

Approved January 24, 1991
Date

MINUTES OF THE SENATE COMMITTEE ON LOCAL GOVERNMENT

The meeting was called to order by Sen. Don Montgomery at
Chairperson

9:00 a.m./~~pm~~ on Jaunaury 23, 1991 in room 531-N of the Capitol.

All members were present except:

Sen. Gaines

Committee staff present:

Theresa Kiernan, Revisor of Statutes
Mike Heim, Legislative Research
Emalene Correll, Legislative Research
Shirley Higgins, Committee Secretary

Conferees appearing before the committee:

Ernie Mosher, League of Kansas Municipalities
Thomas E. Slattery, Associated General Contractors of Kansas, Inc.
Mike Heim, Legislative Research
Rod Cellmer, Schult Homes Corporation
Jack Porteous, Jefferson County resident
Frank C. "Pat" Daniels, Jr.
Bickley Foster, Planning Consultant, Wichita
Marvin S. Krout, Director of Planning, Sedgwick County

The meeting began with the request for the introduction of a bill by Ernie Mosher, League of Kansas Municipalities. The bill was entitled, "An act concerning the condemnation of unsafe or dangerous structures within cities." (Attachment 1).

Sen. Allen made a motion for the introduction of the bill, Sen. Lee seconded, and the motion carried.

Tom Slattery, Associated General Contractors of Kansas, Inc., followed with a request for an introduction of a bill which would provide for "prompt pay" for members throughout all tiers of the construction chain on public works projects. (Attachment 2).

Sen. Ehrlich made a motion that the bill be introduced, Sen. Allen seconded, and the motion carried.

The chairman called on Mike Heim of Legislative Research to give a briefing to the committee of the study done by the interim Local Government Committee regarding planning and zoning recodification. (Attachment 3). The chairman announced that the hearing would begin on SB 23 which is the result of this interim committee study and report.

SB 23 - An act concerning planning and zoning.

Rod Cellmer, Schult Homes Corporation, testified first in support of the bill. (Attachment 4). Sen. Steineger had some brief questions regarding the two other manufactured housing companies in Kansas and HUD minimum standards for modular housing compared to manufactured housing.

Jack Porteous of Jefferson County and who presently lives in a manufactured home testified further in support of SB 23. (Attachment 5).

Frank C. "Pat" Daniels, Jr., followed with further support of

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON LOCAL GOVERNMENT,

room 531-N Statehouse, at 9:00 a.m. ~~PM~~ on January 23, 19 91

the bill. (Attachment 6).

Next to testify in support of SB 23 was Bickley Foster, Planning Consultant, Wichita. He indicated that he had been a resident of Kansas for 26 years and has been waiting for this bill. In dealing with developers, he has been embarrassed in explaining to them that Kansas has a faltering enabling act. This bill is conservative in comparison with other states. It is a basic enabling bill and is basically backed by all builders in Kansas except in the area of manufactured homes where the use of the word "effect" in the bill has made it unclear as to if manufactured homes have been excluded. He supports manufactured homes being included in the bill and feels the bill needs clarification in this area.

Last to testify in support of the bill was Marvin S. Krout, Director of Planning, Sedgwick County. Mr. Krout expressed some concern with the bill as currently drafted, however, and offered amendments. (Attachment 7).

The chairman questioned Mr. Krout concerning the possibility of city zoning becoming discriminatory with regard to manufactured housing. Mr. Krout commented that discrimination has not taken place at the county level, and he thinks this is a problem that should be dealt with at a local level.

Sen. Allen expressed concerns about Mr. Krout's testimony regarding manufactured housing being set apart from a community, their different appearance and the suggestion that they may be inferior. Sen. Allen feels that there is no negative effect by manufactured housing in a community; manufactured housing is attractive and should be allowed to be located anywhere in a community. Mr. Krout responded that he does not feel that the bill will allow cities to control where manufactured housing is located.

There being no further time, the meeting was adjourned at 10:02 a.m.

Date: 1-23-90

GUEST REGISTER

SENATE

LOCAL GOVERNMENT

NAME	ORGANIZATION	ADDRESS
BARRY HOKANSON	JOHNSON COUNTY GOVT.	110 S. CHERRY, OLATHE 66061
Rebecca Hessel GARTEN	CITY OF LEAWOOD	9417 Lee Blvd 66206
Marvin Kroust	Wichita/Sedgwick County	10th flr city hall, Wichita 67202
Tom Phillips	City of Lenexa	12350 W 87th St. Pkwy. Lenexa 66215
Candy Harmonson	City of Lenexa	" " "
Linda Pruitt	Lenexa Chamber of Commerce	11900 W 87th St Pkwy Lenexa
Pat Daniels	Vernum-Cromationg. Director	6800 College Blvd Ste 100 DP
Art Davis	City of Lenexa	12350 W 87th St Pkwy - 66215
Art Chambers	Ks Chapter of Amer. Plng Assoc.	P.O. Box 768 Olathe KS 66061
Vini Kaup	League of Municipalities	Topeka
Anne Smith	Ks. Assoc. of Counties	Topeka
DAVID HILL	CITY OF OLATHE	P.O. BOX 768 OLATHE, KS 66061
Willie Martin	Sedgwick County	Wichita
Janet Stubbbs	XIBA of Ks.	Topeka
Monty R. Wedel	Riley County Planning	110 Courthouse Plaza Manhattan, KS. 66502
Steve Adams	Dist. Wildlife & Parks	Topeka
Shirley R	Top-Shaw Co. Material	Topeka, Ks.
C. Bickley-Foster	2814 N. Edwards	Wichita, KS 67204
Jerry Hazlett	Ks Wildlife Fed.	Box 5715 Topeka 66605
GEORGE AUSTIN	DIV. OF WATER RESOURCES	901 S KANSAS, 2ND FLOOR TOPEKA, KS 66612-1283
BOB ALDERSON	Ks. MAN. HOUSING ASSOC.	2101 W. 21st TOPEKA, KS. 66604
Cathy Holdeman	City of Wichita	Wichita
Erna Belvick	Intern. for Sen. Lee	Topeka

