Approved March 25, 1991
Date

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT.

The meeting was called to order by VICE-CHAIRMAN GEORGE GOMEZ at
Chairperson

1:38 ~~a.m.~~/p.m. on MARCH 20, 1991 in room 521-S of the Capitol.

All members were present except:
Representative M. J. Johnson, excused
Representative Lisa Benlon, excused

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

Conferees appearing before the committee:
Ronald A. Williamson, representing the Kansas Chapter of the American Planning Association and submitted a letter on behalf of the cities of Louisburg, Ottawa and Osage County
Jim Kaup, League of Kansas Municipalities
Michael P. Howe, City Attorney, Lenexa
Nancy Shontz, representing the League of Women Voters of Lawrence-Douglas County
Laura M. Doole, City of Topeka
Terry Humphrey, Executive Director, Kansas Manufactured Housing Association
M. S. Mitchell, Legislative Chairman of Home Builders Association of Kansas
Jack Porteous, Kansas manufactured home consumer
Jerry Hazlett, Executive Manager of the Kansas Wildlife Federation
Wayland J. Anderson, Assistant Chief Engineer, Division of Water Resources
Joyce Wolf, Kansas Audubon Council
Sam Eberly, private citizen from Wichita
Scott Andrews, Kansas Chapter of the Sierra Club
Clark Duffy, the Assistant Director of the Kansas Water Office
Darrell Montei, Kansas Department of Wildlife and Parks

Vice-Chairman Gomez stated that since there are many proponents and opponents to testify on SB 23, planning and zoning, and this subject has been worked over a long period of time and will probably go to a subcommittee, that when conferees testify, please summarize their written testimony in three minutes.

Staff distributed to committee members a section by section description of SB 23. (Attachment 1) Vice-Chairman stated that due to a time constraint, staff would not brief the committee on SB 23. Sometime in the future, we will have a staff briefing if desired.

Vice-Chairman opened a hearing on SB 23.

Vice-Chairman Gomez recognized Ronald A. Williamson, who testified on behalf of the Kansas Chapter of the American Planning Association, as a proponent. (Attachment 2) Mr. Williamson also submitted a letter on behalf of the cities of Louisburg, Ottawa and of Osage County, which he serves as a staff planner. He is a partner in the firm of Bucher, Willis & Ratliff Consulting Engineers, Planners & Architects. (Attachment 3)

Jim Kaup, League of Kansas Municipalities, testified in support of SB 23 and offered two amendments. One amendment pertains to the adoption of the comprehensive plan and the second amendment relates to local regulation of manufactured housing. (Attachment 4)

Vice-Chairman recognized Michael P. Howe, City Attorney, Lenexa, who testified as a proponent on SB 23. (Attachment 5)

Nancy Shontz, representing the League of Women Voters of Lawrence-Douglas County, testified as a proponent to SB 23. (Attachment 6)

Laura M. Doole, representing the city of Topeka, testified as a proponent on SB 23. (Attachment 7)

Terry Humphrey, Executive Director, Kansas Manufactured Housing Association, testified as a proponent on SB 23. (Attachment 8)

M. S. Mitchell, Legislative Chairman of Home Builders Association of Kansas testified as a proponent to SB 23. (Attachment 9)

Jack Porteous, Kansas Manufactured Home Consumer, testified as a proponent to SB 23. (Attachment 10)

There were no other proponents to testify on SB 23.

Vice-Chairman Gomez called on opponents to testify on SB 23.

Jerry Hazlett, Executive Manager of the Kansas Wildlife Federation, spoke in opposition to SB 23. (Attachment 11)

Wayland J. Anderson, Assistant Chief Engineer, Division of Water Resources, spoke in opposition to the current language of Section 17, as a result of being amended on the Senate Floor. (Attachment 12)

Joyce Wolf, on behalf of the Kansas Audubon Council, testified in opposition to SB 23. (Attachment 13)

Sam Eberly, private citizen from Wichita, testified in opposition to SB 23. (Attachment 14)

Scott Andrews, representing the Kansas Chapter of the Sierra Club, testified as an opponent to SB 23. (Attachment 15)

Clark Duffy, the Assistant Director of the Kansas Water Office, appeared on behalf of the Kansas Water Office and the Kansas Water Authority, in opposition to SB 23. (Attachment 16)

Darrell Montei, representing the Kansas Department of Wildlife and Parks, testified as an opponent to SB 23. (Attachment 17)

Vice-Chairman Gomez called to the committee's attention a letter from the city of Derby signed by Mark A. Butterfield, Mayor and Dolan Pelley, Chairman of the Derby Planning Commission, strongly urging the committee to give serious consideration to amending Section 21 of the bill concerning the location of residential designed manufactured homes. (Attachment 18)

Vice-Chairman Gomez called the committee's attention to a letter received from Michael W. Berry, a professional engineer, who expressed his viewpoints concerning SB 23. (Attachment 19)

The Vice-Chairman closed the hearing on SB 23.

The meeting was adjourned at 2:45 p.m.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

DATE March 20, 1991

NAME	ADDRESS	REPRESENTING
George Austin	1095 SW 9th Topeka	KSBA - DWR
Don Kostecki	"	" "
Jerry Hazlett	200 SW 30 Topeka	Ks Wildlife Fed.
Mary Ann Bradford	Topeka	League of Women Voters
Ronald N. Williamson	Overland Park	APA
RICE BANICS	LAWRENCE	KAPA
Joyce Wolf	LAWRENCE	Ks. Audubon Council
Laura Doole	Topeka	City of Topeka
Wayland Anderson	Topeka	KSBA - DWR
SAM EBERLY	RR 9 WICHITA	INDIVIDUAL
Doug Bird	City KCK	City of KCK
Elaine Copp	Shawnee, Kansas	Shawnee Democrats
Elizabeth Allen	LAWRENCE	League of Women Voters - LAWRENCE
RON MITTAG	City of Shawnee	City of Shawnee
Nancy Shontz	Lawrence	League of Women Voters of Lawrence Do Co
Dalyt Singh Jamar	Topeka	KS. water office
Clark Duffy	"	"
Lynn Anderson	"	Sierra Club
Stan Adams	Topeka	KDWP
DARRELL MONTEI	PRATT	KDWP
Tom Bergkamp	Topeka	KMHA
Jack Vosteens	Topeka	KMHA
Michael Howe	Seneca	Seneca

HOUSE COMMITTEE ON LOCAL GOVERNMENT

DATE March 20, 1991

NAME	ADDRESS	REPRESENTING
Sara Corless	Kansas City	Greater KC Home Builders

Senate Bill No. 23 - Planning and Zoning Recodification

Section 1. Statement of enabling legislation, allows for consistent local ordinances and resolutions.

Sec. 2. Definitions.

Sec. 3. Notice of proposed action to other local units of government.

Sec. 4. Planning commission; creation;
- (a) number; residency
- (b) terms; vacancies; removal
- (c) interlocal cooperation; joint planning commissions.

Sec. 5. Planning commission; meetings; record; employees.

Sec. 6. Planning commission; budget.

Sec. 7. Comprehensive Plan;
- (a) planning jurisdiction; notice to other local units
- (b) recommendation to the governing body
- (c) annual review of plan.

Sec. 8. Public improvements, facilities or utilities compliance with comprehensive plan.

Sec. 9. Subdivision regulations
- (a) jurisdiction
- (b) adoption and amendment procedure.

Sec. 10. Joint committee for subdivision regulation
- (a) establishment; membership.

Sec. 11. Subdivision regulations
- (a) building permits
- (b) city building codes enforceable outside city.

Sec. 12. Plats
- (a) requirement of plat
- (b) approval or disapproval by planning commission
- (c) dedication of land for public purposes; governing body's approval
- (d) fees
- (e) issuance of building or zoning permits conditional upon compliance with plat approval procedure.

Sec. 13. Zoning regulations
- (a) general authority granted to adopt and amend zoning regulations.

Sec. 14. Zoning jurisdictions.

Sec. 15. Flood plain zones; applicable to agricultural land.

Sec. 16. Zoning regulations; what they may include.

Sec. 17. Flood plain regulations, ordinances or resolutions; creation or amendment
- (a) review by chief engineer of the division of water resources.

Sec. 18. Zoning; establishment of districts
- (a) planning commission's recommendation
- (b) procedure for adoption or amendment; action of the

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governing body.

Sec. 19. Zoning; amendment of regulations or change in boundaries; rezoning
(b) submitted to planning commission; notice to certain land owners adjacent to or near property subject to zoning change
(c) procedure for adoption of amendment
(e) protest petition
(f) posting of signs notifying of proposed rezoning.

Sec. 20. Certain existing uses of land not subject to regulations adopted pursuant to act
(a) alteration or damage to structure
(b) flood plain regulations applicable to agricultural land.

Sec. 21. Manufactured homes; residential-design manufactured homes
(a) exclusion of, prohibited.

Sec. 22. Board of zoning appeals
(a) membership; terms; vacancies; meetings
(c) notice of hearing
(d) who may appeal
(e) variances and exceptions from zoning regulations
(f) appeal to district court

Sec. 23. Vesting of development rights
(a) single family residential developments
(b) all other developments.

Sec. 24. Building or setback lines on major streets or highways.

Sec. 25. Appeals; to be made within 30 days.

Sec. 26. Violations of regulations adopted under this act
(a) fine not to exceed $500 and/or 6 months imprisonment
(b) who may maintain suit or action to enforce.

Sec. 27. Building codes must be in compliance with national flood insurance act.

Sec. 28. Continuation in effect of existing regulations.

Sec. 29. Amends K.S.A. 24-126 relating to the approval by the chief engineer prior to construction of levees or other improvements on or along a stream subject to flood or overflow which would change the floodwaters of such stream.

The amendment excludes properly placed fills "other than levees" in a floodway fringe from the chief engineer's approval and also from the water projects environmental coordination act, K.S.A. 82a-325 to 82a-327, inclusive (attached).

PROJECTS EXEMPTED BY AMENDMENT TO
K.S.A 24-126 BY SENATE BILL NUMBER 23

Floodway Fringe Fills such as:

Subdivision grading, which fills lots to above base flood elevation (BFE)

Individual house or building fills

The raising of streets and roads/approach fills to bridges (Bridges would continue being regulated since they are in the floodway, not in its fringe.)

Landfills

Sandplant stockpiles or overburden placements

Sewage or hazardous waste lagoon embankments

Wetland fills

Terraces

Railroad embankments

Will be exempted

ditions to the dam as may be required and submit revised plans. If such revised plans are satisfactory and the dam is found to be constructed in accordance with them, the chief engineer shall approve such revised plans and construction.

History: L. 1939, ch. 354, § 3; March 14.

82a-315 to 82a-324. Reserved.

ENVIRONMENTAL COORDINATION

82a-325. Water projects environmental coordination act; purpose. (a) This act shall be known and may be cited as the water projects environmental coordination act.

(b) In order to protect the environment while facilitating the use, enjoyment, health and welfare of the people of the state of Kansas, it is necessary that the environmental effect of any water development project be considered before such water development project is approved or permitted.

History: L. 1987, ch. 400, § 1; July 1.

Law Review and Bar Journal References:
"Legal Aspects of Kansas Water Resources Planning," John C. Peck and Doris K. Nagel, 37 K.L.R. 199 (1989).

Attorney General's Opinions:
Water projects environmental coordination act; environmental review process. 88-142.

82a-326. Same; definitions. When used in this act:

(a) "Water development project" means any project or plan which may be allowed or permitted pursuant to K.S.A. 24-126, 24-1213 and 82a-301 *et seq.*, and amendments thereto;

(b) "environmental review agencies" means the:

(1) Kansas department of wildlife and parks;

(2) office of extension forestry;

(3) state biological survey;

(4) Kansas department of health and environment;

(5) state historical society;

(6) state conservation commission; and

(7) state corporation commission.

History: L. 1987, ch. 400, § 2; L. 1989, ch. 118, § 192; July 1.

Attorney General's Opinions:
Water projects environmental coordination act; environmental review process. 88-142.

82a-327. Same; review of proposed project; considerations. (a) Prior to approval or issuance of a permit for a proposed water development project, the permitting agency shall obtain a review of the proposed project for environmental effects by the appropriate state environmental review agencies, and shall consider their comments in determining whether to approve or issue a permit for such project. The permitting agency may condition the approval of or permit for the project in a manner to address the environmental concerns of the environmental review agencies.

(b) In reviewing a proposed water development project, the environmental review agency shall consider:

(1) The beneficial and adverse environmental effects of a proposed project on water quality, fish and wildlife, forest and natural vegetation, historic, cultural, recreational, aesthetic, agricultural and other natural resources;

(2) the means and methods to reduce adverse environmental effects of a proposed project; and

(3) alternatives to a proposed project with significant adverse environmental effects.

(c) Each environmental review agency shall send its written comments on the proposed project within 30 days of receipt of the proposal from the permitting agency.

(d) Nothing in this act shall be construed as prohibiting a permitting agency from approving or issuing a permit if an environmental review agency determines adverse environmental effects will result if the project is approved or permitted. Nothing in this act shall be construed as preempting or duplicating any existing environmental review process otherwise provided or authorized by law.

History: L. 1987, ch. 400, § 3; July 1.

Attorney General's Opinions:
Water projects environmental coordination act; environmental review process. 88-142.

Article 4.—COLLECTION, STORAGE AND IMPOUNDING OF WATERS

Cross References to Related Sections:
Rural water districts, see ch. 82a, art. 6.
State division of water resources, see 74-506a to 74-506d, 74-509, 74-510.

Law Review and Bar Journal References:
"Legal Aspects of Water Storage in Federal Reservoirs in Kansas," John C. Peck, 32 K.L.R. 785 (1984).

82a-401.

History: L. 1929, ch. 205, § 1; L. 1933, ch. 332, § 1; L. 1933, ch. 127, § 1 (Special Session); L. 1939, ch. 353, § 1; Repealed, L. 1941, ch. 400, § 6; June 30.

Source or prior law:
42-601.

KANSAS CHAPTER
AMERICAN PLANNING ASSOCIATION

March 20, 1991

Mary Jane Johnson
Chairperson
House Local Government Committee
521-S Statehouse
Topeka, KS 66612

Re: Testimony regarding Senate Bill No. 23

Chairperson Johnson and Members of the Committee:

My name is Ronald A. Williamson and I am testifying on behalf of the Kansas Chapter of the American Planning Association. I am a partner in the firm of Bucher, Willis & Ratliff Consulting Engineers, Planners & Architects and have worked as a planning consultant for over 23 years in Kansas. Prior to that I was a staff planner in the Wichita-Sedgwick County Planning Department. During my 26 plus years as a planner in Kansas, I have had the opportunity to work in both urban and rural counties and in large and small communities. During that time, I have helped prepare more than 50 comprehensive plans and zoning regulations. I have served three terms as Kansas Chapter President. The first was from 1978 to 1980, the second was from 1986 to 1988 and the third was from 1988 to 1990.

Today I would like to provide you with background information regarding: 1) the Kansas Chapter of the American Planning Association; 2) why new planning legislation is needed; 3) how this legislation (SB No. 23) was created; and 4) why we are interested in this particular piece of legislation.

It is not my intent to go into great detail about the bill, because the legislative staff has already done an excellent job of explaining Senate Bill No. 23. In addition, there will be other testimony about some of the specific items in the bill. My main purposes are to provide information and to explain the Chapter's support for the bill.

1. Kansas Chapter of the American Planning Association (KAPA)

The Kansas Chapter of the American Planning Association currently has over 270 members. Approximately 100 members are lay persons involved in planning, either

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as a planning commissioner or as an elected official. About 30 are students enrolled in the planning programs at KSU and KU. The remaining 140 members are professional planners that are employed by cities, counties, regional agencies, the state, consulting firms and the universities. The members of KAPA reside in all areas of the state and represent counties, rural areas, small towns, and large cities.

2. *Why New Enabling Legislation is Needed*

Kansas enabling legislation for comprehensive planning, zoning and subdivision regulations was first adopted in 1921. major revisions were made in the 1940s and the 1960s. Since 1970, there has been very little substantive change made to the statutes, but there has been a tremendous change in our society and how people live, work and play. The statutes have simply not kept up with the times.

Although there have been few substantive changes made to the enabling legislation since 1970, there have been some amendments. Those amendments over the last twenty years have resulted in inconsistencies, internal conflicts, unneeded complexity, and procedural differences between cities, counties, and regional/metropolitan commissions. in other situations, there are gaps in the law that have been filled by administrative interpretations or by court decisions.

One way to reduce the complexity of planning legislation is through consolidation and recodification. For example, Senate Bill No. 23 would repeal over 70 statutory sections and replace them with only 32 sections. Three of the four general separate statutes enabling counties to zone would be combined. The planned unit development provision of the act is also an area where the volume of law is much greater tan is necessary to get the job done. The existing statute contains nine sections and occupies seven pages of Kansas Statutes Annotated. The proposed legislation will reduce it to one notation.

Clear, concise planning enabling legislation is important to the cities ad counties in Kansas. A study conducted last summer by Vern Deines at Kansas State University and the League of Kansas Municipalities showed that over half of the counties have a planning board and over 75 percent of the cities with a population of 1,000 or more have a planning commission.

New legislation is needed to provide a consolidated and simplified set of statutes dealing with planning, zoning and subdivision regulations. Enabling legislation that provides a uniform statute for cities and counties dealing with general guidelines and grants of authority would allow cities and counties to better address their future needs in terms of planning for growth and development. This would be advanced by incorporating new planning techniques that have been developed over the last 20 years. Hopefully it will also reduce the confusion and complexity associated with the development process.

3. *How This Legislation was Created*

In 1980 the KAPA formed a legislative committee for the purpose of reviewing Kansas planning laws in detail and recommending a comprehensive update to the Kansas Legislature. The initial committee included planners from cities, counties, regional agencies, consulting firms and universities. In order to broaden the review of the statutes, the committee was expanded to included staff from the Kansas League of Municipalities, the Kansas Home Builders Association, the Kansas Manufactured Housing Institute and attorneys that are involved in planning. Later, representatives from other cities, counties, the Kansas Association of County Planning and Zoning Officials, and the Kansas Association of Counties were invited to participate.

A current membership roster of the KAPA Special Enabling Legislation Study Committee is attached for your information.

From the very beginning, the KAPA believed that the review of the current statutes and the drafting of new legislation should involve as many people and organizations as possible. As a result, the drafting phase took over eight years, but that allowed for a considerable amount of debate, discussion and compromise. In late 1988 and early 1989, the KAPA prepared a summary of proposed changes. That summary had a wide distribution to planners, and other people interested in planning legislation.

Then towards the end of the 1989 legislative session, HB 2551 was introduced. That bill represented the first draft of new planning legislation. However, no hearings were held on the bill.

Prior to the 1990 legislative session, a new bill (HB 3058) was drafted and introduced. Hearings were held in March, 1990 by the House Local Government Committee. A number of people testified in favor of the bill beside the KAPA. Those in support included the Kansas Home Builders Association, the Kansas Manufactured Housing institute, the Kansas Association of County Planning and Zoning Officials: Michael Howe, Lenexa City Attorney; Barry Hokanson, Director of Planning for Johnson County; and C. Bickley Foster, Planning Consultant.

After the hearings, the House Local Government Committee determined that additional study was needed before it could make a recommendation to the full House. As a result, a special interim Committee on Local Government was created by the Legislative Coordinating Council in the summer of 1990.

This committee, comprised of Representatives and Senators, was chaired by Representative Nancy Brown. That committee spent nearly six days hearing testimony and discussing this issue.

During the six days, many people testified on the proposed legislation. I will not go into detail about the testimony because it is discussed in the Committee's Report on "Proposal No. 22-Planning and Zoning Codification".

The second product of the interim committee was a recommended bill that would basically recodify the enabling legislation for planning. A summary of that bill was included in the committee's report. That recommended bill was then pre-introduced as Senate Bill No. 23.

4. Why KAPA is Interested in New Planning Enabling Legislation

As indicated, the current statutes are antiquated, confusing, inconsistent and are unnecessarily lengthy. Given today's society and the need for better methods for addressing the future, planning enabling legislation should be as simple and easily understood as possible. We feel that Senate Bill 23 will represent a major step in that direction.

In conclusion, I would like to point out that during the hearings on this issue there has been a considerable amount of discussion because it addresses many, many diverse areas (i.e. cities, counties, planning, zoning, subdivisions, floodplains, etc.). Thus, unlike a single issue bill there may be a specific section or provision that a particular city, county, organization or association does not wholeheartedly support. However, the proposed bill as a whole is much better than current legislation and has generated broad support. We encourage the committee to act favorably on Senate Bill No. 23.

If any additional information is needed or questions need to be answered, please call me.

Sincerely,

Ronald A. Williamson, AICP
KAPA Past President
5521 West 85th Street
Overland Park, Kansas 66207

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(Rev. 9/14/89)

BUCHER
WILLIS
RATLIFF
CONSULTING ENGINEERS,
PLANNERS & ARCHITECTS

March 20, 1991

Mary Jane Johnson
Chairperson
House Local Government Committee
521-S Statehouse
Topeka, KS 66612

Re: Senate Bill No. 23

Chairperson Johnson and Members of the Committee:

My name is Ronald A. Williamson and I am a partner of Bucher, Willis & Ratliff Consulting Engineers, Planners & Architects. I am testifying on behalf of the cities of Louisburg and Ottawa and of Osage County, which I serve as a staff planner.

Originally, Senate Bill 23 had a 15-day notice requirement for public hearings which was changed to 20 days as a result of the Senate hearings. The 20-day requirement is a problem for cities and counties with weekly newspapers because the planning commission cannot authorize a public hearing and meet the time requirements to have the hearing at its next regular meeting. For example, Ottawa meets on the first Tuesday of the month, which was March 5th, the newspaper prints on Wednesday and carries a Thursday publication date. The March 7th publication date cannot be met so the next publication date is March 14th. From March 14th to April 2nd, the next Planning Commission date, is only 19 days one day short of the 20-day requirement; therefore, the hearing must be held at the May meeting. This is a very typical scenario endured among cities and counties throughout the state. A change in the notice requirement to 15 to 18 days rather than 20 would be extremely helpful, allowing items to be heard at the next regular meeting rather than two months from that time.

Thank you for your consideration.

