attachment I)

Chairman Miller recognized Price Banks, American Planning Association, proponent, who submitted written testimony. Mr. Banks included a section by section comparative summary of the provisions of the legislation, and the existing statute. (Attachment II)

Mr. Banks submitted a letter in support of HB 3058 from C. Bickley Foster, Planning Consultant, of Foster and Associates, who was an intern to the chairman of the Local Government Committee during the 1984 session. (Attachment III)

Chairman Miller recognized Michael P. Howe, City Attorney, Lenexa, Kansas who testified as a proponent to HB 3058 and submitted written testimony. (Attachment IV) Mr. Howe expressed concern on pages 14 and 15 of Sub-Section F which states that a rezoning request must be acted on within ninety days of the submission of a complete application or it shall be deemed approved. Mr. Howe requested the Committee to delete the entire section.

Chairman Miller recognized M. S. Mitchell, Homebuilders Assn., who testified as a proponent on HB 3058 and submitted written testimony. (Attachment V)

Chairman Miller recognized Jim Kaup, League of Kansas Municipalities, who testified as a proponent on HB 3058. Mr. Kaup stated the League believes there is a need to modernize the statutory law on planning and zoning. (Attachment VI)

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT,

room 521-S, Statehouse, at 1:40 a/m./p.m. on MARCH 20, 1990

Mr. Banks submitted written testimony in support of HB 3058 for Jerry Demo, Director of Planning and Zoning for Butler County, as he was not able to attend the meeting. (Attachment VII)

Chairman Miller recognized Terry Humphrey, Kansas Manufactured Housing Association, who testified as a proponent on HB 3058 and submitted written testimony. Ms Humphrey stated that KMHA feels that HB 3058 is important because it consolidates and simplifies the statutes dealing with planning, zoning and subdivisions. (Attachment VIII)

Chairman Miller recognized Barry Hokanson, Planning Director of Johnson Co., who testified as a proponent on HB 3058 and stated they supported the amendments on the balloon and submitted written testimony. (Attachment IX)

Chairman Miller recognized David Pope, Chief Engineer-Director, Division of Water Resources, Kansas State Board of Agriculture, testified that he was not in opposition to HB 3058 in general, but in connection with sections 12 and 22 of the bill. Mr. Pope stated these two sections would alter the role and authority that the Chief Engineer currently has in connection with certain projects in the floodplain. (Attachment X)

Chairman Miller recognized Doug Martin, Attorney for Shawnee County and the Board of County Commissioners, appeared as an opponent of HB 3058 and submitted written testimony. Mr. Martin stated he was representing the Board of County Commissioners from Shawnee County and stated a majority of the board members are in opposition to the bill. Commissioner Velma Paris has asked him to let the Committee know she does favor the bill. (Attachment XI)

Chairman Miller recognized Marvin S. Krout, Director of Planning, Wichita, testified as an opponent representing himself and submitted written testimony. (Attachment XII) Mr. Krout stated his remarks are being shared with, but have not been formally endorsed by, elected officials or the appointed planning commission in Wichita and Sedgwick County.

The Chairman closed the hearing on HB 3058.

Chairman Miller stated that he was going to form a subcommittee to look at HB 3058. The subcomittee is composed of Representatives Miller, Brown, Johnson, and Patrick. The subcommittee will meet March 21, 1990 at 8:00 a.m. in room 514-S.

Meeting adjourned at 3:30 p.m.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

DATE March 20, 1990

NAME	ADDRESS	REPRESENTING
Jerry Demo	El Dorado, Ks	Kan Assoc of Planning + Zoning Off.
JANET STUBBS	TOPEKA	HBA of KS.
Ronald A. Williamson	Overland Park	Kansas Chapter American Plan. Assoc.
PRICE BANKS	LAWRENCE	KANSAS CHAPTER AMERICAN PLANNING ASSOCIATION
BARRY HOKANSON	JOHNSON COUNTY COURTHOUSE	JOHNSON COUNTY
Don Kostecki	Topeka, KS	Div. of Water Resources, KSBA
George Austin	Topeka, Ks	Div. of Water Resources, KSBA
ART BROWN	K.C. MO	KS. Lumber dealers
KAREN FRANCE	Topeka	Ks. Assoc. of REALTORS
DOUG MARTIN	TOPEKA	SHAWNEE COUNTY
MICHAEL HOWE	LENEXA	City of LENEXA
Vern Jarboe	Topeka	City of Topeka
George Barbee	Topeka	Ks. Consulting Engrs
BOB BRADLEY	TOPEKA	KS Assoc of Counties
Willie Martin	Wichita	Sedgwick Co.
Cathy Holdeman	Wichita	City of Wichita
M.S. MITCHELL	1215 Forest Wichita ~~HBAK~~	HBAK.
Don Seifert	Olathe	City of Olathe
Steven Hoyt	K.C.K.	TURNER U.S.D. # 202
Jim Kaup	Topeka	League of Ks Municipalities

LG
3-20-90
Attach. I

Session of 1990

HOUSE BILL No. 3058

By Committee on Local Government

2-21

AN ACT concerning planning and zoning; amending K.S.A. 24-126 and repealing the existing section; also repealing K.S.A. ~~3-701 to 3-713, inclusive,~~ 12-701 to 12-704, inclusive, 12-704a, 12-705, 12-705a, 12-705b, 12-705c, 12-706, 12-706a, 12-707 to 12-715, inclusive, 12-715a, ~~12-717~~ to 12-735, inclusive, 19-2901, 19-2902, 19-2902a, 19-2902b, 19-2902c, 19-2903, 19-2904, 19-2905, 19-2905a, 19-2906 to 19-2916, inclusive, 19-2916a, 19-2916b, 19-2916c, 19-2916d, 19-2918, 19-2918a, 19-2918b, 19-2918c, 19-2919, 19-2920, 19-2921, 19-2924, 19-2925, 19-2925a, 19-2926, 19-2926a, 19-2926b, 19-2927 to 19-2934, inclusive, 19-2934a, 19-2935 to 19-2938, inclusive, 19-2950 to ~~19-2966~~, inclusive, and K.S.A. 1989 Supp. 12-715b, 12-715c, 12-715d~~, 12-716~~ and 12-736.

12-722

19-2955

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

New Section 1. When used in this act:

(a) "Governing body" means the governing body of a city in the case of cities and the board of county commissioners in the case of counties;

(b) "planning commission" means a city, county, regional or metropolitan planning commission;

(c) "zoning regulations" means the lawfully adopted zoning ordinances of a city and the lawfully adopted zoning resolutions of a county.

(d) "Land devoted to agricultural use" means land which is devoted to the production of plants, animals or horticultural products, including but not limited to: Forages; grains and feed crops; dairy animals and dairy products; poultry and poultry products; beef cattle, sheep, swine and horses; bees and apiary products; trees and forest products; fruits, nuts and berries; vegetables; or nursery, floral, ornamental and greenhouse products. Land devoted to agricultural use shall not include those lands which are used for recreational purposes, suburban residential acreages, rural home sites or farm home sites and yard plots whose primary function is for residential or recreational purposes even though such properties may produce or maintain some of those plants or animals listed in the foregoing

definition;
2 (e) "flood plain" means land adjacent to a watercourse subject to
3 inundation from a flood having a chance occurrence in any one year
4 of 1%.
5 New Sec. 2. (a) Prior to enacting any zoning regulations, the
6 governing body of any city, by adoption of an ordinance, shall create
7 a planning commission for such city and the board of county com-
8 missioners of any county, by adoption of a resolution, shall create
9 a planning commission for the county. Any such planning commission
10 shall be composed of not less than five nor more than 20 members.
11 The number of members of a planning commission may be changed
12 by ordinance or resolution. If a city planning commission plans, zones
13 or administers subdivision regulations outside the city limits, two
14 members of such commission shall reside outside of but within three
15 miles of the corporate limits of the city, but the remaining members
16 shall be residents of the city. A majority of the members of a county
17 planning commission shall reside outside the corporate limits of any
18 incorporated city in the county which has adopted zoning regulations.
19 A county/or regional planning commission may serve as the planning
20 commission for a city.
21 (b) The members of the commission first appointed shall serve
22 respectively for terms of one year, two years, and three years, di-
23 vided equally or as nearly equally as possible among these terms.
24 Thereafter members shall be appointed for terms of three/years each.
25 Vacancies shall be filled by appointment for the unexpired terms
26 only. Members of the commission shall serve without compensation
27 for their service. The governing body of the city and the board of
28 county commissioners may adopt rules and regulations providing for
29 removal of members of the planning commission.
30 (c) Any regional or metropolitan planning commission in existence
31 on the effective date of this act shall continue in existence, but shall
32 be governed by the provisions of this act.
33 New Sec. 3. The members of the planning commission shall
34 meet at such time and place as they may fix in their bylaws. They
35 shall elect one of their number as chairperson and one as vice-
36 chairperson who shall serve one year and until their successors have
37 been elected. A secretary also shall be elected who may or may not
38 be a member of the commission. Special meetings may be called at
39 any time by the chairperson or in the chairperson's absence by the
40 vice-chairperson. The commission shall adopt bylaws for the trans-
action of business and hearing procedures. A hearing examiner may
be appointed to hear and decide administrative matters of the plan
43 ning commission. The authority of a hearing examiner shall be de

metropolitan

or four

1-2

fined in the zoning regulations. A majority of the commission shall constitute a quorum. A record of all proceedings of the planning commission shall be kept. The commission may employ such persons deemed necessary and may contract for such services as it requires. The commission, from time to time, may establish subcommittees, advisory committees or technical committees to advise or assist in the activities of the commission.

New Sec. 4. [On or before the first Monday in July of each year the planning commission shall prepare and submit to the governing body its budget of expenditures for the ensuing budget year, itemizing the expenses and amounts and the purposes. The commission also may submit an annual work program to aid in budget preparation.] The governing body shall [consider such] budget and make such allowances to the planning commission as it deems proper, including funds for the employment of such employees or consultants as the governing body may authorize and provide and shall add the same to the general budget. Prior to the time that moneys are available under the budget, the governing body may appropriate moneys for such purposes from the general fund. The governing body may enter into such contracts as it deems necessary for the purposes of this act and may receive and expend funds and moneys from the state or federal government or from any other source for such purpose.

[approve a planning commission

New Sec. 5. [(a)] A city planning commission is hereby authorized to make or cause to be made a comprehensive plan for the development of such city and any unincorporated territory lying outside of the city but within three miles thereof but in no case not more than one-half the distance to another city. The city shall notify the board of county commissioners in writing of its intent to extend the planning area into the county. A county planning commission is authorized to make or cause to be made a comprehensive plan for the coordinated development of the county, including references to planning for cities as deemed appropriate. The provisions of this subsection may be varied through interlocal agreements. [

[Such plan shall include, but not be limited to, provisions regarding land use, transportation, public facilities and natural features.

[(b) In the preparation of such plan, the planning commission shall make or cause to be made comprehensive surveys and studies of past and present conditions and trends relating to land use, population and building intensity, housing, public facilities, transportation and transportation facilities, economic conditions and natural resources and may include any other element deemed necessary to the comprehensive plan. Such proposed plan, in addition to a written presentation, may include maps, plats, charts and other descriptive matter, shall show the planning commission's recommendations for]

[the development or redevelopment of the planning area, including: (1) The general location, extent and relationship of the use of land for agriculture, residence, business, industry, recreation, education, public buildings and other community facilities, major utility facilities both public and private and any other use deemed necessary; (2) population and building intensity standards and restrictions and the application of the same; (3) public facilities including transportation facilities of all types whether publicly or privately owned which relate to the transportation of persons or goods; (4) public improvement programming based upon a determination of relative priority and major sources and expenditure of public revenue relating to long-range facilities and capital improvements; (5) utilization and conservation of natural resources including agricultural land; and (6) any other element deemed necessary to the proper development or redevelopment of the planning area including plans which coordinate and interrelate with other planning organizations.]

(c) The planning commission may approve the recommended comprehensive plan as a whole by a single resolution or by successive resolutions may approve parts of the plan. Such resolution shall identify specifically any written presentations, maps, plats, charts or other materials made a part of such plan. Before the approval of any such plan or part thereof, the planning commission shall hold a public hearing thereon, notice of which shall be published at least once in the official city newspaper in the case of a city or in the official county newspaper in the case of a county. Such notice shall be published at least 15 days prior to the date of the hearing. Upon the approval of any such plan or part thereof by adoption of the appropriate resolution by the planning commission, a certified copy of the plan or part thereof shall be submitted to the governing body and to all other taxing subdivisions in the planning area which request a copy of such plan.

(d) The governing body, within 60 days after the receipt thereof, shall consider such proposed plan or part thereof and submit a statement containing its recommendations regarding the same to the planning commission. The planning commission shall [consider] the recommendations of the governing body and thereafter may adopt such proposed plan or part thereof as the official plan of the respective city or county. All reports and documents forming the plan or part thereof as adopted shall bear the signature of the chairperson and secretary of the planning commission and an attested copy of the same shall be sent to the respective governing body and to all other taxing subdivisions in the planning area which request a copy of such plan. Such plan or part thereof shall constitute the basis o[f]

[reconsider

guide for public action to insure a coordinated and harmonious development or redevelopment which will best promote the health, safety, morals, order, convenience, prosperity and general welfare as well as wise and efficient expenditure of public funds.

(e) At least once each year, the planning commission shall review or reconsider the plan or any part thereof and may propose amendments, extensions or additions to the same. The procedure for the adoption of any such amendment, extension or addition to any plan or part thereof shall be the same as that required for the adoption of the original plan or part thereof. The planning commission shall make a report to the governing body regarding the plan and any amendments thereto on or before the date specified in the commission's bylaws.

(f) If any city or county has adopted any zoning or subdivision regulations prior to the effective date of this act, such city or county shall adopt a comprehensive plan for the development of the city or county. If such plan is not adopted within three years of the effective date of this act, then the zoning and subdivision regulations adopted on or before that date shall become void.

New Sec. 6. Whenever the planning commission has adopted and certified the comprehensive plan for one or more major sections or functional subdivisions thereof, no public improvement, public facility or public utility of a type embraced within the recommendations of the comprehensive plan or portion thereof shall be constructed without first being submitted to and being approved by the planning commission as being in conformity with the plan. If the planning commission does not make a report within 60 days, the project shall be deemed to have been approved by the planning commission. If the planning commission finds that any such proposed public improvement, facility or utility does not conform to the plan, the commission shall submit, in writing to the governing body, the manner in which such proposed improvement, facility or utility does not conform. The governing body may override the plan and the report of the planning commission, and the plan for the area concerned shall be deemed to have been amended.

Whenever the planning commission has reviewed a capital improvement program and found that a specific public improvement, public facility or public utility of a type embraced within the recommendations of the comprehensive plan or portion thereof are in conformity with such plan, no further approval by the planning commission is necessary under this section.

[Following the adoption of a comprehensive plan]

New Sec. 7. The governing body of any city, by adoption of an ordinance, and the board of county commissioners of any county,

by adoption of a resolution, may provide for the adoption or amendment of zoning regulations in the manner provided by this act. Such regulations may restrict and regulate the height, number of stories and size of buildings; the percentage of lots that may be occupied; the size of yards, courts and other open spaces; the density of population; the location, use and appearance of buildings, structures and land for residential, commercial, industrial and other purposes; the conservation of natural resources, including agricultural land; and the use of land located in areas designated as flood plains and other uses, including the distance of any buildings and structures from a street or highway. Such regulations shall define the boundaries of zoning districts by description contained therein or by setting out such boundaries upon a map or maps incorporated and published as part of such regulations or by providing for the incorporation by reference in such regulations of an official map or maps upon which such boundaries shall be fixed. For a county, such map or maps shall be marked "official copy of zoning district map incorporated into zoning regulations by adoption of a resolution of the board of county commissioners on the ________ day of ________, 19___" and filed in the office of the county clerk or such other public office as may be designated by the board of county commissioners. For a city, such map or maps shall be marked "official copy of zoning district map incorporated into zoning regulations by adoption of an ordinance by the governing body of the city on the ___ day of ________, 19________" and filed in the office of the city clerk or such other public office as may be designated by the governing body. Such regulations and accompanying map or maps shall be public records.

New Sec. 8. (a) Following adoption of a comprehensive plan, the planning commission may adopt and amend regulations governing the subdivision of land within the zoning jurisdiction. A city planning commission shall apply subdivision regulations to all land located within the city and may apply such regulations to land outside the city for which it has adopted zoning regulations. A county planning commission may establish subdivision regulations for all or parts of the county. Subdivision regulations may include provisions for the: (1) Efficient and orderly location of streets; (2) reduction of vehicular congestion; (3) reservation or dedication of land for open spaces; (4) off-site and on-site public and private utilities; (4) recreational facilities; (5) flood protection; (6) building lines; (7) compatibility of design; and (8) any other services, facilities and improvements deemed appropriate. Such regulations may provide that in lieu of the completion of any work or improvements prior to the final approval of

[Handwritten/typed amendments in margin:]
for
unincorporated areas of the
improvements; (5)
which may include, but are not limited to, the dedication of land area for park purposes; (6)
(8)
(7)
(9)
Such regulations may provide for administrative changes to elevations designated on a plat.

the plat, the governing body may accept a corporate surety bond, cashier's check, escrow account or other like security in an amount to be fixed by the governing body and conditioned upon the actual completion of such work or improvements within a specified period, in accordance with such regulations, and the governing body may enforce such bond by all equitable remedies.

[, letter of credit]

(b) Before adopting or amending any subdivision regulations, the planning commission shall call and hold a hearing on such regulations or amendments thereto. Notice of such hearing shall be published at least once in [the official city newspaper] in the case of a city or in [the official county newspaper] in the case of a county. Such notice shall be published at least 15 days prior to the hearing. Such notice shall fix the time and place for such hearing and shall describe such proposal in general terms. The hearing may be adjourned from time to time and at the conclusion of the same, the planning commission shall prepare its recommendations and by an affirmative vote of a majority of the entire membership of the commission adopt the same in the form of proposed subdivision regulations and shall submit the same, together with the written summary of the hearing thereon, to the governing body. The governing body either may (1) approve such recommendations [by ordinance] in a city or resolution in a county; (2) override the planning commission's recommendations by a 2/3 majority vote; or (3) may return the same to the planning commission for further consideration, together with a statement specifying the basis for its failure to approve or disapproval. If the governing body returns the planning commission's recommendations, the planning commission, after considering the same, may resubmit its original recommendations giving the reasons therefor or submit new and amended recommendations. Upon the receipt of such recommendations, the governing body may adopt or may revise or amend and adopt such recommendations by the respective ordinance or resolution, or it need take no further action thereon. If the planning commission fails to deliver its recommendations to the governing body following [its] next regular meeting [after receipt of the governing body's report], the governing body shall consider such course of inaction on the part of the planning commission as a resubmission of the original recommendations and proceed accordingly. The proposed subdivision regulations and any amendments thereto shall become effective upon publication of the respective adopting ordinance or resolution.

[a newspaper of wide and general circulation in the city]

[a newspaper of wide and general circulation in the county]

[the planning commissions]

(c) Compliance with subdivision regulations may be required as the condition of an issuance of a building or zoning permit when so specified in the subdivision regulations.

(d) In conjunction with zoning and subdivision regulations, the

governing body of any city may adopt and enforce building codes outside the city limits.

(e) The governing body of any city or cities and the board of county commissioners of any county or counties may establish a joint city-county committee for subdivision regulation. Such joint committee shall have the same powers as a city or county planning commission under this section.

(f) The provisions of this section shall not apply to any city and county which are jointly cooperating in the exercise of planning under K.S.A. 12-716 to 12-720, inclusive, and amendments thereto.