City Dangerous Structures Statute
A Bill Requested by the League of Kansas Municipalities

General Explanation. K.S.A. 12-1750 et seq., relating to the repair or removal of unsafe or dangerous structures within cities, now requires the city governing body to hold all hearings as to the condemnation of structures to secure their repair or removal. In some cities, especially larger cities, this requires considerable time at official governing body meetings. The principal changes made by the proposed bill permit the appointment of a structures appeals board to perform the hearing. The city governing body would still be required to make the final order.

Specific Changes.

1. Section 1 amends K.S.A. 12-1751 to authorize the city governing body to appoint a structures appeals board of not less than three residents to conduct the required hearings.

2. K.S.A. 12-1752 is amended to make the following changes:

(a) the preliminary resolution for scheduling the "show cause" hearing is required to be published once each week for two consecutive weeks, at least five days apart, instead of "on the same day of each week".

(b) The minimum number of days between the last publication and date of hearing is reduced from 30 days to 5 days. Under the present law, about 40 days of elapsed time at the minimum is required between the finding by the enforcement officer and the date of hearing and possible order.

(c) In lieu of the required certified mailing of the resolution, the bill would permit personal service. Personal service appears appropriate when (1) some urgent action is necessary or (2) it is cheaper than certified mail (\$1.10 each, plus \$.90 for return receipt).

3. K.S.A. 12-1753 is amended to:

(a) implement the option of using a structures appeals board. In such instance, the board would make its findings to the governing body for its review, on the record. Whether by review of the board's findings, or after the conclusion of the hearing by the governing body, the governing body must adopt findings by resolution,

(b) the present sentence as to the publication of the final order is changed so it follows the provision as to its contents. Further, the final order (resolution) could be mailed or personally served on the affected parties.

Senate L.G.

1-23-91

Attachment 1

SENATE BILL No. _____

By Committee on Local Government

AN ACT concerning the condemnation of unsafe or dangerous structures within cities; amending K.S.A. 12-1751, 12-1752 and 12-1753 and repealing the existing sections.

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

Section 1. K.S.A. 12-1751 is hereby amended to read: 12-1751. The governing body of any city shall have the power to cause the repair or removal of, ~~or to remove~~ any structure located within the city, which may have become unsafe or dangerous. Such governing body may appoint a structures appeals board of not less than three electors of the city to conduct the hearing provided for in K.S.A. 12-1753.

Sec. 2. K.S.A. 12-1752 is hereby amended to read as follows: 12-1752. Whenever the enforcing officer files with the governing body of the city a statement in writing that any structure, describing the same and where located, is unsafe or dangerous, the governing body shall by resolution fix a time and place at which the owner, the owner's agent, any lienholders of record and any occupant of such structure may appear and show cause why such structure should not be condemned and ordered repaired or demolished. Such resolution shall be published once each week for two consecutive weeks ~~on the same day of each week~~ on days at least five days apart. At least ~~30~~ 5 days shall elapse between the last publication and the date set for hearing. A copy of the resolution shall be mailed by certified mail within no later than three days after its first publication to each such owner, agent, lienholder and occupant, to the last known place of residence, and ~~shall be marked "deliver to addressee only."~~ As an alternative to mailing a copy of such resolution, the same may be personally served on each such owner, agent, lienholder and occupant.

Sec. 3. K.S.A. 12-1753 is hereby amended to read as follows: 12-1753. On the date fixed for hearing or any adjournment thereof, the governing body ~~or its designee~~ the structures appeal board shall hear all evidence submitted by the owner, his or her agent, lienholders of record and occupants having an interest in such structure as well as evidence submitted by the enforcing officer filing the statement and shall make its findings by resolution in writing. If such hearing is conducted by a structures appeals board, such board shall, at the conclusion of the hearing, make findings and transmit its written findings to the governing body for its review, on the

record, of such hearing and findings. After such review, or after the conclusion of a hearing conducted by the governing body, the governing body shall adopt findings by resolution. If the governing body of the city shall find that such structure is unsafe or dangerous, such resolution shall direct the structure to be repaired or removed and the premises made safe and secure. ~~Such resolution shall be published once in the official city paper and a copy mailed to the owners, agent, lienholders of record and occupants in the same manner provided for the notice of hearing.~~ The resolution shall fix a reasonable time within which the repair or removal of such structure shall be commenced and a statement that if the owner of such structure fails to commence the repair or removal of such structure within the time stated or fails to diligently prosecute the same until the work is completed, the governing body will may cause the structure to be razed and removed. Such resolution shall be published once in the official city paper and a copy mailed to or served on the owners, agents, lienholders of record and occupants in the same manner provided for the notice of hearing.

Sec. 4. K.S.A. 12-1751, 12-1752, and 12-1753 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.



Associated General Contractors of Kansas, Inc.