Sincerely,

BUCHER, WILLIS & RATLIFF

Ronald A. Williamson, AICP
Partner

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7920 WARD PARKWAY, SUITE 100 KANSAS CITY, MISSOURI 64114-2021 • (816) 363-2696

League of Kansas Municipalities

Municipal Legislative Testimony

PUBLISHERS OF KANSAS GOVERNMENT JOURNAL 112 W. 7TH TOPEKA, KS 66603 (913) 354-9565 FAX (913) 354-4186

To: House Committee on Local Government
From: Jim Kaup, League General Counsel
Re: SB 23--Planning and Zoning Law Recodifications
Date: March 20, 1991

The League appears in support of SB 23--the recodification of Kansas planning and zoning statutes recommended by the 1990 interim committee. The League had direct involvement with the interim committee's development of SB 23, as well as with that bill's predecessor--HB 3058, the 1990 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 1990-1991 Statement of Municipal Policy states:

I-3. Planning.

I-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, expressly authorizing 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.

Consistent with the above policy position, the League participated actively for years in the work of the planning and zoning laws legislative committee of the Kansas Chapter of the APA. 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 law for cities, K.S.A. 12-701 et seq., was in need of an overall, objective analysis after years of piecemeal amendment. The shortcomings in the existing law have caused

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unnecessary hardship not only for the public regulators of land, but also for private property owners and developers. The breadth of the public and private interest in modernizing Kansas land use law is reflected in the membership of the APA's legislative committee and is noted in the report of the interim committee on SB 23.

Some may be surprised that the League's Statement of Municipal Policy 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 SB 23--local governments 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 a regulatory 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.

In addition to offering its support for SB 23 the League today would speak to two issues associated with the bill--(1) adoption of the comprehensive plan (section 7 of SB 23) and (2) the authority of cities and counties to regulate manufactured housing (sec. 21).

The League respectfully requests this Committee's favorable consideration of SB 23 with the two amendments proposed below.

League Amendments to SB 23

Adoption of the Comprehensive Plan--Section 7.

K.S.A. 12-704 provides that the comprehensive plan is to be adopted by the planning commission. This apparently has been the law in Kansas since the first zoning statutes were enacted in 1923 (L. 1923, Ch. 92).

The APA's 1990 proposed bill and the interim committee's SB 23 both proposed no change to this part of Kansas law. However the Senate Committee did amend SB 23 to add new section 7, which provides (at page 7, lines 17:37) that comprehensive plans must be approved by the governing body of the city or county.

The League submits the following amendment to Sec. 7 of SB 23, at page 7, lines 17:37.

No comprehensive plan shall be effective unless approved by either the governing body or the planning commission, as provided by ordinance in a city or resolution in a county ~~by this section~~.

Striking the balance of lines 19:36 and all of line 37 before the period.

The effect of the League's amendment would be to leave it to local city and county governing bodies to decide whether the local comprehensive plan should be adopted by the appointed planning commission or the elected governing body. The League believes good arguments exist for adoption by each, and believes the resolution of the question is best left to the decision of the governing body--some of which could be expected to retain that approval authority and others to delegate it to the planning commission.

Manufactured Housing--Section 21.

The League's position on the subject of local regulation of manufactured housing has been one of encouraging cities to review their land use regulations for the purpose of eliminating archaic provisions which prohibit the placement of manufactured housing solely on the basis of the fact that it is not built on-site. This has been the League's position as a member of the APA's legislative study committee, and is also our position today before this Committee. This position is based upon the League's Statement of Municipal Policy:

> I-8b. **Manufactured Housing**. We encourage cities to provide for the fair treatment and placement of all housing, including manufactured housing. Local officials can best determine the appropriate location and treatment of manufactured housing not meeting local codes, based on the unique conditions, needs and standards of their community. We therefore oppose state legislation which would specifically permit the placement of manufactured housing that does not meet locally adopted nationally-recognized codes and standards in any areas of the city, including areas zoned exclusively for single family residences. We believe such legislation to be unwarranted, and an unnecessary intrusion into the constitutional home rule authority of cities. We encourage cities to review their regulations applicable to manufactured housing to insure that they are reasonable, non-discriminatory and non-arbitrary.

At the present time the Kansas statutes are silent as to the ability of cities to regulate manufactured housing differently than site-built housing. While the current situation is obviously a desirable one for our member cities, the League nonetheless supported the language of the 1990 interim committee now found at page 19, lines 33:35 of SB 23, which would impose upon cities the same basic prohibition counties are now subject to under K.S.A. 19-2938. If adopted, that language would provide that a city would no longer be able to "exclude" manufactured housing from within its jurisdiction. The wording of that portion of Section 21 is essentially the same as that used in 1990 HB 3058, Sec. 16--the bill which led to the interim study and to SB 23.

At the request of the Kansas Manufactured Housing Association the Senate Local Government Committee amended Section 21 to require local governments to permit certain types of manufactured housing ("residential-design manufactured homes" (as defined in Sec. 2(a)(8) of SB 23) in all areas zoned for single-family residential use.

Statutory restrictions on the authority of locally-elected, locally-accountable governing bodies to regulate the location of manufactured housing violates the spirit and intent of constitutional Home Rule. Because of this encroachment the League must oppose the Senate version of New Section 21.

The League asks this committee to strike lines 36:43 of page 19 of New Section 7 and New Section 2(a)(5) and (a)(8), all relating to local regulation of manufactured housing.

While it is for the Legislature to decide whether the State should have a policy on the placement of manufactured housing, and if so what that policy should be, the League does note for the Committee's information the intent of the original drafters of this legislation--the APA legislative committee. The APA's proposal to the legislature was to statutorily ban cities and counties from adopting or enforcing zoning regulations which exclude manufactured housing <u>from the entire zoning jurisdiction</u> of the city or county enacting those regulations. The League has not, and does not, oppose this limitation upon local land use regulatory authority.

Until amended by the Senate, the language in Section 21 of SB 23 translated to the following: If a city has, for example, distinct residential zoning districts designated as R-1, R-2, R-3, R-4 and R-5, that city <u>can</u> adopt regulations which have the effect of excluding manufactured housing from zone R-1 or R-2, etc. but that city <u>cannot</u> adopt regulations which have the effect of excluding manufactured housing from all of its districts where residential uses are permitted.

In short, the League has not resisted legislation that would place cities under the same prohibition counties now have under K.S.A. 19-2938. If there can be no consensus reached as to Section 21 the League would respectfully suggest deletion of that section in order that the host of worthwhile and long-overdue improvements to the Kansas planning and zoning statutes not be lost.

TESTIMONY TO HOUSE
LOCAL GOVERNMENT COMMITTEE

Re: Senate Bill 23

Michael P. Howe, City Attorney
Lenexa, Kansas

March 20, 1991

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 have been a full-time municipal attorney for eleven (11) years, first with the City of Kansas City, Kansas, as an Assistant City Attorney and Deputy City Attorney; and since 1986, as City Attorney for Lenexa. If I were to select any area in which I would consider myself most experienced, it would be in land use law---having attended hundreds of Planning Commission, Governing Body, and Board of Zoning Appeals' meetings over the past ten (10) years. In addition, I have been involved in dozens of land use lawsuits including two (2) cases before the Kansas Supreme Court. I recite this background not as boastfulness, but simply to explain my keen interest and concern in this area of the law.

The City of Lenexa appears here today as a proponent of this Bill; and, likewise, we strongly urge the Committee's support of Senate Bill 23. The Planning and Zoning Statutes in

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Kansas have needed revision for a great number of years. The majority of law governing planning and zoning matters can be found in case law rather than Statutes. In fact, case law recognizes certain zoning tools which are not even addressed by our current Statutes, such as special use permits. The City of Lenexa, Kansas, has been following this Bill very closely as it has a lot of significance for us. I have testified at the Interim Committee and House Committee hearings last year and Lenexa Assistant City Attorney Cindy Harmison testified at the Senate hearing this year. Lenexa is a community, consisting of 33,000 residents and encompassing approximately 28.95 square miles in Johnson County, Kansas. The majority of land in Lenexa is undeveloped. These new planning and zoning regulations will be Lenexa's roadmap and guide our growth in the future.

The American Planning Association has worked long and hard to come up with a Bill that codifies State law; addresses outdated practices; and encourages innovative planning techniques to permit development in Kansas to be some of the best you will see anywhere! Specifically, this Bill permits planned unit development but deletes the cumbersome and often impractical regulations governing the procedure. The Bill permits special and conditional use permits and overlay zones as well as the conservation of natural resources and reasonable regulation of aesthetics. Although many of these things just mentioned are utilized successfully in other states and Kansas case law has recognized our ability to implement a

number of these techniques, prior to this proposed Bill, these zoning techniques were not utilized to their fullest potential.

Moreover, this Bill has done a good job at "cleaning up" our present Statutes and made them easier to locate and apply. In the current Statutes there were different notice procedures and similar subjects were often discussed in different locations thereby making it difficult for anyone, but especially local citizens to read and understand how the Statutes may apply to them and any issue of which they may be concerned.

Although we do strongly support this Bill, there are several comments we would like to make that we believe, if included in this Bill, would make it the best possible enabling legislation for planning and zoning.

COMMENTS AND SUGGESTED CHANGES

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1. Page 19, NEW Section 20: The City understands the Summer Interim Legislative Committee removed the reference to amortization of nonconforming uses. We would still like to see this language added, with language such as:

> "Amortization regulations may be adopted under authority of this Act; however, no other regulation adopted under

> authority of this Act shall apply to the existing use of any building or land, but shall apply to..."

The City believes amortization can play a significant role in good development. Moreover, Kansas has recognized the City's ability to amortize, and approved the City of Topeka's amortization ordinance as applied to a junkyard in Spurgeon v. City of Topeka. This has been a very confusing area of land use regulation for planners, developers, attorneys, judges, and citizens.

In addition, we are not certain that the current language would take into consideration any alteration or expansion of a use or a modification or enlargement of a building. We would propose the following language be added immediately following the language above:

> "Any modification, alteration, or expansion of a building to provide for an alteration, change, or expansion in the use of any building or land after the effective date of any regulations adopted under this Act."

2. Page 19, New Section 21: The City would like to see all reference to manufactured housing deleted as this is clearly a special group lobby and binds future governing bodies from making sound land use decisions. If it is believed this legislation is needed, the City strongly recommends it would

be more appropriate as the subject of a separate Bill. Alternatively, we would like to see the word "arbitrarily" inserted before the word "excluded" in the manufactured housing Section 21(a) which would result in this Section more closely resembling the current State law with respect to counties.

3. Page 11, NEW Section 12: The City would like to see it be their option to submit plats to either the planning commission or the governing body, rather than be mandated that such plats must go only to the planning commission for approval with the governing body acting only on the dedications of public land.

4. Page 1, NEW Section 3: The City of Lenexa would like to see additional definitions added in the Bill which we believe would help clarify various sections within the Bill. Specifically, we would suggest additional definitions for (a) agricultural; (b) tract; (c) land; and (d) lots. Currently, the Statute uses these terms somewhat interchangeably. If they all mean the same thing, let's say so.

5. Page 6, NEW Section 7: This new Section which was added just recently requires that governing bodies approve all comprehensive plans after recommendation by the planning commission. Currently the planning commission adopts the comprehensive plan after comments from the governing body and other taxing subdivisions in the planning area (i.e., school districts). While at first blush this seems a sensible change, it is Lenexa staff's position that the current

method is less political with the final decision rendered by nonelected commissioners.

It is important to remember the comprehensive plan is a land use guide. If a governing body disagrees with the comprehensive plan for an area, it is fully empowered to vote through the zoning amendment process its desired choice of land uses. This process, which is quite the majority rule around the country, strikes a proper balance of power between the policymakers (governing body members) and the planning professional technicians (planning commission members).

In summary, Senate Bill 23 is good legislation and addresses an important issue in Kansas development. The City of Lenexa would like to assist in any manner possible to effectuate this important Bill. I would be happy to answer any questions the Committee may have at this time.

The League of Women Voters of Lawrence-Douglas County

March 20, 1991
Testimony on SB 23

Chairwoman Johnson and Members
House Local Government Committee

My name is Nancy Shontz. I am a former Lawrence city commissioner. Today, I represent the League of Women Voters of Lawrence-Douglas County. Our comments, as always, are based on positions reached through member study and agreement.

We welcome a recodification of the Kansas planning laws, and the provisions concerning overlay districts, payment of a fee in lieu of dedication of land and both off-site and on-sight improvements. We do, however, find three proposed amendments disturbing.

Our major concern is the exemption in Section 28. In 1986, The Water Office noted that the legislature has declared that it shall protect our natural resources, and our historical and archaeological heritage, and that despite their "important benefits to the state including erosion and sediment control, timber production, wildlife habitat, water quality protection, recreation and aesthetic benefits," areas of native riparian vegetation are still disappearing. Its recommendations that a number of environmental agencies review water development projects and that authority be given to the chief engineer of the board of water resources to condition permits were promptly translated into the environmental coordination act of 1987.

Now barely four years later, comes an amendment to exempt floodfringe fills from environmental review and from the protections it offers riparian environments. Is this action justified because native riparian areas along with their associated wildlife have flourished to the point where any development of a floodfringe would be compatible and review by environmental experts no longer necessary? Hardly. The loss is continuing, particularly in urban settings where development pressures are strong and local governments do not have the funds nor the expertise to conduct such evaluations.

Now more than ever, Kansas needs to protect the benefits that watercourses, their floodplains and their associated vegetation and wildlife provide. The amendment should be deleted from SB23.

The second is the removal of the requirement that planning commissions conduct comprehensive surveys and studies of past and present conditions and trends relating to land use, population, etc. when creating a comprehensive plan. Studies are necessary to forecast needs and to justify resulting policies. Without data, predictions can go haywire and plans and policies can be ineffective or even arbitrary in dealing with the future.

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The third is granting permission for local governments to write their own planned unit development ordinances. Unlike conventional zoning, which is heavily regulated by statute, this form of zoning is to be allowed, incongruously, without purpose, direction or controls by the legislature. Some guidelines are needed.

In Lawrence the planned unit development ordinance incorporates several provisions by reference to the current state statute. If the statute is removed the legal status of our ordinance is questionable. We believe that the current statute should be retained at least until it can be studied at length and improved if need be.

In summary, the League of Women Voters of Lawrence-Douglas County urges you to reinstate the planned unit development provisions, data-supported comprehensive plans, and the environmental coordination act for all water development projects.

LWVL-DC
Box 1072
Lawrence, KS 66044

CITY OF TOPEKA

Chief Administrative Officer
215 E. 7th Street Room 355
Topeka, Kansas 66603
913-295-3725

House Local Government Committee

Testimony on SB 23 - Planning and Zoning

by
Laura M. Doole
Intern, City of Topeka

Madam Chair and members of the House Local Government Committee, my name is Laura Doole, and I appear on behalf of the city of Topeka in support of Senate Bill 23. This bill takes a big step toward solving many problems experienced by planners, city and county officials, planning commission members, developers and others who need to use the various assortment of planning statutes. As you have already heard expressed by other conferees, this bill will recodify and modernize statutes, many of which are antiquated, confusing, contradictory and difficult to use.

The city recognizes that the review of this planning proposal has been a very involved process, covering many issues, with numerous interests attempting to change many aspects of current law. A great deal of compromise has been seen on all sides, and the result is a plan that is both workable and necessary.

The recodification and modernization of laws regulating local planning and zoning is essential to ensure quality planning in the future. This bill provides the opportunity to integrate all the planning laws that currently exist in the state of Kansas into one comprehensive planning act, and in so doing makes the basic requirements of such laws consistent. Therefore, on behalf of the city of Topeka, I strongly urge you to approve Senate Bill 23.

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Attach 7

KANSAS MANUFACTURED HOUSING ASSOCIATION

TESTIMONY BEFORE THE

HOUSE LOCAL GOVERNMENT COMMITTEE

TO: Representative Mary Jane Johnson, Chair. and Members of the Committee

FROM: Terry Humphrey, Executive Director
Kansas Manufactured Housing Association

DATE: March 20, 1991

RE: Senate Bill 23

Madam Chair. and members of the Committee, I am Terry Humphrey Executive Director of the Kansas Manufactured Housing Association (KMHA) and I appreciate the opportunity to appear before you in support of Senate Bill 23.

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 SB 23 is important because it simplifies the statutes dealing with planning and zoning.

Specifically we support New Section 21 which says that local governments shall not exclude manufactured housing from its zoning jurisdiction or residential design manufactured homes from single family residential districts solely because it's a manufactured home.

However, local government can establish appearance standards for manufactured housing to insure it's compatibility with site built housing.

Why do we need state statutory guidance for local government about manufactured housing?

First, most local governments exclude manufactured housing from single family residential districts. According to a 1986 survey

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112 S.W. 6TH • SUITE 204 • TOPEKA, KS 66603 • 913/357-5256

83% of Kansas cities and 50% of Kansas counties that responded prohibit manufactured housing from single family districts and to date very little has changed.

Such restrictive ordinances have out dated roots. They stem from our industry's first product - travel trailers, which were indeed mobile units. However, more than 55 years latter the industry has evolved from transient housing to permanent manufactured housing with traditional residential features.

Secondly, without state statutory inducement it is unlikely that discriminatory treatment of manufactured housing will change! For years politics on the local level have played up the confusion and miss-information about manufactured housing. City commissions, county commissions and planning commissions have been heavily influenced by the building trades. Unfortunately these groups have opposed manufactured housing because it is built to a national building code that they perceive to be inferior and also a competitive advantage. A common tactic by these groups is to scream inferior housing and loss of property value without substantiating their claims.

But in reality, both of these issues have been studied and very different conclusions drawn. According to two recent studies manufactured housing does not negatively impact surrounding property values. The studies are:

- "The Impact Of The Presence Of Manufactured Housing on Residential Property Values: A comparative study of residential property transfers and selected residential areas of Gilford County" by North Carolina A&T State University

- "Residential Property Value and Mobile/Manufactured Homes a Case Study of Belmont, New Hampshire" by the Joint Center for Housing Studies of MIT and Harvard University, 1986.

Also, in 1987 when the Manufactured Housing Institute engineers compared the manufactured housing construction and safety standards to the ICBO Code. They found, "manufactured housing provides a comparably safe shelter while difference do exist between the two codes, these differences are not of a nature which affect the quality of the home."

In fact, according to a recent Foremost Insurance Company "Fire Loss Study", "overall, the chance of a fire occurring in a site built home is twice that of a manufactured home."

Third, the Nation, Kansas and local governments are seriously concerned about the lack of affordable housing. Recently Wichita and Topeka have held affordable housing symposiums to strategies solutions to their affordable housing problems. The Commission on Access to Services for the Medically Indigent and Homeless held hearings on affordable housing this summer and the State Housing Concerns Advisory Committee is developing a State Housing Strategy focusing on housing problems for low to moderate income people. Likewise, in the recently passed National Affordable Housing Act, manufactured housing is defined as a single family dwelling unit and will have to be given consideration in local and state housing strategies before federal dollars are available.

Manufactured housing is affordable housing for example in 1989 the average multisetion manufactured home cost $24.17 per square foot compared to $53.25 per square foot for site built housing. While manufactured housing can't serve all the affordable housing needs, manufactured housing does build housing priced from $20,000 to $60,000 in Kansas. Obviously, it is this price range that meets the needs of the low to moderate income families. Yet, by their own admission the traditional site builder is not set up to meet this need. In a September 30, 1988 article in the Topeka Capital-Journal, Jerry Whittman, Executive Director of the Topeka Home Builders said,

> "Of course, affordable means different things to different people. The 70's are really the bottom price for new, single-family homes. And we have builders in Topeka working at that level.
>
> We have to remember that they must build at a profit. They aren't state-funded; these builders have to support themselves," he emphasized.
>
> Whittman said the $150,000 bracket is where "building at a profit becomes easier."

Nationwide there are many organizations that recognize that manufactured a can play a significant role in affordable housing if local land use regulations are changed. Those reports are:

- The President's Commission on Housing (1982)
- American Planning Association "Planning For Affordable Single Family Housing" (1986)
- The U.S. Conference of Mayors National Housing Forum: Working Towards a Consensus (1988)
- Secretary Jack Kemp's Advisory Commission on Regulatory Barriers to Affordable Housing - Draft Report (1990)

Fourth, Nationwide state legislatures are dealing with land use policies affecting manufactured housing. Since 1976 eighteen states have passed fair zoning statutes for manufactured housing. Those states are:

1.California - 1980
2.Colorado - 1984
3.Florida - 1981
4.Indiana - 1981
5.Iowa - 1983
6.Maine - 1984
7.Michigan - 1979
8.Minnesota - 1982
9.Nebraska - 1981
10.New Hampshire - 1981
11.New Jersey - 1983
12.New Mexico - 1987
13.North Carolina - 1987
14.Pennsylvania - 1986
15.Tennessee - 1979
16.Vermont - 1976
17.Virginia - 1989
18.Wisconsin - 1983

For a moment lets consider the state of California which has operated under a fair zoning provision for 11 years. California has some of the most expensive real estate in the nation and they utilize manufacture housing with no ill effects. In fact, since the law went into effect there has been no attempt to overturn it. Also, Iowa reports similar success.

While I have given you four very good reasons to support New Section 21 of SB 23, I want to respond to some issues that have been previously raised about this provision.

Will New Section 21 preempt local control? No. Local governments will be able to subject manufactured housing to all the same developmental standards required of site built housing plus any additional appearance standards designed to insure the compatibility of housing. By establishing these standards local government will not have to except any manufactured housing that does not meet their housing requirements.

Administratively, this form of land use regulation has been around since 1976 and is workable for even the smallest cities. Both Iowa and California use appearance standards in their local regulation of manufactured housing. To help promote this concept in 1986 the American Planning Association published a booklet "Regulating Manufactured Housing" that fully explains the appearance standards. Also, this concept was published in a

"how to" manual by the League of Kansas Municipalities in cooperation with KMHA. The manual "Manufactured Housing in Residential Neighborhoods": a manual for Kansas cities and counties", also has model ordinances. I have included this manual in your materials.