New Sec. 9. The owner or owners of any land located within an area governed by regulations subdividing the same into lots and blocks or tracts or parcels, for the purpose of laying out any subdivisions, suburban lots, building lots, tracts or parcels or any owner of any land establishing any street, alley, park or other property intended for public use or for the use of purchasers or owners of lots, tracts or parcels of land fronting thereon or adjacent thereto, shall have a plat drawn which accurately describes the subdivision, lots, tracts or parcels of land giving the location and dimensions thereof or the location and dimensions of all streets, alleys, parks or other properties intended to be dedicated to public use or for the use of purchasers or owners of lots, tracts or parcels of land fronting thereon or adjacent thereto. All plats shall be verified by the owner or owners thereof. All such plats shall be submitted to the planning commission or to the joint committee for subdivision regulation if such has been formed. The planning commission or the joint committee shall determine if the plat conforms to the provisions of the subdivision regulations. If such determination is not made within 60 days after the first meeting of such commission or committee following the date of the submission of the plat to the secretary thereof, such plat shall be deemed to have been approved and a certificate shall be issued by the secretary of the planning commission or joint committee upon demand. If the planning commission or joint committee finds that the plat does not conform to the requirements of the subdivision regulations, it shall notify the owner or owners of such fact. If the plat conforms to the requirements of such regulations, there shall be endorsed thereon the fact that it has been submitted to and approved by the [city] planning commission or joint committee. The governing body shall accept or refuse the dedication of land for public purposes within 30 days after the first meeting of the governing body following the date of the submission of the plat to the clerk thereof. The governing body may defer action for an additional 30 days for the purpose of allowing for modifications to comply with the requirements established by the governing body. No additional filing fees shall be assessed during that period . If the governing body defers or refuses such dedication, it shall advise the

commission or committee of the reasons therefor. The [planning commission or joint committee] may establish a scale of reasonable fees to be paid to the secretary of the planning commission or joint committee by the applicant for approval for each plat filed with the planning commission or joint committee. No building permit shall be issued for the construction of any structure upon any lot, tract or parcel of land located within the area governed by the subdivision regulations that has been subdivided, resubdivided or replatted after the date of the adoption of such regulations by the governing body or [governing body and board of county commissioners] but which has not been approved in the manner provided by this act. Any regulations adopted by a governing body with reference to subdividing lots shall provide for the issuance of building permits on lots divided into not more than two tracts without having to replat the lot, provided that the resulting tracts shall not again be divided without replatting. Such regulations shall provide that lots zoned for industrial purposes may be divided into two or more tracts without replatting such lot. Such regulations shall contain a procedure for issuance of building permits on divided lots which shall take into account the need for adequate street rights-of-way, easements, improvement of public facilities, and zoning regulations if in existence. The regulations shall provide for a procedure which specifies a time limit within which action shall be taken, and shall further provide, where applicable, for the final decision on the issuance of such building permit to be made by the governing body, except as may be provided by law. The register of deeds shall not file any plat until such plat shall bear the endorsement hereinbefore provided and the land dedicated to public purposes has been accepted by the governing body.

[governing body

[governing bodies

New Sec. 10. The zoning regulations for a county shall define the area of zoning jurisdiction as all or any portion of the unincorporated area. The zoning regulations for a city shall define the zoning jurisdiction as including the area within the city limits and may also include land located outside the city which is not currently subject to county zoning regulations and is within three miles of the city limits, but in no case shall it include land which is located more than one-half the distance to another city. The governing body of the city shall notify the board of county commissioners in writing of its intention at least 60 days before adopting zoning regulations affecting such an area outside the city limits. Nothing in this act shall be construed as authorizing any city to adopt zoning regulations applying to or affecting any land devoted to agricultural use [as defined by K.S.A. 12-519, and amendments thereto].

I-10

Any flood plain zone or district shall include the flood plain area within the incorporated area of the city and may include any extraterritorial jurisdiction lying outside, but within three miles, of the nearest point on the contiguous city limits when such jurisdiction has not otherwise been designated a flood plain zone or district by any other governmental unit or subdivision.

New Sec. 11. (a) The governing body may establish floodplain zones and districts and restrict the use of land therein and may restrict the application thereof to lands, adjacent to watercourses, subject to floods of a lesser magnitude than that having a chance occurrence in any one year of 1%. Nothing in this act or any floodplain zoning regulation adopted hereunder shall be construed as affecting the eligibility of any existing structure located within such area for flood insurance under the national flood insurance act of 1968.

(b) The governing body may adopt zoning regulations which: [may include, but not be limited to]

(1) Provide for planned unit development;

(2) permit the transfer of development rights;

(3) preserve structures and districts listed on the state or national historic record;

(4) control the aesthetics of redevelopment or new development;

(5) provide for the issuance of special use or conditional use permits; [and]

(6) provide for the granting of variances or exceptions to subdivision regulations.

New Sec. 12. (a) All resolutions, ordinances and regulations relating to floodplains shall be submitted to the chief engineer, division of water resources, Kansas state board of agriculture, for review prior to adoption, and all proposed changes or variations from such approved resolutions, ordinances and regulations shall be reviewed by such chief engineer prior to adoption.

(b) The governing body shall submit to the chief engineer of the division of water resources any ordinance, resolution, regulation or plan that proposes to create or to effect any change or variation in a floodplain zone or district, or that proposes to regulate or restrict the location and use of structures, encroachments, and uses of land within such an area. Each submission hereunder to the chief engineer shall be accompanied by complete maps, plans, profiles, specifications, textual matter, and such other data and information as the chief engineer may require.

New Sec. 13. (a) Before any city or county establishes any zone or district or regulates or restricts the use of buildings or land therein, the governing body shall require the planning commission

1 to recommend the nature and number of zones or districts which it
2 deems necessary and the boundaries of the same and appropriate
3 regulations or restrictions to be enforced therein. All such regulations
4 shall be uniform for each class or kind of building or land uses
5 throughout each district, but the regulations in one district may differ
6 from those in other districts and special uses may be designated
7 within each district with conditions attached. Such regulations may
8 include, but not be limited to, provisions for transfer of development
9 rights, natural resources and historical preservation purposes, special
use permits and gradual elimination of nonconforming uses. Such
11 regulations shall establish the time or event at which zoning rights
12 vest.
13 (b) In the preparation of such recommendations, the planning
14 commission shall make or cause to be made surveys and studies of
15 past and present uses of land and shall have adopted a [land use plan
16 or a land use element of a] comprehensive plan on which such rec-
17 ommendations shall be based.
18 (c) Upon the development of proposed zoning regulations, the
19 planning commission shall hold a public hearing thereon. Notice of
20 such public hearing shall be published in the official city newspaper
21 for proposed city regulations and in the official county newspaper
22 for proposed county regulations. Such notice shall be published at
23 least once in [the respective official newspaper] at least 15 days prior
24 to the date of the hearing. Such notice shall fix the time and place
25 for such hearing and shall describe such proposal in general terms.
26 The hearing may be adjourned from time to time and at the con-
clusion of the same, the planning commission shall prepare its rec-
28 ommendations and by an affirmative vote of a majority of the entire
29 membership of the commission adopt the same in the form of pro-
30 posed zoning regulations and shall submit the same, together with
31 the written summary of the hearing thereon, to the governing body.
32 The governing body either may (1) approve such recommendations
33 by the adoption of the same by ordinance in a city or resolution in
34 a county, (2) override the planning commission's recommendations
35 by a ⅔ majority vote, or (3) may return the same to the planning
36 commission for further consideration, together with a statement spec-
37 ifying the basis for its failure to approve or disapprove. If the gov-
38 erning body returns the planning commission's recommendations,
39 the planning commission, after considering the same, may resubmit
40 its original recommendations giving the reasons therefor or submit
new and amended recommendations. Upon the receipt of such rec-
42 ommendations, the governing body may adopt or may revise or
43 amend and adopt such recommendations by the respective ordinance

[a newspaper of wide and general circulation in the city in the case of a city or in a newspaper of wide and general circulation in the county in the case of a county]

or resolution, or it need take no further action thereon. If the planning commission fails to deliver its recommendations to the governing body following the [next regular meeting] [of the planning commission], the governing body shall consider such course of inaction on the part of the planning commission as a resubmission of the original recommendations and proceed accordingly. The proposed zoning regulations and any amendments thereto shall become effective upon publication of the respective adopting ordinance or resolution.

[planning commissions

[after receipt of the governing body's report

New Sec. 14. (a) The governing body, from time to time, may supplement, change or generally revise the boundaries or regulations contained in zoning regulations by amendment. A proposal for such amendment may be initiated by the governing body, the planning commission or upon application of the owner of property affected. Any such amendment, if in accordance with the land use plan or the land use element of a comprehensive plan, shall be presumed to be reasonable. The governing body shall establish in its zoning regulations the [criteria for] approving or disapproving a rezoning request. The governing body may establish reasonable fees to be paid in advance by the owner of any property at the time of making application for a zoning amendment.

[matters to be considered when

(b) All such proposed amendments first shall be submitted to the planning commission for recommendation. The planning commission shall hold a public hearing thereon, shall cause an accurate written summary to be made of the proceedings, and shall give notice in like manner as that required for recommendations on the original proposed zoning regulations provided in section 13. Such notice shall fix the time and place for such hearing and contain a statement regarding the proposed changes in regulations or restrictions or in the boundary or classification of any zone or district. If such proposed amendment is not a general revision of the existing regulations and affects specific property, it shall be designated by legal description or a general description sufficient to identify the property under consideration. In addition to such publication notice, written notice of such proposed amendment shall be mailed at least 15 days before the hearing to all owners of record of lands located within at least 200 feet of the area proposed to be altered for regulations of a city and to all owners of record of lands located within at least 1,000 feet of the area proposed to be altered for regulations of a county. [Such notices shall extend for similar distances outside the zoning jurisdiction of the city or county including into other counties and inside cities. Whenever the notice area extends outside the zoning jurisdiction of the city, the city shall mail notice to the county clerk of the county within such area and to the city clerk of any city.]

within such area. All notices shall include a statement that a complete legal description is available for public inspection and shall indicate where such information is available. When the notice has been properly addressed and deposited in the mail, failure of a party to receive such notice shall not invalidate any subsequent action taken by the planning commission or the governing body. Such notice is sufficient to permit the planning commission to recommend amendments to zoning regulations which affect only a portion of the land described in the notice or which give all or any part of the land described a zoning classification of lesser change than that set forth in the notice. A recommendation of a zoning classification of lesser change than that set forth in the notice shall not be valid without republication and, where necessary, remailing, unless the planning commission has previously established a table or publication available to the public which designates what zoning classifications are lesser changes authorized within the published zoning classifications.

Notice of a county's action shall extend 200 feet in those areas where the notification area extends within the corporate limits of a city

(c) At any public hearing held to consider a proposed rezoning, sworn testimony may be taken and cross examination may be allowed. An opportunity shall be granted to interested parties to be heard. When determining whether or not to allow the rezoning of land, the planning commission's considerations shall include but not be limited to:

(1) Whether or not the rezoning is in conformity with the comprehensive plan;

(2) the zoning and uses of nearby land;

(3) the suitability of such land for the uses to which it is currently restricted;

(4) the adequacy of public facilities and services;

(5) the impact of the proposed rezoning upon the community as a whole; and

(6) an analysis of the impact of the proposed rezoning upon surrounding land.

(d) Unless otherwise provided by this act, the procedure for the consideration and adoption of any such proposed amendment shall be in the same manner as that required for the consideration and adoption of the original zoning regulations. A majority of the members of the planning commission present and voting at the hearing shall be required to recommend approval or denial of the amendment to the governing body. If the planning commission fails to make a recommendation on a rezoning request, such request shall be deemed denied. When the planning commission submits a recommendation of approval or disapproval of such amendment and the reasons therefor, the governing body, if it approves such recom-

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mendation, may (1) adopt such recommendation by ordinance in a
2 city or by resolution in a county, (2) override the planning com-
3 mission's recommendation by a 2/3 majority vote, or (3) return such
4 recommendation to the planning commission with a statement spec-
5 ifying the basis for its failure to approve or disapprove. If the gov-
6 erning body returns the planning commission's recommendation, the
7 planning commission, after considering the same, may resubmit its
8 original recommendation giving the reasons thereof or submit new
9 and amended recommendation. Upon the receipt of such recom-
mendation, the governing body may adopt or may revise or amend
and adopt such recommendation by the respective ordinance or res-
olution, or it need take no further action thereon. If the planning
12 commission fails to deliver its recommendation to the governing body
13 following its next regular meeting, the governing body shall consider
14 such course of inaction on the part of the planning commission as
15 a resubmission of the original recommendation and proceed accord-
16 ingly. The proposed rezoning shall become effective upon publication
17 of the respective adopting ordinance or resolution.
18 If such amendment affects the boundaries of any zone or district,
19 the respective ordinance or resolution shall describe the boundaries
20 as amended, or if provision is made for the fixing of the same upon
21 an official map which has been incorporated by reference, the amend-
22 ing ordinance or resolution shall define the change or the boundary
23 as amended, shall order the official map to be changed to reflect
24 such amendment, shall amend the section of the ordinance or res-
25 olution incorporating the same and shall reincorporate such map as
26 amended.
28 (e) Regardless of whether or not the planning commission ap-
29 proves or disapproves a zoning amendment, if a protest petition
30 against such amendment is filed in the office of the city clerk or the
31 county clerk within 10 days after the date of the conclusion of the
32 public hearing pursuant to the publication notice, signed by the
33 owners of record of 50% or more of any real property proposed to
34 be rezoned or by the owners of record of 50% or more of the total
35 area receiving notification for rezoning of a specific property, the
36 ordinance or resolution adopting such amendment shall not be passed
37 except by at least a three-fourths vote of all of the members of the
38 governing body.
39 (f) Final action on any rezoning request shall be taken no later
40 than 90 days after submission of a complete application for such
rezoning. Except as otherwise provided by this subsection, a request
for rezoning shall be deemed approved if the request has neither
43 been approved or denied within the ninety-day period. If the notice.

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provisions required by this section are deemed to be inadequate,
2 the date of final action shall be extended in order to allow for proper
3 compliance with such notice provisions. If the governing body returns
4 a recommendation for rezoning by the planning commission to such
5 commission for reconsideration, final action on such rezoning shall
6 be taken no later than 105 days following submission of a complete
7 application for such rezoning. Such time period may be extended
8 by mutual consent of the parties involved. The governing body shall
9 establish, in its zoning regulations, what constitutes a complete
10 application.
(g) [Signs may be posted on any land which is the subject of
12 proposed rezoning procedure.]
13 New Sec. 15. (a) Regulations adopted under authority of this act
14 shall not apply to the existing use of any building or land, but shall
15 apply to any alteration of a building to provide for a change in use
16 or a change in the use of any building or land after the effective
17 date of any regulations adopted under this act. If a building is
18 damaged by more than 50% of its [structural] value such building
19 shall not be restored if the use of such building is not in conformance
20 with the regulations adopted under this act.
21 (b) Regulations adopted under the authority of this act shall [ ] apply
22 to any tract of land devoted to agricultural use if such tract of land
23 exceeds 21 acres.
24 New Sec. 16. The governing body shall not adopt or enforce
25 zoning regulations which have the effect of excluding manufactured
26 housing, as such term is defined by K.S.A. 79-340, and amendments
thereto.
New Sec. 17. (a) Any governing body which has enacted a zoning
29 ordinance or resolution shall create a board of zoning appeals by
30 adoption of the appropriate ordinance or resolution. Such board shall
31 consist of not less than three nor more than seven members. If a
32 city enacts zoning regulations which affect land outside the corporate
33 limits of such city, at least one member of the board shall be a
34 resident of the area outside the city's limits. The members first
35 appointed shall serve respectively for terms of one, two and three
36 years, divided equally or as nearly equally as possible among the
37 members. Thereafter the terms of the members may be changed to
38 either three or four years, whichever is deemed to be in the best
39 interest of the city or county. Vacancies shall be filled by appointment
40 for the unexpired terms. The members of such board shall serve
41 without compensation. The board annually shall elect one of its
members as chairperson, and shall appoint a secretary who may be
43 an officer or an employee of the city or county. The board shall

[Zoning regulations may provide for the posting of signs on land which is the subject of a proposed rezoning, for the purpose of providing notice of such proposed rezoning.

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adopt rules in accordance with the provisions of the ordinance or resolution creating the board. Meetings of the board shall be held at the call of the chairperson and at such other times as the board may determine. The board shall keep minutes of its proceedings, showing evidence presented, findings of fact by the board, decisions of the board and the vote upon each question. Records of all official actions of the board shall be filed in its office and shall be a public record. The governing body, in the ordinance or resolution creating such board, may establish a scale of reasonable fees to be paid in advance by the party appealing.

(b) Any board of zoning appeals in existence on the effective date of this act shall continue in existence, but shall be governed by the provisions of this act.

(c) The board of zoning appeals shall administer the details of appeals from or other matters referred to it regarding the application of the zoning ordinance or resolution as hereinafter provided. The board shall fix a reasonable time for the hearing of an appeal or any other matter referred to it. Notice of the time, place and subject of such hearing shall be published once in [the official city newspaper or the official county newspaper] in the case of a county at least [20] days prior to the date fixed for hearing. A copy of the notice shall be mailed to each party to the appeal and to the appropriate planning commission.

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(d) Appeals to the board may be taken by any person aggrieved, or by any officer of the city, county or any governmental agency or body affected by any decision of the officer administering the provisions of the zoning ordinance or resolution. Such appeal shall be taken within a reasonable time as provided by the rules of the board, by filing a notice of appeal specifying the grounds thereof and the payment of the fee required therefor. The officer from whom the appeal is taken, when notified by the board or its agent, shall transmit to the board all the papers constituting the record upon which the action appealed from was taken. The board shall have power to 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 or resolution.

(e) The board, when it shall deem the same necessary, may grant variances from the zoning regulations on the basis and in the manner hereinafter provided: To authorize in specific cases a variance from the specific terms of the regulations which will not be contrary to the public interest and where, due to special conditions, a literal enforcement of the provisions of the regulations, in an individual case, results in unnecessary hardship, and provided that the spirit

of the regulations shall be observed, public safety and welfare secured, and substantial justice done. Such variance shall not permit any use not permitted by the zoning regulations in such district. A request for a variance may be granted in such case, upon a finding by the board that all of the following conditions have been met: (1) That the variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owner or the applicant; (2) that the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents; (3) that the strict application of the provisions of the zoning regulations of which variance is requested will constitute unnecessary hardship upon the property owner represented in the application; (4) that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare; and (5) that granting the variance desired will not be opposed to the general spirit and intent of the zoning regulations.

(f) In exercising its powers, the board, in conformity with the provisions of this act, may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination, and to that end shall have all the powers of the officer from whom the appeal is taken, may attach appropriate conditions, and may issue or direct the issuance of a permit. Any person, official or governmental agency dissatisfied with any order or determination of the board may bring an action in the district court of the county to determine the reasonableness of any such order or determination. Such appeal shall be filed within 30 days of the final decision of the board.

(g) A hearing examiner may be appointed to hear and decide appeals. Any such examiner shall have the same powers set out in the zoning regulations but shall not have powers exceeding those granted to the board of zoning appeals pursuant to this section. Appeals from the decisions of a hearing examiner shall be made in the same manner provided in this section. A planning commission also may be designated as a board of zoning appeals under this section.

New Sec. 18. (a) For the purpose of single-family residential developments, development rights in such land use shall vest upon recording of a plat of such land. If construction is not commenced on such land within five years of recording a plat, the development rights in such shall expire.

(b) For all purposes other than single-family developments, the

right to use land for a particular purpose shall vest upon the issuance of all permits required for such use by a city or county and construction has begun or substantial amounts of work [has] been completed under a validly issued permit.

(c) The governing body may provide in its zoning regulations for earlier vesting of development rights, however, vesting shall occur in the same manner for all uses of land within a land-use classification under the adopted zoning regulations.

New Sec. 19. The action of the governing body when adopting any zoning regulation or amendment thereto or in approving or denying any request for rezoning is hereby declared to be a legislative act. In reviewing any such action of the city or county, the district court shall not substitute its judgment for that of the governing body of the city or the board of county commissioners. The court may reverse such action only when unreasonableness is established by a preponderance of the evidence. The burden of proof shall be with the party challenging the reasonableness of the action.