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OFFICERS

Bill Whetzel
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Steve Johnson
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Executive Vice President

January 23, 1991

TO: Senator Don Montgomery

On behalf of the Associated General Contractors of Kansas, the Kansas City Builders AGC, Mechanical Contractors Association and the Topeka Chapter of the National Electrical Contractors Association I respectfully request this committee to introduce legislation providing for "prompt pay" for members throughout all tiers of the construction chain on public works projects.

I have provide Theresa Kierran with a proposed draft of this legislation. A summary of this proposal is attached for the committees information.

Thank you for the opportunity to present this request to the Senate Local Government Committee.

Sincerely,


Thomas E. Slattery
Executive Vice President

TES/jm

attachment

DIRECTORS

DON BELLES
MARTIN DONALDSON
PAUL DONDLINGER

DAVID FOREMAN
BOB GREEN
CHARLES SCHULTZ

DAVID UNDERWOOD
D. L. SMITH, Subcontractor
JACK BYBEE, Supplier

National Director
CHARLES E. KOEHN, SR.
NAMC Member
JOE MCGILL

Senate L.G.
1-23-91

Attachment 2



SUMMARY OF PROPOSED PROMPT PAYMENT LEGISLATION

Retainage shall not exceed five percent unless the public owner and architect or engineer determine that a higher rate is required to ensure performance. Retainage, however, shall not exceed ten percent of the value of the contract or subcontract.

A subcontractor may receive an **early release of retainage** if, in the discretion of the owner, the contractor and the architect or engineer, it is determined that the subcontractor's performance has been completed and the subcontractor can be released prior to substantial completion of the contract without risk to the public owner.

Prompt payment shall be made by the public owner within thirty (30) days following the latter of: (a) delivery of materials or construction services, (b) the date upon which the invoice is delivered to the person or place designated, or, (c) receipt of a duly approved estimate by the public owner.

Prompt payment of retainage shall be made by the public owner to the contractor after substantial completion of the contract work and acceptance by the public owner's authorized representative.

Prompt payment shall be made by the contractor to his or her subcontractors and suppliers within fifteen (15) days of receipt of payment from the public owner. Payment within 15 days is also required throughout the lower tiers in the contracting chain.

Prompt final payment shall be made by the public owner to the contractor, by the contractor to his or her subcontractors and suppliers and so on throughout the contracting chain.

An **interest penalty**, at the rate of one and one-half percent (1 1/2%), shall be imposed against any party to the contract for failure to pay promptly without reasonable cause.

Reasonable attorney's fees may be awarded to the prevailing party when it is determined that (a) the losing party in a lawsuit had withheld payment without good faith or reasonable cause, or (b) the losing party in the lawsuit had pursued any legal proceeding therein that was found to be "frivolous" in nature and in bad faith.

Associated General Contractors of Kansas, Inc.

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RE: PROPOSAL NO. 22 -- PLANNING AND ZONING RECODIFICATION*

Proposal No. 22 -- Planning and Zoning Recodification calls for a review of the proposed recodification of Kansas planning and zoning laws (H.B. 3058) suggested by local planners, homebuilders, representatives of cities, and others. The bill was introduced to bring before the Legislature a recodification project begun over ten years ago by the Kansas Chapter of the American Planning Association and others who are interested in recodification.

Kansas Planning and Zoning Laws

General Statutory Overview

The statutory scheme for planning and zoning by local governments in Kansas reflects a smorgasbord of laws that authorize cities, counties, townships, improvement districts, metropolitan or joint planning commissions, regional planning commissions, and airport and port authorities to engage in some form of planning and zoning. The following presents a brief outline of the statutory authority for planning and zoning.

City Statutes. City planning and zoning statutes include: a comprehensive planning and zoning law at K.S.A. 12-701 *et seq.*; authority for cities to zone areas extending not to exceed a three-mile ring outside their boundaries under K.S.A. 12-715b *et seq.*; authority to establish planned unit developments (PUDs) under K.S.A. 12-725 *et seq.*; authority for floodplain zoning under K.S.A. 12-734 *et seq.*; limitations on the power of cities regarding zoning and group homes under K.S.A. 12-736; and authority for airport zoning under K.S.A. 3-701 *et seq.* Further, in cities of the first class, bond issues for projects, a part of master plans, are exempt from bonded debt limits under K.S.A. 13-1114b *et seq.* Finally, incorporation of zoning ordinances or subdivision regulations by reference is permitted under K.S.A. 12-3009 *et seq.*, and K.S.A. 12-3301 *et seq.*

County Statutes. County planning and zoning laws include: a comprehensive county planning and zoning law at K.S.A. 19-2914 *et seq.*; authority for counties to adopt planning and zoning for areas within three miles of any city under K.S.A. 19-2927 *et seq.*; a comprehensive planning and zoning act for Johnson County under K.S.A. 19-2956 *et seq.*; authority for counties to establish PUDs under K.S.A. 12-725 *et seq.*; authority for floodplain zoning under K.S.A. 12-734 *et seq.*; limitations on the power of counties regarding zoning and group homes under K.S.A. 12-736; and authority for airport zoning under K.S.A. 3-701 *et seq.* Counties may incorporate by reference zoning resolutions or subdivision regulations under K.S.A. 12-3301 *et seq.* Certain counties may issue bonds for projects covered by their comprehensive plans and the bond issues are excluded from bonded debt limits under K.S.A. 19-2916b *et seq.*

Township Zoning. Township zoning boards may be appointed by the board of county commissioners for unincorporated areas of any township under K.S.A. 19-2901 *et seq.* Somewhat similar authority exists for Johnson County under K.S.A. 19-2957.