To date I have worked with the Kansas Chapter of the APA, the League of Kansas Municipalities, the Kansas Association of Counties and a number of individual cities in attempt to find a solution to this vary serious problem. Fortunately, I have gained the support and cooperation of some of these groups, however, there still maybe some that want no mention for manufactured housing in state planning and zoning enabling law. These people will raise some of the inflammatory issues that I have already spoken to. Without a doubt those very same arguments were put forth in the 18 states that have passed fair zoning statutes for manufactured housing. However, to my knowledge none of the horror stories have come true nor has a state statute been repealed.

In closing, I would like to remind you that manufactured housing is affordable housing and it comes in a variety of designs - some that are virtually indistinguishable from traditional site built housing. Yet, in Kansas many local governments exclude this housing. Therefore, without state intervention it is unlikely that manufactured housing will be accepted.

Kansans need housing choices, the Kansas Manufactured Housing Industry, 4 plants and allied industries, need a level playing field to market their housing. Please support SB 23, and New Section 21. Thank you.

FIRST AND SECOND CLASS CITIES

TO: Special Committee on Federal and State Affairs

FROM: Terry Humphrey, Executive Director
Kansas Manufactured Housing Institute

RE: Placement Of Manufactured Housing In Kansas Cities.

The city zoning ordinances below have been reviewed to determine first whether or not they permit HUD Code manufactured homes in single family districts. If they do not, I noted where allowed. The survey was sent to 110 First & Second Class cities. The cities were asked the following questions and for a copy of their zoning ordinances.

#1 - Do you allow manufactured housing in single family residential districts? Yes/No

#2 - If not, where are manufactured homes permitted?

#3 - Do you have a building code?

CITY	#1 In District	#2 if no Where	#3 Bldg. Code
Abilene	No	R-4	Uniform Bldg. Code
Anthony	No		-
Atchison	No	Park/Community	Uniform Bldg. Code
Augusta	No	Park/Subdiv/R-4	Uniform Bldg. Code
		R-4	ICBO-to be adopted
Baxter Spg.	Yes		Yes
Beloit	No	Park/Subdivisions M-P	Yes
Bonner Springs	No	Park	-
Chanute	Yes	If zoned R-3	Uniform Bldg. Code
Chetopa	Yes		No
Coffeyville	No	Exception	-
Colby	No	Park & R-4	Uniform Bldg. Code
Concordia	No	M-H or M-P	No
Council Grove	Yes		-
Derby	No		-
Dodge City	No	R-4/MH Dist.	UBC
ElDorado	No	Exception/Park	Yes
Ellis	No		-
Florence	Yes		Yes
Frontenac	No	Park	Yes
Galena	Yes		Southern Bldg. Code
Garden City	No	Park/Subdivision	-
Girard	No	Park/With approval	Yes
Great Bend	No	R-4, M-1 & M-2	Uniform Bldg. Code
Goodland	Yes		Uniform Bldg. Code
Harper	No		-
Hays	No	Park	-

Haysville	No	Exception/Park	Uniform Bldg. Code
Herington	No	R-4/Park	National Bldg. Code
Hillsboro	No	Park	Yes
Hoisington	Yes		-
Holton	No	Exception/Park	Yes
Hugoton	Yes		Uniform Bldg. Code
Humboldt	No	Park	Southern Bldg. Code
Independence	No	Park	Yes
Iola	Yes		Uniform Bldg. Code
Junction City	No	Park Dist.	Uniform Bldg. Code
Kansas City	No	Park	-
Kingman	No	Park	Yes
Lansing	No	Park	Uniform Bldg. Code
Lawrence	No	Park	-
Larned	No	R-4	Uniform Bldg. Code
Leawood	No	?	BOCA
Lenexa	No	Community	Uniform Bldg. Code
Leavenworth	No	Park Dist.	Uniform Bldg. Code
Liberal	No	R-4/Park/Dist.	Uniform Bldg. Code
McPherson	No	Park	Uniform Bldg. Code
Marysville	No	Park	Uniform Bldg. Code
Nickerson	No	Park	Yes
Olathe	No	Exception/Park	Uniform Bldg. Code
Ottawa	No	MH Dist./Park	-
Overland Park	No	MH Dist./Park	BOCA
Paola	No	M-P/Park/Dist.	Yes
Phillipsburg	Yes		Yes
Pittsbiurg	No	Park	Uniform Bldg. Code
Prairie Village	No		-
Roeland Park	No		BOCA
Russell	No	R-4	Uniform Bldg. Code
Salina	No	Park/Subdivision	-
Scammon	Yes		No
Topeka	No	Exception/Park	Yes
Wamego	No	M-H/MH Dist.	UBC, UPC & NEC
Wichita	No	Park	-
Wellington	No	Parks/Dist.	Uniform Bldg. Code

* * * * * * * * * *

110 First and Second Class cities mailed to.
63 Responses received.

#1 - Do you allow manufactured housing in single family residential districts?
12 answered yes
51 answered no

#3 - Do you have a building code?
45 have codes
3 do not have a code
16 did not respond to question

THIRD CLASS CITIES

TO: Special Committee On Federal And State Affairs

FROM: Terry Humphrey, Executive Director
Kansas Manufactured Housing Institute

RE: Placement of Manufactured Housing In Kansas Third Class Cities.

The city zoning ordinances below have been reviewed to determine first whether or not they permit HUD Code manufactured homes in single family districts. If they did not, I note where allowed. The survey was sent to 50 Third Class cities. They were asked the following questions and a copy of their ordinances was requested.

#1 - Do you allow manufactured housing in single family residential districts? Yes/No

#2 - If not, where are manufactured homes permitted?

#3 - Do you have a building code?

CITY	#1 In District	#2 if no Where	#3 Bldg. Code
Colwich	No	?	Uniform Bldg. Code
Edna	Not Zoned		No
Eudora	No	Exception	Standard Bldg. Code
Galva	No	Park	No
Hanston	Yes		No
Moran	Yes		-
Ogden	No		-
Otis	Not Zoned		No
Perry	Yes		-
Seward	Yes		No
Valley Falls	No	Park	-

* * * * * * * * * *

50 Cities mailed to.
11 Responses received.

#1 - Do you allow manufactured housing in single family residential districts.
4 answered yes
5 answered no
2 not zoned

#2 - Do you have a building code?
2 has a code
5 do not have a code
4 did not respond to question

COUNTY ZONING

TO: Special Committee on Federal and State Affairs

FROM: Terry Humphrey, Executive Director
Kansas Manufactured Housing Institute

RE: Placement Of Manufactured Housing In Kansas Counties.

The county zoning ordinances below have been reviewed to determine first whether or not they permit HUD Code manufactured homes in single family districts. If they do not, I noted where allowed. The survey was sent to 105 counties. The counties were asked the following questions and for a copy of their zoning ordinances.

#1 - Do you allow manufactured housing in single family residential districts? Yes/No

#2 - If not, where are manufactured homes permitted?

#3 - Do you have a building code?

COUNTY	#1 In District	#2 if no Where	#3 Bldg. Code
Allen	Yes		No
Anderson	Yes		No
Atchison	Not Zoned		No
Barber	Not Zoned		-
Barton	Yes		-
Brown	Yes		No
Bourbon	Yes		No
Butler	No	A1/Park	No
Chase	Not Zoned		No
Chautauqua	Yes		No
Cherokee	Not Zoned		-
Cheyenne	Not Zoned		No
Clark	Yes		No
Clay	No	Exception/Park	No
Cloud	Not Zoned		No
Comanche	Not Zoned		No
Cowley	Yes		No
Crawford	No	Exception	No
Decatur	Yes		No
Doniphan	No	R-3/Agri.	No
Douglas	Yes Modular/Multisect.		Yes
Elk	Yes		No
Edwards	Not Zoned		-
Finney	No	Park/Subdivision	Yes
Ford	Not Zoned		-
Franklin	Yes in 4 of 5 townships		-
Geary	No	Park/Dist.	Uniform Bldg. Code

Graham	Not Zoned		-
Grant	No	M-H/M-P	Yes
Gray	Not Zoned		-
Greeley			No
Greenwood	Not Zoned		-
Harper	Yes		-
Harvey	Yes		No
Haskell	Yes		No
Jackson	Yes		No
Jefferson	No	Agri./5 acres	No
Johnson	No	Exception	Yes
Kearny	Yes	Park	No
Kiowa	Not Zoned		-
Kingman	No	Park/Agri.	No
Lane	Yes	With Permission of neighbors	No
Leavenworth	No	Exception	-
Lincoln	Yes		No
Linn	Yes		No
Logan	No	No	No
Lyon	No	Exception/2 1/2 acre	No
Marion	Not Zoned		No
Marshall	Not Zoned		No
McPherson	Yes/24wide	Park	No
Miami	Township zoning		No
Mitchell	Not Zoned		-
Morris	Not Zoned		-
Morton	Not Zoned		-
Nemaha	Not Zoned		No
Osage	Yes	Park	No
Osborne	Not Zoned		-
Ottawa	Not Zoned		No
Pawnee	No	Exception/Park	Uniform Bldg. Code
Phillips	No	Park	Yes
Pottawatomie	Yes 24 wide		Yes
Rawlins	Yes		No
Reno	No	Exception/Park	No
Republic	Yes		National Bldg. Code
Rice	Not Zoned		No
Riley	Yes in some		No
Rooks	Yes		No
Rush	Yes		No
Russell	Yes		Yes
Saline	Yes		No
Scott	No	No	No
Sedgwick	No	Exception	Yes - 1979 KABO
Shawnee	Yes/double wide	Exception	No
Smith	Yes		No
Stanton	Yes		No
Stevens	Not Zoned		No
Sumner	Yes		-
Thomas	No	R-2/MH	Yes
Wabaunsee	Yes Zoned R-5	Rural/5 acres	No
Wallace	Not Zoned		Yes
Washington	Yes		No

Wichita	Yes		No
Woodson	No	Park/Dist.	Yes
Wyandotte	No	Exception(in un-incorporated areas)	-

* * * * * * * * * * *

105 Counties mailed to.
83 Responses received.

#1 - Do you allow manufactured housing in single family residential districts?
37 answered yes
20 answered no
24 are not zoned
1 township zoning
1 did not respond to question

#2 - Do you have a building code?
12 have codes
52 do not have a code
17 did not respond to question

Constructing affordable housing is challenge for Topeka builders

By ROBERTA J. PETERSON
Capital-Journal special sections editor

Building affordable housing in today's market is a challenge, said Jerry Wittman, executive director of the Topeka Home Builders Association.

"Of course, affordable means different things to different people. The 70s are really the bottom price for new, single-family homes. And we have builders in Topeka working at that level.

"We have to remember that they *must* build at a profit. They aren't state-funded; these builders have to support themselves," he emphasized.

The record number of parade entries was 44, achieved in the late '70s.

Wittman said the $150,000 bracket is where "building at a profit" becomes easier.

"Those building under that level, and especially under $100,000, are doing it from a dedication to helping people in that market.

"Any error or miscalculation can make it a losing proposition. When you're building a $70,000 or $80,000 house, a $300 error is catastrophic," he said.

The existing housing market competes directly with builders, he said.

"With existing houses, you get landscaped yards, more square footage for the money and often extras don't raise the price. It's hard for new construction to compete with that in the under-$100,000 bracket.

"But the advantages of a new home are strong, too. And many people who can't pay $150,000 want those advantages," he said.

For the second time, "pick of the parade" awards have been designated this fall.

Recognizing the challenge of building in the lower brackets, THBA awards two picks, one for entries priced above $100,000, and a second for those under that limit.

PARADE-GOERS HAVE a large field of entries to view this fall, with 36 new homes on the tour.

The record number of homes on the parade was 44 in the late '70s before the recession of the early '80s crippled the housing market.

"The market is good and there's lots of building, that's one reason for the increase in entries," Wittman said.

He said another help has been the "under construction" category in the parade. Last spring, THBA began designations on parade homes. The three are "under construction," "completed" and "furnished," and descriptions in this special section indicate the category for each home.

"Homes are often sold before they are completed. Many builders have trouble keeping a home for the parade once it is finished. Having an under construction category increases the likelihood that all builders who wish to can participate in the parade.

"There are people who come to look at furnishings and get ideas; we realize this. And the furnished homes most appeal to them.

"Some serious buyers like to see homes furnished, as well, to better visualize how they would feel when lived in," Wittman said.

"But the under construction entries have advantages, too. Potential buyers can see how a home goes together. And, if they don't want to custom build, they can buy before all the decisions have been made and personalize the home to their own tastes."

There are few changes in parade entries, Wittman said. Solar and berm designs faded with the energy crunch; an abundance of windows is on the upswing.

Triple-car garages are becoming "basic," he added.

Upper-bracket, move-up buyers dominate the market, as do southwest subdivisions.

"However, there are new subdivisions all over town and more on line for '89. There is no shortage of building sites to choose from in many different price ranges," he said.

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January 17, 1991

Senator Don Montgomery
Chairman, Senate Local Government Committee
128-8 State Capitol
Topeka, Kansas 66612

Dear Senator Montgomery:

I am pleased to learn that the Kansas Legislature is seriously considering statutory language to prevent discrimination against manufactured homes. My purpose in writing is to encourage you and your colleagues to pass SB-23, including section 20, into law.

The Iowa Legislature passed a similar measure in 1984. At that time we had to deal with the same allegations you're no doubt hearing: That manufactured homes are inferior, that they will have a negative impact on property values, and that local governments don't need state interference with zoning matters.

After six and a half years of experience in Iowa, a state very comparable to Kansas, I can report to you that none of these allegations is true. Manufactured housing is playing a valuable role in the Iowa housing mix. Virtually all of the Iowa cities and counties with zoning ordinances have amended their local ordinances, in various ways, to accomodate manufactured housing in response to the state law.

The interesting development is that there have been very few complaints about the state manufactured housing zoning law. It's almost as if the local leaders knew they needed manufactured housing, but didn't want to take the local political heat for change, needing the state to be the facilitator for change. Additionally, after a few manufactured homes were sited on private property, the marketplace dynamics took over: The homes were placed in neighborhoods where they were comparable in price, if not better than surrounding homes. People tend to go to neighborhoods where they fit in. The neighbors didn't complain about the manufactured homes, and the local leaders now have a new housing option, an attraction for helping to recruit new industry to a town.

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Finally, your action in section 20 of SB-23 will help many Kansans to get into the housing stream, will give realtors more homes to resell, will help traditional site builders as some of our customers move into their homes, will help your four manufactured housing factories and protect jobs, and will increase local property taxes.

In closing I will pose this question: Why can a citizen in Des Moines, or Minneapolis, or Indianapolis, or Nashville, or Detroit purchase a manufactured home built in Kansas and place it on private property in those cities and not be able to do the same in many cities in Kansas?

I appreciate the opportunity to comment on this issue, and I will be happy to answer any questions from you or any of your colleagues.

Sincerely,

Joe M. Kelly
Executive Vice President

JMK:pr

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January 18, 1991

Senator Don Montgomery
Statehouse, 128-S
Topeka, Kansas 66612

Dear Senator Montgomery:

Terry Humphrey, Executive Director of the Kansas Manufactured Housing Institute, has asked me to write to you regarding Section 20 of Senate Bill 53. Terry said she believes you might be interested in learning of California's experience with legislation that forbids zoning discrimination against manufactured housing.

California has had legislation in effect for 11 years that requires local planning and zoning regulations to accommodate manufactured homes (formerly called mobilehomes) on individual lots zoned for single-family homes. Initially adopted in 1980, this legislation was strengthened in 1988 to allow a manufactured home on any residential lot under the same terms and conditions as a conventionally constructed home is allowed.

Essentially, then, a local government cannot distinguish between a manufactured home and a site-built home within its regulatory structure. Local governments must regulate both as single-family dwellings.

Obviously, these legislative actions were not accomplished without controversy. The greatest opposition came from cities and counties which argued that local control was being violated and that local property values would be negatively impacted.

After more than a decade, the industry and local governments in California can look back with the wisdom that comes from hindsight and conclude that neither of these fears have come to pass. Let me take each issue separately.

The Loss of Local Control

The issue of affordable housing in California becomes more intense each year. Almost annually, the legislature adopts new laws which require local governments to respond more adequately to meeting the housing needs of all income levels.

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Local governments need every tool available to them to respond to the affordable housing dilemma California faces. Manufactured housing is one of the tools in meeting this challenge. The legislature, by requiring local governments to deal with manufactured housing, has not preempted their authority or diminished their power. The legislatures has empowered local governments by giving them one more tool.

Besides, the reality is that manufactured housing is just as viable as any other housing type, and sooner or later local governments will have to accept this fact -- either through legislative mandate or court action. A state-wide legislative action is the best means of ensuring that local governments can respond to the inevitable with consistent, adequate and fair regulation.

Local governments, with the industry's support, will always maintain the authority to set development standards high enough to eliminate the threat of "trailer homes" being erected next to suburban tract housing.

If manufactured housing was truly a threat to the authority of local governments, there would be a concerted effort to amend or delete California's laws. There has been no such effort. To the contrary, local governments have quietly accepted the law. Some local officials have privately expressed that they are happy the legislature settled this issue, because they are now free from the controversy and the legal liability.

Diminished Property Values

The fear of diminished property values is often at the heart of most manufactured home zoning issues. How real is this threat, though? Approximately 4,000 manufactured homes are sited on individual rural, suburban and urban parcels each year in California -- right next to conventionally constructed homes. There has been no diminishing of real estate values in California.

The fact is, underlying land values will determine when and how manufactured housing will perform in a local real estate market. Exclusive neighborhoods need not fear an invasion of low cost manufactured homes because lot prices will preclude this from occurring.

In exclusive neighborhoods, should a manufactured home be able to compete as a housing choice, the manufactured home will be of comparable price, quality and aesthetics to surrounding properties. Lending and appraisal guidelines will require this balance.

I hope this letter helps you understand the impact of a Legislative action requiring local governments to accept manufactured homes in single-family neighborhoods. If I can be of further assistance, please contact me.

Sincerely,

Tony Hadley

Tony Hadley
Director
Local Government
and Development Services

cc: Terry Humphrey

Manufactured Housing: A Home for Every Neighborhood

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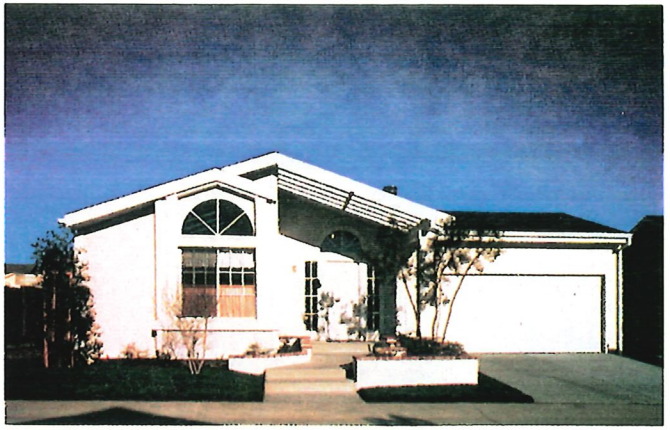

LAND LEASE

Canyon View Estates, Santa Clarita. Size: three bedrooms, two baths, 1,080 square feet. Price: $63,500. Downpayment: $6,747. Monthly mortgage: $627. Monthly land lease: $450. Total monthly cost to occupy: $1,077. Family income necessary to qualify: $37,404.

PLANNED DEVELOPMENT

Rancho Viejo, San Diego County. Size: three bedrooms, two baths, 1,255 sq, ft. Price: $149,990. Downpayment: $29,980. Monthly mortgage: $1,034. Family income necessary to qualify: $37,224.

RURAL SUBDIVISION

Copper Meadows, Calaveras County. Size: three bedrooms, two baths, 1,350 square feet. Price: $86,000. Downpayment: $4,300 (FHA). Monthly mortgage: $747. Family income necessary to qualify: $26,892.

URBAN INFILL

Alicia Court, Pomona. Size: three bedrooms, two baths, 1,545 sq. ft. Price: $120,000. Downpayment: $6,000 (FHA). Monthly mortgage: $1,046. Family income necessary to qualify: $37,656.

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June 1990

ZONING AND PLANNING LAW REPORT

Vol. 14, No. 1 January 1991

CALIFORNIA'S LEGISLATIVE RESPONSE TO THE AFFORDABLE HOUSING CRISIS: INCLUSION OF MANUFACTURED HOMES IN RESIDENTIAL DISTRICTS

by Molly A. Sellman

Molly A. Sellman is a California land use attorney specializing in affordable housing law. She has authored articles on the impact of local land use controls on this country's affordable housing stock and has drafted a model manufactured housing code requiring parity of housing forms.

- The Current Housing Crisis
- Advantages of Manufactured Housing
- Consequences of New Legislation

(The shortage of affordable housing is a critical issue facing this country. California, a state with an acknowledged shortage of affordable housing, enacted remedial legislation intended to ease the affordability problem by prohibiting the discriminatory treatment of manufactured housing at the local government level. This article examines aspects of the current affordable housing crisis and the significance of California's new manufactured housing statutes.)

Introduction

California's willingness to accommodate manufactured housing on lots zoned for single-family dwellings is a direct result of the state's acute housing crisis. The state's demand for affordable housing has reached a near-breaking point. The high cost of housing poses a serious threat to the continued economic growth of the state. A number of California communities with prosperous economies are losing their ability to attract and retain a strong labor force as housing prices and land values rise beyond the reach of many households. Illustrative of this point is the buy-in rate for first-time homeowners, which is a staggeringly low 18 percent—and even lower in some areas of the state. In addition, California has a significant population of single-parent, elderly, immigrant, farmworker, and low and moderate-income families in need of affordable housing. (See generally, *Housing Supply & Affordability*, F. Schnidman and J. Silverman, ed. (Urban Land Institute 1983)).

The legislature, in response to public concern about the affordability gap—defined as the gap between the mean home-sale price and the price a typical family can afford to pay—enacted remedial legislation to facilitate planning

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.or, and development of, affordable manufactured housing in residential districts. The rationale behind this legislation is that manufactured housing is concentrated at the most affordable end of the state's housing market. The strategy behind this legislation is to resolve the state's dwindling supply of affordable housing for its rapidly expanding population while easing the enormous demands upon the state's financial resources.