New Sec. 20. Whenever any city has as a part of its comprehensive plan adopted a plan for its major street or highway system, after consultation with the secretary of transportation and the county engineer and any county or city-county area-wide planning commission of the county or counties within which such system lies, the governing body of the city is hereby authorized and empowered, to establish by ordinance building or setback lines on such existing and proposed major streets or highways and to prohibit any new building being located within such building or setback lines on property within the plat approval jurisdiction of the city. Such ordinance may incorporate by reference an official map, which may include supplementary documents, setting forth such plan which shall show with reasonable survey accuracy the location and width of existing or proposed major streets or highways and any building or setback lines. The governing body of the city shall provide for the method by which this section shall be enforced. Such official map shall not be enforced until after a certified copy of such map and adopting ordinance has been filed with the register of deeds of the county or counties in which such system lies. The board of zoning appeals shall have the power to modify or vary the building restrictions herein authorized in specific cases, in order that unwarranted hardship, which constitutes a complete deprivation of use as distinguished from merely granting a privilege, may be avoided, yet the intended purpose of the regulations shall be strictly observed and the public welfare and public safety protected. The setback ordinance or official map shall not be adopted, changed or amended by the governing

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body until a public hearing has been held thereon by the governing body. A notice of the time and place of such hearing shall be published in the official city newspaper. Such notice shall be published at least 15 days prior to the date of the hearing. The powers of this section shall not be exercised so as to deprive the owner of any existing property or of its use or maintenance for the purpose to which it is then lawfully devoted.

New Sec. 21. Within 30 days of the final decision of the governing body of the city or county, any person aggrieved thereby may maintain an action in the district court of the county to determine the reasonableness of such final decision.

Sec. 22. K.S.A. 24-126 is hereby amended to read as follows: 24-126. It shall be unlawful for any person, corporation, drainage or levee district, county, city~~,~~ ~~town~~ or township, without first obtaining the approval of plans for the same by the chief engineer of the division of water resources, to construct, cause to be constructed, maintain or cause to be maintained, any levee or other such improvement on, along or near any stream of this state which is subject to floods, freshets or overflows, so as to control, regulate or otherwise change the flood waters of such stream~~;~~ ~~and~~. Any person, corporation, county, city, town, township or district violating any provision of this act shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than $100 nor more than $1,000, or by imprisonment in the county jail for a period of not more than one year, or by both such fine and imprisonment~~;~~ ~~and~~. Each day any structure is maintained or caused to be maintained shall constitute a separate offense.

Plans submitted for approval shall include maps, profiles, cross sections, data and information as to the effect upon upstream and downstream areas resulting from the proposed levee or other such improvement and such other data and information as the chief engineer of the division of water resources may require. If the chief engineer finds from an examination of such plans and pertinent information that the construction of the proposed levee or other such improvement is feasible and not adverse to the public interest, the chief engineer shall approve the same. In determining whether or not the construction of any proposed levee or other such improvement designed so as to reduce flood risks to a chance of occurrence in any one year of 1% or less is adverse to the public interest, the chief engineer shall consider the following: (1) The effect upon areas downstream or upstream as a result of the construction of such proposed levee or other such improvement, and (2) the effect of the proposed levee or other such improvement and any other existing

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or proposed levees or other such improvements upon downstream
2 and upstream areas. In the event any such levee or other such
3 improvement is about to be constructed, is constructed or maintained
4 by any person, corporation, county, city, town, township or district
5 without approval of plans by the chief engineer, it shall be the duty
6 of the attorney general, to file suit in a court of competent juris-
7 diction, to enjoin the construction or maintenance of such levee or
8 other such improvement. Prior to the adoption of a general plan of
9 drainage and flood protection, as provided in K.S.A. 24-901, *and
amendments thereto,* and the commencement of construction in car-
rying such plan into effect, the chief engineer of the division of water
12 resources may give temporary approval for the repair and mainte-
13 nance of any levee or other drainage work in existence on May 28,
14 1929~~; but~~. Such approval for such temporary repair and maintenance
15 shall be without prejudice to withdrawal of such approval when a
16 general plan shall be adopted. Nothing contained in this section shall
17 apply to any drainage district heretofore organized under K.S.A. 24-
18 401 *et seq., and amendments thereto,* and having therein property
19 of an assessed valuation of $50,000,000 or more. *The provisions of
20 this section shall not apply to floodway fringe fills.* The chief engineer
21 shall adopt such rules and regulations deemed necessary to admin-
22 ister and enforce the provisions of this section. — New Sec. 23. - attached
23 [24.] Sec. [23.] K.S.A. ~~3-701 to 3-713, inclusive,~~ 12-701 to 12-704, in-
24 clusive, 12-704a, 12-705, 12-705a, 12-705b, 12-705c, 12-706, 12-706a,
25 12-707 to 12-715, inclusive, 12-715a, ~~12-717~~ [12-722] to 12-735, inclusive, 19-
26 2901, 19-2902, 19-2902a, 19-2902b, 19-2902c, 19-2903, 19-2904, 19-
2905, 19-2905a, 19-2906 to 19-2916, inclusive, 19-2916a, 19-2916b,
28 19-2916c, 19-2916d, 19-2918, 19-2918a, 19-2918b, 19-2918c, 19-2919,
29 19-2920, 19-2921, 19-2924, 19-2925, 19-2925a, 19-2926, 19-2926a,
30 19-2926b, 19-2927 to 19-2934, inclusive, 19-2934a, 19-2935 to 19-
31 2938, inclusive, 19-2950 to ~~19-2966~~ [19-2955], inclusive and 24-126 and K.S.A.
32 1989 Supp. 12-715b, 12-715c, 12-715d, 12-716 and 12-736 are hereby
33 repealed.
34 [25.] Sec. [24.] This act shall take effect and be in force from and after [January 1, 1991, and]
35 its publication in the statute book.

New Sec. 23. (a) Any violation of any regulation adopted under the authority of this act shall be a misdemeanor and shall be punishable by a fine of not to exceed $500 or by imprisonment for not more than six months for each offense or by both such fine and imprisonment. Each day's violation shall constitute a separate offense.

(b) Any city or county, and any person the value or use of whose property is or may be affected by such violation, shall have the authority to maintain suits or actions in any court of competent jurisdiction to enforce the adopted zoning regulations and to abate nuisances maintained in violation thereof.

(c) Whenever any building or structure is or is proposed to be erected, constructed, altered, converted or maintained or any building, structure or land is or is proposed to be, used in violation of any zoning regulations, the city or county, or in the event the violation relates to a provision concerning floodplain zoning, the attorney general and the chief engineer of the division of water resources of the Kansas state board of agriculture, in addition to other remedies, may institute injunction, mandamus, or other appropriate action or proceeding to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance or use or to correct or abate such violation or to prevent the occupancy of such building, structure or land.

(d) Any person, company, corporation, institution, municipality or agency of the state or federal government who violates any provision of any regulation relating to floodplain zoning shall be subject to the penalties and remedies provided for herein.

TESTIMONY IN SUPPORT OF PROPOSED
PLANNING LEGISLATION

Price Banks, Chair, Legislative Study Committee,
Kansas Chapter, American Planning Association

Over 10 years ago, the Kansas Chapter of the American Planning Association established the goal of modernizing planning related laws.

Our existing statutes are antiquated. Many have been around since the beginning of the century, and have been amended many times over the years. They contain archaic language and lack modern planning methodologies. Many of the provisions are overly complex and hard to understand. The law, as we thought we understood it, has been changed by the courts in some instances, and there is confusion regarding procedural requirements.

As we began our task, we realized that we planners would need the support of other interest groups if we were to succeed. We enlisted the assistance of the Kansas League of Municipalities, the Kansas Home Builders Association, and the Kansas Manufactured Housing Institute. Therefore, representatives of each of those agencies sat on the study committee.

We have also enlisted the assistance of faculty members from Kansas University and Kansas State University, and have had several attorneys sit as members of the committee.

The proposed legislation is the result of the work of the committee.

The proposed legislation accomplishes three primary objectives:

- It provides one uniform statute for both cities and counties.

- It simplifies and shortens the language in the statutes.

- It provides for contemporary planning tools.

Attached is a section by section comparative summary of the provisions of the legislation, and the existing statute.

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Attach. II

SECTION	HB 3058	EXISTING LANGUAGE	REASON
1	Defines terms in one section	Various definitions found in different sections	To consolidate and simplify the statute
2(a)	Requires planning commission prior to enacting zoning	No such provision	Provides a solid basis for zoning
	Provides for not less than 5 nor more than 20 members	12-702; 19-2915; 12-718. City - not less than 7 nor more than 15. County - not less than 5 nor more than 11. Metropolitan or regional - set by agreements between participating units.	To provide maximum flexibility and uniformity of statute.
	City - if any extra territorial planning, zoning or subdivision administration occurs - 2 members must be appointed from that area.	12-702. Status quo.	
	County - majority of members must reside outside cities with zoning regulations.	19-2915. Majority of members must reside outside of incorporated cities.	Counties may be administering planning activities for cities. This will enable their representation.
	County, regional or metropolitan planning commission can serve as city planning commission.	That is status quo, but was placed in this section to clarify the intent.	This should avoid imposing hardship upon communities lacking the resources to plan.

SECTION	HB 3058	EXISTING LANGUAGE	REASON
2(b)	Provides for staggered 3 or 4 year terms.	12-702; 12-718; 19-2915. 3 year staggered terms for cities and counties.	Uniformity - 4 years was added to allow greater flexibility.
3	Requires the adoption of bylaws and the election of officers. Allows the commissions to contract and employ personnel, and establish committees. Allows appointment of hearing examiner to hear certain administrative matters as authorized by local zoning regulations.	Status quo except for the provision of a hearing examiner, and there is no current requirement for bylaws.	Uniformity and clarification. The hearing examiner could be appointed to conduct administrative reviews of issues such as site plans or minor changes in land use. This would keep the planning commission agenda from being cluttered with smaller issues.
4	Allows the governing body to appropriate funds as it deems necessary. Also provides that planning commission shall prepare budget; however, we have recommended eliminating the budget requirement. Typically the local government administrators prepare the budget.	12-706, 19-2924 and 12-719 status quo for cities and counties.	Uniformity and simplicity.

SECTION	HB 3058	EXISTING LANGUAGE	REASON
5(a)	Enables planning commission to make a plan. Cities may plan outside but within 3 miles of their limits, not more than 1/2 the distance to another city.	12-704; 19-2916a. Cities may plan outside the city but within the county any area which in the opinion of the planning commission "forms the total community of which the city is a part."	Restricts planning jurisdiction of cities to same as the extraterritorial jurisdiction for other purposes.
5(c)	Provides that plan can be adopted in part or in whole and establishes notice and hearing requirements.	12-704; 19-2916a. Restricts adoption in part to: major geographical sections or functional subdivisions of the plan.	Simplification.
	15-day notice published in "official newspaper."	12-704; 19-2916a. Requires 20-day notice.	All notice provisions throughout the new bill are being made uniform (15 days).
	Requires submission to all taxing subdivisions in planning area which request copies.	12-704; 19-2916a. Requires submission to "all other legislative and administrative agencies affected thereby.	Clarification, original language was vague and broad.

SECTION	HB 3058	EXISTING LANGUAGE	REASON
5(d)	Governing body submits recommendations to planning commission within 60 days. Planning commission adopts plan as official plan of city or county and forwards to governing body and other taxing subdivisions requesting copies.	12-704; 19-2916a. Governing body submits recommendations within 60 days. Planning commission adopts plan and certifies an attested copy to all legislative and administrative agencies affected by the plan.	Clarification
5(e)	Planning commission must review plan annually, may propose amendments to it. Planning commission must report results of review to governing body.	12-704; 19-2916a. Planning commission must review plan before the first day of June to determine if any portion is obsolete, and report to governing body.	To permit the planning commission to review for other reasons than obsolescence. To give flexibility to the date of review to accommodate local needs & schedules.
5(f)	Requires a community currently exercising zoning or subdivision control powers to have a plan adopted within 3 years of this act.	No current provision.	Plans provide a basis for land use regulation. Without a plan to provide guidelines, actions of a zoning authority are more likely to be arbitrary or discriminatory. Plan requirements have been simplified to prevent hardship. (See Sec. 5b)

SECTION	HB 3058	EXISTING LANGUAGE	REASON
6	Requires planning commission review of capital improvements of a type embraced in plan. Governing body can override planning commission decision.	12-704a; 19-2916a. Same except governing body could only override planning commission in decision with 3/4 majority vote.	
7	Enables cities or counties to adopt zoning ordinances following adoption of a comprehensive plan.	12-707 & 708, 19-2901, 19-2119, 19-2927, 2928 & 2929. Initial adoption provisions are status quo. Current language requires ordinance to be based upon a land use plan or land use element of a comprehensive plan.	

SECTION	HB 3058	EXISTING LANGUAGE	REASON
8(a)	Enables adoption of subdivision regulations and provides for guarantee of public improvements. Provides that county can establish regulations governing all or parts of county. Our recommendations include adding letters of credit to the list of guarantees. Subdivision regulations may provide for streets, traffic reduction, open space, on site and off site public improvements (HB 3058 currently says public utilities), recreational facilities, flood protection, building lines, compatibility, and other items deemed appropriate.	12-705, 19-905, 19-2918. Status quo except that current statutes specify that county can adopt and enforce regulations by township and can act based upon recommendation of township zoning board. Current statutes include density of population, and width and depth of lots, and do not include off site improvements.	New legislation is broader than old. Will still permit regulating subdivisions on a township by township basis; however, county could use other geographic bases too. Will permit greater flexibility in providing guarantees. Population density and lot size are zoning rather than platting issues. A developer would be required to install or pay for public improvements needed to serve the development.

SECTION	HB 3058	EXISTING LANGUAGE	REASON
8(b)	Establishes mechanics for adoption of subdivision regulations by cities and counties. Cannot take effect until adopted by resolution or ordinance of governing body. Establishes mechanism for governing body to override planning commission at first viewing by 2/3 vote or regulations must be referred back to planning commission with recommendations. After 2nd review of planning commission governing body can act with simple majority. Provides for notice and hearing. Our recommendation requires publication in a newspaper of "wide and general circulation."	12-705; 19-2918. Status quo, except current statute for county board to act on first viewing with simple majority. Cities have 1 mandatory referral back to planning commission if they are not in agreement, then may act with simple majority. Current language requires publication in "official" newspaper.	For the sake of uniformity we looked for middle ground between the two statutes. To clarify notice requirements.
8(c)	Platting may be requisite to issuance of building permits.	No current provision.	Provides enforcement measure. Codifies practice.
8(d)	Provides for extra-territorial issuance of building permits where extra-territorial zoning and subdivision controls are in place.	No current provision.	If the county has not pre-empted the city from having extra-territorial zoning and subdivision regulations, the city could enforce building codes in concert. This would provide a complete, coordinated package of development regulation.

SECTION	HB 3058	EXISTING LANGUAGE	REASON
8(e)	Enables joint committees for subdivision regulation for cities and counties.	12-705(a) sets out requirements for joint committees in great detail. Specifies membership procedures, etc.	To simplify and provide greater flexibility to those that choose to use the method. (It is rarely used.)
9	Sets procedures for submission, review & approval of subdivision plats and establishes maximum time limits for action. (We had proposed 60 days for preliminary plat, 30 for final plat.) Current bill says 60 days for planning commission and 30 days for governing body to accept property dedicated for public purpose.	12-705b, 19-2918c. Cities - status quo. Counties - there is currently no provision for acceptance of public lands by county board. Planning commission has full approval authority.	To provide governing body with authority to accept public property it will be responsible for.
10	Enables extra-territorial zoning, including flood plain zoning, for cities if not pre-empted by county. Enables counties to zone for all or for only a portion of the unincorporated area.	12-707, 12-715b, 19-2901. Status quo except counties are permitted to zone on a township basis with township recommendation.	This broadens the scope of the statute. Counties can still zone on a township basis with township recommendation, but can also zone other areas that may be only a portion of the county.
11(a)	Enables flood plain zoning.	12-707 & 708. Status quo.	

SECTION	HB 3058	EXISTING LANGUAGE	REASON
11(b1)	Enables planned unit development zoning.	12-725 to 733. Current statute is lengthy and confusing.	This was simplified to make it easier to use.
11(b2)	Enables transfer of development rights.	No current provision.	This is a contemporary concept that can be used in developing or redeveloping areas to protect natural features or historic sites without hurting the owner or developer.
11(b3)	Enables historic preservation zoning.	No current provision.	To protect state & federal historic structures.
11(b4)	Enables zoning for aesthetics.	Case law, but no statutory provision.	Codifies case law.
11(b5)	Enables special use or conditional use permits.	No current provision.	Codifies existing practice. Gives flexibility.
11(b6)	Enables procedures for granting variances and exceptions to subdivision regulations.	No current provision.	Will allow communities to allow for special situations.
12(a) & (b)	Requires state review of flood plain regulations.	12-735. Status quo.	

SECTION	HB 3058	EXISTING LANGUAGE	REASON
13(a)	Establishes criteria for creating zoning districts. Includes provisions for transfer of development rights, natural resources and historic preservation, special use permits and vesting rights as well as gradual elimination of non-conforming uses (should include amortization or eminent domain mechanisms to abate non-conforming uses).		
13(b)	Requires zoning to be based upon a plan (should be the Comprehensive Plan).	12-708; 19-2920; 12-708. Requires basing upon surveys or studies or comprehensive plan. 19-2920 requires survey or study.	Uniformity and better planning basis for zoning.
13(c)	Establishes hearing notice & procedure. 15-day publication notice. If governing body disagrees with planning commission at first they can override with 2/3 majority or return to planning commission with recommendation. At second viewing governing body can approve, deny, or change with simple majority. Also requires publication in a newspaper of wide and general circulation.	12-708, 19-2920, 19-2907, 19-2931. 12-708 & 19-2920 = 20 days. 19-2907 = publications no time limit. 19-2931 = 15 days. If governing body disagrees with planning commission they must refer it back to commission with reasons. At second viewing they can approve, deny, or change with simple majority.	Uniformity.

SECTION	HB 3058	EXISTING LANGUAGE	REASON
14(a)	Establishes procedures for amendment. Presumed reasonable if based upon comprehensive land use plan.	12-708, 19-2907, 19-2920, 19-2932. Status quo in 12-708. No presumption of reasonableness in county legislation.	Uniformity and to provide incentive to base county zoning decisions on a plan.
14(b)	Provides for notice (both mailed & published) and hearing for amendments. 15 days published notice in a newspaper of wide and general circulation. Provides for zoning to lesser change. Provides for counties to honor city notification requirements when normal notification area extends beyond city boundaries.	12-708, 19-2907, 19-2920, 19-2931. 12-708 provides 20 days; 19-2907 3 weeks; 19-2920 20 days; 19-2931 15 days. Status quo. No current provision.	Uniformity. To prevent a hardship on counties having to mail notice to the many property owners in dense areas.
14(c)	Establishes hearing procedures and factors that must be considered for rezoning. Permits governing body to require sworn testimony or cross examination of witnesses.	No provisions.	To provide guidance to local government & assure fair treatment of parties.

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SECTION	HB 3058	EXISTING LANGUAGE	REASON
14(d)	Establishes procedural requirements for adoption of amendment. Permits governing body to override planning commission recommendation at 1st viewing by 2/3 majority vote.	12-708, 19-2920. Status quo except city governing body may not override planning commission at 1st viewing. Must return to planning commission 1 time with recommendations. County governing body may adopt the amendment with or without change or refer it back to planning commission. There is no provision for denial.	Uniformity and to provide governing bodies with an opportunity to deny an amendment when it is strongly opposed.
14(e)	Permits petition by property owners to cause a super majority requirement. Language says 50% of surrounding property owners within the area to be rezoned or within 200' in cities or 1000' in counties. The study committee had intended 20% which is status quo.	12-708, 19-2907, 19-2920 & 19-2932. Status quo for 12-708, 19-2920 & 19-2932. 19-2907 provides for protest petition by owners of 20% of the frontage proposed to be changed, or by 20% of the frontage directly opposite or immediately in the rear of the subject property.	Uniformity.