Improvement District Zoning. Improvement districts in Wabaunsee County adjacent to any park and recreation area are given zoning powers under K.S.A. 19-2950 *et seq.*

Metropolitan or Joint Planning Commissions and Regional Planning Commissions. There is authority under K.S.A. 12-716 *et seq.* for cities and counties to jointly exercise planning and zoning powers such as is done (1) by the Topeka-Shawnee County Metropolitan Planning Commission; (2) by multi-county regional planning bodies such as the 11-county Southeast Kansas Regional Planning Commission; and

* S.B. 23 accompanies this report.

Senate L. G.

1-23-91

Attachment 3

(3) by the bi-state Mid-America Regional Council (MARC) serving eight Kansas and Missouri counties and 112 cities in the Kansas City metropolitan area.

Airport Authorities and Port Authorities Zoning. Both airport authorities and port authorities, as well as cities and counties, fit the definition of political subdivision in K.S.A. 3-701(4) and therefore have the power to zone for airport hazards under the airport zoning law.

For a thorough review of the Kansas Planning and Zoning laws and a discussion of relevant court cases see "Planning and Zoning Under Kansas Laws," Legislative Research Department, July 9, 1990.

Committee Activity and Testimony of Conferees

The Committee devoted nearly six days of its interim schedule to the study of this topic and heard from approximately 30 conferees. Those appearing included representatives of the Kansas Chapter of the American Planning Association (APA), the League of Kansas Municipalities, the Kansas Association of Counties, the Homebuilders Association of Kansas, the Kansas Manufactured Housing Association, and the Kansas Association of County Planning and Zoning Officials. Others included planning representatives of the cities of Manhattan, Olathe, Wichita, Lenexa, Lawrence, and Oakley; representatives of Douglas, Johnson, Pottawatomie, Sedgwick, Saline, and Shawnee counties; builders from the Topeka and Wichita areas; a mobile home dealer; a Chicago attorney; and professors from Kansas State University and the University of Missouri at Kansas City.

Need for Recodification

There was nearly general consensus among conferees that a recodification of planning and zoning laws was needed. Those who advocated recodification said it was necessary to provide a single set of simplified statutes dealing with planning, zoning, development, and subdivision regulation. Planning and zoning laws are scattered in several chapters of *Kansas Statutes Annotated*. Current law is not clear concerning the nature of comprehensive plans required. Such plans are not always required before zoning regulations may be adopted. Public hearing procedures and notice provisions vary somewhat among the various statutes. Several of the laws describe subdivision regulations differently. Certain court decisions, in particular, *Golden v. City of Overland Park*, 224 Kan 591 (1978) have caused cities and counties extra work and litigation. *Golden* held that rezoning decisions were quasi judicial in nature rather than legislative. The impact of the decision has been that courts can play a greater role in deciding individual zoning cases and local governments are required to provide greater due process for the parties involved. The current law which excludes property used for agricultural purposes from county zoning regulations does not contain a definition of agricultural land nor any type of acreage threshold. Finally, current law does not authorize many of the new flexible zoning techniques such as overlay zones, and transfer of development rights which some communities may need to utilize in the near future. The ability of cities and counties to utilize home rule power in the area of planning and zoning has been implicitly recognized by the courts but the full scope of this power is unknown. As a result, a recodification clarifying various planning and zoning powers is needed.

However, at least one conferee disagreed that a recodification was needed. The chairman of the Oakley Board of Zoning Appeals argued that zoning was controversial, unduly limited individual rights, and was not needed. Representatives of the Kansas Association of Counties also raised concerns about not having been directly included in the development of the planning and zoning recodification and listed various problems with H.B. 3058.

Brief Summary of H.B. 3058

H.B. 3058 was used as a vehicle for discussion by the interim committee. The following brief summary is provided to reveal the starting point for Committee discussion. The summary reflects several proposed amendments to the bill presented as a balloon by the proponents of the recodification. Each subsection is followed by a summary of comments and concerns and suggested amendments offered by conferees.

Recodification. City and county planning and zoning statutes are combined into one law. Left out of the recodification is the Johnson County law, the airport zoning law, the improvement district zoning law, and the law relating to group home zoning.

Representatives of Johnson County argued that their law, enacted in 1984, addressed unique needs of that county and should not be repealed as a part of the recodification. In regard to the group home zoning, the Committee was informed of Attorney General Opinion No. 89-99, which said the Kansas law violates certain provisions of the federal Fair Housing Amendments Act of 1988. A law professor from the University of Missouri at Kansas City agreed with the opinion and cited additional discrepancies between the state and federal law. A representative of the League of Kansas Municipalities disagreed with the opinion and the professor's assessment of the law.

Planning Commissions. Planning commissions may have from five to 20 members with members serving three- or four-year staggered terms. Planning commissions are required to adopt bylaws and are permitted to have hearing examiners.

Most conferees favored more flexibility in the number of members and the makeup of planning commissions.

Comprehensive Plan. The bill does not restrict the planning area for cities to the unincorporated areas within their own county as current law provides and the current law is clarified to encompass the three-mile unincorporated ring. The latter provision in the bill may limit current law, which provides the planning area shall be what is determined to be the total community of which the city is a part. All cities or counties before exercising zoning or subdivision controls would be required to have a comprehensive plan. Those local governments currently exercising these powers without the benefit of a comprehensive plan would have three years to adopt a plan.

Several Committee representatives objected to the absolute requirement of a comprehensive plan before a city or county could impose zoning or subdivision controls arguing such plans would be too expensive for small cities and would generally be without value. The League of Kansas Municipalities and a professor at Kansas State University conducted a survey of Kansas cities to determine, among a number of other questions, the number of cities that had established zoning regulations and which had comprehensive plans. Results for cities below 1,000 population showed of the 182 responses out of 424 surveyed, 48 such cities had adopted zoning regulations, but only 29 of these cities had a comprehensive plan.