Restrictive Land Use Controls

On the state level, California has historically had a favorable attitude toward the use of manufactured housing, as evidenced by its 1980 legislative declaration, "(T)he Legislature finds and declares that manufactured housing, which includes mobilehomes, offers Californians additional opportunity to own and live in decent, safe, and affordable housing on a permanent basis." (1980 Cal. State 3690, ch. 1142, 1). Nevertheless, the siting of manufactured housing in California communities was complicated unnecessarily by local governments' disparate treatment and regulatory approach to these homes. A 1986 survey found that some local governments employed practices and procedures of questionable constitutionality when reviewing applications for the installation of manufactured homes. (*Local Government Mobilehome and Mobilehome Park Policies In California*, California Department of Housing and Community Development (1986)). This segregation of manufactured homes from lots zoned for single-family, site-built homes is a vestige of *Euclidean* zoning favoring the traditional concept of homes constructed on large neighborhood lots to the exclusion of other housing forms.

Prior to the enactment of the legislation, state law permitted manufactured housing to be subjected to a myriad of arbitrary and discriminatory land use controls. Local governments successfully utilized a tangle of site-restrictive regulations or procedures such as conditional use permits and rezonings. Review of permit applications were conducted on a case-by-case basis involving notification to surrounding property owners, hostile public hearings, and expensive applications to offset the cost of burdensome review procedures. In addition, manufactured homes were subjected to numerous regulations, including lot size and width, minimum house size, maximum structure coverage, architectural standards, etc., which functioned effectively as exclusionary barriers.

The imposition of these intimidating regulatory obstacles by local governments resulted in an increasingly deficient supply of affordable housing. All too frequently the loss of affordable housing in California occurred in communities where it was needed the most. Against this backdrop, California's high-growth demographics are staggering. The state's population reached a record 30 million during the 1980s, and it is predicted that another 7 million people will move California during the 1990s. Residential real estate prices soared to the most expensive in the country while the affordability gap widened dramatically.

California's remedial manufactured housing statutes represent a logical progression from a state housing policy articulating governmental responsibility to provide for manufactured housing within communities to one which requires the inclusion of manufactured housing. Local governments must now examine their regulatory permitting processes and remove any impediments to the siting of manufactured homes within their communities.

Manufactured Housing

Federal law defines a manufactured home as "a structure, transportable in one or more sections, which, in traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three-hundred-twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems therein. . . ." (42 U.S.C. Section 5402(6) (Suppl. V. 1981) (amending 42 U.S.C. 5402 (1976)). The factory-built and inspected manufactured home must conform to the Federal Manufactured Housing Construction and Safety Standards Act established and administered by the United States Department of Housing and Urban Development. This single, preemptive national construction and safety code, known as the "HUD Code," was generally based on California's manufactured housing code standards and level of quality. The code regulates home design and construction, strength and durability, fire resistance and energy efficiency, as well as the installation and performance of heating, plumbing, air conditioning, and thermal and electrical systems.

The historic prototypes, "mobile homes" and "trailers," are confused frequently with manufactured homes despite the technological advances and dramatic design changes of the past two decades. Manufactured homes or HUD Code homes are built and inspected in factories, and transported to a site where they are affixed to a foundation system. The homes are sold with all appliances, plumbing, and electrical installation in a single section, or in multi-section configurations which are then assembled at the site. (See S. Robinson, *Manufactured Housing: What It Is, Where It Is, How It Operates* (Ingleside Publishing 1988)). In terms of permanency, the application of "mobilehome" to modern manufactured homes is antiquated. Fewer than 7 percent of manufactured homes are removed from their foundations once they are permanently sited. (S. O'Heron, *The Evolution and Outlook for Manufactured Housing: A*

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ational and Eleventh District ...rview, Federal Home Loan Bank Board of San Francisco (April 1986)).

In terms of architectural appearance, the manufactured home is virtually indistinguishable from site-built housing when properly sited on a permanent foundation and landscaped. A 1990 study by the California Department of Housing and Community Development found that manufactured housing has evolved into housing that is comparable in design and performance to site-built housing as a result of the growing use of multi-sectioned units (two or more sections transported and assembled at the installation site), conventional roofing, siding, internal finishings, and foundation systems. (*Manufactured Housing For Families: Innovative Land Use And Design*, State of California Department of Housing and Community Development (1990)).

Housing Costs

The total cost of a manufactured home is significantly less than that of a site-built home. In California, the average construction cost of a manufactured home is approximately $30 per square foot, compared with approximately $42 per square foot for the typical site-built home. The average cost of a 3-bedroom, 2-bath manufactured home is $49,702 (*California Mobilehome Report*, Berlin Research Corporation, San Luis Obispo, CA (January 1990)). The cost for the same manufactured home sited with land is $130,000 (*MANUFACTS*, California Manufactured Housing Institute (January 1990)), while the median cost of a comparable site-built home is $204,000. (*California Real Estate*, California Association of Realtors (January 1990)). Savings on labor and financing accounts for much of the difference in costs. The savings in labor costs are due to the use of semi-skilled labor. Lower financing costs are due to shorter construction time and reductions in carrying costs for idle land and building material on-site.

An important issue in the development of affordable housing is efficient use of land. Land costs in most areas of California account for an ever-increasing percentage of total development costs. For example, the excessive costs of local land use controls such as duplicate permitting, impact fees, and public hearings add significantly to the overall cost of homes. A federal commission found that in many parts of the country, including California, nearly 90 percent of the homes are built on land so overregulated that only 5 percent of prospective home buyers are able to afford the inflated price of these homes. (*Report of the Advisory Commission on Regulatory Barriers to Affordable Housing*, United States Department of Housing and Urban Development (1990)).

Delays in the regulatory process also drive up land prices, to the detriment of the manufactured housing industry, which is dependent on lower land costs in order to compete in the single-family market. Excessive regulatory land ...controls such as zoning, exact... codes, fees, and permit conditions also contribute to... high cost of housing. Impact fees represent up to 10 percent of the price of a manufactured home, yet only 3-4 percent of a comparable site-built home. When manufactured housing is sited without the burdens of excessive regulatory controls, unnecessary delays, and cumbersome approval procedures, the affordability gap is reduced sufficiently to enable many households, previously shut out of the housing market, to purchase homes.

Social and Environmental Consequences

A 1990 report on the California family revealed that many family members are working longer hours or multiple jobs, or commuting longer distances to work, in order to afford housing. (*Report of the Joint Select Task Force on the Changing California Family*, State of California, Department of Housing and Community Development (1990)). Communities are becoming increasingly diminished as people live in one town, work in another and have strong ties to neither. As more and more commuters travel longer distances, there is more sprawl, traffic congestion, and air pollution. One reason for these environmental and social consequences is the failure of the California housing market to meet the needs of diverse family types that no longer conform to a uniform mold of the traditional family. This is best illustrated by developers of site-built housing who continue to build traditional single-family homes on large lots in suburban locations located long distances from workplaces.

The affordability gap takes its toll on the financial well-being of families. For example, the fastest growing

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mily form in California is the s. gle-parent household, particularly those headed by females. These single-parent families are hit hardest by the high cost of housing because they have fewer financial resources available for housing, due to their higher transportation costs, wasted hours on the freeway and precarious day-care arrangements.

The *Report of the Joint Select Task Force on the Changing California Family* cited the importance of home ownership to the financial stability of families, not only the single-parent households, but also the first-time homebuyers, the elderly, the immigrants, the farmworkers, and low and moderate-income families. One solution is to give developers incentives to build affordable housing with the innovative use of manufactured housing. Innovative uses of manufactured housing for low and moderate-income families include land-lease communities, condominium developments, small and large planned unit developments, urban and suburban infill lots, and public sector developments.

Manufactured Housing Codes

To date, sixteen states (California, Colorado, Florida, Indiana, Iowa, Kansas, Maine, Michigan, Minnesota, Nebraska, New Hampshire, New Jersey, New Mexico, Oregon, Tennessee, and Vermont) have drafted codes or statutory provisions limiting the discriminatory regulation of manufactured housing by local governments. Only four states—California, Iowa, Minnesota, and Vermont—have codes which encourage the siting of manufactured homes by legislating parity of all housing forms. The remaining states allow local governments to retain varying degrees of control over the siting of manufactured housing. (See M. Sellman, "Equal Treatment of Housing: A Proposed Model State Code for Manufactured Housing," 20 Urban Lawyer 73 (1988), *reprinted in 1989 Zoning and Planning Law Handbook*).

California's progressive enabling legislation is a model for addressing this country's housing problem. The legislation places California in the forefront of jurisdictions establishing a state-level preemption of the traditional concept of local control over manufactured housing. Moreover, California's mandate of providing for affordable housing with the inclusion of manufactured housing "by right" signals a willingness of one state legislature to respond aggressively to its affordable housing crisis.

The New Legislation

The California Legislature passed SB 2741 and SB 2827, effective 1989, which clearly define the authority of local governments to regulate manufactured housing within their jurisdictions. SB 2827 amended Government Code Section 65852.3, thereby repealing the existing authority of local governments to designate sites as being "compatible" with ...anufactured housing uses. SB 2 added Government Code Section 65852.4, wh... prohibits a manufactured home from being subjected to regulatory approval and permitting processes that are not identical to those that would be imposed on a site-built home located on the same single-family zoned lot.

Single-Family Zoned Lots

Government Code Section 65852.3, adopted in 1980, provided for the installation of manufactured homes on foundations pursuant to Section 18551 of the Health and Safety Code on lots zoned for single-family housing. The statute allowed local governments the option of permitting manufactured homes on all single-family lots, or permitting manufactured homes on single-family lots determined to be "compatible for mobilehome use." This vague statutory language enabled local governments to restrictively interpret or selectively implement the statute.

As amended, Section 65852.3(a) provides that a local government "shall allow the installation of manufactured homes certified under" the HUD Code "on a foundation . . . on lots zoned for conventional single-family residential dwellings." The legislative intent was to close the "compatibility" loophole, eliminating the option of local governments to permit manufactured homes on all single-family lots determined to be "compatible" for manufactured homes. Manufactured homes may now be sited on any lot zoned for single-family dwellings.

Manufactured homes must comply with all development standards including yards, setbacks, access, vehicle parking, minimum square footage, and enclosures required of single-family dwellings, as well as any applicable private covenants, conditions, and restrictions. However, the unbridled imposition of development standards is restricted by a final clause providing that "*[i]n no case may a (local government) apply any development standards which will have the effect of . . . precluding manufactured homes from being installed as permanent residences*" (emphasis added).

Local governments may impose limited architectural requirements—relating to siding material, roof material and roof overhangs—on manufactured homes even if these requirements are not imposed on site-built homes. However, specific architectural requirements for roofing and siding material may not exceed those required of conventional single-family dwellings constructed on the same lot.

Other amendments to section 65852.3 are also worth noting. Subdivision (a) changes all existing references from "mobilehomes" to "manufactured homes." Under Subdivision (b), manufactured homes may be precluded from being located near "any place, building, structure, or other object having a special character or special

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istorical interest or value" pr ed that it is listed on ne National Register of Historic Places.

Administrative Permits

Section 65852.4 provides that local governments may not subject an application to locate or install a manufactured home certified under the HUD Code on a lot zoned for a single-family residential dwelling to any administrative permit, planning, or development process or requirement that is not identical to the administrative permit, planning or development process or requirement that would be imposed on a conventional single-family residential dwelling on the same lot. This is a direct response to local governments' restrictive strategies of requiring public hearings, notifying surrounding property owners, and instituting lengthy review periods that created disincentives toward siting of manufactured homes on single-family lots. Section 65752.4 also contains a provision reinforcing compliance with the portion of Section 65852.3 that relates to the limited architectural requirements (i.e., siding material, roof material, and roof overhangs) that may be imposed on manufactured homes even if these architectural standards are not required of conventional single-family residential dwellings.

The Impact of the Legislation

The new statutes have several significant socio-economic impacts. First, the statutes bring about positive changes in local land use policies and controls that are conducive to the development of affordable housing. Governmental tendency to overregulate manufactured housing is significantly curtailed. The new state housing policy dictates the equal application of land use controls and appearance criteria to both manufactured homes and site-built homes, ending the arbitrary and discretionary restrictions that have long plagued the manufactured housing industry.

Second, the statutes encourage the replenishment of the state's increasingly deficient housing stock by requiring local governments to streamline their regulatory approval processes for manufactured housing. Expensive and time-consuming permit procedures which created uncertainty and discouraged manufactured home development are removed. The opportunity for California homeowners to live in affordable homes is dramatically increased by the number of single-family lot sites available for manufactured homes.

Statistics support the growing trend of utilizing manufactured housing to mitigate the state's high growth and housing affordability problems. Over 1.1 million Californians reside in more than 550,000 manufactured homes. (*Mobilehome Parks In California*, California Department of Housing and Community Development (1986)). It is estimated that in 1990, more than 50,000 California families purchased a new or existing manufactured home. (*M factured Housing Site Develop Status Report*, California Manufactured Housing stitute (September 1990)).

Local Government Regulation

The statutes do not remove local governments' power to approve the siting of manufactured housing in their communities, nor do they change existing land use planning and zoning laws pertaining to development standards. Rather, the statutes assist local governments in land use planning processes by providing specific guidelines for reviewing applications for the permanent installation of manufactured homes. As stated above, local governments retain control over limited architectural requirements even if such requirements are not applied to site-built homes, thereby ensuring the architectural compatibility of manufactured homes sited in residentially zoned areas.

Local governments that will have to change their permitting procedures include: (1) governments that have not yet made all single-family lots available for manufactured home use; and (2) governments that have applied arbitrary or discriminatory permit procedures to manufactured homes. The legal ramifications of these statutes are potentially far-reaching. If local governments' decision-making policies and regulatory procedures are not amended to conform to state law, or if local governments engage in discriminatory practices, liability for damages may be incurred. The unfortunate consequence of expensive litigation and accompanying delays would be a substantial increase in the cost of developing affordable housing.

Planned Unit Developments

The statutory removal of discriminatory regulations and disparate treatment has mitigated the chilling effect on the production of manufactured housing. No longer do public policies or regulatory barriers serve as incentives to adopt site-built housing to the exclusion of manufactured housing. Illustrative of this shift toward manufactured housing in California is the current development of 162 manufactured housing projects in 34 counties containing 22,300 manufactured home sites. (*Manufactured Housing Site Development Status Report, supra*).

This shift toward manufactured housing is accompanied by a revolution in design and development. Manufacturers, encouraged by the new laws, are constructing more sophisticated manufactured homes which are competitive with site-built homes. Developers are producing and marketing more planned unit developments with manufactured housing which are competitive with site-built developments. For example, the National Association of Home Builders bestowed its 1990 Outstanding Achievement in Affordable Housing Award to

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swell Park, a 400-unit manufa .ed housing planned unit development in Bakersfield. (National Association of Home Builders (Washington, D.C. 1990)).

A study by the state determined that although manufactured housing is not a complete solution to the problems of affordable housing for families, it is significantly more affordable than site-built housing. For instance, manufactured housing, depending on location, labor costs, number of units in a project, and the cost of land, can offer a more attractive investment and lifestyle than site-built rental housing. The study concluded that economies of high unit densities combined with the innovative design and technological advances of manufactured homes make this outcome possible. (*Manufactured Housing for Families: Innovative Land Use and Design*, Department of Housing and Community Development (1990)).

Liberalized Finance Regulations

Traditionally, manufactured homes were subjected to discriminatory financing due to the historical perception of their impermanence, absence of durability, and perceived depreciation. A recent study found that manufactured homes in California are appreciating at an average annual rate of 9.4 to 15.8 percent. (*California Mobilehome Report, supra* (February 1988)). An issue related to appreciation is the concern that when site-built homes are located near manufactured homes, their value may depreciate. However, a 1982 study of housing in San Jose, California, concluded that a manufactured housing development with proper architectural controls should not result in depreciation of the resale value of adjacent or nearby site-built homes. (*Manufactured Housing for Families, supra*).

Parallel changes in financing have taken place now that manufactured homes are built as functionally permanent housing and provide certain assurances of construction quality and safety. Lending institutions now have incentive to treat manufactured homes as site-built homes with loans being made on a real property basis. Lenders are re-evaluating their lending practices to take advantage of the predicted growth in the market for permanently sited manufactured homes. Although some loans are still financed at higher rates than those for site-built homes, lenders are amortizing loans on permanently sited homes for 15-30 years with a 15-20 percent downpayment. For example, California's second largest bank introduced the first 30-year mortgage for manufactured homes, citing the new state laws as benchmarks for market expansion. Some financial lenders are providing temporary construction financing.

Single-family homeowner mortgage insurance and loan programs under the Federal Housing Administration (FMA), Veterans Administration (VA), Farmers Home Administration (FmHA), California Housing Finance Agency (CHFA), and Cal-Vet allow real estate loans permanently sited manufactured homes on buyer-owned lots. In addition, the secondary mortgage purchase market has begun to accept manufactured home loans, allowing more lenders to make loans at more favorable rates. The Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac") accept manufactured housing loans provided the homes are permanently sited and aesthetically comparable to site-built homes.

Community Redevelopment Law

The largest source of affordable housing funds in California is the Community Redevelopment Law (Health and Safety Code Section 33000 *et. seq.*). Under the law, public agencies are encouraged and required to participate in the production of affordable housing in their communities. Recent legislative revisions of the redevelopment law are part of the state's corrective response to the housing affordability crisis. To provide for affordable housing opportunities, the legislature linked the state's redevelopment law with residential development through the strategic use of tax increment redevelopment funds.

The Community Redevelopment Law requires: (1) that tax increment revenue be used to increase and improve the supply of low and moderate-income housing in a community; (2) that redevelopment agencies replace low and moderate-income housing that is destroyed as a result of a redevelopment project; and (3) that a portion of all housing constructed in a redevelopment project area be affordable to low and moderate-income persons and families. For example, Health and Safety Code Section 33334.2 requires that 20 percent of all tax increment funds generated from a redevelopment project area be set aside for "increasing and improving" affordable housing.

Affordable housing is an integral part of the state's comprehensive redevelopment program to revitalize California communities. Many local redevelopment agencies, housing authorities, and community development agencies utilize manufactured housing for low and moderate-income housing. The use of manufactured housing enables local governments to meet the requirements of the state's zoning and planning law which requires that each housing element of a local government's general plan contain either an inventory of existing adequate sites or a program of adequate sites to "facilitate and encourage the development of a variety of types of housing for all income levels," including manufactured housing. (Government Code Section 65583).

Private Sector Redevelopment

A growing trend in California is the private redevelopment of infill lots with affordable housing. (See generally, *Infill Development Strategies*, Real Estate Research Cor-

)ration (Urban Land Institute 32)). As the housing demand increases, local governments are faced with the deterioration of older neighborhoods filled with vacant lots and dilapidated, substandard homes. The need for safe and affordable housing is exacerbated by a scarcity of federal and state funds as housing subsidy programs are dismantled. As a consequence, local communities are forced to develop their own funding strategies.

One strategy is the use of manufactured housing as a cost-effective solution for single-lot infill in urban and suburban areas. The advances in design allow modern manufactured homes to be architecturally integrated into many California urban and suburban communities. On small urban infill lots, private developers utilize manufactured homes as a cost-effective alternative to constructing site-built homes. Similarly, manufactured homes with site-built garages on regular-size, single-family lots in existing middle and upper middle-income suburban infill lots are more cost-effective than site-built homes. The cost-effectiveness of manufactured homes in small infill projects is due to a factory's economy of scale, which combines readily with a small developer's need to save time, avoid high overhead costs, minimize on-site material losses, and reduce the number of subcontractors.

A case in point of public-private sector cooperation in developing affordable housing is found in Riverside, California. The city's Eastside neighborhood had a high percentage of lower-income households living in older, substandard housing. The city started a housing rehabilitation program with its Community Development Block Grant funds and a new construction infill program. Manufactured housing and California Housing Assistance Programs funds were used to ensure affordability in the new construction program. The cooperative effort of this public-private partnership led to the development of a number of three-bedroom, two-bath, 1,150 square foot manufactured homes, including site-built garages and landscaping with a mortgage of only $460 per month. (*Manufactured Housing for Families, supra*).

Enforcement of the Affordable Housing Mandate

The preeminent importance of the mandatory housing element of each community's general plan is evidenced by the legislative declaration that the availability of housing is a matter of "vital statewide importance" and that the "early attainment of decent housing and a suitable living environment for every California family is a priority of the highest order." (Government Code Section 65580(a)). State law requires local governments to specifically address the need for manufactured housing in the housing element of their general plans. (Government Code Section 65583).

To enforce the affordable housing mandate, the legislature enacted the Housing Crisis Statute, Government Code Section 65750 *et seq.* The statute acknowledges the state's current h ng crisis and the essential nee reduce delays in completing housing projects. primary thrust of this remedial statute is: (1) to expedite judicial review of challenges to a general plan; and (2) to ensure that a court decision holding a general plan inadequate or invalid does not unnecessarily inhibit the provision of affordable housing.

In a matter of first impression, a California court addressed the circumstances under which a court may curtail development under the Housing Crisis Statute. *Committee For Responsible Planning v. Indian Wells*, No. 50665 (Cal. Super. Ct., Riverside Co., June 26, 1987). A citizens group opposed the proposed development of a large real estate project and challenged the validity of the city of Indian Wells' general plan for its lack of provisions for affordable housing. The trial court cited the city for its regulatory negligence, pointing to a complete absence of any discussion or provision for affordable housing in the mandatory housing element of its general plan. An ominous message was sent to California communities attempting to evade the state's affordable housing mandate. The trial court prohibited Indian Wells from issuing building permits, map approvals, and other discretionary land use approvals until the city brought its general plan into compliance with state law.

The California Court of Appeal concurred, finding that neither the city's general plan nor the mandatory housing element of the plan complied with the state's statutory requirements. *Committee For Responsible Planning v. Indian Wells*, 209 Cal. App. 3d 1005 (1989). The appellate court noted that under the statute, a court is required to include in its order or judgment the suspension of a local government's authority to grant development approvals for any and all categories of developments until the housing element is brought in compliance with state law. Government Code Section 65755. Suspension of all discretionary land use approvals, zoning changes and variances is a unique and powerful method for ensuring that local governments comply with California's affordable housing mandate.