SECTION	HB 3058	EXISTING LANGUAGE	REASON
14(f)	Establishes time limitations for actions by governing body. 90 days unless it has been referred back from governing body to planning commission, then 105 days.	No current time limitation.	To assure that those petitioning their governing body receive an answer.
14(g)	Permits posting of signs announcing rezoning.	No current provision.	To permit additional notice.
15(a)	Regulations shall not apply to existing buildings unless damaged by more than 50% of its (should be market value).	12-709. Existing language says structural value.	Structural value is a vague term. Fair market value can be determined by appraisal.
15(b)	Excludes agricultural land in excess of 21 acres (was defined in Section 1).	19-2908 currently exempts agricultural land from county regulations, but leaves it undefined. No similar provision in city statute.	Eliminates vagueness from statute.
16	Prohibits exclusion of manufactured housing.	19-2938. Prohibits arbitrary exclusion of manufactured housing by counties - no provision for cities.	Uniformity.

SECTION	HB 3058	EXISTING LANGUAGE	REASON
17(a)	Requires communities with zoning to appoint Boards of Zoning Appeals. If a city exercises extra-territorial zoning at least one member must be appointed from that area.	12-714, 19-2926a & 19-2934. Status quo except no current provision for extra-territorial membership for cities.	Uniformity and fairness.
17(b)	Continues existing Boards of Appeal.	----	----
17(c)	Provides for notice and hearing. HB 3058 says 20 day notice; we had intended 15 days.	12-715, 19-2926b, 19-2934a. 12-715 requires 20 days notice; others require 15 days notice.	Uniformity.
17(d)	Gives Board power to hear appeals of administrative orders in carrying out zoning ordinance provisions.	12-715, 19-2926b, 19-2934a. Status quo.	
17(e)	Gives Board power to grant a variance from zoning requirements and sets criteria for variance.	Status quo.	
---	At this point HB 3058 removes existing BZA power to grant "exception"	12-715, 19-2926b, 19-2934a. Board may grant exceptions to provisions in zoning ordinance where specifically authorized.	Exception language was believed to be vague and overly broad.

2-15

SECTION	HB 3058	EXISTING LANGUAGE	REASON
17(f)	Defines Board of Zoning Appeals role in resolving appeals.	12-715, 19-2926b, 19-2934a. Status quo.	
17(g)	Allows appointment of hearing examiner to hear & decide appeals. Allows designation of planning commission as Board of Appeals.	No current language.	Allows local governments to have greater flexibility to handle appeals.
18	Creates vesting requirements for development rights.	No current language. Case law has established vesting at permits issued, construction begun, and substantial work completed under a valid permit.	Fairness.
19	Declares rezoning to be a legislative act.	No current language. The KS Supreme Court has declared zoning to be more quasi-judicial than legislative.	The governing bodies are legislative & have constituent responsibilities. If strict judicial rules are followed, it has a chilling effect upon the participation in the hearings, complicates the rezoning process, and creates greater expense to local government.

SECTION	HB 3058	EXISTING LANGUAGE	REASON
20	Allows for setbacks along major streets.	Status quo.	
21	Establishes appeal procedure.	Status quo.	
24	Establishes that the bill take effect upon publication. (A January 1, 1991 date would work better for most communities.) The APA Study Committee has drafted a penalty clause that we are recommending be included in the bill.		

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

March 12, 1990

To: HOUSE COMMITTEE ON LOCAL GOVERNMENT

From: C. Bickley Foster, Planning Consultant, Foster & Associates

Subject: HB3058

Having had the opportunity to work with over 60 cities and counties in Kansas since 1972, I am very much aware of the problems which the present Kansas planning and zoning statutes create for local officials. Since their original introduction in 1921, the statutes have been revised over the succeeding decades to form a fragmented approach to the subject. Almost all local planning commissioners are lay volunteers who in their term of office find it difficult enough to master their responsibilities as planners without the added difficulty of understanding the complexities of an out-of-date set of enabling statutes. The unclear issues which arise lead many officials to work around the problems rather than finding the statutes a source of solutions.

As an original member of the Legislative Committee of the Kansas Chapter-American Planning Association since 1984, it has been an enlightening experience to note the differences in use and interpretations given to the present statutes by knowledgeable professionals as the discussions proceeded. This is the first time during the 26 years which I have been in Kansas that such a determined and sustained effort has been made to clarify in such a comprehensive manner the areas of misinterpretation and to introduce more modern concepts in municipal planning efforts. You can well understand the appreciation which our

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Attach. III

(over)

organization feels for your Committee's willingness to introduce HB3058 in what has turned out to be a busy legislative session for all of you.

Over the years, counties have become more active in planning and zoning and thus there is more interaction between cities and counties in their planning efforts. As a result there is more need to not only clarify the relationship between them, but to provide more opportunities for them to work together. The combining of county and city statutes to be more uniform where possible should prove useful in the proposed statutes. With the added concern for economic development in the state, the more simplified and uniform procedures being proposed and the reduction in the adoption period for all planning and zoning matters should be welcomed by officials and developers. Since over 90% of the cities in Kansas are under 5,000 in population, the proposed statutes attempt to provide some options and discretion so that both small and large cities can adapt the legislation to their level of need rather than a one fits all approach.

Some of you may recall that I had the privilege of serving as an intern to the Chairman of your committee during the 1984 session. I was amazed at the patience, understanding and ability to sit for long hours which were needed to perform the legislative function! I am sure that Ron Williamson, our president, and Price Banks, Committee Chairman, would be glad to assist you in any way to make your task easier in fine tuning this new material to meet the needs of planning in Kansas.

3-20-90
III-2

TESTIMONY TO LOCAL GOVERNMENT COMMITTEE

RE: HOUSE BILL 3058

MICHAEL P. HOWE, CITY ATTORNEY
LENEXA, KANSAS

March 20, 1990

Mr. Chairman and Members of the Committee:

My name is Michael Howe and I am the City Attorney with the City of Lenexa, Kansas. I am here to support this House Bill but suggest one minor revision.

I have been a municipal attorney for ten (10) years, having previously served as the Land Use Attorney for the City of Kansas City, Kansas, before joining Lenexa in a similar capacity until I became the City Attorney. If experience counts for anything, I have attended a minimum of one meeting of the Planning Commissions and Governing Bodies of these cities regarding land use items every month for the past ten (10) years. In addition, I have handled over fifty (50) land use court cases as an attorney for these cities. I have long believed the existing planning and zoning statutes both for cities and counties was in need of revision.

I would like to make one suggestion regarding a provision that I find troubling in this proposed legislation. For your convenience, I have attached the Section in question which is found in the House Bill on Pages 14 and 15. Specifically, Sub-Section

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Attach. IV

F which in general states that a rezoning request must be acted on within ninety (90) days of the submission of a complete application or it shall be deemed approved. I would respectfully request your consideration to delete the entire Sub-Section F.

While I understand the rationale behind such a time limitation, that is to assure that a particular rezoning request makes it through the process in a reasonable period of time, I submit that this legislation is inherently dangerous. While I am sure there are abuses as there are in any area of governmental administration, I can honestly state that after sitting through hundreds of rezoning applications over the past ten (10) years that the governing bodies genuinely act in good faith in attempting to process an applicant's rezoning. I have never witnessed any intentional effort by the City to drag an application out. If an applicant, under the existing law, which is silent regarding any timeframe, feels aggrieved or that a governing body is simply delaying a decision on his request, there are other remedies available such as a mandamus action in court challenging the city's inaction and demanding that the City make a decision. Several unacceptable scenarios could be played out with these proposed timeframes. A governing body after deliberating a particular application following planning commission review discovers on the eighty-fifth (85) day that the applicant will not consent to an extension which is provided for in the proposed legislation even though the extension may be quite necessary to allow the applicant time to provide some necessary information and allow city staff the time to review it. At that point, the only choice the city or county has is to deny the rezoning request. This could even require

the city calling a special meeting if no regular meeting is scheduled prior to the elapse of the ninety (90) days. If a city does not take such action, the rezoning is approved. What most likely will be deemed approved is a rezoning which, by the nature of it being ninety (90) days in the process, is controversial, complex or which is poorly planned. In Lenexa, and most cities, we use planned zoning. In other words we will not rezone unless a development plan accompanies the rezoning. Does this deemed approved also approve the plan? If it doesn't, the developer will still need to receive approval of his plan. A city could take as long as it wants in the plan review, thus negating the intent of this ninety (90) day provision which is to get something through the process quickly. The worst case result of this legislation is that a use of property totally incompatible in an area or neighborhood could occur to a city which slips up and doesn't act in time. Surrounding property owners and neighborhoods should not be punished potentially forever by a harsh land use for the inaction of its government officials.

If a city does act to deny a rezoning before the ninety (90) days, it could be attacked in District Court for acting in an arbitrary, capricious and unreasonable manner. Such an argument might be persuasive if the city denied a rezoning without all the necessary hearings and information being presented.

In such a situation if I were representing the city, I would argue to the District Court Judge that he remand the matter back to the city for a full hearing. Once again the desired goal of expedience of developers' projects would be defeated.

In summary, the City of Lenexa supports this needed legislation with the deletion of the provision related to the ninety (90) days. This ninety (90) day provision is analogous to someone telling you that action must be taken in ninety (90) days or a bill will become law -- regardless of how poor the legislation is and whether the language is in good form. Thank you for your consideration of this request for amendment. I will be glad to answer any questions.

1 mendation, may (1) adopt such recommendation by ordinance in a
2 city or by resolution in a county, (2) override the planning com-
3 mission's recommendation by a 2/3 majority vote, or (3) return such
4 recommendation to the planning commission with a statement spec-
5 ifying the basis for its failure to approve or disapprove. If the gov-
6 erning body returns the planning commission's recommendation, the
7 planning commission, after considering the same, may resubmit its
8 original recommendation giving the reasons thereof or submit new
9 and amended recommendation. Upon the receipt of such recom-
10 mendation, the governing body may adopt or may revise or amend
11 and adopt such recommendation by the respective ordinance or res-
12 olution, or it need take no further action thereon. If the planning
13 commission fails to deliver its recommendation to the governing body
14 following its next regular meeting, the governing body shall consider
15 such course of inaction on the part of the planning commission as
16 a resubmission of the original recommendation and proceed accord-
17 ingly. The proposed rezoning shall become effective upon publication
18 of the respective adopting ordinance or resolution.

19 If such amendment affects the boundaries of any zone or district,
20 the respective ordinance or resolution shall describe the boundaries
21 as amended, or if provision is made for the fixing of the same upon
22 an official map which has been incorporated by reference, the amend-
23 ing ordinance or resolution shall define the change or the boundary
24 as amended, shall order the official map to be changed to reflect
25 such amendment, shall amend the section of the ordinance or res-
26 olution incorporating the same and shall reincorporate such map as
27 amended.

28 (e) Regardless of whether or not the planning commission ap-
29 proves or disapproves a zoning amendment, if a protest petition
30 against such amendment is filed in the office of the city clerk or the
31 county clerk within 10 days after the date of the conclusion of the
32 public hearing pursuant to the publication notice, signed by the
33 owners of record of 50% or more of any real property proposed to
34 be rezoned or by the owners of record of 50% or more of the total
35 area receiving notification for rezoning of a specific property, the
36 ordinance or resolution adopting such amendment shall not be passed
37 except by at least a three-fourths vote of all of the members of the
38 governing body.

Propose deletion

39 (f) Final action on any rezoning request shall be taken no later
40 than 90 days after submission of a complete application for such
41 rezoning. Except as otherwise provided by this subsection, a request
42 for rezoning shall be deemed approved if the request has neither
43 been approved or denied within the ninety-day period. If the notice

Propose deletion

1 provisions required by this section are deemed to be inadequate,
2 the date of final action shall be extended in order to allow for proper
3 compliance with such notice provisions. If the governing body returns
4 a recommendation for rezoning by the planning commission to such
5 commission for reconsideration, final action on such rezoning shall
6 be taken no later than 105 days following submission of a complete
7 application for such rezoning. Such time period may be extended
8 by mutual consent of the parties involved. The governing body shall
9 establish, in its zoning regulations, what constitutes a complete
10 application.
11 (g) Signs may be posted on any land which is the subject of
12 proposed rezoning procedure.
13 New Sec. 15. (a) Regulations adopted under authority of this act
14 shall not apply to the existing use of any building or land, but shall
15 apply to any alteration of a building to provide for a change in use
16 or a change in the use of any building or land after the effective
17 date of any regulations adopted under this act. If a building is
18 damaged by more than 50% of its structural value such building
19 shall not be restored if the use of such building is not in conformance
20 with the regulations adopted under this act.
21 (b) Regulations adopted under the authority of this act shall apply
22 to any tract of land devoted to agricultural use if such tract of land
23 exceeds 21 acres.
24 New Sec. 16. The governing body shall not adopt or enforce
25 zoning regulations which have the effect of excluding manufactured
26 housing, as such term is defined by K.S.A. 79-340, and amendments
27 thereto.
28 New Sec. 17. (a) Any governing body which has enacted a zoning
29 ordinance or resolution shall create a board of zoning appeals by
30 adoption of the appropriate ordinance or resolution. Such board shall
31 consist of not less than three nor more than seven members. If a
32 city enacts zoning regulations which affect land outside the corporate
33 limits of such city, at least one member of the board shall be a
34 resident of the area outside the city's limits. The members first
35 appointed shall serve respectively for terms of one, two and three
36 years, divided equally or as nearly equally as possible among the
37 members. Thereafter the terms of the members may be changed to
38 either three or four years, whichever is deemed to be in the best
39 interest of the city or county. Vacancies shall be filled by appointment
40 for the unexpired terms. The members of such board shall serve
41 without compensation. The board annually shall elect one of its
42 members as chairperson, and shall appoint a secretary who may be
43 an officer or an employee of the city or county. The board shall

HOUSE LOCAL GOVERNMENT COMMITTEE
ON
HOUSE BILL 3058

Mr. Chairman, Members of the Committee:

My name is M.S. Mitchell, Legislative Chairman for the Home Builders Association of Kansas.

My testimony is directed to the aspects of planning having to do with flood plain management. My background in this field dates to 1958 when, as flood control and stream maintenance superintendent for Wichita and Sedgwick County, I began service on the Advisory Committee to the Subdivision Committee of the Metropolitan Area Planning Commission. I continued service in that capacity until 1978. Since that time I have been an independent consultant in flood plain management and land development.

The three sections of HB 3058 which I will address are section 1, which defines certain terms or phrases, section 12 which amends current law found in KSA 12-734 & 12-735, and Section 22 which has to do with levees.

In section 1, we need to add three terms which are used in the Federal Flood Insurance Program which may not have universal meaning.

"Base Flood" means the flood having a one percent chance of being equalled or exceeded in any given year.

"Regulatory Floodway" means the channel of a river or other water course and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

"Floodway Fringe" means all flood plain areas outside boundaries of the regulatory floodway.

Section 1 also defines the term "Flood Plain". Provisions governing establishment of flood plain zones and districts are in section 11. Removal of the responsibility for approval of a community's flood plain management ordinances/resolutions/regulations from the Chief Engineer of the Division of Water Resources of the Kansas State Board of Agriculture is in Section 12. Those ordinances/resolutions/-regulations or any variations from them are still to be reviewed by the Chief Engineer to provide the State Coordinator of the Federal Flood Insurance Program with an opportunity to assist and advise communities in their dealings with the Federal Program.

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Section 12 also includes most of the General language in KSA 12-735; however, the list of minimum standards for such ordinances/-resolutions/regulations has been removed.

KSA 12-734 and 12-735 were made law very early in the era when it became apparent that reliance on structural measures to control flood losses wasn't the total answer. Building was taking place in flood prone areas faster than the Federal, State, County, City or special district projects could be conceived, much less approved, funded and constructed. The emphasis of some of the early efforts in controlling future flood losses was to restrict new development in flood plains to those uses which were or could not be made compatible with the flood risk. The Federal Flood Insurance Program, enacted in 1968, was a forerunner of what Kansas did in passing KSA 12-734 and 12-735. Before that time, very few communities had the knowledge, organization, authority or will to control development in Flood Plains. KSA 12-734 and 12-735 provided the umbrella under which communities could begin to define and restrict building in historic flood plains.

Meanwhile, the Federal Government embarked on what, to many, seemed the impossible task of defining and mapping all flood plains in Kansas. When those maps became available, and communities which were identified as having one or more flood risk areas came into the emergency phase of the Federal Flood Insurance Program, the role of the State was reduced to that of providing enabling legislation. As the Federal Program studies continued, they supplied not only maps of flood risk areas but detailed hydrologic and hydraulic studies based upon which communities adopted regulatory floodways and new detailed ordinances/resolutions/regulations mandated by the Federal Program to control all aspects of flood plain management. Each community's ordinance/resolution/regulation has to be approved by the Federal Emergency Management Agency, and must closely adhere to a model supplied by the agency. Annual reviews of each community's activity and implementation/enforcement is monitored by Federal Inspectors with loss of insurance eligibility for the entire community as a consequence of failure to comply. With the advent of the requirements of the Federal Insurance Program, there is no need for, nor benefit from, approval of a community's flood plain management ordinances/resolutions/regulations by the Chief Engineer. It is unclear what would be the outcome of an instance in which the Federal Government mandates and approves an ordinance/resolution/-regulation which the Chief Engineer refuses to approve. Section 12 is written to remove that possible conflict.

KSA 24-126 is a 1929 law giving the Chief Engineer responsibility for review and approval of a "levee or other such improvements" which control, regulate or otherwise change the floodwater of any stream. The Chief Engineer has determined that any fill in any flood plain is "other such improvement" and therefore subject to the provisions of KSA 24-126. The regular phase of the Federal Flood Insurance Program permits communities to approve construction in flood plains outside the regulatory floodway (in floodway fringe areas) provided it is flood proofed to at least the elevation of the base flood. The

normal method of such flood proofing is to elevate the structure on fill. Examples of things which must be elevated to provide floodproofing are sanitary sewer manholes, streets, electrical and communication connection boxes and residential buildings. Other buildings may be floodproofed by elevating on fill or by structural components.

Conflict arises here because few of those floodway fringe fills are ever submitted to the Chief Engineer under KSA 24-126, and those which are submitted must go through the environmental coordination review process before being approved. A lengthy delay is caused by this procedure. All of the technical conditions which must be met in order to obtain approval by the Chief Engineer under KSA 24-126 are inherent in the Federal hydrologic and hydraulic analysis which established the regulatory floodway boundaries to be adopted by the community and set out the limits of the floodway fringe. Review and approval by the State for every fill in the floodway fringe would put a burden on the staff of the Chief Engineer's office which would bring all such activity to a standstill. Selective application of the levee statute to floodway fringe fills is based on complaints and the visibility of the project rather than the general public interest.

The City of Wichita attempted to obtain from the Division of Water Resources authority to use its engineering and planning expertise to determine which, if any, floodway fringe fill applications were significant enough to justify State review and approval under KSA 24-126. The first reply was ambiguous, but seemed to give the City considerable latitude. Two and one-half years later, based on a complaint, the City received a letter from the Chief Engineer stating that all floodway fringe fills, except those which do not alter or redirect the flow of water, are indeed "other such improvements" with the intent of clarifying the City's apparent misunderstanding of the earlier division of water resources letter. Followed to the letter, any fill in any flood plain alters or redirects floodwaters, that is its purpose.

In a telephone conversation with the Chief Engineer, he expressed concern to me that the changes in language of KSA 12-734 & 12-735 which remove the approval of ordinances/resolutions/regulations overlook the fact that there may be communities in Kansas which have identified flood hazard areas which are somehow not covered by the Federal Program and would slip through the cracks. Sections 11 and 12 of HB 3058 were not intended to take away the ability of any governing body to control development of flood prone land, and if it is appropriate to amend them to require that communities which are not under the Federal Flood Insurance Program must obtain approval of Flood Plain Management ordinances/resolutions/regulations from the Chief Engineer, we will not object.