A representative of the Wichita-Sedgwick County Planning Commission urged that the law permit, as an option, the approval of the comprehensive plan by the governing bodies of cities and counties rather than the planning commission.

Subdivision Regulations. The bill defines subdivision regulations more clearly than provided under current law. Procedural variations between city and county adoption of subdivision regulations are made uniform. The board of county commissioners is given the power to approve dedication of land for public purposes like cities have under current laws.

Platting is made a prerequisite to the issuance of building permits. Further, procedures for the extraterritorial issuance of building permits is granted to cities where the cities enforce subdivision regulations. Neither of the above provisions are found in current law.

Conferees generally supported these changes. A representative of Shawnee County raised a concern about the adoption of subdivision regulations in situations involving joint city-county planning commissions. A representative of the Wichita-Sedgwick County Planning Commission argued that a city's extraterritorial power to adopt subdivision controls should not be contingent upon the city enforcing zoning regulations in the area. Further, he suggested the bill be clarified to permit fees in lieu of land dedication in subdivision regulations.

Zoning Regulations. Zoning procedures for cities and counties and overall zoning jurisdiction remains the same as under current law. The bill grants cities and counties the power to establish floodplain zoning, planned unit development, historic preservation zoning, zoning for aesthetics, use of special use or conditional use permits, and transfer of development rights. Zoning regulations would have to be based on a comprehensive plan. Current laws have varying requirements regarding the necessity of a comprehensive plan.

Several conferees said the proposed bill did not make it clear a county could supersede city extraterritorial zoning. A representative of the Wichita-Sedgwick County Planning Commission suggested zoning powers regarding historic preservation include sites on local historic registers and that overlay zoning also be permitted. One conferee objected to repealing the planned unit development procedures in current law and leaving these procedures to local determination.

Floodplain Zoning. The bill provides for review only, not approval, of floodplain zoning ordinances, resolutions, and changes in districts by the Chief Engineer of the Division of Water Resources, State Board of Agriculture.

Several developers, private engineers, and representatives of local governments argued in favor of the provision citing delays in the current approval process and said that state approval was not needed since local units are capable of making these decisions. Representatives of the Chief Engineer of the Division of Water Resources noted delays were often caused by the developers and the fact that such projects were subject to review by some other state agencies under the Environmental Coordination Act, K.S.A. 82a-325 *et seq.* The Committee was also made aware that the Federal Energy Management Agency had informed the Governor that 40 counties may not be in compliance with federal law due to the agricultural exemption under Kansas law.

Rezoning Decisions. Rezoning decisions are declared to be legislative decisions and a number of factors to be considered by the body hearing these requests are listed in the bill. The bill also establishes a 90-day time limit, or 105 days if referred back to the planning commission, for the governing body to decide these rezoning issues. If the governing body takes no action within these time constraints, such applications shall be deemed approved.

Several conferees opposed a legislative attempt to declare rezoning decisions to be legislative decisions, opposed listing the factors for consideration, and opposed adding more elaborate due process procedures to current law. Several persons also opposed the automatic approval of rezoning decisions, arguing this time limit would hamper the rezoning process, put too much pressure on local governing bodies, and lead to hasty decisions. The law professor from the University of Missouri at Kansas City said, if anything were done, the decision after the time limit lapses should be deemed automatically denied instead of automatically deemed approved.

Manufactured Housing. The bill prohibits the exclusion of manufactured housing. Current law prohibits only counties from arbitrarily excluding manufactured housing.

Several conferees opposed the elimination of the word "arbitrary" from the prohibition against excluding manufactured housing and opposed the extension of this prohibition to cities. The concern was that local discretion concerning the location of manufactured housing may be unduly restricted.

Agricultural Land. Agricultural land is defined and the protection from zoning regulations is extended to city zoning as well as county zoning where such lands are in excess of 21 acres. Excluded from the definition are rural home sites, farm homes, land used for recreational purposes, and suburban residential acreage. Under current law, there is no definition of agricultural land, no 21-acre limit, and no such limit on city zoning power within incorporated areas.

Several conferees expressed concern about the agricultural land provision being extended to areas within cities. Another conferee feared that agricultural land uses not covered specifically by the definition could be regulated or prohibited under zoning regulations.

Board of Zoning Appeals. The bill authorizes the appointment of hearing examiners and removes existing powers of such boards to grant "exceptions."

Several conferees opposed limiting the powers of boards of zoning appeals by eliminating their power to grant exceptions. Several Committee members expressed concern about the lack of clarity of the role of hearing examiners.

Vesting of Development Rights. The bill provides that development rights for all projects, other than single family housing, shall vest upon the issuance of all permits required and where substantial construction has begun. Development rights for single family housing vest upon the recording of the plat. Cities and counties may provide for the earlier vesting of development rights.

Current law contains no such provision. Case law generally requires issuance of all permits plus substantial construction for all projects. The provisions were supported by several homebuilders, the Homebuilders Association of Kansas, and others. One conferee argued that the issue of the vesting of development rights be left to the court system.

Committee Conclusions and Recommendations

The Committee commends those who have spent a considerable amount of time and effort over the past years to work toward a recodification of the Kansas planning and zoning laws. The Committee also appreciates the comments and suggestions of all conferees.