Building Codes

One controversy which impaired the siting of manufactured homes was the imposition of local and regional building codes. Frequently, different safety and construction requirements of these building codes were imposed on manufactured homes as a means of precluding them from residential districts. The broader question in this controversy was the interaction of federal and state law on the issue of preemption, and whether the HUD Code preempted local and regional standards.

In *Scurlock v. City of Lynn Haven*, No. MCA 84-2129-RV (N.D. Fla. Apr. 1, 1987), the City of Lynn Haven denied owners of a manufactured home a variance, thus preventing the home from being sited on residentially

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oned property. The trial court questioned the city's failure to explain why a manufactured home would be accepted as safely constructed if it were located in a designated mobilehome park or an unzoned area, but not if it were located within a residentially zoned area. The court concluded the HUD Code and the Southern Building Code are essentially comparable, noting that the slight differences in the codes do not affect the integrity or the safety of manufactured homes. Moreover, Section 5403(d) of the HUD Code clearly reflects the intent of Congress to preempt the field with respect to any standard of construction or safety for manufactured homes that is not identical to the federal standard.

The Eleventh Circuit Court of Appeals concurred, ruling that the HUD Code preempts the application of different and additional safety requirements upon HUD-Code homes. *Scurlock v. City of Lynn Haven*, 858 F.2d 1521 (1988). No state or local rule may be enforced or any action taken which would impair "the federal superintendence" of the manufactured housing industry as set forth by the HUD Code. (24 C.F.R. Section 3282.11(e)). In addition, the city was admonished for attempting land use planning through the guise of a safety provision in an ordinance when that safety requirement was preempted by federal law. The court ruled that manufactured homes, constructed in compliance with federal and state regulations, can not be prohibited by local ordinances, regulations or rules governing construction and safety standards, thus ending the imposition of this particular exclusionary barrier.

Conclusion

The manufactured housing statutes are a major factor in rectifying California's affordable housing crisis by paving the way for the mainstream use of manufac homes in all communities. The statutes serve to increase the supply of safe, decent, affordable housing for first-time homebuyers, and single-parent, low and-moderate income, elderly, immigrant, and farmworker families.

The statutes also encourage local governments to understand the manufactured housing industry, and the advanced performance standards and enhanced design features of manufactured homes. The expanding need for affordable housing and the growing innovative use of manufactured housing provide local governments with incentives to encourage the non-discriminatory development of manufactured homes within their communities. The modern manufactured home has come of age in California.

UPCOMING CONFERENCE

The 1990 National Affordable Housing Act: Prepayment, Preservation and Other Opportunities for Owners and Developers, sponsored by *Housing and Development Reporter* and the Institute for Professional and Executive Development, Inc., on February 7-8 in **Ft. Lauderdale, Florida.** Topics covered will include an overview of the National Affordable Housing Act, new development opportunities under the Home Investment Partnerships Program, management of assisted housing, and various issues under the Low-Income Housing Preservation and Resident Homeownership Act of 1990, including retaining rental occupancy, sales to priority purchasers or qualified purchasers, prepayment, and differing tax consequence of selling or refinancing. For more information, call IPED at (202) 331-9230.

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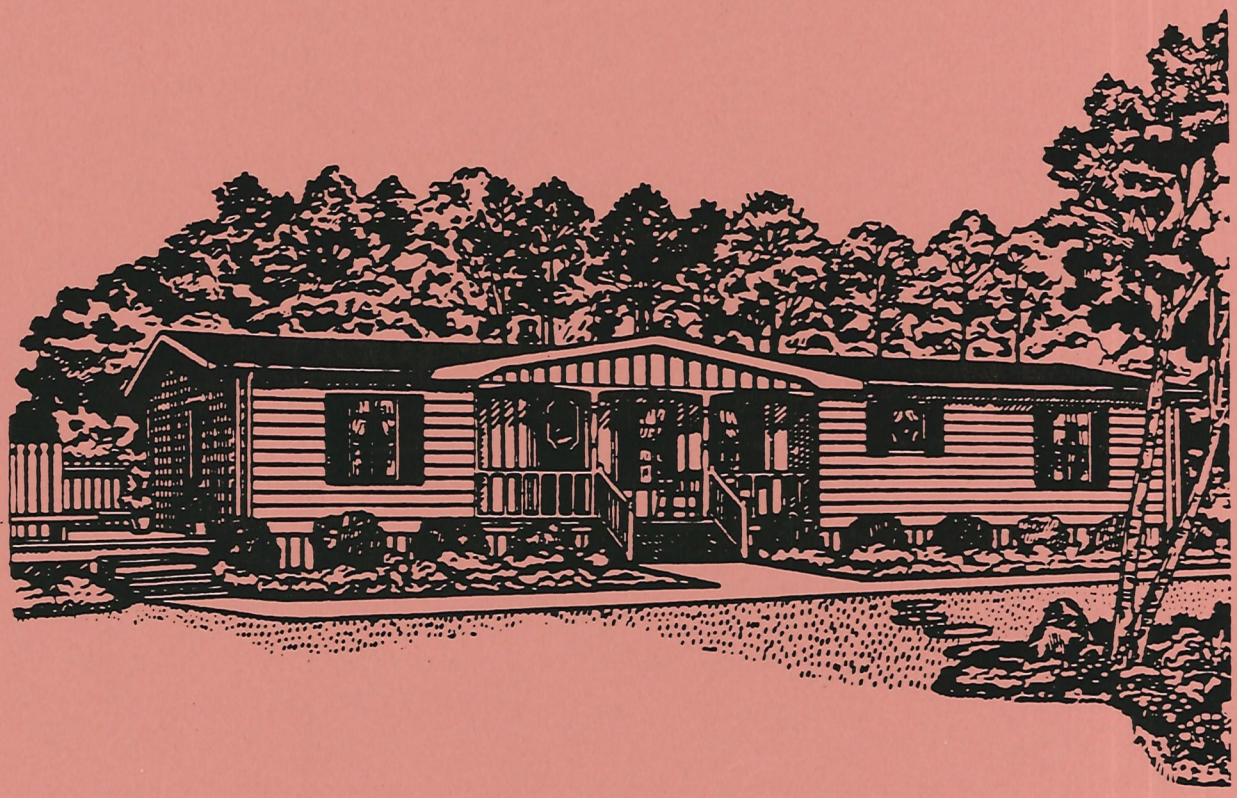
MANUFACTURED HOUSING

IN RESIDENTIAL NEIGHBORHOODS:

A Manual for Kansas Cities and Counties



League of Kansas Municipalities

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Manufactured Housing

In Residential Neighborhoods:

A Manual for Kansas Cities and Counties

Prepared and Published by the
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SECTION 1. INTRODUCTION

This manual was prepared for those Kansas cities and counties concerned with providing for affordable housing by encouraging the location of certain types of manufactured homes in single-family and other low density residential areas. It does not address issues associated with mobile home parks. (For information on that subject, see the 1979 League of Kansas Municipalities report entitled Mobile Home Development: A Guide for City and County Officials). Instead, the aim of this manual is to provide the necessary tools to allow for the integration of certain manufactured housing into areas zoned for residential use without the risk of reducing neighborhood integrity frequently associated with mobile home developments.

Why publish a manual on local government regulation of manufactured housing that encourages Kansas cities and counties to examine their zoning practices and other policies affecting manufactured housing? There are three national developments which support the reevaluation of traditional municipal regulatory practices: 1) Manufactured housing can help meet the need for moderately priced housing in a time of increasing housing costs; 2) innovations in the manufactured housing product, and in local government regulatory practices, have greatly increased the compatibility of manufactured homes in residential areas historically dominated by site-built homes; and 3) the increase in legal challenges to restrictive zoning practices.

The Statement of Municipal Policy of the League of Kansas Municipalities provides: "We encourage cities to review their regulations applicable to manufactured housing to insure that they are reasonable, non-discriminatory and non-arbitrary." In addition, the League has long been supportive of the concept of urban conservation, including the better use of land already serviced by public facilities instead of encouraging dispersed development. Use of manufactured housing to provide "in-fill", using vacant lots or replacing dilapidated structures, appears advisable in many Kansas communities.

This manual discusses various aspects of manufactured housing regulation: local zoning regulations; the manufactured home construction code; installation; and appearance standards. Also, a model city ordinance and county resolution authorizing the location of manufactured housing in residential areas, subject to certain appearance standards, are provided.

Manufactured Housing To Help Meet The Need For Moderately Priced Housing

According to the U.S. Bureau of the Census, 80% of American families in 1988 were priced out of the average new site-built home market -- housing which cost on average about $123,700 in the Midwest. It is not likely that this situation will change since site-built housing costs have annually increased about 7.5% in recent years. According to the U.S. Department of Commerce, in 1986 there were only 87,000 new homes priced under $60,000 built in the United States. In Kansas, the U.S. Bureau of the Census estimated that the median price of

a single family home tripled between 1970-1980, while the median income of Kansans only doubled.

How do these housing statistics impact the American family? According to the National Housing Task Force, there is currently a severe shortage of affordable housing. Further, the percentage of Americans owning their own homes (which peaked in 1980 at 65.6%) has declined by 2% to 63.6%. Those impacted most heavily by the high cost of housing are young families. From 1975 to 1986, home ownership fell 10% among those in the 30 to 34 age bracket, and fell nearly as much for the 25 to 29 age bracket.

Manufactured housing is one solution to our affordable housing problem. In 1989, manufactured housing building costs were half as much as site-built homes on a per square foot basis -- $22.26 versus $53.25. The lower building cost of manufactured homes can make the difference for many American families in their financial ability to own their own home.

Innovations in Manufactured Housing and Local Government Regulatory Practices

Traditionally, zoning laws have treated all manufactured housing alike. Many local government regulatory practices were formulated in an era when factory built homes were "trailers". Those local laws effectively limited manufactured homes to mobile home parks or to commercial and rural locations and prohibited their placement along traditional site-built housing.

Today, the manufactured housing industry builds a wide range of housing products in conformance to a national code. Some of those products closely resemble traditional site-built housing. If certain appearance standards are met, manufactured housing can be attractively integrated into many residential neighborhoods alongside site-built housing. Yet, despite these innovations in the manufactured housing product, many zoning regulations take a "lowest common denominator" approach, restricting the location of all manufactured housing to guard against the negative effects associated with some lower quality manufactured housing and mobile homes.

Manufactured housing is not readily available to residents in many communities largely because of long-standing land use and regulatory policies. It is this situation which prompted the United States Conference of Mayors in 1988 to call for the review of local housing regulations to allow for modular and manufactured housing.

While some Kansas local governments allow manufactured houses within any residential area, others have adopted zoning laws that exclude all types of manufactured homes from single-family and other low density residential districts. The Kansas Manufactured Housing Association, a trade group for the manufactured housing industry, conducted a survey in 1986 of Kansas counties and cities which indicated that many local governments may need to evaluate their regulatory and zoning laws to allow for the integration of manufactured homes into single family districts.

Before discussing how local governments can encourage the planned use of manufactured housing in their communities, it is necessary to define the manufactured housing product, distinguish it from "mobile homes," and understand the ability of local governments to define the manufactured housing product and impose reasonable appearance standards. These matters are addressed in the following sections.

This newly sited manufactured home is located in the City of Ottawa. The city created an overlay zoning district for manufactured housing for the purpose of urban infill.

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SECTION 2. WHAT IS MANUFACTURED HOUSING?

Manufactured housing has three features which distinguish it from other types of housing. Manufactured housing is:

(1) Built according to a national construction code, the "HUD Code," which largely preempts local and state building codes. See Section 6.

(2) Built in a factory, rather than on-site.

(3) Transported to the homeowner's property for installation.

Although all manufactured housing must meet minimum national construction standards, not all manufactured housing looks alike. Single-section or multi-section housing units are available with either bowed metal or pitched, composition-shingled roofs. They are also available with vertically hung aluminum siding or with horizontal lap siding of aluminum, vinyl or hardwood that is identical to the siding used on site-built homes. Siding options also include brick or stucco. When sited on a properly engineered foundation, some manufactured housing closely resembles site-built homes.

Manufactured housing is available in many sizes and configurations and can accommodate garages, carports and porches which enhance their fit within a neighborhood of site-built housing.

A distinguishing feature of some manufactured homes is the inclusion of a chassis as an integral part of the structure. Recent technological developments in the manufactured housing industry have produced an integrated chassis system made mostly of wood. It is likely that this system will be widely used in the Midwest. The chassis allows wheels and axles to be attached and the completed unit to be towed to its site. The house can then be placed on a foundation, which results in a permanent installation. The wheels and axles and towing apparatus are usually removed after the unit reaches the site and the house is ready for occupancy after utility connections.

While a general definition of manufactured housing is helpful for an understanding of the product, it is equally important to know what is not manufactured housing. This is reviewed in the next section.

SECTION 3. THE IMPORTANCE OF DEFINITIONS: MANUFACTURED HOUSING VS. MOBILE HOMES

Local governments which want to encourage manufactured housing within their community, or at least remove prohibitions against it, should distinguish between a manufactured home and a mobile home in order to tailor zoning laws and other regulations to allow greater use of manufactured housing. It is important to note that local governments can add additional definitional requirements in their zoning code in order to ensure the compatibility of manufactured housing alongside site-built houses. See Section 4 regarding appearance standards.

The following definition is a common one and is used in the model ordinance/resolution in this manual.

> **Manufactured House.** A dwelling unit substantially assembled in an off-site manufacturing facility for installation or assembly at the dwelling site, bearing a label certifying that it was built in compliance with the National Manufactured Home Construction and Safety Standards (24 CFR 3280 et seq.) promulgated by the U.S. Department of Housing and Urban Development.

Another definition a local government might use is:

> **Manufactured Home.** A factory-built structure that is manufactured or constructed under the authority of 42 United States Code Sec. 5401 and is to be used as a place for human habitation, but which is not constructed or equipped with a permanent hitch or other device allowing it to be moved other than for the purpose of moving to a permanent site, and which does not have permanently attached to its body or frame any wheels or axles. A mobile home is not a manufactured home.

Mobile Home. The Kansas statute (K.S.A. 75-1211 et seq.) which sets forth uniform standards for mobile homes and recreational vehicles defines a mobile home as "a structure, transportable in one or more sections, which has a body width of eight (8) feet or more and a body length of thirty-six (36) feet or more and which is built on a permanent chassis and designed to be used as a dwelling, with or without a permanent foundation, when connected to the required utilities, and includes the plumbing, heating, air-conditioning and electrical systems contained therein . . . Mobile home does not include any structure which is subject to the federal mobile home construction and safety standards established pursuant to 42 U.S.C. 5403."

Modular House. Another type of factory-built dwelling is the modular house. A modular house is a dwelling unit fabricated at an off-site manufacturing facility for installation or assembly at the building site. Local governments with a building code can regulate modular houses in the same manner they regulate site-built houses. Some local governments inspect factories that construct modular houses to ensure their compliance with applicable local

building codes; however, third party inspectors typically certify the home in the plant during construction. A modular house is different than a manufactured house because a manufactured house is required to be built according to the HUD Code and a modular house is not. A modular house can be regulated by a local building code, but the federal HUD Code preempts local building codes regarding manufactured houses. See Section 6.

This manufactured house in Osage County has several features which give it a traditional residential appearance, including a double-pitched roof with an eave projection, landscaping compatible with surrounding properties, shutters beside windows, and a carport.

SECTION 4. RESIDENTIAL APPEARANCE STANDARDS FOR MANUFACTURED HOUSING

Kansas cities and counties have legal authority to impose reasonable appearance requirements or architectural conformity standards on new residential structures, whether factory-built or site-built. See City of DeSoto v. Centurion Homes, Inc., 1 Kan. App.2d 634, 573 P.2d 1081 (1977). When manufactured housing is placed within residential districts, local governments can use appearance standards to help ensure compatibility with site-built homes in some districts. Such standards help assure the owners of adjacent housing that their property will not depreciate in value as a result of the introduction of manufactured housing. Appearance standards can be applied to both site-built and manufactured housing without unduly increasing the cost of home ownership and help manufactured housing gain acceptance in a community.

Appearance standards may include roof pitch and overhang requirements; exterior siding; color/texture compatibility; roofing material; garage or carport requirements; installation according to a referenced code; requirements that the hitch, axles, and wheels be removed; and minimum floor areas and minimum structure widths and lengths.

Most local governing bodies will want to weigh the value of certain appearance standards against any cost or burden they create for the homeowner before deciding what, if any, appearance standards should be adopted. Certain appearance standards are incorporated into the model ordinance/resolution in this report which allows manufactured housing in residential areas. See Sections 9 and 10. The following appearance standards for manufactured housing serve as illustrations of possible ordinance/resolution provisions:

1. The roof must be double-pitched and have a minimum vertical rise of 2.2 feet for each 12 feet of horizontal run, and covered with material that is residential in appearance, including, but not limited to, approved wood, asphalt composition shingles or fiberglass, but excluding corrugated aluminum, corrugated fiberglass, or metal roof;

2. Exterior siding cannot have a high-gloss finish and must be residential in appearance, including, but not limited to, clapboards, simulated clapboards such as conventional vinyl or metal siding, wood shingles, shakes, or similar material, but excluding smooth, ribbed, or corrugated metal or plastic panels;

3. The home must be placed on a permanent foundation that complies with the city or county building code for residential structures (e.g. NCS BCS Standard, see Section 6).

4. The hitch, axles, and wheels must be removed;

5. The unit must be oriented on the lot so that its long axis is parallel with the street. A perpendicular or diagonal placement may be permitted if there is a building

addition or substantial landscaping so that the narrow dimension of the unit, as so modified and facing the street, is no less than 50% of the unit's long dimension;

6. The lot must be landscaped to ensure compatibility with surrounding properties;

7. The home must be at least _____ feet in width, not including overhang;

8. All fuel supply systems shall be constructed and installed within the foundation wall or underground within all applicable building and safety codes except that any bottled gas tanks may be fenced so as not to be clearly visible from the street or abutting properties; and

9. A garage or carport is required. (This requirement is sometimes waived where the deletion would be consistent with the surrounding neighborhood.) Where required, the external material and roofing of the garage or carport must be the same as that of the dwelling unit.

Again, as noted throughout this manual, it is important to recognize the authority of cities and counties to establish appearance standards, such as those cited above, within zoning codes or other regulations which allow for the placement of manufactured housing in certain neighborhoods.

Photographs of manufactured houses installed in Kansas are shown in this manual. They demonstrate certain features that enhance the appearance and integration of manufactured homes into residential neighborhoods.

This manufactured house in Ottawa has a doubled-pitched roof with an eave projection, a permanent porch with a pediment style overhang, and an attached two-car garage.

SECTION 5. MANUFACTURED HOUSING AND LOCAL ZONING REGULATIONS

> ". . . Prebuilt homes, mobile or otherwise, which in a given case may be more attractive in appearance and design than many conventional homes built completely on site, are a part of our changing society, and give recognition to the fact that the law must be responsive to the best interests of those whom it is designed to serve." Heath v. Parker, 93 N.M. 680, 604, P.2d 818, 819 (1980).

Zoning regulation of manufactured housing has changed over the years as both the manufactured housing product and community acceptance of that product have evolved. The stereotypical transient nature of a "mobile home", its historic "box-like" appearance, together with perceptions about the income level of their occupants, have been used as justification for either the total exclusion of manufactured housing from a community or their relegation to mobile home parks or even to non-residential areas.

Zoning regulations are a tool of community planning, allowing cities and counties to restrict the use of land for the purposes of promoting public health, safety and welfare. Decisions by Kansas courts give clear authority to a city to forbid the location of mobile homes in any area of the city except those locations zoned expressly for mobile home parks or mobile home communities. City of Colby v. Hurtt, 212 Kan. 113, 509 P.2d 1142 (1973). While the quality and appearance of manufactured housing has changed over the years and regulatory practices across the country have adapted to those changes, some Kansas communities still maintain the historic, highly restrictive regulatory response to manufactured housing.

Changing Legal Climate

Cities and counties should note that, nationally, the traditional legal climate for regulating manufactured housing is changing. As noted by one zoning and planning commentator:

> Some judicial decisions have now recognized that the modern manufactured home looks much like conventional housing and should be regulated as such. Quality building materials and the addition of fireplaces, garages, patios, landscaping, and other improvements have made such homes virtually indistinguishable from site-built homes of comparable size and style. Moreover, the low purchase price of manufactured homes makes them the only means of home ownership for a large segment of the population. Some recent decisions and state statutes, therefore, permit local regulatory agencies to require only that manufactured housing is compatible with nearby conventional homes. 2 Rathkopf, The Law of Zoning and Planning, Sec. 1901.

Many municipal zoning regulations which have excluded manufactured housing from certain or all residential districts have done so under the rationale that because manufactured housing is mobile, it is distinguishable from site-built homes and can be restricted on that basis. The use of a simple "mobility" criteria to distinguish between a manufactured house and a site-built house was rejected in 1981 by the Michigan Supreme Court in the case of Robinson Township v. Knoll, 410 Mich. 293, 302 N.W.2d 146. In that case, the Michigan court rejected the argument that the mobility of manufactured housing offered a rational (i.e. lawful) basis for regulating manufactured housing differently than site-built housing. See Manufactured Housing: The Invalidity of the "Mobility" Standard, 19 Urban Lawyer 367, 385-388 (1987).

Even though the above-cited Michigan decision is not binding upon Kansas cities or counties and there are no comparable Kansas court decisions rejecting local ordinances or resolutions which distinguish between manufactured housing and site-built housing on the basis of mobility, it is advisable to reexamine the use of this criteria in light of the Michigan case. If distinguishing between manufactured housing and site-built housing solely on the basis of whether it is moved to the site or built on-site is legally suspect, what other criteria can a city or county use to address community concerns about neighborhood integrity? The Michigan Supreme Court in Robinson Township, after invalidating the mobile home regulation on the "mobility" criteria, indicated that 'reasonable standards designed to assure favorable comparison' are still available in local governments when it stated:

> We add, however, that a municipality need not permit all mobile homes, regardless of size, appearance. . .or manner of on-site installation, to be placed in all residential neighborhoods. A mobile home may be excluded if it fails to satisfy reasonable standards designed to assure favorable comparison of mobile homes with site-built housing which would be permitted on the site, and not merely because it is a mobile home. 410 Mich. 310, 302 N.W.2d 146.