For the exemption of all floodway fringe fills from being considered "other such improvements" under KSA 24-126 we do no find any compromise. As stated earlier, all of the technical requirement to obtain approval of any floodway fringe fill are accomplished by the

detailed analysis performed for or by the Federal Government as part of the Flood Insurance Study. We see no reason for the review and approval by the Chief Engineer unless it is to subject them to the environmental coordination fiasco. If there are environmental/-wildlife reviews which are appropriate to all land use changes in all developing areas, it is our opinion that there should be provisions in the law to require them, and if appropriate, to require mitigation. But, to base the cause of such environmental/wildlife reviews which cause extensive delays solely on the presence of mapped flood plain based on an event which an annual chance of occurrence of one percent is not reasonable.

In conclusion, I would direct your attention to two elements of the bill on which the HBAK and the planning professionals agreed to disagree.

First on page 17 and 18, Section 18(b). The Home Builders Association of Kansas has consistently argued for the principle that all property use rights should be vested early in the development process and without being tied to obtaining a building permit.

For commercial and industrial projects, the cost of plat preparation and land subdivision can be expensive and, we believe, those costs should not be incurred without assurance that the project can be permitted and constructed in accordance with the original development plan.

On page 6, Section 8a contains a list of provisions which may be included in subdivision regulations. Number four in that list commits a developer to provide "off-site" as well as "on-site" public and private utilities. Number eight in that list commits a developer to provide "any other" service, facilities and improvements deemed appropriate. Here again, HBAK and the planners working on the study committee agreed to disagree on this matter. The tendency of local governments to look for non-visible sources of funding for public improvements makes the developer the blank check writer for "off-site" or "any other" services or improvements which a governing body deems appropriate. Every one of these additional services or improvements adds to the cost of housing at a time when affordability is a key to home ownership.

Mr. Chairman and Members of the Committee, we ask for your favorable consideration of HB 3058 as presented to you by the coalition which has spent considerable time discussing, debating, and compromising on this issue.

League
of Kansas
Municipalities

Mun' al
Legislative
Testimony

An Instrumentality of its Member Cities. 112 West Seventh Street, Topeka, Kansas 66603 913-354-9565 Fax 354-4186

To: House Committee on Local Government
From: Jim Kaup, League General Counsel
Re: HB 3058; Planning and Zoning Enabling Act for Cities and Counties
Date: March 19, 1990

The League appears in support of HB 3058, a bill sponsored by the Kansas Chapter of the American Planning Association for the purpose of clarifying, simplifying and updating Kansas statutory law relating to planning and zoning by cities and counties.

The League's convention-adopted Statement of Municipal Policy states:

> 1-3. Planning.
>
> 1-3a. Planning General. (a) Cities and counties are urged to undertake and support comprehensive and continuing land use planning and management programs. (b) We support a modernization of Kansas planning laws. Consideration should be given to redefining the roles of local planning commissions and governing bodies in land use decisionmaking, more closely linking land use decisions to adopted comprehensive plans, providing greater flexibility to cities in the regulation of subdivisions and clarifying the authority to issue conditional use permits. (c) Cities should be granted clear authority to cause the removal of non-conforming zoning uses after a reasonable period of time. (d) State planning and zoning laws should be defined as general enabling statutes, permitting local legislation providing supplemental procedural or substantive provisions. (e) The amending of zoning ordinances should be defined by state law as a legislative function. (f) The authority of cities to control the development of fringe areas adjacent to cities should be expanded and cities should be specifically authorized to require subdividers to pay a fee for open space and recreational purposes in lieu of land dedication. (g) Cities should be authorized to establish and enforce building standards in the urban fringe area not subject to county regulations.

The League participated actively in the work of the planning and zoning laws study committee of the Kansas Chapter of the APA. While we endorse the product of the committee's work--HB 3058--we understand that the fine points of the Legislature's product will be developed after you take into account all the policy questions associated with the public regulation of land use.

We believe there is a need to modernize the statutory law on planning and zoning. The existing language of the law is unnecessarily detailed at some points, and vague at others. The existing laws for cities, K.S.A. 12-701 et seq., was in need of an overall, objective analysis

LG
3/20/90
Attach. VI

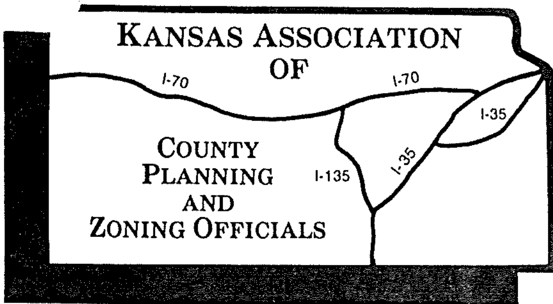
President: Irene B. French, Mayor, Merriam • Vice President: Frances J. Garcia, Mayor, Hutchinson • Directors: Ed Eilert, Mayor, Overland Park • Harry Felker, Mayor, Topeka • Greg Ferris, Councilmember, Wichita • Idella Frickey, Mayor, Oberlin • William J. Goering, City Clerk/Administrator, McPherson • Judith C. Hollnsworth, Mayor, Humboldt • Jesse Jackson, Mayor, Chanute • Stan Martin, City Attorney, Abilene • Richard U. Nienstedt, City Manager, Concordia • Judy M. Sargent, City Manager, Russell • Joseph E. Steineger, Mayor, Kansas City • Bonnie Talley, Mayor, Garden City • Executive Director: E.A. Mosher

after years of piecemeal amendment. The shortcomings in the existing law troubled not only the regulators of land, but also property owners and developers. The breadth of the public and private interest in modernizing Kansas land use law was reflected in the membership of the APA's study committee.

Some may be surprised that the League favors state enabling legislation rather than legislative endorsement of planning and zoning by Home Rule. While strong advocates of Home Rule, the League believes that the approach found in HB 3058--regulating land use under general guidelines set out by state enabling legislation--has certain advantages. Public regulation of private property rights is an area of municipal law that is complex and often-litigated. A well-conceived enabling act will help local governments protect and promote public health, safety and welfare without landing in court every time an action is taken. The other principal players in the land use game--property owners--also are benefitted by the level of uniformity and predictability which follows from local land use laws enacted under authority of state enabling legislation.

Not only does the League believe the public interest is better served by planning and zoning under state enabling legislation, we also consent to certain new state mandates that are found in HB 3058. For example, section 5 provides that if a city or county wants to zone land then it must have an adopted comprehensive plan. This will undoubtedly be an unpopular mandate among some of our member cities--particularly smaller ones. Nonetheless, it is our belief that the public's interest is better served through regulating the use of private property in accordance with a "blueprint" for that regulation, adopted by locally-accountable public officials.

The League respectfully requests this Committee's consideration of the need for enactment of legislation such as HB 3058. We offer you our continuing assistance as you discuss the fine points of the enabling legislation and consider the amendments that are certain to be offered to HB 3058.



March 12, 1990

HONORABLE MEMBERS
Committee on Local Government
House of Representatives
State of Kansas

My name is Jerry Demo. I reside in El Dorado, and have for the past five years served as Director of Planning and Zoning for Butler County. I also serve as an officer in the Kansas Association of County Planning and Zoning Officials which is affiliated with the Kansas Association of Counties.

Speaking for myself as a County Planner, and for the members of the association I serve, all of whom are dedicated to orderly growth and the most effective use of land, I respectfully urge your favorable consideration of House Bill 3058. Not only does this proposed legislation bring the myriad of planning and zoning statutues scattered throughout into one neat package, it does so by utilizing modern concepts of planning with an eye toward orderly growth.

Those of us in the planning profession are involved daily with one of our most important, valuable, but limited assets- our land. As our population grows and our economy improves so grows the need for more residential, more commercial and more industrial land. Yet, we must always be aware that the preservation of our prime agricultural lands is equally as important. We believe House Bill 3058 will be a viable tool in helping us balance those interests.

Respectfully,

Jerry R. Demo

Jerry R. Demo

LG
3-20-90
Attach. VII

TESTIMONY BEFORE THE
HOUSE LOCAL GOVERNMENT COMMITTEE

TO: Representative Robert D. Miller, Chairman, and Members of the Committee

FROM: Terry Humphrey, Executive Director
Kansas Manufactured Housing Association

DATE: March 20, 1990

RE: House Bill 3058

Mr. Chairman and members of the Committee, I am Terry Humphrey, Executive Director of the Kansas Manufactured Housing Association, and I appreciate the opportunity to appear before you in support of House Bill 3058.

For the past six years, I have worked in cooperation with the Kansas Chapter of the American Planners Association and other interested parties on the comprehensive re-write of Kansas planning and zoning laws. In short, KMHA feels that HB 3058 is important because it consolidates and simplifies the statutes dealing with planning, zoning and subdivisions. In addition, the enabling legislation is uniform for cities and counties wherever possible, which makes it easier for the public at large to learn the system and participate.

The simplification of these statutes is particularly important to the manufactured housing industry and its consumers because for many years manufactured housing has been excluded and restricted by land use practices. Furthermore, the complexities of city and county land use regulations only serve to intimidate those attempting to gain acceptance.

However, with the enactment of HB 3058, coupled with improved attitudes towards manufactured housing on the part of local governments, we are more confident that manufactured housing will be included by right in the housing stock of Kansas.

In areas across the country where land use policies accept manufactured housing on the same terms and conditions as site-built housing, remarkable things have occurred. Specifically, in California where state law requires that local governments permit manufactured housing and apply the same regulatory standards to them as site-built housing, the outcome has been a win-win situation for local governments and home buyers. In California, manufactured housing has evolved to be comparable in every way to site-built homes except for the price tag. Attached to my testimony is an article from the California Builder Magazine that explains their progress.

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3-20-90
Attach VIII

In 1976, the Kansas Legislature enacted K.S.A. 19-2938 which prevents the board of county commissioners and the planning commission from passing any regulation that would have the effect of excluding manufactured housing. Through the years, this statute has served to facilitate discussion and actions that lead to greater acceptance of manufactured housing, and under the provisions of HB 3058, this concept remains.

Despite wording differences, Section 16 of HB 3058 will have the effect of restating the substance of the existing statute. While HB 3058 prohibits zoning regulations which will have the effect of excluding manufactured housing, and K.S.A. 19-2938 prohibits zoning regulations which effect an "arbitrary" exclusion of manufactured housing, there is no substantive difference between these requirements. To this effect, I would call to the Committee's attention Attorney General Opinion No. 76-99 which concluded, in effect, that the word "arbitrary" in the existing statute was superfluous, since Kansas courts have ruled that a valid zoning regulation cannot be arbitrary. Thus, this opinion of Attorney General Schneider indicated that the presence of the word "arbitrary" in this statute did not bring about any change in the law.

I mention this point, because I am aware that one conferee on HB 3058 will suggest that Section 16 of this bill should do no more than restate the current statutory language. For the reasons I have previously mentioned, I think such suggestion is totally inappropriate. The word "arbitrary" in the current statute is not only superfluous, but somewhat misleading, giving the false impression that zoning regulations pertaining to manufactured housing are to be held to a higher standard than other zoning regulations.

I also understand that this same conferee will suggest further modification of Section 16, to limit its prohibition to an exclusion of manufactured housing "from the entire zoning jurisdiction." I also must oppose this proposal, since the insertion of this language in Section 16 would potentially send false signals to cities and counties. It might cause the governing bodies of zoning jurisdictions to believe that they could establish a single zoning area, tucked away in the far reaches of the city or county, to which all manufactured housing would be relegated, and thereby conclude that manufactured housing had not been excluded "from the entire zoning jurisdiction." Such belief, however, would ignore the current state of the law throughout the United States regarding the application of zoning regulations to manufactured housing.

Zoning jurisdictions may no longer classify and regulate manufactured housing separate and distinct from site-built housing. For example, courts throughout the country have invalidated distinctions between manufactured housing and site-built housing based on the mobility of manufactured housing in delivery to the construction site. If manufactured housing is to be excluded from a residential area, it must be done in furtherance of a legitimate governmental interest. Manufactured housing and site-built

housing must be subject to the same standards, and there must be a rational basis for the exclusion of manufactured housing from any residential zoning area. As the Michigan Supreme Court has stated, "the assumption that all mobile homes are different from all site-built homes with respect to criteria cognizable under the police power can no longer be accepted." Robinson Township v. Knoll, 410 Mich. 293, 302 N.W.2d 146 (1981).

Thus, I would strongly urge the Committee to avoid the insertion of any additional language in Section 16 which might wrongly suggest to cities and counties that manufactured housing is to be judged by standards different from those applicable to site-built housing. The governing bodies of zoning jurisdictions should not be led into a belief that they can regulate all manufactured housing in the same manner, because some manufactured housing is virtually identical to site-built housing. To do so will only promote litigation and prolong the removal of regulatory impediments to the greater utilization of this form of affordable housing throughout the communities of this state.

HB 3058 is the result of the collective efforts of persons representing many public and private interests concerned with planning and zoning regulations. Our association believes that it provides a fair and equitable blend of these interests and we support its enactment.

Thank you for the opportunity of appearing before the Committee today in support of HB 3058. I will be happy to respond to any questions you might have.

Manufactured Home

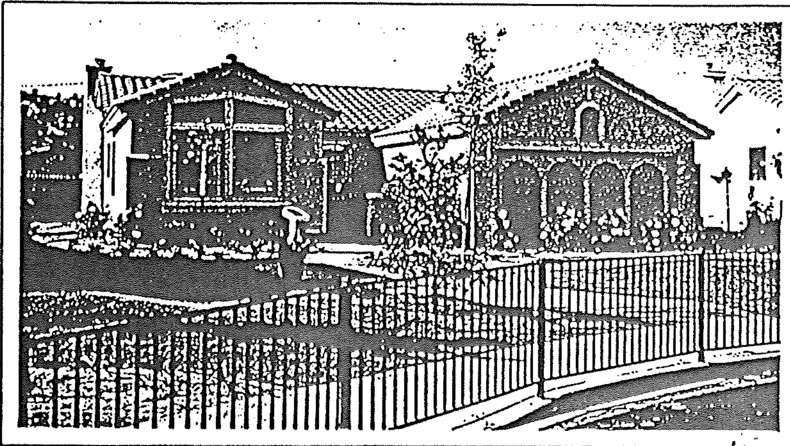
Manufactured Home

Manufactured Home

Big developers push manufactured housing as times look for affordable breakthroughs

Among advantages: Big reduction in standing inventory, little or no construction financing needed, factory builds at av. $32 psf.

MANUFACTURED home, built by Fuqua Homes, Inc., Corona, is one of three models offered at Robert Childers' Rancho Viejo development in North San Diego County. Manufactured homes usually sell for 15-20% below market prices.



Two prominent California developers of single-family tracts are currently marketing projects which exclusively feature manufactured homes. Sales to first-time buyers are reported to be brisk in both developments. Watt Industries' Santiago Estates in the San Fernando Valley features 800 homes on hillside lots in Sylmar. Robert Childers Company is developing a 270-home community set in an orange grove in North San Diego County and dubbed Rancho Viejo.

Selling Price Much Lower than Comparable Site-Builts. Both developments feature amenity-packed homes which sell for significantly less than their site-built counterparts in the same market. Childers' Rancho Viejo homes range between $149,990 and $164,990 for square footages of between 1,225 and 1,625 in a market where low price is currently averaging about $190,000. Homes in Watt's Santiago Estates range in price from $94,900 to $113,900 for square footages of between 1,250 and 1,600. Comparable three-bedroom homes in the area average $250,000. The Watt Industries price is not quite as amazing as the math first indicates, because the community features leased lots. Lease payments run about $350 per month.

Marketing Advantages. Praise comes from the marketing people at both Robert Childers Company and Watt Industries. Both model complexes have drawn raves from shoppers, coupled with cries of amazement at the price tag. Both companies reported almost no hesitation on the part of homebuyers because the homes are built off-site. Childers' Vice President of Marketing, Jess Painter, said "When the homes look this good, for this price, no one cares where they are built. We didn't advertise that these homes are built in a factory, but the day we opened the model complex we had one house unfinished and still sitting on the trailer. We took 47 reservations the first weekend and were only open for a total of four hours."

Watt Industries' Marketing Coordinator Jana Carmer said her colleagues' biggest thrill lies in being able to qualify nearly every customer that walks through the door.

Because homebuyers are financing only their home—and not the land and development costs—the typical downpayment at Santiago Estates is approximately $10,000.

"When you're dealing with a quality product with consumer appeal in a market that has entry level homes in the $250,000 range, it's a real pleasure to offer payments averaging $700 a month less than they'd pay anywhere else in the (San Fernando) Valley," Carmer said.

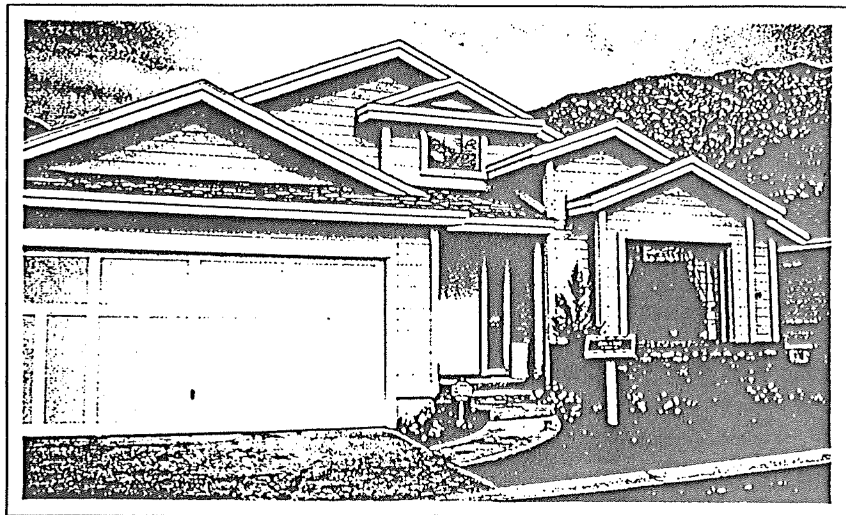
Watt is currently completing a marketing analysis on another site in East San Diego County where it expects to site 544 manufactured homes.

"Developer Series" Manufactured Homes. Currently between 20-25% of the 11,000 manufactured homes built in California each year go to builder/developers who site them in tracts of between 50 and 450 homes, according to Tony Hadley, Land Use Director for the California Manufactured Housing Institute. This segment of the HUD-Code manufactured housing market has grown steadily since 1980 when local governments and financial institutions began treating manufactured housing on par with conventional construction. In response to growing consumer, financing and local regulatory acceptance, some manufacturers have begun designing "developer series" homes that feature amenities favored by the entry-level and retirement homebuying markets. The overall quality, marketing appeal and resulting selling price of the homes are spurring developers to increasingly consider manufactured housing for selected market niches and specific land parcels. Several advantages accrue to the developer using manufactured housing.

The Factory Becomes Your Number

 8-5

RAY WATT is developer of Santiago Estates in Sylmar, San Fernando Valley, where home at right is featured. It's an 800-home development of hillside lots.



Builders get density bonuses; buyers may pay $700 a month less, 10% down

One Subcontractor. Once the developer selects a piece of land and begins tentative mapping, he concurrently begins talking with prospective manufacturers. A developer can choose from the manufacturers array of current floor plans and exterior elevations or manufacturers can take specifications and construct precision-built homes to meet the developer's targeted market. **The cost efficiencies achieved through the use of highly-supervised labor working in a controlled and routinized environment keep sf. costs to an average of $32.71.**

Curb appeal can be achieved through factory design as with Santiago Estates' wood Cape Cod look. Or, a developer can perform more involved on-site customizing, as at Rancho Viejo, where the Robert Childers Company finishes the home with stucco exteriors and tile roofs. Additional hard costs include those for site-built garages, foundations, flatwork and landscaping.