The Committee endorses the recodification effort and believes that a recodification of planning and zoning laws is needed. The Committee is aware that further changes may be needed but believes that its recommendations contained in S.B. 23, which it recommends to the 1991 Legislature, will provide a solid foundation for any further efforts needed.

S.B. 23 contains the following major provisions.

1. **Scope of Recodification.** The recodification includes the city planning and zoning law; the authority for city extraterritorial zoning law; the metropolitan, joint, or regional planning commission law; and three of the four county planning and zoning acts, one of which authorizes township zoning boards. Also included are provisions dealing with planned unit development and floodplain zoning. Excluded from the recodification is the Johnson County Planning and Zoning Law and the group home zoning law. In regard to the latter issue, the Committee believed that more time was needed to determine the extent, if any, to which Kansas law conflicted with federal law.

2. **Planning Commission Membership.** The bill provides that any city or county may create a planning commission, which must have a minimum number of five commissioners. If a city planning commission plans, zones, or administers subdivision regulations outside the city, two members of the commission must reside outside the city. A majority of the members of a county planning commission must reside in unincorporated areas. The number and qualifications of members of regional or metropolitan planning commissions are set by agreement.

The recodification generally parallels current law.

3. **Notice.** A new section on notice is added and notice requirements expanded. Before any city adopts a comprehensive plan, subdivision regulations, zoning regulations, or building setback lines, written notice must be given to the county and to townships in which such property is located in noncounty unit road system counties. Similar notice requirements are established for counties who are required to notify cities and townships in the same instances noted above.
4. **Comprehensive Plan.** When a comprehensive plan is required, its content and the geographic territory covered by the plan basically parallel current law. The planning commission retains its responsibility for adoption of the comprehensive plan.
5. **Subdivision Regulations.** Current law is retained regarding: the content, approval authority (which ultimately remains with the city or county governing body), area to be covered by subdivision regulations, the ability of cities and counties individually to adopt such regulations, and the requirement that a joint committee on subdivision regulation be appointed in situations where both a city and a county want to control the growth in the unincorporated area within three miles of a city. Other additions to current law include provisions permitting compliance with subdivision regulations to be made a precondition for the issuance of a building or zoning permit and the ability of cities to enforce building codes outside city limits. Added also is the ability of governing bodies to require both on- and off-site improvements and to provide for payment of fees in lieu of land dedications as part of subdivision requirements. Further, platting of land can be made a prerequisite to the issuance of building permits.
6. **Zoning Regulations.** Current law requirements are retained regarding zoning jurisdiction; approval authority; which remains with the governing body of the city or county; and basic procedures for adoption of zoning regulations. The general power of cities and counties to zone is expanded statutorily (although arguably these powers are already permitted under home rule) to include: the transfer of development rights, historic preservation zoning, aesthetic zoning, issuance of special use or conditional use permits, and overlay zones. Elaborate statutory provisions which now provide for planned unit developments (PUDs) are replaced by a general authorization for PUDs.
7. **Rezoning Decision.** Current law regarding rezoning procedures is retained. The Committee declined to modify case law by legislatively declaring rezoning decisions were legislative rather than quasi judicial in nature. The Committee, likewise, declined to list factors to be considered in rezoning decisions or add new procedural steps since these currently are provided in case law.
8. **Floodplain Zoning.** The Committee retained the current law requirement that the Division of Water Resources approve floodplain zoning ordinances, resolutions, and changes in floodplain zones or districts. The Committee adopted an overall 90-day time limit for Division approval of changes in floodplains. Further, the Committee modified the exemption of land used for agricultural purposes from zoning regulations to make such lands subject to floodplain zoning requirements in order to comply with federal law.

9. **Agricultural Land.** The treatment of agricultural land in reference to zoning reflects current law with the exception of floodplain zoning described above. The Committee declined to adopt a statutory definition of agricultural land and, rather, decided to rely on case law which has defined such land. Likewise, the Committee declined to limit the agricultural exclusion from zoning to tracts of 21 acres or more. Further, the agricultural exemption only applies to the unincorporated areas of counties.
10. **Manufactured Housing.** The bill prohibits the exclusion of manufactured housing by both cities and counties. Current law prohibits arbitrary exclusion of manufactured housing by counties.
11. **Vesting of Development Rights.** The bill establishes vesting rights for single-family developments and other developments. Development rights for single family housing vest upon the recording of a plat. Other developments require the issuance of all permits and substantial construction before development rights vest.

SCHULT HOMES CORPORATION

MEMORANDUM

TO: Don Montgomery - Chairman
Senate Local Government Committee
and Committee Members

DATE: January 23, 1991

FROM: Rod Cellmer - Schult Homes

CC:

SUBJECT:

My name is Rod Cellmer, I am Sales Manager for Schult Homes Corporation, Plainville, KS. Schult Homes operates nine divisions across the United States and is the nations oldest Manufacturing Housing Company.

Schult Homes started business in 1934 in Middlebury, Indiana and opened the Plainville division in June of 1968. I joined the company in Plainville in December, of 1969.

Schult Homes of Plainville is one of the largest employers in Western Kansas. We employ approximately 115 people with an annual payroll of almost \$2,000,000.00 and an additional \$500,000.00 in fringe benefits.

Schult Homes provides a clean, environmentally safe work place for its employees and annually builds over 500 manufactured homes, providing an affordable housing opportunity to consumers.

I stand here today in support of Senate Bill 23 New Section 20.

Our Industry has been declining for the past decade. At one time in the mid 80's, there were over 12 Manufacturing Housing Companies producing homes in the state of Kansas. This provided a tremendous employment opportunity to Kansas and brought along with it all the benefits of employment to cities, counties and to the state.