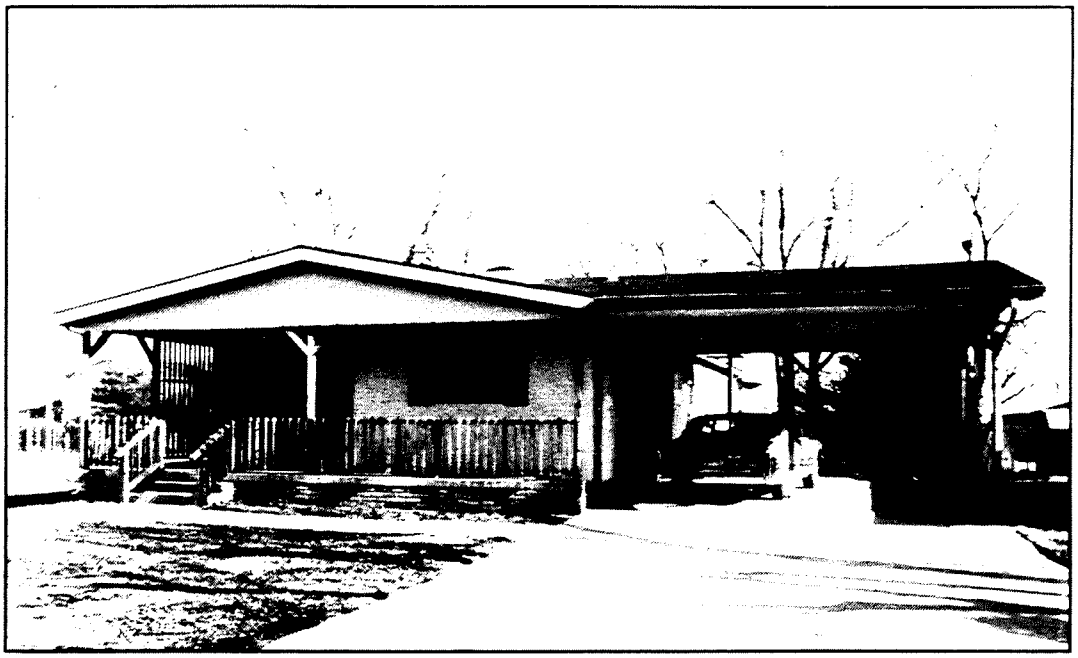
While cities and counties may not enact construction regulations that conflict with the HUD Code (see Section 6), and are probably wise to avoid regulations which rely simply on "mobility" criteria to distinguish between factory and site-built houses, they have other regulatory means to assure that the appearance of manufactured housing compares favorably with site-built housing. The model ordinance/resolution provided in this manual uses size, architectural, accessory and other appearance controls to attempt to ensure that manufactured housing within residential areas will have substantially the appearance of an on-site, conventionally built, single-family dwelling.

County officials should note that K.S.A. 19-2938 provides that neither the board of county commissioners nor the planning board of any county shall, in the exercise of any of the powers and duties conferred under county zoning statutes, regulate the occupancy or location of dwelling units in such a way as to effect an arbitrary exclusion of manufactured housing. No comparable statutory prohibition exists for Kansas cities. Both city and county officials should bear in mind that as it is true with zoning ordinances or resolutions, those regulating manufactured housing must comply with the recognized limitations upon the use of the police power and other constitutional requirements such as due process of law and equal protection of the law.

Cities and counties are neither required to regulate manufactured housing in the first place, nor are they required to treat it differently from other types of housing under their zoning regulations. A local government cannot lawfully prohibit the placement of manufactured homes within their community in the same manner that nuisances are prohibited. However, a city or county without zoning laws may provide some regulation of the siting of manufactured housing by establishing requirements such as certain lot sizes for houses or requiring each house to have access to a street or road.

While there are no Kansas court decisions on the topic, it would appear to be lawful for cities and counties to regulate manufactured housing (through reasonable appearance controls in zoning laws) even though the city does not have comparable regulations for site-built housing.

In establishing zoning or other regulations it is important to note that such laws will generally have only a prospective effect, i.e. manufactured houses that are already in the community at the time the law went into effect generally cannot be required to comply with changes in local zoning or regulatory laws. For example, a local land use regulation which increased the minimum floor area requirement of residential structures from 1,000 to 1,200 square feet could not be applied to dwellings already in existence. However, a local requirement that all occupied dwellings have smoke detectors could be so applied.



SECTION 6. THE MANUFACTURED HOUSING CONSTRUCTION CODE-- THE "HUD CODE"

By definition, manufactured housing is built to conform to a national standard authorized in the federal Manufactured Home Construction and Safety Standards Act (42 U.S.C. Sec. 5401), administered by the United States Department of Housing and Urban Development (HUD). The federal standard issued under the authority of this federal act is commonly referred to as the "HUD Code." Manufactured housing is the only type of housing regulated by a uniform federal code. Site-built homes are generally built according to locally adopted building codes, such as the Uniform Building Code prepared by the International Conference of Building Officials. K.S.A. 75-1211 et seq. sets forth the state uniform standards code for mobile homes and recreational vehicles, but specifically excludes from its application structures subject to the HUD Code, i.e., manufactured housing.

The HUD Code is found in Volume 24 of the Code of Federal Regulations, Housing and Urban Development. It may be referred to as "24 CFR 3280 et seq." Part 3280, relating to manufactured home construction and safety standards, contains pages on such matters as fire safety; body and frame construction; testing; thermal protection; plumbing systems; heating, cooling and fuel burning systems; and electrical systems. This volume, CFR 24, is available for $13.00 from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Generally, the HUD Code is oriented toward performance standards regulating the design and construction of manufactured housing. The Code is based upon standards developed by the Manufactured Housing Institute, the National Fire Protection Association, and the American National Standards Institute. Generally, building codes such as the Uniform Building Code establish specification standards for structures.

The HUD Code is a preemptive law, meaning that local and state governments cannot impose building standards on HUD Code manufactured housing that conflict with the HUD Code. 42 U.S.C. Sec. 5403(d) provides:

> . . . no State or political subdivision of a State shall have any authority either to establish, or to continue in effect, with respect to any manufactured home covered, any standard regarding construction or safety applicable to the same aspect of performance of such manufactured home which is not identical to the Federal manufactured home construction and safety standard.

In Scurlock v. City of Lynn Haven, Florida, 858 F.2d 1521 (11th Cir. 1988) the United States Court of Appeals for the 11th Circuit interpreted this federal statute and held "The language of the statute clearly precludes states and municipalities from imposing construction and safety standards upon mobile homes that differ in any respect from those developed by HUD." No comparable decision has been rendered in the federal circuit court covering Kansas (the 10th Circuit). While the HUD Code preempts differing local building codes regulating manufactured housing, it does not preempt local government land use and zoning powers from

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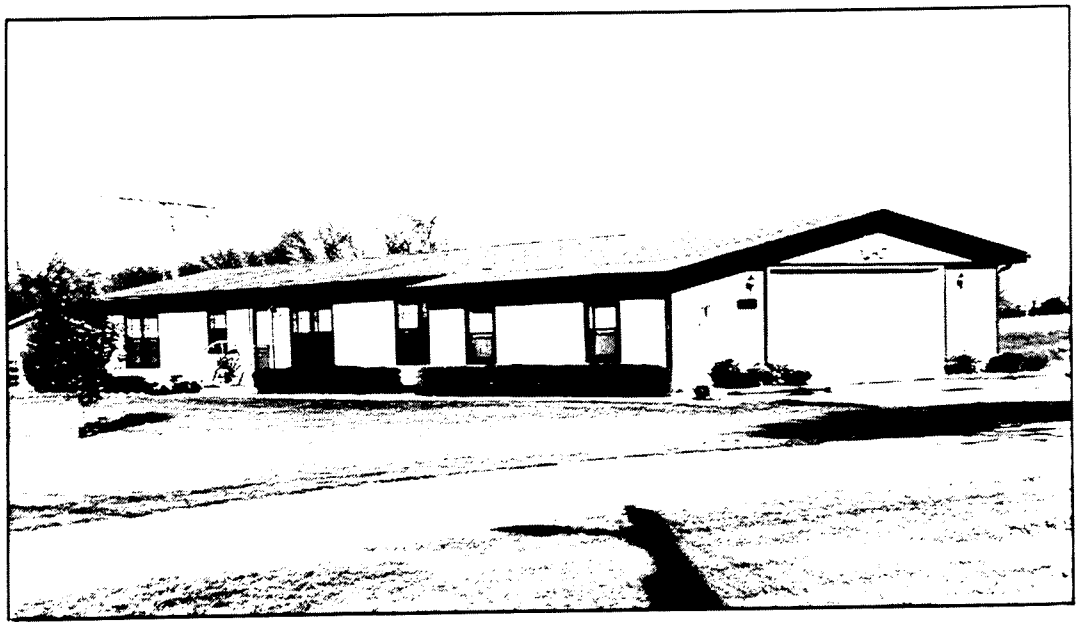
being applied to manufactured housing. City of Brookside Village v. Comeau, 633 S.W.2d 790 (Texas, 1982); Glacker Land Co., Inc. v. Yankee Springs Township, 359 N.W.2d 226 (Mich. App. 1984).

Since 1976, all manufactured housing has been built according to HUD Code standards. If a factory-built house does not comply with the HUD Code it does not meet the legal definition of a manufactured house. Inspections under the HUD Code are conducted at the factory. HUD authorizes design approval primary inspection agencies (third-party agencies) to conduct design reviews and inspections, and production inspection primary inspection agencies to conduct in-plant inspections during the construction process. These services are designed and contracted for through HUD's agent, the National Conference of State and Building Codes Standards, which enforces the HUD Code. The third-party, HUD-certified agencies inspect the design of a manufactured house for compliance with engineering standards and verify standards compliance during the in-plant construction.

Although the HUD Code partially regulates the installation of manufactured housing, actual site preparation and foundation construction are governed by any applicable local building codes.

As of December 1990, Kansas has four manufactured housing plants, located in Arkansas City, Halstead, McPherson and Plainville. The manufactured housing industry has a practice of encouraging local government officials to visit their plants to better understand the manufactured house product.



This manufactured house in Douglas County has an attached garage, pitched-roof with eave projection and landscaping features which makes it compatible with site-built structures in the neighborhood.

SECTION 7. INSTALLATION OF MANUFACTURED HOUSING

An important part of ensuring the safety of persons residing in manufactured housing is to require that such housing be properly installed according to the manufacturer's specifications, applicable laws, and nationally-recognized, locally-adopted codes. The National Conference of States on Building Codes and Standards, Inc. (NCS BCS) Committee on Manufactured Home Installations has published national standards covering the installation of manufactured housing. These standards are referred to as "NCS BCS A225.1, Manufactured Home Installations, 1987". It was approved by the American National Standards Institute (ANSI) on April 26, 1989 as "ANSI A225.1-1987, Manufactured Home Installations."

The NCS BCS Manufactured Home Installation Standards include requirements for manufactured housing siting and foundation systems (whether a single site or sites located in communities), plumbing and utility facilities and connections, manufactured housing set-ups, and manufactured housing on-site accessory buildings or structures. Inquiries regarding purchase of a copy of the standards should be addressed to NCS BCS, 481 Carlisle Drive, Herndon, Virginia 22070, telephone (703) 437-0100. The price is $25.00 each. The following ordinance/resolution requires that a manufactured house be set up in accordance with the NCS BCS standards in order to be classified as a "Manufactured House, Class A", and thus eligible for placement within a single-family residential zone. It does not adopt the standards by reference. Some cities and counties may want to formally adopt the standards by reference.

Incorporation by reference permits a published compilation of rules, regulations or laws available in book or pamphlet form to be adopted as city or county law without having to be published in its full text in the official city or county newspaper. This is done by passing and publishing an ordinance or resolution (called the incorporating ordinance or resolution) which contains a statement that a certain publication, described by title, publisher, compiler and edition, is "incorporated by reference." The effect of these words is that the provisions of the described publication becomes a part of the incorporating ordinance or resolution as though they had been set out in full. The incorporating ordinance or resolution is adopted and published like any other local law. The statutes which authorize and prescribe the procedure for incorporation by reference are K.S.A. 12-3009 through 12-3012 and K.S.A. 12-3301 and 12-3302. Under the city statute, three copies of the published standard must be maintained for public inspection. Under K.S.A. 12-3304, applicable to counties, five copies must be on file. See "Incorporating Codes and Ordinances by Reference," Kansas Government Journal, October 1984.

SECTION 8. ELEMENTS OF MODEL ORDINANCE AND RESOLUTION AUTHORIZING MANUFACTURED HOUSING IN RESIDENTIAL AREAS

Cities and counties which have made the public policy decision to allow certain types of manufactured housing into zoned residential areas may need to amend their current zoning laws to accomplish this objective.

As an alternative to amending their zoning laws, some local governing bodies issue special use permits to allow individual manufactured housing on particular sites as exceptions to existing zoning restrictions. The use of special use permits to authorize manufactured housing in residential areas may be less desirable than zoning code amendments allowing certain manufactured housing. Special use permits which are exceptions to a zoning law, and apply to individual parcels of land, may create within a given neighborhood widely disparate housing forms which vary from lot to lot. Also, the requirement of a special use permit for each manufactured housing site can be burdensome and discourage persons who wish to reside in manufactured houses. Cities and counties also must bear in mind that, in order to allow special use permits, the local zoning law must set out a procedure governing their use, grant and denial.

The model city ordinance and county resolution in this manual place design and appearance standards on manufactured housing that would be allowed in single family residential areas, while also allowing manufactured homes meeting fewer requirements to be located in areas not zoned exclusively for single family residential use. The manufactured housing allowed in single family residential areas is designated as "Class A Manufactured House". In the definitional section of the ordinance/resolution, a Class A Manufactured House must meet certain design and appearance criteria; including length, width and square feet requirements, pitched roofs, eave projections, comparable exterior siding, and the removal of the moving hitch, wheels and axles and transporting lights.

The intent of the these criteria is to ensure that a Class A Manufactured House, when installed, will have substantially the same appearance of an on-site, conventionally built, single family residential dwelling. The use of appearance criteria is discussed in Section 4 of this manual.

The appearance criteria section of the ordinance/resolution can be strengthened or weakened depending upon the preferences of local governing bodies and the needs of the local community. The use of appearance criteria in the ordinance/resolution should take into account not only the goal of achieving the compatibility of manufactured housing in a residential neighborhood, but also the cost to homeowners of complying with appearance standards. While the absence of appearance standards may result in manufactured housing that is incompatible with surrounding site-built residential homes, appearance standards that are too stringent may exclude manufactured housing from single family residential areas, contrary to the public goal of expanding housing options for community members.

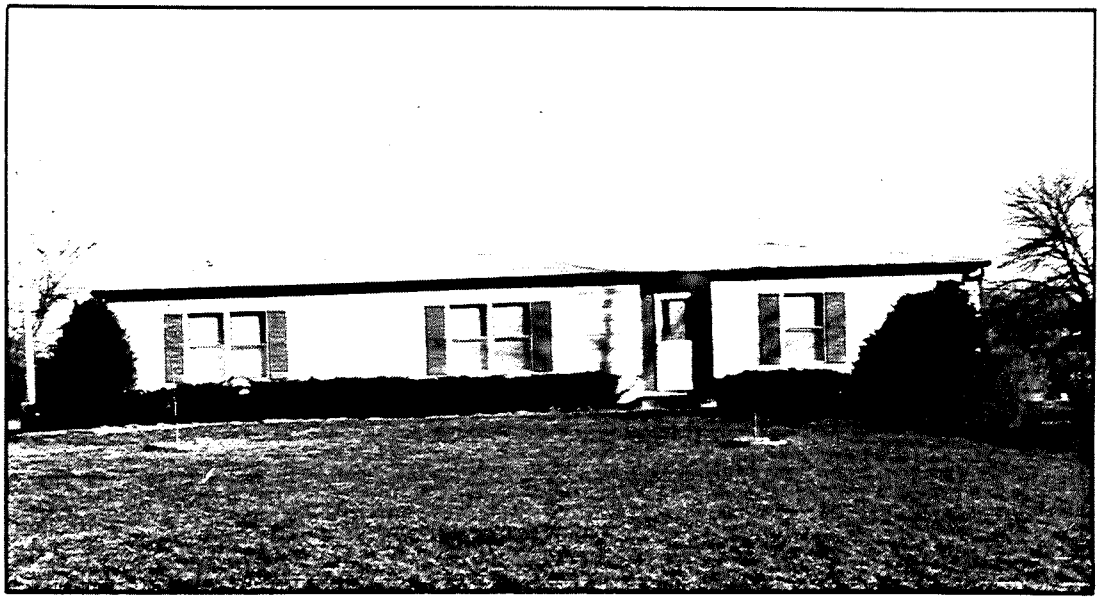
A Class B Manufactured House under the model ordinance/resolution can either be HUD Code housing which does not satisfy the appearance criteria established for a Class A House (Alternative 1) or only satisfies certain criteria (Alternative 2). A Class C Manufactured House does not satisfy the definitional criteria of a Class A or Class B Manufactured House and is not built according to the HUD Code. A Class C Manufactured House may or may not be a "mobile home," and is usually limited to manufactured housing or mobile home districts or mobile home parks.

Section 2 of the ordinance/resolution amends the permitted use table of the local zoning ordinance/resolution. Local governing bodies will need to tailor this section to meet their existing classifications and uses, as well as desired manufactured housing permitted uses. Some zoning regulations do not provide for a permitted use table.

Under Section 2, Class A Manufactured Houses are permitted in all residential districts, including single family districts. In the intermediate residential district -- which is a higher density than single-family -- Class B Manufactured Houses are permitted subject to the issuance of a special use permit. Class B Manufactured Houses are only permitted as a matter of right in the highest density residential districts. The Class C housing is only allowed in a Manufactured House District or a Mobile Home Park.

Section 3 of the ordinance/resolution requires zoning compliance permits and building permits to be obtained and inspections to be performed before a certificate of occupancy is issued. The certificate states that the property owner is responsible for assuring that all applicable conditions and requirements continue to be satisfied, and that appropriate enforcement actions will be taken if violations occur.

The ordinance/resolution may need modification to conform to existing local permit and inspection practices. For example, cities and counties which have a designated building inspector should provide in the ordinance/resolution for a zoning compliance permit, building permit and certificate of occupancy permit in the same manner as used for site built homes. The amount of inspection fees applicable to on-site constructed homes should also be identified.



The owner of this manufactured house in Douglas County has used landscaping around the house and window shutters to enhance its appearance.

SECTION 9. MODEL CITY ORDINANCE CONCERNING MANUFACTURED HOUSING IN RESIDENTIAL AREAS

Ordinance No. _____

AN ORDINANCE Concerning Manufactured Housing In Residential Areas; Amending The Definitions Section And Permitted Use Table Of (Ordinance No. _____ Or City Code Section___-_____) The City's Zoning Ordinance; And Requiring Zoning Compliance Documents.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF _____:

Section 1. Definitions. The definitions section of the city zoning ordinance (Ordinance No. _____ or City Code Sec. _____) is amended by adding the following terms and definitions:

(a) Dwelling Unit. An enclosure containing sleeping, kitchen and bathroom facilities designed for and used or held ready for use as a permanent residence by one family.

(b) Manufactured House. A dwelling unit substantially assembled in an off-site manufacturing facility for installation or assembly at the dwelling site, bearing a label certifying that it was built in compliance with National Manufactured Home Construction and Safety Standards (24 CFR 3280 et seq.) promulgated by the U.S. Department of Housing and Urban Development.

(c) Manufactured House, Class A. A manufactured house constructed after July 1, 1976 that meets or exceeds the construction standards promulgated by the U.S. Department

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of Housing and Urban Development that were in effect at the time of construction and that satisfies the following additional criteria:

(1) The manufactured house has a length not exceeding four times its width, with length measured along the longest axis and width measured at the narrowest part of the other axis.

(2) (Alternative 1) The manufactured house has a minimum of _____ square feet of enclosed and heated living area;

(Alternative 2) The manufactured house has a minimum of _____ square feet of enclosed living area;

(Alternative 3) The manufactured house has minimum dimensions of 24 feet in width and 40 feet in length.

(3) The pitch of the roof of the manufactured house has a minimum vertical rise of 2.2 feet for each 12 feet of horizontal run and the roof is finished with a type of shingle that is commonly used in standard residential construction in the city;

(4) All roof structures shall provide an eave projection of no less than six inches, which may include a gutter;

(5) The exterior siding consists predominantly of vinyl or metal horizontal lap siding (whose reflectivity does not exceed that of gloss white paint), wood, or hardboard, comparable

in composition, appearance and durability to the exterior siding commonly used in standard residential construction in the city;

(6) The manufactured house is set up in accordance with the recommended installation procedures of the manufacturer and the standards set by the National Conference of States on Building Codes and Standards and published in "Manufactured Home Installations, 1987" (NCS BCS A225.1), and a continuous, permanent masonry foundation or masonry curtain wall, unpierced except for required ventilation and access, is installed under the perimeter of the manufactured home.

(7) Stairs, porches, entrance platforms, ramps and other means of entrance and exit to and from the home shall be installed or constructed in accordance with the standards set by the city building code and attached firmly to the primary structure and anchored securely to the ground; and

(8) The moving hitch, wheels and axles, and transporting lights have been removed.

It is the purpose of these criteria to ensure that a Class A Manufactured House, when installed, shall have substantially the appearance of an on-site, conventionally built, single-family dwelling in this city.

(d) Manufactured House Class B. (Alternative 1) A manufactured house constructed after July 1, 1976 that meets or exceeds the construction standards promulgated by the U.S. Department of Housing and Urban Development that were in effect at the time of construction,

but that does not satisfy all of the criteria necessary to qualify the house as a Class A Manufactured House.

Manufactured House, Class B. (Alternative 2) A manufactured house constructed after July 1, 1976 that meets or exceeds the construction standards promulgated by the U.S. Department of Housing and Urban Development that were in effect at the time of construction, and that meet or exceed criteria (6), (7) and (8) for Class A Manufactured Houses above.

(e) Manufactured House, Class C. Any manufactured house as defined in Section 1(b) of this ordinance that does not meet the definitional criteria of a Class A or Class B Manufactured House.