Distinctive interiors and amenities are limited only by the developers' imagination and budget considerations. Interiors can include vaulted ceilings, walk-in closets, luxurious baths, breakfast nooks and kitchens with every modern convenience.

The use of manufactured housing lowers administrative costs and eliminates much of the detail work by collapsing some two-dozen sub-contractors to one level—the factory. Another benefit is that the use of manufactured homes significantly reduces the number of local government inspections, thereby speeding construction time. Depending upon the jurisdiction, between two and four local inspections are all that's necessary to complete a manufactured home. All other inspections are completed in the factory.

Significant Reduction in Standing Inventory. One of the biggest differences in developing a tract using manufactured housing occurs during what traditional builders think of as the "first phase." **Developments using manufactured homes can eliminate the process of building tracts in phases.**

The first step is constructing the model center, commonly the developers' only primary financial investment in a project. From the model center, the homes are committed to individual buyers and ordered from the factory. About three weeks later, the homes are delivered to the site in two or more fully completed modules, where they are placed on a prepared foundation. On-site additions such as garages are made and the home can be ready for occupancy in about the same time frame as the escrow process. This time-frame significantly lowers large investments in standing inventory and interest charges to the developer by **reducing or in some cases eliminating, the need for construction financing.** The challenge the builder faces is to achieve the same efficiencies and production schedule on-site as is achieved in the factory.

Significantly Lower Risk. This process also offers the advantages of lowering risk in an uncertain or downward market or during times when mortgage rates are rising. With manufactured housing, inventory can more closely match demand and follow the rate of the marketing process for a tract. Overhead costs are also lower due to the fact that building times are measured in weeks as compared to months common with site-building. Reducing risks in all these areas is particularly important when expanding a market to include the cost-concious entry-level buyer.

Comparable Financing. The maturity of the industry as a solid option for building quality, affordable single-family homes has captured the allegiance of the mortgage industry. Virtually every type of financing applicable to traditional developments can be readily secured, including every government insured lending option. This means easy financing for qualifying homebuyers. And General Electric Mortgage Insurance Company recently announced a new program to provide mortgage insurance on manufactured homes, allowing homebuyers to qualify for 10% downpayments.

Local Government Acceptance. Local planning officials in California are encouraging the use of manufactured housing in planned unit developments more with every passing day. They have adopted generally favorable development standards with lot sizes and infrastructure improvements geared to the more "affordable market." Density bonuses are commonly awarded to developers utilizing manufactured homes. In many cases, fees and infrastructure requirements are lower as a means to further encourage developers to include manufactured housing developments in their range of products.

In some cases, local governments have set aside choice parcels exclusively for manufactured housing. Rancho Viejo is one such example. Initially, Robert

(Continued on p. 37)

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Architect—from page 35

in if you don't want to."

My point is that if you don't study a means of thinking then you really have a problem on your hands. The problem is that we are not experimenting. We seem to have a middle-administrative mentality that is constantly kowtowing to pressures created by either a group above us or a group below us. Yet they are making the decisions in education.

I've been educated to question and to ask questions and there is a very big difference between the two. I've also been educated to break things down into their basic components and try to understand why they may have worked to begin with, not as stylistic imagery, but simply why it worked to begin with.

FRANK: **What about other problems?**

ED: I think Post-Modernism started off being a wonderful idea but then it became a license—a crutch, for those who can't create. It's overwhelming!

Now that we're seeing the results of some of this pasty architecture, we're beginning to understand it's a problem. This problem is fermented by the writing professions covering style and architecture today. There are 20 writers for every practicing architect and as many teachers or architecture for every one doing it at his level best. The proportion is backward. It used to be the reverse ... so whatever's trendy is always "in."

Manufactured—from page 15

Childers Company, who had no previous experience with manufactured homes, was denied the necessary zoning change to convert use of the land to a site-built development. The company's decision to proceed into the new world of manufactured housing has proven to be a marketing success.

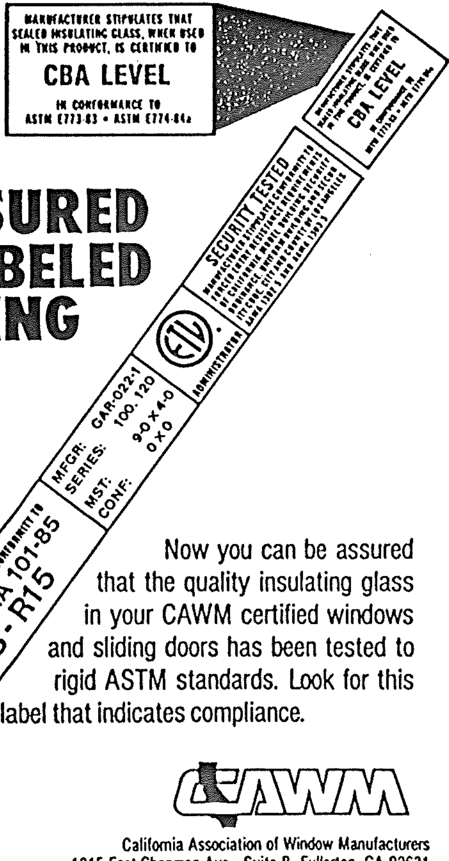
California state law, Government Code Sections 65852.3 and 6582.4, provides further incentive to the developer to investigate manufactured housing by prohibiting local governments from adopting discriminatory zoning and land use policies regulating this housing type.

How to Proceed. Developers who wish to investigate the advantages manufactured housing provides, including lower risks, increased return on capital investment, lower square footage costs and lower administrative and marketing costs, should begin by contacting the industry's professional and trade association, the California Manufactured Housing Institute at (714) 987-2599. The Institute has a special technical assistance and professional referral program for developers. The result can be a satisfying and successful process, marketing single-family detached homes to grateful customers at a selling price substantially below comparable stick-built houses.

Quake data—from page 11

A return to normal conditions will require the same inspired and cooperative response that marked the joint efforts of federal, state and local governments, utilities, community organizations and individual citizens in the immediate hours and days after the earthquake.

Then, disaster field offices were established throughout the Bay Area, shelters and mobile homes were provided for residents displaced by the quake, damaged water systems were checked and millions of pounds of frozen and canned goods in collapsed warehouses were inspected by food and drug officials.



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8-7

The best-kept housing secret in California

This is a manufactured home!

The styles, amenities and craftsmanship that buyers want are featured in today's manufactured homes. They're well-designed, energy-efficient, and precision-built with quality materials. They're changing the old-fashioned notions about factory-made homes.

Choices now available match site-built homes in sales appeal and are much more affordable: as much as 1/3 less per square foot. Which immediately broadens the market. Don't miss out on this housing revolution. Contact any of these fine companies.

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Chino: (714) 738-4204
Moreno Valley: (714) 656-6668
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Builders and developers are discovering that today's manufactured homes offer plenty of design flexibility, reduce construction costs, cut down on the number of subcontractors, improve financing costs, and reduce the risks of standing inventory. For more information, contact any of these fine companies.

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The best-kept housing secret in California

MAR 14 1990

In the Supreme Court of Georgia

Decided: MAR 13 1990

S89A0302. CANNON v. COWETA COUNTY, GEORGIA et al.

BELL, Justice.

This appeal involves questions of the constitutionality of a zoning ordinance that restricts the placement of manufactured homes to manufactured-home parks, and an additional question of the standing of the appellant, T. G. Cannon, to attack the constitutionality of the ordinance. The trial court held that Cannon did not have standing and that the ordinance is constitutional. We reverse both holdings.

On December 16, 1986, Coweta County adopted an amendment (the Amendment) of the Coweta County Zoning Ordinance, to delete manufactured homes as a permitted use in all residential zones. The effect of the Amendment was to restrict the placement of manufactured homes to manufactured-home parks. After this amendment, Cannon, a manufactured-home dealer and developer with dealerships in Georgia and North Carolina, purchased a one-acre tract of land in a residential zone in Coweta County. Cannon subsequently applied to Coweta County for a permit to place a manufactured home on his property. The county denied Cannon's request, on the ground such a placement violated the Amendment.

Cannon subsequently brought this action, contending, inter

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8-10

alia, that the Amendment violated due process and equal protection. Following a bench trial, the trial court ruled that Cannon did not have standing to challenge the ordinance and that his constitutional challenges were without merit. Cannon now appeals. For the following reasons, we conclude that Cannon had standing to bring the instant suit and that the exclusion of manufactured homes from all residential districts is unconstitutional.

1. Cannon argues that the trial court erred in ruling that he did not have standing to challenge the constitutionality of the ordinance. We agree. First, we note that Cannon's purchase of his lot after the enactment of the Amendment does not defeat his standing. City of Rome v. Pilgrim, 246 Ga. 281, 283-284 (2) (271 SE2d 189) (1980). Moreover, we conclude that Cannon showed that the Amendment injures his property rights. Payne v. Bradford, 231 Ga. 487 (2) (202 SE2d 422) (1973).

2. Cannon contends that excluding manufactured homes from all residential districts is unconstitutional.

> This state uses a balancing test to determine whether the police power has been properly exercised. This test weighs the benefit to the public against the detriment to the individual. . . . A zoning ordinance is presumptively valid, and this presumption can be rebutted only by clear and convincing evidence. Guhl v. Holcomb Bridge Rd. Corp., [238 Ga. 322 (232 SE2d 830) (1977).] The burden is on the plaintiff to come forward with clear and convincing evidence that the zoning presents a significant detriment to the landowner and is insubstantially related to the public health, safety, morality, and welfare. Only after this initial burden is met must the governing authority come forward with justification for the zoning as reasonably related to the public interest. [Cits. omitted.]

8-11

[Gradous v. Bd. of Commrs., Etc., 256 Ga. 469, 471 (349 SE2d 707) (1986).]

In the absence of a proper exercise of police power, zoning legislation is arbitrary and capricious, violates due process, and will be held unconstitutional. Id. at 470-471.

Although we are bound by the trial court's findings of fact unless clearly erroneous, we owe no deference to the trial court regarding the law. City of Roswell v. Heavy Machines Co., 256 Ga. 472, 474 (349 SE2d 743) (1986); Dougherty County v. Webb, 256 Ga. 474, 477, fn. 3, (350 SE2d 457).

a. Cannon presented evidence that numerous other residents of Coweta County could not afford site-built housing, but could afford to place a manufactured home on an individual lot. He also presented evidence that modern manufactured homes, including the one he desired to put on his lot, are as safe and attractive as site-built housing, do not devalue neighboring site-built residences, and should not, if valued properly, constitute a drain on the county's tax base.

b. The county then presented evidence, seeking to justify the zoning on two grounds: first, that manufactured homes adversely impact the county's tax base; and second, that manufactured homes devalue nearby site-built homes.

3. The trial court found as facts that manufactured homes adversely affect the market value of nearby site-built homes. The trial court also recited as facts statistics presented by the county regarding the percentage of manufactured housing in the

county as compared to all single-family dwellings, and the percentage of property taxes paid by owners of manufactured housing. In its findings of facts the court noted that the county voted

> to enact the Amendment because of: (a) concern over the adverse affect of the presence and continuing influx of manufactured homes on the tax base of Coweta County with a resulting negative effect on the ability of Coweta County to provide services to the public; and, (b) the adverse affect of manufactured homes on the market value of nearby site-built homes.

The court concluded as a matter of law that Cannon had not shown that the ordinance bears an insubstantial relationship in the public health, safety, morality, and welfare, and that the ordinance's restriction of manufactured homes to manufactured-home parks was a valid exercise of the police power.

4. We begin our review by addressing the county's argument that Cannon did not carry his burden of showing that the ordinance bears an insubstantial relation to public health, safety and welfare. We find that Cannon did satisfy this burden.

Our review of the trial court's order shows that the court made no findings of fact regarding the evidence presented by Cannon on this issue. The court only made a conclusion of law that Cannon had failed to show an insubstantial relation to the public health, safety and welfare.

Our review of Cannon's evidence shows that he demonstrated a public need for manufactured housing in residential districts. Further, he presented evidence that the modern manufactured home is as safe and attractive as site-built housing; that

manufactured homes do not devalue nearby site-built homes; and manufactured homes should not, if valued properly, adversely affect the county's tax base.

5. Having decided that Cannon did satisfy his burden, we must now consider the county's justification of the zoning and determine, using this court's balancing test, whether the zoning is constitutional.

a. First, we find that the county's tax-base justification has no merit. The trial court made no finding of fact that manufactured housing would adversely impact the county's ability to provide services to its citizens. Moreover, the county presented only generalized statements of concern that manufactured housing would impact on its ability to provide services, and county officials acknowledged that at the time of the Amendment and at the time of trial the county was not having any difficulty providing services.

b. We next consider the justification of the protection of the property values of site-built homes located near manufactured homes. In this regard, the trial court found as fact that manufactured homes did adversely affect the value of nearby site-built homes, and we cannot conclude that the court's finding is clearly erroneous. However, considering the improvement of modern manufactured homes; the fact that appropriate steps[1] can be taken to minimize the negative impact of the placement of

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[1] Such steps could include regulations requiring attachment to a permanent foundation, appropriate lot size and location, and certain aesthetic standards.

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manufactured homes near site-built homes; and the oppressive impact of the ordinance on individuals in need of manufactured housing, we conclude, in applying our balancing test, that the protection of property values cannot justify the ordinance's restriction of manufactured homes from all residential areas. See Bourgeois v. Parish of St. Tammany, La., 628 FSupp. 159, 162 (E.D. La. 1986).

Having reviewed the Amendment in view of the facts of this case and the law, we conclude that it is arbitrary and unreasonable, and therefore unconstitutional.[2] However,

> this is not to say that a municipality must permit all mobile homes, regardless of size, appearance, quality of manufacture or manner of installation on the site, to be placed wherever site-built single family homes have been built or are permitted to be built. Nor do we hold that a municipality may no longer provide for mobile home parks. We hold only that a per se restriction is invalid; if a particular mobile home is excluded from areas other than mobile parks, it must be because it fails to satisfy standards designed to assure that the home will compare favorably with other housing that would be allowed on that site, and not merely because it is a mobile home. [Robinson Tp. v. Knoll, 302 NW2d 147, 154 (Mich. 1981).]

6. Based on our holdings in the foregoing divisions, we do not need to decide Cannon's remaining enumerations of error.

Judgment reversed. All the Justices concur, except Clarke, C.J., Hunt and Fletcher, JJ., who dissent.

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[2] This holding is in accord with holdings in several other jurisdictions that have considered the constitutionality of restrictions like that of Coweta County. See Robinson Tp. v. Knoll, 302 NW2d 146 (Mich. 1981); Borough of Malvern v. Jackson, supra, 529 A2d 96; Bourgeois v. Parish of St. Tammany, La., supra, 628 FSupp. 159; Luczynski v. Temple, 497 A2d1 211 (N.J. Super. 1985); Geiger v. Zoning Hearing Bd., 507 A2d 361 (Pa. 1986).

S89A0302. CANNON v. COWETA COUNTY ET AL.

HUNT, Justice, dissenting.

I agree with the majority that the plaintiff here has standing to challenge the ordinance, just as would any property owner in Coweta County desiring to place a manufactured home on his property but prohibited from doing so by the ordinance. I disagree, however, with the majority's conclusion that the ordinance is unconstitutional. This is not a zoning case involving a county's refusal to rezone a particular piece of property such as Guhl v. Holcomb Bridge Rd. Corp., 238 Ga. 322 (232 SE2d 830) (1977) and Gradous v. Bd. of Commrs., 256 Ga. 469 (349 SE2d 707) (1986) cited by the majority. Rather, this is a facial challenge to the constitutionality of an ordinance. The ordinance the plaintiff challenges is a valid exercise of Coweta County's police power unless it is "clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals or general welfare." Village of Euclid v. Ambler Realty, 272 US 365 (47 SC 114, 71 LE 303) (1929). "[T]he power to classify in the adoption of police laws...admits of the exercise of a wide scope of discretion." Lindsley v. National Carbonic Gas Co., 220 US 61, 78-79 (31 SC 337, 55 LE 369) (1910).

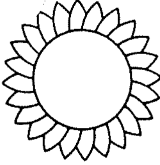
It is well established in this state that manufactured homes are properly subject to regulation under the police powers of local governments. Hornstein v. Lovett, 221 Ga. 279 (144 SE2d 378) (1965); Nichols v. Pirkle, 202 Ga. 372 (43 SE2d 306) (1947).

The majority of courts faced with the question of the constitutionality of restricting manufactured homes to designated areas generally have upheld such ordinances. See generally Rathkoph, The Law of Planning and Zoning § 19.04; Annot., 17 ALR 4th 106, 111 § 3 (1982). Considerations such as encouragement of the most appropriate use of land and conservation of property values have been held to be proper justifications in restricting the location and use of manufactured homes for the protection of the general welfare. See, e.g., Duggins v. Town of Walnut Cove, 306 SE2d 186 (N.C. 1983); City of Brookside Village v. Comeau, 633 SW2d 790 (Tex. 1982); Warren v. Municipal Officers of Town of Gorham, 431 A2d 624 (Me. 1981); DeSoto v. Centurian Homes, Inc., 573 P2d 1081 (Kan. 1977). Here, the county presented evidence, and the trial court found, that placement of manufactured homes next to site-built homes would adversely affect the property value of the site-built homes. While this finding might be debatable, it is not clearly erroneous, and in the absence of action by the county which is arbitrary or capricious, or otherwise amounts to an abuse of discretion, we are not authorized to substitute our judgment for that of the zoning authority.

This is not a case like Borough of Malvern v. Jackson, 529 A2d 96 (Pa. 1987) cited by the majority, where the zoning authority sought to exclude mobile homes entirely. Rather, the ordinance limits mobile homes to mobile home parks in the county, and does not preclude owners of mobile home parks from applying to enlarge an existing park or to build an entirely new park. Further,

manufactured homes on lots containing or previously zoned for manufactured homes under the former ordinance are grandfathered. The owner of a manufactured home occupied lawfully under the previous ordinance may keep it, replace it with a new manufactured home on the same lot, or transfer it, together with its lot, to a new owner. Thus, the number of manufactured homes outside parks in Coweta County can remain the same as before the enactment of the ordinance, manufactured homes can be placed in existing parks, and owners of manufactured home parks may apply to enlarge their parks or to build new parks. Also, the record reflects that a number of mobile home parks currently in Coweta County are operating at less than full capacity and that there are existing grandfathered lots outside of parks on which manufactured homes can be placed. Under these circumstances, I cannot conclude that the county's action is unreasonable. I am authorized to state that Chief Justice Clarke and Justice Fletcher join in this dissent.

8-18



Johnson County
Kansas

Testimony of Barry Hokanson, Director of Planning, Johnson County, to the House Committee on Local Government, March 20, 1990, State Capitol, Topeka

RE: House Bill 3058

Mr. Chairman and Members of the Committee, my name is Barry Hokanson; I am a director of planning for Johnson County. I am speaking today on behalf of the Johnson County Board of County Commissioners, to emphasize two points:

1. The County supports the amendment which will retain the special enabling statute for Johnson County which was approved by the Legislature in 1984 (KSA 19-2956, et.seq.).

2. In addition to the correction shown in the mark-up version of HB 3058 distributed yesterday, March 19, Johnson County believes there is need for an express provision to clarify that a county operating under KSA 19-2956, et.seq. is not affected by HB 3058.

Johnson County has invested several years of work to implement the 1984 legislation, including substantial contributions by our new Planning Commission which is comprised of both rural and urban citizen members. We are this year updating our 1986 Comprehensive Plan, hearings have been held within the past month, and we are about to adopt new zoning regulations to streamline and modernize our development standards. Because Johnson County is a rapidly growing area with 21 separate cities, close coordination between cities and the county government is essential. We have made great strides in the six years since the enabling statute was approved by the Legislature, and we need to keep our organizational structure in place to continue this work.