As of today, there are only 3 Manufacturing Housing Companies building homes in Kansas. Several factors have led to the decline of our Industry including economy, financing and zoning.

Our Industry has changed tremendously in the last 10 years and today we provide a much more residential product than ever before.

It becomes increasingly more difficult to market a residential product when it is difficult to find a residential area that will accept it.

Consumers buying an affordable manufactured home and wanting to fulfill their American dream of home ownership, constantly are stopped by siting restrictions or zoning regulations.

Senate L.G.

1-23-91

Attachment 4

Our Industry totally understands communities needs and concerns over placement of any type of housing.

Attached, is a photograph of a manufactured home located in Western Kansas. This type of set would fit in most R-1 residential districts in most cities and towns across Kansas. Today this housing is excluded because of lack of understanding by local communities about manufactured housing.

I am concerned about the decline in our Industry and stand before you, urging your support of a fair zoning bill.

Fair zoning will allow more site placements, which increases the opportunity for better financing, which provides the opportunity for more consumers to purchase affordable housing, which provides more business, which provides more jobs.

I thank you for hearing my views and am willing to answer any questions you might have.



4-3

Senator Don Montgomery
Chairman Senate Local Government
Committee

19 January 1991

Dear Senator Montgomery:

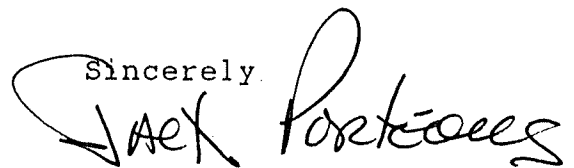
I am writing to you in regard to Senate Bill 23, new section 20. My name is Jack Porteous and I presently live in a manufactured home located in Jefferson County. I have been in the broadcasting business for 30 Years and have lived in seven states. I have owned eight homes and four of those I had custom 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 expences. 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 \$37.00 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 maintainence 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

Senate L.G.

1-23-91

Attachment 5

TESTIMONY TO SENATE
LOCAL GOVERNMENT COMMITTEE

RE: SB 23

FRANK C. "PAT" DANIELS, JR.

January 23, 1991

Mr. Chairman and Members of the Committee:

I am Pat Daniels an Associate Broker with Varnum - Armstrong Deeter, a real estate development and brokerage company based in Overland Park. I am a member of the Board of Directors of the Commercial Investment Division of the Johnson County Board of Realtors. I am also serving as Chairman of the Lenexa Economic Development Council. My comments this morning are my own and do not necessarily represent the views of my Company, the Board of Realtors or of the Economic Development Council.

In my judgment, the two most important elements in determining real estate values are: 1) what can be done with a property, and 2) when can it take place. The private marketplace -- individuals and companies -- heavily impact both.

We here this morning are only addressing the first element -- the use of property. To the extent that broad community interests should be figured into the equation to balance the individual right of an owner or lessee to do with a property as he or she sees fit, to that extent we have properly established laws for planning and zoning.

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1-23-91
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I hope no one here is opposed to the legitimate right to legislate the uses and locations of the various components that make up communities. This is not a rural or urban issue. It is an issue and a right that over time has helped all communities plan their infrastructure and harmonize neighboring interests. Of equal importance, proper planning and zoning has stabilized and enhanced property values, protecting existing owners from adverse intrusions and providing future purchasers of real estate a sense of continuity, thus minimizing risk.

For the past six years, I have been involved in bringing clients to Johnson County and Lenexa in particular. I have spent untold hours working with city and county officials and professional staffs in helping land developers obtain zoning from local governments. I have a much easier time selling a developer on a site when he or she sees that a community has the zoning tools and planning documents to ensure the community is working to provide roads, schools, parks, sewers and other features for vibrant and successful growth. Good local planning and zoning attracts good development.

Incidentally, my family has its' roots in the town of Lathrop, Missouri, a community of about 1,700 folks approximately 40 miles north of Kansas City. I'm very familiar with the rugged individualism and independence that link small town people together. I also know that Lathrop is a planned community and has benefited from the judicial application of sound zoning ordinances.

The bill now before you allows for communities to continue to plan their future with zoning and subdividing authority. From my perspective, the bill seeks to incorporate the lessons learned by cities and counties since the last enabling legislation was approved years ago. Let's face it, a business has to adapt to changing conditions and ways of making business decisions. Senate Bill No. 23 will give cities and counties several new tools and procedures to more successfully plan and zone, still allowing widely diverse communities the latitude to apply these new tools as they desire.

I strongly support the import of this new legislation which will help bring all of Kansas into the Twenty-First Century, and I ask for your support for Senate Bill No. 23.

I would be happy to answer any questions you might have.

SEDGWICK COUNTY



METROPOLITAN AREA PLANNING
DEPARTMENT

CITY HALL — TENTH FLOOR
455 NORTH MAIN STREET
WICHITA, KANSAS 67202-1888
(316) 268-4561

January 22, 1991

Senator Don Montgomery, Chairman
Senate Committee on Local Government
State Capitol
Topeka, Kansas 66612

Dear Mr. Chairman and Members of the Committee:

The reform of the state planning statutes has been a subject of considerable discussion, both formal and informal, among elected and appointed officials in Wichita and Sedgwick County for the past two years. Having participated in all these discussions, I feel confident that the views expressed in this letter accurately reflect the views of the City Council of the City of Wichita, the Sedgwick County Board of Commissioners, and a majority of their appointed planning body, Wichita/Sedgwick County Metropolitan Area Planning Commission.