Section 2. Permitted Uses. The Permitted Use Table of the city zoning ordinance (Ordinance No. _____ or City Code Sec. _____) is amended by adding the following permitted uses in the districts designated.

	R-1	R-2	R-3	Manufactured House District
Class A Manufactured House	P	P	P	P
Class B Manufactured House		S	P	P
Class C Manufactured House				P

(P = Permitted Use; S= Permitted Use Upon Issuance of a Special Use Permit)

Section 3. Zoning Compliance Documents. A zoning compliance permit must be secured by the owner of a manufactured house from the city (zoning enforcement) officer

before a Class A, B or C manufactured house may be placed on a lot zoned for residential purposes. A building permit must also be secured by the owner of the house. The building permit shall state all applicable conditions and requirements and state that any violations will be subject to appropriate enforcement action. Once installation and construction is complete and necessary inspections have been performed, and before occupancy and use, a certificate of occupancy must be secured from the city. The certificate shall state that the house owner is responsible for assuring that all applicable conditions and requirements continue to be satisfied, and that appropriate enforcement actions will be taken if violations occur.

The permits required under this ordinance shall be in addition to any other permits required under the law of the city.

Section 4. Penalty. Any person, firm or corporation who violates, neglects or refuses to comply with any provision of this ordinance, or who shall maintain, use or construct any building or premises in violation of any of the provisions of this ordinance shall, upon conviction, be fined in a sum not exceeding $_____ for each offense. Each day that a violation is committed, caused or continued to exist, shall constitute a separate offense.

Section 5. Effective Date. This ordinance shall be effective upon publication in the official city newspaper and shall apply to the placement of any manufactured house on or after _____.

Adopted this _____ day of _____, 199__ by the governing body of the City of _____.

_____
Mayor

ATTEST:

_____
City Clerk

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SECTION 10. MODEL COUNTY RESOLUTION CONCERNING MANUFACTURED HOUSING IN RESIDENTIAL AREAS

Resolution No. ____

A RESOLUTION Concerning Manufactured Housing In Residential Areas; Amending The Definitions Section And Permitted Use Table Of (Resolution No. ____), The County Zoning Resolution; And Requiring Zoning Compliance Documents.

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF _____ COUNTY THAT THE FOLLOWING RESOLUTION BE ADOPTED:

Section 1. Definitions. The definitions section of the county zoning resolution (Resolution No. ____) is amended by adding the following terms and definitions:

(a) Dwelling Unit. An enclosure containing sleeping, kitchen and bathroom facilities designed for and used or held ready for use as a permanent residence by one family.

(b) Manufactured House. A dwelling unit substantially assembled in an off-site manufacturing facility for installation or assembly at the dwelling site, bearing a label certifying that it was built in compliance with National Manufactured Home Construction and Safety Standards (24 CFR 3280 et seq.) promulgated by the U.S. Department of Housing and Urban Development.

(c) Manufactured House, Class A. A manufactured house constructed after July 1, 1976 that meets or exceeds the construction standards promulgated by the U.S. Department of Housing and Urban Development that were in effect at the time of construction and that satisfies the following additional criteria:

(1) The manufactured house has a length not exceeding four times its width, with length measured along the longest axis and width measured at the narrowest part of the other axis.

(2) (Alternative 1) The manufactured house has a minimum of _____ square feet of enclosed and heated living area;

(Alternative 2) The manufactured house has a minimum of _____ square feet of enclosed living area;

(Alternative 3) The manufactured house has minimum dimensions of 24 feet in width and 40 feet in length.

(3) The pitch of the roof of the manufactured house has a minimum vertical rise of 2.2 feet for each 12 feet of horizontal run and the roof is finished with a type of shingle that is commonly used in standard residential construction in the area;

(4) All roof structures shall provide an eave projection of no less than six inches, which may include a gutter;

(5) The exterior siding consists predominantly of vinyl or metal horizontal lap siding (whose reflectivity does not exceed that of gloss white paint), wood, or hardboard, comparable in composition, appearance and durability to the exterior siding commonly used in standard residential construction in the area;

(6) The manufactured house is set up in accordance with the recommended installation procedures of the manufacturer and the standards set by the National Conference of States on Building Codes and Standards and published by "Manufactured Home Installations, 1987" (NCS BCS A225.1), and a continuous, permanent masonry foundation or masonry curtain wall, unpierced except for required ventilation and access, is installed under the perimeter of the manufactured house.

(7) Stairs, porches, entrance platforms, ramps and other means of entrance and exit to and from the house shall be installed or constructed in accordance with the standards set by the county building code and attached firmly to the primary structure and anchored securely to the ground; and

(8) The moving hitch, wheels and axles, and transporting lights have been removed.

It is the purpose of these criteria to ensure that a Class A Manufactured House, when installed, shall have substantially the appearance of an on-site, conventionally built, single-family dwelling located in the same area.

(d) Manufactured House Class B. (Alternative 1) A manufactured house constructed after July 1, 1976 that meets or exceeds the construction standards promulgated by the U.S. Department of Housing and Urban Development that were in effect at the time of construction, but that does not satisfy all of the criteria necessary to qualify the house as a Class A Manufactured House.

Manufactured House, Class B. (Alternative 2) A manufactured house constructed after July 1, 1976 that meets or exceeds the construction standards promulgated by the U.S. Department of Housing and Urban Development that were in effect at the time of construction, and that meet or exceed criteria (6), (7) and (8) for Class A Manufactured Houses, above.

(e) **Manufactured House, Class C.** Any manufactured house as defined in Section 1(b) of this resolution that does not meet the definitional criteria of a Class A or Class B Manufactured House.

Section 2. Permitted Uses. The Permitted Use Table of the county zoning resolution (Resolution No. _____) is amended by adding the following permitted uses in the districts designated.

	R-1	R-2	R-3	Manufactured House District
Class A Manufactured House	P	P	P	P
Class B Manufactured House		S	P	P
Class C Manufactured House				P

(P = Permitted Use; S= Permitted Use Upon Issuance of a Special Use Permit)

Section 3. Zoning Compliance Documents. A zoning compliance permit must be secured by the owner of a manufactured house from the county (zoning enforcement) officer before a Class A, B or C manufactured house may be placed on a lot zoned for residential purposes. A building permit must also be secured by the owner of the house. The building permit shall state all applicable conditions and requirements and state that any violations will

be subject to appropriate enforcement action. Once installation and construction is complete and necessary inspections have been performed, and before occupancy and use, a certificate of occupancy must be secured from the county. The certificate shall state that the house owner is responsible for assuring that all applicable conditions and requirements continue to be satisfied, and that appropriate enforcement actions will be taken if violations occur.

The permits required under this resolution shall be in addition to any other permits required under the laws of the county.

Section 4. Penalty. Any person, firm or corporation who violates, neglects or refuses to comply with any provision of this resolution, or who shall maintain, use or construct any building or premises in violation of any of the provisions of this resolution shall, upon conviction, be fined in a sum not exceeding $_____ for each offense. Each day that a violation is committed, caused or continued to exist, shall constitute a separate offense.

Section 5. Effective Date. This resolution shall be effective upon publication in the official county newspaper and shall apply to the placement of any manufactured house on or after _____.

Adopted this _____ day of _____, 199___.

_____
Chair

_____
Commissioner

_____
Commissioner

ATTEST:

_____
County Clerk

8-55

HOUSE LOCAL GOVERNMENT COMMITTEE

TESTIMONY OF M. S. MITCHELL

LEGISLATIVE CHAIRMAN

OF

HOME BUILDERS ASSOCIATION OF KANSAS

ON

SENATE BILL 23

MR. VICE-CHAIRMAN AND MEMBERS OF THE COMMITTEE:

Thank you for the opportunity to appear before your Committee today on a matter which has occupied so much of my time and effort, as well as the other people who served on the Ad Hoc Planning committee, over the past four years, or more.

My testimony is directed at the two portions of the bill which have to do with the Flood Plain Management provisions of Senate Bill 23. My experience with that subject dates back to the 1950's when the City-County Flood Control Office of which I was supervisor obtained a seat on the Utility Advisory Committee which served the Subdivision Committee of the Metropolitan Area Planning Commission in Wichita and Sedgwick County.

For the past 12 years I have had a consulting service for landowners, developers, builders, attorneys and others in Flood Plain Management and Land Development. In that capacity, I deal with the Federal Flood Insurance Program and its officials who work for the Federal Emergency Management Agency known as FEMA. The Federal Flood Insurance Program, surveys communities to determine the presence of flood hazard areas, contracts for detailed hydrologic and hydraulic analyses for the flooding sources in the communities, prepares maps outlining the boundaries of the 100-year frequency flood and compiles a report containing text, tables and charts from which the community can base the technical aspects of its flood plain management program.

LG
3-20-91
Attach.

In exchange for its promise to manage its flood plain development in a manner designed by FEMA to reduce flood loss, the community's residents are given an opportunity to purchase and maintain, without fear or cancellation, federally subsidized flood insurance for structures and contents. To be certain that the communities actually do restrict development so that it is reasonably flood proof, FEMA furnishes Model Ordinances which must be adopted by the local governing body before the flood insurance is made available it constituents. The form and content of the Local Ordinance must very closely conform to the Model Ordinance in order to pass FEMA review.

FEMA further insures compliance with the provisions of the Model Ordinance and their regulations by making periodic audits of community performance, and if there are violations of a serious nature, has the power to sanction communities in several ways, including removing the right of constituents to purchase new flood insurance policies or to renew existing policies.

Notice that to this point, I have not mentioned one phase of the Federal Flood Insurance Program which relates to the state. In Kansas, current law requires communities to submit its ordinances, or in the case of Counties, resolutions and any regulations or changes or variations from those ordinances, resolutions, etc. to the Chief Engineer of the Division of Water Resources of the Kansas State Board of Agriculture for approval PRIOR to adoption by the local governing body. It has been our position that this requirement served no useful purpose and that it creates a source of conflict between FEMA and the DWR with the communities caught in the middle. One such case occurred in Saline County where DWR refused to approve Variances which had been approved local authorities.

The amended language found in New Section 17 on Page 15 removes this "double jeopardy" and is what the Ad Hoc Committee of

professional planners and others recommended. During all of the peer reviews of the outlines, bill drafts and bills submitted to the planning and code enforcement officials across the state, not one objected to the removal of the Division of Water Resources from the ordinance approval process, or saw the need for it.

The other aspect of current law which Senate Bill 23 addresses is found in New Section 29 on Page 29 where the levee law, K.S.A. 24-126 is amended to add the phrase "The provisions of this section 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 act." This language is a compromise reached with the Chief Engineer who recognized that the studies done by the Federal contractor which determine the boundaries and flood elevations in regulatory floodways meet the hydraulic requirements of K.S.A. 24-126.

The objection to this compromise comes from those who don't want to lose the environmental review now being imposed on all subdivision lot fills required by the by FEMA for lots in mapped flood plains. Our answer to this objection is that, if such reviews are appropriate for subdivision lots, they should be applied to all subdivision lots, not just the ones in a mapped flood plain. If the Environmental Coordination Act agencies want to review subdivision proposals, let them serve on the advisory committees to local planning commissions, or if they cannot persuade local officials of that need, let them work for legislation which requires planning commissions to permit such reviews. At the present time those reviews constitute an unequal application of the law to flood plain properties.

In closing, we urge passage of SB 23 as amended by the Senate Committee of the Whole.

Representative Mary Jane Johnson
Chairman House Local Government Committee

20 March 1991

Dear Representative Johnson:

I am writing to you in regard to Senate Bill 23, new section 21. My name is Jack Porteous and I presently live in a manufactured home located in Jefferson County. I have been in the broadcasting business for 30 years and have lived in seven states. I have owned eight homes and four of those I had custom built. This is my first manufactured home.

Three years ago I decided to go back to school to get my masters degree and prepare to start my own broadcast consultancy business. I had been living in homes that were approximately 2700 sq. ft. in size and I knew that while I was attending graduate school it would be necessary to live in a smaller home to reduce my living expenses. The manufactured home made it possible for me to have a larger home than a site built home without sacrificing appearance. My manufactured home cost, including land, was approximately $35.00 per sq. ft.. If I purchased a site built home it would have cost $50.00 to $55.00 per sq. ft. for the same size home.

In today's housing market there is a void of new site built homes in the $45,000 to $65,000 price range. Therefore, first time home buyers and lower income people are forced to purchase older homes that generally are less energy efficient and often in need of expensive maintenance that they can not afford. The family that makes $25,000 a year in income can only qualify for about a $600 a month house payment. That would be a home that would sell for approximately $60,000 and that price new home is not available in today's market place.

Therefore my recommendation to this committee is that as long as manufactured homes meet the national building code and appearance standards, we should give the public the needed choices for today's market place. We need to make it possible for many Kansans to improve their current housing.

Sincerely,

Jack Porteous

LG
3-20-91
Attach.
10

Kansas Wildlife Federation, Inc.

P.O. Box 5715
Topeka, Ks. 66605

Affiliate of National Wildlife Federation
913/266-6185

200 S.W. 30th
Suite 106
Topeka, Ks. 66611

TESTIMONY SB 23 RECODIFICATION LOCAL PLANNING AND ZONING

HOUSE LOCAL GOVERNMENT COMMITTEE March 20, 1991

I am Jerry Hazlett, Executive Manager of the Kansas Wildlife Federation. The Federation is a non-profit wildlife and natural resources conservation and education organization. Our volunteer membership joins with the members of our national affiliate, the National Wildlife Federation, to support the wise use and sustained management of our vital air, water, soil, forest and wildlife resources.

Thank you for this opportunity to speak in opposition to SB 23.

Let me state that the Kansas Wildlife Federation is not opposed to local government control for land use planning and development. We recognize that local government has to be in a position to make land use decisions that benefit its constituents.

Unfortunately, many of these local land use decisions are made for short term development benefits with little or no consideration given to environmental or other natural resource needs or benefits. This problem is especially compounded for land use decisions along rivers and streams.

A typical scenario in a stream valley, has and continues to be, clear the trees, fill the wetlands, straighten and channel the stream, and build flood levees. In this process, greenways and wetlands are destroyed, soil, chemical, and biological pollutants into the river are increased, and stream habitats are lost.

Unfortunately, these impacts are not limited to the local government boundaries where the land use decisions are made. The pollutants move downstream to impair the water quality of those below. Flood events are increased both downstream and upstream calling for more channelization, levy building, riparian and wetlands destruction, and stream pollution.

The State, through the State Water Plan, has recognized the need for incorporating these environmental needs into local land use zoning and planning efforts. These needs are included in three State Water Plan programs; the Non Point Source Pollution, the Wetland and Riparian and the Local Environmental Protection programs. All are recognized and authorized by the legislature as high priority for planning and implementation at the local, county and state levels.

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Attach. 1

This bill as it now reads, would significantly reduce the states responsibility to carry out these programs. It eliminates the States authority and responsibility to review, condition and grant land use development permits within the flood way fringes of many rivers and streams in Kansas.

KWF urges this Committee to strike the language on Page 29 lines 2 through 5, "The provisions of this section shall not apply to properly placed fills other than levees located in the flood way fringe within a participating community as defined and identified by the national flood insurance act." Please note that this language is an amendment and not a part of the original statutes being recodified. If this is left in, it gives the States blessing to the continued domino effect of increased need for flood protection, increased habitat destruction, and increased water quality impairment rather than comprehensive and cooperative land use planning.

Statement of Wayland J. Anderson, Assistant Chief Engineer
Division of Water Resources, Kansas State Board of Agriculture
Before the House Local Government Committee on Senate Bill 23.

March 20, 1991

Mr. Chairman and members of the Committee, thank you for the opportunity to speak to the Committee in connection with this Bill. The Bill for the most part recodifies and changes existing planning and zoning laws, which the Division is not opposing.

We are here to oppose the current language of Section 17, as a result of being amended on the Senate Floor. This section would repeal K.S.A. 12-734 and 735 which currently delegates authority to the Chief Engineer to both review and approve floodplain zoning regulations and ordinances. The new section would remove the function and responsibility for approval of floodplain ordinances and leave the Chief Engineer with only a review and comment function.Further, we have become aware that Section 29 may significantly impact the state's ability to protect critical habitat of threatened and endangered species. This section would amend K.S.A. 24-126, the Levee Law, to exempt certain properly placed fills other than levees located in the floodway fringe from the Chief Engineer's approval prior to construction. These two sections would change the Chief Engineer's existing statutory authority dealing with floodplains, and the proper placement of levees, which concerns us greatly. We have presented testimony to the House Committee on Local Government last session, to the Interim Committee and to the Senate Committee this session in support of the bill before its latest amendment.

I. Section 17 - Flood plain zoning regulations and ordinances. The Division was satisfied with the original language which resulted from the House and Interim Committees and took into account our previous testimony. Unfortunately, the most recent amendment by the Senate has resulted in language that is unacceptable to the Division because it significantly alters the historic role of the Division and, will create additional hardship on the residents and communities of the state by: (1) removing approval authority of floodplain ordinances, and (2)reducing our effectiveness in providing advice when a local entity needs help, especially to small communities which usually do not have access to technical staff resources. Currently, there are differences in the administrative and enforcement actions at the Local, State and Federal levels of government that have developed over the past twenty years. The Federal Emergency Management Agencies' (FEMA) sanctions are on the community as a whole rather than on the individual projects. It is the local community's role to enforce its ordinance on individuals. If this local enforcement fails or the community needs additional assistance, our state agency can concentrate on an individual problem and work with the community rather than penalizing all residents of a community.

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Under Section 17, if a community consistently ignores individual complaints or comments regarding their ordinances, the injured party has only one place of review -- that is FEMA. FEMA currently has one staff member based in Kansas City, Missouri, assigned to this program for the entire state of Kansas. Even with the best of intentions, one FEMA staff member cannot possibly address these types of individual needs for such a broad and diverse hydrologic area. It seems a giant step backwards to remove approval and enforcement authority of the Chief Engineer to assist the individual or small community in such instances. By relegating the Chief Engineer to an advisor as new section 17 proposes, such would be the case.

On a positive note, while new Section 17 would impose a 90 day time on the review and approval of floodplain ordinances, which currently does not exist, we feel that this is a reasonable time limit which we can and did support in our testimony to the Senate Committee. Fortunately, we have been able to dedicate staff time to FEMA activities since 1989 due to a FEMA grant, which provided funding for an additional position to address both the contractual duty specified by FEMA and Division needs, such as the review and approval of ordinances.

Since the Division backlog has been made an issue, let me give you some background regarding this matter. The Water Structures Section of the Division of Water Resources is involved in administering 17 separate laws. Fortunately, the floodplain statute does not suffer from the same backlog problems that others do. Factors which affect backlog are imposed statutory time limits, specific funding mechanisms, staffing limitations and workload. The Floodplain Management Program is adequately staffed because the Federal Emergency Management Agency has provided a federal grant to finance a position within the Division of Water Resources. The funding of this position enables specific review of floodplain ordinances in a timely manner and provides general technical assistance to local communities. The backlogs are involved with other permit programs. This bill, regardless of the language imposed, will not significantly impact any of the backlogs of the Division of Water Resources, whether in the remainder of the Water Structure's Section or in the Water Appropriation permitting process.

For example, one of the duties the agency has is related to the issuance of permits to construct projects which affect stream channels and obstruction of those channels. These include road bridges, stream channel alterations both in dimension and alignment and pipeline crossings to name a few. Permitting of these projects unfortunately does have the longest average date of processing time of any of our statutory duties. This backlog has resulted from the doubling of this particular workload, and it does impact other programs. However, the floodplain management program at this time remains unaffected by that impact.

Since increased funding for staff or for hiring of consulting engineering firms seems to be forlorn thought in the budget process, we have internally taken steps to relieve the staff of review responsibilities on projects - types which infrequently prove to be a problem for someone else. We've attempted to do this by establishing reduced-requirement permits, known as general permits, which allow both the applicant and the agency to benefit from the reduced processing time and reduced information submittal requirements. We have established one general permit with four others on the drawing board and instituted other time-saving measures such as supplemental questionnaires, reworked procedures, new policies and regulations.

Another program which this agency administers is the approval and permit of the construction of dams exceeding 30-acre feet in capacity. The average processing time for this duty is less than 90 days. So as you can see, when discussing backlogs within the Division of Water Resources, one must be concerned about the specific program, because of the mix in funding and staff assignments which we must deal with.

Finally, more than a dozen individuals and environmental entities have inquired of the Division about the possible reduction of this area of the Chief Engineer's authority. These individuals and entities feel their concerns are overlooked at the local level, requiring them to seek remedy by appeal to this state agency. Without the agency's ability and authority to be involved with approval of floodplain ordinances, those private individuals' only recourse is to hire an attorney to address the local oversight in the court of appropriate jurisdiction. It seems much more responsive and responsible to continue to allow the state agency to iron out these differences before having to go to court.

II. Section 29 - the Levee Law

The statutory language change in Section 29 involves the Chief Engineer's authority to approve fills which can affect other landowners in the floodplain by redirecting flood flows, raising the level of the flood, or blocking drainage as proposed by amendment to K.S.A. 24-126. If the Chief Engineer retained the authority to review and approve the floodplain ordinances, resolutions, variances, and changes as previously provided for in new Section 17, it would not be necessary to review every individual project for such fills.

One further consequence of amending K.S.A. 24-126 through Section 29 of the Bill is that areas of these floodway fringe fills would now be outside the protection of the Threatened and Endangered Species Act. This would allow the destruction of critical habitat of threatened and endangered species without protection or mitigation opportunity. This could occur because The Threatened and Endangered Species Act applies only to those projects which are sponsored by a governmental entity or when the state agency permit or approval is needed. This also means that individuals, whether it be their homes or other property which are in these areas can also be adversely impacted without any state recognition of their problem. Historically, this agency has exercised its authority concerning floodway fringe fills to assist individuals in resolving differences in problems unrelated to strictly floodplain insurance program requirements. The situations or examples brought up to the Committees as being unnecessary or hurtful regulation, are, in our opinion, examples where the regulatory process is working.

In summary, I would urge amending new Section 17 to retain the Chief Engineer's current authority to review and approve city ordinances and county resolutions on floodplain lands. A draft is attached for the committee's consideration. This authority has been in the agency for more than 20 years and we are surprised by the arguments against the agency continuing this necessary duty, especially since this argument has not been proposed or discussed with us by local communities.