We urge your approval of the amendment which will preserve the statute approved in 1984. Thank you for your consideration.

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3-20-90
Attach. IX

Office of Planning 110 S. Cherry Olathe, Kansas 66061-3422 (913) 791-5299

TESTIMONY BY DAVID L. POPE, CHIEF ENGINEER-DIRECTOR
DIVISION OF WATER RESOURCES
KANSAS STATE BOARD OF AGRICULTURE
HOUSE BILL NO. 3058
BEFORE THE HOUSE COMMITTEE ON LOCAL GOVERNMENT

March 19 & 20, 1990

Mr. Chairman and members of the committee, thank for this opportunity to express my views concerning certain features of House Bill No. 3058. First of all, I would like to make it clear that I'm not appearing in opposition to the bill in general, but in connection with sections 12 and 22 of the bill. These two sections would alter the role and authority that the Chief Engineer currently has in connection with certain projects in the floodplain. I have no opposition to the general direction of the bill, but am concerned about certain issues within those two specific sections.

In order to explain my concerns, I would like to describe the program which these sections would affect. These sections would specifically affect the floodplain management program and its relationship to the federal National Flood Insurance Program, first passed by Congress in 1968. The National Flood Insurance Program established a means for recovering flood damages through a subsidized insurance program and, also, a means to control future costs by reducing the amount of property and development that would be built in areas subject to flood damages. In order to participate within this program, the Kansas Legislature enacted K.S.A. 12-734 and 735 in 1970. The DWR, KSBA was named the coordinating agency to work with local communities and act as a liaison between those communities and the federal government.

Representatives from the Division participated in public information meetings, reviewed technical information as to the establishment of floodways and floodplains, and served as a clearing house and repository of floodplain maps and their revisions.

Under current statutes the Division also examines city and county floodplain ordinances and resolutions for compliance with requirements of K.S.A. 12-735 and the requirements of the National Flood Insurance Program. Figure 1 illustrates the natural condition in a floodplain. Figure 2 provides illustration of the floodway and floodway fringes that are identified based upon hydraulic studies in the floodplain for a once in 100 year frequency flood event. If this review indicates compliance with those state and federal requirements, then the ordinance is approved by the Chief Engineer. Such approval is transmitted to The Federal Emergency Management Agency (FEMA) and back to the city or county for their adoption contingent on the approvals. The Chief

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Attach X

Engineer also must approve any changes or variations in the ordinances prior to acceptance by the local planning entity. A considerable more amount of time is spent on the coordination functions, especially this last year or so since we now have a community assistance program partially funded by FEMA. The workload in connection with the review and approval of local ordinances is currently not too great, except in cases of changes in federal regulations when everyone essentially has to change their current ordinances or resolutions to agree with the new federal regulations.

An example of how this statutory authority promotes local community planning and enforcement would be when a city ordinance or county resolution is violated by an individual in that community. In small communities, the division can provide some technical expertise which may not otherwise exist. Often times the individual may rebuff the community in their efforts to enforce their zoning ordinance. The Divisions regulatory authority allows another level of authority be imposed before the community has to go to court to enforce their regulations. The whole community may be subjected to federal suspension if the ordinance is not enforced against the individual violator.

The levee law, K.S.A. 24-126, requires the Chief Engineer to approve levees and other such improvements. The approval of construction fills in floodplains and the approval of floodplain ordinances mesh nicely under the federal program.

Levees are usually dikes constructed to repel or divert flood waters that are outside the stream channel to the benefit of the lands protected by the levee. This also means that the water may be pushed onto adjacent lands which may not be under the control to the levee owner. If you will look at the drawings labelled Figure No. 1 and Figure No. 3, you can see a representative of a levee and its effect. Our role is to examine the effects of such changes in the flood waters for unreasonable effects. Nationally, an unreasonable effect is generally recognized as the raising of the flood level by more than one foot during the 100 year flood when comparing existing conditions to cumulative post-project ones.

Levees are not the only structures which have this effect. There are other examples of structures that may have similar effects, but may not always be fully appreciated for their possible consequences. The construction of a fill for a house or even an entire subdivision can be essentially a levee which has been backfilled behind. The placement of sewage treatment lagoons along a stream may also have the effect of a levee. In some cases, small areas of filling may not have a large effect.

In the National Flood Insurance Program there is an attempt to delineate areas which can be developed with the protection of levee or a fill that can be placed without having the unreasonable impact. This does not mean that any fill placed in a floodplain, which has received study to address such identification, is automatically correct or approvable. In addition, of the 448 communities, including 55 counties, which are currently identified as flood prone in Kansas, only 118 have identified floodways and in all of these cases many small streams are not delineated. In such circumstances an example of a problem that may occur is where the placement of the fill may restrict or confine local drainage even though the project may not necessarily have an unreasonable impact on the flood flows of the main stream channel. We have handled applications for some house fills which are within wetlands that require mitigation or some other means of

avoiding the environmental loss entailed by such filling. In both of these circumstances, the authority under K.S.A. 24-126 was used by the Division to insure that proper consideration was given to environmental issues, the local drainage problems and other effects on others prior to the construction of such fills.

New Section 12 and Section 22, of H.B. No. 3058 effectively removes the regulatory role and jurdisdiction of State Government in the floodplain. New Sections 11 and 12 retains the most of language currently found in K.S.A. 12-734 and 735 regarding city and county floodplain ordinances. The main difference between the language in the bill and the current statutes is that the Chief Engineers' approval is no longer required and the criteria for his review which was specified in K.S.A. 12-735, no longer exists. It appears that, in general, the Bill requires submittal to the Chief Engineer of the ordinances but does not require any action or approval by the Chief Engineer. The role of the DWR in connection with floodplain ordinances would essentially be a repository of such information. There is some provision for the Chief Engineer to require certain types of information and details pertaining to the content of such ordinances and resolutions.

The lack of authority to approve ordinances would limit the technical role the Division has had in connection with the National Flood Insurance Program in providing guidance to local entities.

Section 22 amends K.S.A. 24-126 by exempting from that statute, "floodway fringe fills". Unfortunately, while this agency understands what the "floodway fringe" means under federal regulations, it appears that such language might be interpreted so broadly that the exception would exempt any levee in the state, whether within an identified flood prone community or not, from approval under the law. All house or subdivision fills, whether unreasonable or not, or whether in environmental sensitive areas, would also be exempt. The term, "floodplain fringe fill," could be applied so broadly that essentially the authority of the Chief Engineer could be established at the beginning of the statute and then be removed by the closing paragraph. I doubt that this is the intent of the bill, but it definitely leaves much room for question.

My basic objection to the amendment to K.S.A. 24-126 is that it really makes no difference in impact or effect whether flood waters are repelled by a floodway fringe fill or by a levee. Figure 4 would represent the circumstance occasioned by the filling of the floodway fringe.

I believe it's also appropriate to indicate that the Water Projects Environmental Coordination Act does apply to approvals issued under the levee law, K.S.A. 24-126. These fills often affect sensitive areas of wildlife habitat and wetlands. If they are exempted from K.S.A. 24-126, then they would also be removed from the review of the environmental review agencies provided for under the Water Projects Environmental Coordination Act.

I wish to thank the committee for your time and attention. My staff and I would certainly be willing to work with the committee or proponents of this bill in order to establish language that may be acceptable to our office if you would like to provide for a more significant role, as we have had historically. I would be happy to entertain any questions which you may wish to propose in connection with my testimony.

Figure 1
Valley Cross Section w/o Levee or Fill

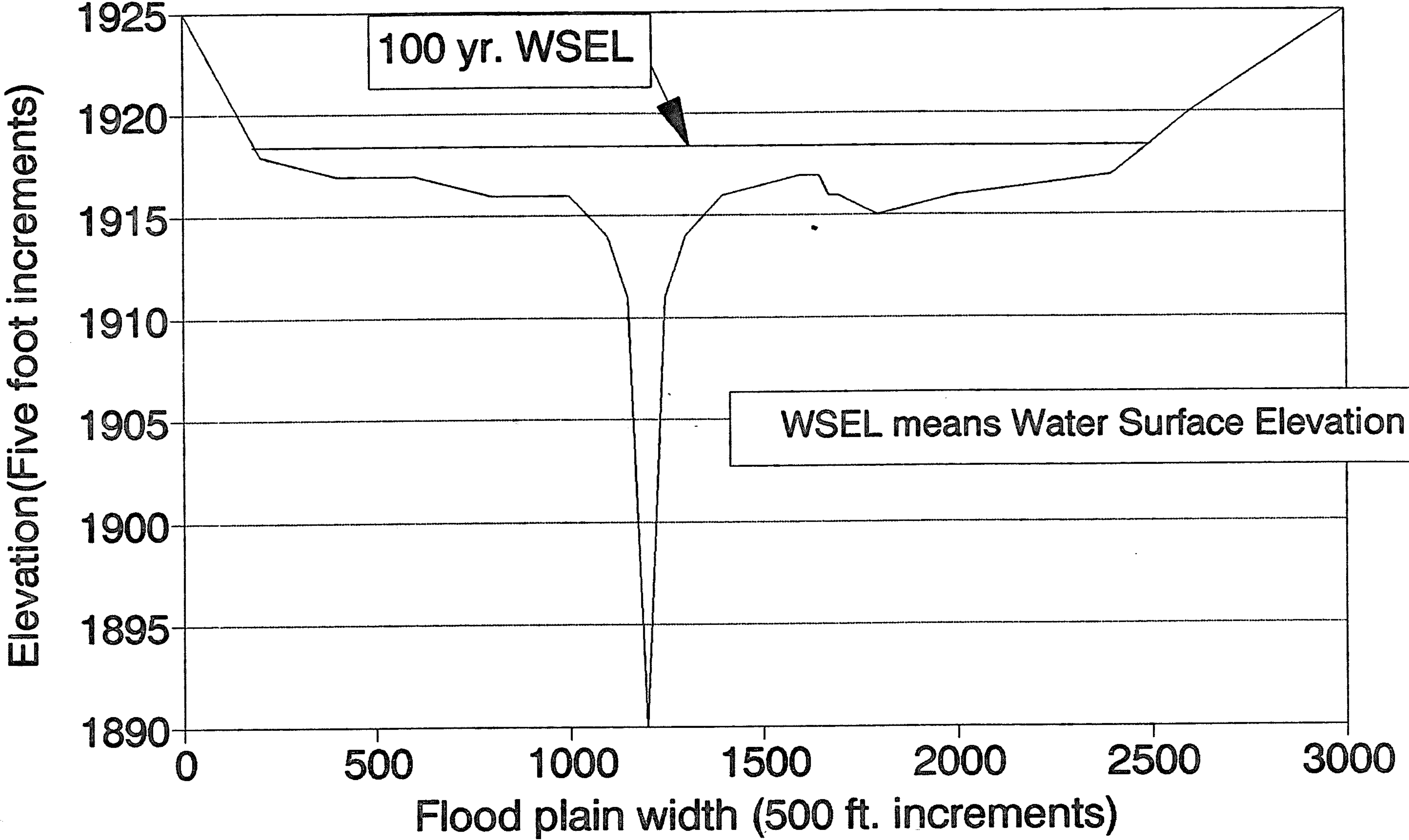

Figure 2
Defined Flood Plain Features

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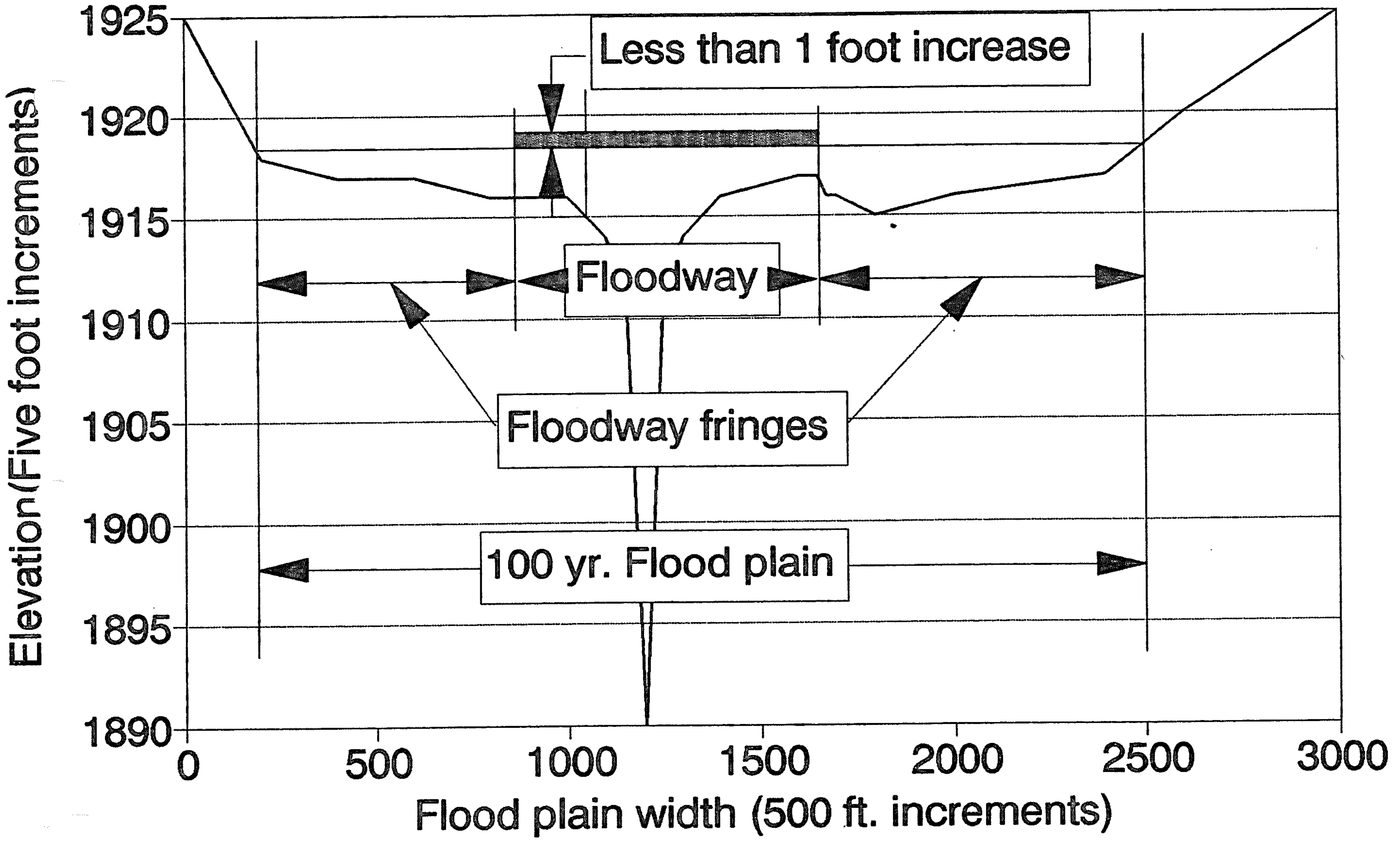

Figure No 3
Valley X-section with Levee

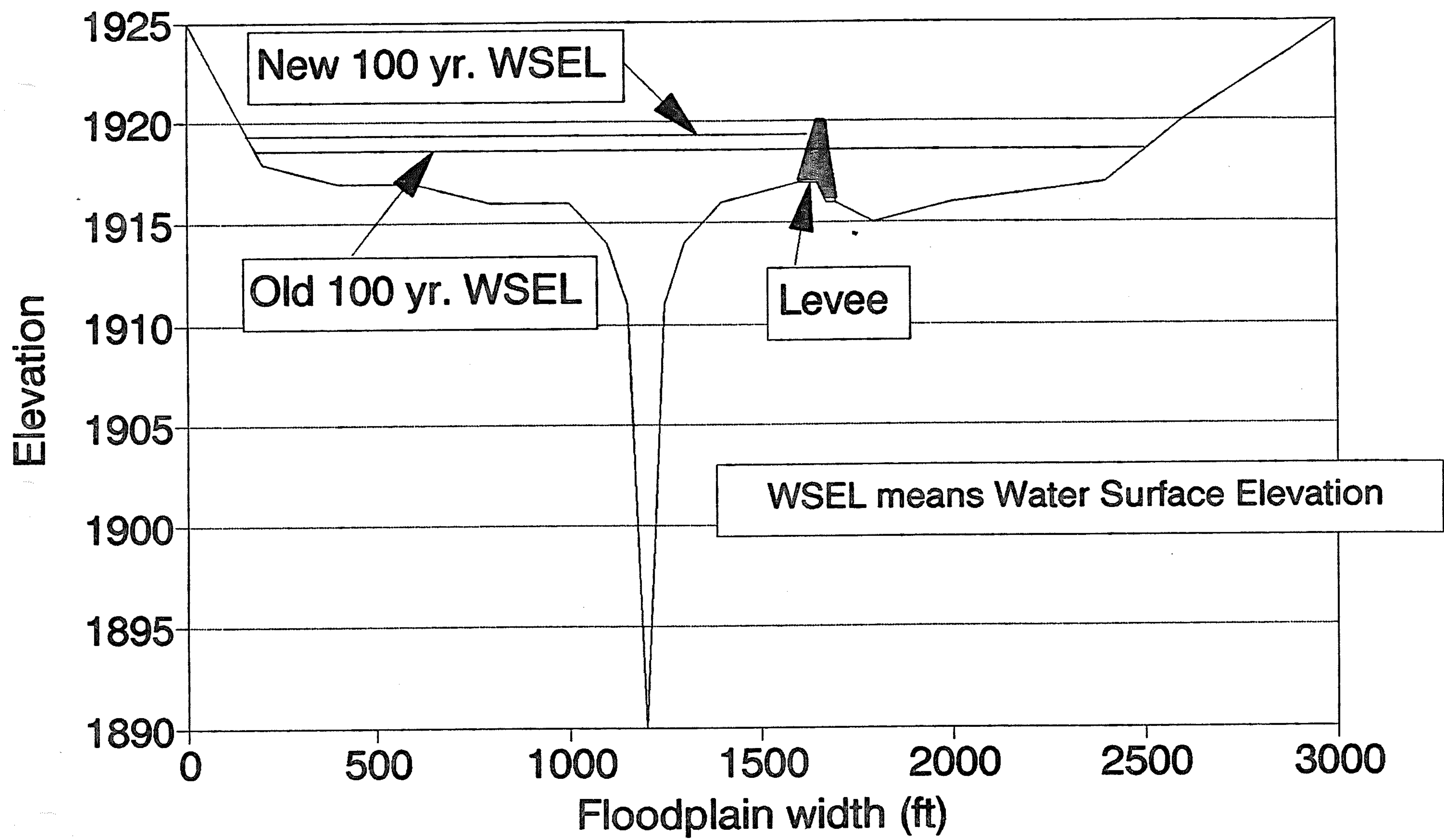

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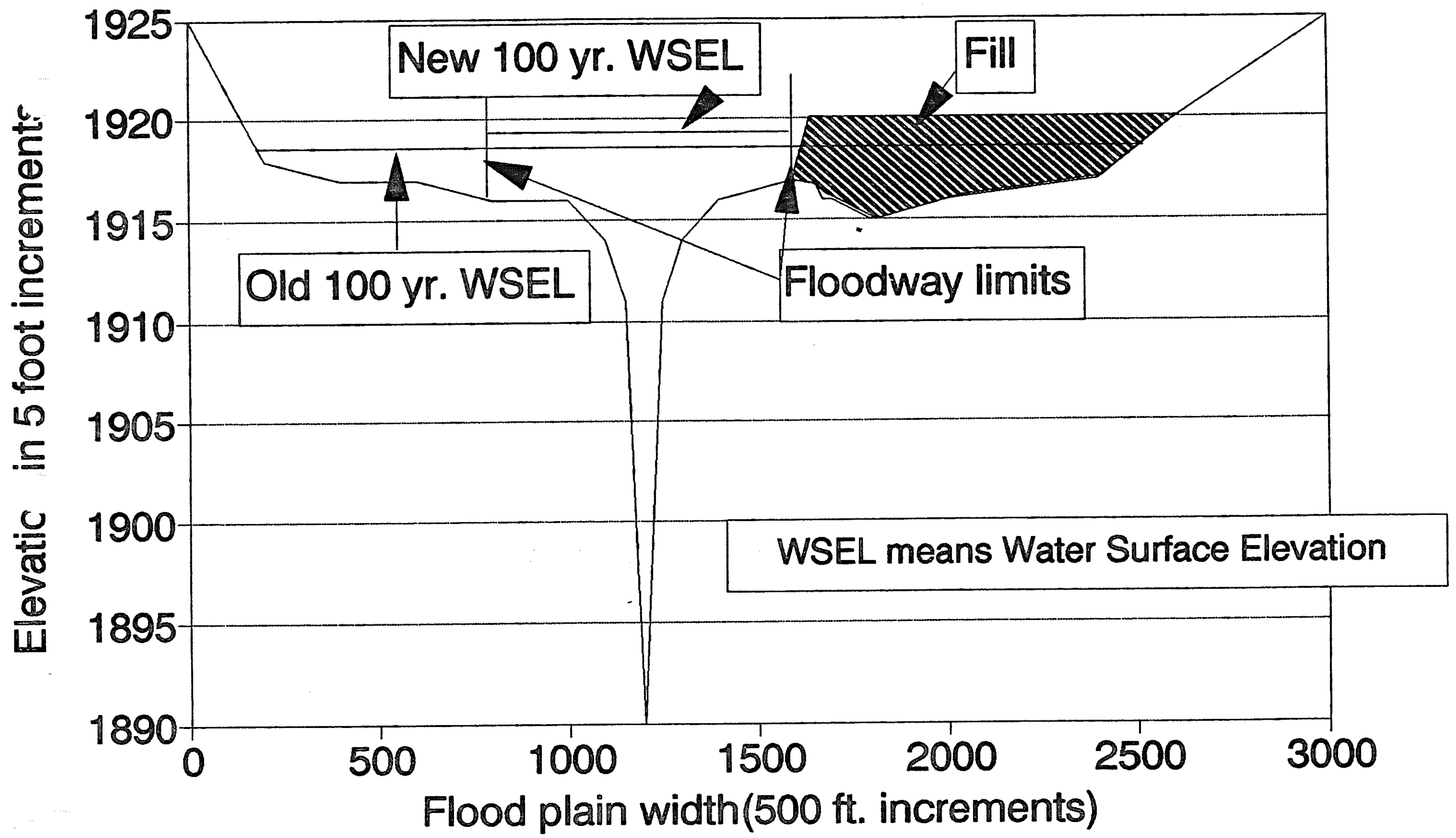
Figure 4
Valley X-sec with Floodway fringe fill



K.S.A. 24-126 - Amendment

Except that the provisions of this act shall not apply to properly placed fills other than levees located in the floodway fringe within a participating community as defined and identified by the national flood insurance program.