Overall, these bodies support the purposes and most all the proposed revisions in Senate Bill 23. We will be able to deliver planning services more effectively and efficiently if this bill is enacted. The amendments clarify a number of long-standing ambiguities in the current statutes, and standardize notice and hearing procedures. They also simplify the requirements for establishing Planned Unit Developments, which now take seven pages of text in the state statutes and are so restrictive that few communities have been able to take advantage of this modern planning tool.

Wichita and Sedgwick County do have several concerns about the bill as currently drafted, however, and will be offering or supporting amendments on the following sections:

1. New Section 20 extends language to cities that currently applies to counties regarding manufactured housing. The existing county provision prevents the adoption or enforcement of zoning regulations "...which have the effect of arbitrarily excluding manufactured homes." However, the provision in SB 23 removes the word "arbitrarily", and in doing so, dramatically changes the meaning of this provision. The existing statutory language does not prevent counties from determining which zoning districts and which portions of counties are appropriate for manufactured housing; it simply

Senate L.G.

1-23-91

Attachment 7

warns against regulations which are arbitrary in nature. But by removing the word "arbitrarily", the meaning is changed in a way that totally preempts local discretion on the location of manufactured housing in cities and counties; SB 23 would dictate that a manufactured home must be allowed on any residential lot in a city or county on which a house built to local building code standards can be constructed. At their most recent meeting, a majority of the members of the APA legislative committee which has sponsored the rewriting of the planning statutes indicated that they did not intend to change the meaning of the existing county, and concurred that a modification of the proposed wording was warranted.

Wichita and Sedgwick County agree that manufactured housing can play an important role in meeting affordable housing objectives. Both the city and county have provisions for individual placement as well as entire subdivisions which can be devoted to manufactured housing, and over ten percent of our county's housing stock consists of mobile and manufactured homes. However, manufactured homes can be very different in appearance from typical site-built housing, and are built to a standard which is frankly inferior to local building codes. The uncontrolled placement of manufactured houses in and around existing neighborhoods can have a negative effect on property values, and can have a deterrent effect on the orderly development of surrounding undeveloped land.

We urge you to amend this provision by reinserting the word "arbitrarily" back into new Section 20, or alternatively, to add the language "...in the entire zoning jurisdiction" to the end of this provision. That would signal to local communities that they have an obligation to provide locations for manufactured housing in their communities, without preempting their local authority on where in the community that housing should be and should not be located.

2. The field of planning and zoning continues to evolve; we utilize many tools that were not contemplated when the state planning statutes were first drafted, and it is likely that other new tools will be developed in the future that we cannot imagine today. Cities and counties in Kansas are very different in size and complexion and political philosophy, and so state planning statutes should be as flexible as possible to allow for these differences. Therefore, we would support the following amendments:

- a. Language which would permit cities and counties to use their home rule authority to develop local planning and zoning rules and procedures. This would specifically require the deletion of Section 27(23) in SB 23, which would have the effect of eroding county home rule authority.

- b. At the very least, we recommend a statement granting local governing bodies the ability to establish regulations and procedures which may not be specifically provided for in the statutes but are not in conflict with them.
- c. The City of Wichita specifically requests an addition to Section 5 of this bill which provides for the option of the governing body to have the responsibility for adoption of the comprehensive plan, and for the planning commission to have an advisory role in the process of developing that plan. Most modern state planning statutes, including those of three of the four states bordering Kansas, assign the responsibility for adoption of the comprehensive plan to the governing body. The comprehensive plan is a significant document which states the official goals and policies for community development. It is important for elected officials to take an active role in the development and adoption of the plan, so that they can better understand how their individual decisions in rezoning land and constructing public improvements relate to broader goals and policies. The experience of most planners is that governing bodies who are not given the responsibility for adopting comprehensive plans tend to ignore them in their everyday decisions, and the plan is not a meaningful document to anyone. We recognize that some communities may be satisfied to leave the responsibility of plan adoption with planning commissions, but request the flexibility in the statutes for either option.
3. New Section 18(a) adds language requiring the governing body to "establish in its zoning regulations the matters to be considered when approving or disapproving a rezoning request." We feel that the decisions of the Kansas Supreme Court over the past decade provide very adequate instructions to governing bodies on matters to be considered and this statement should be deleted. This new requirement has the potential to "muddy the water" by suggesting that some of the criteria identified by the courts can be ignored by the governing body or that additional criteria not identified by the courts can be utilized.

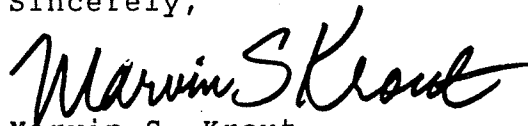
In addition to these more substantive issues, there are several minor amendments of a "clarifying" nature that are needed. Those important to Wichita and Sedgwick County are:

- 18(b): Add statement that the procedures for considering special or conditional uses should be the same as required for zoning amendments.
- 18(e): The area to be measured for the purpose of calculating protest petitions should be clarified to be excluding public

streets and ways, and the calculation should be of "...owners of record of 20% or more of the total area required by this section." (The City of Wichita has a local ordinance with notification of property owners exceeding the 200 foot minimum in some cases, but would like to continue to use the 200 foot standard for purposes of calculating protest petitions.)

- 22(b) There is an apparent typographical error in this provision governing vesting of rights; vesting should occur upon the issuance of permits and "...construction has begun and (not "or") substantial amounts of work have been completed..."

Sincerely,



Marvin S. Krout
Director of Planning