If new Section 17 is amended to allow the Chief Engineer to continue his current authority to review and approve ordinances and resolutions then new Section 26 should remain unchanged from the current language.

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We believe it is important that the Division be involved in addressing environmental issues and possible flooding of other property. The protection of other persons' property rights is also important and should be considered by the Committee in connection with Section 29 and we will support the Committee's wishes in that regard.

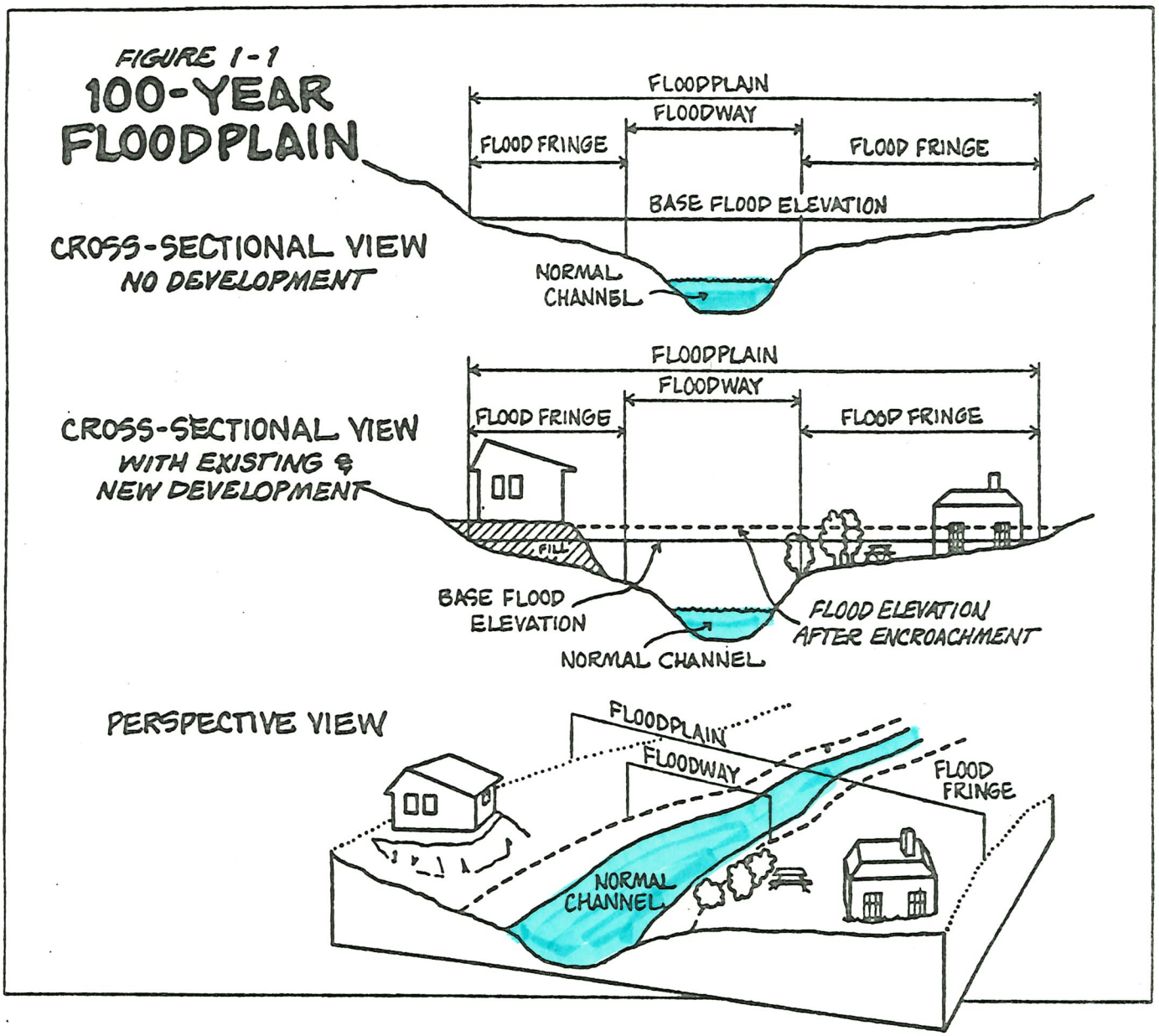
In closing, we hope you will consider the Division's overall performance with respect to floodplain management before you remove the authority you have intrusted to the Division in 1970.

Thank you very much, I would be happy to answer any questions.

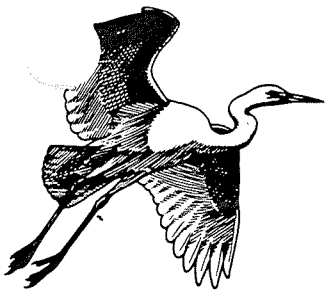
New Sec. 17.

(a) All resolutions, ordinances and regulations relating to flood plains shall be submitted to the chief engineer, division of water resources, Kansas state board of agriculture, for review and approval thereby prior to adoption, and all proposed variances or changes from such approved resolutions, ordinances and regulations shall be reviewed and approved by the 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 in a flood plain 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. The chief engineer shall approve or disapprove any such ordinance, resolution, regulation or plan or variances or changes thereof within 90 days of the date of receipt thereof.



FLOODPLAIN -- The area inundated by the 1 percent chance flood constitutes the 100-year floodplain of a river, creek, ditch, lake, or other source of flooding. This floodplain is also referred to as the Special Flood Hazard Area (SFHA). It is the area of a community where development must be regulated through a local ordinance conforming to the standards of the NFIP.



Kansas Audubon Council

March 20, 1991
House Committee on Local Government

SB NO. 23: PLANNING AND ZONING RECODIFICATION

My name is Joyce Wolf and I am here on behalf of the 5000 Kansas members of the National Audubon Society who support the wise use and protection of our natural resources.

I would like to make it perfectly clear that the Kansas Audubon Council does not oppose the process of recodification of the planning and zoning statutes. We do, however, have concerns that that process is being used to jeopardize the environmental integrity of Kansas' streams and rivers. Specifically, we are opposed to the inclusion of Section 29 (K.S.A. 24-126) in the bill. This section is part of the Environmental Coordination Act, passed in 1987 to partially implement the Fish, Wildlife and Recreation section of the State Water Plan. Section 29 exempts floodfringe fills from the review process that the Environmental Coordination Act sets up; in so doing, the Council believes Section 29 negates an "implemented" section of the Water Plan: the Subsection on Riparian Protection. Allow me to explain:

The Riparian Subsection of the SWP states: "Riparian areas in Kansas represent an important natural resource. Benefits of natural riparian areas can include timber production, sediment and erosion control, water quality protection, streambank stabilization and wildlife habitat. Riparian areas refers to the area of streamside vegetation along a natural watercourse which is typically distinguishable from upland areas in terms of vegetation, soils or topography. IN KANSAS, LESS THAN TWO PERCENT OF THE TOTAL LAND AREA IS REPRESENTED BY RIPARIAN WOODLANDS LOCATED PRIMARILY IN THE EASTERN PART OF THE STATE".(emphasis added)

If Section 29 is included in the bill, the Kansas Audubon Council believes the following adverse conditions will result:

1) It will encourage the development and placement of structures in floodway fringe areas. Although the structures may be protected from the 100 year regulatory flood, it will increase the potential for significant property loss from less frequent (500 year) but more damaging flood events. We do not believe the state should encourage the development of flood prone areas. (If the structures are insured under the federal program, we all pay for property losses.)

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2) By removing the oversight of floodplain filling from the Division of Water Resources, the state no longer will have in place a mechanism to take a more holistic look at an entire watershed. Streams and rivers do not begin and end at community boundaries, and floodplain fills can have effects both up and downstream. The Kansas Audubon Council believes approval of these proposed fills needs to be regulated by an entity, like the DWR, that will have a comprehensive view of a watershed.

3) Most importantly, the potential to increase erosion, siltation and sedimentation from the placement of fill along a floodway violates, if not the letter then surely the spirit of, several important programs of the State Water Plan. The programs we are referring to are the Non-Point Source Pollution Control Program and the Local Environmental Protection Program which are administered by the State Conservation Commission, and the Kansas Department of Health and Environment in cooperation with County Conservation Districts and County Health Departments. Somehow, it does not seem appropriate to be asking some Kansans to put erosion and siltation control structures in place on their lands (terraces, grass waterways etc.) at the same time communities would be permitted to add to these problems.

The Kansas Audubon Council firmly believes that the multi-agency review of the Environmental Coordination Act under the leadership of the DWR is critical to the protection of these laws and vital components of the State Water Plan. Now is not the time to abandon a complete subsection of the State Water Plan; especially when it addresses a resource that is not abundant within the state. If Section 29 is permitted to remain in SB 23, it would be the equivalent of tearing up the Riparian Subsection of the SWP. Disregarding this subsection may benefit a few special interests, but it certainly will not benefit the people, the natural resources, nor the wildlife of the state.

I appreciate this opportunity to express our concerns, and I would be pleased to try to answer questions.

STATEMENT OF
SAM G. EBERLY
ROUTE #9
WICHITA, KS 67235

BEFORE THE
HOUSE LOCAL GOVERNMENT COMMITTEE
ON
SENATE BILL NO. 23
MARCH 20, 1991

Madam Chairman, and members of the committee, thank you for the opportunity to present testimony before your committee today.

I do not represent any interest or political body, except to say that since I am here representing no one group, possibly I am representative of our democratic system, I am the common man. I am here today to speak to you about the legislation under consideration as passed by the Senate Bill No. 23 and as an individual who has encountered the growing pains of the City of Wichita and the over zealous interests of developers. In the Summer of 1988, property that adjoined my home and farm was sold. Soon thereafter, it came to my attention that 17 1/2 acres of the property in the flood plain was to be filled to allow homes to be built in the flood plain. Since my property that adjoined the development was also in the flood plain, me first question was "where will the flood water go that has been displaced by seven foot of fill?"

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I began my search for answers with the City Engineers office. They seemed sympathetic to my problem but could only tell me of a hearing before the Sub-committee for plat approval, and of a hearing before the full Metropolitan Area Planning Committee. I attended both, spoke at both, and was treated as an individual trying to stop the developer's progress. I wasn't trying to stop progress, I was just trying to understand what this would do to my property.

You see, the sad part about this issue was that my property line was the city/county boundary. From those city meetings and staff contacts, I contacted my county staff members and commissioners. Since this was an approval process in the city, no one in the county could seem to solve or answer my questions.

After many contacts, including the local Soil Conservation Service, I was told to call the Kansas State Department of Water Resources in Topeka. One phone call later, I was able to talk first to David Pope, then to George Austin and finally to Jim Schoof. They explained their authority as it pertained to my problem. On September 3, 1988, we received a copy of a letter addressed to the developers. The letter was from the Kansas Department of Water Resources indicating certain requirements including the necessity for them to obtain a permit for the proposed levy they were building under KSA 24-126.

Within a few days I received all sorts of phone calls. On September 15, 1988, I received a public condemnation by certain members of the Metropolitan Area Planning Committee about my involvement, and the fact that the Division of Water Resources was getting involved. It was very obvious that turf was being protected and a power struggle was developing.

Filling a flood plain doesn't sound too serious to some, but in later meetings, the developers engineering authority, Mr. M.S. Mitchell, finally admitted it would force 7/10 of a foot more water on our property, members of the committee, that is eight inches. In 1985, during the highest water on record at our location, we lacked just one inch from having water in our home. Had this levy problem been around in 1985, so what if seven inches of water was in our home and farm buildings. The law allows fill in flood plains as long as it doesn't exceed twelve inches!!! We were told by the Chairman of the sub-committee of the MAPC that our home shouldn't be where it was--how ridiculous. It has been there since 1934, not much I could do in 1988.

Let me emphasize, that if it were not for the intervention of the Division of Water Resource, no resolution to the increased flooding of our property would have been reached. We would have been totally ignored.

After a site inspection and a through review of the flood levels, a compromise to assist the drainage away from my property was reached and conveyed to the developers on December 1, 1988.

The language in Senate Bill No. 23 removes approval authority of the Division of Water Resources in the example of my personal dilemma. If anything, language should be adopted giving more state authority to flood issues, since the City of Wichita, the Sub-committee on Sub-divisions, the Metropolitan area Planning Committee and Sedgwick County could not agree to who had the authority to review the resulting flooding with adjoining landowners.

The sad part of this entire debate was that staff members of the City of Wichita felt the plat of the subdivision should have been revised, but appointed and elected officials overrode the staff recommendations.

Please, lets keep a professional approval process in effect through the Department of Water Resources that acts as a check and balance system. Without their assistance, no one would have listened to one individual when the developers were talking in the other ear.

SIERRA CLUB

Kansas Chapter

Testimony to House Local Government

S.B.23 - Environmental Review of Flood Plain Development

I am Scott Andrews representing the Kansas Chapter of the Sierra Club. The Sierra Club is certainly not opposed to this bill as a whole. Our concerns stem from amendments in two sections of the bill which weaken environmental review and management in flood plains.

Section 17 (page 15), paragraphs (a) and (b) were amended to take approval authority of flood plain regulation away from the Division of Water Resources leaving only a weak review function with no teeth.

The second is a single sentence found in Section 29 (page 29), line 2, it reads:

" The provisions of this section shall not apply to properly placed fills other than levees located in the floodway fringe within a participating community as defined by the national flood insurance act."

This sentence has the effect of eliminating all state environmental review of fill projects in the floodway fringe of most communities, including effects on animals on the state endangered species list. Additionally, because the reporting procedure is eliminated, it is possible that species on the Federal Threatened and Endangered List, still legally protected, would have little de-facto protection.

Together these changes weaken state review and regulation of flood plains, inviting environmental abuse and likely destruction of riparian and wetland habitat.

The Sierra Club urges the members of this committee to amend S.B. 23 by striking the sentence quoted above and by maintaining state approval authority over these sensitive riparian areas.

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Testimony on Senate Bill 23
House Committee on Local Government
by
Clark Duffy
Assistant Director, Kansas Water Office

March 20, 1991

Madam Chairman and members of the committee, I am Clark Duffy the Assistant Director of the Kansas Water Office. I appear today on behalf of the Kansas Water Office and the Kansas Water Authority.

We support those sections of Senate Bill 23 which would improve local planning in Kansas. We oppose those provisions of this bill which would eliminate the State Floodplain Management Program.

The state water polices and programs established through the *Kansas Water Plan* require a strong partnership with local units of government. Over two-thirds of the states expenditures to implement the *Kansas Water Plan* are returned to local units of government to address water problems. Effective local planning is necessary to maintain a strong state and local partnership in implementation of the *Kansas Water Plan.* We believe the planning and zoning provisions of this bill will improve local coordination and strengthen this partnership. Therefore, we support those provisions of the bill.

We have a great deal of concern about those provisions of Senate Bill 23 which would eliminate the state's floodplain management program and restrict the local governing bodies floodplain management program. Most urban flooding problems have been addressed over the years by structural solutions with local, state and federal financing. With a few exceptions this is one water problem that has essentially been solved in the State of Kansas. For these reasons the *Kansas Water Plan* recognizes the importance of floodplain management. Unless the state maintains an effective Floodplain Management Program there is a strong likelihood

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that future development will occur in floodplain areas which will result in the need for state expenditures of funds to mitigate those future flooding disasters. We would recommend that the appropriate forum to examine a change in the state's floodplain management policy should be through the State Water Planning Process.

Kansas Water Office and Kansas Water Authority recommend that those sections of Senate Bill 23 which eliminate the State Floodplain Management Program (Sections 15, 17, 27, 29 and modifications to 2 and 31) be stricken and the balance of Senate Bill 23 be enacted. If further consideration of the State Floodplain Management Program is desirable it could be addressed through the State Water Planning Process or through separate legislation.

S.B. 23

Testimony Provided To: House Local Government Committee

Provided By: Kansas Department of Wildlife and Parks

March 20, 1991 Darrel Montei

S.B. 23 deals primarily with planning and zoning laws and as such does not directly involve the Department of Wildlife and Parks. The Department is charged with management and protection of the state's fish and wildlife resources. A crucial requirement of those resources is habitat and protection of the resource involves attention to their habitats. Providing proper attention to habitats involves a high level of cooperation with other state agencies and with certain federal agencies. Much of this cooperation is accomplished through a state established environmental review process for publicly funded projects. The Department is a member of that review process. Through these reviews and in concert with the permitting authorities of several state and federal agencies, a measure of protection can be afforded to critical habitats.

There are two sections of S.B. 23 which will severely restrict the ability of this Department in meeting our responsibility. We respectfully request the Committee to consider those sections and possible amendments to address those concerns.

Section 17 on page 15 was amended by the Senate Committee of the Whole to remove the Chief Engineer's authority to review and approve plans which affect floodplains. As currently worded, the

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Chief Engineer can only review and comment on plans. This will now negate values of the environmental review process and ignore many environmental problems including resource and habitat considerations. We strongly recommend the Committee restore language that existed prior to the final Senate amendments.

Section 29 starting on page 27 has language that will allow certain projects affecting critical habitats to escape any review and input through the environmental review process. The specific language in question is on page 29, lines 2 through 5. It would allow for fills in the floodplain which would not be subject to the Chief Engineer's review and approval. The filling of wetlands and oxbows is an anticipated result. Wildlife including threatened and endangered species would be impacted. Fills intended for future building would also occur, thus compounding other problems within the floodplain such as erosion and pollution. The phrase "properly placed" fills is used. Properly placed is not defined and without the Chief Engineer's review and approval authority, what will determine a properly placed fill? We recommend that the new language of Section 29 on page 29 be deleted.

March 18, 1991

Honorable Mary Jane Johnson, Chairman
Local Government Committee
Kansas House of Representatives
State Capitol-426S
Topeka, KS 66603

Dear Chairman Johnson:

It is our understanding that your Committee will consider action on Senate Bill 23 on Tuesday March 19. We would strongly urge you and the Committee to give serious consideration to amending Section 21 of the bill concerning the location of residential designed manufactured homes.

When we were informed that a special task force had been appointed to restructure and recodify the existing zoning statutes, we were excited to say the least. We had hopes of new legislation which would streamline the process not only for the applicant, but would also make interpretation easier for the Planning Commission, and Governing Bodies that consider zoning matters. We did not realize that the legislation would end up being somewhat tainted in favor of special interest groups, namely, the manufactured home industry.

Please do not misinterpret our concern to think that cities are prejudiced against manufactured homes, because nothing could be further from the truth. The City of Derby has many manufactured homes in the city, and we understand that the homes are essential for new families, and those families and/or individuals who choose manufactured homes as principal dwellings.

It is the spirit of the legislation to which exception is taken. We as a Governing Body, and as a Planning Commission take great exception to the language of Section 21. It should be left to the local units of government, and especially their delegate boards and commissions to determine the viability and the logic for placement of homes be they manufactured homes, or homes which are constructed on site. It does not seem legitimate nor appropriate that the legislature make such a broad, sweeping determination as to what is the best usage of land, when that usage can and will differ for each of the 685 incorporated cities in the state.

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City of Derby 611 Mulberry • Derby, Ks 67037 • 316/788-1519 • Fax 316/788-6067

The Kansas Constitution, and the K.S.A. 12-101, grant cities and counties Home Rule authority to develop and enforce local legislation which is in the best interest of all of the citizens within their jurisdictions. Please leave us the discretion to continue to invoke local standards and regulations which protect us not only as a political subdivision of the state, but also as a part of the democratic process of the state.

Due to scheduling conflicts, the City of Derby will not be able to have anyone in attendance for the Committee Hearings. However, we request that this letter be read into the record of your hearings. Should you have any questions, or require additional information concerning this testimony, please contact us at your convenience.

Sincerely,

Mark A. Butterfield, Mayor
City of Derby

Dolan Pelley, Chairman
Derby Planning Commission

March 8, 1991

1819 White Oak Circle
Wichita, KS 67207

Rep. Mary Jane Johnson, Chairperson
Local Government Committee
Statehouse
Topeka, KS 66612

Dear Ms. Johnson:

I am a professional engineer engaged in the private practice of civil engineering. My colleagues at my firm, as well as myself, are retained by a broad range of clientele in our work, from smaller to larger cities and counties, to industries, to developers, and occasionally individual landowners. I am writing to you today to express my viewpoints concerning Senate Bill 23, particularly regarding regulation of flood prone areas. It is my understanding that after passing the Senate on March 7, that this bill will be assigned to your committee.

I support the floor amendment made to Section 17 by the Senate in passing the bill. I feel that local zoning officials have sufficient technical guidance and oversight from the National and Regional Federal Emergency Management Agency (FEMA) officials. FEMA audits each community from time-to-time to ensure that the Flood Insurance program is being properly administered. I believe that the Chief Engineer of the Division of Water Resources (DWR) need not be involved in the local administration of flood plain regulations as long as FEMA provides the technical assistance and oversight; to involve the DWR adds an unneeded level of bureaucracy.

I fully support the new Section 27 as written. The National Flood Insurance Program has been developed to discourage construction of improvements in flood prone areas, and I feel this proposed section confirms that intent.

I also wish to express my support for the amendment to Section 29 embodied in the next to last sentence of Section 29. This provision, as written, provides an exemption for construction of fill materials which are properly placed in accordance with the National Flood Insurance Act. The National Flood Insurance Program designates those areas in which fill may be placed without a severe impact on flooding heights or velocities. These permissible areas have been established based on a detailed engineering study. To make properly placed fills in these areas subject to the review of the Chief Engineer under K.S.A. 24-126 will bring on two problems:

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1) It will cause unneeded delay to a developer, builder, industry, or homeowner who wishes to construct fill in accordance with the National Flood Insurance Program requirements with the approval of the local building/zoning official.

2) It will drastically increase the workload on the staff of the Office of Chief Engineer, which already, by their own admission, are understaffed and overworked. Again, we feel that the exemption granted to properly placed fills is warranted.

I make the above comments on these particular points with the understanding that they have been points of discussion. As an engineer involved with the intricacies of floodplain management and use, I wish to make known my personal view that the proposed legislation in regards to floodplain regulation is good, and should not be weakened or diminished.

Sincerely,

Michael W. Berry

Michael W. Berry

MWB:cas

xc: Wanda Fuller, Rep. 87th District
Eric Yost, Senator 30th District