TESTIMONY OF
SHAWNEE COUNTY COUNSELOR DOUGLAS F. MARTIN,
ATTORNEY FOR SHAWNEE COUNTY, KANSAS AND
THE BOARD OF COUNTY COMMISSIONERS

MARCH 20, 1990

1. Shawnee County is opposed to House Bill No. 3058. This bill is a complete rewrite of all the zoning laws of the State of Kansas. In some instances, there are few changes to the substance of the law. In other instances, there are major changes to the way we will be doing business under the zoning laws of our state. If this bill passes, it could be one of the most significant and substantial pieces of legislation to impact the lives of the citizens of our state. I would like to make it clear to this committee that a majority of the Board of County Commissioners are in opposition to this bill. However, Commissioner Velma Paris has asked me to let you know that she does favor the bill.

2. Although an interim study was requested on this legislation last summer, there was no interim study. In my opinion, I believe that an interim study would be most useful, and result in legislation that has more input from the many groups in Kansas that will be impacted by this legislation.

3. The first major area that the Board objects to in this bill is that it would remove from their decision and control all matters relating to subdivision approval, with the exception of receipt of public land to be dedicated for

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Attach. XI

public purposes. All other decisions will be left to the planning commissions. This is a major change to the way we do business here in Shawnee County. Let me explain. In counties such as Shawnee County that have a joint planning commission, the general statutes that relate to the subdivision of land do not apply to the cities and counties. See, K.S.A. 12-705a where it states at the end of the statute that those subdivision statutes do not apply if there is a joint planning commission. We have a joint planning commission here in Shawnee County. Furthermore, the joint planning commission statutes specifically state that there shall be no legislative powers given to the planning commission. See, K.S.A. 12-720. We know that approval or disapproval of a subdivision is a legislative decision because of Sabatini v. Jayhawk Construction Co., Inc., 214 Kan. 408, 520 P.2d 1230 (1974). Because of these existing laws, the Board of County Commissioners here in Shawnee County have full and complete control over subdivision approval. These new laws would change that, and give control to our planning commission. However, even this new bill would muddy the waters on this issue since the provisions of the bill give the authority to the planning commissions, yet K.S.A. 12-720 will still be in existence, thus making it most confusing as to whether joint planning commissions or boards of county commissions are to have final approval on subdivisions. Suffice it to say, Shawnee County believes the Board of County

Commissioners should have the final approval, and not appointed planning commissions.

4. Although this is not the basis for Shawnee County being opposed to this legislation, I think it is most important for this committee to understand that because of the new definition of "land devoted to agricultural use" as contained in new Section 1, that there will be a significant change to the zoning exemption previously enjoyed by general agriculture. Presently, there is complete exemption for agricultural uses. The courts interpret this exemption very broadly. With this new more restrictive definition, counties will have significantly more authority to zone and regulate agricultural activities. As an example, I recently appealed a decision of a District Court that determined a hunting preserve was an agricultural use. The residents next door to the hunting preserve wanted the County to enact some protections through a special use permit and so did the Board of County Commissioners. But the Kansas Court of Appeals determined that the present exemption from zoning regulation for agriculture prevented the county from requiring a special use permit that would have required certain safety regulations and other regulations. Under this new definition of agriculture for zoning purposes, in my estimation, the Board of County Commissioners will be able to regulate all agricultural activities that are outside this definition. I think this committee should be mindful of what

this legislation will do. Shawnee County does not oppose this bill for these reasons, but it will significantly change the way we zone agricultural activities in Kansas.

6. This bill is not clear, in my opinion, regarding whether the city or the county will always ultimately have the control and authority to make the zoning decisions inside the three-mile limit. I was advised by one of the members of the committee that drafted this bill that it was their intention to leave these decisions to counties in the three-mile limit. If this committee does decide to pass this bill, I most strongly recommend the following clarification for Section 10. The following sentence should be added: "At any time before or after the city has adopted zoning regulations affecting an area outside its city limits, a Board of County Commissioners for the county may enact zoning regulations for all areas outside city limits, and said county zoning regulations shall be in effect, and the city zoning regulations shall become null and void."

7. One of the most significant changes this bill does to our zoning laws is to require a comprehensive plan. This new requirement along with the zoning of some agricultural activities are the two biggest changes in this legislation. Now I believe in plans, and so does the Board of County Commissioners. The key is what impact will the plan have on all future zoning decisions. Essentially, after a comprehensive plan is enacted by a Board of County Commissioners,

it must be followed. Generally, the Courts look at the legislation to determine whether or not the comprehensive plan must be followed when making zoning decisions. In my opinion, this legislation would require that the comprehensive plan be followed. For instance, if an area is indicated as agriculture in the comprehensive plan, that land cannot be zoned commercial. There have been many court cases over this requirement of consistency with the comprehensive plan. I base my opinion about the result of this legislation because there is one exception to the comprehensive plan that is granted to governing bodies. That is contained in new Section 6. Section 6 allows a governing body to override a comprehensive plan only with regard to public improvements, facilities, or utilities. The direct implication is that with regard to other aspects of the plan, such as general land use, a governing body cannot, I repeat, cannot override what is contained in the master comprehensive plan. What is the impact on cities and counties? Well, I think there is much less impact on cities, because cities are mostly developed, and areas are pretty much established once an area is taken into a city. It would be easy for a city to enact a comprehensive plan, and then to comply with the plan because there are ordinarily few dramatic changes to the existing development of an incorporated area. On the other hand, for counties, we must constantly review and reassess areas to determine whether major zoning changes should be made. By

requiring a comprehensive plan that cannot be deviated from, a Board of County Commissioners will have to know today how it wants to look thirty or forty years down the road. I strongly recommend that this bill be amended to specifically provide that a Board of County Commissioners can override any aspect of a comprehensive plan any time there is a majority vote by the governing body.

8. Section 16 of House Bill No. 3058 states that a governing body shall not adopt or enforce zoning regulations which have the effect of excluding manufactured housing. This provision, while essentially stating existing law, will eventually have to be considered by the Legislature. I'm not here to advocate more or less regulation of manufactured housing and mobile homes. However, this issue presents numerous difficulties for county governments. Speaking as the attorney for Shawnee County government, I would appreciate having more guidance from the Legislature on this one matter. What that guidance is I leave to your wisdom and judgment.

SEDGWICK COUNTY

METROPOLITAN AREA PLANNING
DEPARTMENT
CITY HALL — TENTH FLOOR
455 NORTH MAIN STREET
WICHITA, KANSAS 67202-1688
(316) 268-4561

March 19, 1990

Representative R. D. Miller
Chairman, House Local Government Committee
State Capitol, Room 183-W
Topeka, Kansas 66612

Dear Mr. Chairman and Members
of the House Local Government Committee:

I must apologize for not being able to attend the rescheduled hearings on HB 3058 due to previous commitments, but this bill is of great importance to officials and citizens in Wichita and Sedgwick County, and so I hope you will accept these written comments in my place.

Let me first state that my remarks are being shared with, but have not been formally endorsed by, elected officials or the appointed planning commission in Wichita and Sedgwick County. We have had a number of informal discussions with local officials on statutory revisions from time to time, but the recommendations of the APA planning group have continued to evolve and change over the past year, and so we were awaiting the arrival of a real bill to review with those bodies. Unfortunately, there has not been enough time between our receiving the bill and your hearings to have serious discussions with these bodies. My discussions with some other planners around the state indicate that they are also in this position. However, I am told that it is important to provide some comments to you as quickly as possible. I know that the elected and appointed officials would not be unanimous in their views, but I believe that I can represent most of the key concerns that have been expressed to me based on those previous discussions.

Overall, we support the purposes and most all of the proposed revisions in the rewrite of the planning statutes. We will be able to deliver planning services more effectively and efficiently if these revisions are enacted. The simplification and standardization of procedures and requirements will be very helpful, especially for a multi-jurisdictional agency like our own. The revisions clarify a number of longstanding ambiguities in the current statutes. They are also helpful in recognizing that in a state as large and varied as Kansas, there is need for more flexibility to develop land use plans and regulations in a manner reflective of local sensitivities and sentiments.

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3-20-90
Attach. XII

However, we do see a number of problems for Wichita/Sedgwick County if this bill is enacted as currently drafted; some of them quite serious. Unless most of these problems are addressed, I believe that the governing bodies will take formal positions in opposition to the bill as it progresses. The Wichita/Sedgwick County Metropolitan Area Planning Department has jurisdiction over the single largest service area of any local agency in the state, and so we will be affected more than anyone else in the state by these new provisions; I hope these comments will be given your most serious attention. It may well be that the issues raised in this letter are numerous and significant enough that the bill should be sent to interim study.

I have categorized these problems into two categories: errors and omissions, and substantive problems.

1) errors and omissions. The representatives of the study committee who developed the outline of the proposed statutory revisions agree that there are a number of inadvertent errors and omissions in the language of the bill that was drafted and is before you today. I believe that you have or will receive separate comments from this group with proposed amendments to deal with these problems. We have not received their list of errors and omissions, so I may be somewhat redundant in listing these for you. However, some of the items I have listed under this category may not be noted, or may have been determined by that group to be unimportant. We believe that all of the items in our list do need to be addressed.

2) substantive problems. There are several areas where I believe that elected officials of Wichita and Sedgwick County would take exception, in some cases quite strongly, to the recommendations of this planning group.

Thank you for the opportunity to present these views. We would support the proposed bill if it can be redrafted in this session to reflect these concerns. I would be glad to provide any other information that you might need on this issue.

Sincerely,

Marvin S. Krout
Director of Planning

MK/pu

ATTACHMENT

Comments on HB 3058
Marvin S. Krout, Director
Wichita/Sedgwick County Metropolitan Area Planning Department
3-15-90

A. Errors and omissions

- Sec. 8(a): The new reference to "off-site" improvements should not be limited to "utilities" as drafted; other types of off-site facilities and improvements may be required to deal with the impacts of subdivision development. This section was also to have reiterated that municipalities may require the dedication of public open space, subject to a maximum 10% of net land area (as in the current statutes), and also state that fees in lieu of land dedication is an acceptable alternative.

- Sec. 8(B): line 21 should read ..."such recommendations by ordinance in a city...", and line 25 should read disapprove, not disapproval.

- Sec. 9: The 60-day deadline for planning commission approval of plats is ambiguous and does not reflect current practice, with submission of preliminary and then final plats on most properties. This section was to have been rewritten. Locally, we have been requesting signed waivers of this requirement when applications are filed. Also, the governing body of the municipality, not the planning commission, should be responsible for setting fees for subdivisions, just as they are currently responsible for setting fees for zoning and other applications in other parts of the statutes.

- Sec. 10: Interlocal agreements between municipalities should be enabled as an alternative for establishing extraterritorial zoning jurisdiction to "one-half the distance" between cities.

- Sec. 14(e): The 50% protest requirement is in error; the protest area should be left at 20% as in the current statutes, and clarified as to public streets and rights of way being excluded from the calculation of area. The planning group also recommended that the governing body be enabled to override protests by a 2/3 vote rather than the current 3/4 requirement.

- Sec. 15(a): it was our understanding that the bill was supposed to have enabled local governments to terminate non-conforming uses by amortization; this was not included in the drafting. The use of amortization to deal with nonconforming uses should be left to local option.

- Sec. 15(b): this section which applies zoning regulations to tracts over 21 acres in agricultural use is in conflict with the "exemption" of agricultural land in new Section 10, and should be deleted.

- Sec. 17(c): the time before hearings of a board of zoning appeals for newspaper advertising should be reduced from 20 days to 15 days, like the other advertising requirements in this bill.

- Sec. 20: lines 18-36 should be deleted and a statement providing a general grant of authority for municipalities to establish building or setback lines along existing and proposed major streets and highways inserted.

- Sec. 22: The "exception" from state approval of flood plain fringe fills

in this section were only to have been applicable to communities with federally - approved flood insurance programs.

- Several sections on vacations (KSA 12-512a & b, 58-2613 et seq, and 14-423) were to have been consolidated as a part of this bill into one section, with advertising requirements made consistent with others in this section, and planning commissions made part of the review procedures.

- Special procedures for airport zoning and the granting of authority for such zoning to special commissions (in KSA 3-702 et seq) were deleted. Our concern is that some of the provisions, e.g. the definition section and the section that provides for special extraterritorial application (50,000 feet and five miles) needs to be retained in the statutes.

B. Substantive concerns

- Sec. 2(b): Under the current statutes, metropolitan planning commissions like our own have flexibility to establish appropriate terms of appointment. The new statutes would limit terms to three years. Both the governing bodies in our jurisdiction currently appoint members to four-year terms, coinciding with local elections. Because elections are staggered, continuity is retained on the planning commission. The proposed wording for boards of zoning appeals provides for three or four year terms. We would propose to leave terms of office for both bodies at the discretion of the local governing body.

- Sec. 5(c & d): The Wichita city council has an interest in allowing governing bodies to have the final authority for adoption of the Comprehensive Plan. More modern state statutes reflect the planning philosophy that elected officials must adopt plans if plans are to be meaningful. Elected officials already have the final authority on most of the tools for implementing comprehensive plans, so it is natural for them to be more central in the process of plan development and adoption. You are probably aware that in 1984, the state legislature gave Johnson County the special authority for its elected officials to have the final authority for adopting the comprehensive plan and approving subdivision plats. I am sure that the city council would want to have the same local option to take on that authority, or to continue to delegate it to its planning commission.

- Sec. 8(a): Lines 31-34 limit a city's extra-territorial subdivision jurisdiction to only those areas where the city also has extended extra-territorial zoning jurisdiction. In Sedgwick County, the county government retains zoning authority in all unincorporated areas, but has delegated extra-territorial subdivision jurisdiction to several cities. This system, which has worked quite well, would be prohibited by this new section.

- Sec. 8(b): We believe that the requirement for the planning commission to reconsider subdivision regulations sent back for reconsideration by the governing body at its next regular meeting is too stringent; we commonly have planning commission meetings just two days following city council meetings and one day after county commission meetings, which does not provide adequate time for notice and consideration. "Within 20 days" might be a more appropriate timeline in this section. I would note that there is not a "next regular meeting" requirement in other sections of the proposed bill.

- Secs. 8(b) and 13(c): Publication of subdivision and zoning ordinances and resolutions is very expensive because of the length of these items. Currently, there is no requirement for county resolutions to be published, and we commonly publish notice of the resolution "by reference." We would recommend that publication be permitted by reference for both city ordinances and county resolutions.

- Secs. 14(c) and 19: We have serious concerns that the new suggested provisions in these sections are conflicting, and will create real problems for legislative bodies and the courts in Kansas in reviewing zoning cases. We have no objection to the declaration of zoning as a legislative act in Section 19; however, we would recommend that the language in lines 15-16 be amended to the same language that has been established by state court precedents: "...only when clearly compelled to do so by the evidence."

But the requirements to establish criteria in the ordinance and to require formal findings of fact at public hearings will put new burdens on zoning deliberations to demonstrate that their decisions are not arbitrary, and these new burdens are not warranted and have not been required by the courts in Kansas in their recent decisions on zoning cases. Our attorneys are afraid that the courts will view the "may" regarding sworn testimony and cross examination as a "shall" in reading the intent of the statutes with these other sections, and we believe it would have a chilling and destructive effect on the zoning process to conduct public hearings on zoning cases like jury trials.

- Sec. 14(f): We agree in concept with establishing reasonable deadlines for zoning decisions on zoning cases, but this subsection needs rewording to avoid unintended results. There is a possibility that one or another body, by intentionally deferring a decision, may cause a case to be approved which in the end would not be approved. In addition, a 15-day period (90 to 105 days) is not adequate time for the governing body to return a case to the planning commission, have them reconsider it, and send it back to the governing body for a final decision.

- Sec. 16: The county commission will have serious concern about the ambiguous wording in this section. The clause "...which will have the effect of excluding manufactured housing..." is ambiguous, and goes farther than the current county statute which prevents regulations that have the effect of excluding manufactured homes "from the entire zoning jurisdiction." The courts are likely to interpret the meaning of this clause in a much different manner than the current statutes and court decisions dealing with this issue. The wording should be revised to do no more than restate the current statutory language. The county commission over the past year has been studying their regulations concerning manufactured housing; resulting in new zoning regulations which they believe deal responsibly with this issue. But they would be very concerned about statutory provisions which might be interpreted, or misinterpreted, to weaken their local authority in this area.

- Sec. 17: This new section deletes the current statutory language authorizing boards of zoning appeals to grant exceptions to the zoning regulations regarding specified uses, while retaining the provisions on appeals and variances. For years in this community, the review of "use exceptions" by our board of zoning appeals has provided a responsible and efficient mechanism for reviewing a wide variety of cases that are generally minor in nature, where specific standards are stated in the ordinance for the use, in which notice and

public hearing and input are provided, all in a procedure which is faster and less expensive than a zoning change procedure. We believe that the local option to delegate this authority to boards of zoning appeals should be preserved. The deletion is not accompanied in the bill by a prohibition against this practice, and it could reasonably be argued that we could rely on home rule authority to continue. But we would prefer to leave the exception authority in the revised statutes, or at least have it stated in the record that there is not a legislative intent to prohibit this practice.